



**U.S. Department of Justice
Executive Office for United States Trustees**

**Report to Congress:
Criminal Referrals by the
United States Trustee Program
Fiscal Year 2008**

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

May 2009

TABLE OF CONTENTS

EXECUTIVE SUMMARY	1
INTRODUCTION	2
I. NUMBER AND TYPES OF CRIMINAL REFERRALS	3
II. OUTCOMES OF CRIMINAL REFERRALS	4
III. COMPARISON WITH CRIMINAL REFERRALS MADE IN PREVIOUS YEAR	7
IV. PROGRAM EFFORTS TO PREVENT BANKRUPTCY FRAUD AND ABUSE	7
SUMMARY	9

EXECUTIVE SUMMARY

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

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

The United States Trustee Program (USTP or Program) made 1,471 bankruptcy and bankruptcy-related criminal referrals during Fiscal Year (FY) 2008. This represents a 27 percent increase over the 1,163 criminal referrals made during FY 2007. The most common allegation contained in the FY 2008 criminal referrals involved false oaths or statements (42%), followed by concealment of assets (32%), bankruptcy fraud schemes (20%), tax fraud (20%), and identity theft or use of false/multiple Social Security numbers (20%).

Of the 1,471 criminal referrals, as of October 27, 2008, formal criminal charges had been filed in connection with 21 of the referrals, 990 of the referrals remained under review or investigation, and 460 of the referrals were declined for prosecution or administratively closed.

In FY 2008, the USTP participated in more than 50 local bankruptcy fraud and other specialized working groups and task forces in districts across the country; assisted in the investigation and prosecution of bankruptcy crimes by serving as Special Assistant U.S. Attorneys in cases and providing support as expert and fact witnesses; conducted training for nearly 1,000 Program staff, private panel trustees, and federal, state, and local law enforcement agents; participated in the nationwide Federal Bureau of Investigation (FBI) initiative titled

“Operation Malicious Mortgage” which targeted mortgage fraud schemes; and continued to review referrals received via the Program’s Internet email “hotline.”

INTRODUCTION

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

The USTP is the component of the Department of Justice whose mission is to promote the integrity and efficiency of the bankruptcy system by enforcing bankruptcy laws, providing oversight of private trustees, and maintaining operational excellence. The Program consists of 21 regions with 95 field offices nationwide and an Executive Office in Washington, DC. Each field office is responsible for carrying out numerous administrative, regulatory, and litigation responsibilities under title 11 (the Bankruptcy Code) and title 28 of the United States Code.^{1/}

The Program has a statutory duty to refer matters to the United States Attorneys’ offices (USAOs) for investigation and prosecution that “relate to the occurrence of any action which may constitute a crime.” 28 U.S.C. § 586(a)(3)(F). The statute also requires that each United States Trustee shall assist the United States Attorney in “carrying out prosecutions based on such action.” With the enactment of 18 U.S.C. § 158, which requires designation of a prosecutor and a Federal Bureau of Investigation (FBI) agent in each district to address bankruptcy-related

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

crimes, Congress reaffirmed the importance of the USAOs and the FBI working in cooperation with the Program to protect the integrity of the bankruptcy system.

I. NUMBER AND TYPES OF CRIMINAL REFERRALS

The Program tracks criminal referrals using its automated Criminal Enforcement Tracking System (CETS), which was implemented nationwide in FY 2005. Program personnel enter information into CETS that relates to each criminal referral, and are required to update information for each referral at least once every six months. The system is designed to provide an accurate measure of criminal enforcement actions, assist in trend identification, and facilitate management improvements.

In FY 2008, the Program made 1,471 bankruptcy and bankruptcy-related criminal referrals. Each referral may be sent to multiple agencies but is counted only once within CETS. Similarly, one referral may contain multiple allegations. The breadth of allegations involved in criminal referrals is evident in Table 1. The most common allegation contained within the 1,471 criminal referrals involved false oaths or statements (42%), followed by concealment of assets (32%), bankruptcy fraud schemes (20%), tax fraud (20%), and identity theft or use of false/multiple Social Security numbers (20%).

Table 1: Criminal Referrals by Type of Allegation		
Type of Allegation	Referrals	
	Number	Percent*
False Oath/Statement [18 U.S.C. § 152(2) and (3)]	620	42%
Concealment of Assets	477	32%
Bankruptcy Fraud Scheme [18 U.S.C. § 157]	296	20%
Tax Fraud [26 U.S.C. § 7201, et seq.]	290	20%
ID Theft/Use of False/Multiple SSNs	287	20%
Mortgage/Real Estate Fraud	190	13%
Perjury/False Statement	154	11%
Mail/Wire Fraud [18 U.S.C. §§ 1341 and 1343]	84	6%
Bank Fraud [18 U.S.C. § 1344]	70	5%
Forged Documents	62	4%
Concealment of Documents [18 U.S.C. § 152(8) and (9)]	51	4%
Sarbanes-Oxley [18 U.S.C. § 1519]	28	2%
Embezzlement [18 U.S.C. § 153]	25	2%
Post-Petition Receipt of Property [18 U.S.C. § 152(5)]	24	2%
Money Laundering	23	2%
Federal Program Fraud	22	2%
Credit Card Fraud/Bust-Out	19	1%
Serial Filer	14	1%
State Law Violation	14	1%
Criminal Contempt	12	<1%
Corporate Bust-Out/Bleed-Out	11	<1%
False Claim [18 U.S.C. § 152(4)]	11	<1%
False Statement/Report - Loan/Credit Application	10	<1%
Investor Fraud	10	<1%
Corporate Fraud	6	<1%
Disregard of Law by Preparer [18 U.S.C. § 156]	6	<1%
Conspiracy	5	<1%
Internet Fraud	5	<1%
Obstruction of Justice	5	<1%
Terrorism	5	<1%
Threat of Violence	6	<1%
Health Care Fraud	5	<1%
Immigration Offense	4	<1%
Professional Fraud	4	<1%
General False/Fraudulent Statement [18 U.S.C. § 1001]	3	<1%

Type of Allegation	Referrals	
	Number	Percent*
Insurance Fraud	2	<1%
Adverse Interest/Officer Conduct [18 U.S.C. § 154]	1	<1%
Bribery [18 U.S.C. § 152(6)]	1	<1%
Child Pornography	1	<1%
Counterfeiting	1	<1%
Espionage [18 U.S.C. § 792]	1	<1%
Extortion	1	<1%
False Impersonation	1	<1%
Fee Agreement/Cases Under Title 11 [18 U.S.C. § 155]	1	<1%
Kickbacks	1	<1%
Transportation of Stolen Goods	1	<1%
Unlawful Influence of Trustee	1	<1%
Uttering Counterfeit Obligations or Securities	1	<1%
Witness Tampering - Physical	1	<1%
* Percent based on 1,471 referrals. One referral often contains more than one allegation, so the sum of the percentages for referrals will exceed 100 percent.		

II. OUTCOMES OF CRIMINAL REFERRALS

Table 2 shows the collective outcome/disposition of the 1,471 criminal referrals made by the Program during FY 2008 as of October 27, 2008.^{2/} Of the 1,471 referrals, 990 referrals (67%) remain under investigation or review, 21 referrals (1%) have resulted in formal charges, 444 referrals (30%) were declined for prosecution, and 16 referrals (1%) were administratively closed.^{3/}

Table 2: Outcome/Disposition of FY 2008 Referrals (as of 10/27/08)		
Outcome/Disposition	Referrals	
	Number	Percent
Under Review in United States Attorneys' Office	790	54%
With Investigative Agency	200	14%
Formal Charges Filed (Case Active)	16	1%
Formal Charges Filed (Case Closed)	5	<1%
– At Least One Conviction or Guilty Plea	5	
– At Least One Pre-trial Diversion	0	
– At Least One Dismissal	0	
– At Least One Acquittal	0	
Prosecution Declined by United States Attorney	444	30%
Administratively Closed	16	1%
NOTE: (1) Outcome and disposition information will change over time. The information contained within Table 2 reflects information contained within CETS as of October 27, 2008. (2) Rounded percent based on 1,471 referrals.		

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

^{3/} Administratively closed referrals may still be under review/investigation by an agency (other than a USAO) that has not historically provided updates on case referrals. Because the referral has been open for a period of time and the USTP has not been able to verify the outcome/disposition, the case has been administratively closed. Referrals that are administratively closed may be reopened at a later date.

The 21 cases referenced in Table 2 where formal charges have been filed are prosecutions from October 1, 2007, to October 27, 2008, that originated from a FY 2008 referral as derived from CETS.^{4/} It is important to note that white-collar criminal referrals like those made by the Program often require significant time and resources to investigate. As a result, it generally takes more than two years before there is a reportable action in CETS. Therefore, it is reasonable to expect that a high percentage of cases referred in FY 2008 are still under investigation or review.

III. COMPARISON WITH CRIMINAL REFERRALS MADE IN PREVIOUS YEAR

As shown in Table 3, the number of criminal referrals made during FY 2008 represents a 27 percent increase over the number of referrals made in FY 2007.

FY 2007	FY 2008	Percent Change
1,163	1,471	27%

IV. PROGRAM EFFORTS TO PREVENT BANKRUPTCY FRAUD AND ABUSE

For each of the last three fiscal years, the Program has experienced significant and steady growth in the number of its bankruptcy and bankruptcy-related criminal referrals. Between FY 2005 and FY 2006, there was a 24 percent increase; between FY 2006 and FY 2007, a 26 percent increase; and between FY 2007 to FY 2008, a 27 percent increase. This growth reflects the Program’s commitment to identifying and referring for prosecution bankruptcy fraud and other crimes, and demonstrates that the systems it has in place to detect common, higher risk frauds are proving effective.

^{4/} Table 2 reflects only disposition information related to referrals made by the USTP in FY 2008. It does not reflect the entirety of prosecutions with bankruptcy charges brought by the Department of Justice in FY 2008. A reporting of all prosecutions would include those that originated from referrals made by the Program in prior fiscal years, as well as prosecutions related to referrals not made by the Program.

The Program's Criminal Enforcement Unit (CrEU), consisting primarily of former federal prosecutors who oversee and coordinate the Program's criminal enforcement efforts, has significantly strengthened the Program's ability to detect, refer, and assist in the prosecution of criminal violations. Through the issuance of guidance and resource materials, extensive training and educational opportunities (both in-person and via pre-recorded video), and collaborative efforts with our law enforcement partners, the Program has established the necessary systems to effectively combat fraud and abuse that threatens the integrity of the bankruptcy system.

Highlights of the Program's criminal enforcement efforts in FY 2008 include the following.

Bankruptcy Fraud and Other Specialized Working Groups and Task Forces. The Program is a member of the National Mortgage Fraud Working Group sponsored by Department's Criminal Division, and also participates in more than 50 local bankruptcy fraud working groups, mortgage fraud working groups, and other specialized task forces throughout the country. Members of these working groups and task forces include representatives from, among others, USAOs, FBI, United States Postal Inspection Service, Internal Revenue Service, Offices of the Inspector General for the Social Security Administration and the Department of Housing and Urban Development, United States Secret Service, and Immigration and Customs Enforcement.

Special Assistant United States Attorneys. Four experienced career prosecutors within the CrEU, plus about 25 attorneys in field offices across the country, are designated as Special Assistant U.S. Attorneys to assist USAOs in the prosecution of bankruptcy crimes. In addition, Program staff is often called upon to provide expert or fact testimony at trial.

Training. During FY 2008, the CrEU provided extensive bankruptcy fraud training and instruction at the National Bankruptcy Training Institute of the National Advocacy Center and throughout the country. This included a Criminal Fraud course for Program attorneys, as well as local and regional bankruptcy fraud training sessions for private panel trustees, Assistant United States Attorneys, and federal law enforcement personnel that reached nearly 1,000 people.

Special Operations. In June of 2008, the USTP participated in a nationwide FBI initiative titled “Operation Malicious Mortgage,” which focused primarily on three types of mortgage fraud schemes: lending fraud, foreclosure rescue scams, and mortgage-related bankruptcy schemes. Operation Malicious Mortgage resulted in 144 cases in which 406 defendants were charged in more than 50 judicial districts with mortgage fraud and related crimes. Amongst those prosecutions were cases that the USTP either had referred or had provided assistance in the criminal investigation.

Bankruptcy Fraud Internet “Hotline.” In FY 2008, the USTP documented 643 email submissions via its Internet bankruptcy fraud hotline.

SUMMARY

In FY 2008, the United States Trustee Program continued its focus on combating fraud and abuse in the bankruptcy system. The nearly 27 percent increase in the number of criminal referrals made during FY 2008 is attributable to the enhanced efforts of every Program office and the leadership and guidance of the CrEU. Through uniform internal controls, collaboration with our law enforcement partners, and training and education, the Program will continue its enforcement efforts in order to promote the integrity of the bankruptcy system.