



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

Report to Congress:

**Criminal Referrals by the
United States Trustee Program
Fiscal Year 2017**

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

May 2018

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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 (USTP or Program) made 2,171 bankruptcy and bankruptcy-related criminal referrals during Fiscal Year (FY) 2017. This represents a 0.6 percent increase from the 2,158 criminal referrals made during FY 2016. The five most common allegations contained in the FY 2017 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 2,171 criminal referrals, as of February 20, 2018, formal criminal charges had been filed in connection with 9 of the referrals, 1,303 of the referrals remained under review or investigation, 851 of the referrals were declined for prosecution, and 8 were administratively closed.

In FY 2017, the Program continued its work to strengthen its partnerships with law enforcement through its participation on bankruptcy fraud working groups and other specialized task forces in districts across the country, as well as assisting in 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 USTP also employed 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 whose mission is to promote the integrity and efficiency of the bankruptcy system for the benefit of all stakeholders – debtors, creditors, and the public. It 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 each case progresses and review the status of all referrals at least once every six months. The system is designed to provide an accurate measure of criminal enforcement actions, assist in trend identification, and facilitate management improvements.

In FY 2017, the USTP made 2,171 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 43 separate categories. The five most common allegations contained in the FY 2017 criminal referrals involved tax fraud (52.6%), false oath or statement (29.1%), concealment of assets (21.8%), bankruptcy fraud scheme (19.9%), and identity theft or use of false/multiple Social Security numbers (14.2%).

Table 1: Criminal Referrals by Type of Allegation

Type of Allegation	Referrals	
	Number	Percent ¹
Tax Fraud [26 U.S.C. § 7201, <i>et seq.</i>]	1,143	52.6%
False Oath/Statement [18 U.S.C. § 152(2) and (3)]	632	29.1%
Concealment [18 U.S.C. § 152(1) and (7)]	473	21.8%
Bankruptcy Fraud Scheme [18 U.S.C. § 157]	433	19.9%
ID Theft or Use of False/Multiple Social Security Numbers	309	14.2%
Mail/Wire Fraud [18 U.S.C. §§ 1341 and 1343]	143	6.6%
Perjury/False Statement [18 U.S.C. § 1001]	136	6.3%
Concealment/Destruction/Withholding of Documents [18 U.S.C. § 152(8) and (9)]	109	5.0%
Forged Document(s)	105	4.8%
Sarbanes/Oxley [18 USC § 1519]	65	3.0%
Bank Fraud [18 U.S.C. § 1344]	52	2.4%
Conspiracy [18 U.S.C. § 371]	42	1.9%
Mortgage/Real Estate Fraud	41	1.9%
Money Laundering [18 U.S.C. §§ 1956 and 1957]	24	1.1%
Embezzlement [18 U.S.C. § 153]	23	1.1%
State Law Violation(s)	23	1.1%
Federal Program Fraud	20	<1%
Post-Petition Receipt of Property [18 U.S.C. § 152(5)]	19	<1%
Serial Filer	17	<1%
Misuse of Seals of Courts; Seals of Departments or Agencies [18 U.S.C. §§ 505 and 506]	16	<1%
Disregard of Bankruptcy Law/Rule by Bankruptcy Petition Preparer [18 U.S.C. § 156]	13	<1%
Criminal Contempt [18 U.S.C. § 402]	11	<1%
Investor Fraud	11	<1%
Threat of Violence	8	<1%

Table 1: Criminal Referrals by Type of Allegation, Continued

Type of Allegation ¹	Referrals	
	Number	Percent ²
False Claims [18 U.S.C. § 152(4)]	7	<1%
Internet Fraud	7	<1%
Professional Fraud	7	<1%
Corporate Bust-Out/Bleed-Out	5	<1%
Corporate Fraud	4	<1%
Credit Card Fraud/Bust-Out	4	<1%
Extortion	3	<1%
Health Care Fraud [18 U.S.C. § 1347]	3	<1%
Obstruction of Justice	3	<1%
Insurance Fraud	2	<1%
Abusive Reaffirmation of Debt/Creditor Abuse	1	<1%
Arson	1	<1%
Immigration Offense	1	<1%
Loan and Credit Applications [18 U.S.C. § 1014]	1	<1%
Property Mortgaged or Pledged to Farm Credit Agencies [18 U.S.C. § 658]	1	<1%
Stalking [18 U.S.C. § 2261A]	1	<1%
Subornation of Perjury [18 U.S.C. § 1622]	1	<1%
Theft, Embezzlement, or Misapplication by Bank Officer or Employee [18 U.S.C. § 656]	1	<1%
Violation of False Claims Act [31 U.S.C. § 3729 and 18 U.S.C. § 287]	1	<1%
<p>1) Allegation information can change over time. Table 1 reflects information contained within CETS as of February 20, 2018.</p> <p>2) Percent based on 2,171 referrals. One referral often contains more than one allegation, so the sum of the percentages for referrals will exceed 100 percent.</p>		

II. OUTCOMES OF CRIMINAL REFERRALS

Table 2 shows the collective outcome/disposition of the 2,171 criminal referrals the Program made during FY 2017 as of February 20, 2018.^{2/} Of the 2,171 referrals, 1,303 referrals (60.0%) remained under investigation or review, 9 referrals (0.4%) resulted in formal charges, 851 referrals (39.2%) were declined for prosecution, and 8 referrals (0.4%) were administratively closed.^{3/}

Table 2: Outcome/Disposition of FY 2017 Referrals (as of 2/20/2018)		
Outcome/Disposition¹	Referrals	
	Number	Percent²
Under Review in United States Attorney's Office	933	43.0%
With Investigative Agency	370	17.0%
Formal Charges Filed (Case Active)	7	0.3%
Formal Charges Filed (Case Closed)	2	0.1%
– At least One Conviction or Guilty Plea	2	
– At least One Pre-trial Diversion	0	
– At least One Dismissal	0	
– At least One Acquittal	0	
Prosecution Declined by United States Attorney	851	39.2%
Administratively Closed	8	0.4%
<p>1) Outcome and disposition information will change over time. The information contained within Table 2 reflects information contained within CETS as of February 20, 2018.</p> <p>2) Rounded percent based on 2,171 referrals.</p>		

^{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.

The nine cases referenced in Table 2 in which formal charges were filed between October 1, 2016, and February 20, 2018, are prosecutions that originated from an FY 2017 referral 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 2017 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 during FY 2017 represents a 0.6 percent increase from the number of referrals made in FY 2016.

FY 2016	FY 2017	Percent Change
2,158	2,171	0.6%

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 an increase in referrals despite continued resource challenges in FY 2017, demonstrate the Program’s commitment to this important statutory duty.

IV. USTP EFFORTS TO PREVENT BANKRUPTCY FRAUD AND ABUSE

The Program is committed to identifying and referring for investigation and prosecution bankruptcy fraud and bankruptcy-related crimes. The USTP’s Office of Criminal Enforcement

^{4/} Table 2 reflects only disposition information related to referrals the Program made in FY 2017. It does not reflect the entirety of prosecutions with bankruptcy charges brought by the Department of Justice in FY 2017. 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.

(OCE) oversees and coordinates these enforcement efforts, and has strengthened the Program's ability to detect, refer, and assist in the prosecution of criminal violations. Through issuing guidance and resource materials, participating in working groups and task forces, collaborating with its law enforcement partners, and providing extensive training, the USTP has established the necessary systems to detect fraud schemes and to combat fraud and abuse that threaten the integrity of the bankruptcy system.

Highlights of the Program's criminal enforcement efforts in FY 2017 include the following.

Bankruptcy Fraud Working Groups and Other Specialized Task Forces. The Program participates in more than 70 local bankruptcy 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, 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.

Working groups and task forces offer the Program an important opportunity to draw on the collective expertise of its law enforcement partners to address fraud and abuse. By way of example, in one matter that was concluded in FY 2017, a former financial institution owner was sentenced to 51 months imprisonment after pleading guilty to wire fraud, bank fraud, and bankruptcy fraud. The prosecution was based, in part, on a referral from the USTP, and the investigative support and assistance provided by the Southern Indiana Bankruptcy Fraud Working Group coordinated by the United States Trustee was recognized by the United States Attorney in his press release.

Special Assistant United States Attorneys. Approximately 25 USTP attorneys in field offices across the country are designated as Special Assistant United States Attorneys to assist USAOs in the investigation and prosecution of bankruptcy and bankruptcy-related crimes. In

one matter of note this year, an Assistant United States Trustee, in his capacity as a Special Assistant United States Attorney, served on the team that prosecuted two defendants who ultimately pleaded guilty to bank fraud, false declaration under penalty of perjury, and concealment of assets in connection with a bankruptcy case. In this case, which was referred by the USTP, one defendant was sentenced to 40 months in prison followed by five years of supervised release and the second defendant to time served followed by five years of supervised release.

Other Staff Support. In addition to service as Special Assistant United States Attorneys, Program staff also provide other substantial assistance to USAOs and its law enforcement partners. This is accomplished both at the local office level and through two staff on detail to OCE as part-time regional criminal coordinators. It includes support both on matters referred by the Program, as well as matters not associated with a Program referral.

For example, in a case referred by the Program that was concluded in FY 2017, one USTP Attorney served as an expert witness and another as a fact witness in a trial that resulted in the jury finding the defendant guilty of the concealment of assets, false oaths and statements in bankruptcy, and three counts of wire fraud, as well as first-degree fraud relating to a home contracting business and a scheme to defraud a public assistance program. The defendant was sentenced to 120 months in prison followed by three years of supervised release.

The USTP also responded to requests for assistance from USAOs, the FBI, and other law enforcement agencies on more than 150 matters not originating from a Program referral. Such assistance included consulting on the bankruptcy process and providing documents or testimony.

Training. During FY 2017, OCE and Program staff presented more than 75 bankruptcy and bankruptcy-related fraud training programs that reached approximately 2,400 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. Notable for FY 2017 were presentations made by Program personnel at the FBI's Complex Financial Crimes Conference and at a United States Attorney's White Collar Crime Summit.

Bankruptcy Fraud Internet "Hotline." In FY 2017, the USTP documented 468 email submissions via its National Bankruptcy Fraud Hotline (USTP.Bankruptcy.Fraud@usdoj.gov). The Hotline offers a convenient means for individuals to report suspected bankruptcy fraud and provide supporting documentation and specific factual information that may be useful in pursuing allegations.

SUMMARY

The United States Trustee Program's criminal enforcement program continued to thrive in FY 2017 through the actions described in this report. By detecting and referring fraud schemes, collaborating with its law enforcement partners, and providing specialized training, the Program will continue to prioritize its enforcement efforts to combat fraud and abuse and to protect the integrity of the bankruptcy system.