United States General Accounting Office

GAO

Report to the Chairman, Committee on the Judiciary, U.S. Senate

January 1993

BANK AND THRIFT CRIMINAL FRAUD

The Federal Commitment Could Be Broadened

GAO/GGD-93-48

GAO **United States**
General Accounting Office
Washington, D.C. 20548

General Government Division

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January 8, 1993

The Honorable Joseph R. Biden, Jr.
Chairman, Committee on the Judiciary
United States Senate

Dear Mr. Chairman:

Your February 1, 1991, letter requested that we provide a series of reviews assessing the federal government's efforts to investigate and prosecute financial institution fraud. This report discusses how the federal response lacks the cohesion needed to address a crisis of this magnitude.

As arranged with the Committee, unless you announce its contents earlier, we plan no further distribution of this report until 30 days from the date of this letter. At that time, we will send copies of the report to the Attorney General and other interested parties and make copies available to others upon request.

Major contributors to this report are listed in appendix VI. If you have any questions, please call me on (202) 566-0026.

Sincerely yours,

Harold A. Valentine
Associate Director, Administration
of Justice Issues

Executive Summary

Purpose

Fraudulent activities committed by officers, directors, and customers of financial institutions have contributed to large numbers of bank and thrift failures and cost others millions of dollars in losses. In response, the Attorney General pledged to intensify the federal government's attack on bank and thrift fraud, and Congress passed two major pieces of legislation that supported the government's effort. The Financial Institutions Reform, Recovery, and Enforcement Act (FIRREA) of 1989 and the Crime Control Act of 1990 (Crime Control Act) provided the Department of Justice with additional powers and resources to investigate and prosecute financial institution fraud.

The Chairman of the Senate Judiciary Committee asked GAO to examine how the government structured its approach to investigating and prosecuting criminal financial institution fraud. This report provides an overview of the government's efforts, with a particular focus on

- the implementation of certain provisions of the Crime Control Act of 1990,
- Justice's local enforcement efforts to address criminal bank and thrift fraud, and
- the progress achieved to date.

Background

The "bank and thrift problem" ranks as one of the country's costliest domestic crises. GAO has calculated that losses from thrift failures could cost taxpayers hundreds of billions of dollars over the next 40 years. Criminal fraud, often involving real estate, has been a major factor in many financial institution failures. For example, in "land flips," related parties transferred land between themselves to inflate its value. They then used the fraudulently overvalued land as collateral to obtain loans, which typically greatly exceeded the land's actual value.

Financial institutions and their regulatory agencies refer suspected criminal activity to local Federal Bureau of Investigation (FBI) and U.S. Attorneys' offices for investigation and prosecution. Other federal agencies—such as the Internal Revenue Service (IRS), the Secret Service, and Justice's Criminal Division—also participate in investigating and prosecuting financial institution fraud.

The criminal financial institution fraud investigative workload in FBI has continued to grow. As of July 31, 1992, FBI had 9,659 investigations pending, an increase of about 45 percent from 1987. More than half of those investigations were classified as "major" fraud cases, which

generally include alleged frauds that either contributed to an institution's failure or involved estimated losses of $100,000 or more.

For this review, GAO analyzed FBI and U.S. Attorney data relating to the investigation and prosecution of financial institution fraud. GAO also interviewed senior officials in all participating agencies in Washington and at numerous field locations.

Results in Brief

Following enactment of FIRREA, the Attorney General designated criminal fraud in financial institutions a top enforcement priority. He announced but did not implement plans to address this "enormous and unprecedented challenge" by establishing task forces in 26 cities around the country modeled after the Dallas Bank Fraud Task Force. The Crime Control Act of 1990 authorized more than a doubling of available Justice resources and focused responsibility for the overall effort in Justice's new Office of Special Counsel for Financial Institutions Fraud.

The Special Counsel has led efforts to improve the government's response. In particular, the Special Counsel has worked to coordinate the overall approach with senior officials in agencies involved in the effort throughout the government.

Nonetheless, limited authority prevents the Special Counsel from fully carrying out his legislative responsibilities. For example, the Special Counsel cannot ensure, as required by the Crime Control Act, that adequate resources are available to investigate and prosecute financial institution fraud, in part, because the U.S. Attorneys exercise great discretion in managing their own enforcement programs and resources. In addition, the Special Counsel has little, if any, influence over staff from agencies outside Justice who are often critical for effective investigations and prosecutions.

GAO believes that Justice did not do all it could with the authority it has to strengthen the government's financial institution fraud program. For example, Justice did not create multiagency task forces as the Attorney General originally envisioned. In addition, Justice has not entered into formal interagency agreements to ensure that the proper staff, in sufficient numbers, are assigned to the program. Justice has since suggested that local U.S. Attorneys design their own enforcement programs. In this regard, Justice has approached the financial institution fraud crisis much like it has other enforcement matters.

Nevertheless, Justice is convicting increasing numbers of financial institution fraud criminals. Between October 1, 1988, and June 30, 1992, Justice convicted 2,603 defendants in major financial institution frauds involving estimated losses of over $11.5 billion. Over 1,700 of these offenders have been sentenced to prison, most of them to terms of less than 2 years; fewer than 2 percent received sentences of more than 10 years. Additionally, federal courts have ordered the payment of restitution and fines totaling over $846 million. As of July 31, 1992, the government has collected approximately 4.5 percent of this total, although not all of the remainder may be collectible.

Although the number of prosecutions and convictions has grown, GAO found it difficult to determine the overall effectiveness of the government's response. First, the actual amount of fraud that has occurred and the number of individuals involved is not known; thus, the relative significance of Justice's accomplishments cannot be readily determined. Second, no similar law enforcement programs exist that can be compared to assess the degree of progress or effectiveness. Third, Justice has not set sufficient goals for measuring accomplishments and evaluating the overall effectiveness of the program. Without such information, it is not clear whether the government's response is as effective as it could or should be or whether changes in strategy are warranted.

GAO's Analysis

Justice's Ability to Provide Governmentwide Leadership Is Limited

The Crime Control Act of 1990 generally assigned Justice the responsibility to improve the federal response to crimes affecting financial institutions. This act established the Financial Institutions Fraud Unit within Justice to be headed by a Special Counsel. Among other things, the act requires the Special Counsel to (1) supervise and coordinate matters concerning financial institution fraud within Justice and (2) ensure that adequate resources are made available to investigate and prosecute financial institution crimes.

Since his confirmation in May 1991, the Special Counsel has worked to improve the government's response. Among other things, the Special Counsel has participated in deciding where to allocate the resources Justice received following the Crime Control Act and has worked to

coordinate the overall approach with all agencies involved in the effort. (See pp. 46 to 48.)

However, the structure of both Justice and the federal government inhibits the Special Counsel's ability to control the government's response to financial institution fraud. Within Justice, operations are dispersed, and its decisionmaking is highly decentralized. The 93 U.S. Attorneys, for example, exercise significant discretion in prosecutive policies and the management of their offices and programs. Thus, as with other enforcement efforts, Justice and the Special Counsel must rely on the U.S. Attorneys and the local FBI offices to apply adequate resources to the most significant cases. (See pp. 48 to 50.)

In addition, the Special Counsel has no authority over non-Justice personnel involved in pursuing bank and thrift fraud and thus cannot ensure that those resources are adequate. Non-Justice staff expertise provided by IRS agents and regulatory examiners is often needed for successful prosecutions of financial institution fraud. But because non-Justice agencies have competing priorities and demands on their resources, their staffs are not always available to assist Justice. For example, whether IRS assigns agents to work bank and thrift investigations depends on the priorities of each IRS Regional Commissioner. In addition, the Office of Thrift Supervision has withdrawn staff from some enforcement efforts because of disagreements with Justice over reimbursement for staff time. Lacking formal interagency agreements to commit or maintain resources, agencies have either not provided resources to or withdrawn staff from local enforcement efforts. (See pp. 50 to 53.)

Justice's Enforcement Strategy Has Shifted

Justice's strategy for pursuing bank and thrift fraud appears to have shifted over time. In December 1989, the Attorney General announced plans to intensify and coordinate the nationwide attack on financial institution fraud by establishing task forces in 26 cities where criminal bank and thrift fraud violations were most prevalent. The Crime Control Act later provided that the Special Counsel could supervise any task forces the Attorney General established.

Citing its success in investigating and prosecuting complex cases that require expertise from several agencies, Justice initially held up the Dallas Bank Fraud Task Force as the national model for multiagency task forces. The Dallas model combined the resources of the financial regulators,

Justice's Criminal Division, FBI, and other investigative agencies. Justice widely promoted this strategy. However, only two other task forces have been created that resemble the Dallas model: the New England Bank Fraud Task Force and the San Diego Bank Fraud Task Force. (See pp. 58 to 63.)

Justice says that U.S. Attorneys should devise their own financial institution fraud enforcement programs. Many U.S. Attorneys' offices use bank fraud working groups. The major difference between working groups and task forces is that task forces investigate and prosecute cases, while working groups do not. Working groups generally facilitate interagency contacts. GAO believes that despite the presence of dedicated resources, by changing its strategy from one that featured multiagency task forces to one that leaves the design to the U.S. Attorneys, Justice has approached this effort much like it has other enforcement programs. (See pp. 63 to 68.)

Evaluating Bank and Thrift Fraud Enforcement Results Is Difficult

From October 1, 1988, through June 30, 1992, Justice has convicted 2,603 defendants in major financial institution frauds involving estimated losses of over $11.5 billion. Federal courts ordered financial institution fraud offenders to pay restitution and fines totalling over $846 million and sent 77 percent of them to prison. However, as of July 1992, the government had collected 4.5 percent of the amount ordered, although all fines and restitutions ordered are not collectible.

GAO recognizes the growing numbers of indictments, convictions, and sentences. But because there are few goals or criteria against which to gauge the program, GAO also believes a more complete assessment of the program should recognize other factors as well. For example, the percentage of FBI investigations closed following U.S. Attorney declinations (those in which the U.S. Attorneys declined to prosecute) increased from 64 percent to 76 percent between fiscal years 1987 and 1991. This increase may reflect a number of factors. With relatively scarce resources, the U.S. Attorneys give major cases a higher priority than nonmajor cases, which account for the vast majority of closings through declinations. Still, the percentage of major cases closed because of declinations in fiscal year 1991 varied widely around the country. Examining the reasons for those closures could help assess the program and identify areas needing management attention. Through these and other analyses, such as determining how many and at which locations resources from both Justice and non-Justice agencies are needed, the

Special Counsel could establish a set of goals for management purposes. (See pp. 69 to 84.)

Matter for Congressional Consideration

Given the federal structure, the limited authority of the Special Counsel within that structure, and the lack of sufficient measures for gauging the overall success of the effort, the issue of whether the executive branch is providing a sufficiently comprehensive and integrated response against criminal financial institution fraud merits continuous congressional oversight. GAO believes that Congress should explore the need and ways to integrate Justice and non-Justice agencies more fully into the national effort. In this regard, dedicating resources to identify and investigate financial institution fraud could be one mechanism to consider. Congress should also explore whether legislative action is required to clarify the authority and role of the Office of Special Counsel. (See p. 56.)

Recommendations

Regardless of congressional action, Justice could do more within its existing authority to strengthen the government's response to the financial institution fraud problem. To this end, the Attorney General should direct the Special Counsel to develop systematic information on the adequacy of FBI and U.S. Attorney staffing, determine where and how many non-Justice staff resources are needed, and develop measures for gauging the overall effectiveness of the government's response. Based on this analysis, the Attorney General should assess whether additional action is needed, including entering into formal interagency agreements to ensure that adequate non-Justice agency resources are committed to this effort, and notify Congress of those findings. (See pp. 56 to 57.)

Agency Comments

Justice basically disagreed with the entire report's message, maintaining, in effect, that it is doing a very good job in this area. GAO notes the progress made in leading and coordinating the government's efforts but believes that the magnitude of the problem requires a more concerted federal response than has existed to date. (See app. V.)

Contents

Figures

Abbreviations

CID	Criminal Investigations Division
DAWY	direct agent work year
EOUSA	Executive Office for U.S. Attorneys
FBI	Federal Bureau of Investigation
FDIC	Federal Deposit Insurance Corporation
FIRREA	Financial Institutions Reform, Recovery, and Enforcement Act of 1989
FTE	full-time equivalent
IRS	Internal Revenue Service
NCUA	National Credit Union Administration
OCC	Office of the Comptroller of the Currency
OCDETF	Organized Crime Drug Enforcement Task Force
OTS	Office of Thrift Supervision
RTC	Resolution Trust Corporation

Introduction

The "bank and thrift problem" ranks as one of the country's costliest domestic crises. Nearly 2,800 banks and thrifts failed between 1981 and 1992, with more than 72 percent having failed since 1987. We have calculated that losses from thrift failures alone could cost taxpayers more than $300 billion over the next 40 years. Costs associated with bank failures add billions more to the total. Officials from the government's financial regulatory agencies estimated that criminal fraud contributed to the failure of between 11 and 33 percent of the financial institutions that failed during the 1980s. In addition, large numbers of institutions still operating have been defrauded as well.

The Department of Justice has made financial institution fraud one of its highest enforcement priorities.[1] As of July 31, 1992, the Federal Bureau of Investigation (FBI) was investigating 758 cases of fraud that may have contributed to the failure of an institution, along with 4,254 cases in which the alleged fraud involved $100,000 or more. The U.S. Attorneys charged 975 defendants during the first 9 months of fiscal year 1992 in "major" fraud cases alone—generally, those involving (1) a fraud or loss estimated at $100,000 or more; (2) officers, directors, or owners; or (3) schemes involving multiple borrowers in the same institution. According to Justice, the estimated loss associated with those major fraud cases exceeded $1.6 billion.[2]

As the wave of financial institution fraud rose during the 1980s, both Congress and the executive branch took action. Congress began to examine the federal response to criminal misconduct and insider abuse in the nation's financial institutions.[3] In 1989 and 1990, Congress passed two major pieces of legislation that shaped the government's approach. The Financial Institutions Reform, Recovery, and Enforcement Act (FIRREA) of 1989[4] and the Crime Control Act of 1990[5] (Crime Control Act) provided

[1]As defined by Justice's Special Report on Monetary Enforcement in Financial Institution Fraud Cases, financial institution fraud prosecutions are those contemplated by the Financial Institutions Reform, Recovery, and Enforcement Act and the Crime Control Act of 1990 involving federally insured depositories, such as savings and loans, banks, and credit unions.

[2]In its comments to this report (see app. V), Justice noted that the loss figure it reports to Congress is not necessarily the amount of fraud charged in particular cases. According to Justice's second quarter 1992 report to Congress, Attacking Financial Institution Fraud, the loss figure reported often includes total estimated losses to the institution and not just the loss charged in the indictment or the loss attributable to criminal activity.

[3]See, for example, H.R. Rep. No. 1137, 98th Cong., 2d Sess. (1984).

[4]Financial Institutions Reform, Recovery, and Enforcement Act of 1989, P.L. 101-73, 103 Stat. 183.

[5]Crime Control Act of 1990, P.L. 101-647, 104 Stat. 4789.

Justice with additional powers and resources to investigate and prosecute financial institution fraud.

In February 1991, the Chairman of the Senate Committee on the Judiciary requested that we provide a series of reviews assessing the government's efforts to investigate and prosecute financial institution fraud. Our first assignment was to examine how the government structured its attack on financial institution fraud. This report provides an overview of the federal response.

An Overview of the Extent and Types of Criminal Bank and Thrift Fraud

Estimating the extent and impact of fraud against depository institutions has proven to be difficult. One problem involves determining if and when suspect activities cross the line between poor business judgment and fraud. Putting a dollar value on losses caused by fraudulent activities is also difficult.

Estimates on the extent to which fraud contributed to total losses in financial institutions vary widely. A report published in 1988 by the Office of the Comptroller of the Currency (OCC) said that "material fraud" played a significant role in 11 percent of the institutions OCC studied.[6] The 1989 annual report from the Federal Deposit Insurance Corporation (FDIC) noted that "insider abuse or criminal fraud was present to some degree in about one-quarter of all bank failures" in 1989. And in June 1992, the Resolution Trust Corporation (RTC), which is responsible for investigating and developing claims against potential assets of thrifts it oversees as designated conservator and/or receiver, estimated that potentially criminal conduct by insiders contributed to the failure of about 33 percent of the RTC thrifts. Roughly 64 percent of RTC-controlled thrifts have had suspected criminal misconduct referred to Justice. Regardless of the exact incidence of criminal fraud in financial institutions, it is clear that fraud and insider abuse have been major factors in a significant portion of financial institution failures in the 1980s.

Fraud against financial institutions is a federal concern if the suspected activity violates a federal criminal statute. Federal prosecutors may bring a variety of criminal charges against individuals suspected of misconduct in or against financial institutions. Cases often involve charges of several offenses, using both specific banking statutes and other federal statutes. Table 1.1 outlines the seven statutes most commonly charged by U.S.

[6]OCC defined "material fraud" to include the intent to deceive and/or an attempt to conceal but not ordinary teller losses.

Attorneys as lead charges in financial institution fraud cases in fiscal year 1990.[7]

Table 1.1: Commonly Applied Banking Statutes

Title and section	Description
Title 18, section 215	The bank bribery provision prohibits giving, offering, or promising anything of value to any person with intent to influence or reward an officer, director, employee, agent, or attorney of a financial institution. The statute also applies to an officer, director, employee, agent, or attorney of a financial institution who corruptly solicits, demands, or corruptly accepts or agrees to accept anything of value with an intent to be influenced or rewarded in connection with a transaction.
Title 18, section 656	Section 656 prohibits an officer, director, agent, or employee of or those connected in any capacity with any federally insured bank from embezzling, abstracting, purloining, or willfully misapplying the bank's funds with an intent to injure or defraud the bank.
Title 18, section 657	Section 657 covers the same conduct as section 656 in federally insured credit institutions, including savings and loans.
Title 18, section 1005	Section 1005 prohibits an officer, director, agent, or employee from making false entries in bank books, reports, or statements with an intent to injure, defraud, or deceive a bank officer, agent, examiner, OCC, FDIC, or the Federal Reserve.
Title 18, section 1006	Section 1006 is similar to section 1005 except that it applies to false entries in the books, reports, or statements of savings and loan associations. This section expressly applies to officers, agents, employees, or those connected in any capacity with an institution.
Title 18, section 1014	Section 1014 prohibits anyone from knowingly making false statements or reports or willfully overvaluating land, property, or security to influence in any way the action of any bank or credit union whose deposits are federally insured.
Title 18, section 1344	Section 1344 prohibits the knowing execution or attempted execution of a scheme or artifice to (1) defraud a financial institution or (2) obtain money, funds, credits, assets, securities, or other property owned by or controlled by a financial institution by means of false or fraudulent pretenses, representations, or promises.

Real estate frauds are common vehicles for defrauding financial institutions. According to one witness testifying before the Commerce, Consumer, and Monetary Affairs Subcommittee of the House Committee on Government Operations, large fraudulent loans, especially for real estate projects, are the "perfect device for fraud and insider abuse" and are very effective in "destroying institutions."[8]

[7]Justice's Special Counsel for Financial Institutions Fraud has noted to us that Justice investigates and prosecutes a broad range of conduct, not just criminal financial institution fraud. Fraud involves a specific statutory definition that does not embrace other violations that Justice might also prosecute as criminal misconduct involving a financial institution. For convenience in this report, however, we will refer to the entire range of criminal misconduct against financial institutions, including credit unions, as bank and thrift or financial institution fraud.

[8]Statement of William K. Black, Deputy Director, Federal Savings and Loan Insurance Corporation, Hearing Before a Subcommittee of the Committee on Government Operations, House of Representatives, June 13, 1987, p. 165.

Based on information previously provided by FBI, the House Committee on Government Operations summarized some different schemes commonly used against financial institutions.[9] For example, in a "land flip," related parties transfer land between themselves to inflate its value. Borrowers then use the fraudulently overvalued land as collateral to obtain loans, which typically greatly exceed the land's actual value. Another scheme that has been commonly used to defraud a financial institution is known as a "nominee loan." Nominee loans generally involve one person obtaining a loan on behalf of an undisclosed person. The nominee or "straw borrower" typically has no involvement in the loan transaction other than to pose as the borrower. Land flips and nominee loans may be prosecuted under Title 18's section 371, conspiracy statute, as conspiracies to submit false loan applications, among other sections.[10] Appendix I describes other common fraudulent practices.

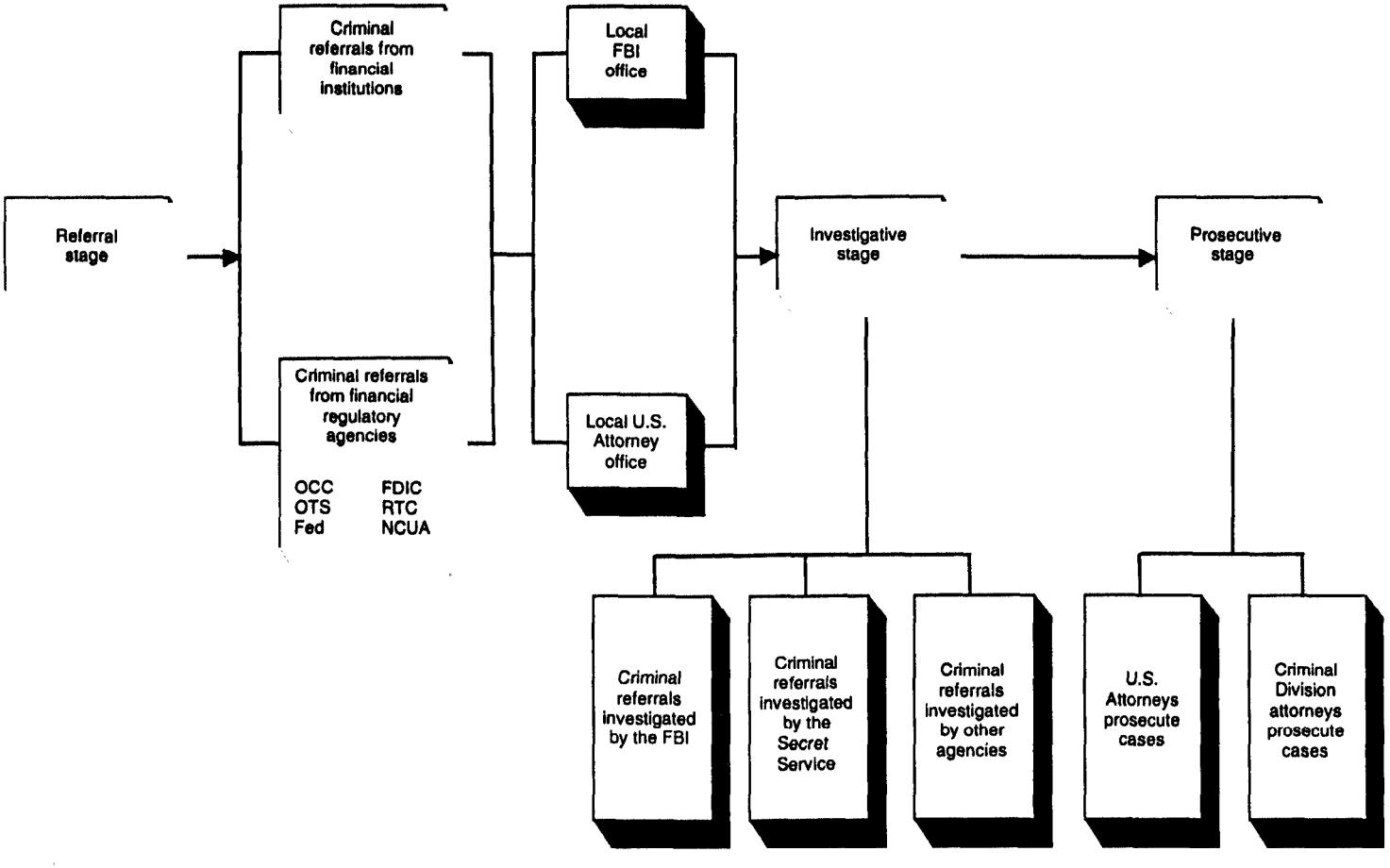
Many Agencies Have Roles in Addressing Financial Institution Fraud

Numerous federal agencies exercise different roles and responsibilities in identifying, investigating, and prosecuting financial institution fraud. Information on criminal fraud flows from institutions or regulators through FBI and Justice attorneys to the courts. Figure 1.1 depicts the way information on criminal bank and thrift fraud moves through the justice system.

[9]H.R. Rep. No. 1088, 100th Cong., 2d Sess. (1988), pp. 41-42.

[10]Justice noted that these summations are simplified and referred interested readers to its Financial Institution Fraud Prosecution Manual for more information on the various fact patterns that constitute violations of the law.

Figure 1.1: Three Stages of the Bank and Thrift Fraud Investigation and Prosecution System



Legend

Fed = the Federal Reserve System
NCUA = the National Credit Union Administration
OTS = the Office of Thrift Supervision

Note: Within the prosecutive stage, Tax Division attorneys also participate in criminal financial institution fraud enforcement.

The Referral Stage

The referral stage occurs when financial institutions and their federal regulatory agencies [the Office of Thrift Supervision (OTS), the Federal

Reserve System (the Fed), the National Credit Union Administration (NCUA), FDIC, OCC, and RTC] refer suspected criminal activity to two Justice entities—the local FBI and U.S. Attorneys' offices.[11] Such reports of suspected criminal activity made by these and other sources are criminal referrals.

Each agency has policies and procedures relating to identifying, reviewing, and referring suspected criminal conduct. Similarly, the regulatory agencies have policies or rules requiring the institutions they supervise to file criminal referrals.

Most referrals originate not in the regulatory agencies but in the financial institutions. The institutions send referrals directly to the local FBI and U.S. Attorneys' offices. According to FBI data, in July 1992, referrals from financial institutions outnumbered those from regulatory agencies by nearly 26 to 1.[12]

The Investigative Stage

By far, the vast majority of bank and thrift fraud cases are investigated by FBI. FBI becomes involved in investigations of misconduct in financial institutions after receiving information or criminal referrals from the institutions or their regulators. FBI evaluates the referrals using procedures established in that locality. In some locations, FBI makes the initial review of the referrals and then alerts the U.S. Attorney's office to those that might have merit. In others, FBI will review the referrals concurrently with the U.S. Attorney's office. For each referral, FBI field offices are supposed to notify the financial institution regulatory agencies about the referral's status.

For each referral, complaint, or piece of information that FBI receives, there are seven possible outcomes. FBI may:

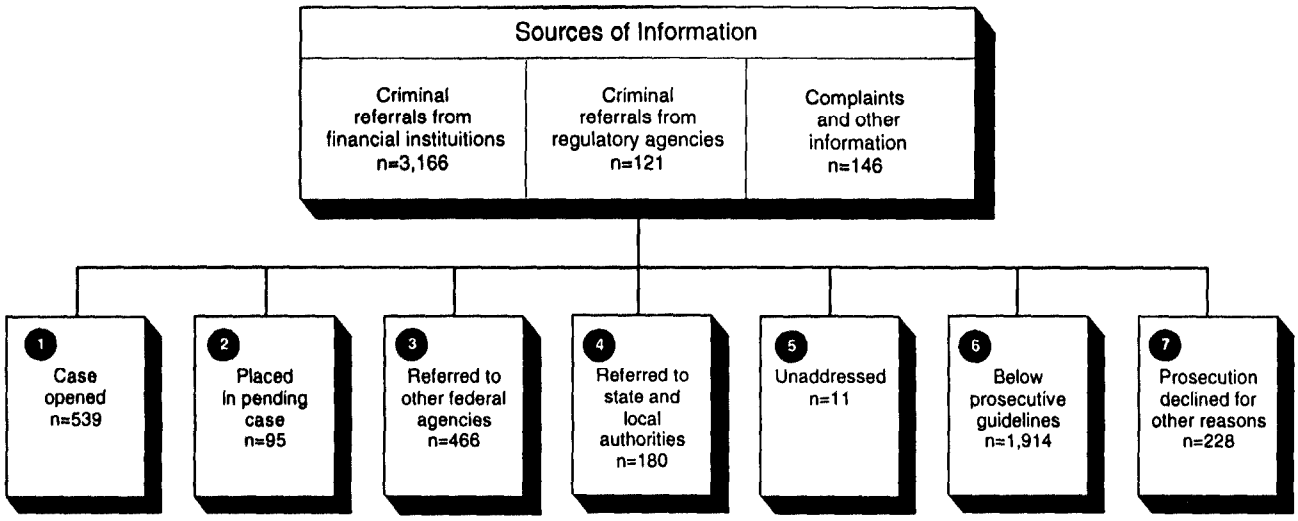
[11]There are a few exceptions. For example, allegations regarding credit card fraud go to the Secret Service (18 U.S.C. § 3056(b)), and certain alleged violations of the Bank Secrecy Act generally go to the Internal Revenue Service (IRS) (31 C.F.R. § 103.46(c)).

[12]The overwhelming majority of those referrals (2,787 out of 3,166, or about 88 percent) reported losses of under $25,000. The 1988 report from the House Committee on Government Operations (H.R. Rep. No. 1088, 100th Cong., 2d Sess. (1988)) also noted that in terms of sheer volume of acts of alleged criminal misconduct, there are many more teller embezzlements and defalcations (i.e., misappropriations), often in the range of several hundred to several thousand dollars. These cases make up the large majority of criminal referrals and are technically "insider" abuse and misconduct. But in terms of impact on financial institutions, it is the larger criminal schemes, often involving major borrowers or senior insiders, that often result in losses to institutions in the $100,000 to several million dollars range and that negatively affect an institution and the deposit insurance funds.

- Start an investigation ("open a case").
- Include a referral in an ongoing (or "pending") case.
- Send it to another federal agency for investigation.
- Send it to a state or local agency for investigation.
- Delay deciding whether to open a case until resources become available.
- Close the case if the referral involves an estimated dollar loss too small to warrant expending agent and attorney time. U.S. Attorneys' offices usually have guidelines that suggest a threshold dollar value (the "declination level") below which they may not pursue a case. Declination levels vary among the 94 districts, with levels ranging from $5,000 to $100,000. Declination policies may be written in such a way, however, that leaves much discretion to the U.S. Attorney about whether to pursue even small cases.
- Close the case if the U.S. Attorney's office declines prosecution for other reasons. According to Justice, there are many reasons for declining to prosecute a referred matter. For example, there may be no federal offense evident; the suspect (if he or she is known) may be being prosecuted on other charges or by other authority; the evidence may be weak, insufficient, or inadmissible; the statute of limitations may have expired, or the office may lack investigative or prosecutive resources.

Figure 1.2 shows the flow of referrals, complaints, and pieces of information through FBI for the month of July 1992. FBI received a total of 3,433 criminal referrals, complaints, or other pieces of information that month. The vast majority—3,166, or 92.2 percent—were referrals from financial institutions. Only 121 (or 3.5 percent) were criminal referrals from regulatory agencies. (FBI data do not identify the sources of the remaining 146 complaints and other information.) Following receipt of these data, FBI opened 539 cases (about 16 percent of the total). The U.S. Attorneys declined prosecution, either because the case was below their prosecutive guidelines or for other reasons, on 2,142 (or 62 percent) of the criminal referrals, complaints, or other pieces of information received. Another 646 were referred for local prosecution or to other federal agencies.

Figure 1.2: FBI's Receipt and Disposition of Criminal Referrals, Complaints, and Other Information During July 1992



Source: FBI data.

Other federal investigative agencies may also be critical to successful bank and thrift fraud investigations. FBI has relied on the cooperation of staff from the regulatory agencies to provide information and expertise needed for investigations. FBI and U.S. Attorneys' offices have also received assistance from the Postal Service, IRS, and other federal agencies in various aspects of an investigation, provided they had jurisdiction and available resources.

In addition, the Treasury, Postal Service, and General Government Appropriations Act for Fiscal Year 1991 authorized the Secret Service to conduct civil or criminal investigations related to unlawful activity against federally insured financial institutions or RTC that Justice law enforcement personnel are authorized by law to conduct or perform.[13] The act provided, however, that the Secret Service could not initiate any of these investigations independent of the Attorney General's supervision.

[13]Treasury, Postal Service, and General Government Appropriations Act for Fiscal Year 1991, P.L. 101-509, 104 Stat. 1427 (Title I, sec. 528).

The Prosecutive Stage

The prosecutive stage begins when the U.S. Attorneys charge a suspect through an indictment or information. The 93 U.S. Attorneys are the principal litigators for the government.[14] They are presidential appointees who set enforcement priorities consistent with the Attorney General's law enforcement goals, operate largely autonomously, and control the use of staff resources allocated to their offices. Generally, each U.S. Attorney's office has a criminal and civil unit staffed by Assistant U.S. Attorneys, and each unit is responsible for prosecuting and litigating cases within its respective area.

The U.S. Attorneys and their staffs prosecute criminal defendants in federal courts. When a person has been referred for prosecution, the U.S. Attorney may (1) decline to prosecute, perhaps referring the person to state or local authorities for possible prosecution or (2) file formal charges against the defendant in federal court in the form of an indictment or information.[15] The U.S. Attorney specifies the crime(s) for which the defendant will be prosecuted when charges are filed. In conjunction with the courts, the U.S. Attorney also decides whether to accept a guilty plea and on what terms.

Figure 1.3 depicts the flow of bank and thrift fraud work through the U.S. Attorneys' offices during fiscal year 1991. At the beginning of the year, U.S. Attorneys' offices were working with FBI or another investigative agency on matters involving 10,996 suspects already under investigation and handling cases involving 2,968 defendants. During the year, U.S. Attorneys opened new matters involving 9,581 suspects. From the old matters pending and new ones opened, U.S. Attorneys indicted or charged by information a total of 3,596 defendants. Of the 6,564 total defendants "active" during the year, 2,243 pled guilty, 138 were found guilty at trial, and 397 were either acquitted or had their cases dismissed.[16] The workload carrying over to fiscal year 1992 included matters involving 12,348

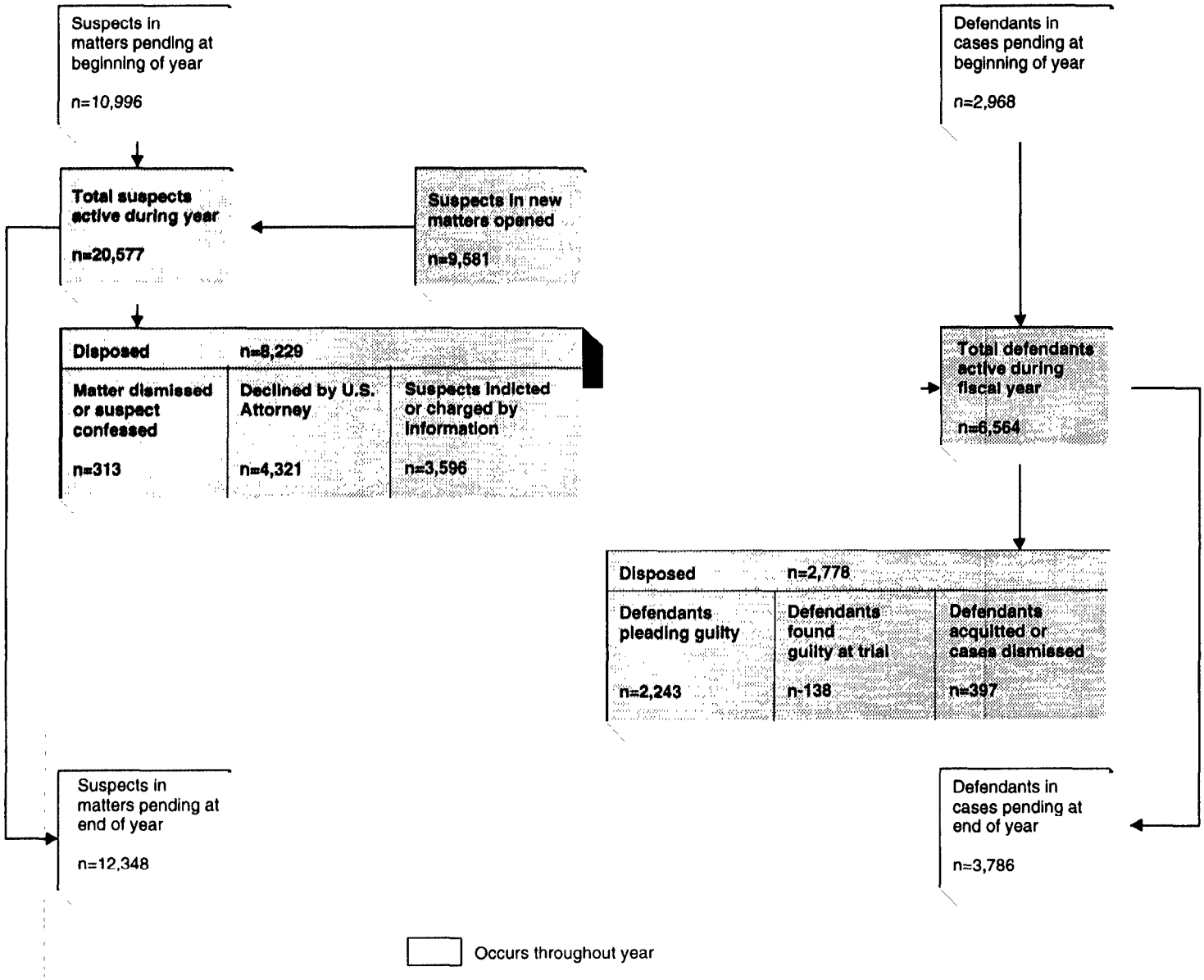
[14]Because a single U.S. Attorney administers offices in both Guam and the Northern Mariana Islands, there are 94 U.S. Attorneys' offices but only 93 U.S. Attorneys.

[15]According to a senior Justice official, Justice considers a number of factors in determining which matters to investigate and which to prosecute. Those factors include (not necessarily by level of importance) the amount of the suspected loss to the victim; whether the offense is part of a systemic problem; whether an insider (i.e., an officer, director, or senior employee) committed the offense; whether the applicable statute of limitations is about to expire; whether there is a reasonable, available alternative to criminal prosecution; and whether investigatory and prosecutorial resources are available.

[16]The total number of defendants "active" during a period is equal to the number existing at the beginning of the period plus the number indicted or charged by information during the period. As shown in figure 1.3, 6,564 total defendants active during fiscal year 1991 equaled 2,968 existing defendants plus 3,596 new defendants.

suspects and cases involving 3,786 defendants pending at the end of the year.

Figure 1.3: The Prosecutive Stage Workload in Fiscal Year 1991



Other Justice Department attorneys also prosecute financial institution fraud. Justice's Criminal Division oversees the enforcement of all federal criminal laws except those that are specifically assigned to other divisions. The Criminal Division will provide assistance to a U.S. Attorney on any matter within the Division's jurisdiction. The Division's Fraud Section supports the U.S. Attorneys with legal and investigative guidance and, when requested and able to do so, provides staffing for U.S. Attorney-originated financial institution fraud cases. Additionally, Fraud Section attorneys staff the bank fraud task forces in Dallas, San Diego, and Boston. Tax Division attorneys also actively participate in criminal financial institution fraud enforcement.

Legislative Efforts to Address Financial Institution Fraud

Congress has enacted two major pieces of legislation since 1989 that significantly influenced the government's efforts against financial institution fraud, FIRREA and the Crime Control Act of 1990.

Congress enacted FIRREA in part to address financial institution fraud by strengthening civil and criminal penalties for defrauding or otherwise damaging financial institutions and depositors. The legislation responded to concerns that misconduct, fraud, and abuse had contributed to or caused significant portions of bank and thrift failures.[17]

Title IX of FIRREA generally expanded the scope and application of existing federal statutes relating to financial institution offenses. These provisions included increased fines and prison terms for certain financial institution offenses, increased enforcement powers for federal financial institution regulatory agencies, civil and criminal forfeiture in connection with various offenses affecting financial institutions, and language authorizing the Attorney General to bring civil actions to recover civil penalties for violations of various financial institution-related offenses.

Following FIRREA, continued losses from failed financial institutions as well as reports of criminal activity and questionable behavior led to the enactment of the Crime Control Act. Title XXV of the Crime Control Act, entitled the Comprehensive Thrift and Bank Fraud Prosecution and Taxpayer Recovery Act of 1990, built upon FIRREA's antifraud provisions and provided additional tools to Justice and federal financial institution regulatory agencies to combat unlawful activities affecting financial institutions. These provisions included new financial institution-related

[17]H.R. Rep. No. 54, 101st Cong., 1st Sess. 464 (1989). The House report accompanying FIRREA reflects the belief that Title IX of FIRREA was "absolutely essential to respond to a serious epidemic of financial institution insider abuse and criminal misconduct and to prevent its recurrence in the future."

offenses, increased fines and prison terms for certain financial institution-related offenses, expanded restitution for victims, and measures to protect assets from wrongful disposition.

Certain provisions of both FIRREA and the Crime Control Act had specific impacts on Justice's financial institution fraud programs. First, both laws greatly increased the number of resources Justice could apply to bank and thrift fraud. For fiscal years 1990 through 1992, FIRREA authorized $75 million per year in additional appropriations for the Justice Department's efforts against bank and thrift fraud. The Crime Control Act amended FIRREA and authorized $162.5 million per year for fiscal years 1991 through 1993 for Justice's investigations, prosecutions, and civil proceedings involving financial institutions.

Second, both acts legislatively created organizational reforms. FIRREA required Justice to establish a regional office of the Criminal Division's Fraud Section in the Northern District of Texas. Eventually known as the Dallas Bank Fraud Task Force, this office generally was intended to improve Justice's coordination and handling of criminal bank and thrift fraud cases in Texas. Following FIRREA, Justice announced plans to establish various financial institution fraud task forces around the country based on the Dallas model. Justice also initiated a number of measures to oversee and coordinate its efforts against financial institution fraud. Among other things, Justice created the position of Special Counsel for Financial Institutions Fraud to coordinate all matters concerning the investigation and prosecution of financial institution fraud and to ensure that resources are properly allocated to the most significant cases.

The Crime Control Act subsequently enacted those departmental measures into law. The act established the Financial Institutions Fraud Unit within Justice to be headed by a presidentially appointed Special Counsel. The act also required the Attorney General to establish financial institution fraud task forces, as deemed appropriate, to ensure that adequate resources are made available to investigate, prosecute, and recover the proceeds of financial institution crimes.

Objectives, Scope, and Methodology

This report reviews how the government structured its approach to financial institution fraud. It provides an overview of the government's efforts, focusing on issues related to the organizational reforms codified by the Crime Control Act. Chapter 2 describes the change in financial institution fraud resources and workload that have occurred over the past

5 years. Chapter 3 discusses issues relating to the Special Counsel and other mechanisms that were intended to provide national direction and coordination. Chapter 4 discusses the task forces and other organizational approaches used in investigating and prosecuting financial institution fraud at the local level. Finally, chapter 5 provides a brief analysis of the results achieved to date in the government's efforts against bank and thrift fraud.

To develop this information, we interviewed senior officials from the Justice Department and from the financial regulatory agencies, both at their Washington, D.C., headquarters and in a number of locations around the country. We analyzed data on the investigation and prosecution of financial institution fraud cases from FBI and the Executive Office for U.S. Attorneys (EOUSA) for fiscal years 1987 through 1991 and for part of fiscal year 1992. We also analyzed data on the allocation and deployment of FBI, U.S. Attorney, and Secret Service staff resources. Appendix II provides a more complete discussion of our objectives, scope, and methodology.

Justice provided comments on a draft of this report. Justice's comments and our response are included as appendix V. We also discussed relevant portions of the report with other participating agencies (e.g., IRS, the Secret Service, and the financial regulatory agencies). Their views have been incorporated where appropriate. Our work was done in accordance with generally accepted government auditing standards.

Addressing the Growing Criminal Bank and Thrift Fraud Problem

The financial institution fraud problem has continued to escalate. FBI has received growing numbers of criminal referrals from financial institutions and their regulatory agencies over time and has opened more investigations. At the end of fiscal year 1987, FBI had 6,649 investigations pending. As of July 31, 1992, FBI had 9,659 financial institution fraud cases under way, an increase of 3,010, or about 45 percent, over the number of investigations ongoing almost 5 years earlier. Additionally, a growing percentage of those cases involved either failed institutions or alleged losses of $100,000 or more.

In response to the workload growth that occurred in the 1980s, Congress twice provided significant increases in enforcement resources. Appropriations following FIRREA and the Crime Control Act nearly tripled the investigative and prosecutive resources that had previously been available to Justice to address the mounting volume of criminal bank and thrift fraud. The Crime Control Act also authorized additional appropriations to support more IRS resources important to fraud investigations. In addition, the act appropriating funds for the Department of the Treasury in fiscal year 1991 also authorized the Secret Service to participate in financial institution fraud investigations.

Still, some questions remain about whether the resources available to address the financial institution fraud problem are sufficient. Because of budgetary constraints, FBI was not able to field the full number of agents authorized by both pieces of legislation until fiscal year 1992. IRS neither requested nor received the appropriations to support the increase in its personnel authorization. And in testimony in 1992, the Special Counsel could not say whether the resources that were in place were adequate.

The Investigative Workload Has Increased Over Time

FBI and U.S. Attorneys' offices have received increasing numbers of criminal referrals over time. Data available from the regulatory agencies suggest a substantial growth in referrals submitted by personnel in both regulatory agencies and the institutions they oversee since 1987. FBI officials also told us that the institutions themselves have submitted larger numbers of referrals now relative to years past. Table 2.1 shows the increase in the number of referrals submitted to Justice since 1987.

Table 2.1: Regulatory Agencies Have Reported Increasing Numbers of Criminal Referrals Having Been Submitted to Justice Since 1987

Regulatory agency	Calendar year 1987	1988	1989	1990	1991	Increase 1987-91	Percent change 1987-91
FDIC	835	902	938	1,988	2,434	1,599	191.5
The Fed	3,318	3,122	3,239	3,426	3,197	-121	-3.6
NCUA	217	433	686	763	610	393	181.1
OCC	440	565	824	1,356	N/A	N/A	N/A
Federal Home Loan Bank Board/OTS[a,b]	6,100	5,114	5,014	6,393	7,861	1,761	28.9
RTC[b]	[b]	[b]	[b]	336	411	N/A	N/A

Note: N/A means not available or not applicable.

[a]OTS took over the Federal Home Loan Bank Board's duties as thrift regulator.

[b]OTS and RTC were created by FIRREA in 1989.

Source: GAO analysis of agency data.

Getting a clear picture of the total amount of potential fraud is difficult. To begin with, the systems that regulatory agencies use to track fraud-related activities lack uniformity. Regulatory agencies record statistics on the criminal referrals that are submitted, but they do so in different ways:

- FDIC records only referrals involving estimated frauds greater than $10,000 and/or those concerning directors, officers, and shareholders.
- The Fed records all referrals sent to Justice, but it records referrals by the numbers of individual suspects, as opposed to the number of suspected crimes.
- NCUA records all criminal referrals of suspected crimes sent to Justice.
- OCC records referrals involving estimated losses exceeding $200,000, a bank insider, or some other significant circumstance.
- Like NCUA, OTS records all referrals of suspected crimes sent to Justice.
- RTC tracks the total number of criminal referrals submitted by RTC and others involving RTC-controlled institutions.

Thus, we do not know the total number of possible offenses or alleged offenders referred by those agencies. Those we do know about meet inconsistent, agency-specific criteria.

Similarly, we do not know the total number of referrals submitted by regulatory agencies or the institutions themselves over time. FBI began keeping statistics on both the source and size of the criminal referrals it receives in fiscal year 1991. Those statistics reaffirm that financial institutions submit far more referrals than do the regulatory agencies. And as noted in chapter 1, the vast majority of those referrals were for alleged frauds of relatively small dollar amounts.

Table 2.2 shows FBI data on the number of referrals submitted by both regulatory agencies and the institutions they oversee for the first 10 months of fiscal year 1992. Over 87 percent of all referrals submitted to FBI involved estimated frauds of less than $25,000, and 1,834 referrals (6.7 percent of the total) concerned alleged frauds of $100,000 or more. Institutions themselves submitted over 96 percent of all referrals.

Table 2.2: Financial Institutions Submitted the Majority of Criminal Referrals in the First 10 Months of Fiscal Year 1992

	Source of referrals					
	Regulatory agencies		Financial institutions		Total	
Size of estimated fraud	Number	% of total	Number	% of total	Number	% of total
$1 million or greater	84	0.3	229	0.8	313	1.1
$500,000 to $999,999	39	0.1	210	0.8	249	0.9
$100,000 to $499,999	136	0.5	1,136	4.2	1,272	4.7
$25,000 to $99,999	105	0.4	1,561	5.7	1,666	6.1
Under $25,000	666	2.4	23,100	84.7	23,766	87.2
Total	**1,030**	**3.8**	**26,236**	**96.2**	**27,266**	**100.0**

Note 1: Percentages may not total because of rounding.

Note 2: FBI also received another 1,273 complaints and other information about alleged criminal financial institution fraud during this same period but did not identify sources.

Source: GAO analysis of FBI data.

Senior Justice officials caution, however, that referrals are not equivalent to prosecutable cases. Referrals very often contain unverified allegations and rest upon suspicion of criminal conduct. A referral seldom contains conclusive evidence of criminal conduct. Referrals do not always contain information sufficient to warrant opening a federal criminal investigation, do not always lead to the discovery of evidence of criminal fraud, and do not always justify a criminal prosecution. Additionally, referrals can relate either to a single accused individual or a group of accused individuals, and they may involve a number of related or unrelated suspected criminal

transactions. Ultimately, one criminal prosecution may be based on a number of referrals. Thus, knowing that the total number of criminal referrals submitted to FBI has increased over time does not automatically indicate that regulatory agencies have made increasing numbers of referrals about discrete acts of fraud or about particular individuals. The actual amount of fraud that has occurred and the number of individuals involved is not known.

To help fund the effort against financial institution fraud, several pieces of legislation enacted since 1989 expanded the federal presence against bank and thrift fraud. The next section briefly discusses the increase in budget and staff resources dedicated to addressing criminal bank and thrift fraud.

FIRREA and the Crime Control Act Added Significant Resources to the Government's Efforts Against Financial Institution Fraud

The appropriation acts that followed FIRREA and the Crime Control Act greatly increased the funding for resources dedicated to pursuing financial institution fraud. FIRREA authorized additional resources for Justice's investigation and prosecution of financial institution crimes. The Crime Control Act amended FIRREA by authorizing further increases in resources to enable Justice to better handle pressing demands resulting from the savings and loan crisis. The Crime Control Act also authorized appropriations for IRS to investigate tax-related aspects of financial institution fraud. Additional legislation authorized the Secret Service to participate in bank and thrift fraud investigations.

FIRREA authorized Justice Department appropriations of $65 million per year for fiscal years 1990 through 1992 for investigations and prosecutions involving financial institutions and $10 million per year for fiscal years 1990 through 1992 for civil proceedings involving financial institutions. The Crime Control Act authorized $162.5 million per year for fiscal years 1991 through 1993 for investigations, prosecutions, and civil proceedings involving financial institutions.[1]

With appropriations that followed those acts, the resources and staffing available for financial institution fraud grew significantly. Following FIRREA, Congress appropriated over $49 million to enhance the Justice Department's enforcement programs in fiscal year 1990.[2] Following the Crime Control Act, the Justice Department's fiscal year 1991

[1]FIRREA's appropriation authorization was seen as insufficient to meet the demands for personnel generated by the thrift crisis. See 136 Cong. Rec. E3684 (daily ed., Nov. 2, 1990).

[2]The fiscal year 1990 FIRREA appropriations were $49.2 million. Various adjustments, including the sequester and internal reprogrammings, established a total availability of $49.4 million.

appropriations more than doubled the 1990 commitment, nearly tripling the total resources that had been available to address financial institution fraud only 2 years earlier. Crime Control Act authorizations resulted in appropriations that provided Justice with almost $120 million specifically to investigate and prosecute bank and thrift fraud. Table 2.3 shows the increases in budgetary resources available to the Justice Department to investigate and prosecute financial institution fraud. For the most part, those increases supported additional dedicated staff resources. Table 2.4 shows the growth in the number of positions authorized for various agencies in Justice.

Table 2.3: Increasing Justice Appropriations Dedicated to Pursuing Financial Institution Fraud

Dollars in millions

Organization	Base resources	Additional FIRREA appropriations (1990)	Additional Crime Control Act appropriations (1991)	Total 1991 availability	Actual 1991 obligations	Total 1992 availability
FBI	$59.5	$25.3	$ 54.4	$139.2	$132.2	$144.6
U.S. Attorneys	19.1	20.9	47.0	87.0	86.1	90.4
Criminal Division	2.1	2.6	6.4	11.1	11.2	11.3
Tax Division	0.2	0.7	3.5	4.4	1.7	4.6
Civil Division	0.0	[a]	8.3	8.3	8.3	9.3
Total	**$80.8**	**$49.4**	**$119.7**	**$250.0**	**$239.5**	**$260.2**

Note 1: Totals may not add due to rounding.

Note 2: Base resources are those applied to financial institution fraud prior to FIRREA.

[a]The Civil Division did not receive appropriations in this year.

Source: Department of Justice data.

Table 2.4: Increased Justice Authorized Staff Positions

Fiscal years 1990 to 1992 (special agent, attorney, and other support positions)

	Base resources		FIRREA addition		Crime Control Act addition		Fiscal year 1991 actual obligations			
Organization	Agents/ attorneys	Other	Agents/ attorneys	Other	Agents/ attorneys	Other	Agents/ attorneys	Other	Total positions	FTEs[a]
FBI	504	318	216	192	266	172	978	643	1,621	1,452
U.S. Attorneys	124	90	118	138	205	255	368	404	772	554
Criminal Division	17	11	24	16	43	39	76	40	116	68
Tax Division	2	1	6	4	32	20	40	25	65	35
Civil Division	0	0	0	0	65	43	39	7	46	32
Total	**647**	**420**	**364**	**350**	**611**	**529**	**1,501**	**1,119**	**2,620**	**2,141**

[a]FTEs means full-time equivalents, a measure of staff years applied.

Source: Department of Justice data.

Most of the additional resources went to local FBI and U.S. Attorneys' offices. Following FIRREA, EOUSA allocated 121 dedicated Assistant U.S. Attorneys to 38 offices, and FBI allocated its dedicated FIRREA resources to 30 of its 56 field divisions.[3] The Attorney General identified 27 of those locations as being targeted for "task force" investigations (discussed in greater detail in ch. 4). Appendix III shows the distribution of FIRREA resource allocations among FBI field divisions and U.S. Attorneys' offices.

The next year, FBI allocated its dedicated Crime Control Act special agents to 50 field divisions. Some offices that received FIRREA agents did not receive Crime Control Act agents, although other offices received significant increases. The FBI office in New Orleans, for example, received no additional resources, while the Boston office gained 35 special agent positions. EOUSA allocated 228 Assistant U.S. Attorneys resulting from Crime Control Act authorizations to 73 of 93 U.S. Attorneys' offices.[4] As shown in tables 2.3 and 2.4, resources available to address financial institution fraud in the Criminal, Tax, and Civil divisions also increased over the period. Appendix IV shows the allocation of FBI special agent positions, along with Assistant U.S. Attorney and support staff positions gained following the Crime Control Act.

[3]EOUSA allocated 3 positions transferred from the Civil Division in addition to the 118 attorney positions funded by FIRREA appropriations.

[4]This total includes 23 positions transferred from the Civil Division in addition to the 205 funded by the Crime Control Act. Another four positions were allocated the following year.

The Secret Service Gained Authorization to Investigate Financial Institution Fraud

Other legislation enacted in late 1990 also expanded the federal presence in investigating criminal bank and thrift fraud. The Treasury, Postal Service, and General Government Appropriations Act for Fiscal Year 1991[5] authorized the Secret Service to investigate civil and criminal fraud against any federally insured financial institution or RTC that Justice law enforcement personnel are authorized by law to conduct or perform. The act essentially provided the Secret Service with jurisdiction to investigate financial institution fraud that was concurrent with that of FBI. According to a Secret Service official, the Secret Service began its work in financial institution fraud in January 1991.

According to the Secret Service's special agent in charge of the Financial Crimes Division, the Secret Service originally targeted 13 cities for its financial fraud investigations. The Secret Service selected those cities (see fig. 2.1) on the basis of their perceived capacity to absorb the additional work, the number of criminal referrals made in the area, and whether Justice had identified them as needing additional resources. The Secret Service originally planned to assign 100 dedicated agents to its field offices in those cities to work financial institution fraud cases. According to a senior Secret Service official, 1 of the Secret Service's objectives was to have agents working at least 1 major case in each of the 13 offices, using a total of about 65 to 70 agents for those cases.

[5]P.L. 101-509, 104 Stat. 1389, 1427 (sec. 528 (a)(3)).

Figure 2.1: The Secret Service Originally Targeted 13 Cities for Participating in Bank and Thrift Fraud Investigations

The Treasury appropriations act established the framework for how the Secret Service's efforts would be coordinated with the Justice Department. The act made the Secret Service's participation in these investigations subject to the supervision of the Attorney General. The Attorney General subsequently delegated his authority to supervise the Secret Service to the Deputy Attorney General and the responsibility to coordinate the activities of the Secret Service to the Director of FBI. An agreement signed by the directors of FBI and the Secret Service stipulated that the Secret Service would receive referrals on financial institution fraud matters directly from local FBI offices to ensure coordination and avoid duplication of effort.

The agreement provided that the referrals are to be of the same quality and priority as those matters being worked by the local FBI office making the referrals. They are to include major investigations involving losses or exposure in excess of $100,000. If no such unaddressed referrals are available, then FBI is to refer already opened priority investigations that are not receiving sufficient investigative attention because of a lack of resources. According to the special agent in charge of the Secret Service's Financial Crimes Division, the Secret Service did not provide any other written guidance to its local offices for accepting referrals or matters, leaving the decision to the local special agent in charge.

Information provided by the Secret Service and included in Justice's third quarter 1992 report to Congress indicated that the Secret Service expanded its financial institution fraud investigative work beyond its original intentions. Rather than limiting its efforts to 13 cities, for example, the Secret Service had 438 bank and thrift fraud investigations ongoing in 79 cities as of June 30, 1992. Of those investigations, 224 involved major cases. Since it began working on financial institution fraud, the Secret Service has reported that its investigations have led to 307 arrests, 132 felony convictions, recoveries of $15.6 million, seizures totaling $2.2 million, and $1.6 million in restitution orders. According to the Secret Service, approximately two-thirds of the investigations it was working did not originate with criminal referrals supplied through FBI. Rather, the Secret Service initiated those investigations as a result of other leads.

Other Federal Agencies Also Have Key Roles in Financial Institution Fraud Investigations

Other federal investigative agencies also assist in bank and thrift fraud investigations. Various FBI and U.S. Attorneys' staffs told us that several different agencies have contributed. They cited, for example, cases in which staff from the Customs Service, Department of Health and Human Services, Department of Housing and Urban Development, and Postal Service have played key roles in investigations. The agency most frequently mentioned, however, was IRS.

IRS' Criminal Investigations Division (CID) is involved with financial institution fraud investigations in a number of locations around the country. IRS' primary focus in these investigations is on Title 26 U.S.C. tax violations, although it may also focus on Title 18 conspiracy and Title 31 money laundering violations. CID agents have participated in investigations of over 200 institutions since 1987, primarily through joint agency participation in grand jury task forces. In July 1991, IRS reported that CID agents in 7 different regions were involved or had participated in

investigating 290 bank and thrift fraud investigations. According to information from IRS, the largest numbers of those investigations were in California and Texas.

In August 1992, IRS reported that CID had initiated another 148 financial institution fraud cases between October 1, 1991, and July 10, 1992. It noted, however, that the expiration of Title 26 statutes of limitation for violations occurring in the savings and loan industry during the 1980s continued to be a major concern to IRS. According to IRS, the expiration of those statutes would preclude Title 26 charges and that would "adversely impact" CID's continued participation in those investigations.

In fiscal year 1991, IRS estimated that for fiscal years 1991 and 1992, it supported the government's efforts against financial institution fraud with about 60 staff years. Yet FBI and U.S. Attorneys' staffs around the country often told us that they found IRS CID agents to be extremely valuable in their investigations and prosecutions and increasingly requested participation by CID. Similarly, a senior Treasury Department official said that IRS agents are a valuable commodity for most local U.S. Attorneys' offices, because no other federal agency personnel have been trained to handle such complex cases. More recent information indicated that through August 1991, IRS CID spent 188.6 staff years on financial institution fraud.

Some Issues About Resources Remain

Despite the considerable increase in resources applied to the criminal bank and thrift fraud problem, there was some difficulty getting them in place, and there is still some uncertainty about whether the available resources are adequate. Both issues are most directly related to investigative resources, although not exclusively.

Largely because of budgetary constraints, FBI was not able to fill all the positions authorized by the Crime Control Act until fiscal year 1992. According to Justice, FBI was authorized a total of 986 special agent positions for financial institution fraud work. At the end of fiscal year

1991, FBI was to have dedicated a total of 798 agents.[6] FBI expected to apply another 56 agents in fiscal year 1992, bringing the total number of dedicated agents up to 854.

IRS could have supported considerably more staff years during fiscal year 1991 if the administration had requested the appropriations. The Crime Control Act authorized an additional $16 million for fiscal year 1991 for IRS to work on bank and thrift fraud.[7] That authorization would have supported an additional 120 special agents and 40 other personnel (revenue agents and support). However, according to a senior Treasury official, IRS did not forward the request for the appropriations to Treasury, and the Office of Management and Budget directed Treasury not to request funding for these positions. Consequently, the request was not included in the president's budget and was therefore never acted on by Congress.

For fiscal year 1992, IRS requested a net increase of 28 average positions for CID. According to IRS' 1992 budget submission to Congress, those increases were specifically targeted toward other efforts in CID, not financial institution fraud. That budget submission did note that IRS would emphasize white-collar tax crimes related to criminal violations committed by banks, regulated financial institutions, or employees of the banking and savings and loan industries, along with public corruption and "abusive compliance crimes." Those emphases would have to come from CID's existing resources.

For fiscal year 1993, the administration requested an increase in the number of IRS CID resources available to investigate white-collar tax crimes and criminal violations associated with financial institution fraud. IRS' budget request includes an additional 19 work years (annualized to 76 positions). This suggests that the individuals would not be brought on board until the last quarter of the fiscal year, beginning in July 1993.

[6]FBI measures the time it devotes to investigative work not in terms of agents or positions but in terms of direct agent work years (DAWY). A DAWY accounts for all the time an agent spends directly on investigative work and administrative time, including leave. For fiscal year 1991, 1 FBI DAWY equated to 2,563 hours. Executive agency personnel budgets are usually expressed differently, in terms of full-time equivalents (FTEs). Because FTEs include fewer hours per year (about 2,100), the number of FTEs will exceed the number of DAWYs that FBI reports. Similarly, the number of authorized positions will usually be greater than the number of FTEs applied because the accompanying appropriations are usually insufficient to support the full complement of authorized positions.

Consequently, although FBI was authorized 986 agent positions for financial institution fraud work in fiscal year 1991, it was able to fund fewer FTEs. Over the course of the year, FBI reported that it applied 610 DAWYs to bank and thrift fraud.

[7]P.L. 101-647, 104 Stat. 4789, 4893 (sec. 2559 (b)).

Still, questions about resource adequacy persist. FBI does not yet appear to have sufficient resources to address all criminal referrals it receives. For example, because of a lack of resources, FBI categorized 35 referrals it received in June 1992 as "unaddressed." In testimony before the Subcommittee on Consumer and Regulatory Affairs of the Senate Committee on Banking, Housing, and Urban Affairs in February 1992, the Special Counsel could not say whether the current level of resources was adequate, in part, because the investigators and prosecutors already in the field were not fully "functional."[8] For fiscal year 1993, the administration requested an additional 50 FBI agents for bank and thrift fraud but did not request additional attorney resources specifically to address financial institution fraud. The Special Counsel testified that more investigators are needed than "people in court."[9]

FBI Investigations Have Increased Significantly

As the number of referrals submitted by financial institutions and their regulators increased over the past 5 years and as the number of staff available to address the issue rose, so too did the number of FBI investigations. According to FBI data, FBI undertook an increasing number of investigations since fiscal year 1987. Table 2.5 shows the number of investigations received (or opened) by FBI between fiscal years 1987 and 1991. The total number of investigations opened increased from 11,555 to 21,607, an increase of 10,052 (or 87 percent).[10]

[8]As will be discussed in chapter 5, one relatively common reason that Justice prosecutors declined cases in fiscal year 1991 was a lack of investigative and prosecutive resources.

[9]Justice's fiscal year 1993 congressional authorization and budget submission requested an additional 60 attorney positions to combat economic crime. The submission said that those positions were to address such criminal activity as insurance fraud, bankruptcy fraud, computer fraud, defense procurement fraud, pension plan fraud, and telemarketing fraud. Of the 60 positions, 24 were to address fraud in the health care industry.

[10]These data do not include all investigations counted by FBI. Rather, they reflect only those investigations done by the office of origin and do not include "auxiliary" investigations. Origin cases are cases in which the investigation originates and venue exists for prosecution within the territory covered by that field office. Origin denotes the control and direction of the investigation. Auxiliary investigations are those opened on the basis of requests for investigative assistance from other field offices. Generally, prosecution would not occur within the auxiliary field office.

According to an FBI official, auxiliary investigations vary greatly in the amount of work required, ranging from following one lead with one interview to much more extensive investigative work. In some instances, auxiliary investigations may lead to new origin cases. Consequently, these data slightly underreport the total investigative effort being made by FBI. Throughout this report, we have limited any discussion of FBI caseload to origin cases only, where possible.

Table 2.5: FBI Has Opened More Investigations, and the Majority Involved Nonmajor Cases

Type of case investigation opened	Fiscal year						
	1987	1988	1989	1990	1991	Change	Percent change
Major case	1,977	1,892	2,174	3,479	3,129	1,152	58.3%
Percent of total	17.1%	11.4%	13.9%	20.2%	14.5%	11.5%	N/A
Nonmajor case	9,578	14,668	13,424	13,716	18,478	8,900	92.9%
Percent of total	82.9%	88.6%	86.1%	79.8%	85.5%	88.5%	N/A
Total	**11,555**	**16,560**	**15,598**	**17,195**	**21,607**	**10,052**	**87.0%**

Note: N/A means not applicable.

Source: GAO analysis of FBI data.

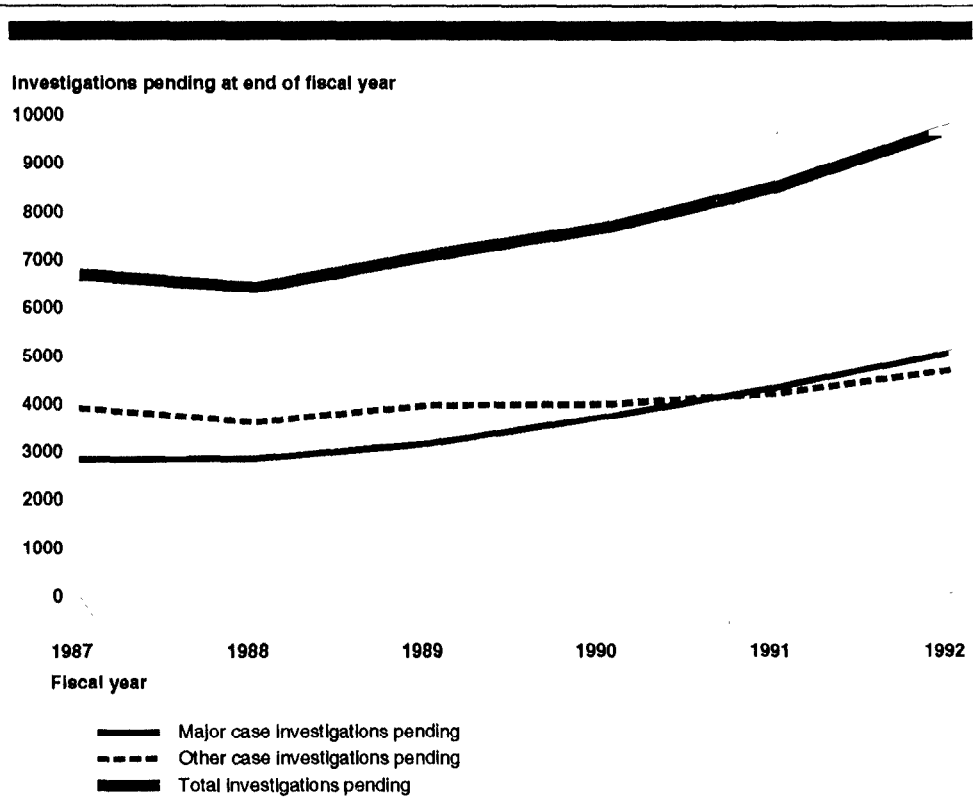
Most of the investigations that FBI opened did not involve major cases. FBI defines major cases differently than the U.S. Attorneys. FBI categorizes an investigation as major if it concerns an alleged fraud of $100,000 or more or alleged frauds that contributed to the failure of an institution. This definition does not include references to the suspect's position or other factors the U.S. Attorneys may consider in categorizing cases. In fiscal year 1991, for example, of the total number of investigations opened, major case investigations made up less than 15 percent and nonmajor fraud investigations accounted for more than 85 percent. Additionally, most of the increase in the total number of investigations opened since 1987 can be attributed to the near doubling of the number of nonmajor investigations initiated.

Nonetheless, the number of major criminal bank and thrift fraud investigations opened by FBI has risen substantially as well. In fiscal year 1991, FBI opened an average of about 261 major investigations each month, up from an average of about 165 per month in fiscal year 1987. In addition, the majority of FBI's ongoing (pending) financial institution fraud investigations involved major cases. Of the 9,659 investigations pending as of July 31, 1992, 5,012 (or 51.9 percent) were investigations into major frauds.

Moreover, major fraud investigations are becoming a greater part of FBI's pending financial institution fraud investigation inventory. Between the end of fiscal year 1987 and July 31, 1992, the total number of investigations pending increased by 3,010 (or 45 percent). Pending major fraud investigations accounted for the great majority of that increase. The number of nonmajor investigations pending at the end of the period rose

about 20 percent, from 3,864 to 4,647, while the number of major fraud investigations pending increased nearly 80 percent, rising from 2,785 to 5,012. Figure 2.2 shows the change in the number of major and nonmajor investigations pending at the end of the period.

Figure 2.2: The Number of Pending FBI Investigations Has Increased



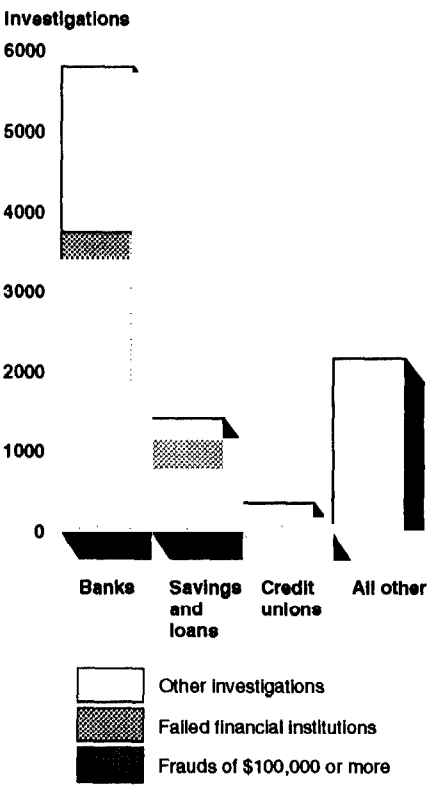
Note: 1992 data are as of July 31, 1992.

Source: GAO analysis of FBI data.

Most major case investigations involved banks rather than savings and loans. Of the 5,012 major case investigations pending on July 31, 1992, 74 percent were bank investigations, 23 percent involved savings and loans, and the remaining 3 percent were credit union investigations.

Figure 2.3 illustrates the mix of FBI's case investigation inventory at the end of July 1992.[11]

Figure 2.3: A Majority of FBI's Major Cases Involved Banks Rather Than Savings and Loans, as of July 31, 1992



Note: "All other" investigations involve relatively small dollar losses and are those in which the government can obtain a quick disposition ("fast track" cases). FBI does not distinguish among the types of institutions victimized.

Source: GAO analysis of Department of Justice data.

[11]We are unable to provide trend information on these data. Before fiscal year 1990, FBI aggregated all bank fraud and embezzlement cases by size of the potential fraud and did not distinguish among the different types of institutions. Starting in fiscal year 1990, FBI began recording separate information for banks, thrifts, and credit unions, along with the size of the potential fraud. A senior program manager in FBI's white-collar crime section believed that FBI field agents did not categorize cases correctly when the new data system was first activated. Consequently, FBI was skeptical about the reliability of its data for fiscal year 1990 but believed that its data for 1991 were far superior.

However, FBI has spent relatively more time investigating fraud in savings and loans than in banks. According to senior FBI officials, this is because a relatively larger proportion of the savings and loan cases involved failures, which tended to be more complex to investigate than cases involving bank failures. Of the total agent time devoted to major investigations in fiscal year 1991, FBI spent about 56 percent of agent time working bank cases and 41 percent on savings and loan cases.

An Overview of Prosecutive Results to Date

According to its third quarter 1992 report to Congress, Justice has charged 3,270 defendants with major financial institution offenses since October 1, 1988. Those crimes involved over $11.5 billion in estimated losses.[12] Over the same period, it has convicted 2,603 defendants in major bank and thrift fraud cases.

A large part of those accomplishments occurred in fiscal year 1991. Table 2.6 shows the results from Justice's efforts in major cases during that year. Justice obtained 722 informations or indictments and charged 1,085 individuals (an information or indictment may charge more than 1 individual). Its attorneys also won convictions against 855 defendants, establishing a conviction rate of over 95 percent.[13] In addition, cases completed in fiscal year 1991 resulted in the courts imposing $9.5 million in fines and ordering over $300 million in restitution. The majority of these results came from cases involving banks rather than savings and loans or credit unions.

[12]As noted earlier, Justice commented that these loss figures are not necessarily the amount of fraud charged in particular cases.

[13]According to Justice's fiscal year 1993 budget submission for the U.S. Attorneys, only 2 percent of all individuals prosecuted criminally in fiscal year 1991 were found innocent.

Table 2.6: Major Financial Institution Fraud Prosecutions in Fiscal Year 1991

Dollars in millions

	Financial institution			
Description	S&Ls	Banks	Credit unions	Total
Information/indictments	214	474	34	722
Defendants charged	349	689	47	1,085
Defendants convicted	290	528	37	855
Defendants acquitted	36	6	1	43
Conviction rate	89.0%	98.9%	97.4%	95.2%
Defendants sentenced to jail	180	379	39	598
Defendants sentenced without jail	46	94	2	142
Percent sentenced to jail	79.6%	80.1%	95.1%	80.8%
Fines imposed	$7.8	$1.7	$0.0	$ 9.5
Restitution ordered	$141.5	$152.4	$6.9	$300.9

Note: Totals may not sum because of rounding.

Source: Department of Justice data.

Chapter 5 provides additional analyses of Justice's results to date and offers some preliminary conclusions.

Conclusion

The number of investigations into bank and thrift fraud—especially into major frauds—has continued to escalate, and the number of pending investigations and cases continues to grow. FIRREA and the 1990 Crime Control Act authorized significant amounts of resources for the government to address the burgeoning problem. Hundreds of additional FBI agents and Assistant U.S. Attorneys have been hired, trained, and allocated to offices around the country. Staff from other federal agencies have also participated in the pursuit of bank and thrift fraud. Data from both FBI and EOUSA show increasing numbers of investigations and prosecutions.

Justice's Special Counsel for Financial Institutions Fraud is responsible for coordinating the overall effort, a task made especially difficult by the involvement of so many federal entities outside Justice. Chapter 3 discusses the activities of the Special Counsel and other national coordinating mechanisms in greater detail.

Agency Comments

Justice disagreed with our description of the adequacy of the resources available for identifying, investigating, and prosecuting criminal financial institution fraud. (See app. V.) Justice said that we mischaracterized its position on resource adequacy. Justice also said that we wrongly criticized it for lacking control over IRS and federal regulatory agency resources.

We believe that we accurately reported the Special Counsel's statements on the adequacy of Justice's resources, although we revised the text to include more information on Justice's budget request for fiscal year 1993. Similarly, we revised the text to include more information on IRS' resources. Finally, we do not fault Justice for the fact that no one department controls all the resources needed to address criminal bank and thrift fraud. The problem is that overall, the government has not been able to marshall its resources as effectively as possible to deal with the financial institution fraud problem. We discuss this issue in greater detail in chapter 3.

Justice's Ability to Direct the National Effort Is Limited

As the identification of crimes committed against financial institutions increased during the mid-1980s, Congress enacted legislation intended to strengthen federal involvement in addressing the problem. The need for participation by agencies outside Justice required a multiagency response to the crisis. Justice, as the government's primary investigator and prosecutor of criminal bank and thrift fraud, developed several mechanisms aimed at better coordinating that response.

In 1984, Justice, along with the federal financial regulatory agencies, formed the Interagency Bank Fraud Enforcement Working Group in an effort to facilitate interagency communication and coordination between Justice and each of the regulatory agencies. In 1990, Justice established an Office of Special Counsel for Financial Institutions Fraud and an interagency group to coordinate and provide leadership over the government's financial institution fraud efforts. The Crime Control Act subsequently enacted these initiatives and focused responsibility for the overall effort in the Office of Special Counsel. Among other things, the act required the Special Counsel to (1) supervise and coordinate matters concerning financial institution fraud within Justice and (2) ensure that adequate resources are made available to investigate and prosecute financial institution crimes. We believe these efforts have been important steps toward improving coordination over the government's attack against bank and thrift fraud.

However, limited authority prevents the Special Counsel from fully carrying out his legislative responsibilities. Because most attorneys and FBI agents addressing bank and thrift fraud are under the control of local U.S. Attorney and FBI field offices, the Special Counsel has relatively little direct influence over those resources. And although Justice reported that it has received "unprecedented" cooperation from regulatory agencies and other government departments, Justice noted that it would welcome additional assistance. In particular, resources that Justice needs from IRS are under the direction and control of IRS Regional Commissioners. Thus, organizational boundaries—both within Justice and between Justice and other participating agencies and departments—prevent Justice from ensuring that adequate resources are available to investigate and prosecute financial institution fraud. In addition, Justice has limited information on where and how many non-Justice resources are needed, and it has no evaluation program for assessing the government's efforts to pursue financial institution fraud.

Justice's Early Efforts Were a Good Foundation for Improving Coordination

During the 1980s, Congress became concerned about the need for better coordination between each of the financial regulatory agencies and Justice. In 1984, the House Government Operations Committee recommended that Justice form an interagency task force to improve coordination between each of the regulatory agencies and Justice.

Responding to that recommendation, then-Attorney General William French Smith and officials from the Federal Home Loan Bank Board,[1] the Board of Governors of the Federal Reserve System, OCC, and FDIC formed the Interagency Bank Fraud Enforcement Working Group. Established in 1984, the group was designed to promote closer cooperation and facilitate the exchange of information among all agencies involved in criminal financial institution fraud investigations and prosecutions. Renamed the National Bank Fraud Enforcement Working Group, the group included officials from Justice (including the Criminal Division's Fraud Section, the Attorney General's Advisory Committee of Attorneys, and FBI), OTS, FDIC, OCC, the Fed, NCUA, the Farm Credit Administration, the Secret Service, the Department of the Treasury, and the Securities and Exchange Commission.

Currently, the working group serves as a central point of coordination between and among its participants. According to Justice officials, it has addressed issues related to law enforcement and bank supervision and confronted concerns that arose at the local field offices. Since its inception, the group has been involved in several initiatives aimed at promoting closer cooperation between Justice and each of the regulatory agencies. In 1988, a House Government Operations Committee report noted that the group had made "substantial progress" in overcoming a number of problems, especially those stemming from a lack of interagency communication and coordination. In 1990, in testimony before the House Committee on the Judiciary, the Assistant Attorney General of the Criminal Division noted that the group had a number of accomplishments. Among other things, he noted that it produced a uniform criminal referral form and encouraged and promoted the creation of local financial institution fraud working groups to strengthen enforcement efforts at the local level.

The National Bank Fraud Enforcement Working Group was a positive first step toward facilitating coordination between Justice and each of the regulatory agencies. However, faced with a mounting workload and widespread agency involvement in responding to the crisis, Justice

[1]OTS took over the Federal Home Loan Bank Board's duties as thrift regulator.

recognized that having a group to coordinate matters was not enough. The effort also needed a focal point to provide leadership and oversight. As a means toward that end, Justice appointed a Special Counsel.

Justice Attempted to Provide National Direction Through a New Leadership Position

Recognizing the expanding caseload and widespread federal participation in criminal financial institution fraud, the Attorney General announced a special initiative to supervise and coordinate the government's effort. This initiative, which vested overall policy and operational control in one senior-level Justice official, created an Office of Special Counsel for Financial Institutions Fraud that would report directly to the Deputy Attorney General. At the same time, Justice created a Senior Interagency Group to help the Special Counsel coordinate the effort.

On June 23, 1990, then-Attorney General Richard Thornburgh named a Special Counsel who served in that capacity through the end of 1990. According to Justice, this individual concentrated his efforts on ensuring that top-priority cases and matters received proper attention and that new Justice resources were allocated appropriately. Justice also reported that he familiarized local U.S. Attorneys' offices with certain aspects of the law pertaining to civil money penalties and contacted over 70 U.S. Attorneys investigating significant criminal referrals.

The Crime Control Act replaced Justice's financial institution fraud coordinating mechanisms with a legislatively created Office of Special Counsel and Senior Interagency Group. The act directs the Special Counsel to (1) supervise and coordinate investigations and prosecutions within Justice of financial institution fraud; (2) ensure that federal law relating to civil enforcement, asset seizure and forfeiture, money laundering, and racketeering are used to the fullest extent authorized to recover the proceeds of unlawful activities from persons who have committed crimes in and against the financial services industry; and (3) ensure that adequate resources are made available to investigate and prosecute financial institution fraud. Further, the act directs the Senior Interagency Group to assist the Special Counsel in identifying the most significant financial institution fraud cases and in allocating investigative and prosecutorial resources where they are most needed. It also requires that the Special Counsel chair this group. In May 1991, the Senate confirmed the new presidentially appointed Special Counsel for Financial Institutions Fraud.

Since his confirmation, the Special Counsel has taken steps to facilitate the government's overall efforts to pursue financial institution fraud. According to Justice, among other things, the Special Counsel has

- participated in deciding where to allocate the resources Justice received following the Crime Control Act and has worked on Justice's fiscal year 1993 staffing requests;
- visited and worked with U.S. Attorneys' offices around the country to get an overview of enforcement activities at the local level;
- established the New England and San Diego Bank Fraud Task Forces;
- worked on guidelines for FIRREA forfeitures with various law enforcement officials;
- mediated the completion of the memorandum of understanding between the Secret Service and FBI on handling financial institution fraud matters;
- improved training for financial institution fraud prosecutors and developed a joint training curriculum with the investigators and regulators;
- helped to negotiate the significant $650-million settlement regarding the Bank of Credit and Commerce International;
- secured the unanimous endorsement of the Senior Interagency Group of national guidelines for enhancing coordination of monetary enforcement efforts; and
- produced the first comprehensive report on monetary enforcement for the Deputy Attorney General, which was presented to the Senior Interagency Group and submitted to the Senate Banking Committee.

In addition, in response to reporting requirements in the Crime Control Act, the Special Counsel has worked with EOUSA to provide statistical information to Congress on Justice's civil and criminal financial institution enforcement activities. Among other things, the act requires Justice to report information on (1) active and inactive investigations, matters, and prosecutions; (2) unaddressed referrals; (3) closed, settled, or litigated matters; and (4) the results achieved, including convictions and pretrial diversions, fines and penalties levied, restitution assessed and collected, and damages recovered, in such matters.

Over the past year, the Special Counsel has made progress in developing this information. Justice reports on financial institution fraud investigations and prosecutions in a quarterly publication, Attacking Financial Institution Fraud. Since Justice issued its first report in December 1990, the amount of information included has expanded steadily. For example, Justice now provides data on major bank and credit

union prosecutions that were missing in its first reports. And in its second-quarter report in fiscal year 1992, Justice included for the first time information from the regulatory agencies on civil enforcement actions.

Finally, the Special Counsel has worked to enhance the government's overall approach to attacking bank and thrift fraud by improving interagency communication with the bank regulatory community. General counsels from various regulatory agencies told us that the Special Counsel has improved relations between Justice and the regulatory agencies. For example, one official noted that the Special Counsel has been especially effective in functioning as an intermediary and addressing problems that arose between the regulatory agencies and the U.S. Attorneys.

The Federal Structure Inhibits Justice's Ability to Lead a Cohesive Governmentwide Response

The Justice Department said that it has received an "unprecedented degree of cooperation" in its effort to address criminal bank and thrift fraud. As an example, Justice cited the Senior Interagency Group's adoption of a national policy on coordination in collecting restitution. At the same time, Justice acknowledged that resources often needed for investigations and prosecutions are not available in sufficient numbers and are not under its control.

Thus, despite its efforts to consolidate the federal response to criminal financial institution fraud, the structure of Justice and the federal government inhibits the Special Counsel's ability to fully carry out his responsibilities under the Crime Control Act. Within Justice, the U.S. Attorneys exercise significant discretion in managing their own law enforcement programs. Outside Justice, the Special Counsel has little, if any, influence over agency staff who are often critical for effective investigations and prosecutions.

Justice's Structure and Operations Limit the Special Counsel's Abilities

Tradition and structure dictate program management at Justice. We have reported in the past that Justice's dispersed operations and decentralized decisionmaking have allowed its components significant control in managing their programs.[2] In particular, we pointed out that U.S. Attorneys have traditionally operated with much program autonomy. Because they are subject to removal only by the president and are geographically separated from national headquarters, the U.S. Attorneys have significant discretion in setting prosecutive policies and in managing their offices.

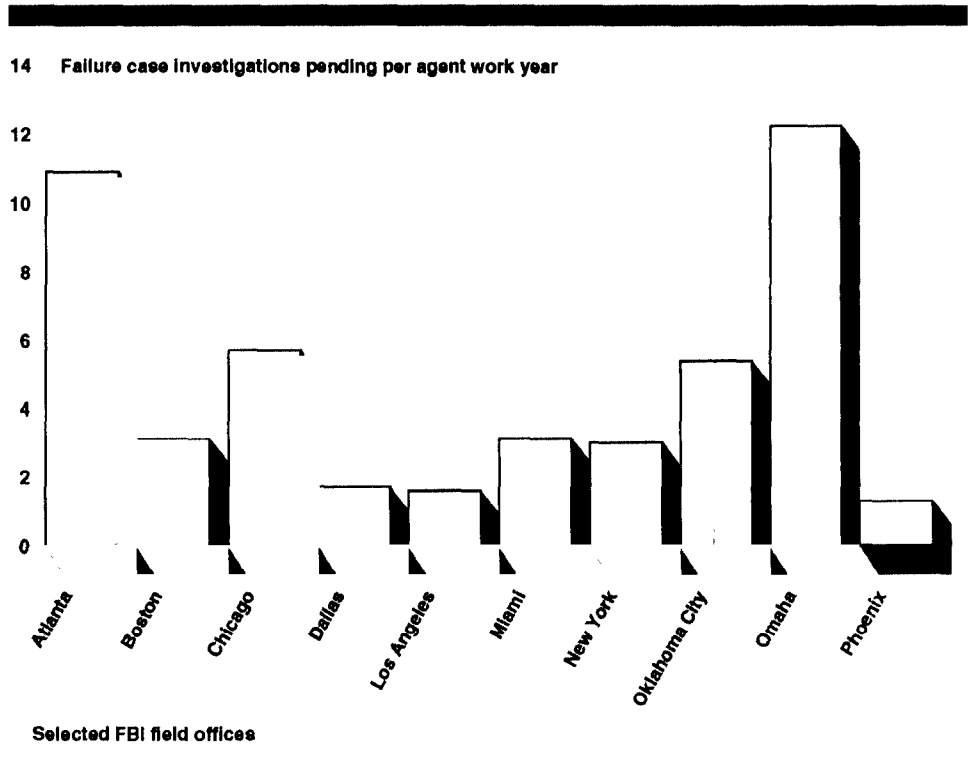
[2]See, for example, Justice Department: Improved Management Processes Would Enhance Justice's Operations (GAO/GGD-86-12, Mar. 14, 1986).

Limited management information has also hampered policymakers and program managers at Justice. Since 1977, Justice has attempted to implement a departmentwide litigative and case management system that would provide Congress and others with summary information on the litigative caseload. It would also provide top Justice executives with workload information that could be used in making resource allocation decisions. This system is still not fully operational.

Such an environment limits the Special Counsel's abilities. The Crime Control Act requires the Special Counsel to ensure that adequate resources are available for pursuing bank and thrift fraud. But Justice's current organizational structure limits the Special Counsel's ability to manage the financial institution fraud resources of the local FBI and U.S. Attorneys' offices. To meet his responsibility under the Crime Control Act, the Special Counsel told us that he relies on U.S. Attorneys and FBI for assurance that an adequate number of resources are available to investigate and prosecute financial institution fraud and that resources have been applied to the most significant cases. Aside from those U.S. Attorney and FBI offices applying a given amount of resources that Congress dedicated to the effort through appropriations, structurally, Justice's efforts against criminal bank and thrift fraud differs little from its efforts against most other offenses.

We analyzed FBI workload and staffing data for fiscal year 1991 to get a picture of Justice's resource assignments. Overall, FBI assigned an average of about 14 investigations to each FBI agent. There are no readily available criteria to evaluate whether staffing at various offices is adequate, but our analysis showed wide variations in workload at selected locations that were designated for "task force investigations." With investigations into frauds that allegedly contributed to an institution's failure, for example, each FBI agent in Omaha on average worked approximately 12.2 cases, while each agent in Phoenix worked about 1.3 such cases. Figure 3.1 illustrates these variations for 10 different FBI field offices, each of which Justice originally designated for task forces.

Figure 3.1: FBI's Failure Case Investigation Workload Varied Widely Among Different Field Offices in Fiscal Year 1991



Source: GAO analysis of FBI data.

According to the Special Counsel, a number of factors, such as office caseload and the complexity and duration of a case, contribute to variations in FBI staffing. We recognize that certain factors may produce differences in workload. On the other hand, FBI officials told us that ideally, Justice would like to have sufficient resources to assign two agents to each failure case (0.5 cases per agent).

Also, as we discuss in more detail in chapter 5, case declination rates vary widely around the country. These variances also could indicate inadequate resources of both FBI agents and Assistant U.S. Attorneys.

The Special Counsel Has Limited Authority Over Non-Justice Resources

The limited nature of the Special Counsel's authority is even more pronounced with agencies outside Justice. Non-Justice staff expertise provided by IRS agents and regulatory examiners is often needed for successful prosecutions of financial institution fraud. Because those

agencies have competing priorities and demands on their resources, however, their staffs are not always available to assist Justice.

Justice is aware of the benefits of using investigative resources from outside the agency, such as IRS agents, to assist in financial institution fraud investigations. In 1987, before the House Committee on Government Operations, the chief federal prosecutor for the Northern District of Illinois testified on the successes that can be achieved through the cooperation of alternative investigative resources. Referring to that district, he noted:

"We have found that team investigations [including agents from these agencies]... is the most effective approach due to the melding of their various expertise, and the greater flexibility of the Postal Inspector Service and the IRS to follow the case outside the District, rather than to use collateral requests to another agency [FBI] office."[3]

Various senior Justice officials have indicated to us that IRS' investigative resources are a valuable commodity for most local U.S. Attorneys' offices. They noted that no other federal agency personnel have been trained to handle complex financial fraud tax matters. Similarly, in communications to the Senate Committees on Banking and the Judiciary, Justice noted that it would welcome additional investigative assistance from IRS. However, the Special Counsel cannot ensure that CID agents will be assigned to work financial institution fraud cases. Whether IRS assigns CID resources to work these cases depends on the individual case, the priorities of each IRS Regional Commissioner, and the success of each U.S. Attorney in negotiating for assistance.

Justice and Treasury have no written agreement over the use of CID resources. The Special Counsel's involvement in getting CID resources to participate more in financial institution fraud has been achieved on a case-specific basis. For example, the Special Counsel told us that he negotiates with Treasury officials to solicit IRS' assistance for priority cases as the need arises. The Special Counsel also met with Treasury officials to discuss CID's participation in the financial fraud enforcement efforts of the New England Bank Fraud Task Force. The task force initially wanted CID to provide 10 to 12 special agents and appropriate support personnel. In October 1991, Justice and IRS reached an agreement for IRS to dedicate four agents to the task force, and IRS provided those resources in mid-1992.

[3]See statement of Anton Valukas in hearings before the House Committee on Government Operations, "Adequacy of Federal Efforts to Combat Fraud, Abuse, and Misconduct in Federally Insured Financial Institutions," 100th Congress, 1st Session, Nov. 17, 1987, p. 106.

New England is not the only location where IRS has been unable to provide sufficient investigative assistance. According to information from IRS, CID had to decline U.S. Attorneys' requests for assistance in four other locations: Oklahoma City, Omaha, Houston, and Jersey City. In addition, the U.S. Attorney in San Diego requested an "entire group" of agents for the new bank fraud task force, but CID provided only two full-time agents. CID determined it could provide other support agents on identified cases from that task force.

A similar situation exists with resources from the regulatory agencies. As with IRS, Justice recognized that regulatory agency personnel provide valuable assistance to investigations and acknowledged that it would welcome investigative assistance from certain regulatory agencies. In our visits to local FBI and U.S. Attorneys' offices around the country, we found that the level of participation by regulatory agency personnel varied tremendously. Again, however, agency boundaries limit the Special Counsel from ensuring that sufficient non-Justice resources are being placed where they are needed.

Different agency priorities limit the ability of federal regulators to provide assistance in financial institution fraud investigations. Whether regulatory agencies provide assistance depends on the availability of their resources, the cooperation and willingness of the agency, and the success of each U.S. Attorney in soliciting agency assistance. Justice has no formal interagency agreements with other agencies to ensure that the proper staff, in sufficient numbers, are assigned to this task.

As a result, many regulatory agencies have been reluctant to provide examiners to assist in financial institution fraud investigations without reimbursement. OTS entered into an agreement with Justice on reimbursing the agency for the use of its resources for fiscal year 1991. That agreement, reached only after year-long negotiations, is no longer in effect. Although other regulatory agencies would like to receive reimbursement (which a senior OTS official described as "modest in comparison to the support provided"), Justice told us that no negotiations for compensating these agencies are planned because the money is not available. According to Justice, it was able to provide some reimbursement to OTS only because "Congress had appropriated a full year's funding for a partial year personnel enhancement" of Justice programs.

Unresolved issues over reimbursement between each of the regulatory agencies and Justice have now resulted in OTS and FDIC officials no longer

being assigned to the Dallas Bank Fraud Task Force. As of February 1992, three OTS examiners and one FDIC attorney are no longer task force members. The current director of the task force said that the loss of these officials significantly reduced its expertise. On the other hand, OTS' General Counsel told us that he does not believe that OTS' departure from the task force impaired any investigative or prosecutive effort in Dallas. He suggested that given the training and experience that Justice staff have gained over the past 2 years, Justice's need for expert assistance from regulatory agency staff is not as great as it was earlier.

Furthermore, some regulatory agencies are reluctant to provide examiners to work on grand jury investigations, particularly when these agencies face resource shortages. Examiners who work on these investigations are subject to grand jury secrecy rules, which may prohibit them from using any type of regulatory information that may be discovered in the course of assisting in the investigations. As a result, these personnel may be effectively lost to the regulatory agency for an extended period of time.

We believe that institutional or organizational difficulties hinder the government's overall approach to bank and thrift criminal fraud. Organizational boundaries certainly have limited Justice's ability to control the application of non-Justice resources needed to assist with investigations and prosecutions. In addition, however, we believe that this organizational separation limits Justice's ability to effectively serve as an advocate for increased non-Justice resources dedicated to bank and thrift fraud. A senior Treasury official made the same point: Given the overall budget constraints with which the federal government must operate, Justice's Special Counsel cannot effectively advocate increases in Treasury Department resources, particularly if such increases would come at Justice's expense.

Justice Needs to Systematically Assess Its Efforts

A fundamental component of oversight is gauging program performance. However, Justice has no evaluation program for assessing financial institution fraud efforts around the country.

Such a deficiency is not unique to the financial institution fraud program. We have reported in the past that assessing program effectiveness has been a long-standing challenge for Justice. For example, we noted that the success of Justice's efforts against organized crime would be dependent on developing measures for assessing effectiveness.[4]

[4]Organized Crime: Issues Concerning Strike Forces (GAO/GGD-89-67, Apr. 11, 1989).

The Special Counsel told us that although he has a role in evaluating the government's financial institution fraud enforcement efforts, he has not developed any systematic means to achieve this end. He told us that he assesses activities at the local level through several means. For example, he said that he stays apprised of important financial institution fraud cases and resource issues through informal communications with the field offices and various networks, such as the National Bank Fraud Enforcement Working Group. Field offices also report monthly on significant developments in financial institution fraud cases and file important cases with the Deputy Attorney General's office. The Special Counsel also said that he meets periodically with FBI management to review selected financial institution fraud programs. In addition, individual U.S. Attorney's office activities are evaluated by the Evaluation and Review staff of EOUSA.[5]

While recognizing that these approaches will provide some useful information, we have a number of concerns about their valuative utility. Maintaining strong communications is an important component in addressing problems at the local level, particularly in a decentralized environment such as Justice's. But it is no substitute for a systematic assessment across offices.

Second, our review of selected EOUSA evaluations showed that they do not provide a complete picture of the financial institution fraud activities at the local level. We reviewed 13 EOUSA evaluations that were done between 1990 and 1991 for offices that received FIRREA and/or Crime Control Act resources. Our analysis showed that these evaluations did not address financial institution fraud as a discrete program activity and did not follow a consistent format across offices. Rather, they captured rudimentary information about various program activities and reflected a more descriptive than valuative effort. For example, they generally listed the office's priorities, caseload, and staffing and indicated whether the office had a coordinator for financial institution fraud.

In addition, the evaluations did not address other agencies' roles in the overall financial institution fraud effort. They were not designed to capture the extent of other agencies' time and resources devoted to assisting the

[5]Since 1978, EOUSA has been doing periodic evaluations of the local U.S. Attorneys' offices. Among other things, these evaluations were originally designed to assess compliance with Justice programs and priorities and make recommendations for the staffing, space, and other requirements of U.S. Attorneys' offices. In 1990, the scope of the evaluations was expanded to incorporate certain areas designated by the Attorney General as national priorities. One such area was financial institution fraud.

particular U.S. Attorney's office or the extent to which their involvement was adequate.

The Special Counsel has little information on where or how many regulatory agency personnel are involved in financial institution fraud investigations. Such information could be used to help determine the extent to which adequate numbers of non-Justice resources are provided in the field offices. According to the Special Counsel, regulatory agencies have not provided his office with information on resource allocations except when they sought reimbursement or provided advance notice of the allocation to a regional office.

We believe that a more comprehensive analysis, one that is specific to the financial institution fraud activities of the offices and includes the involvement of non-Justice entities, would provide departmental policymakers with far better information for decisionmaking. Developing the basic framework for a measurement system to assess program results is a critical step toward achieving this end.

Conclusion

Since the mid-1980s, the federal attack against bank and thrift fraud has emerged as a multiagency response. Recognizing the magnitude of the government's involvement, the position of Special Counsel was Justice's key initiative toward providing leadership over this response. This initiative was subsequently enacted into law by the Crime Control Act. Among other things, the act requires the Special Counsel to supervise and coordinate matters concerning financial institution fraud within Justice and ensure that adequate resources are available to pursue them.

Various agency officials have told us that the federal effort against criminal financial institution fraud is relatively well coordinated, and they commend the Special Counsel for his efforts. In addition, Justice has made considerable progress in training and allocating new investigators and prosecutors and has improved both the quality and quantity of information that it reports to Congress.

On the other hand, the structure of both the Justice Department and the federal government inhibits the Special Counsel from fully carrying out his legislative requirements. For example, within Justice, operations are dispersed, and Justice's decisionmaking is highly decentralized, thus providing U.S. Attorneys and local FBI offices with significant discretion in

managing their staffs. As a result, the Special Counsel has limited influence over those departmental resources.

At the same time, Justice's organizational separation from other agencies that provide key assistance to financial institution fraud investigations and prosecutions prevents the Special Counsel from ensuring that those staffs are adequate. Institutional boundaries contributed to difficulties Justice experienced in effectively serving as an advocate for increased non-Justice resources dedicated to financial institution fraud. In consideration of competing priorities and demands on their resources, departments and agencies have negotiated with Justice over how and when to participate in investigations and prosecutions. Regulatory agencies have wrestled with reimbursement issues. And IRS' resource commitment to financial institution fraud remains at the discretion of regional officials.

Moreover, Justice has not developed any systematic means for evaluating particular enforcement programs, such as the financial institution fraud effort. The workload has continued to grow as has the demand for expertise from agencies outside Justice. For these reasons, we believe that a systematic mechanism that can evaluate the efforts and results of all participants is essential.

Matter for Congressional Consideration

Given the federal structure, the authority of the Special Counsel within that structure, and the lack of sufficient measures for gauging the overall success of the effort, the issue of whether the executive branch is providing a sufficiently comprehensive and integrated response to criminal financial institution fraud merits continuous congressional oversight. With institutional structures and boundaries having defined the limits of the federal response, Justice has approached this effort much like it has other enforcement programs. We believe that Congress should explore the need and ways to integrate Justice and non-Justice agencies more fully into the national effort. In this regard, dedicating resources to identify and investigate financial institution fraud could be one mechanism to consider. Congress should also explore whether legislative action is required to clarify the authority and role of the Office of Special Counsel.

Recommendations

Regardless of congressional action, the Justice Department could do more within its existing authority to strengthen the government's response to the financial institution fraud problem. To this end, the Attorney General should direct the Special Counsel to develop systematic information on

the adequacy of FBI and U.S. Attorney staffing, determine where and how many non-Justice staff resources are needed, and develop measures for gauging the overall effectiveness of the government's response. On the basis of this analysis, the Attorney General should assess whether additional action is needed, including entering into formal interagency agreements to ensure that adequate non-Justice agency resources are committed to this effort, and notify Congress of those findings.

Agency Comments

Justice disagreed with our conclusion that its approach to financial institution criminal fraud is like other enforcement efforts. For example, Justice cited the use of dedicated investigative and prosecutive resources, coordinated and evaluated by a Special Counsel, as evidence of its "unique" nature. What Justice did not say was that Congress was responsible initially for assuring that additional resources provided to Justice had to go toward this effort.

Justice also indicated that Congress is responsible for the limits to its ability to lead the government's approach to financial institution fraud. In addition, Justice asserted that we gave insufficient credit to the Special Counsel's efforts to coordinate the government's efforts.

In our view, the overriding point is that the government has approached this issue much as it has other enforcement efforts. Investigative and prosecutive resources have been provided to, but remain under the control of, local FBI and U.S. Attorneys' offices. Non-Justice agencies contribute when they can, given different priorities and competing demands on their resources. Similarly, dedicated resources are not unique to the financial institution fraud program: The Organized Crime Drug Enforcement Task Force program (OCDETF) also uses dedicated resources, as Justice points out in its comments.

The only feature that distinguishes this effort from others is the existence of the Office of Special Counsel to coordinate efforts within Justice. However, Justice also recognized our point that the Special Counsel has direct authority over neither the dedicated resources within Justice nor the resources in non-Justice agencies needed to assist in investigations and prosecutions of criminal bank and thrift fraud. The federal government as a whole has never dedicated itself to addressing this issue. Although we believe we originally included a fair sample of the Office of the Special Counsel's accomplishments, we revised the text to incorporate additional examples.

Justice's Enforcement Strategy Shifted

Justice's efforts to establish a national financial institution fraud enforcement program reflect the federal government's inability to develop and implement a cohesive, comprehensive strategy to approach the issue.

In December 1989, following the enactment of FIRREA, the Attorney General announced plans to intensify the federal government's efforts to combat bank and thrift fraud. The plan focused on establishing task forces around the country, modeled after the Dallas Bank Fraud Task Force, to aggressively investigate and prosecute financial institution fraud. Justice did not implement this strategy. Despite numerous references to the task forces in testimony and reports, only two other task forces have been formed that are similar to the Dallas model: one in Boston in May 1991 and one in San Diego in June 1992.

A year earlier, in June 1991, the Attorney General had indicated that the task force was no longer the national model for combatting financial institution fraud. In a written response to a congressional committee, the Attorney General said that the current model to foster cooperation and coordination among various agencies was the local bank fraud working group. Local bank fraud working groups are informal networking bodies that strive to improve cooperation and coordination among law enforcement and regulatory agencies. Justice's influence on these groups is unclear. Justice has issued no written guidance to the groups. Consequently, they tend to vary in their organization, operations, and functions. In addition, without any national guidance, decisions on whether and how to involve and organize non-Justice agencies are left to local officials. The result is a wide variety of programs with uneven participation by non-Justice agencies.

Justice's Strategy Initially Focused on Task Forces

In December 1989, the Attorney General announced a plan to meet the "enormous and unprecedented challenge" of bank and thrift fraud. The plan targeted 26 cities for task force investigations modeled after the Dallas Bank Fraud Task Force. Justice promoted the task force concept as an effective way to use additional resources obtained through FIRREA. In addition, the Crime Control Act of 1990 directed the Attorney General to establish such financial institution fraud task forces as deemed appropriate to ensure that adequate resources are made available to investigate and prosecute crimes involving financial institutions. The act also provided that the Special Counsel could supervise such task forces as the Attorney General established.

Justice did not implement its announced task force strategy. Only two additional task forces have been formed that are similar to the Dallas model. Furthermore, in June 1991, the Attorney General suggested a different model and encouraged each U.S. Attorney to devise his or her own program to combat financial institution fraud.

Dallas Bank Fraud Task Force Was the National Model

The Attorney General's initial plan called for the Dallas Bank Fraud Task Force to serve as the task force model. According to the Attorney General, the Dallas task force was successful because it effectively investigated and prosecuted complex cases that required expertise from several agencies and took a long time to complete.

The Dallas task force was established in August 1987 by the Northern District of Texas in reaction to the growing savings and loan crises. The U.S. Attorney and Dallas Division of FBI had requested additional resources from Justice to address the mounting workload. Justice responded with a substantial commitment of additional resources and assistance.

The Dallas task force combined Justice's Criminal Division resources with resources from other federal agencies to work with the U.S. Attorney's office to investigate and prosecute financial institution fraud cases. As of July 1992, the Dallas task force staffing included

- 26 Fraud Section attorneys and 6 attorneys from the Northern District of Texas;
- 2 paralegals and 9 other support staff;
- 6 tax attorneys from Justice's Tax Division;
- 9 full-time special agents and 5 revenue agents from IRS; and
- 52 special agents (32 full-time and 20 part-time), 9 financial analysts, 3 supervisors, and 10 support staff from FBI.

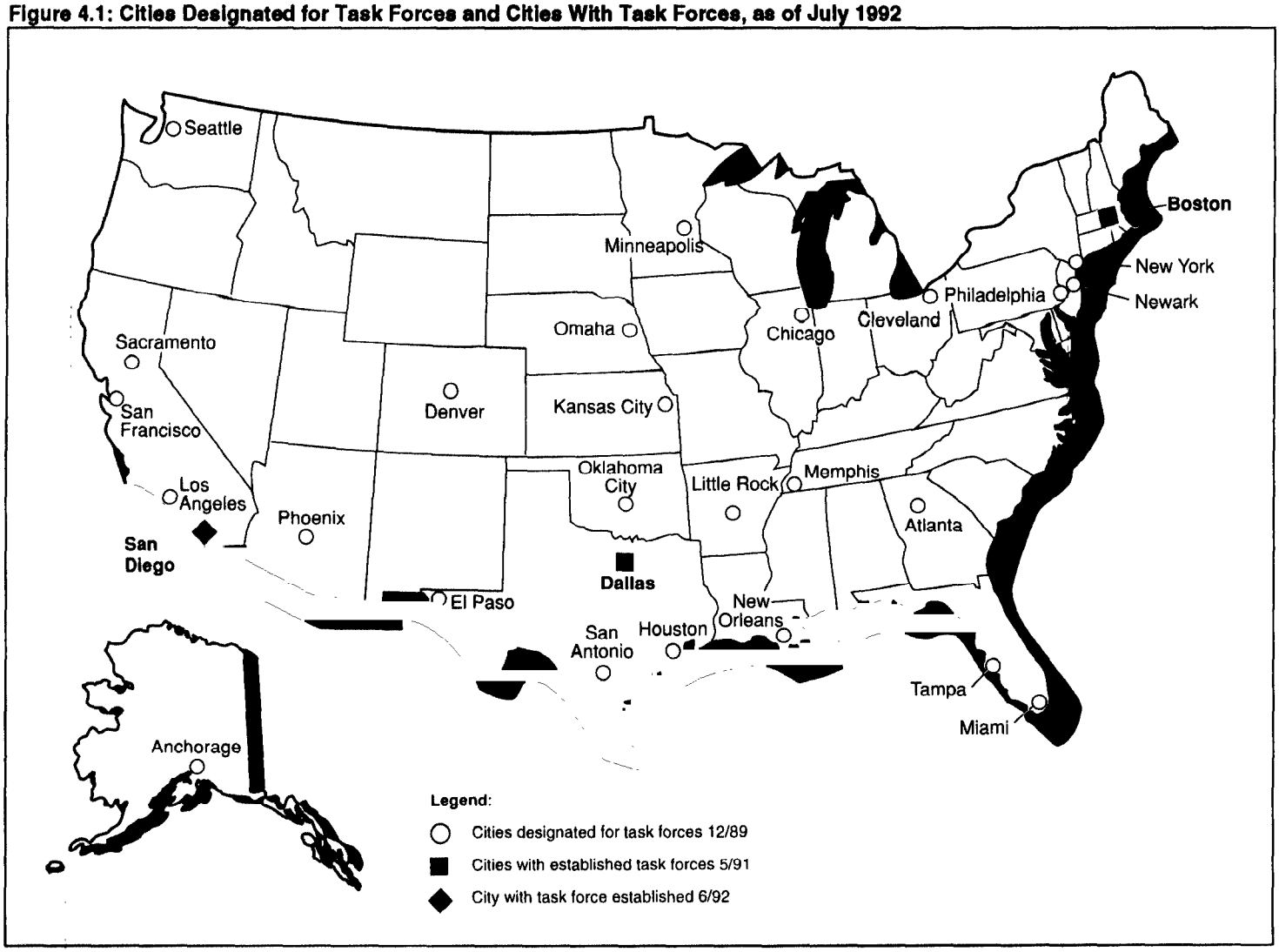
According to Justice, the success of the Dallas task force made it the model for future task forces.[1] From the time it began operating in August 1987 through July 29, 1992, the Dallas task force brought charges against 190 defendants and obtained convictions against 142. In addition to confinement, the courts have ordered nearly $1.5 million in fines and about $70.5 million in restitution in those cases.

[1]IRS has also advocated the use of task forces for financial institution fraud investigations, citing the success it has achieved with narcotics work through OCDETF.

Justice Did Not Implement the Announced Task Force Strategy

Justice originally indicated that it was implementing the task force concept nationwide. In testimony before the House Judiciary Committee in May 1990, an Assistant Attorney General of the Criminal Division said Justice's investigatory and prosecutorial strategy included establishing task forces. In June 1990, in a speech to U.S. Attorneys, the President referred to expanding the task force concept around the country. At the same time, Justice said that its task forces were in place and moving forward. We contacted Justice and regulatory agency officials in the cities targeted by the Attorney General for task forces and found that no task forces had been formed as a result of the Attorney General's announcement. We found only one task force that resembled the Dallas task force—the New England Bank Fraud Task Force (New England task force)—in Boston. More recently, Justice announced the formation of a third task force to address financial institution fraud, the San Diego Bank Fraud Task Force. San Diego was not among the 26 cities originally targeted for task forces, but a Justice report noted that the area recently experienced a number of significant thrift failures. Figure 4.1 shows the cities targeted for task forces and the location of the three task forces actually established by Justice.

Figure 4.1: Cities Designated for Task Forces and Cities With Task Forces, as of July 1992



The New England task force was established in May 1991, and the San Diego task force, in June 1992. Although each resembles the Dallas model, there are distinct differences.

We recognize that the task force approach is based on a concept that each task force need not necessarily be a mirror image of the others. Even so, some of the differences among the Dallas, San Diego, and New England task forces are noteworthy. Each task force was created to investigate and

prosecute crimes related to financial institutions and is headed by a Fraud Section attorney. (The attorney heading the New England task force is a former Assistant U.S. Attorney from Massachusetts hired to integrate the staffs.) Unlike task forces in Dallas and San Diego, which provide resources and support for one district each (the Northern District of Texas and the Southern District of California, respectively), the New England task force involves U.S. Attorneys from all six New England states. New England task force guidelines signed by these six U.S. Attorneys give them a say on investigations and prosecutions in their districts, although overall task force operations are coordinated by the task force supervisor.

Another major difference among the task forces is that the New England task force did not plan to include staff from the regulatory agencies. Officials told us that assistance from regulators would be requested only on a case-by-case basis. The rationale for this is that the regulators do not have enforcement authority. The Dallas task force, on the other hand, included regulators who were active members of the task force, and RTC is committing resources to the San Diego task force. Because of problems related to Justice's reimbursement of OTS and FDIC, staff from those agencies are no longer assigned to the Dallas task force.

In addition, the New England task force did not include staff from IRS. Repeatedly, FBI and U.S. Attorneys' staffs around the country told us that they have found IRS CID agents to be extremely valuable in their investigations and prosecutions. IRS had pledged to provide CID resources to the New England task force, but they were not on board as of March 1992. As of October 1992, IRS had detailed four special agents to the New England task force, although the U.S. Attorney had initially requested CID to provide 10 to 12 special agents and appropriate support personnel. In San Diego, IRS had two agents working with the task force in October 1992.

Finally, members of the San Diego and New England task forces are co-located, as the Dallas task force once was. Originally co-located with other Dallas task force members, FBI is no longer in the same building. FBI officials told us that separation from other task force members had not harmed communication. However, IRS task force members told us that both communication and the exchange of documents between FBI and other task force members are now more restricted. According to Justice's 1991 report on financial institution fraud, having representatives of all the cooperating agencies and offices work from a central location significantly improved coordination of investigations and prosecutions.

In summary, while the Dallas, San Diego, and New England task forces bear some resemblance to each other, they also differ in some respects. The New England task force is clearly a departure from the original Dallas model, and aside from the recently created San Diego task force, we found that no other task forces resembling the Dallas model have been established.

Local Bank Fraud Working Groups Coordinated Bank and Thrift Fraud Activities

Many U.S. Attorneys have coordinated their efforts through local bank fraud working groups. These groups are informal networking bodies that meet periodically. The primary objective of these groups is to improve coordination and cooperation among federal law enforcement and financial regulatory agencies. Several working groups predate the Attorney General's 1989 task force strategy announcement; the first was established in Chicago in 1985. As of late 1991, there were at least 35 bank fraud working groups in various judicial districts, with more planned. The major difference between working groups and task forces is that task forces investigate and prosecute cases, while working groups do not.

Justice's role in establishing the local working groups is unclear. In 1988, the Assistant Attorney General of the Criminal Division encouraged all U.S. Attorneys in districts with heavy caseloads of financial institution fraud to create local working groups modeled after the Bank Regulator Forum.

The Forum, established in 1986 in the Northern District of Illinois, coordinates the financial institution fraud activities of law enforcement and financial supervisory agencies and provides them with an arena to address problems. The Special Counsel also told us that Justice has encouraged U.S. Attorneys to create and use local bank fraud working groups. According to Justice, the Senior Interagency Group also adopted a policy encouraging the formation of such groups. However, Justice has not provided written guidance on establishing and operating local bank fraud working groups.

Consequently, the groups' organization, operations, and functions varied according to local preferences and conditions. For example, the majority of the groups were led by the U.S. Attorney's office, but about one-fourth were led by someone from a regulatory agency or had no designated leader. Table 4.1 illustrates the variation in leadership roles among the 21 bank fraud working groups that we identified during field work on this assignment.

Table 4.1: Local Bank Fraud Working Group Leadership Varied

Groups led by	Number	Percent
U.S. Attorney's office	14	67
FBI	1	5
Regulatory agency	3	14
No designated leader	3	14
Total	**21**	**100**

Groups varied in their operations. The frequency with which groups met varied widely. Some groups held meetings monthly, others quarterly, and the rest at other intervals. Most had no written guidelines describing the objectives and functions of the group. Although many groups did have written agendas for meetings, most did not have written minutes for each meeting. Table 4.2 illustrates the variation in group operations.

Table 4.2: Local Bank Fraud Working Group Operations Varied

Groups had[a]	Number	Percent
Meeting agendas	13	62
Meeting minutes	6	29
Written policies	1	5
Written procedures	0	0
Groups met		
Monthly	2	10
Quarterly	8	38
Other	11	52
Total	**21**	**100**

[a]Numbers do not total to 21 groups because the categories are not mutually exclusive.

Membership in these working groups also differed. In addition to FBI and U.S. Attorneys' offices, the agencies represented most often were the Secret Service, FDIC, RTC, OTS, OCC, IRS, and the Fed. State and local agencies were represented in more than half of the groups. Other federal agencies that participated less frequently included the Postal Service, the Customs Service, and the Securities and Exchange Commission. Table 4.3 illustrates the variation in group membership.

Table 4.3: Local Bank Fraud Working Group Membership Varied

Agencies participating	Number of groups	Percent of groups
U.S. Attorney's office	21	100
FBI	21	100
OTS	20	95
RTC	19	91
Federal Reserve	18	86
OCC	18	86
Secret Service	17	81
FDIC	16	76
State/local law enforcement	14	67
State/local other	14	67
Postal Service	9	43
Customs Service	5	24
NCUA	4	19
Justice Civil Division	1	5
Justice Criminal Division	1	5
Other agencies	10	48

Finally, the scope of the groups' functions differed. For example, one group discussed policies and facilitated potential agency contacts. Another group discussed the status of cases, identified cases for multiagency participation, and developed training courses, among other activities. Yet none of the working groups actually worked (i.e., investigated and prosecuted) cases as do task forces. Table 4.4 illustrates the variation in group functions.

Table 4.4: Local Bank Fraud Working Group Functions Varied

Functions the groups served	Number of groups	Percent of groups
Discussed policies	17	81
Discussed status of cases	12	57
Discussed specifics of cases	7	33
Identified cases for multiagency participation	10	48
Set priorities for cases	10	48
Developed training courses	18	86
Coordinated activities on cases	7	33
Expedited interagency contacts	20	95
Other functions	11	52

Most members of the 21 local bank fraud working groups we talked with were positive about the groups' efforts to facilitate coordination and communication among the participating agencies. One Assistant U.S. Attorney said that before the working groups were formed, all the agencies were compartmentalized. However, within the working group, rapport and information sharing has markedly improved. Participants credited the group with a variety of positive effects, including

- providing good financial institution fraud training,
- keeping participants current on legislation related to financial institution fraud (e.g., FIRREA),
- improving coordination regarding penalty actions,
- increasing assistance from regulatory agencies,
- providing a forum to discuss problems,
- improving access to financial records, and
- enhancing the sharing of information among agencies.

We agree that the bank fraud working groups are a positive development in the fight against financial institution fraud at the local level. Yet working groups do not specifically investigate and prosecute cases.

Justice's Current Enforcement Strategy

The strategy Justice is pursuing in its efforts against bank and thrift fraud appears to have shifted. Based on statements from the Attorney General, the model that Justice is using seems to have changed over the past 2 years. But the Special Counsel rejected the notion that the strategy has changed. He maintained that Justice has followed a consistent strategy all along.

Whether Justice has followed a consistent strategy over time depends on the answers to two related issues: (1) how task forces are defined and who defines them and (2) what the national model is and what that means.

When the Attorney General originally announced Justice's strategy in late 1989, he called for creating task forces in 26 cities with the Dallas task force acting as a national model. That model included more than just attorneys and FBI agents. According to a later report from the Attorney General, the task force concept combined the resources of the U.S. Attorney's office, Justice's Criminal and Tax divisions, FBI, IRS, and various financial regulatory agencies in a team effort to investigate and prosecute fraud allegations.

In May 1990, the Assistant Attorney General of the Criminal Division testified that Justice's strategy for investigating and prosecuting financial institution fraud consisted of a number of elements, including

- establishing task forces, consisting mainly of FBI staff and U.S. Attorney's office staff, in FBI divisions and judicial districts with the greatest need;
- using Assistant U.S. Attorneys to fill attorney positions on such teams (task forces) except where a Fraud Section attorney as lead attorney is needed and adding IRS agents, postal inspectors, and Tax Division attorneys to teams when this would strengthen the team; and
- developing and maintaining close cooperation with the financial institution regulatory agencies at the national and local levels.

More recently, senior Justice officials—including the Special Counsel—defined task forces in terms that are far less expansive than the Attorney General's. In their views, task forces consist of Assistant U.S. Attorneys and FBI special agents dedicated to work in a specific area or on a particular problem—in this case, bank and thrift fraud. In our opinion, by using this definition, Justice has created task forces throughout the country, wherever personnel are dedicated to financial institution fraud matters.

Additionally, in June 1991, the Attorney General wrote of a different national model for addressing financial institution fraud. In a written response to questions from the House Judiciary Committee, the Attorney General noted that fostering cooperative law enforcement remains a goal and that what Justice wants to replicate is not the structure or composition of the Dallas Bank Fraud Task Force but its creativity, flexibility, and success. The "current national model for cooperation between regulators, investigators, and prosecutors," he wrote, was the Chicago Bank Fraud Working Group.

He also noted that a technique that may be effective in one district may not be in another, and he encouraged individual U.S. Attorneys to devise a program that works best for their individual districts. The Special Counsel reiterated this position to us, saying that any national strategy would call for great variation among districts, reflecting different factors and circumstances in operation. Imposing a single strategy from Washington, he said, is not the way to manage U.S. Attorney resources. He added that Justice has used many models, not just Dallas and Chicago and that lessons are learned from different models.

Yet, in a February 1992 speech in Detroit, the Director of FBI said that the Dallas Bank Fraud Task Force was the national model for combatting financial institution fraud. Similarly, the U.S. Attorney for the Northern District of Georgia also referred to the Dallas task force as the national model for bank and thrift fraud in a speech later in 1992.

Conclusion

Justice did not implement its task force strategy as announced. In June 1991, the Attorney General said the model to foster cooperation and coordination among various agencies was the local bank fraud working group. More recently, the Special Counsel told us that a number of models had been used and that imposing a single strategy is not the way to manage U.S. Attorney resources because of differences among districts. Yet Justice maintained that its strategy against financial institution fraud has not changed. However, the shift from the task force concept to the local bank fraud working group model was clearly a departure from the original strategy.

We believe that Justice's enforcement approach at the local level may have been consistent over time. Justice allocated the FIRREA and Crime Control Act resources Congress provided and encouraged its U.S. Attorneys to establish their own programs. Yet this bears little relation to the Attorney General's announcement outlining a single national strategy to combat financial institution fraud.

Agency Comments

In commenting on this report, Justice insisted that it has not changed its strategy regarding task forces and that it has always informed Congress of how it approached the criminal bank and thrift fraud issue. (See app. V.) We recognize that Justice has described its approach to Congress through various mechanisms. However, we also recognize that over time, Justice has changed its definition of what constitutes a task force.

We continue to believe that the then-Attorney General said one thing regarding using task forces to approach the issue, but Justice did something else. As recently as October 1992, some U.S. Attorneys were making speeches saying that the Dallas task force was still the model for Justice's approach to criminal financial institution fraud. The point is not that strategies cannot change to fit the current situation. Flexibility is important. The point is the evidence shows that Justice had not pursued a unique strategy to deal with this problem, while the impression given by Justice to many was that it would do "something special."

Justice's Results to Date Are Difficult to Evaluate

Over the past several years, Justice has conducted more investigations into financial institution fraud, charged increasing numbers of suspects, and won growing numbers of convictions. Without question, Justice investigative activities and convictions of people perpetrating major bank and thrift frauds have increased over the past several years.

But Justice's results are somewhat difficult to evaluate. First, the actual amount of fraud that has occurred and the number of individuals involved is not known; thus, the relative significance of Justice's accomplishments cannot be readily determined. In addition, few measurable criteria exist against which to assess the program, and Justice officials resist comparisons with other enforcement programs. Citing the need to consider a variety of factors, Justice officials also asked us to consider qualitative indicators of the program's progress. We agree that both qualitative and quantitative considerations are important for evaluating such programs.

At the same time, we believe that a more complete assessment of the program should recognize other events in addition to indictments, convictions, and sentences. For example, the percentage of FBI cases closed through U.S. Attorney declinations increased from 64 percent to 76 percent between fiscal years 1987 and 1991. In addition, the percentage of major cases declined in fiscal year 1991 varied widely around the country. Examining the reasons for such trends could help assess the program and identify areas needing management attention.

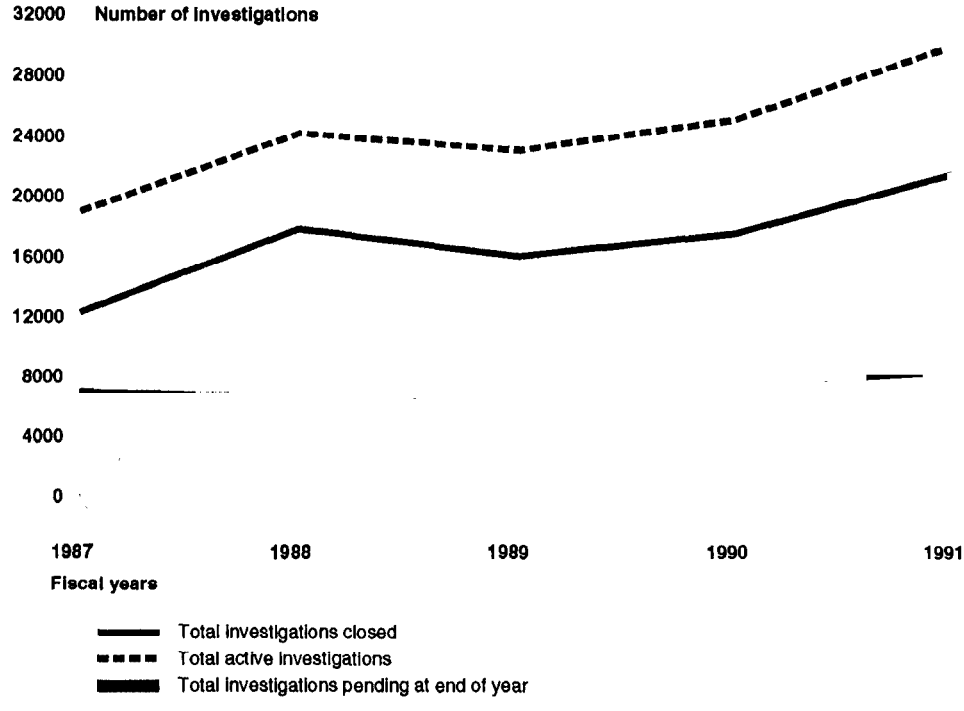
Observations About FBI's Changing Investigative Activities

FBI's inventory of bank and thrift fraud investigations has grown steadily since fiscal year 1987. As of July 31, 1992, FBI had 9,659 financial institution fraud cases pending, an increase of 11.3 percent over the 8,678 pending at the end of fiscal year 1991 and 45.3 percent over the 6,649 pending at the end of fiscal year 1987. Figure 5.1 shows the growth in the number of investigations active,[1] closed,[2] and pending.

[1]The number of active investigations in a year is the total number of investigations pending at the beginning of the fiscal year plus the number of investigations opened during the year.

[2]FBI closes an investigation when all possible actions are completed. FBI divides investigation closings into three categories: declinations from the U.S. Attorney's office, administrative closings (in which all leads have been exhausted and the special agent in charge authorizes the closing because further investigation is not warranted), and other closings (cases closed by judicial action, such as conviction, acquittal, or dismissal).

Figure 5.1: FBI Opened and Closed Increasing Numbers of Investigations



Source: GAO analysis of FBI data.

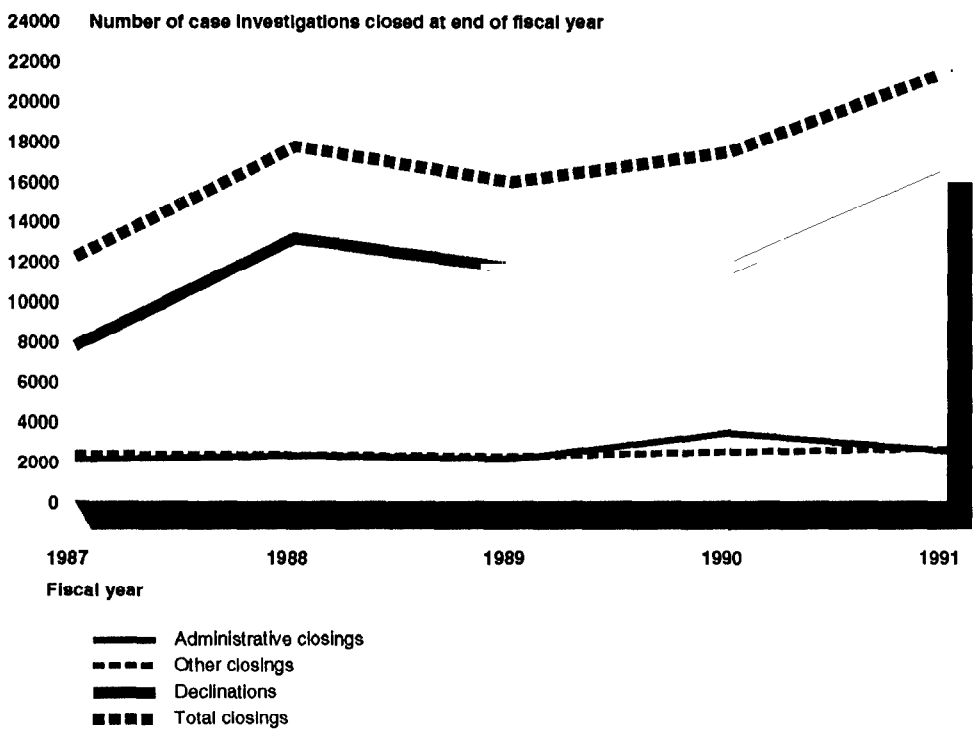
FBI closed most of its investigations following receipt of a criminal referral because the U.S. Attorney declined to proceed with them.[3] For example, of the 3,433 criminal referrals, complaints, or other pieces of information received during July 1992, FBI closed 2,788 (81.2 percent) because of U.S. Attorney declinations. The reasons for these declinations were as follows: 1,914 involved alleged frauds below the U.S. Attorneys' prosecutive guidelines, 646 were referred for local prosecution or to another federal

[3]In this context, the Special Counsel disagreed with our use of the term "investigation," maintaining that it is confusing. In particular, he would like to distinguish between investigations and referrals, suggesting that many of the declinations were not of investigations but of referrals that involved relatively minimal amounts of alleged losses, such as $100 disappearing from a bank teller's cash drawer. He said that such referrals are never opened as an investigation.

Unfortunately, the available data do not permit such distinctions. As noted in chapter 1, most referrals do involve relatively small amounts of alleged losses. But FBI categorizes each referral received as an investigation and does not separately account for referrals with which it undertakes little, if any, activity. Thus, because neither FBI's nor the Special Counsel's records distinguish between the number of referrals in total and those that result in full-fledged investigations, we can report the data only as the FBI records it, i.e., as investigations.

agency, and 228 were declined by the U.S. Attorneys for other reasons. Figure 5.2 shows the increase in the number of declinations and total investigation closings over time.

Figure 5.2: FBI Closed Increasing Numbers of Case Investigations Because of U.S. Attorney Declinations



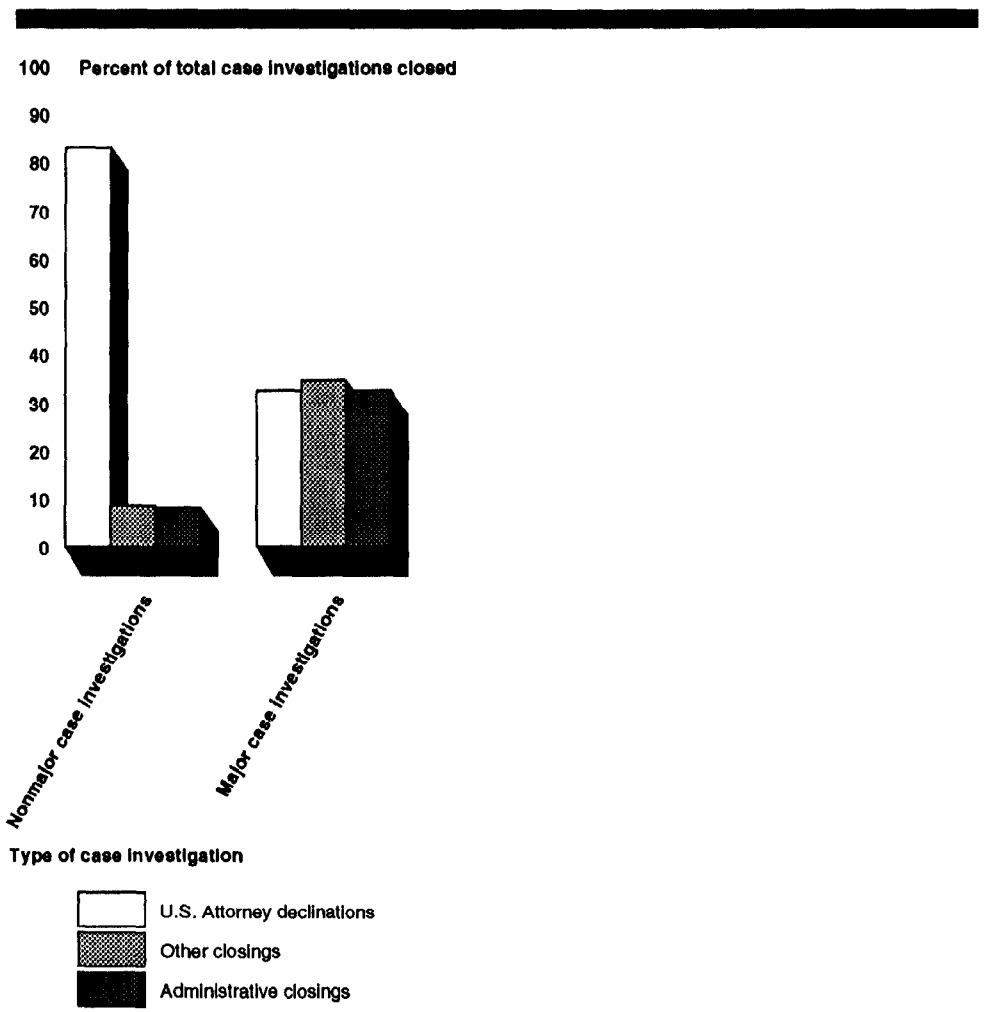
Source: GAO analysis of FBI data.

Nonmajor investigations account for the vast majority of closings through declinations. Available FBI data indicate that U.S. Attorneys have always declined significantly more nonmajor than major investigations. In fiscal year 1987, for example, the U.S. Attorneys declined about 8.8 nonmajor investigations for every 1 major investigation declined. In fiscal year 1991, that ratio had increased to about 16 to 1.

The U.S. Attorneys prosecuted only a small percentage of FBI's nonmajor investigations in fiscal year 1991. As shown in figure 5.3, the U.S. Attorneys prosecuted less than 9 percent of FBI's nonmajor investigations and

declined about 83 percent. FBI closed the other 8 percent administratively. With major investigations, on the other hand, the U.S. Attorneys declined about 33 percent, prosecuted about 35 percent, and FBI closed the remainder administratively.

Figure 5.3: In Fiscal Year 1991, FBI Closed Relatively More Nonmajor Investigations Because of U.S. Attorney Declinations Than Major Investigations



Source: GAO analysis of FBI data.

Justice maintains that as a matter of policy, major cases are reviewed more stringently than other financial institution fraud matters and are

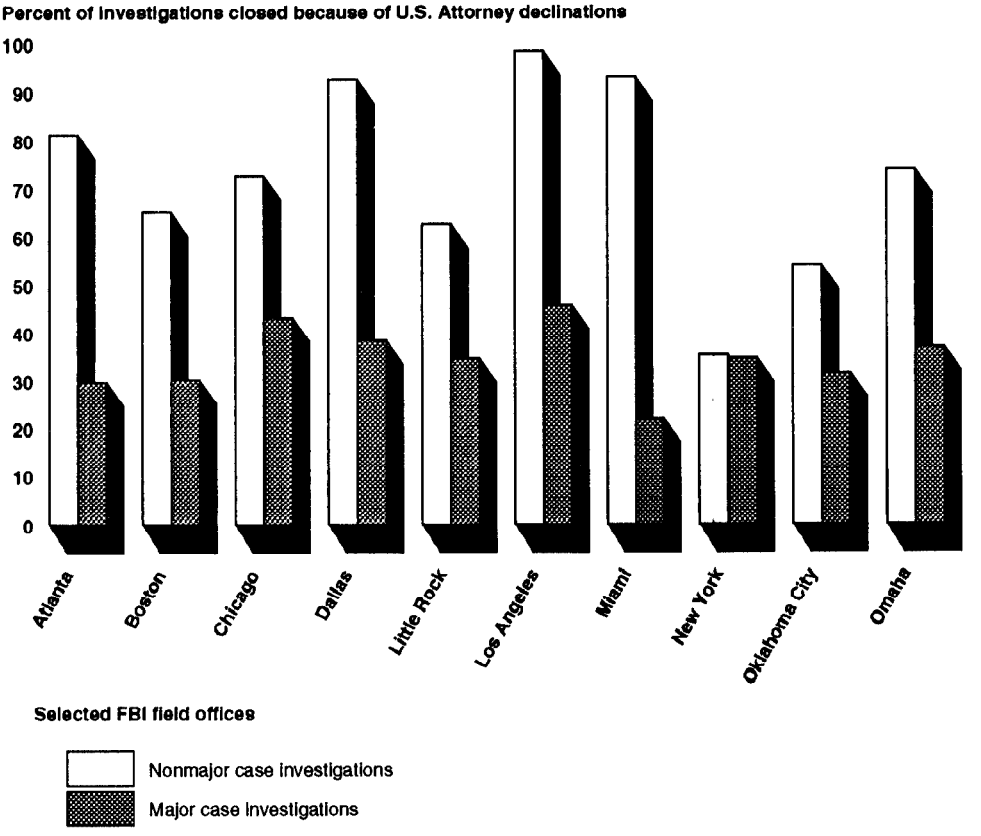
usually declined only where there are proof problems or the statute of limitations has expired.

A review of FBI workload data for fiscal year 1991 illustrates that the percentage of nonmajor and major investigations closed because of U.S. Attorney declinations varied widely among selected field offices. In Los Angeles, for example, FBI closed about 98 percent of its nonmajor investigations and about 46 percent of its major investigations after U.S. Attorney declinations. In Little Rock, Arkansas, U.S. Attorney declinations accounted for nearly 63 percent of nonmajor investigation closings and about 35 percent of major investigations closed. Figure 5.4 shows variations for 10 selected FBI field offices.[4]

[4]Each of these cities was designated as a task force location by the Attorney General. According to EOUSA data, of those suspects whose cases both originated and were disposed of in fiscal year 1991, the U.S. Attorneys in those locations declined roughly 13 percent of both major and nonmajor cases because the suspect was being prosecuted by other authorities. Other common reasons listed in the EOUSA data for those offices' declining cases included a lack of investigative or prosecutive resources, weak evidence, minimal federal interest, office policy, and a lack of evidence of criminal intent.

In commenting on this report, Justice said that there is no significance to the variation in declination rates. Justice said that such rates vary for a variety of reasons, including differences in the nature, quantity, and quality of referrals.

Figure 5.4: FBI Investigation Closings Because of U.S. Attorney Declinations Varied Widely Among Different Field Offices in 1991



Source: GAO analysis of FBI data.

According to the Special Counsel, the increase in the percentage of U.S. Attorney declinations of nonmajor cases between fiscal years 1987 and 1991 reflects the changing emphasis given to major cases. He told us that with relatively scarce prosecutorial resources, the available attorneys should make major cases a higher priority. Although FBI could investigate smaller matters for training purposes, he said that FBI should refer such

matters to state or local prosecutors for further action rather than sending them to the U.S. Attorneys.[5]

According to data from EOUSA, of the 7,841 matters disposed in fiscal year 1991 (by charging a defendant through an indictment or information, declining the matter, or some other disposition), the U.S. Attorneys closed 4,007 matters with a declination (51 percent of the total). Of those declined, 481 (or 12.0 percent) were because the suspect was to be prosecuted by other authorities. Table 5.1 lists the other reasons EOUSA data noted for those declinations.

Table 5.1: Reasons U.S. Attorneys Listed for Declining Financial Institution Fraud Cases, Fiscal Year 1991

Reason for declination	Number	Percent of total
Weak evidence	660	16.5
Lack of evidence of criminal intent	486	12.1
Suspect being prosecuted by other authorities	481	12.0
Lack of investigative or prosecutive resources	358	8.9
No federal offense evident	333	8.3
Minimal federal interest	271	6.8
Office policy[a]	255	6.4
Suspect being prosecuted on other charges	195	4.9
No known suspect	181	4.5
Pretrial diversion completed	169	4.2
Agency request	131	3.3
Jurisdiction or venue problems	73	1.8
Opened in error/office error	69	1.7
Restitution made or being made	58	1.4
Civil, administrative, or other disciplinary alternatives	56	1.4
Staleness[a]	33	0.8
General office declination	26	0.6
Suspect deceased	26	0.6
Statute of limitations	25	0.6
Suspect's cooperation	19	0.5
Suspect serving sentence	16	0.4

(continued)

[5]According to FBI data, of the 26,105 referrals, complaints, and other information received in fiscal year 1991, FBI referred 5,367 (or 20.6 percent) for local prosecution or to another federal agency. Through July 1992, of the 28,539 criminal referrals, complaints, or other information received in fiscal year 1992, FBI referred 7,238 (25.4 percent) for local prosecution or to another federal agency. At the case stage (i.e., after the U.S. Attorneys opened a matter), FBI's data does not indicate whether closed investigations were referred elsewhere for prosecution.

Reason for declination	Number	Percent of total
Petite policy[a]	16	0.4
Department policy	15	0.4
Suspect a fugitive	15	0.4
Witness problems	11	0.3
Offender's age, health, prior record, or personal matter	11	0.3
Declined per instructions from Justice	9	0.2
Motion hearing	5	0.1
Court policy	2	0.0
Juvenile suspect	2	0.0
Total	**4,007**	**100.0**

Note: Total may not add to 100.0 because of rounding.

[a]According to a Justice official, "office policy" relates to a particular U.S. Attorney's office's own policy regarding declinations. That policy may incorporate a number of considerations, such as the size of the alleged loss, the viability of the case, or the availability of resources. "Staleness" involves such considerations as how old the evidence may be or whether witnesses may have disappeared. "Petite policy" relates to whether state authorities might also be prosecuting the case. The Justice official said that there are no written descriptions of these declination reasons and noted that many of the declination categories are similar.

Source: GAO analysis of Justice Department data.

Observations About Justice's Accomplishments Over Time

Justice data show increases in major case results.[6] Between October 1, 1988, and June 30, 1992, Justice charged 3,270 defendants through indictments and informations and convicted 2,603 defendants (110 defendants were acquitted, establishing a conviction rate near 96 percent). The courts sentenced 1,706 of 2,205 offenders to jail (77.4 percent). According to Justice, those cases involved estimated losses of over $11.5 billion. Table 5.2 summarizes these results.

[6]Justice has data only on major cases from fiscal year 1989 into 1992, and it does not report data for nonmajor cases. FBI keeps data for both major and nonmajor cases since fiscal year 1987. The Special Counsel told us, however, that because of time lags in FBI's reporting, EOUSA data on indictments, informations, and convictions were more accurate.

Table 5.2: Justice's Major Case Results

Dollars in millions

Fiscal year	Indictments and informations	Defendants charged	Defendants convicted	Defendants sentenced to jail
1989	291	419	266	138
1990	542	791	649	386
1991	722	1,085	855	598
1992[a]	655	975	833	584
Total	**2,210**	**3,270**	**2,603**	**1,706**

[a]Data are for October 1, 1991, through June 30, 1992.

Source: Justice Department data.

Information from Justice on major financial institution fraud offenders shows that sentences for different types of conduct have varied. Several examples illustrate this:

- The president and chairman of the board of a Nebraska bank was convicted of a $2-million nominee loan scheme. He was sentenced to 8 months in jail and ordered to pay $504,000 in restitution. As of July 1992, he had paid $135,000.
- Both the former president and vice president of a Mississippi savings and loan were convicted of conspiracy and embezzlement in a $30-million fraud. One was sentenced to 1 year in prison and the other to 3 years. Both were ordered to pay restitution of $50,000. As of July 1992, neither had paid any of the restitution ordered.
- The executive assistant to the chairman of the board of a California savings and loan was convicted of Racketeering Influenced Corrupted Organizations charges involving phony invoices, fictitious escrows, and other devices to convert funds. She received a 20-year sentence and was ordered to pay more than $13 million in restitution. All of this restitution has been paid.
- The president of an Indiana bank was convicted of a $4.4-million embezzlement and misapplication of funds. He was sentenced to 6 months in jail and ordered to pay a $15,000 fine. All of this fine has been paid.
- The president and chief executive officer of a Florida savings and loan was convicted of a loan approval and kickback scheme involving $90 million. He received a 12-year prison sentence and was ordered to pay $940,000 in restitution. As of July 1992, none of this restitution has been paid.
- The vice chairman of a Texas savings and loan was convicted of a $15.7-million fraud involving conspiracy and misapplication of the

institution's funds. He was given 60 months probation and ordered to pay a $100,000 fine. As of July 1992, he had paid $1,600.

- The president of a Florida bank was convicted of a $1.25-million nominee loan scheme. He was sentenced to 5 years probation and 400 hours of community service and was ordered to pay $75,000 in restitution. As of July 1992, he had paid none of that amount.

Overall information on sentencing indicated that most major financial institution fraud defendants received prison sentences of less than 2 years. Specifically, as shown in table 5.3, nearly three-fourths of these criminals received prison sentences of 2 years or less. Less than 2 percent received sentences of more than 10 years.

Table 5.3: Sentencing Information for Major Financial Institution Fraud Defendants, October 1988 Through July 1992

	Type of institution					
	Savings and loans		Banks		Total	
Sentence	Number	Percent	Number	Percent	Number	Percent
No prison	172	23.0	336	23.0	508	23.0
0 to 12 months	201	26.9	462	31.6	663	30.0
12 to 24 months	144	19.3	340	23.3	484	21.9
24 to 36 months	76	10.2	137	9.4	213	9.6
36 to 60 months	76	10.2	125	8.5	201	9.1
60 to 120 months	51	6.8	49	3.4	100	4.5
120 to 180 months	17	2.3	9	0.6	26	1.2
180 to 240 months	6	0.8	4	0.3	10	0.5
Greater than 240 months	5	0.7	0	0.0	5	0.2
Total sentenced	**748**	**100.0**	**1,462**	**100.0**	**2,210**	**100.0**

Note: Totals may not add to 100.0 because of rounding.

Source: GAO analysis of Justice data.

The Federal Sentencing Guidelines specify minimum offense levels for certain crimes against financial institutions.[7] For offenses that substantially jeopardize the safety and soundness of a financial institution or that affect a financial institution and the defendant derived more than $1 million in gross receipts, the guidelines indicate that the courts should sentence an offender to a minimum of 51 months of imprisonment, provided the offender had zero or one prior felony conviction. The Special Counsel

[7]The Comprehensive Crime Control Act of 1984 established the U.S. Sentencing Commission (28 U.S.C. secs. 991-998) and directed it to promulgate to the federal courts criminal sentencing guidelines that provide "certainty and fairness in sentencing and reduce unwarranted sentencing disparities."

testified in February that Justice is seeking some modifications to the guidelines that would enhance the penalty for certain bank and thrift failure-related crimes.[8] Justice's data on financial institution fraud did not indicate whether the offenders were sentenced under the guidelines.

Collection of Fines and Restitution

The Crime Control Act requires the Attorney General to compile, collect, and report to Congress information on the results achieved, including restitution assessed and collected in financial institution fraud cases.[9] Information from Justice indicates that the federal courts have ordered bank and thrift fraud offenders to pay substantial fines and restitution in major cases. Between October 1988 and July 1992, the courts ordered $846.7 million in fines and restitution in major cases alone.[10] As of July 1992, the government had collected about 4.5 percent of the total ordered. Table 5.4 shows the amount of fines and restitution ordered and collected in major cases in which the offenders were sentenced between fiscal year 1989 and July 1992.

Table 5.4: Fines and Restitution for Financial Institution Fraud Offenders, as of July 1992

Dollars in thousands

	Amount ordered	Amount collected	Percent collected
Savings and loans			
Fines	$ 11,288.0	$ 931.9	8.3
Restitutions	439,164.6	24,539.3	5.6
Banks and credit unions			
Fines	6,458.5	547.2	8.5
Restitutions	389,759.6	12,192.6	3.1
Total	**$846,670.7**	**$38,211.0**	**4.5**

Source: GAO analysis of Justice data.

Justice recognized that the information it has on the collection of fines and restitution is incomplete. In testimony before the Subcommittee on Consumer and Regulatory Affairs of the Senate Committee on Banking, Housing, and Urban Affairs, the Special Counsel noted that Justice has

[8]S. Hrg. 102-537 (Feb. 6, 1992), p. 27.

[9]P.L. 101-647, 104 Stat. 4789, 4885 (Title XXV, Subtitle E, sec. 2546(a)(1)(D)).

[10]In general, fines and restitution are due immediately, unless the sentencing court provides for payment on a specific date or in installments. If the court orders restitution, any fines imposed should not impair the ability of the defendant to make restitution.

only part of the responsibility for monitoring the collection of fines and restitution.[11]

One reason that Justice's collections data are incomplete is that procedures for collecting and monitoring restitution vary around the country. In some districts, the Probation and Pretrial Services Division of the Administrative Office of the U.S. Courts monitors collection of restitution. In other districts, U.S. Attorneys' offices monitor collection. In addition, actual payments are received at a number of different access points at several agencies, which include Justice, FDIC, and the Probation Office of the U.S. Courts.[12]

Justice pointed out that the seemingly low collection rate can be explained by a number of factors. According to Justice, it first created an "inevitable gap" between restitution that is ordered and payable when it began pursuing restitution orders on the basis of the amount of the loss regardless of the defendant's ability to pay. Second, many offenders are serving terms of incarceration, which limits their ability to make payments. Third, fine and restitution orders may be stayed by courts, pending appeal.

Justice also maintained that the collection rate is not unexpectedly low. Justice reported that there is "historic agreement" that only a fraction of the total losses would ever be recovered. The Attorney General testified in 1990 that only about 5 to 10 percent of losses may be recovered through civil and criminal proceedings. For a variety of reasons, Justice believed that the money disappeared and that there is little or nothing left to collect or recover at the conclusion of the criminal process when sentencing occurs.

Following the testimony before the Senate Committee on Banking, Housing, and Urban Affairs, the Senior Interagency Group took steps to improve collection and reporting procedures for fines and restitution. The

[11]S. Hrg. 102-537, p. 11.

[12]Once it is fully operational, the National Fine Center will provide a central point for processing fines, restitution, forfeitures of bail bonds and collateral, and assessments. Authorized by the Criminal Fine Improvements Act of 1987 (P.L. 100-185), the National Fine Center will not only physically receive payments of fines, restitution, and special assessments, it also will provide current information on the payment of all fines, restitution, and assessments imposed by the federal courts nationwide. It will perform, in one location, the accounting and administrative support for fine collection and enforcement, accept payments, furnish current balances, compute interest, send monthly statements and notices to debtors, track delinquencies and defaults, and provide information to probation officers, clerks, U.S. Attorneys, and the Bureau of Prisons. In addition, the National Fine Center will generate national statistics. We are reviewing the status of the National Fine Center's development as a part of another assignment.

group decided to have the Interagency Bank Fraud Enforcement Working Group develop guidelines to enhance coordination and reporting of information on monetary enforcement in financial institution fraud matters. Then, on June 25, 1992, the group unanimously adopted a national policy statement on collection and reporting procedures for restitution payable to financial institution regulatory agencies. In general, this policy established when and under what circumstances officials from Justice and the regulatory agencies should make contact and delineated responsibilities for reporting information on monetary collections. Additionally, the policy recommended funding and implementation of the National Fine Center in the Administrative Office of the U.S. Courts to provide complete information on payment of fines and restitution.[13]

No Measurable Criteria to Evaluate Results

Although Justice has certainly increased the number of individuals indicted and convicted, it is difficult to evaluate Justice's overall progress against criminal bank and thrift fraud. There are few clear goals or criteria against which the program can be measured. Lacking such bases of comparison for perspective, we find it difficult to characterize Justice's results.

The President and the Attorney General have offered occasional statements that could be interpreted as goals. In December 1989, then-Attorney General Richard Thornburgh set Justice's goal as being "to bring to justice all those who have sought to capitalize on the American dream . . . by destroying the financial solvency of institutions designed to serve them." In June 1990, President Bush pledged to put "the cheats, . . . chiselers, and . . . charlatans behind bars." Such unconditional goals may well be unrealistic, however, considering that the resources available to investigate and prosecute criminal financial institution fraud are not unlimited, while the reported incidence of alleged fraud continues to rise.

More recently, the Attorney General committed Justice's resources and efforts to the prosecution of major financial institution fraud cases as Justice defined them. Prosecution of nonmajor cases was to be within the discretion of the U.S. Attorney to prioritize along with the other demands on his or her resources.

Justice officials resisted comparing this program with other enforcement programs. The Special Counsel told us that there are no other Justice

[13]This policy is reprinted in its entirety in Justice's third quarter 1992 report on financial institution fraud.

investigative and prosecutive programs against which this program can be compared. The Special Counsel also said that there are no measurable criteria against which the program may be gauged. He noted, for example, that there are no standard caseloads for Justice attorneys and that workloads of different Assistant U.S. Attorneys cannot be compared because case complexity may vary tremendously. In addition, the Special Counsel said that fine and restitution collection is not solely the responsibility of the Justice Department and that he did not believe that the amount collected should be used to evaluate Justice's financial institution fraud program.

According to the Special Counsel, quantitative or statistical indicators of the program's condition are less than perfect, and several qualitative factors should also be considered in making any assessment. He mentioned, for example, that attorney caseload statistics tell only part of the story, that the significance of cases varies, and that statistics do not capture those nuances. Prosecuting a high-profile defendant might exert a greater deterrent effect than prosecuting several more routine cases. Thus, although statistics are important, evaluating a program requires professional judgments about other factors as well, such as the quality of cases and the strength of case management. The Special Counsel also told us that other factors outside of Justice's control, such as congestion in the federal courts, affect the speed with which Justice can process cases.

We agree that both qualitative and quantitative considerations are important for evaluating such programs. However, we also believe that a more complete assessment of the program should recognize other factors as well. The increasing percentage of FBI cases being closed through U.S. Attorney declinations and wide variations in the percentage of major cases being declined, for example, may suggest areas needing management attention.

Conclusion

Justice activity against criminal bank and thrift fraud has unquestionably increased over the past few years. Justice has achieved increasing numbers of indictments, convictions, and sentences for major financial institution fraud. Justice characterizes these results in enthusiastic terms.

For a variety of reasons, however, it is difficult to evaluate Justice's efforts. Few goals or criteria exist against which to assess the program, and the Special Counsel noted that any evaluation must account for many qualitative considerations, such as varying case complexity. We agree that

qualitative considerations are factors in evaluating such programs. We also believe, however, that a more complete assessment of the program should recognize other factors in addition to indictments, convictions, and sentences. Examining such additional factors as declination rates and trends could help assess the program and identify areas needing management attention.

Agency Comments

Justice made two major comments on this chapter. First, Justice maintained that statistics on the number of individuals indicted, convicted, and sentenced; amounts of money forfeited or ordered paid in fines and restitution; and anecdotal case examples should suffice as measures of the program's success. Second, Justice wrote that our presentation of information on investigation declinations was misleading. Justice would like to distinguish between investigations and referrals, suggesting that many of the declinations are not of investigations but of referrals that involve the disappearance of small amounts of cash. Justice now says that such "non-major matters are not part of the Justice Department's . . . program."

We strongly disagree that any program, whether the pursuit of criminal financial institution fraud or efforts to reduce air pollution, can be evaluated solely with aggregate numbers of events. We noted the statistics on the number of indictments secured and convictions, and we believe that we adequately represented those accomplishments throughout the report. Yet such statistics are not meaningful for purposes of evaluation unless they can be compared against some standard or goal. Lacking any statement of a program's goals, standards, or objectives, we are unable to endorse Justice's characterization of its progress.

As we noted in chapter 1, we recognize that most referrals of financial institution fraud have involved relatively small amounts of alleged losses. However, FBI has categorized each as an investigation and has not separately accounted for referrals with which it undertakes little, if any, activity. Because neither FBI nor the Special Counsel distinguish between the number of referrals in total and the number that result in full-fledged investigations, we can report only what the FBI records—i.e., investigations.

Lastly, we note that Justice says it no longer considers nonmajor matters to be part of its financial institution fraud program. On the one hand, we believe it is commendable that Justice has decided to focus its limited

resources on major cases. On the other hand, Justice's statistics seem to belie this position. As of July 1992, nearly half of FBI's financial institution fraud investigation workload involved nonmajor investigations. As we noted in chapter 3, local FBI and U.S. Attorneys' offices operate with much discretion in managing their resources and enforcement programs.

Summaries of Various Types of Conduct Involved in Criminal Bank and Thrift Fraud

The types of criminal conduct that FBI has seen involved in bank failures and fraud and embezzlement matters are varied. FBI summarized some of that conduct as follows:

- Nominee loans. Loans obtained by one person on behalf of an undisclosed person. The nominee, or "straw borrower," typically has no involvement in the loan transaction other than to pose as the borrower.
- Double pledging of collateral. Loans obtained at two or more different financial institutions by pledging the same property as collateral. The combined amount of the loans exceeds the value of the property, and the borrower does not disclose the pledging of the property as collateral to a previous loan.
- Reciprocal loan arrangements. Loans made to insiders of a financial institution or sold to the financial institution itself based upon an agreement with insiders of another financial institution to reciprocate in future loan transactions. This arrangement results in less than arm's-length transactions between insiders of the two financial institutions and has been used previously to conceal loans from financial institution examiners.
- Land flips. Transfers of land between related parties to fraudulently inflate the value of the land. The land is used as collateral for loans based on the inflated or fraudulent valuation. Loan amounts typically greatly exceed the actual value of the land.
- Linked financing. The practice of depositing money into a financial institution with the understanding that the financial institution will make a loan conditioned upon receipt of the deposits.

Objectives, Scope, and Methodology

On February 1, 1991, the Chairman of the Senate Committee on the Judiciary requested that we initiate a series of reviews assessing the federal government's investigation and prosecution of financial institution fraud. The first of those reviews was to focus on those provisions in the Crime Control Act of 1990 that restructured the federal attack on financial institutions fraud, particularly issues related to the new Special Counsel for Financial Institutions Fraud, Financial Institutions Fraud Task Forces, and the Senior Interagency Group. The Chairman also asked that we address issues relating to the resources applied to financial institution fraud and the results achieved to date.

We analyzed data on the investigation and prosecution of financial institution fraud cases from FBI and EOUSA for fiscal years 1987 through 1991. We also analyzed data on the allocation and deployment of FBI, U.S. Attorney, and Secret Service staff resources over the same period. We did not review the accuracy or reliability of the information generated by those systems because the amount of time and staff necessary to review those systems was prohibitive.

To assess the status of the Special Counsel and Senior Interagency Group, we interviewed senior officials from the Justice Department and from several financial supervisory agencies. We interviewed staff members in the Special Counsel's Financial Institutions Fraud Unit, including officials from EOUSA and Justice's Criminal Division.

To determine the status of the task forces, we reviewed a number of Justice Department statements and documents regarding financial institution fraud task forces. We also interviewed officials from numerous participating agencies, both at their Washington, D.C., headquarters and in a number of locations around the country. In each city we visited, we interviewed officials from the U.S. Attorney's and FBI offices. In cities where financial supervisory agencies had offices, we also interviewed officials from those agencies. Those interviews covered several topics, including the organization of efforts at that location to coordinate the investigation and prosecution of financial institution fraud, the referral process, investigations in which FBI or the Secret Service used the assistance of other federal agencies, workload, access to information, and results achieved.

We interviewed those officials in several cities that we selected on the basis of a number of factors. The first criterion was whether the city had been designated as a task force location by the Attorney General in

December 1989. Because of resource and time constraints, we could not visit each of those locations. We thus used three additional criteria to reduce the number of cities to visit: (1) cities with heavy workloads of financial institution fraud investigations and prosecutions, (2) cities where the largest number of financial supervisory agencies were located, and (3) cities where the Secret Service had offices actively involved in financial institution fraud investigations.

For locations we did not visit that had been designated for task forces, we interviewed officials from U.S. Attorneys' offices by telephone. We decided to interview attorneys in those offices because we discovered during our field visits that the U.S. Attorney's office was most frequently the coordinator of efforts to organize task forces or bank fraud working groups.

In addition, we visited four other cities that the Attorney General had not designated as task force locations to get some different perspectives on the scope of the fraud problem. We selected Columbia, South Carolina; Jackson, Mississippi; Detroit, Michigan; and Portland, Oregon because FBI and U.S. Attorneys' offices there had varying numbers of ongoing financial institution fraud investigations and litigation. In general, each of those cities had less financial institution fraud investigative and prosecutorial activity than did the locations designated for task forces. We did not select those cities to provide a direct comparison with other locations visited. The cities we visited and agencies we contacted are shown in table II.1.

Table II.1: Agencies and Locations Contacted

	U.S. Attorney	FBI	Secret Service	Federal Reserve	OTS	FDIC	OCC	RTC	Bank Fraud Task Force
Anchorage	T								
Atlanta	X	X	X		X			X	
Boston	X	X		X	X	X			
Chicago	X	X	X		X	X	X		
Cleveland	T								
Columbia, SC	X	X							
Dallas									X
Denver	T								
Detroit	X	X							
El Paso, TX	T								
Houston	T	X				X			
Jackson, MS	X	X							
Kansas City, MO	X	X	X	X		X	X	X	
Little Rock, AR	T								
Los Angeles	X	X	X					X	
Memphis	T								
Miami, FL	X	X	X						
Minneapolis	X	X		X				X	
New Orleans	X	X						X	
New York	X	X	X	X		X	X		
Newark, NJ	X	X	X		X				
Oklahoma City	T								
Omaha	T								
Philadelphia	X	X	X	X				X	
Phoenix	X	X	X					X	
Portland, OR	X	X							
Sacramento, CA	X	X							
San Antonio	T								
San Francisco	X	X	X	X	X	X	X		
Seattle	X	X	X						
Tampa	T								
Total	**30**	**20**	**11**	**6**	**5**	**6**	**4**	**7**	**1**

Legend
T = Interviewed on telephone.
X = Interviewed in person.

FBI and U.S. Attorney Resource Allocations Under FIRREA

FBI division	Special agents	Accounting technicians	U.S. Attorney office	U.S. Attorneys	Auditors	Support
Anchorage	2	1	Alaska	1		1
Atlanta	3	1	Northern District of Georgia	2		2
			Middle District of Georgia	1		1
Boston	3	1	Massachusetts	2		2
			New Hampshire	1		1
Charlotte	3		Eastern District of North Carolina	2		2
Chicago	4	2	Northern District of Illinois	3	1	3
Cleveland	2	1	Northern District of Ohio	1		1
Dallas	37	17	Northern District of Texas	12	2	12
			Eastern District of Texas	3	1	3
Denver	13	4	Colorado	4		3
			Wyoming	1		1
El Paso	1		Western District of Texas	1	1	1
Houston	27	14	Southern District of Texas	15	3	15
Kansas City	10	5	Kansas	4	1	4
			Western District of Missouri	3	1	3
Knoxville	1	0	Eastern District of Tennessee			
Little Rock	4	2	Eastern District of Arkansas	2	1	2
Los Angeles	27	14	Central District of California	15	3	15
Memphis	1	1	Western District of Tennessee	1		1
Miami	4	3	Southern District of Florida	4		4
Minneapolis	5	2	Minnesota	3	1	3
			North Dakota	1		1
Newark	9	3	New Jersey	1		1
New Orleans	12	5	Eastern District of Louisiana	3	1	3
			Middle District of Louisiana	2		2
			Western District of Louisiana	2		2
New York	10	4	Southern District of New York	3	1	3
			Eastern District of New York	3	1	3
Oklahoma City	10	4	Western District of Oklahoma	5	1	5
Omaha	3	2	Nebraska	1		1
			Northern District of Iowa	1		1
Philadelphia	1	1	Eastern District of Pennsylvania	1		1
Phoenix	6	3	Arizona	3	1	3
Sacramento	1	1	Eastern District of California	1		1
San Antonio	10	4	Western District of Texas	5		5
San Francisco	4	3	Northern District of California	3	1	3

(continued)

FBI division	Special agents	Accounting technicians	U.S. Attorney office	U.S. Attorneys	Auditors	Support
San Juan	2	0	Puerto Rico			
Seattle	3	1	Western District of Washington	2		2
Tampa	1	1	Middle District of Florida	3	1	3
Total	**219**	**100**		**121**	**22**	**120**

Source: Department of Justice data.

FBI and U.S. Attorney Resource Allocations Under the Crime Control Act

FBI division	FBI special agents[a]	U.S. Attorney office	Assistant U.S. Attorneys	Support staff[b]
Albany	2	Northern District of New York	2	1
Albuquerque	3	New Mexico	1	1
Anchorage	0	Alaska	1	1
Atlanta	2	Northern District of Georgia	2	3
		Middle District of Georgia	2	2
		Southern District of Georgia	1	1
Baltimore	5	Maryland	3	3
Birmingham	3	Middle District of Alabama	1	1
		Northern District of Alabama	2	2
Boston	35	Massachusetts	8	5
		New Hampshire	2	2
		Maine	1	1
		Rhode Island	1	1
		Vermont	1	1
Buffalo	1	Western District of New York	2	1
Charlotte	4	Eastern District of North Carolina	1	2
		Western District of North Carolina	1	1
		Middle District of North Carolina	1	1
Chicago	5	Northern District of Illinois	4	4
		Central District of Illinois	2	1
Cincinnati	1	Southern District of Ohio	2	1
Cleveland	2	Northern District of Ohio	3	2
Columbia	2	South Carolina	3	3
Dallas	10	Northern District of Texas	6	9
		Eastern District of Texas	3	4
Denver	17	Colorado	7	7
		Wyoming	1	1
Detroit	2	Western District of Michigan	2	1
		Eastern District of Michigan	1	1
El Paso	4	Western District of Texas	7	6
Houston	20	Southern District of Texas	9	7
Indianapolis	2	Indiana	0	0
Jackson	2	Southern District of Mississippi	2	1
Jacksonville	5	Northern District of Florida	2	3
Kansas City	7	Kansas	2	2
		Western District of Missouri	1	1
Knoxville	1	Eastern District of Tennessee	2	2

(continued)

FBI division	FBI special agents[a]	U.S. Attorney office	Assistant U.S. Attorneys	Support staff[b]
Las Vegas	0	Nevada	1	1
Little Rock	1	Eastern District of Arkansas	1	1
Los Angeles	26	Central District of California	15	10
Louisville	3	Eastern District of Kentucky	2	1
		Western District of Kentucky	2	1
Memphis	6	Western District of Tennessee	1	2
		Middle District of Tennessee	0	1
Miami	15	Southern District of Florida	10	10
Milwaukee	1	Wisconsin	0	0
Minneapolis	1	Minnesota	3	3
Newark	14	New Jersey	14	9
New Haven	7	Connecticut	4	4
New Orleans	0	Eastern District of Louisiana	2	1
		Middle District of Louisiana	1	1
		Western District of Louisiana	1	1
New York	5	Southern District of New York	4	4
		Eastern District of New York	5	3
Norfolk	0	Eastern District of Virginia	3	2
Oklahoma City	4	Western District of Oklahoma	2	2
		Eastern District of Oklahoma	1	1
		Northern District of Oklahoma	2	1
Omaha	1	Nebraska	1	1
		Southern District of Iowa	1	1
Philadelphia	5	Eastern District of Pennsylvania	13	8
		Middle District of Pennsylvania	1	1
Phoenix	7	Arizona	7	4
Pittsburgh	2	Western District of Pennsylvania	3	2
Portland	2	Oregon	2	2
Richmond	3	Western District of Virginia	2	1
Sacramento	5	Eastern District of California	4	4
Salt Lake City	3	Utah	1	1
San Antonio	11	Western District of Texas	0	0
San Diego	2	Southern District of California	2	3
San Francisco	2	Northern District of California	4	6
San Juan	2	Puerto Rico	2	2
Seattle	5	Western District of Washington	2	2
Springfield	2	Southern District of Illinois	1	1
St. Louis	2	Eastern District of Missouri	2	1

(continued)

FBI division	FBI special agents[a]	U.S. Attorney office	Assistant U.S. Attorneys	Support staff[b]
Tampa	11	Middle District of Florida	11	9
Washington, D.C.	6	Washington, D.C.	3	3
Total	**289**		**228**	**198**

[a]Includes special agents allocated in fiscal year 1992.

[b]Includes auditors, paralegals, and other support staff.

Source: Department of Justice data.

Comments From the Department of Justice and GAO'S Response

Note: GAO comments supplementing those in the report text appear at the end of this appendix.

U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General *Washington, D.C. 20530*

OCT 1 1992

Mr. Richard L. Fogel
Assistant Comptroller General
General Government Division
General Accounting Office
Washington D.C. 20548

Re: Draft GAO Report on Justice Department's Financial Institution Fraud Program.

Dear Mr. Fogel,

See comment 1.

3500 defendants charged in major financial institution fraud (FIF) cases between October 1, 1988 and August 31, 1992; almost 2800 convictions; a 95% conviction rate; a 77% incarceration rate; and more than 100% increases in productivity reported in each of FY 1991 and 1992 over FY 1989-90 combined. These objective facts, which stand as irrefutable evidence of the success of the Justice Department's anti-fraud effort, are largely ignored in your 140-page Report. The determination to criticize rather than analyze is evident throughout.

See comment 2.

While the Report purports to focus on what Justice has done in the FIF program since the arrival of the Special Counsel, it ignores volumes of information supplied in our *Reports on Attacking Financial Institution Fraud* over the past two years and the extensive information supplied in response to various Congressional inquiries -- all shared with GAO during the "audit" which allegedly took place as part of this Report.

We have successfully integrated and trained a record number of prosecutors in a training program completely overhauled under the supervision of the Special Counsel. Working relationships within the law enforcement community and with the regulators have never been better. Under the leadership of the Special Counsel, the Senior Interagency Group has passed the first multi-agency accord to enhance the monetary enforcement effort. Though constantly improving, the reporting mechanisms now in place for the FIF program are the most comprehensive in existence for a multi-agency enforcement program.

See comment 3.

Yet, short shrift is given to the accomplishments of the program, and the Special Counsel. Rhetoric about unfunded budget allocations in FY 1991 abounds with nary a mention of proposed Congressional budget cuts in this program for FY 1993. Significantly, the Congressional slashing of forty-four million dollars in enhancements to combat white-collar crime (including FIF) from our FY 1992 appropriations is omitted.

See comment 4.

By all accounts, the near-collapse of the thrift industry was the result of a series of complex factors. Yet no one has ever suggested that the work of federal prosecutors is in any way responsible for the thrift failures. Moreover, regardless of whose numbers one looks at, fraud has not yet been shown to be the "major"[1] factor in the industry's failures. Nonetheless, the Report conveys the notion that the collapse is primarily a criminal law enforcement issue. It is not. Blaming all of the S&L losses on "criminals" may be politically convenient but it is not responsible law enforcement and it is not accurate.

While fraud and real estate related fraud in particular[2] were certainly factors in some failures, it cannot fairly be said that they were the major factors in all or even a majority of the failures. Economic factors in the real estate and other markets seem to have played a far larger role than fraud.[3] Notwithstanding the unsupported assertions of the Report, the extent of fraud as a factor in S&L failures is simply not known at this time, and indeed may never be known.[4] Moreover, it cannot be responsibly inferred

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See comment 4.

Now on p. 13.

[1] The use of the word "major" to suggest that fraud brought down the thrifts is simply not accurate based on known data. Report at page 26.

See comment 5.
Now on p. 15.

[2] At page 27 of the Report, GAO provides only a partial list of the statutes applied to this area. At page 27, the description of a land flip and nominee loan transactions is both oversimplified and inaccurately limited to "conspiracy" cases.

See comment 4.
Now on p. 2.

[3] The Report at page 3 states "Criminal fraud, often involving real estate, has been a major factor in many financial institution failures." (emphasis added)

See comment 6.

[4] As described in our *1992 Second Quarter Report: Attacking Financial Institution Fraud, p. 31-32*, the loss figure we report to Congress is not necessarily the amount of fraud charged in the particular case. GAO fails to note this potentially significant fact when it describes "loss associated with those cases" at page 24 of the GAO Report.

without empirical and anecdotal study of the reasons for all the failures.

See comment 7.

Prosecutors are merely cleaning up a mess left by others -- and they are doing a great job with the resources they have been given to convict the guilty and protect the rights of the innocent. Responsible officials within the agencies regulating the industry and those prosecuting the fallout of the collapse have resisted efforts to attribute "costs" to "fraudulent" activity until the cases are completed. Nonetheless, GAO purports to do just that at page one of the Report's Executive Summary, without the benefit of statistical or anecdotal case analysis. The "costs" of the thrift bailout have many causes, including Congressional delay in funding the RTC since April 1992.

Our "comment" on the Report is that it is simply wrong in fact and tone, the obvious product of biased reporting. Specifically:

See comment 8.

- The leadership[5] of the Department and the Special Counsel, universally praised by the professionals involved in the program, exceeds what Congress could reasonably expect given the number of overlapping but fully independent agencies that Congress legislated as part of this effort.[6]

See comment 9.

- There has been no "shift in strategy"[7] and any evolution of our efforts has been fully documented for Congress.

See comment 10.

- Ironically, having failed to identify a measurement which would support criticism of the program, GAO criticizes Justice for the absence of such a yardstick[8]. There are many measurements of our success -- including the absence of any valid criticism of the program in the face of 22 months of GAO efforts to invent one.

See comment 11.

- Efforts to divert responsibility for the scarcity of IRS-CID[9] resources to Justice from Congress[10] is sophistry of the worst kind.

Now on p. 4.

[5] Report at page 8.

[6] The Report omits the fact that the Brady Bank Bill, rejected by Congress, sought to streamline the regulatory function and clarify the Attorney General's role as the nation's litigator.

Now on p. 5.

[7] Report at page 13.

Now on p. 6.

[8] Report at page 13.

[9] Criminal Investigations Division.

Now on p. 5.

[10] Report at page 15.

See comment 12.

- Recommended improvements in the program[11] were instituted by the Special Counsel almost from the outset, without prompting or apparent interest by the GAO.

Despite the substantial time we have devoted to attempts to inform GAO in Washington, D.C. and in the field, the Report eliminates the positive in favor of the same predetermined but inaccurate criticisms the auditors brought to their work when your "audit" began in November of 1990.

See comment 13.

In short, the Report is wrong in so many ways that it must be assumed that the inaccuracies are intentional. Release of this draft just five weeks before the Presidential election further demonstrates the absence of objectivity. Perhaps it is because of the number of times we have corrected misinformation some within GAO have supplied to Congress that you have taken this tack, but the Report simply fails to meaningfully analyze our program.

See comment 14.

Introduction[12]:

"The Department of Justice is not a newcomer to the problems of financial institution fraud. Though few could predict the scope of the work ahead, federal prosecutors were there in Tennessee when the Butcher brothers' self-dealing broke the first bank scandal in that state in the late 1970s.

Federal prosecutors were there in prosecuting the cases resulting from the collapse of Penn Square in Oklahoma and the near collapse of Continental Bank in ... Chicago.

Though budget restrictions on staffing inhibited the growth of federal prosecutors' offices throughout the 1980s, innovative thinking and leadership brought us the Dallas Bank Fraud Task Force and the Interagency Bank Fraud Working Group in 1987. Highly motivated prosecutors also developed strong programs in Los Angeles, Chicago, Newark, Philadelphia, and elsewhere. Los Angeles and Philadelphia also helped develop our affirmative civil litigation program in this area.

In June, 1990, recognizing the need for enhanced coordination and dissemination of information, then Attorney General Dick Thornburgh asked James G. Richmond, the United

Now on p. 7.

[11] Report at page 16.

[12] This introductory material has previously been supplied to Congress and the GAO in the written testimony of Ira H. Raphaelson, Special Counsel for Financial Institution Fraud before the Senate Committee on Banking, Subcommittee on Consumer and Regulatory Affairs, Senator Allen J. Dixon, Chairman, on February 6, 1992.

States Attorney for the Northern District of Indiana and two term Chairman of the Attorney General's Advisory Committee of United States Attorneys, to serve as Special Counsel on financial institution fraud matters within then Deputy Attorney General William P. Barr's Office.

See comment 14.

Through the summer of 1990 and into the fall, then Deputy Attorney General Barr and Jim Richmond worked closely with Congress in developing the provisions of the Crime Control Act of 1990 (CCA) which aimed at dealing with the crisis brought about by a dramatic increase in the number of financial institution failures.[13] That partnership produced much-needed enhancements in resources for law enforcement and improvements in the laws we prosecutors use as tools to put the swindlers in jail and recover their ill-gotten gains.

As part of the CCA, Congress formalized Mr. Richmond's assignment by creating the statutory position of Special Counsel within the Deputy Attorney General's Office...

In undertaking the ... responsibilities [of Special Counsel], [Mr. Raphaelson] worked closely with the Deputy Attorney General in concentrating on a number of priorities:

* ensuring appropriate resource allocations to maximize effective prosecution and recovery of assets;

* enhancing communication and coordination within the Department and with the law enforcement and regulatory agencies involved;

* improving training for financial institutions fraud prosecutors and developing a joint training curriculum with the investigators and regulators; and

* refining and increasing the scope of reporting mechanisms.

As with each written report [he] ... made to Congress, ... [he] report[ed] ... continuing progress on all fronts."

Comments on Chapter 2 and Issues Related to Resources:

See comment 16.

The Report's "analysis" of resource issues is selective, inaccurate and incomplete. As a threshold matter, the hiring, training and absorption of a record influx of attorney and FBI

See comment 15.

Now on p. 26.

[13] While FIRREA and the CCA, passed in 1989 and 1990, provided much need resources and tools, they could not have been "partly in response" to increased caseloads experienced in 1991 and 1992 as the Report purports at page 10.

agent resources accomplished in less than two years should merit praise, not concern.[14]

See comment 17.
Now on p. 37.

This section of the report includes a selective reporting of the Special Counsel's testimony which is particularly disturbing (Report at page 63, and F.N.8).[15] The Special Counsel testified at his confirmation hearing and consistently thereafter, that the Department wanted the resources it asked for and that he would ask for additional resources only after assessing the impact of those requested.[16] More importantly, it is simply not accurate to state as the Report does that "the Bush Administration ... did not request additional attorney resources." Requests for additional attorneys were made for FY 1992 and refused by Congress and pending requests for FY 1993 are being cut by Congress.

See comment 18.

While GAO criticizes the Administration for not requesting additional IRS-CID appropriations in 1991[17] and makes passing but critical reference to the Administration's request for CID resources in 1993[18], the Report is remarkably silent on the Fiscal Year 1992 budget cycle where, with strong support by Justice, the Administration requested and Congress rejected CID resource enhancements.[19] The selective reporting of this sequence of events

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Now on p. 47.

[14] See Report at page 60.

See comment 19.

[15] If the GAO figures on declinations are accurate, declination of non-major cases due to resource considerations is an entirely proper, and indeed responsible use of limited prosecutive resources. However, in the context presented by the Report, GAO seeks to mislead Congress and the public with the inference that the major crooks responsible for the S&L failures are escaping prosecution because of the Administration. That is a falsehood of immense proportions. In fact, 30% of those prosecuted are the major corporate insiders -- CEOs, presidents, shareholders, directors and officers of the affected institutions.

[16] See for instance, pages 12 - 13 of the attached testimony of Mr. Raphaelson before Senator Dixon's subcommittee.

Now on p. 36.
Now on p. 37.

[17] Report at page 61.

[18] Report at page 62.

See comment 20.

Now on p. 41.

[19] In its "analysis" of the nature of the FBI caseload, the Report takes comments by senior FBI officials out of context and falsely asserts "investigations of fraud in savings and loans generally require more time than similar investigations involving banks" (Report at p. 68, emphasis added). In fact, an S&L failure is no more difficult to investigate than a bank failure case -- they are both complex investigations which require extensive time and dedication. To date, the S&L cases have been bigger than the

strikes a questionable tone for a supposedly "objective" Report.

See comment 18.

The scarcity of CID resources available for FIF work is not a function of the powers of the Special Counsel or the Justice Department's interest. IRS operates in a structure, approved by Congress, which provides for application of CID resources through IRS Regional Commissioners, who answer neither to Treasury nor Justice. Thus, a memorandum of understanding between Treasury and Justice, as GAO erroneously suggests[20], would not result in additional Justice input in CID resource allocation. Nonetheless, the greatest impediment to CID involvement in FIF matters today is a function of the limited CID resources provided by Congress.

Contrary to the tone of the Report[21], Justice has consistently argued for additional CID resources, which Congress has not provided. Nonetheless, the Special Counsel has had success in obtaining resources in individual cases because of the close working relationship he developed with IRS-CID management in Washington.

See comment 21.

Insofar as the Report seeks to criticize Justice for lack of oversight of bank regulatory resources[22], the Report is simply disingenuous.[23] The Report falsely suggests that "Justice and the regulatory agencies are still wrestling with reimbursement issues."[24] We are not. Congress alone can make those resources available through changing the law and appropriations structure. Congress has not addressed this issue, a fact which GAO ignores.

Congress and GAO have known, almost from the outset, that the independent bank regulatory agencies would make only limited expert

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bank cases as a group because more of the S&L cases involved failures. Yet, as of May 31, 1992, the FBI had almost as many bank failures (316) under investigation as S&L failures (383). See *Third Quarter Report: Attacking Financial Institution Fraud, Appendix C, page 55.*

Now on pp. 50-53.
Now on p. 53.

[20] Report at pages 84-86.

[21] Report at page 84.

Now on pp. 52-53.

[22] Report at page 86.

See comment 21.

[23] Money was made available to reimburse OTS for certain criminal case related expenses in FY 1991, because funds were available due to the fact that Congress had appropriated a full year's funding for a partial year personnel enhancement of Justice FIF programs.

Now on p. 56.

[24] Report at page 91.

assistance available to the criminal investigative process. These agencies do not receive appropriations to assist the government with criminal prosecutions and investigations. Despite the absence of appropriations, the regulators continue to provide such assistance to Justice on a case by case basis. The Justice Department promised to staff major FIF matters with the 100% dedicated resources Congress provided. We have endeavored to keep that promise. The "policy" decisions by Congress regarding funding and mission of the bank regulators is hardly something for which Justice can fairly be criticized.

See comment 22.

Finally, the Special Counsel regularly meets with senior managers from the FBI to assess investigative resource needs. The FBI has allocated and reallocated resources based on these assessments. Moreover, the GAO figures for placement of FBI resources are inaccurate.[25]

Comments on Chapter 3 and Program Oversight:

See comment 23.

The tenor of the Report[26] underscores a fundamental philosophical difference between the GAO and the Justice Department, without an honest acknowledgement by GAO of that difference. Professional prosecutors simply will not indict someone merely because they are named in a criminal referral as part of a misplaced search for scapegoats. Nor should they.

See comment 24.

Career professionals at the Justice Department believe that the criminal justice system must not become a tool of partisan politics or cater in any way to a lynch-mob mentality. Modification of the professional standards of prosecution is not appropriate simply because an issue is "hot". Only by resisting attempts to sensationalize crime with labels such as "crisis"[27] can we fairly prosecute the guilty and protect the rights of the innocent.

See comment 25.

The FIF program is unique, however. We have applied 100% dedicated attorney and FBI resources to these major fraud prosecutions and the results have been outstanding. The use of

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[25] See attached Chart supplied by FBI reflecting accurate data which would have been available to GAO had they asked for it.

[26] The Report claims at page 6 that the Department approached the FIF "crisis much like it has other enforcement matters."

See comment 24.

[27] Whatever significance the term "crisis" may have to GAO, it adds little to any useful analysis of the FIF effort. Before the GAO and others tried to portray the S&L industry collapse into a law enforcement "crisis", the Justice Department was involved in prosecuting significant FIF matters.

dedicated resources, coordinated and evaluated by a Special Counsel who has the respect of the U.S. Attorneys, other component heads, and regulatory and law enforcement chiefs, is not "much like" our other efforts.[28]

By way of comparison -- OCDETF -- dedicated resources focused on major drug organizations -- has prosecuted 20,000 defendants in the last 10 years. The FIF program has averaged more than 1000 prosecutions per year over the last three years with about half the investigative resources available to OCDETF, in an area that mostly involves historical investigations of complex financial transactions.

See comment 26.

Whatever the limits on the Justice Department's "leadership" abilities,[29] they are the result of statutory and budgetary limits imposed by Congress. In the CCA, Congress simply did not give the Special Counsel, nor even the Attorney General, the authority to overrule the decisions of the myriad of agencies, law enforcement and regulatory, with responsibilities in the financial institution area. Moreover, Congress voted increases in Secret Service resources for FIF this year without consulting the Justice Department yet refused the Department's request for attorney, FBI and IRS-CID enhancements for 1992 and 1993.

See comment 27.

The role of the Special Counsel has been consistently described to Congress. His leadership of the program has drawn universal praise from the regulatory and law enforcement communities, and from many local U.S. Attorneys' Offices. The only criticism has come from GAO, and then only with complete disregard for the truth of their assertions.[30] The bias of the report is

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[28] See response to Senator Dixon by AAG Rawls of April 15, 1992.

Now on p. 4.

[29] At page 8, the Report reflects GAO's erroneous conclusion: "ANALYSIS: Justice's Ability To Provide Government-wide Leadership is Limited."

See comment 28.

[30] For instance, Mr. Harold Valentine, Associate Director of the GAO, inaccurately reported to Congress that judges sentenced defendants to pay restitution based on their present ability to pay. This created a false impression that courts had found an ability to pay so that low restitution recovery rates should be cause for concern. The Justice Department expended considerable resources to study cases purportedly relied on by GAO and others to disprove this assertion. See *Second Quarter 1992 Report: Attacking Financial Institution Fraud*.

perhaps clearest in the partial listing of accomplishments[31] and grudging tone of the Report of praise by one general counsel.[32] Praise not by just one regulatory official as GAO would seem to indicate but by many regulators, and others, is a measure of progress in this program.[33]

See comment 30.

The Office of Special Counsel for Financial Institutions Fraud was established under the Crime Control Act of 1990 within the Deputy Attorney General's Office of the Department of Justice.

On February 15, 1991, President George Bush nominated veteran state and federal prosecutor Ira H. Raphaelson of Chicago, Illinois to hold that position. Mr. Raphaelson was confirmed by the United States Senate on May 24, 1991.

The Special Counsel is responsible for coordinating the efforts of the Justice Department and all 93 U.S. Attorneys to prosecute financial institution fraud and recoup losses where possible. He also chairs an interagency coordinating group (the Senior Interagency Group) to further those efforts and periodically reports to Congress.

Functioning as the personal representative of the Deputy Attorney General, and, since January 1992, of the Attorney General as well, the Special Counsel has deeply involved himself in all aspects of our enforcement and reporting efforts.

Both before and after his confirmation, the Special Counsel has used his strong law enforcement background to work closely with the many Justice Department, law enforcement, and regulatory components involved in this important program.

In order to ensure an effective approach within the Department of Justice, the Special Counsel has met with components, U.S. Attorneys, First Assistants, Criminal and Civil Division Chiefs of U.S. Attorneys, law enforcement agencies, regulatory agencies,

Now on pp. 47-48.

See comment 29.

[31] Report at page 77.

[32] In fact, GAO was prepared to release the Report without bothering to consult with any regulatory or law enforcement member of the Senior Interagency Group. These interviews were only conducted after the Special Counsel criticized the auditors for not having been thorough. The cavalier manner in which the Report addresses the opinions of the professionals running the agency programs further calls the objectivity of this Report into question.

[33] See for instance the testimony of Al Byrne, General Counsel of the FDIC, before the House Banking Committee on H.R. 5538 on August 11, 1992.

banking and professional groups. His message has been to emphasize the need to proceed with the coordinated two-pronged effort to put the crooks in jail and take their money back for the public. A partial but fairer list of his accomplishments would indicate that from the outset, the Special Counsel has worked to improve coordination, communication, reporting ability, and our civil enforcement efforts.

Under his leadership, there is an unprecedented atmosphere of cooperation and communication at the highest levels of the agencies involved in this effort. Mr. Raphaelson has established the Office of Special Counsel as a place where regulators, law enforcement components and U.S. Attorneys turn to resolve coordination issues which arise. In this regard, the Special Counsel serves as a helpful and decisive moderator of parallel prosecution issues, witness, administrative stays, grand jury access and document access issues in parallel proceedings contexts. There have also been substantial accomplishments since the creation of that office which include:

- Establishing the New England (2/91) and San Diego (6/92) Bank Fraud Task Forces.

- Coordinating the Department's response to the collapse of Rhode Island's privately insured credit union.

- Mediating the completion of the memorandum of understanding between the U.S. Secret Service and FBI on handling FIF matters.

- Securing the internationally approved, comprehensive multi-party settlement and guilty plea of BCCI and record $650 million forfeiture.

- Completing the process of allocating, absorbing, training and focusing the prosecutive resources provided to the Justice Department by FIRREA and the Crime Control Act.

- Completely overhauling the training program for FIF lawyers (criminal and civil) and instituting a variety of mechanisms from joint training to specialized units to strengthen the focus of the Department's monetary enforcement effort.

- Emphasizing the monetary enforcement aspect of the FIF program by:

* Developing pilot programs in eight U.S. Attorneys' offices for staffing of affirmative civil FIRREA litigation in the summer of 1991.[34]

* Integrating the U.S. Marshals Service efforts in monetary enforcement.

* Obtaining the unanimous endorsement of the 93 U.S. Attorneys for continued pursuit of an aggressive loss-based restitution policy in FIF cases.

* Securing the unanimous endorsement of the Senior Interagency Group of National Guidelines for Enhancing Coordination of Monetary Enforcement Effort on June 25, 1992.

* Establishing a central clearinghouse for international asset search efforts within the Justice Department's Civil Division.

* Working with FBI-Headquarters to expand Texas pilot program dedicated to asset search and seizure in FIF cases -- the so-called FAST Teams (Forfeiture and Asset Search Teams).

* Helping develop policy regarding prosecution of institutions in receivership in conjunction with General Counsel for RTC and U.S. Attorneys.

* Increasing representation by DOJ of RTC and FDIC in affirmative civil litigation.

* Producing first comprehensive Report on Monetary Enforcement for the Deputy Attorney General, which was presented to the Senior Interagency Group on March 18, 1992, and submitted to the Senate Banking Subcommittee.

- Overseeing the enhancement of the financial institutions fraud (FIF) reporting mechanisms within the Executive Office for U.S. Attorneys to include information on major bank and credit union prosecutions in addition to major thrift cases, and more complete information concerning monetary enforcement activities.

See comment 31.
Now on p. 31.

[34] As previously reported to Congress, 30 AUSA positions were allocated, not 23 as reflected in the Report (F.N. 4 p.55). 10 support positions were also transferred from the Civil Division to these programs as part of the Special Counsel's effort to enhance the effectiveness and reporting capabilities of those programs.

- Ensuring an unprecedented information flow to Congress to comply with the spirit of cooperation embodied by the Crime Control Act of 1990 and in order to correct misleading reporting by GAO about the program.

There has been full disclosure of the Department's "structure" which GAO criticizes as "limiting" the Special Counsel.[35] Far from limiting the Special Counsel or the FIF program, the Department's structure has allowed the program to achieve remarkable success. The discretion afforded U.S. Attorneys is one of the strong points of our enforcement program.[36]

At the same time, the Special Counsel has added a strong national perspective in conjunction with the U.S. Attorneys who have voiced unprecedented support for him and his programs.[37] Moreover, the Report ignores the central role of the Special Counsel in overseeing the use of Departmental resources[38] and in

Now on p. 48.

See comment 32.
Now on p. 49.

[35] Report at page 79.

[36] The Report's misleading approach is further evident in the partial quote attributed to the Special Counsel at page 81 regarding the Special Counsel's reliance on the U.S. Attorneys and FBI for ensuring the adequacy of resources. What the Report ignores is the elaborate system of checks and balances that ensures adequate staffing of cases. For instance, important cases result in Urgent Reports filed with the Deputy Attorney General's Office in accordance with the U.S. Attorneys' Manual. Resource issues are discussed periodically in phone and conference meetings, primarily with the 37 core city FIF Coordinators. All FIF coordinators report monthly on significant developments in the cases. The EOUSA reviews the FIF programs with its Evaluation and Review Staff. The Special Counsel and FBI management periodically review selected FIF programs, and teams from EOUSA and the Fraud Section review and consult on FIF programs in additional districts. The Secret Service has also been asked to report where it has available resources. The regulators often inform the Special Counsel directly of staffing needs and of significant referrals. Moreover, the core FIF Unit, consisting of representatives of the Justice components, FDIC and RTC, meets regularly to help the Special Counsel effectively manage the program.

[37] See Letter of U.S. Attorney J. William Roberts (C.D. Illinois), Chairman of the Attorney General's Advisory Committee of U.S. Attorneys, to Senator Dixon in April 1992.

See comment 33.
Now on p. 56.

[38] GAO's conclusion that the "Special Counsel has little influence over departmental resources" (Report at page 90) is simply false. Justice resources are assigned under the supervision of the Special Counsel. The FBI has worked with the Special Counsel from the outset to place its resources where they are

See comment 34.

See comment 35.

the Senior Interagency Group's Adoption of a National Policy on Coordination of the Monetary Enforcement Effort.[39]

Comments on Chapter 4 and the alleged "shift"[40] in Departmental strategy:

The Report claims that then Attorney General Thornburgh announced but the Department did not implement a Task Force approach[41]. This assertion, oft-repeated by the auditors over the last 19 months, and oft-corrected by us in the Congressional record[42], is repeated here once again. For the record -- again -- your auditors either don't have the capacity or the willingness to understand how the Department is running this program.

The Special Counsel began his duties in an "Acting" capacity in January 1991. Shortly thereafter, he described his role and the Department's program to you and other GAO auditors. He addressed these issues again both at his confirmation hearing and in written

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Now on p. 53.

Now on pp. 56-57.
Now on p. 56.

needed. The IRS has also worked with the Special Counsel to identify those offices and cases where the help is needed the most. Through these and a variety of other mechanisms ignored by GAO, the Special Counsel works to ensure that adequate resources are made available to the priority FIF cases. Moreover, as evident from the discussion above, GAO simply ignored the facts when it falsely asserted that "the Department has not developed an evaluation program for use in assessing (FIF) efforts around the country" (Report at page 87) and recommends that we "develop information on the adequacy of FBI and U.S. Attorney staffing, determine where and how many non-Justice staff resources are needed, and develop measures for gauging the overall effectiveness of the government's response" (Report at page 92). Insofar as GAO recommends Congress dedicate "resources to identify and investigate FIF" matters (Report at page 92), the Report ignores that bank regulators, Justice and the FBI have already undertaken 100% dedication of allocated resources.

[39] See *Third Quarter Report: Attacking Financial Institution Fraud, Appendix C, page 1.*

Now on p. 58.

[40] Report at page 93.

Now on pp. 3 and 6.

[41] Report at pages 5 & 11.

[42] See attached correspondence and replies to Congressman Brooks in 1991 and separate responses to Senators Dixon and Biden in 1992, both previously provided to but ignored by your report.

response to committee questions.[43] With that disclosure, the Senate confirmed him and he has carried out the program in an outstanding manner given the statutory limits placed upon his and the Attorney General's authority.

See comment 36.

The structure of this program has been the subject of continuous scrutiny by GAO and Congressional committees since the passage of FIRREA. There have been no hidden agendas or changes in plan as the Report concludes. The Department has told Congress what it is doing with its resources. GAO's criticism is simply unfair and inappropriate given these facts.

See comment 37.
Now on pp. 64-68.

Ignoring the facts, GAO repeats their misunderstanding of what a task force and what a working group does (p. 101-107).[44] They simply do not wish to accurately report on this matter.[45] Misquotes and quotes out of context aside, GAO has discovered no "shift in strategy". GAO was told by the Special Counsel at the outset of its "audit" that FIF programs were not fast food franchises that all looked alike. The auditors apparently didn't like that fact then and they have continued to ignore it throughout the Report.

Comments on Chapter 5 and the assertion that Justice's accomplishments are difficult to evaluate:

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[43] See Letter and accompanying materials selected from response by Assistant Attorney General Rawls to inquiries by Senator Biden of 8/30/92.

[44] See Letter from AAG Rawls to Senator Biden and attached correspondence to GAO which fully address this false issue. As an aside, GAO's refusal to accurately report on developments in the program results in ignoring the formation of the San Diego Task Force this past June.

See comment 38.
Now on p. 62.

[45] Though a relatively minor inaccuracy, the Report fails to note that the "Fraud Section" (Report at page 99) attorney who heads the New England Task Force is a former Boston AUSA, hired by the Task Force for purposes of fully integrating the staffs. There is simply nothing magical about a task force headed by a fraud section lawyer as opposed to an experienced AUSA as the Report seems to infer. Moreover, contrary to the Report, New England's attorneys and the FBI are co-located. Additionally, the Report at page 38 ignores the work of the Fraud Section in the San Diego Task Force and other such cases as needed. Moreover, contrary to the Report (at page 101), the role of Justice in forming local working groups is quite clear. The Senior Interagency Group adopted, as its first action, a Policy encouraging formation of such groups drafted by the Special Counsel. The local groups that had been formed, were formed on models developed by U.S. Attorneys' Offices (part of Justice) in Chicago and L.A.

Now on p. 23.

Now on p. 63.

See comment 39.

Because an objective analysis of the accomplishments provides stark proof of the effective utilization of resources, GAO ignores the most obvious methods of assessing the FIF program in an almost desperate search for something to criticize.[46]

The statistics contained at the beginning of this letter certainly are valid measures of success. The progress made in the areas identified by Congress and the Special Counsel at his confirmation hearing and again before Senator Dixon's subcommittee are other measures of success. Prosecutions based on 67 of the Top 100 institutions referred by the regulators in just two years since they were identified is still another objective indicia of success which GAO prefers to ignore. Charging and/or conviction of (with significant jail terms) all those thrift officers popularly associated with the Texas thrift collapse is still another objective indicator of success. The fact that David Paul, Charles Keating and Tom Spiegel -- all owner/operators of the institutions which were our costliest failures -- have been charged during the 19 months the Special Counsel has been in place is also significant but ignored by GAO.

See comment 40.
Now on pp. 77-78.

Again, through selective reporting on anecdotal cases, GAO fails to note the parallel monetary enforcement proceedings in several of the case it cites at page 120. In fact, despite an exhaustive search to find something to criticize, GAO has not identified a single dime that the nation's prosecutors either missed or are unwilling to chase.

See comment 42.

The Report also ignores the historic and extensively praised BCCI plea agreement and record $650 million forfeiture -- which would not have been possible without the Special Counsel's leadership and relationship with the regulatory community.

See comment 43.

Another note of frustration is the Report's cavalier conclusion that GAO was "unable to determine whether sentences imposed on the individuals noted above are consistent with the [Sentencing] Guidelines, because we do not know whether the Guidelines applied to each case."[47] Certainly, Congress and the public can expect an "objective" auditor to look before attempting to draw inferences from the imposition of disparate sentences.

See comment 41.

[46] For instance, rather than use any available objective criteria, the Report states that GAO has "found it difficult to determine the overall effectiveness of the government's response" and that "Justice has not set sufficient goals to use for measuring accomplishments and evaluating the overall effectiveness of the program." Report at page 7 & 13.

Now on pp. 4 and 6.

Now on p. 79.

[47] Report at page 122.

Yet, whatever the factual explanation which GAO chose to ignore, the Report misleadingly implies the discrepancies are Justice's responsibility. The prosecutors working for the Justice Department do not sentence anyone. Whether pre- or post- Sentencing Guidelines, courts, not prosecutors, impose sentences and Congress has always set the statutory requirements for those sentences.

The Declination Issue:

See comment 44.

GAO has presented its statistical analysis in a misleading way.[48] The GAO auditor who prepared the declination analysis conceded at a September 22, 1992 meeting[49] that 85-90% of the cases that he counted as declined in his analysis, were "non-major...non-serious fraud cases."[50] As GAO is well aware, non-major matters are not part of the Justice Department's FIF program. Nonetheless, GAO relied on declination of these minor, non-FIF program matters in arriving at their conclusion that "large" numbers of cases are being declined.

See comment 45.

[48] See also letter of September 25, 1992 from Special Counsel to Harold Valentine regarding Draft of proposed "Fact" Sheet for Transmittal to Congressman Wise.

See comment 46.

[49] At the same meeting, Mr. Stephenson admitted that the GAO had undertaken no comparative analysis of declination rates between the FIF program and any other prosecutive category. He further conceded that he had no empirical or statistical support for his assessment that the total FIF declination rates, including non-major matters, were "high". When Justice officials at the meeting objected to his characterization, he assured them that his characterization was merely his "personal opinion" and not part of the official GAO Report. Two days later, Mr. Valentine forwarded a revised draft of a "Fact" Sheet allegedly drawn by GAO from the Draft Report for Congressman Wise. The "Fact" Sheet had been revised by GAO, purportedly to meet certain objections raised by the Justice officials at the September 22nd meeting. One of the revised sections included an observation, beginning at the bottom of page one and continuing to the top of page two, that "large numbers of investigations and cases" were being declined by the U.S. Attorneys. As described in the attached letter of September 25, 1992 from the Special Counsel to Mr. Valentine, the characterization was and is misleading. Given the admitted absence of any audit support, it was irresponsible as well.

See comment 47.

[50] When asked whether his use of the term "fraud case" included referrals by institutions of mysterious disappearances of $25 from teller drawers, he said yes. Both he and Mr. Stephenson of GAO noted that the term "fraud" was used by them generally and not in the precise manner we use it.

See comment 48.

There has been and continues to be management oversight of all aspects of the FIF program, including declinations. GAO would know, if they had bothered to ask, that the Special Counsel has studied issues relating to declinations with FIF coordinators from around the country. To portray the declination of the mysterious disappearance of a small amount of cash as matter of importance in evaluating a program focusing on major financial institution failures and frauds, calls the methodology and objectivity of the reviewer into question. Nor is there any significance to GAO's observation that declination "rates" vary from office to office. Experienced prosecutors know that in FIF, and other programs, declination rates vary around the country for a variety of reasons, including differences in the nature, quantity and quality of referrals. More importantly, as with any crime, if a declination is perceived as "unjust" by the victim, whether private institution or regulatory agency, their objections will be reviewed and considered by Special Counsel. Like so much else in this Report, by presenting an incomplete picture, GAO has simply missed the point.

Conclusion:

See comment 49.

Law is not a precise science. The business of prosecution is best understood by those who have devoted their careers to improving the system. Congress seemed to appreciate that when it confirmed a career prosecutor as Special Counsel to help guide the FIF program. GAO holds itself out as an objective accounting organization. Yet, objectivity is clearly omitted from this Report. These things that we do -- extensive investigations and prosecutions of alleged criminal activity -- simply cannot be counted by non-law enforcement personnel who refuse to be educated about the nature of our work.

See comment 50.

The GAO "audit" team that prepared this Report flew all over the country to speak with prosecutors and investigators. Those prosecutors and investigators took time away from the task of investigating and prosecuting these cases in an effort to provide insight into this important work. It is significant that the Report contains not a word of that insight. It is significant that GAO gives those who have accomplished so much in this program so little credit while apparently having learned so little from those who actually do the work. One cannot help but wonder whether there has ever been so much information gathered and ignored in the name of "study".

Whatever GAO's agenda, whatever their perceived expertise, this Report contains no new information. Every "fact" in this Report was readily available to Congress on a simple, direct inquiry. The direct inquiry would have the dual benefit of providing Congress with direct answers with appropriate explanations of the reasons why facts are facts and eliminating the middleman who adds nothing but critical innuendo in the absence of

true insight. If there has been study of the FIF program, it is not reflected here. Congress and the American public would be better served by saving the time and money that went into efforts such as this.

Finally, this letter and attachment constitutes the "comments" of the Department of Justice and Federal Bureau of Investigation. We prefer to have these comments made part of the record in their entirety so as to ensure that they remain in context. If you choose to respond to these comments as part of your Report, we request the opportunity to respond to those revisions as well.

Very truly yours,

Lee Rawls

Lee Rawls
Assistant Attorney General

See comment 51.

LIST OF APPENDICES

Appendix 1 - Testimony of Ira H. Raphaelson of February 6, 1992

Appendix 2 - FBI resource allocation Chart.

Appendix 3 - Response of AAG Rawls to Senator Dixon, 4/15/92.

Appendix 4 - Letter of J. William Roberts to Senator Dixon.

Appendix 5 - Letter from AAG Rawls to Senator Biden.

Appendix 6 -Relevant portions of Response to Congressman Brooks in 1991.

Appendix 7 - Letter from Special Counsel to Harold Valentine of September 25, 1992.

Memorandum

To : Ira H. Raphaelson Date 9/25/92
Special Counsel, Department of Justice

From : Fred B. Verinder
Deputy Assistant Director

Subject: GAO DRAFT REPORT
BANK AND THRIFT CRIMINAL FRAUD

The FBI concurs with the proposed response of the Department of Justice, to the General Accounting Office (GAO) addressing the draft report on Bank and Thrift Criminal Fraud. This report was generated as the result of a request to GAO from Senator Reigle. In reviewing the report, we share your concerns about the conclusions reached and the manner in which data was used by GAO.

See comment 52.

The numbers used in the report purportedly from FBI reports appear to be factually accurate, with no material discrepancies, except for those in Appendix V. Appendix V is a schedule of FBI and U.S. Attorney Resource Allocations Under the Crime Control Act. The number of FBI Special Agents listed in the report reflect Special Agents that were allocated and to be assigned in fiscal year 1992. The actual number of Special Agents assigned were modified to address the current financial institution fraud (FIF) problem in the field. In addition, fiscal year 1992 budget enhancements for FIF increased the number of Special Agents from 250 to 289. The corrected resource allocation list for fiscal year 92 is depicted in the attached table.

GAO Comments

1. We disagree that we have ignored statistics concerning indictments, convictions, and incarceration rates when evaluating Justice's financial institution fraud program. The report contains extensive information on not only this information but on the number of bank and thrift fraud criminal referrals, the length of sentences, the extent of fine and restitution collections, and the percentage of cases declined, among other data. As we noted in our report, we do not believe data on indictments and convictions alone constitute "irrefutable evidence" of the success of the program. Without clear goals or objectives, we cannot unequivocally endorse the success of the financial institution fraud program.

2. The report gives credit to a number of things the Special Counsel has done to facilitate the government's overall effort to pursue financial institution fraud (see pp. 47-48). The draft report specifically noted the Special Counsel's role in training investigators and prosecutors and the improved reporting of financial institution fraud management information. We have amended our report (see p. 81) to discuss the monetary enforcement agreement reached by the Senior Interagency Group. It should be pointed out that this agreement was reached only after we testified on February 6, 1992, before the Senate Banking Subcommittee on Consumer and Monetary Affairs that Justice had collected relatively little of the fines and restitution ordered.[1] At that hearing, the Special Counsel testified that his office was only partly responsible for overseeing the collection effort.

3. We have amended the report in chapter 2 (pp. 36-37) to discuss financial institution fraud budget deliberations for fiscal years 1992 and 1993. This additional information does not change our belief that the Special Counsel needs to determine the adequacy of resources devoted to financial institution fraud in order to ensure that adequate resources are made available as is required by the Crime Control Act of 1990. The Special Counsel has insisted during our review and repeated in these comments that he would judge the adequacy of resources only after assessing the impact of the resources already received.

4. We, and to our knowledge no other responsible organization, have never said or implied that the prosecutors were in any way responsible for the bank and thrift failures. Justice's assertion that fraud was not a major factor in bank and thrift failures is not supported by evidence and does not comport with what either the President or Attorney General Thornburgh

[1]Bank and Thrift Fraud: Overview of the Federal Government's Response (GAO/T-GGD-92-12, Feb. 6, 1992).

said when announcing increases in Justice's financial institution fraud efforts. President Bush in June 1990 said "the most critical financial fraud problem we've faced is the . . . savings and loan crisis." And in December 1989, the Attorney General announced the attack on savings and loan fraud, saying:

"Wrongdoing in the savings and loan industry may turn out to be the biggest white-collar swindle in the history of our nation. . . . Our goal is to bring to justice all those who have sought to capitalize on the American dream of home ownership by cheating our citizens out of their savings and destroying the financial solvency of institutions designed to serve them. This uniquely sinister exercise in fraud and dishonesty may force the taxpayers to pick up a bill of more than $50 billion in defaults. Without a vigorous prosecutive effort, the serious problem of fraud and insider abuse might only worsen and could recur again."

The evidence also indicates that financial institution regulators believe criminal fraud was a major factor in failed savings and loans and that real estate was frequently involved. RTC criminal referral data show that alleged criminal fraud committed by directors, officers, or principal shareholders was present in 336 of the 723 RTC failed savings and loans for which information is available. Similar data from FDIC indicate that criminal referrals on former directors, officers, or principal shareholders were made involving nearly half of banks that failed in 1990 and 1991 (140 of 285).

5. This list contains only commonly used statutes in bank and thrift fraud investigations, not all possible statutes. The list was developed based on the most commonly used lead charges as indicated in the EOUSA database. The descriptions of the land flip and nominee loan were based on information provided by FBI and were included to generally illustrate examples of bank and thrift fraud illegal activity.

6. We have added a footnote (footnote 2, ch. 1) to qualify the estimated loss figure that is reported by the Department of Justice.

7. The report does not criticize individual prosecutors for their efforts to prosecute cases. We agree individual prosecutors and, we would add, individual investigators are doing a good job. But we believe the Justice Department and the government could do a better job of coordinating the overall response to bank and thrift fraud. In fact, Justice's comments themselves illustrate the lack of a cohesive government response. Specifically, Justice states that it has little say in the application of IRS CID resources, that the Justice Department was not consulted when additional

Secret Service resources were provided for bank and thrift fraud, and that the banking regulatory agencies are not being reimbursed for supporting criminal investigations. Although these facts are not the fault of the Justice Department, they do illustrate the point that the government's financial institution fraud response is not as cohesive as it could be.

8. We disagree that the leadership of the Department of Justice and the Special Counsel exceeds what Congress expected. For example, the Crime Control Act of 1990 called for the Special Counsel to ensure that adequate resources are devoted to the fight against financial institution fraud, but the Special Counsel has not assessed the adequacy of existing resources. Such an assessment is still needed.

9. We continue to believe that there has been a shift in strategy. The statements of the Attorney General and other Justice officials in 1989 and 1990 clearly indicated that Justice would form task forces around the country made up of Justice and non-Justice personnel. With the exception of task forces established in Dallas, New England, and San Diego, this has not been done.

10. We strongly believe that any government program, including those in Justice, needs clear objectives, goals, and criteria that can be used to measure progress. More than 3,000 individuals charged and 2,600 convicted are laudable accomplishments, but such data alone do not automatically make the program an unqualified success. Justice needs to examine other relevant data such as statistics indicating that, faced with continuing increases in bank and thrift fraud criminal referrals, Justice is declining larger numbers of cases. Also, problems exist in the collection of fines and restitution orders.

11. We are not diverting responsibility for the lack of IRS CID resources from Congress to Justice. We do believe, however, that the Special Counsel should determine how many IRS CID resources are needed to work with other Justice and non-Justice personnel to adequately pursue financial institution fraud and report that to Congress. Congress would then be in a better position to decide whether IRS CID needs additional resources to support criminal financial institution fraud investigations. On this question, the issue may involve the Special Counsel taking a proactive rather than reactive stance.

12. We disagree that Justice has carried out the recommendations we are making to the Attorney General (see p. 7). After receiving these comments,

we asked Justice for the information it had developed to respond to these recommendations. Justice had neither specific information that outlined the level of Justice and non-Justice personnel needed to adequately pursue financial institution fraud nor specific criteria that could be used to measure program effectiveness.

13. The points raised in this paragraph of Justice's comments are particularly disturbing. The assertions that we intentionally included inaccurate information in a report and that the report lacked objectivity because we provided it to Justice for comment 5 weeks before the presidential election are without basis. We maintain a high standard of assuring that our products are of the highest possible quality and that they accurately and objectively communicate the results of our work. On balance, most of our disagreements with the Special Counsel relate to conclusions rather than to a dispute on factual accuracy.

Chapter 1

14. The report generally includes this material in different sections of chapters 1 and 3.

15. We disagree that the report "purports" to link the increased resources provided following FIRREA and the Crime Control Act to caseloads of 1991 and 1992. The report clearly indicates in chapter 2 that FIRREA and the Crime Control Act added resources for Justice investigations and prosecutions in response to the increasing workload during the 1980s.

Chapter 2

16. We disagree that our analysis is selective, inaccurate, and incomplete. Because of the assignment's scope, we did not assess every aspect of the federal resource commitment to financial institution fraud. We did not express concern about Justice's training new special agents and attorneys; rather, we credited the Special Counsel with having coordinated training activities (see pp. 47 and 55).

17. We believe that we sufficiently characterized the Special Counsel's position on the adequacy of Justice's resources. Justice is correct in pointing out that the administration did ask for additional attorney resources for fiscal years 1992 and 1993. However, Justice's budget submissions to Congress said that those resources would be applied toward other crimes, not financial institution fraud. We have clarified the discussion in the text (see pp. 36-37).

18. Justice is correct in pointing out that we omitted a discussion of IRS' fiscal year 1992 budget request. We have revised the text to include the events of that year, that IRS requested increases for CID but none of those were specifically targeted toward financial institution fraud (see p. 36).

We agree with Justice's comment that IRS CID is not under the control of the Special Counsel of the Department of Justice. That is precisely the point: Resources needed to address the problem of financial institution fraud are not under the control of any one department or office.

We disagree with Justice that a memorandum of understanding between Justice and Treasury would not help. Such an agreement could specifically identify IRS CID resources that would be deployed to financial institution fraud.

In order to aid congressional deliberations over the need for more IRS CID resources, we recommended that the Special Counsel specifically identify non-Justice resources needed to adequately address financial institution fraud. This information coupled with data from Treasury could then be used by Congress to assess the overall need for additional CID resources.

19. As noted in the text, data on declinations are from both EOUSA and FBI. Neither Justice nor FBI disagreed with the facts and data. We believe that we adequately characterized the Special Counsel's position regarding declinations of major and nonmajor cases in chapter 5, where we note that Justice prosecuted approximately 35 percent of the major cases in fiscal year 1991 but that FBI closed the majority of its nonmajor investigations because of U.S. Attorney declinations.

20. The report's reference to "similar" investigations is meant only to refer to cases involving failed banks and those involving failed savings and loans. We have clarified the text (see p. 41) to prevent any other misunderstanding. Figure 2.3 illustrates the mix of FBI's investigation inventory.

21. As with the earlier IRS example, we are not criticizing Justice for its inability to exercise authority over the financial regulatory agencies. Rather, we are pointing out that no one department controls all the resources needed to address this issue, and we do not fault Justice for this.

Justice does not contest our earlier description of the reimbursement issue, in which we note that "other regulatory agencies would like to

receive reimbursement" from Justice (p. 52). In addition, we recognize the need for dedicated resources from all participating agencies, as we note in the matter for congressional consideration.

Again as with IRS CID resources, Congress would be in a much better position to assess regulatory resources needs if the Special Counsel specifically explained how many such resources would be adequate to address the financial institution fraud problem.

22. The data we used for FBI's resource allocation were the latest available when we drafted the report. We have revised the text to reflect the new data (p. 32 and app. IV).

Chapter 3

23. We do not believe that the government should always indict everyone named in a criminal referral. We never suggested that. Our conclusion that Justice approached the issue much like it has other enforcement matters is based on how it structured its approach and not on the number of resources applied or persons indicted.

24. We agree that Justice should not alter its professional investigative and prosecutorial standards simply because an issue is "hot," whether it is financial crime or carjacking. We do not believe that we "sensationalized" the financial institution fraud issue, and we recognize that Justice has long prosecuted financial fraud offenders. Reasonable people may disagree whether or not estimated losses already in excess of $11.5 billion attributable to major criminal financial institution fraud constitute a "crisis." We would point out, however, that Justice itself used the same descriptor on page 5 of its comments.

25. Justice is inconsistent in its position on whether the financial institution fraud program can be compared with any other effort. As we reported in chapter 5, the Special Counsel earlier told us that there were no other Justice enforcement programs against which the program could be compared (pp. 81-82). Justice now wants to compare the productivity of its financial institution fraud program with that of the OCDETF program. We believe that this comparison might provide valuable insights into structuring approaches to law enforcement issues, particularly given the task forces' structural differences. The absence of programs against which to compare the financial institution fraud effort was one of the main reasons we concluded that the program's results were difficult to evaluate.

26. These are among the factors we cited that limit Justice's ability to provide governmentwide direction and leadership to the issue. That Congress might add Secret Service resources without consulting Justice demonstrates the need for a governmentwide approach to the financial institution fraud problem.

27. Although we did not include an exhaustive list of the Special Counsel's activities, we believe that we fairly noted a partial list of his accomplishments (pp. 47-48), most of which we derived from Justice's quarterly reports to Congress. We have added some additional accomplishments. We credit him with having worked to improve coordination, communication, and reporting ability.

28. As a review of our oral and written statements to congressional committees will indicate, Justice is mistaken: We did not discuss the payment of restitution related to criminal bank and thrift fraud cases, other than to mention the total amount that had been collected to date, based on Justice data. (See GAO/T-GGD-92-12 and S. Hrg. 102-537.) It is true, however, that in setting criminal fines and restitution, federal judges are supposed to consider, among various factors, an individual's ability to pay. Justice's second quarter 1992 report recognizes that as well. See pages 4 and 21 of that report.

29. We had extensive interviews with senior-level officials from Justice, Treasury, and the regulatory agencies, as well as those most directly involved in the identification, investigation, and prosecution of financial institution fraud throughout the assignment. As a matter of policy, we discuss the preliminary results of assignments with cognizant agency officials before the release of any final product. Because we would have met with senior officials at each financial regulatory agency during that phase of the assignment, we assured the Special Counsel that we would be sure to solicit their opinions regarding the Office of Special Counsel. We included a summary of their comments on page 48.

30. We added additional activities of the Office of Special Counsel to the report (see pp. 47-48).

31. According to information supplied by EOUSA, of the 30 positions transferred from the Civil Division, Justice allocated 3 positions in fiscal year 1990, 23 positions in fiscal year 1991, and the remaining 4 positions in fiscal year 1992.

32. We have revised the text (see p. 54) to incorporate descriptions of these other communication and coordination mechanisms. Nevertheless, virtually all of Justice's financial institution fraud resources are under the direct control of the 93 independent U.S. Attorneys and FBI field offices, not the Special Counsel. The Special Counsel may participate in decisions about which locations should receive resources. Yet because his office does not directly control those resources, as he has frequently told us, he cannot personally ensure that adequate resources are made available to address major financial institution fraud.

33. We noted in chapter 3 that the Special Counsel participated in decisions regarding the allocation of Justice resources (see p. 47) and negotiated with Treasury officials for IRS resources (pp. 51-52). The U.S. Attorneys, not the Special Counsel, directly control their Assistant U.S. Attorneys, and CID resources are under the control of the IRS Regional Commissioners. Consequently, the Special Counsel must rely on other individuals for assigning adequate resources to investigations.

We did not "assert" that Justice lacks an evaluation program for its financial institution fraud program. The Special Counsel does receive some information on local activities, as we recognized on page 54. However, as discussed on pages 53-55, Justice's systematic efforts are rudimentary (e.g., whether or not the office has a financial institution fraud coordinator), providing little evaluative information and no information on which or to what extent non-Justice agencies are involved.

We recognize that Justice has dedicated attorneys and FBI special agents working on financial institution fraud. Contrary to what Justice says here (as it recognized on pages 7 and 8 of its comments, acknowledging the ". . . limited expert assistance available [from the regulatory agencies] to the criminal investigative process"), non-Justice agencies, including IRS, have no resources dedicated to identifying and investigating financial institution fraud. Our recommendation is directed toward meeting that apparent need.

34. We informed the Special Counsel when we transmitted this draft for comment that we were aware of a number of developments that had occurred since Justice last issued a report on financial institution fraud. The Senior Interagency Group's adoption of this policy was one such event. As noted in Justice's 1992 third quarterly report, the group adopted that policy on June 25, 1992, and Justice reported it in

mid-September 1992. We have revised the draft to add this updated information (see pp. 80-81).

Chapter 4

35. We were asked by the requester to find out the status of the task forces around the country following the Attorney General's announcement that 26 cities would receive new resources to fight financial institution fraud. The task forces were to be modeled after the Dallas Bank Fraud Task Force. We found one task force that resembled the Dallas model: the New England task force. In addition, we now recognize that a task force in San Diego was formed. However, San Diego was not one of the original 26 locations designated for a task force. The information presented in the report is just a statement of facts.

36. Our view that Justice appears to have shifted its strategy does not imply that Justice has a "hidden agenda" but that the structure of the financial institution fraud program was distinctly different from the task force concept announced by the Attorney General and exemplified by the Dallas model.

37. Our definition of task forces was provided by Justice officials. Justice and other agency officials who belong to working groups provided information on the composition, activities, and objectives of local working groups. The same officials explained that working groups do not investigate and prosecute cases but provide a forum for discussion, coordination, and cooperation.

38. Justice officials told us in March 1992 that the New England task force members were not co-located. The report has been revised to reflect Justice's description of the current status of the New England task force (pp. 61-62).

We told Justice officials when transmitting the draft report for comment that we would include information on the San Diego task force, which was created in June 1992 after we completed our field work. The report has been revised accordingly (see pp. 58 and 60-63). We noted that San Diego was not one of the locations originally targeted for a task force.

Our view that Justice's role in the formation of bank fraud working groups is unclear is based on interviews with Justice officials who belong to working groups. Members of working groups told us that they were

encouraged by Justice to join these groups but received no formal guidance or direction from Justice on the formation of the groups.

Chapter 5

39. Justice noted that its program should be measured on the number of indictments secured, convictions won, sentences imposed, and interagency relationships established or maintained. We believe that we adequately represented those accomplishments throughout the report.

However, the Special Counsel told us that the program had no specific goals and that there were no other programs or measures against which the program could be evaluated. (See pp. 81-82.) Lacking such measures, we are unable to assess whether Justice's having charged 3,500 defendants in major financial institution fraud since October 1, 1988, is good or bad. Other factors are important to a complete evaluation. For example, could more defendants have been charged if Dallas-type task forces were used throughout the nation? How important are the collection of fines and restitution, the length of sentences, and the declination rate? The statistics that Justice cites may be measures of accomplishment, but they are not evaluative. They address only part of the equation.

40. We developed this material from data supplied by Justice. These data did not indicate whether there were parallel proceedings ongoing with particular cases. We have added payment information where we could determine how much in fines and restitution the individuals have paid (see pp. 77-78).

41. We continue to believe that any program, especially one this large, needs goals, objectives, and performance criteria. For example, is the goal simply to clear out the case inventory? Does Justice prefer pleas to lesser charges or trials? What proportion of cases should go to trial? Should the program's goal be to deter future fraud? Should there be caseload targets or goals regarding the referral of cases to state and local enforcement agencies?

42. We have revised the text to note that the Special Counsel helped to negotiate the significant Bank of Credit and Commerce International settlement (see p. 47).

43. The information presented is factual in nature. No inferences were drawn or implications suggested.

The Declination Issue

44. We disagree. We believe that we have made every effort to properly characterize Justice's efforts. However, given that FBI data can be disaggregated only to certain levels and U.S. Attorneys' data cannot be disaggregated at all, further distinctions by either Justice or us would require a review of closed case files, including cases closed due to declination. It would be necessary to aggregate and categorize the dollar amounts to reach the specificity suggested by Justice officials. We could not do this because we were not permitted access to the necessary files. Given this limitation, we characterized Justice's efforts by pointing out the difference between investigations, prosecutions, and declinations of major and nonmajor cases using the level of detail provided by the records available.

The reference was to FBI data on the number of referrals received: Of the total number of referrals received by FBI in the first 10 months of fiscal year 1992, about 87 percent alleged frauds of less than $25,000. See table 2.2.

Justice's announced focus on major cases is a relatively new development that we have now included in the text. Nevertheless, according to information from FBI as of July 1992, nearly half of FBI's financial institution fraud investigation workload involved nonmajor investigations.

45. We made appropriate revisions to the product. See Bank and Thrift Criminal Fraud: Information on Justice's Investigations and Prosecutions (GAO/GGD-93-10FS, Oct. 5, 1992).

46. We are reporting the data on declinations as Justice and FBI recorded them. As noted in chapter 2, FBI categorizes each referral it receives into one of several categories, depending on its origin and size. FBI also labels each as an investigation and does not separately account for referrals with which it undertakes little, if any, activity. Thus, because neither FBI nor the Special Counsel can distinguish between the number of referrals and the number that result in full-fledged investigations, we can report only what data FBI records.

47. We refer to "financial institution fraud" in the same general context that Justice does when it issues its quarterly reports, titled Attacking Financial Institution Fraud.

48. We recognize that declinations may vary significantly among different U.S. Attorneys' offices and have incorporated the factors mentioned. At

the same time, however, Justice does not deny that certain areas of the country, such as the Los Angeles region, may be declining far larger numbers of cases more frequently because of resource shortages.

Conclusion

49. We agree with Justice's statement that "the business of prosecution is best understood by those who have devoted their career to improving the system," but we disagree that we cannot provide objective oversight of law enforcement programs. In fact, although the overall effort is one of law enforcement, competent and effective management is required, particularly for programs as critical as financial institution fraud. For several decades, we have reviewed Justice programs, reported our results to Congress, and recommended improvements to those programs. In many instances, Justice has taken actions to implement our recommendations.

50. We disagree that we did not consider a word of the scores of investigators and prosecutors we met with throughout the country. Quite the contrary, without the information we gathered at these locations, we would not have been able to describe the various working arrangements, both task forces and working groups, that existed around the country.

51. We did not reprint all of these attachments because we do not believe they added significantly to Justice's comments.

52. We adjusted the data on FBI agent allocations on page 31 and in appendix IV.

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