



**United States Department of Justice
Executive Office for United States Trustees**

Report to Congress:

**Criminal Referrals by the
United States Trustee Program
Fiscal Year 2016**

*(As required by Section 1175 of the Violence Against Women and
Department of Justice Reauthorization Act of 2005, Public Law 109-162)*

March 2017

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EXECUTIVE SUMMARY

The Director of the Executive Office for United States Trustees (EOUST) is required to submit an annual report to Congress under the provisions of Section 1175 of the Violence Against Women and Department of Justice Reauthorization Act of 2005 (P.L. 109-162).

Section 1175 states:

The Director of the Executive Office for United States Trustees shall prepare an annual report to the Congress detailing – (1) the number and types of criminal referrals made by the United States Trustee Program; (2) the outcomes of each criminal referral; (3) for any year in which the number of criminal referrals is less than for the prior year, an explanation of the decrease; and (4) the United States Trustee Program’s efforts to prevent bankruptcy fraud and abuse, particularly with respect to the establishment of uniform internal controls to detect common, higher risk frauds, such as a debtor’s failure to disclose all assets.

The United States Trustee Program (Program or USTP) made 2,158 bankruptcy and bankruptcy-related criminal referrals during Fiscal Year (FY) 2016. This represents a 1.3 percent increase from the 2,131 criminal referrals made during FY 2015. The five most common allegations contained in the FY 2016 criminal referrals involved tax fraud, false oath or statement, concealment of assets, bankruptcy fraud scheme, and identity theft or use of false/multiple Social Security numbers.

Of the 2,158 criminal referrals, as of January 9, 2017, formal criminal charges had been filed in connection with 16 of the referrals, 1,416 of the referrals remained under review or investigation, 723 of the referrals were declined for prosecution, and three were administratively closed.

In FY 2016, the Program was an active member of the President’s Financial Fraud Enforcement Task Force (FFETF), two national working groups, and more than 70 bankruptcy fraud and other specialized working groups and task forces in districts across the country. USTP staff contributed to the prosecution of bankruptcy and bankruptcy-related crimes by serving as Special Assistant United States Attorneys in cases, assisting with investigations, and providing

support as expert and fact witnesses. The Program employs a variety of strategies to identify fraud, including the Program’s Internet email “Hotline” which enables individuals to report suspected bankruptcy crimes.

INTRODUCTION

Section 1175 of the Violence Against Women and Department of Justice Reauthorization Act of 2005 (P.L. 109-162) requires the Director of the EOUST to submit a “report to Congress detailing – (1) the number and types of criminal referrals made by the United States Trustee Program; (2) the outcomes of each criminal referral; (3) for any year in which the number of criminal referrals is less than for the prior year, an explanation of the decrease; and (4) the United States Trustee Program’s efforts to prevent bankruptcy fraud and abuse, particularly with respect to the establishment of uniform internal controls to detect common, higher risk frauds, such as a debtor’s failure to disclose all assets.”

The Program is the component of the Department of Justice (DOJ) whose mission is to promote the integrity and efficiency of the bankruptcy system for the benefit of all stakeholders – debtors, creditors, and the public. The Program consists of 21 regions with 92 field office locations nationwide and an Executive Office in Washington, DC. Each field office is responsible for carrying out numerous administrative, regulatory, and litigation responsibilities under title 11 (the Bankruptcy Code) and title 28 of the United States Code.^{1/}

The USTP has a statutory duty to refer matters to the United States Attorneys’ offices (USAOs) for investigation and prosecution that “relate to the occurrence of any action which may constitute a crime,” and to assist the United States Attorney in “carrying out prosecutions based on such action.” 28 U.S.C. § 586(a)(3)(F). In addition, 18 U.S.C. § 158 requires designation of a prosecutor and a Federal Bureau of Investigation (FBI) agent in each district to address bankruptcy-related crimes, affirming the importance of the partnership between the USTP and law enforcement in protecting the integrity of the bankruptcy system.

^{1/} The Program has jurisdiction in all federal judicial districts except those in Alabama and North Carolina.

I. NUMBER AND TYPES OF CRIMINAL REFERRALS

The Program tracks criminal referrals using its automated Criminal Enforcement Tracking System (CETS). Program personnel enter information into CETS as a case progresses and review the status of all referrals semi-annually. The system is designed to provide an accurate measure of criminal enforcement actions, assist in trend identification, and facilitate management improvements.

In FY 2016, the USTP made 2,158 bankruptcy and bankruptcy-related criminal referrals. Each referral may be sent to multiple agencies, but it is counted only once in CETS. Similarly, each referral may contain multiple allegations. The breadth of allegations involved in criminal referrals is evident in Table 1, with referral allegations in 47 separate categories. The five most common allegations contained in the FY 2016 criminal referrals involved tax fraud (47.8%), false oath or statement (24.9%), concealment of assets (21.5%), bankruptcy fraud scheme (19.7%), and identity theft or use of false/multiple Social Security numbers (16.1%).

Type of Allegation	Referrals	
	Number	Percent*
Tax Fraud [26 U.S.C. § 7201, et seq.]	1,032	47.8%
False Oath/Statement [18 U.S.C. § 152(2) and (3)]	538	24.9%
Concealment [18 U.S.C. § 152(1) and (7)]	464	21.5%
Bankruptcy Fraud Scheme [18 U.S.C. § 157]	425	19.7%
ID Theft or Use of False/Multiple Social Security Numbers	348	16.1%
Mail/Wire Fraud [18 U.S.C. §§ 1341 and 1343]	153	7.1%
Perjury/False Statement [18 U.S.C. § 1001]	127	5.9%
Concealment/Destruction/Withholding of Documents [18 U.S.C. § 152(8) and (9)]	102	4.7%
Bank Fraud [18 U.S.C. § 1344]	67	3.1%
Mortgage/Real Estate Fraud	64	3.0%
Sarbanes/Oxley [18 U.S.C. § 1519]	64	3.0%
Forged Document(s)	55	2.5%
State Law Violation(s)	43	2.0%
Embezzlement [18 U.S.C. § 153]	37	1.7%
Conspiracy [18 U.S.C. § 371]	32	1.5%
Post-Petition Receipt of Property [18 U.S.C. § 152(5)]	28	1.3%

Table 1: Criminal Referrals by Type of Allegation, <i>Continued</i>		
Type of Allegation	Referrals	
	Number	Percent*
Money Laundering [18 U.S.C. §§ 1956 and 1957]	24	1.1%
Federal Program Fraud	21	1.0%
Misuse of Seals of Courts; Seals of Departments or Agencies [18 U.S.C. §§ 505 and 506]	16	<1%
Serial Filer	16	<1%
False Claim [18 U.S.C. § 152(4)]	11	<1%
Disregard of Bankruptcy Law/Rule by BPP [18 U.S.C. § 156]	10	<1%
Criminal Contempt [18 U.S.C. § 402]	8	<1%
Health Care Fraud [18 U.S.C. § 1347]	7	<1%
Professional Fraud	7	<1%
Obstruction of Justice	6	<1%
Drug Offenses	5	<1%
Insurance Fraud	5	<1%
Investor Fraud	5	<1%
Threat of Violence	4	<1%
Bribery [18 U.S.C. § 152(6)]	3	<1%
Corporate Bust-Out/Bleed-Out	3	<1%
Corporate Fraud	3	<1%
Credit Card Fraud/Bust-Out	2	<1%
Extortion	2	<1%
Fee Agreement/Cases Under Title 11 [18 U.S.C. § 155]	2	<1%
Internet Fraud	2	<1%
Structuring [31 U.S.C. § 5324]	2	<1%
Adverse Interest/Officer Conduct [18 U.S.C. § 154]	1	<1%
Child Pornography [18 U.S.C. § 2252A]	1	<1%
Control of Arms Exports and Imports [22 U.S.C. § 2278]	1	<1%
Embezzlement [18 U.S.C. § 645]	1	<1%
Embezzlement from Employee Pension Plans	1	<1%
Falsifying a Government Contract [18 U.S.C. §§ 494 and 495]	1	<1%
Subornation of Perjury [18 U.S.C. § 1622]	1	<1%
Terrorism	1	<1%
Unlawful Acts [18 U.S.C. § 922]	1	<1%
<p>1) Percent based on 2,158 referrals. One referral often contains more than one allegation, so the sum of the percentages for referrals will exceed 100 percent.</p> <p>2) Allegation information can change over time. Table 1 reflects information contained within CETS as of January 9, 2017.</p>		

II. OUTCOMES OF CRIMINAL REFERRALS

Table 2 shows the collective outcome/disposition of the 2,158 criminal referrals the Program made during FY 2016 as of January 9, 2017.^{2/} Of the 2,158 referrals, 1,416 referrals (65.6%) remained under investigation or review, 16 referrals (0.7%) resulted in formal charges, 723 referrals (33.5%) were declined for prosecution, and three referrals (0.1%) were administratively closed.^{3/}

Outcome/Disposition ¹	Referrals	
	Number	Percent ²
Under Review in United States Attorney's Office	887	41.1%
With Investigative Agency	529	24.5%
Formal Charges Filed (Case Active)	7	0.3%
Formal Charges Filed (Case Closed)	9	0.4%
– At least One Conviction or Guilty Plea	9	
– At least One Pre-trial Diversion	0	
– At least One Dismissal	0	
– At least One Acquittal	0	
Prosecution Declined by United States Attorney	723	33.5%
Administratively Closed	3	0.1%

1) Outcome and disposition information will change over time. The information in this table reflects information contained within CETS as of January 9, 2017.
2) Rounded percent based on 2,158 referrals. Percentages total to only 99.9% due to rounding.

The 16 cases referenced in Table 2 in which formal charges were filed between October 1, 2015, and January 9, 2017, are prosecutions that originated from an FY 2016 referral

^{2/} The Program is not the source of official disposition information. CETS is designed primarily to track referrals made by the Program to United States Attorneys. While Program staff work with local USAOs to update disposition information semi-annually, delays in reporting, as well as differences in tracking systems, may result in reporting variances between the agencies.

^{3/} Administratively closed referrals may still be under review/investigation by agencies (other than USAOs) that historically have not provided updates to the USTP on referrals. After a referral has been open for a period of time and if the Program is not able to verify the outcome/disposition, the referral is administratively closed in CETS. Referrals that are administratively closed may be reopened at a later date.

as derived from CETS.^{4/} It is important to note that white-collar criminal referrals like those made by the Program often require significant time and resources to investigate. As a result, it generally takes more than two years before there is a reportable action in CETS. Therefore, it is reasonable that a high percentage of cases referred in FY 2016 are still under investigation or review.

III. COMPARISON WITH CRIMINAL REFERRALS MADE IN PREVIOUS YEAR

As shown in Table 3, the number of criminal referrals made in FY 2016 represents a 1.3 percent increase from the number of referrals made in FY 2015.

FY 2015	FY 2016	Percent Change
2,131	2,158	1.3%

The USTP has experienced near continuous growth in the number of bankruptcy and bankruptcy-related criminal referrals over the past 10 years, with the exception of a slight decline in FY 2013. The Program’s sustained efforts to detect and refer suspected criminal activity, including FY 2016’s increase in referrals despite continued resource challenges, demonstrate the Program’s continuing commitment to this important statutory duty.

IV. USTP EFFORTS TO PREVENT BANKRUPTCY FRAUD AND ABUSE

The USTP is committed to identifying and referring for prosecution bankruptcy fraud and other crimes, and has systems in place to detect fraud schemes. The Program’s Office of Criminal Enforcement (OCE) oversees and coordinates the Program’s criminal enforcement efforts, and has strengthened the Program’s ability to detect, refer, and assist in the prosecution of criminal violations. The OCE has a number of USTP attorneys on detail who serve as part-time regional criminal coordinators. These individuals provide support, assistance, and

^{4/} Table 2 reflects only disposition information related to referrals the Program made in FY 2016. It does not reflect the entirety of prosecutions with bankruptcy charges brought by the Department of Justice in FY 2016. A reporting of all prosecutions would include those that originated from Program referrals in prior fiscal years, as well as prosecutions related to referrals not made by the Program.

training to Program personnel regarding the identification and referral of suspected bankruptcy fraud, and coordinate with USAOs within their designated regions.

Through issuing guidance and resource materials, providing extensive training, participating in national working groups, and working with its law enforcement partners, the USTP has established the necessary systems to combat fraud and abuse that threaten the integrity of the bankruptcy system.

Highlights of the Program's criminal enforcement efforts in FY 2016 include the following:

Bankruptcy Fraud and Other Specialized Working Groups and Task Forces. The Program is an active member of the President's Financial Fraud Enforcement Task Force and several other national working groups sponsored by the Department of Justice's Criminal Division. In addition, the Program participates in more than 70 local bankruptcy fraud working groups, mortgage fraud working groups, and other specialized task forces throughout the country. Members of these working groups and task forces include representatives from the USAOs, FBI, United States Postal Inspection Service, Internal Revenue Service-Criminal Investigation (IRS/CI), Offices of the Inspector General for the Social Security Administration and the Department of Housing and Urban Development, United States Secret Service, Office of the Special Inspector General for the Troubled Asset Relief Program, and Immigration and Customs Enforcement, among others.

Special Assistant United States Attorneys and Other Staff Support. Approximately 25 USTP attorneys in field offices across the country are designated as Special Assistant United States Attorneys (SAUSA) to assist USAOs in the investigation and prosecution of bankruptcy and bankruptcy-related crimes. Other Program staff also are called upon to assist with investigations and to provide expert or fact testimony at trial.

Notably, in FY 2016, a USTP Trial Attorney serving as a SAUSA was recognized by the United States Attorney for the District of Arizona for her work as a member of a federal

investigative team that included the USAO, FBI and IRS/CI. The award, announced in conjunction with the observance of National Crime Victims' Rights Week, recognized the Trial Attorney and other members of the team for the successful investigation and prosecution of an investment fraud scheme involving the concealment of assets from victims, creditors, and the court by the debtor defendants.

Training. During FY 2016, the OCE and Program staff presented more than 100 bankruptcy and bankruptcy-related fraud training programs that reached approximately 3,900 federal, state, and local law enforcement personnel, Program employees, private bankruptcy trustees, and members of the bar and other professional associations throughout the country. The Program customizes each presentation to maximize impact and utilizes a variety of educational formats to deliver training, including in-person presentations, online meeting technology, and video teleconferences. Among the key presentations in FY 2016 were those made at the National Victims of Crime Conference (in partnership with the DOJ's Criminal Division, Asset Forfeiture and Money Laundering Division; the SEC; and the FTC) and the Advanced White Collar Crime Seminar conducted by the Executive Office for United States Attorneys.

Bankruptcy Fraud Internet "Hotline." In FY 2016, the USTP documented 570 email submissions via its National Bankruptcy Fraud Hotline (USTP.Bankruptcy.Fraud@usdoj.gov).

SUMMARY

The USTP's criminal enforcement program was enhanced again in FY 2016 through the actions described in this report. Through detecting and referring fraud schemes, collaborating with its law enforcement partners, and providing specialized training, the Program will continue its enforcement efforts to combat fraud and abuse and to protect the integrity of the bankruptcy system.