



AMERICAN  
BANKRUPTCY  
INSTITUTE

# 2017 New York City Bankruptcy Conference

## Ethics Panel

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**Hon. Alan S. Trust**

*U.S. Bankruptcy Court (E.D.N.Y.)*



## New York City Bankruptcy Conference May 18, 2017                      Ethics Panel

- I. Introduction of the Panel members
- II. Introduction and Discussion of Ethics Topic: Bankruptcy Crimes
  - a. What constitutes a bankruptcy crime (examples from 18 USC 152 and 157)?
  - b. Theme of transparency and an honest and earnest system
  - c. Not victimless crimes
  - d. Self-policing aspect
  - e. How do cases get referred for prosecution?
  - f. UST procedures/hotline/investigations
- III. Overview of Emory Law Review Statistics
- IV. Ethical Obligations of Counsel when Criminal Behavior of Client is Suspected
  - a. When attorney suspects that client has committed a bankruptcy crime, what is he/she ethically obligated to do?
  - b. When attorney suspects that client is about to commit bankruptcy crime, what is he/she ethically obligated to do?
  - c. Does attorney doing nothing possibly rise to criminal behavior (accessory, conspiracy issues)?
- V. Bankruptcy Crime Referrals versus Sanctions or Other Bankruptcy Code/Rules-Authorized Punishments
  - a. The Bankruptcy Code and Bankruptcy Rules prescribe sanctions for certain actions. Rule 9011, Section 363(n).
  - b. When does conduct cross line from such sanctions to be criminal behavior?
- VI. Schedules and Proofs of Claim
  - a. Debtor required to file schedules and SOFA and sign attesting to the belief that information is true and correct
  - b. Creditors file proofs of claim which are signed attesting to the belief that information is true and correct
  - c. Both forms remind the filers that bankruptcy fraud is a crime
  - d. The quantum of scheduled claims never equals the quantum of filed claims. Is one side or the other or both committing bankruptcy crimes?
  - e. How reasonable does the belief need to be in the theory behind how the claim is listed? Intent and materiality.
  - f. Hypothetical – creditor files claim for \$1.0 million and reasonably believes claim amount is appropriate. A few months after filing the claim, the creditor discovers that there was a mistake in how the claim was calculated and it should have been filed for \$800,000. The debtor has not yet objected to claim. Creditor and attorney agree to not to do anything and will deal with it when debtor objects to claim. Problem? Suppose debtor has accepted claim before the error is noticed. Creditor and attorney agree not to inform debtor. Problem?
- VII. Common Scenarios that Could Give Rise to Bankruptcy Crimes
  - a. Review of Section 363 Sale Issues
    - Tampering
    - Process manipulation – rigging by insiders to prefer a bidder, junk data, the most interesting cases are a slippery slope (proof issues)
    - How does 363(m) protection work in situations where there could be criminal behavior?
  - b. Disclosure Issues in Retention of Counsel
    - Bucyrus – review what happened and importance of adequate disclosure.
- VIII. Crime Fraud Exception – discussion of recent crime fraud cases
  - a. Recent Cases
  - b. Different Circuit Court Tests
- IX. Forfeiture – Legal and Practical Considerations



New York City Bankruptcy Conference  
May 18, 2017 Ethics Panel

### Table of Exhibits

1. Bankruptcy Crime and Referral Statutes
2. United States Bankruptcy Court, Southern District of New York  
General Order Regarding Referrals
3. Excerpts – U.S. Trustee and USA Handbooks
4. USA Criminal Resource Manual
5. Study on Bankruptcy Crime Prosecutions, Emory Law Review
6. U.S. Trustee Reports on Criminal Referrals - 2014/2015
7. U.S. v. Gellene
8. Crime/Fraud Exception Cases
9. Forfeiture Statute

## Bankruptcy Crime and Referral Statutes

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New York City Bankruptcy Conference  
May 18, 2017 Ethics Panel

§ 151. Definition, 18 USCA § 151

United States Code Annotated
Title 18. Crimes and Criminal Procedure (Refs & Annos)
Part I. Crimes (Refs & Annos)
Chapter 9. Bankruptcy

18 U.S.C.A. § 151

§ 151. Definition

Currentness

As used in this chapter, the term "debtor" means a debtor concerning whom a petition has been filed under Title 11.

**CREDIT(S)**

(June 25, 1948, c. 645, 62 Stat. 689; Pub.L. 95-598, Title III, § 314(b)(1), Nov. 6, 1978, 92 Stat. 2676; Pub.L. 103-322, Title XXXIII, § 330008(5), Sept. 13, 1994, 108 Stat. 2143.)

18 U.S.C.A. § 151, 18 USCA § 151

Current through P.L. 115-22.

End of Document

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§ 152. Concealment of assets; false oaths and claims; bribery, 18 USCA § 152

United States Code Annotated
Title 18. Crimes and Criminal Procedure (Refs & Annos)
Part I. Crimes (Refs & Annos)
Chapter 9. Bankruptcy

18 U.S.C.A. § 152

§ 152. Concealment of assets; false oaths and claims; bribery

Effective: October 11, 1996

Currentness

A person who--

- (1) knowingly and fraudulently conceals from a custodian, trustee, marshal, or other officer of the court charged with the control or custody of property, or, in connection with a case under title 11, from creditors or the United States Trustee, any property belonging to the estate of a debtor;
- (2) knowingly and fraudulently makes a false oath or account in or in relation to any case under title 11;
- (3) knowingly and fraudulently makes a false declaration, certificate, verification, or statement under penalty of perjury as permitted under section 1746 of title 28, in or in relation to any case under title 11;
- (4) knowingly and fraudulently presents any false claim for proof against the estate of a debtor, or uses any such claim in any case under title 11, in a personal capacity or as or through an agent, proxy, or attorney;
- (5) knowingly and fraudulently receives any material amount of property from a debtor after the filing of a case under title 11, with intent to defeat the provisions of title 11;
- (6) knowingly and fraudulently gives, offers, receives, or attempts to obtain any money or property, remuneration, compensation, reward, advantage, or promise thereof for acting or forbearing to act in any case under title 11;
- (7) in a personal capacity or as an agent or officer of any person or corporation, in contemplation of a case under title 11 by or against the person or any other person or corporation, or with intent to defeat the provisions of title 11, knowingly and fraudulently transfers or conceals any of his property or the property of such other person or corporation;
- (8) after the filing of a case under title 11 or in contemplation thereof, knowingly and fraudulently conceals, destroys, mutilates, falsifies, or makes a false entry in any recorded information (including books, documents, records, and papers) relating to the property or financial affairs of a debtor; or
- (9) after the filing of a case under title 11, knowingly and fraudulently withholds from a custodian, trustee, marshal, or other officer of the court or a United States Trustee entitled to its possession, any recorded information (including books, documents, records, and papers) relating to the property or financial affairs of a debtor,

shall be fined under this title, imprisoned not more than 5 years, or both.

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**§ 152. Concealment of assets; false oaths and claims; bribery, 18 USCA § 152**

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**CREDIT(S)**

(June 25, 1948, c. 645, 62 Stat. 689; Pub.L. 86-519, § 2, June 12, 1960, 74 Stat. 217; Pub.L. 86-701, Sept. 2, 1960, 74 Stat. 753; Pub.L. 94-550, § 4, Oct. 18, 1976, 90 Stat. 2535; Pub.L. 95-598, Title III, § 314(a), (c), Nov. 6, 1978, 92 Stat. 2676, 2677; Pub.L. 100-690, Title VII, § 7017, Nov. 18, 1988, 102 Stat. 4395; Pub.L. 103-322, Title XXXIII, § 330016(1)(K), Sept. 13, 1994, 108 Stat. 2147; Pub.L. 103-394, Title III, § 312(a)(1)(A), Oct. 22, 1994, 108 Stat. 4138; Pub.L. 104-294, Title VI, § 601(a)(1), Oct. 11, 1996, 110 Stat. 3497.)

Notes of Decisions (1013)

18 U.S.C.A. § 152, 18 USCA § 152

Current through P.L. 115-22.

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§ 153. Embezzlement against estate, 18 USCA § 153

United States Code Annotated
Title 18. Crimes and Criminal Procedure (Refs & Annos)
Part I. Crimes (Refs & Annos)
Chapter 9. Bankruptcy

18 U.S.C.A. § 153

§ 153. Embezzlement against estate

Effective: October 11, 1996

Currentness

(a) **Offense.**--A person described in subsection (b) who knowingly and fraudulently appropriates to the person's own use, embezzles, spends, or transfers any property or secretes or destroys any document belonging to the estate of a debtor shall be fined under this title, imprisoned not more than 5 years, or both.

(b) **Person to whom section applies.**--A person described in this subsection is one who has access to property or documents belonging to an estate by virtue of the person's participation in the administration of the estate as a trustee, custodian, marshal, attorney, or other officer of the court or as an agent, employee, or other person engaged by such an officer to perform a service with respect to the estate.

**CREDIT(S)**

(June 25, 1948, c. 645, 62 Stat. 690; Pub.L. 95-598, Title III, § 314(a)(1), (d)(1), (2), Nov. 6, 1978, 92 Stat. 2676, 2677; Pub.L. 103-322, Title XXXIII, § 330016(1)(K), Sept. 13, 1994, 108 Stat. 2147; Pub.L. 103-394, Title III, § 312(a)(1)(A), Oct. 22, 1994, 108 Stat. 4139; Pub.L. 104-294, Title VI, § 601(a)(1), Oct. 11, 1996, 110 Stat. 3497.)

Notes of Decisions (21)

18 U.S.C.A. § 153, 18 USCA § 153

Current through P.L. 115-22.

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§ 154. Adverse interest and conduct of officers, 18 USCA § 154

United States Code Annotated
Title 18. Crimes and Criminal Procedure (Refs & Annos)
Part I. Crimes (Refs & Annos)
Chapter 9. Bankruptcy

18 U.S.C.A. § 154

§ 154. Adverse interest and conduct of officers

Effective: October 11, 1996

Currentness

A person who, being a custodian, trustee, marshal, or other officer of the court--

(1) knowingly purchases, directly or indirectly, any property of the estate of which the person is such an officer in a case under title 11;

(2) knowingly refuses to permit a reasonable opportunity for the inspection by parties in interest of the documents and accounts relating to the affairs of estates in the person's charge by parties when directed by the court to do so; or

(3) knowingly refuses to permit a reasonable opportunity for the inspection by the United States Trustee of the documents and accounts relating to the affairs of an estate in the person's charge,

shall be fined under this title and shall forfeit the person's office, which shall thereupon become vacant.

**CREDIT(S)**

(June 25, 1948, c. 645, 62 Stat. 690; Pub.L. 95-598, Title III, § 314(a)(2), (e)(1), (2), Nov. 6, 1978, 92 Stat. 2676, 2677; Pub.L. 103-322, Title XXXIII, § 330016(1)(G), Sept. 13, 1994, 108 Stat. 2147; Pub.L. 103-394, Title III, § 312(a)(1)(A), Oct. 22, 1994, 108 Stat. 4139; Pub.L. 104-294, Title VI, § 601(a)(1), Oct. 11, 1996, 110 Stat. 3497.)

Notes of Decisions (2)

18 U.S.C.A. § 154, 18 USCA § 154

Current through P.L. 115-22.

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§ 155. Fee agreements in cases under title 11 and receiverships, 18 USCA § 155

United States Code Annotated
Title 18. Crimes and Criminal Procedure (Refs & Annos)
Part I. Crimes (Refs & Annos)
Chapter 9. Bankruptcy

18 U.S.C.A. § 155

§ 155. Fee agreements in cases under title 11 and receiverships

Currentness

Whoever, being a party in interest, whether as a debtor, creditor, receiver, trustee or representative of any of them, or attorney for any such party in interest, in any receivership or case under title 11 in any United States court or under its supervision, knowingly and fraudulently enters into any agreement, express or implied, with another such party in interest or attorney for another such party in interest, for the purpose of fixing the fees or other compensation to be paid to any party in interest or to any attorney for any party in interest for services rendered in connection therewith, from the assets of the estate, shall be fined under this title or imprisoned not more than one year, or both.

**CREDIT(S)**

(June 25, 1948, c. 645, 62 Stat. 690; May 24, 1949, c. 139, § 4, 63 Stat. 90; Pub.L. 95-598, Title III, § 314(f)(1), (2), Nov. 6, 1978, 92 Stat. 2677; Pub.L. 103-322, Title XXXIII, § 330016(1)(K), Sept. 13, 1994, 108 Stat. 2147.)

Notes of Decisions (4)

18 U.S.C.A. § 155, 18 USCA § 155

Current through P.L. 115-22.

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§ 156. Knowing disregard of bankruptcy law or rule, 18 USCA § 156

United States Code Annotated
Title 18. Crimes and Criminal Procedure (Refs & Annos)
Part I. Crimes (Refs & Annos)
Chapter 9. Bankruptcy

18 U.S.C.A. § 156

§ 156. Knowing disregard of bankruptcy law or rule

Currentness

(a) Definitions.--In this section--

(1) the term "bankruptcy petition preparer" means a person, other than the debtor's attorney or an employee of such an attorney, who prepares for compensation a document for filing; and

(2) the term "document for filing" means a petition or any other document prepared for filing by a debtor in a United States bankruptcy court or a United States district court in connection with a case under title 11.

(b) Offense.--If a bankruptcy case or related proceeding is dismissed because of a knowing attempt by a bankruptcy petition preparer in any manner to disregard the requirements of title 11, United States Code, or the Federal Rules of Bankruptcy Procedure, the bankruptcy petition preparer shall be fined under this title, imprisoned not more than 1 year, or both.

**CREDIT(S)**

(Added Pub.L. 103-394, Title III, § 312(a)(1)(B), Oct. 22, 1994, 108 Stat. 4140; amended Pub.L. 109-8, Title XII, § 1220, Apr. 20, 2005, 119 Stat. 195.)

18 U.S.C.A. § 156, 18 USCA § 156

Current through P.L. 115-22.

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§ 157. Bankruptcy fraud, 18 USCA § 157

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United States Code Annotated
Title 18. Crimes and Criminal Procedure (Refs & Annos)
Part I. Crimes (Refs & Annos)
Chapter 9. Bankruptcy

18 U.S.C.A. § 157

§ 157. Bankruptcy fraud

Effective: December 22, 2010

Currentness

A person who, having devised or intending to devise a scheme or artifice to defraud and for the purpose of executing or concealing such a scheme or artifice or attempting to do so--

(1) files a petition under title 11, including a fraudulent involuntary petition under section 303 of such title;

(2) files a document in a proceeding under title 11; or

(3) makes a false or fraudulent representation, claim, or promise concerning or in relation to a proceeding under title 11, at any time before or after the filing of the petition, or in relation to a proceeding falsely asserted to be pending under such title,

shall be fined under this title, imprisoned not more than 5 years, or both.

**CREDIT(S)**

(Added Pub.L. 103-394, Title III, § 312(a)(1)(B), Oct. 22, 1994, 108 Stat. 4140; amended Pub.L. 109-8, Title III, § 332(c), Apr. 20, 2005, 119 Stat. 103; Pub.L. 111-327, § 2(b), Dec. 22, 2010, 124 Stat. 3562.)

Notes of Decisions (13)

18 U.S.C.A. § 157, 18 USCA § 157

Current through P.L. 115-22.

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§ 158. Designation of United States attorneys and agents of the..., 18 USCA § 158

United States Code Annotated
Title 18. Crimes and Criminal Procedure (Refs & Annos)
Part I. Crimes (Refs & Annos)
Chapter 9. Bankruptcy

18 U.S.C.A. § 158

§ 158. Designation of United States attorneys and agents of the Federal Bureau of Investigation to address abusive reaffirmations of debt and materially fraudulent statements in bankruptcy schedules

Currentness

(a) **In general.**--The Attorney General of the United States shall designate the individuals described in subsection (b) to have primary responsibility in carrying out enforcement activities in addressing violations of section 152 or 157 relating to abusive reaffirmations of debt. In addition to addressing the violations referred to in the preceding sentence, the individuals described under subsection (b) shall address violations of section 152 or 157 relating to materially fraudulent statements in bankruptcy schedules that are intentionally false or intentionally misleading.

(b) **United States attorneys and agents of the Federal Bureau of Investigation.**--The individuals referred to in subsection (a) are--

(1) the United States attorney for each judicial district of the United States; and

(2) an agent of the Federal Bureau of Investigation for each field office of the Federal Bureau of Investigation.

(c) **Bankruptcy investigations.**--Each United States attorney designated under this section shall, in addition to any other responsibilities, have primary responsibility for carrying out the duties of a United States attorney under section 3057.

(d) **Bankruptcy procedures.**--The bankruptcy courts shall establish procedures for referring any case that may contain a materially fraudulent statement in a bankruptcy schedule to the individuals designated under this section.

**CREDIT(S)**

(Added Pub.L. 109-8, Title II, § 203(b)(1), Apr. 20, 2005, 119 Stat. 49.)

18 U.S.C.A. § 158, 18 USCA § 158

Current through P.L. 115-22.

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§ 1519. Destruction, alteration, or falsification of records in..., 18 USCA § 1519

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United States Code Annotated
Title 18. Crimes and Criminal Procedure (Refs & Annos)
Part I. Crimes (Refs & Annos)
Chapter 73. Obstruction of Justice (Refs & Annos)

18 U.S.C.A. § 1519

§ 1519. Destruction, alteration, or falsification of records in Federal investigations and bankruptcy

Effective: July 30, 2002

Currentness

Whoever knowingly alters, destroys, mutilates, conceals, covers up, falsifies, or makes a false entry in any record, document, or tangible object with the intent to impede, obstruct, or influence the investigation or proper administration of any matter within the jurisdiction of any department or agency of the United States or any case filed under title 11, or in relation to or contemplation of any such matter or case, shall be fined under this title, imprisoned not more than 20 years, or both.

**CREDIT(S)**

(Added Pub.L. 107-204, Title VIII, § 802(a), July 30, 2002, 116 Stat. 800.)

Notes of Decisions (69)

18 U.S.C.A. § 1519, 18 USCA § 1519

Current through P.L. 115-22.

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§ 3284. Concealment of bankrupt's assets, 18 USCA § 3284

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United States Code Annotated
Title 18. Crimes and Criminal Procedure (Refs & Annos)
Part II. Criminal Procedure
Chapter 213. Limitations (Refs & Annos)

18 U.S.C.A. § 3284

§ 3284. Concealment of bankrupt's assets

Currentness

The concealment of assets of a debtor in a case under title 11 shall be deemed to be a continuing offense until the debtor shall have been finally discharged or a discharge denied, and the period of limitations shall not begin to run until such final discharge or denial of discharge.

**CREDIT(S)**

(June 25, 1948, c. 645, 62 Stat. 828; Pub.L. 95-598, Title III, § 314(k), Nov. 6, 1978, 92 Stat. 2678.)

Notes of Decisions (21)

18 U.S.C.A. § 3284, 18 USCA § 3284

Current through P.L. 115-22.

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§ 586. Duties; supervision by Attorney General, 28 USCA § 586

KeyCite Yellow Flag - Negative Treatment  
Proposed Legislation

United States Code Annotated
Title 28. Judiciary and Judicial Procedure (Refs & Annos)
Part II. Department of Justice (Refs & Annos)
Chapter 39. United States Trustees (Refs & Annos)

28 U.S.C.A. § 586

§ 586. Duties; supervision by Attorney General

Effective: December 22, 2010

Currentness

(a) Each United States trustee, within the region for which such United States trustee is appointed, shall--

(1) establish, maintain, and supervise a panel of private trustees that are eligible and available to serve as trustees in cases under chapter 7 of title 11;

(2) serve as and perform the duties of a trustee in a case under title 11 when required under title 11 to serve as trustee in such a case;

(3) supervise the administration of cases and trustees in cases under chapter 7, 11, 12, 13, or 15 of title 11 by, whenever the United States trustee considers it to be appropriate--

(A)(i) reviewing, in accordance with procedural guidelines adopted by the Executive Office of the United States Trustee (which guidelines shall be applied uniformly by the United States trustee except when circumstances warrant different treatment), applications filed for compensation and reimbursement under section 330 of title 11; and

(ii) filing with the court comments with respect to such application and, if the United States Trustee considers it to be appropriate, objections to such application;

(B) monitoring plans and disclosure statements filed in cases under chapter 11 of title 11 and filing with the court, in connection with hearings under sections 1125 and 1128 of such title, comments with respect to such plans and disclosure statements;

(C) monitoring plans filed under chapters 12 and 13 of title 11 and filing with the court, in connection with hearings under sections 1224, 1229, 1324, and 1329 of such title, comments with respect to such plans;

(D) taking such action as the United States trustee deems to be appropriate to ensure that all reports, schedules, and fees required to be filed under title 11 and this title by the debtor are properly and timely filed;

(E) monitoring creditors' committees appointed under title 11;



§ 586. Duties; supervision by Attorney General, 28 USCA § 586

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(F) notifying the appropriate United States attorney of matters which relate to the occurrence of any action which may constitute a crime under the laws of the United States and, on the request of the United States attorney, assisting the United States attorney in carrying out prosecutions based on such action;

(G) monitoring the progress of cases under title 11 and taking such actions as the United States trustee deems to be appropriate to prevent undue delay in such progress;

(H) in small business cases (as defined in section 101 of title 11), performing the additional duties specified in title 11 pertaining to such cases; and

(I) monitoring applications filed under section 327 of title 11 and, whenever the United States trustee deems it to be appropriate, filing with the court comments with respect to the approval of such applications;

(4) deposit or invest under section 345 of title 11 money received as trustee in cases under title 11;

(5) perform the duties prescribed for the United States trustee under title 11 and this title, and such duties consistent with title 11 and this title as the Attorney General may prescribe;

(6) make such reports as the Attorney General directs, including the results of audits performed under section 603(a) of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005;

(7) in each of such small business cases--

(A) conduct an initial debtor interview as soon as practicable after the date of the order for relief but before the first meeting scheduled under section 341(a) of title 11, at which time the United States trustee shall--

(i) begin to investigate the debtor's viability;

(ii) inquire about the debtor's business plan;

(iii) explain the debtor's obligations to file monthly operating reports and other required reports;

(iv) attempt to develop an agreed scheduling order; and

(v) inform the debtor of other obligations;

(B) if determined to be appropriate and advisable, visit the appropriate business premises of the debtor, ascertain the state of the debtor's books and records, and verify that the debtor has filed its tax returns; and

(C) review and monitor diligently the debtor's activities, to determine as promptly as possible whether the debtor will be

§ 586. Duties; supervision by Attorney General, 28 USCA § 586

unable to confirm a plan; and

(8) in any case in which the United States trustee finds material grounds for any relief under section 1112 of title 11, apply promptly after making that finding to the court for relief.

(b) If the number of cases under chapter 12 or 13 of title 11 commenced in a particular region so warrants, the United States trustee for such region may, subject to the approval of the Attorney General, appoint one or more individuals to serve as standing trustee, or designate one or more assistant United States trustees to serve in cases under such chapter. The United States trustee for such region shall supervise any such individual appointed as standing trustee in the performance of the duties of standing trustee.

(c) Each United States trustee shall be under the general supervision of the Attorney General, who shall provide general coordination and assistance to the United States trustees.

(d)(1) The Attorney General shall prescribe by rule qualifications for membership on the panels established by United States trustees under paragraph (a)(1) of this section, and qualifications for appointment under subsection (b) of this section to serve as standing trustee in cases under chapter 12 or 13 of title 11. The Attorney General may not require that an individual be an attorney in order to qualify for appointment under subsection (b) of this section to serve as standing trustee in cases under chapter 12 or 13 of title 11.

(2) A trustee whose appointment under subsection (a)(1) or under subsection (b) is terminated or who ceases to be assigned to cases filed under title 11, United States Code, may obtain judicial review of the final agency decision by commencing an action in the district court of the United States for the district for which the panel to which the trustee is appointed under subsection (a)(1), or in the district court of the United States for the district in which the trustee is appointed under subsection (b) resides, after first exhausting all available administrative remedies, which if the trustee so elects, shall also include an administrative hearing on the record. Unless the trustee elects to have an administrative hearing on the record, the trustee shall be deemed to have exhausted all administrative remedies for purposes of this paragraph if the agency fails to make a final agency decision within 90 days after the trustee requests administrative remedies. The Attorney General shall prescribe procedures to implement this paragraph. The decision of the agency shall be affirmed by the district court unless it is unreasonable and without cause based on the administrative record before the agency.

(e)(1) The Attorney General, after consultation with a United States trustee that has appointed an individual under subsection (b) of this section to serve as standing trustee in cases under chapter 12 or 13 of title 11, shall fix--

(A) a maximum annual compensation for such individual consisting of--

(i) an amount not to exceed the highest annual rate of basic pay in effect for level V of the Executive Schedule; and

(ii) the cash value of employment benefits comparable to the employment benefits provided by the United States to individuals who are employed by the United States at the same rate of basic pay to perform similar services during the same period of time; and

(B) a percentage fee not to exceed--

§ 586. Duties; supervision by Attorney General, 28 USCA § 586

- (i) in the case of a debtor who is not a family farmer, ten percent; or
- (ii) in the case of a debtor who is a family farmer, the sum of--
  - (I) not to exceed ten percent of the payments made under the plan of such debtor, with respect to payments in an aggregate amount not to exceed \$450,000; and
  - (II) three percent of payments made under the plan of such debtor, with respect to payments made after the aggregate amount of payments made under the plan exceeds \$450,000;
 based on such maximum annual compensation and the actual, necessary expenses incurred by such individual as standing trustee.
- (2) Such individual shall collect such percentage fee from all payments received by such individual under plans in the cases under chapter 12 or 13 of title 11 for which such individual serves as standing trustee. Such individual shall pay to the United States trustee, and the United States trustee shall deposit in the United States Trustee System Fund--
  - (A) any amount by which the actual compensation of such individual exceeds 5 per centum upon all payments received under plans in cases under chapter 12 or 13 of title 11 for which such individual serves as standing trustee; and
  - (B) any amount by which the percentage for all such cases exceeds--
    - (i) such individual's actual compensation for such cases, as adjusted under subparagraph (A) of paragraph (1); plus
    - (ii) the actual, necessary expenses incurred by such individual as standing trustee in such cases. Subject to the approval of the Attorney General, any or all of the interest earned from the deposit of payments under plans by such individual may be utilized to pay actual, necessary expenses without regard to the percentage limitation contained in subparagraph (d)(1)(B) of this section.
- (3) After first exhausting all available administrative remedies, an individual appointed under subsection (b) may obtain judicial review of final agency action to deny a claim of actual, necessary expenses under this subsection by commencing an action in the district court of the United States for the district where the individual resides. The decision of the agency shall be affirmed by the district court unless it is unreasonable and without cause based upon the administrative record before the agency.
- (4) The Attorney General shall prescribe procedures to implement this subsection.
- (f)(1) The United States trustee for each district is authorized to contract with auditors to perform audits in cases designated by the United States trustee, in accordance with the procedures established under section 603(a) of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005.
- (2)(A) The report of each audit referred to in paragraph (1) shall be filed with the court and transmitted to the United States

**§ 586. Duties; supervision by Attorney General, 28 USCA § 586**

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trustee. Each report shall clearly and conspicuously specify any material misstatement of income or expenditures or of assets identified by the person performing the audit. In any case in which a material misstatement of income or expenditures or of assets has been reported, the clerk of the district court (or the clerk of the bankruptcy court if one is certified under section 156(b) of this title) shall give notice of the misstatement to the creditors in the case.

(B) If a material misstatement of income or expenditures or of assets is reported, the United States trustee shall--

(i) report the material misstatement, if appropriate, to the United States Attorney pursuant to section 3057 of title 18; and

(ii) if advisable, take appropriate action, including but not limited to commencing an adversary proceeding to revoke the debtor's discharge pursuant to section 727(d) of title 11.

**CREDIT(S)**

(Added Pub.L. 95-598, Title II, § 224(a), Nov. 6, 1978, 92 Stat. 2663; amended Pub.L. 99-554, Title I, § 113, Oct. 27, 1986, 100 Stat. 3091; Pub.L. 101-509, Title V, § 529 [Title I, § 110(a)], Nov. 5, 1990, 104 Stat. 1427, 1452; Pub.L. 103-394, Title II, § 224(a), Title V, § 502, Oct. 22, 1994, 108 Stat. 4130, 4147; Pub.L. 109-8, Title IV, § 439, Title VI, § 603(b), Title VIII, § 802(c)(3), Title XII, § 1231, Apr. 20, 2005, 119 Stat. 113, 122, 146, 201; Pub.L. 111-327, § 2(c)(3), Dec. 22, 2010, 124 Stat. 3563.)

Notes of Decisions (87)

28 U.S.C.A. § 586, 28 USCA § 586  
Current through P.L. 115-22.

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§ 3057. Bankruptcy investigations, 18 USCA § 3057

United States Code Annotated
Title 18. Crimes and Criminal Procedure (Refs & Annos)
Part II. Criminal Procedure
Chapter 203. Arrest and Commitment

18 U.S.C.A. § 3057

§ 3057. Bankruptcy investigations

Currentness

(a) Any judge, receiver, or trustee having reasonable grounds for believing that any violation under chapter 9 of this title or other laws of the United States relating to insolvent debtors, receiverships or reorganization plans has been committed, or that an investigation should be had in connection therewith, shall report to the appropriate United States attorney all the facts and circumstances of the case, the names of the witnesses and the offense or offenses believed to have been committed. Where one of such officers has made such report, the others need not do so.

(b) The United States attorney thereupon shall inquire into the facts and report thereon to the judge, and if it appears probable that any such offense has been committed, shall without delay, present the matter to the grand jury, unless upon inquiry and examination he decides that the ends of public justice do not require investigation or prosecution, in which case he shall report the facts to the Attorney General for his direction.

**CREDIT(S)**

(June 25, 1948, c. 645, 62 Stat. 818; May 24, 1949, c. 139, § 48, 63 Stat. 96; Pub.L. 95-598, Title III, § 314(i), Nov. 6, 1978, 92 Stat. 2677.)

Notes of Decisions (16)

18 U.S.C.A. § 3057, 18 USCA § 3057

Current through P.L. 115-22.

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**United States Bankruptcy Court  
Southern District of New York  
General Order Regarding Referrals**



New York City Bankruptcy Conference  
May 18, 2017 Ethics Panel

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
In re: :  
: General Order M-313  
GENERAL ORDER REGARDING :  
CRIMINAL REFERRALS OF CERTAIN :  
BANKRUPTCY CRIMES. :  
-----X

WHEREAS, the Bankruptcy Abuse and Prevention and Consumer Protection Act of 2005 enacted section 158 of title 28 regarding, inter alia, the designation of certain individuals within the Department of Justice with primary responsibility for carrying out enforcement activities in addressing violations of 18 U.S.C. §§ 152 and 157 relating to abusive reaffirmations of debt or materially fraudulent statements in bankruptcy schedules that are intentionally false or intentionally misleading; and

WHEREAS, 18 U.S.C. § 158(d) directs the bankruptcy courts to establish procedures for referring any case that may contain a materially fraudulent statement in a bankruptcy schedule to the individuals designated under 18 U.S.C. § 158; it is hereby

ORDERED, that in addition to the obligations imposed under 18 U.S.C. § 3057, any person having reasonable grounds to believe that a bankruptcy schedule contains a materially fraudulent statement in violation of 18 U.S.C. §§ 152 or 157 shall report such violation to one or more of the individuals designated under 18 U.S.C. § 158 by completing the attached referral form or otherwise providing the same information in writing.

Dated: New York, New York  
November 30, 2005

/s/ Stuart M. Bernstein  
STUART M. BERNSTEIN  
Chief United States Bankruptcy Judge

**AMERICAN BANKRUPTCY INSTITUTE**

**United States Bankruptcy Court for the  
Southern District of New York**

**NOTIFICATION STATEMENT  
REGARDING POTENTIAL  
VIOLATION OF 18 U.S.C. § 152 OR 157**

TO: \_\_\_\_\_ POSITION: \_\_\_\_\_  
FROM: \_\_\_\_\_ TITLE (if any): \_\_\_\_\_  
DATE: \_\_\_\_\_ SIGNATURE \_\_\_\_\_

1. Background Information

- a. Name of Debtor \_\_\_\_\_
  - i. Case number \_\_\_\_\_
  - ii. Debtor's Address \_\_\_\_\_
  - iii. Debtor's Telephone no. \_\_\_\_\_
- b. Debtor's Attorney \_\_\_\_\_
  - i. Address \_\_\_\_\_
  - ii. Telephone no. \_\_\_\_\_
- c. Name of Trustee (if any) \_\_\_\_\_
  - i. Address \_\_\_\_\_
  - ii. Telephone no. \_\_\_\_\_

2. Case Chapter

- a. Under what chapter was the case originally filed: 7 ( ); 11 ( ); 12 ( ); 13 ( )
- b. Under what chapter is the case now pending: 7 ( ); 11 ( ); 12 ( ); 13 ( )



- c. Type of Case: Voluntary ( ); Involuntary ( )
- 3. Report all facts and circumstances of the offense or offenses believed to have been committed (provide as complete a description as possible), including the following:
  - a. Identify the schedule that contains the materially fraudulent statement.
  - b. Explain why the statement is materially fraudulent.
  - c. Provide the names, addresses, and telephone numbers of personas with knowledge of an information relating to the suspected offense.
  - d. Disclose any other pertinent information regarding the suspected offense.

## Excerpts – U.S. Trustee and USA Handbooks

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New York City Bankruptcy Conference  
May 18, 2017 Ethics Panel

U.S. DEPARTMENT OF JUSTICE  
EXECUTIVE OFFICE FOR UNITED STATES TRUSTEES

## HANDBOOK FOR CHAPTER 7 TRUSTEES

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Effective October 1, 2012

**9) REFERRAL OF POTENTIAL BANKRUPTCY CRIMES**

**a. DETECTING CRIMINAL ACTIVITY**

The trustee is often in the best position to initially identify fraud or criminal activity in chapter 7 cases. When criminal activity is suspected, the trustee must notify the United States Trustee immediately. 18 U.S.C. § 3057.

The initial review of bankruptcy schedules may alert the trustee to potential crimes. Schedules and statements may indicate sham or fraudulent transactions, such as creation of false secured creditors, gross undervaluation of assets, sudden depletion of inventory, fraudulent transfers to fictitious entities (e.g., affiliates), credit bust outs, real estate fraud, or identity theft.

Creditors and other parties may contact the trustee with allegations of fraud. For example, former employees may have knowledge of undisclosed assets that the debtor failed to list on the schedules (e.g., assets transferred on the eve of bankruptcy). Ex-spouses or trade creditors may disclose information about assets which the debtor failed to list on the bankruptcy schedules.

The meeting of creditors is an important opportunity to discover potential criminal activity. During this meeting, and while the debtor is under oath, the trustee may acquire or develop facts that may indicate a potential bankruptcy related crime. For example, the debtor may lie during questioning about recent repayments of debts, gifts or transfers to insiders. In all cases where the trustee suspects criminal activity, the trustee must immediately notify the United States Trustee so that the recording of the meeting of creditors may be properly secured and stored to preserve its later use in a criminal proceeding. 28 U.S.C. § 586.

The trustee may also discover potential criminal violations through the review of records such as financial statements and records, UCC filings and title searches, insurance records, divorce files, bank loan files, proofs of claim and tax returns. It is not infrequent to discover gross discrepancies between assets identified in these documents and the debtor's documentation on the bankruptcy schedules and statements.

**b. TYPES OF CRIMINAL CONDUCT**

The most common bankruptcy crimes are set forth in section 152 of title 18. That section makes it a crime for any individual to "knowingly and fraudulently:"

- 1) Conceal property of the estate;
- 2) Make a false oath or account in relation to a bankruptcy case;
- 3) Make a false declaration, certification, verification or statement in relation to a bankruptcy case;
- 4) Make a false proof of claim;

- 5) Receive a material amount of property from the debtor with intent to defeat the Bankruptcy Code;
- 6) Give, offer, receive or attempt to obtain money, property, reward or advantage for acting or forbearing to act in a bankruptcy case;
- 7) Transfer or conceal property with the intent to defeat the Bankruptcy Code;
- 8) Conceal, destroy, mutilate or falsify documents relating to the debtor's property or affairs; or
- 9) Withhold documents related to the debtor's property or financial affairs from a trustee or other officer of the court.

Persons other than the debtor may commit bankruptcy crimes. During the course of the administration of the estate, the trustee also may become aware of potential theft or embezzlement by professionals (e.g., appraisers, auctioneers, attorneys) or by the trustee's employees.

Sections 153 and 154 of title 18 are specifically directed to trustees and other officers of the court. Section 153 relates to the knowing and fraudulent misappropriation, embezzlement or transfer of property, or destruction of any estate document, by the trustee or other officer of the court, including an agent, employee or other person engaged by the trustee or officer of the court. 18 U.S.C. §§ 153, 154.

Section 154 of title 18 prohibits a trustee or other officer of the court from knowingly purchasing, directly or indirectly, any property of the estate of which such person is a trustee or officer; or the knowing refusal to permit a reasonable opportunity for the inspection of estate documents or accounts when directed by the court to do so. It also specifically identifies the United States Trustee as the only party in interest who does not require a court order directing the trustee or court officer to permit a reasonable opportunity for inspection. 18 U.S.C. § 154(3).

Section § 155 of title 18 makes it a crime for any party in interest or its attorney to knowingly and fraudulently enter into an agreement with another party in interest or its attorney, for the purpose of fixing the fee or compensation to be paid to them for services rendered in connection therewith, from assets of the estate. 18 U.S.C. § 155.

Under section 156 of title 18, a "bankruptcy petition preparer" is guilty of a misdemeanor if its knowing attempt to disregard in any manner the requirements of the Bankruptcy Code or Rules causes a bankruptcy case or related proceeding to be dismissed. 18 U.S.C. § 156. A bankruptcy petition preparer does not include a debtor's attorney or an employee of such attorney, but applies to a person who prepares for compensation a document for filing by a debtor in bankruptcy or district court.

Section 157 of title 18 is similar to the federal mail fraud and wire fraud statutes in that it requires a showing of intent to devise or intent to devise a scheme or artifice to defraud. A person, not only a debtor, commits bankruptcy fraud if, for the purpose of executing or concealing this scheme or artifice to defraud, that person:

- 1) Files a petition under title 11;
- 2) Files a document in a proceeding under title 11; or
- 3) Makes a false or fraudulent representation, claim, or promise concerning or in relation to a proceeding under title 11, at any time before or after the filing of the petition, or in relation to a proceeding falsely asserted to be pending under such title. 18 U.S.C. § 157. If a person falsely claims to be in bankruptcy, this is a violation of section 157.

The Sarbanes-Oxley Act of 2002, created 18 U.S.C. § 1519. Section 1519 covers the alteration, destruction or falsification of records, documents or tangible objects, by any person, with intent to impede, obstruct or influence, the investigation or proper administration of any “matters” within the jurisdiction of any department or agency of the United States, or any bankruptcy proceeding, or in relation to or contemplation of any such matter or proceeding. It provides:

“Whoever knowingly alters, destroys, mutilates, conceals, covers up, falsifies, or makes a false entry in any record, document, or tangible object with the intent to impede, obstruct, or influence the investigation or proper administration of any matter within the jurisdiction of any department or agency of the United States or any case filed under title 11, or in relation to or contemplation of any such matter or case, shall be fined under this title, imprisoned not more than 20 years, or both.”

There are several other criminal statutes that may be relevant to bankruptcy related crimes including those relating to bank fraud, tax fraud, mail and wire fraud, and money laundering. The trustee should consult with the United States Trustee if additional information and training on these statutes is needed.

**c. COMPLIANCE WITH TRUSTEE’S DUTY TO REPORT CRIMINAL CONDUCT**

Section 3057 of title 18 of the United States Code requires the trustee to report suspected violations of federal criminal law to the appropriate United States Attorney. Section 586 of title 28 imposes a similar duty on the United States Trustee to refer any matter that may constitute a violation of criminal law to the United States Attorney and, upon request, to assist the United States Attorney in prosecuting the matter. This statutory obligation does not provide for the referral of only those matters which will be prosecuted or for which there is proof beyond a reasonable doubt. Nor is it subject to any thresholds or guidelines established by the United States Attorneys’ offices.

Accordingly, the trustee should continue to refer to the United States Trustee matters which relate to any action which the trustee believes may constitute a crime. It is important that the trustee and the United States Trustee coordinate their efforts in the criminal referral process. Upon determining that there are reasonable grounds to believe that a crime has been committed, the trustee is required to refer the matter to the United States Attorney. Depending upon local practice, the trustee must submit the referral through the United States Trustee or furnish a copy to the United States Trustee. 28 U.S.C. § 586. The mechanics of this referral be discussed with the United States Trustee or the Assistant United States Trustee, as they may have developed specific procedures with the local offices of the United States Attorney, the Federal Bureau of Investigation, and other law enforcement agencies.

In making a criminal referral it is important to promptly provide as much specific factual and documentary information as possible. At a minimum, the referral must include:

- 1) The bankruptcy case name, file number and chapter;
- 2) A chronological summary including dates and specific facts related to the who, what, where, when and how of the suspected crime;
- 3) A brief narrative of what occurred in relation to each allegation referring to copies of relevant documents;
- 4) An estimate of the amount of loss involved;
- 5) Names, addresses, phone numbers, titles, and descriptions of likely witnesses;
- 6) A copy of all written documents relevant to the allegations; and
- 7) A statement of other related referrals made to law enforcement agencies.

28 U.S.C. § 586

U.S. Department of Justice

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# CHAPTER 11 TRUSTEE HANDBOOK



*May 2004*

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Bankr. P. 2003(e). Finally, the United States Trustee may call a special meeting of creditors on request of a party in interest or on the United States Trustee's own initiative. Fed. R. Bankr. P. 2003(f).

If a chapter 11 trustee is appointed prior to the conclusion of the § 341 meeting of creditors, the chapter 11 trustee has an immediate opportunity to conduct an examination of the debtor or the debtor's principals, under oath, at the creditors' meeting. If, however, the trustee is appointed after the § 341 meeting has been concluded, the trustee may request that the United States Trustee convene a special meeting of creditors. *See* Fed. R. Bankr. P. 2003(f). In addition, the trustee should carefully review the recordings of all meetings conducted prior to the trustee's appointment.

Alternatively, the trustee may seek court approval to examine the debtor, or any other entity, pursuant to Bankruptcy Rule 2004. *See* Fed. R. Bankr. P. 2004. A Rule 2004 examination "may relate only to the acts, conduct, or property or to the liabilities and financial condition of the debtor, or to any matter which may affect the administration of the debtor's estate, or to the debtor's right to a discharge . . . [or] to the operation of any business and the desirability of its continuance, the source of any money or property acquired or to be acquired by the debtor for purposes of consummating a plan and the consideration given or offered therefor, and any other matter relevant to the case or to the formulation of a plan." Fed. R. Bankr. P. 2004(b).

#### **D. CONTROL AND PRESERVATION OF PROPERTY**

Upon court approval of the trustee appointment, it is imperative that the chapter 11 trustee secure the assets of the estate. The trustee must immediately assume control of all bank accounts held in the name of the debtor, whether or not they are designated as "debtor in possession" accounts, *see* Chapter 7, *infra*; identify, secure, and ascertain the value of the assets of the estate; review and implement internal controls of an operating debtor to safeguard assets; obtain and/or maintain adequate and appropriate insurance coverages, *see* Chapter 7, *infra*; and determine whether the initial bond set by the United States Trustee is sufficient to protect the estate against loss. *See* Chapter 3, *supra*. Monitoring insurance and bond coverage is an ongoing duty of the trustee. If a loss occurs as a result of a trustee's failure to ensure or otherwise protect property of the estate, the trustee could be liable.

#### **E. BANKRUPTCY CRIMES**

Chapter 11 trustees are often appointed after a judicial finding of "cause, including fraud, dishonesty, incompetence, or gross mismanagement of the affairs of the debtor by current management, either before or after the commencement of the case." 11 U.S.C. § 1104(a)(1). After the trustee assumes control of the debtor, it is the trustee's duty to investigate the affairs of the debtor and the status of the case. *See* 11 U.S.C. § 1106(a)(3). To the extent that the trustee either

discovers or verifies the existence of fraudulent activity, the trustee should notify the United States Trustee immediately.

### **1. Duty to Report Criminal Conduct**

Unless a judge or receiver has already made such report, 18 U.S.C. § 3057 requires a trustee to report suspected violations of federal criminal law to the appropriate United States Attorney. Section 586 of title 28 imposes a similar duty on the United States Trustee to refer any matter that may constitute a violation of criminal law to the United States Attorney and, upon request, to assist the United States Attorney in prosecuting the matter. 28 U.S.C. § 586(a)(3)(F).

A chapter 11 trustee should coordinate efforts with the United States Trustee in the criminal referral process. As noted above, if the trustee has reasonable grounds to believe that a crime has been committed, the trustee is required to refer the matter to the United States Attorney. 18 U.S.C. § 3057(a). However, depending on local practice, the trustee should either submit the referral through the United States Trustee or provide a copy of the referral to the United States Trustee. The mechanics of the actual referral should be discussed with the United States Trustee, the Assistant United States Trustee, or the Regional Criminal Coordinator for the Criminal Enforcement Unit, as they have developed specific procedures with the local offices of the United States Attorney and the Federal Bureau of Investigation.

In making a criminal referral, it is important to provide specific factual and documentary information. At a minimum, the referral should include:

- the bankruptcy case name, file number, and chapter;
- a chronological summary, including dates and specific facts related to the who, what, where, when, and how of the suspected crime;
- a brief narrative of what occurred in relation to each allegation, referring to copies of relevant documents;
- an estimate of the amount of loss involved;
- names, addresses, phone numbers, titles, and descriptions of likely witnesses;
- copies of all written documents relevant to the allegations; and
- a statement of other related referrals made to law enforcement agencies.

### **2. Types of Criminal Conduct**

The most common bankruptcy crimes are set forth in 18 U.S.C. § 152. Section 152 makes it a crime for any individual to "knowingly and fraudulently" (1) conceal property of the estate; (2) make a false oath or account in relation to a bankruptcy case; (3) make a false declaration, certification, verification, or statement in relation to a bankruptcy case; (4) make a false proof of claim; (5) receive a material amount of property from the debtor with intent to defeat the Bankruptcy Code; (6) give, offer, receive, or attempt to obtain money, property, reward, or

advantage for acting or forbearing to act in a bankruptcy case; (7) transfer or conceal property with the intent to defeat the Bankruptcy Code; (8) conceal, destroy, mutilate, or falsify documents relating to the debtor's property or affairs; or (9) withhold documents related to the debtor's property or financial affairs from a trustee or other officer of the court. 18 U.S.C. § 152.

Persons other than the debtor, the debtor's principals, or the debtor's management may commit bankruptcy crimes. For example, a chapter 11 trustee may discover potential theft or embezzlement by professionals employed by the debtor, or by the debtor's employees.

Sections 153 and 154 of title 18 are specifically directed to trustees and other officers of the court. Section 153 relates to the knowing and fraudulent misappropriation, embezzlement, or transfer of property, or destruction of any estate document, by the trustee or other officer of the court. The Bankruptcy Reform Act of 1994, Pub. L. 103-394, 108 Stat. 4106, 4139 (1994), broadened the scope of those affected by this statute to include an agent, employee, or other person engaged by the trustee or officer of the court.

Section 154 of title 18 prohibits a trustee or other officer of the court from knowingly purchasing, directly or indirectly, any property of the estate of which such person is a trustee or officer; or from knowingly refusing to permit a reasonable opportunity for the inspection of estate documents or accounts when directed by the court to do so. It also specifically identifies the United States Trustee as the only party in interest who does not require a court order directing the trustee or court officer to permit a reasonable opportunity for inspection. 18 U.S.C. § 154(3).

Section 155 of title 18 makes it a crime for any party in interest or its attorney to knowingly and fraudulently enter into an agreement with another party in interest or its attorney, for the purpose of fixing the fee or compensation to be paid them for services rendered in connection therewith, from assets of the estate. 18 U.S.C. § 155.

The Bankruptcy Reform Act of 1994 added 18 U.S.C. § 156, "Knowing Disregard of Bankruptcy Law or Rule," and 18 U.S.C. § 157, "Bankruptcy Fraud." See Pub. L. 103-394, 108 Stat. 4106, 4140 (1994). Section 156 makes it a misdemeanor if a bankruptcy case or related proceeding is dismissed because of a knowing attempt by a "bankruptcy petition preparer" in any manner to disregard the requirements of the Bankruptcy Code or the Federal Bankruptcy Rules. 18 U.S.C. § 156. The term "bankruptcy petition preparer" does not include the debtor's attorney or an employee of the debtor's attorney, but applies to a person who prepares for compensation a document for filing by a debtor in bankruptcy court or district court. 11 U.S.C. § 110(a).

Section 157 is similar to the federal mail fraud and wire fraud statutes in that it requires a person to devise or intend to devise a scheme or artifice to defraud. A person, not only a debtor, commits bankruptcy fraud if, for the purpose of executing or concealing this scheme or artifice to defraud, that person:

- (1) files a petition under title 11;
- (2) files a document in a proceeding under title 11; or
- (3) makes a false or fraudulent representation, claim, or promise concerning or in relation to a proceeding under title 11, at any time before or after the filing of the petition, or in relation to a proceeding falsely asserted to be pending under such title.

See 18 U.S.C. § 157.

If a person falsely claims to be in bankruptcy, this is a violation of § 157.

Further, the Sarbanes-Oxley Act of 2002, Pub. L. 107-204, 116 Stat. 745 (2000), added 18 U.S.C. § 1519, making the “destruction, alteration, or falsification of records in federal investigations and bankruptcy” a felony. Under § 1519,

Whoever knowingly alters, destroys, mutilates, conceals, covers up, falsifies, or makes a false entry in any record, document, or tangible object with the intent to impede, obstruct, or influence the investigation or proper administration of any matter within the jurisdiction of any department or agency of the United States or any case filed under title 11, or in relation to or contemplation of any such matter or case, shall be fined under this title, imprisoned not more than 20 years, or both.

18 U.S.C. § 1519.

There are several other criminal statutes that may be relevant to bankruptcy crimes including those relating to bank fraud, tax fraud, mail and wire fraud, and money laundering.

U.S. Attorneys' Manual 9-41.010 (U.S.A.M.), 1997 WL 1944742

UNITED STATES DEPARTMENT OF JUSTICE

UNITED STATES ATTORNEYS' MANUAL

TITLE 9 - CRIMINAL DIVISION

CHAPTER 9-41.000 BANKRUPTCY FRAUD

2009

9-41.010 Report of Violations of Bankruptcy Fraud

\*1 Section 3057(a) of Title 18, United States Code, requires a judge, receiver or trustee having reasonable grounds for believing that any violation of laws of the United States relating to insolvent debtors, receiverships or reorganization plans has been committed, to report all the facts and circumstances to the appropriate United States Attorney (USA). Upon receipt of this report, the USA determines whether an investigation should be commenced; and upon completion of this investigation, the USA decides whether criminal action is warranted. A report by a judge, receiver or trustee of possible violations is not a condition precedent to the initiation of an investigation.

When a matter referred to the USA pursuant to 18 U.S.C. § 3057(a) by a judge, receiver or trustee is declined, 18 U.S.C. § 3057(b) requires that the USA "report the facts of the case to the Attorney General for his direction." This statutory directive is satisfied by providing the Fraud Section, Criminal Division, with a concise summary of the facts of the case and the reasons for declining it. Concurrence with the decision to decline may be presumed if no disagreement is expressed by the Fraud Section.

The personal opinion of the judge or trustee as to whether a criminal offense has occurred or as to whether criminal proceedings should or should not be commenced is in no way binding on the USA or determinative of the issues involved. Similarly, the decision of an officer of the Bankruptcy Court not to refer a matter to the USA should not be determinative in any prosecutive analysis.

[cited in USAM 9-2.111]

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U.S. Attorneys' Manual 9-41.010 (U.S.A.M.), 1997 WL 1944742

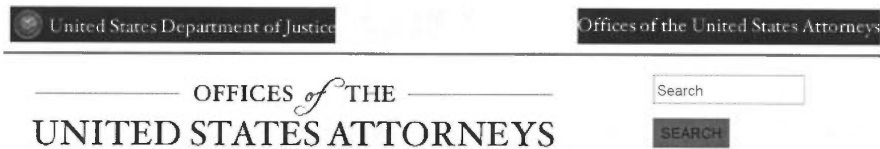
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## **USA Criminal Resource Manual**



New York City Bankruptcy Conference  
May 18, 2017 Ethics Panel



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## 838. Bankruptcy Fraud

The criminal provisions relating to bankruptcy fraud were enacted to preserve honest administration in bankruptcy proceedings and to ensure the distribution to creditors of as large a portion of the bankrupt's estate as possible. These criminal sanctions are embodied in Title 18, United States Code, §§ 152 to 157. The provisions of 18 U.S.C. §§ 152 to 157 are applicable to any proceeding, arrangement or plan under the Bankruptcy Code, Title 11, United States Code.

CAVEAT: Although most criminal law principles remain the same, because the civil bankruptcy laws were changed considerably in 1978, some older bankruptcy fraud cases or parts of cases may no longer be good law when read in conjunction with the current Bankruptcy Code.

CAVEAT: On October 22, 1994 the Bankruptcy Reform Act of 1994 made revisions to 18 U.S.C. § 152, 153, 154, 155 and added sections 156 and 157. The references to Section 152 will indicate the present paragraph numbering. Before that change the Section 152 paragraphs were unnumbered. The old sections continue to apply to crimes completed before October 22, 1994 -- the effective date of the Bankruptcy Reform Act. The new provisions apply to all crimes continued or committed after the effective date.

Sample indictments follow the general discussion of each code section. Longer conspiracy and fraud indictments are not included because they are so fact specific. Examples of the longer indictments are available from the individuals listed below.

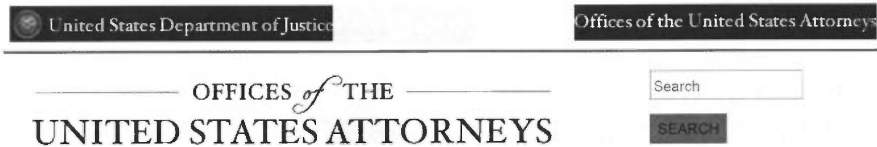
For additional information or assistance contact Maureen Tighe, Assistant United States Attorney (AUSA), United States Attorney's Office (USAO), Central District of California at ACAC01(MTIGHE) or 213-894-0703; Joan Safford, Deputy AUSA, USAO, Northern District of Illinois (N.D.Ill.) at AILN01(JSAFFORD) or 312-353-5300; Brian Netols, AUSA, USAO N.D.Ill. AILN01(BNETOLS) or 312-353-5300; Joe Brown, Special Assistant United States Trustee, Nashville, Tennessee, at JMD15(BROWNJOE) or 615-736-2746; TRIAL ATTORNEY Patrick Donley, Fraud Section, Criminal Division, at CRM02(DONLEY).

[cited in [USAM 9-41.001](#)]

[837. Mail/Wire Fraud Affecting Financial Institution](#)

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## 839. Report Of Violations

It is immaterial, when prosecuting an offender under any of the criminal provisions, whether the procedure set forth in 18 U.S.C. § 3057(a) has or has not been followed. *Dean v. United States*, 51 F.2d 481 (9th Cir. 1931). This section does not confer any procedural rights upon a defendant relating to Speedy Trial or pre-indictment delay. *United States v. Filiberti*, 353 F. Supp. 252 (D.Conn. 1973).

To facilitate the investigations required by § 3057(a) the court in *In re Stockbridge Funding Company*, 153 B.R. 654 (Bankr. S.D.N.Y. 1993), extended a "bankruptcy crimes investigatory privilege" to a Chapter 11 trustee who had reported a suspected crime. The full extent of coverage of this privilege has been left open.

[cited in [USAM 9-41.001](#)]

[838. Bankruptcy Fraud](#)

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[840. Overview Of 18 U.S.C. 152 Violations](#)





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### 840. Overview Of 18 U.S.C. 152 Violations

18 U.S.C. § 152 "attempts to cover *all the possible methods* by which a bankrupt or any other person may attempt to defeat the Bankruptcy Act through an effort to keep assets from being equitably distributed among creditors." *Stegeman v. United States*, 425 F.2d 984, 986 (9th Cir.), *cert. denied*, 400 U.S. 837 (1970)(citation omitted; emphasis in original). Moreover, "18 U.S.C. § 152 was enacted to serve the important interests of government, not merely to protect individuals who might be harmed by the prohibited conduct." *Id.*

The nine paragraphs of the section prohibit the following activities:

1. the concealment of property belonging to the estate of a debtor;
2. the making of false oaths or accounts in relation to any case under Title 11;
3. the making of a false declaration, certificate, verification or statement under penalty of perjury as permitted under Section 1746 of Title 28 or in relation to any case under Title 11;
4. the making of false claims against the estate of a debtor;
5. the fraudulent receipt of property from a debtor;
6. Bribery and extortion in connection with a case under Title 11;
7. transfer or concealment of property in contemplation of a case under Title 11;
8. the concealment or destruction of documents relating to the property or affairs of a debtor; and
9. the withholding of documents from the administrators of a case under Title 11.

The separate paragraphs of Section 152 create separate crimes, the violation of which may be indicted separately. *United States v. Gordon*, 379 F.2d 788, 790 (2d Cir.), *cert. denied*, 389 U.S. 927 (1967); *United States v. Arge*, 418 F.2d 721 (10th Cir. 1969). Separate violations of separate paragraphs of § 152 constitute multiple counts, because each requires proof of a different set of facts. *United States v. Roberts*, 783 F.2d 767 (9th Cir. 1985); *United States v. Kaldenberg*, 429 F.2d 161 (9th Cir.), *cert. denied*, 400 U.S. 929 (1970); *United States v. Christner*, 66 F.3d 922, 928 (8th Cir. 1995).

However, it is not appropriate to allege two offenses and impose two convictions as a result of the same set of facts. See *United States v. Ambrosiani*, 610 F.2d 65 (1st Cir. 1979), *cert. denied*, 445 U.S. 930 (1980). In *United States v. Graham*, 60 F.3d 463 (8th Cir. 1995) the charging of three separate counts of making false statements was not permitted even though the debtor told the same false statement to three different people at three successive meetings of creditors because the repetition of the false statement did not add to the harm sustained by the bankruptcy estate.

**KNOWINGLY AND FRAUDULENTLY:** All the crimes described in the various paragraphs of Section 152 require that the criminal act be done "knowingly" and "fraudulently." An inadvertent error does not support a violation of Section 152 because the statute proscribes only false statements that are made

"knowingly and fraudulently." *United States v. Ellis*, 50 F.3d 419, 426 (7th Cir.), *cert. denied*, 116 S. Ct. 143 (1995).

The term "fraudulently" means that the act was done with the intent to deceive. *United States v. Diorio*, 451 F.2d 21, 23 (2d Cir. 1971), *cert. denied*, 405 U.S. 955 (1972). Fraudulent intent may be proven circumstantially. *United States v. Goodstein*, 883 F.2d 1362, 1370 (7th Cir. 1989), *cert. denied*, 494 U.S. 1007 (1990); *United States v. Weichert*, 783 F.2d 23 (2d Cir.), *cert. denied*, 479 U.S. 831 (1986)(fraudulent intent inferred from the hurried formation of a new company after the debtor company has filed Chapter 11 and from the diversion of assets before a trustee is appointed); and *United States v. Catabran*, 836 F.2d 453, 459 (9th Cir. 1988)(removal of the carpeting which belonged to the landlord was admissible to show intent to start new business with old business' assets, even though carpeting was not an asset of the estate.

The statutory requirement that the underlying acts be performed knowingly requires only that the acts be voluntary and intentional; the government does not have to show that the defendant knew that he or she was breaking the law. *United States v. Zehrbach*, 47 F.3d 1252 (en banc)(3d Cir. 1995), *cert. denied*, 115 S. Ct. 1699 (1995).

A jury instruction that "an act is done 'knowingly' when that act is done voluntarily and intentionally, not because of mistake or accident" does not need to be qualified by the phrase "or other innocent reason" where the jury is otherwise instructed on a good faith reliance defense. *United States v. Smithson*, 49 F.3d 138, 142 (5th Cir. 1995).

**IN CONTEMPLATION OF BANKRUPTCY:** Failure of the government to show that the defendant was contemplating a bankruptcy or intended to defeat the bankruptcy laws can result in a reversal of a conviction for transferring property in contemplation of bankruptcy. See *United States v. Tashjian*, 660 F.2d 829, 842 (1st Cir.), *cert. denied*, 454 U.S. 1102 (1981). However, the jury is entitled to "put two and two together" to decide how far back defendant actually contemplated bankruptcy. For example, in *United States v. Haymes*, 610 F.2d 309 (5th Cir. 1980) the jury found a contemplation of bankruptcy at the time defendant started trying to generate a greater cash flow.

Circumstantial evidence of pre-petition activity such as secret deals among officers and the weak financial condition of a company can be used to show that the defendant's acts were in contemplation of bankruptcy. *United States v. Martin*, 408 F.2d 949, 954 (7th Cir.), *cert. denied*, 396 U.S. 824 (1969); *United States v. Ayotte*, 385 F.2d 988, 991 (6th Cir. 1967), *vacated on other grounds sub nom Giordano v. United States*, 394 U.S. 310 (1969)(defendant's renting warehouse space before bankruptcy, secretly emptying store inventory into warehouse and failing to pay debts were in contemplation of bankruptcy); *United States v. Butler*, 704 F. Supp. 1338, 1347 (E.D.Va. 1989), *aff'd w/o op.*, 905 F.2d 1532 (4th Cir.) *cert. denied*, 498 U.S. 900 (1990) (defendant's awareness of debtor's cash flow problems and defendant's efforts to get payment from debtor for his legal fees prior to declaration of bankruptcy showed that defendant's acts were in contemplation of the debtor's bankruptcy); *United States v. Willey*, 57 F.3d 1374, 1380 (5th Cir.), *cert. denied*, 116 S. Ct. 675 (1995) (defendant's statement that he was forced to "consider relief through the Federal Bankruptcy Court" in an affidavit in a divorce proceeding four years before he actually filed bankruptcy followed by transfer of assets out of his name showed that defendant's acts were in contemplation of bankruptcy).

**PRACTICE TIP:** The district within which the actual concealment of assets takes place is immaterial. Venue is proper in the district in which the bankruptcy proceeding is located, *United States v. Schireson*, 116 F.2d 881, 884 (3d Cir. 1940); *United States v. Brimberry*, 779 F.2d 1339, 1345 (8th Cir. 1985); *United States v. Martin*, 408 F.2d 949, 953 (7th Cir.), *cert. denied*, 396 U.S. 824 (1969), or the district which is the situs of the trustee. *United States v. Gordon*, 379 F.2d 788, 791 (2d Cir.), *cert. denied*, 389 U.S. 927 (1967); *United States v. Zimmerman*, 158 F.2d 559 (7th Cir. 1946).

[cited in [USAM 9-41.001](#)]

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### 841. Concealment of Property—18 U.S.C. § 152(1)

The concealment of property can be charged under either 18 U.S.C. § 152(1) or § 152(7). One of the important differences between these two paragraphs is that under Subsection (1) the property which was concealed must be property of the bankruptcy estate.

Subsection (1) of Section 152 provides that:

A person who . . . knowingly and fraudulently conceals from a custodian, trustee, marshal, or other officer of the court charged with the control or custody of property, or, in connection with a case under title 11, from creditors or the United States Trustee, any property belonging to the estate of a debtor; . . . shall be fined. . . , imprisoned. . . , or both.

The elements of the offense of concealment under 18 U.S.C. § 152(1) that the government must prove are:

1. the bankruptcy proceeding was in existence;
2. the defendant fraudulently concealed the property from the custodian; and
3. the property belonged to the bankruptcy estate.

Devitt, Blackmar & O'Malley, 2 *Federal Jury Practice and Instructions*, § 24.03 (4th ed. 1990); *United States v. Guiliano*, 644 F.2d 85, 87 (2d Cir. 1981); *United States v. Beery*, 678 F.2d 856 (10th Cir. 1982), *cert. denied*, 471 U.S. 1066 (1985).

Although § 152, itself, does not provide a definition, the phrase "property belonging to the estate of the debtor" has been construed broadly to include "any legal, equitable, or beneficial interest of the debtor in property on the date the bankruptcy petition was filed or that [the debtor] may have acquired after the commencement of the case other than earnings from personal services or loan proceeds." *United States v. Moody*, 923 F.2d 341, 348 (5th Cir.), *cert. denied*, 502 U.S. 821 (1991) (approving instruction with quoted language); *United States v. Cardall*, 885 F.2d 656, 677 (reh'g denied)(10th Cir. 1989)(11 U.S.C. § 541 is to be broadly construed to include all property interests wherever located and by whomever held). This all-encompassing definition requires the debtor to disclose information about all property that might be part of the bankruptcy estate.

It is a reasonable reading of 18 U.S.C. § 152 to conclude that the statute requires a bankrupt to disclose the existence of assets whose immediate status is uncertain. Even if the asset is not ultimately determined to be property of the estate under the technical rules of the Federal Bankruptcy Code, Section 152 properly imposes sanctions on those who pre-empt a court's determination by failing to report the asset.

*United States v. Cherek*, 734 F.2d 1248, 1254 (7th Cir. 1984), *cert. denied*, 471 U.S. 1014 (1985).

A defendant may not conceal equitable interests in property of the bankruptcy estate. The fact that legal title to an asset is not held by the bankruptcy estate does not relieve a defendant of the duty to disclose the estate's equitable interest in such an asset. *United States v. Weinstein*, 834 F.2d 1454, 1461 (9th Cir. 1987), *post conviction relief denied*, 931 F.2d 899 (1991); *United States v. Moynagh*, 566 F.2d 799, 803 (1st Cir. 1977), *cert. denied*, 435 U.S. 917 (1978); *United States v. Schireson*, 116 F.2d 881, 883 (3d Cir. 1941). Even property which is ultimately determined not to be the property of a bankruptcy estate can be considered concealed for purposes of prosecution. *United States v. Martin*, 408 F.2d 949, 953 (7th Cir.), *cert. denied*, 396 U.S. 824 (1969).

**PRACTICE TIP:** It is a question of fact for the jury to determine whether assets are property of the debtor and belong to the bankruptcy estate. *United States v. Weinstein*, 834 F.2d 1454 (9th Cir. 1987), *post conviction relief denied*, 931 F.2d 899 (1991); *United States v. Robbins*, 997 F.2d 390, 392 (8th Cir.), *cert. denied*, 114 S. Ct. 391 (1993).

**CAVEAT:** Where the law is uncertain as to whether the debtor really would be receiving the property, such uncertainty may be relevant in determining whether the defendant had a knowing and fraudulent intent in not disclosing the potential asset. *United States v. Collins*, 424 F. Supp. 465 (E.D.Ky. 1977)(suspended member of police department did not disclose that he could receive back wages if he was reinstated; evidence held insufficient to show fraudulent intent since law was uncertain as to whether defendant could receive such back wages for the period he was suspended).

"Conceal" does not mean merely to secrete or hide away. In fact the defendant does not have to physically hide the property at all. "Conceal" also means to prevent the discovery of the asset or to withhold knowledge of the asset. *United States v. Schireson*, 116 F.2d 881, 884 (3d Cir. 1941); *Burchinal v. United States*, 342 F.2d 982, 985 (10th Cir.), *cert. denied*, 382 U.S. 843 (1965). Therefore, since the debtor has an affirmative obligation to list all estate property in the debtor's schedules, failure to list an asset on the bankruptcy schedules can constitute concealment under the statute. *Coghlan v. United States*, 147 F.2d 233 (8th Cir. 1945), *cert. denied*, 325 U.S. 888 (1945); *United States v. Grant*, 971 F.2d 799, 807 (en banc)(1st Cir. 1992).

**PRACTICE TIP:** A bankruptcy judge's testimony that property is an asset of the estate is inadmissible to prove that the assets in question belong to the bankruptcy estate. A judge's findings may be admitted only on the question of notice, and the jury must be given a limiting instruction. *United States v. Robbins*, *supra*, at 393.

**PRACTICE TIP:** The abandonment of the asset by the trustee in the course of the civil administration of the estate does not bar a later prosecution for the concealment of the asset. *United States v. Grant*, 971 F.2d 799, 806 (en banc)(1st Cir. 1992).

The concealment of property belonging to a bankruptcy estate can take place before (pre-petition) as well as after (post-petition) the bankruptcy is filed. *Sultan v. United States*, 249 F.2d 385 (5th Cir. 1957). This does not mean, however, that the initial act of concealing must occur after the filing of the petition, it merely means that the property must remain concealed after the commencement of the bankruptcy proceeding. In addition, there must be a concealment from one of the persons enumerated in the first paragraph of 18 U.S.C. § 152. If there is a concealment from more than one of the persons mentioned, it is a separate and independent offense as to each person. An indictment charging concealment from one person will not bar a subsequent indictment charging concealment from another. *United States v. Yacht*, 135 F. Supp. 911 (S.D.N.Y. 1955).

When multiple assets are concealed prior to the filing of a bankruptcy petition, there is only a single offense since there is only a single duty to disclose the existence of all assets. *United States v. Moss*, 562 F.2d 155, 159 (2d Cir. 1977), *cert. denied*, 435 U.S. 914 (1978). Pre-petition concealment

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charges can be combined into one count to avoid multiple convictions based on a violation of the single statute of bankruptcy fraud. *United States v. White*, 879 F.2d 1509, 1512 (7th Cir.), *cert. denied*, 494 U.S. 1027 (1989); *United States v. McClellan*, 868 F.2d 210 (7th Cir. 1989); *United States v. Kaldenberg*, 429 F.2d 161 (9th Cir.), *cert. denied*, 400 U.S. 929 (1970).

Each asset concealed after the filing of the petition constitutes a separate offense. *United States v. Moss*, 562 F.2d 155, 159 (2d Cir. 1977), *cert. denied*, 435 U.S. 914 (1978). Post-petition concealment of assets or property represents individual counts for each act of concealment, because each concealment represents a separate act with intent. *United States v. Melton*, 763 F.2d 401 (11th Cir. 1985); *United States v. Montilla Ambrosiani*, 610 F.2d 65, 69 (1st Cir. 1979), *cert. denied*, 445 U.S. 930 (1980).


PRACTICE TIP: Where the concealed asset charge involves assets acquired after the filing of the bankruptcy petition, the government must prove that the assets were acquired with pre-petition assets or proceeds from pre-petition property. *United States v. Robbins*, 997 F.2d 390, 393 (8th Cir.), *cert. denied*, 114 S. Ct. 391 (1993).

PRACTICE TIP: An indictment must describe the concealed property adequately, *United States v. Schireson*, 116 F.2d 881 (3d Cir. 1940); *Beitel v. United States*, 306 F.2d 665 (5th Cir. 1962), including the time and place of the concealment, *United States v. Arge*, 418 F.2d 721, 724 (10th Cir. 1969), and from whom the property was concealed, *United States v. Yacht*, 135 F. Supp. 911 (S.D.N.Y. 1955).

NOTE: The concealment of the assets of a debtor is a continuing offense. The statute of limitations does not begin to run until the debtor is granted or denied a discharge. See this [Manual at 969](#), Statute of Limitations: 18 U.S.C. § 3284.

[cited in [USAM 9-41.001](#)]

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**842. Sample Indictment—Concealing Assets, 18 U.S.C. § 152(1)—Chapter 7**


On or about the \_\_\_\_ day of \_\_\_\_, in the \_\_\_\_ District of \_\_\_\_, JOHN DOE, defendant herein, did in this district and elsewhere knowingly and fraudulently conceal property belonging to Robert Roe Construction Co., Bankruptcy Case No. \_\_\_\_, specifically two automobiles, \_\_\_\_, etc., from the trustee charged with control of the debtor's property and from the creditors and the United States Trustee.

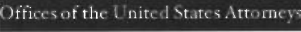
All in violation of 18 U.S.C. §§ 152 and 2.

[cited in [USAM 9-41.001](#)]

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### 843. Sample Indictment—Concealing Assets, 18 U.S.C. § 152(1)—Chapter 11

- At all times material to this indictment defendant JOHN DOE was president of Robert Roe Nursery, Inc. which was a tree nursery.
- On \_\_\_\_\_ JOHN DOE filed or caused to be filed a petition for reorganization under Chapter 11 of Title 11 of the United States Code in the Bankruptcy Court for this District. The matter was captioned Robert Roe Nursery, Inc., Case No. \_\_\_\_\_. This case remained open at all times pertinent to this indictment.
- As a debtor under Chapter 11, Robert Roe Nursery, Inc., was allowed to continue business as a Debtor in Possession. As such the company was required to close existing bank accounts and to open two new accounts; one entitled Robert Roe Nursery, Inc., Debtor in Possession; and one entitled Robert Roe Nursery, Inc., Debtor in Possession (Payroll) and to place all moneys received into one of those accounts. All disbursements were required to be made from one of those accounts.
- From on or about the \_\_\_\_\_ day of \_\_\_\_\_, to on or about \_\_\_\_\_ day of \_\_\_\_\_, in the \_\_\_\_\_ District of \_\_\_\_\_,

JOHN DOE,

defendant herein, did knowingly and fraudulently conceal and cause to be concealed from creditors and from the United States Trustee the following accounts receivable which were the property of the bankruptcy estate and which he deposited or caused to be deposited into a personal account entitled "John and Jane Doe:"

Count Date of Deposit Acct. Rec. Ck. No. Amount

One 11/7/94 Sun Gardens 5215 \$6,583.30

Two ----- etc.

All in violation of 18 U.S.C. §§ 152(1) and 2.


[cited in [USAM 9-41.001](#)]

[842. Sample Indictment—Concealing Assets, 18 U.S.C. § 152\(1\)—Chapter 7](#)

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## 844. Sample Indictment—Money Laundering, 18 U.S.C. § 1956(a)(1)(B)(i)

NOTE: This count is based on the facts of the concealment listed above.

1. On or about the \_\_\_\_\_ day of \_\_\_\_\_, in the \_\_\_\_\_ District of \_\_\_\_\_,

JOHN DOE,

defendant herein, did knowingly conduct and cause to be conducted a financial transaction affecting interstate commerce, that being the expenditure of a \$6,583.30 account receivable of the debtor in possession, Robert Roe Nursery, Inc., from Sun Gardens, Chicago, Illinois, by using the money in making a loan payment of \$8,073.50 payable to the First State Bank, Wrens, Georgia on a debt owed by JOHN DOE .

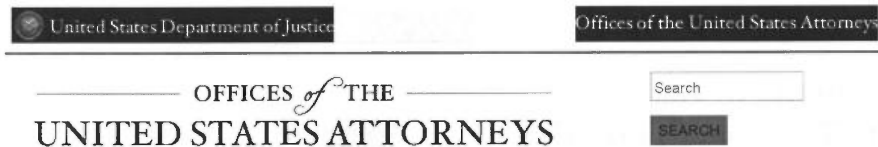
2. The \$6,583.30 used to make part of this \$8,073.50 loan payment involved the proceeds of a specified unlawful activity, that is bankruptcy fraud in violation of 18 U.S.C. § 152 as charged in count one of this indictment.

3. The defendant did so knowing that the transaction was designed in whole or in part to conceal and disguise the ownership and control of the proceeds of the specified unlawful activity, namely bankruptcy fraud, and that the property involved the proceeds of some form of unlawful activity.

All in violation of Title 18, United States Code, Sections 1956(a)(1)(B)(i) and 2.

[cited in [USAM 9-41.001](#)]

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Subsection 152(2), of Section 152 provides:

A person who...knowingly and fraudulently makes a false oath or account in or in relation to any case under title 11;...shall be fined..., imprisoned..., or both.

The elements of a false oath violation have been defined as:

1. the existence of a bankruptcy proceeding;
2. a statement made under oath;
3. the statement must be material;
4. the statement must be false; and
5. the statement was made knowingly and fraudulently.

*Metheany v. United States*, 390 F.2d 559, 561 (9th Cir.), *cert. denied*, 393 U.S. 824 (1968).

Absent fundamental ambiguity or imprecise questioning, the meaning and truthfulness of the defendant's answer when questioned under oath in the bankruptcy proceeding is for the jury. The defendant "cannot escape a false oath charge by misleading the questioner with false testimony and then supply literally true answers to questions based on his false testimony." *United States v. Robbins*, 997 F.2d 390, 395 (8th Cir.), *cert. denied*, 114 S. Ct. 391 (1993); *United States v. Schaftrick*, 871 F.2d 300 (2d Cir. 1989).

CAVEAT: A literally true but unresponsive answer, even if intentional misleading, is to be "remedied through the 'questioner's acuity' and not by a federal perjury conviction." *Bronston v. United States*, 409 U.S. 352, 362 (1973).

The false oath or account must be given "in relation to any [bankruptcy] case. . ." Therefore testimony in adversary proceedings, depositions, or even creditor meetings are encompassed by the broad language of the statute. *United States v. Jackson*, 836 F.2d 324 (7th Cir. 1987); *United States v. Yagow*, 953 F.2d 427 (8th Cir.), *cert. denied*, 506 U.S. 833 (1992).

The false statement must be made with respect to a material matter. *United States v. O'Donnell*, 539 F.2d 1233, 1237 (9th Cir.), *cert. denied*, 429 U.S. 960 (1976). The law has been that the materiality of a false statement in a bankruptcy fraud prosecution is a question of law to be decided by the court, not the jury. *United States v. Key*, 859 F.2d 1257, 1261 (7th Cir. 1988); *United States v. Metheany*, 390 F.2d 559 (9th Cir.), *cert. denied*, 393 U.S. 824 (1968). However, the Supreme Court's recent

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decision in the § 1001 area in effect reverses this line of cases on this issue, so the better practice is to submit the materiality question to the jury. *United States v. Gaudin*, 115 S. Ct. 2310 (1995).

Materiality of a false statement has been broadly interpreted to mean that the false statement bears a relationship to the bankrupt's business transactions or estate, or pertains to the discovery of assets, including the history of the bankrupt's financial transactions. *United States v. Jackson*, 836 F.2d 324, 329 (7th Cir. 1984); *United States v. O'Donnell*, 539 F.2d 1233, 1237-38 (9th Cir.), *cert. denied*, 429 U.S. 960 (1976). Thus misstatements as to defendant's social security number and past names are material, *United States v. Phillips*, 606 F.2d 884, 886 (9th Cir. 1979), *cert. denied*, 444 U.S. 1024 (1980), as is the failure to list prior bankruptcy filings, *United States v. Lindholm*, 24 F.3d 1078, 1083 (9th Cir. 1994), *post conviction relief denied*, 61 F.3d 913 (1995).

PRACTICE TIP: A failure to answer a question on the bankruptcy petition can constitute a false statement since leaving the question blank had the same effect as if the debtor had affirmatively replied "none." *United States v. Ellis*, 50 F.3d 419 (7th Cir.), *cert. denied*, 116 S. Ct. 143 (1995).

PRACTICE TIP: In some circuits, the common law rule requiring two witnesses or one witness and corroboration is no longer followed. *United States v. Jessee*, 605 F.2d 430, 431 (9th Cir. 1979); *but see, Mosheim v. United States*, 285 F.2d 949, 951 (5th Cir.), *cert. denied*, 365 U.S. 868 (1961).

Where the defendant falsely testifies or produces other false information before a court 18 U.S.C. § 1623 may be used. Section 1623 does away with the "two witness" rule and also allows a defendant to be convicted where the defendant makes inconsistent statements in the same proceeding. This section can also be used to prosecute the "I don't remember" answer where it can be shown that the witness did know at one time and has, in fact, not forgotten.

CAVEAT: Section 1623 applies only to statements made before a court or grand jury.

PRACTICE TIP: The reasoning of decisions under Section 1623 may also apply to false oath cases under 18 U.S.C. § 152(2). Under 18 U.S.C. § 1623(d), a perjury prosecution is barred if the defendant can show that the perjurious testimony was recanted in the same continuous court or grand jury proceeding. The recantation must be unequivocal. *United States v. Tobias*, 863 F.2d 685 (9th Cir. 1988); *United States v. Moore*, 613 F.2d 1029 (D.C.Cir. 1979), *cert. denied*, 446 U.S. 954 (1980); *United States v. D'Auria*, 672 F.2d 1085 (2d Cir. 1982); *United States v. Goguen*, 723 F.2d 1012 (1st Cir. 1983). *see also, United States v. Diorio*, 451 F.2d 21, 23 (2d Cir.), *cert. denied*, 405 U.S. 955 (1971)(a recantation in and of itself cures an original false statement under oath).

Subsection (2) of Section 152 also prohibits the making of false accounts. The term "account" is not defined in the statute. Generally the term "account" means a reconciliation or reporting of a financial activity -- i.e., an accounting. Thus a debtor in possession's monthly report, a trustee's semi-annual report, a trustee's final report in an asset case; a creditor's report of rents received, and an auctioneer's report of sale are all examples of "accounts."

[cited in [USAM 9-41.001](#)]

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## 846. Sample Indictment—False Testimony Under Oath, 18 U.S.C. § 152(2)

On or about the \_\_\_\_\_ day of \_\_\_\_\_, in the \_\_\_\_\_ District of \_\_\_\_\_.

JOHN DOE, defendant herein, knowingly and fraudulently made a false material statement under oath in and in relation to a case under Title 11, *In re: John Doe*, Case No. \_\_\_\_\_, by falsely testifying under oath in a proceeding before the case trustee at a meeting of creditors that he did not own any shares of XYZ Company when in fact the defendant knew that he owned 200 shares of XYZ Company.

All in violation of 18 U.S.C. § 152.

[cited in [USAM 9-41.001](#)]

« [845. False Oath or Account—18 U.S.C. § 152\(2\)](#) [up](#) [847. Sample Indictment—False Social Security Number. 42 U.S.C. § 408\(a\)\(7\)\(B\)](#) »



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**847. Sample Indictment—False Social Security Number, 42  
U.S.C. § 408(a)(7)(B)**

On or about the \_\_\_\_\_ day of \_\_\_\_\_, in the \_\_\_\_\_ District of \_\_\_\_\_, defendant JOHN DOE, with  
intent to deceive, falsely did represent that his social security number was \_\_\_\_\_ on a  
bankruptcy petition, Case No. \_\_\_\_\_, then well knowing that social security number \_\_\_\_\_  
had not been assigned to him by the Secretary or other proper authority.

All in violation of 42 U.S.C. § 408(a)(7)(B).

[cited in [USAM 9-41.001](#)]

◀ [846. Sample Indictment—False Testimony Under Oath, 18 U.S.C. § 152\(2\)](#)      [up](#)      [848. False Declarations—18 U.S.C. § 152\(3\)](#)

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### 848. False Declarations—18 U.S.C. § 152(3)

The False Oath provisions of § 152(2) and the False Declarations provisions of 18 U.S.C. § 152(3) are closely related. Subsection (3) is derived from Subsection (2), the "false oath" offense. In 1976, Congress amended Section 152 to add Subsection 3. This amendment was made in connection with the creation of 28 U.S.C. § 1746, which authorized the use of unsworn statements subscribed to under penalty of perjury but not under oath. Congress added Subsection 3 to Section 152 with the intention of making no changes to the elements of a violation of Subsection 2 of Section 152. Thus, the elements of a violation of Subsection 3 are the same as those that apply to a Subsection 2 violation. The only difference, of course, is that a violation under Subsection 3 does not require the false declaration or statement to have been made under oath.

The policy behind the false oath/false declaration portions of Section 152 is that the debtor has a duty to produce honest, complete financial records.

Bankruptcy law presupposes that one who seeks its protection will deal honestly and fairly with creditors by furnishing a complete and accurate schedule of assets... A debtor has a paramount duty to consider all questions posed on statement or schedules carefully and see that question is answered completely in all respects.

*In re Braymer*, 126 B.R. 499, 503 (Bankr. N.D.Tex 1991).

Subsection (3) provides:

A person who...knowingly and fraudulently makes a false declaration, certificate, verification, or statement under penalty of perjury as permitted under section 1746 of title 28, in or in relation to any case under title 11;...shall be fined..., imprisoned..., or both.

The elements of a false declaration violation have been defined as:

1. the existence of a bankruptcy proceeding;
2. the defendant made a false declaration, certificate, verification, or other statement in relation to the bankruptcy proceeding;
3. the statement must be material; and
4. the statement was known to be false.

Devitt, Blackmar & O'Malley, 2 *Federal Jury Practice and Instructions*, § 24.07 (4th ed. 1990).

Since many documents--e.g., the bankruptcy petition, schedules of assets and liabilities, and statement of affairs--in a bankruptcy case are submitted under penalty of perjury as permitted under Section 1746, the potential scope of this statute is very broad. Even leaving a question blank can

848. False Declarations—18 U.S.C. § 152(3) | USAM | Department of ... <https://www.justice.gov/usam/criminal-resource-manual-848-false-decl...>

constitute a false statement and thus violate 18 U.S.C. § 152(3). *United States v. Ellis*, 50 F.3d 419 (7th Cir.), *cert. denied*, 116 S. Ct. 143 (1995).

**PRACTICE TIP:** If the statement or testimony is not under oath or under the penalty of perjury consideration should be given to using the false statement provisions of 18 U.S.C. § 1001. See 9-42.000 *et seq.* for a more in depth discussion of 18 U.S.C § 1001.

**PRACTICE TIP:** The deliberate omission of assets by the debtor on the bankruptcy petition and schedules will violate this section as well as constitute a concealment of the assets. It is often advisable to charge both the concealment of the asset and the false statement even though the same asset is involved.

[cited in [USAM 9-41.001](#)]

◀ [847. Sample Indictment—False Social Security Number, 42 U.S.C. § 408\(a\)\(7\)\(B\)](#)

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[849. Sample Indictment—False Statement Under Penalty of Perjury, 18 U.S.C. § 152\(3\) —Omission of Assets on Bankruptcy Petition and Schedules >](#)



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**849. Sample Indictment—False Statement Under Penalty of Perjury, 18 U.S.C. § 152(3)—Omission of Assets on Bankruptcy Petition and Schedules**

On or about the \_\_\_\_\_ day of \_\_\_\_\_, in the \_\_\_\_\_ District of \_\_\_\_\_.

JOHN DOE, defendant herein, knowingly and fraudulently made a material false declaration, certificate and verification under the penalty of perjury, as permitted under Section 1746 of Title 28, in and in relation to a case under Title 11, *In re John Doe* No. \_\_\_\_\_, by submitting Schedules of Assets and Liabilities and a Statement of Financial Affairs, in which the defendant fraudulently omitted to disclose all bank accounts he had maintained within two years immediately preceding the filing of the bankruptcy petition, property held by third persons in which he had an interest, including two Rembrandt paintings, and the fact that he had previously filed bankruptcy within the past six years.

All in violation of 18 U.S.C. § 152(3).

[cited in [USAM 9-41.001](#)]

[848. False Declarations—18 U.S.C. § 152\(3\)](#)

[up](#)

[850. Sample Indictment—Omission of an Answer as a False Statement Under Penalty of Perjury, 18 U.S.C. § 152\(3\)](#)





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**850. Sample Indictment—Omission of an Answer as a False  
Statement Under Penalty of Perjury, 18 U.S.C. § 152(3)**

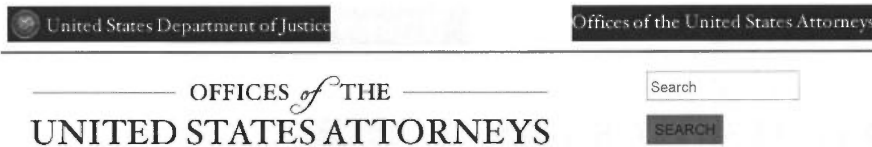
On or about the \_\_\_\_\_ day of \_\_\_\_\_, in the \_\_\_\_\_ District of \_\_\_\_\_,

JOHN DOE, defendant herein, knowingly and fraudulently made a material false statement under the penalty of perjury, as permitted under Section 1746 of Title 28, in and in relation to a case under Title 11, *In re* John Doe, No. \_\_\_\_\_, by submitting a voluntary petition under Chapter 13 of Title 11 in which the defendant fraudulently left the question "pending bankruptcy case filed within last six years (if more than one attach additional sheets)" blank, then well knowing that he had filed four previous bankruptcy cases within the past six years.

All in violation of Title 18, U.S.C. § 152(3).

[cited in [USAM 9-41.001](#)]

« [849. Sample Indictment—False Statement Under Penalty of Perjury, 18 U.S.C. § 152\(3\)—Omission of Assets on Bankruptcy Petition and Schedules](#) up [851. False Claims—18 U.S.C. § 152\(4\)](#) »



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## 851. False Claims—18 U.S.C. § 152(4)

Subsection (4) of Section 152 sets out the offense of filing a false bankruptcy claim. A "claim" is a document filed in a bankruptcy proceeding by a creditor of the debtor. It is sometimes also called a "proof of claim." For the purposes of this section the nature of the claim is immaterial— i.e., the claim can be secured or unsecured, liquidated or unliquidated, disputed or undisputed. A "false" claim is one that is known by the creditor to be factually untrue at the time the claim is filed.

Subsection (4) provides:

A person who...knowingly and fraudulently presents any false claim for proof against the estate of a debtor, or uses any such claim in any case under title 11, in a personal capacity or as or through an agent, proxy, or attorney;...shall be fined..., imprisoned..., or both.

The elements of a false claim violation are:

1. that bankruptcy proceedings had been commenced;
2. that defendant presented or caused to be presented a proof of claim in the bankruptcy;
3. that the proof of claim was false as to a material matter; and
4. that the defendant knew the proof of claim was false and acted knowingly and fraudulently.

*United States v. Overmyer*, 867 F.2d 937, 949 (6th Cir.), *cert. denied*, 493 U.S. 813 (1989).

A claim can be asserted by a creditor whether or not it is reduced to judgment, whether the claim is liquidated, unliquidated, fixed, contingent, mature, unmatured, disputed, undisputed, legal, equitable, secured or unsecured. *United States v. Connery*, 867 F.2d 929, 934 (*reh'g denied*)(6th Cir. 1989), *appeal after remand* 911 F.2d 734 (1990).

Since the falsity of a claim, in most cases, is obvious, the key issue frequently becomes what was the defendant's state of mind at the time of the filing of the claim. Good faith is a complete defense to this charge. The filing of a false claim is not a crime where there was a good faith belief in its accuracy. *United States v. Connery*, 867 F.2d 929, 934 (*reh'g denied*)(6th Cir. 1989), *appeal after remand* 911 F.2d 734 (1990).

A proof of claim is not false merely because it may be inaccurate or erroneous in any or all respects. The claim may be asserted by a creditor in good faith even though the moneys being sought are thereafter successfully disputed by the debtor or disallowed by the Bankruptcy Court. Instead, a proof of claim is false if the statements contained therein are intentionally inaccurate and submitted without any good faith basis for the

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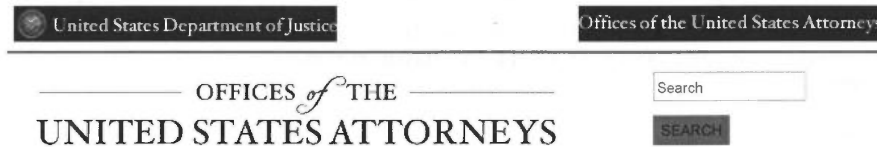
851. False Claims—18 U.S.C. § 152(4) | USAM | Department of Justice <https://www.justice.gov/usam/criminal-resource-manual-851-false-cla...>

claim and are not the result of some mistake or clerical error or inadvertent omission.

*United States v. Overmyer*, 867 F.2d 937, 950 (6th Cir.), *cert. denied*, 493 U.S. 813 (1989), *appeal after remand*, 899 F.2d 457 (6th Cir. 1990), *cert. denied*, 498 U.S. 939 (1990)(quoting above instruction with approval).

[cited in [USAM 9-41.001](#)]

◀ [850. Sample Indictment—Omission of an Answer as a False Statement Under Penalty of Perjury, 18 U.S.C. § 152\(3\)](#) [up](#) [852. Sample Indictment—False Claim, 18 U.S.C. § 152\(4\)](#) ▶



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## 852. Sample Indictment—False Claim, 18 U.S.C. § 152(4)

On or about \_\_\_\_\_, in the \_\_\_\_\_ District of \_\_\_\_\_, JOHN DOE, defendant herein, knowingly and fraudulently presented a false claim in the amount of \$4,800 for proof against the estate of XYZ Company, No. \_\_\_\_\_, which sum purportedly was due for furniture sold to the debtor by the defendant JOHN DOE, when in truth and in fact, as JOHN DOE well knew, no furniture had been sold to the debtor.

All in violation of 18 U.S.C. § 152(4).

[cited in [USAM 9-41.001](#)]

◀ [851. False Claims—18 U.S.C. § 152\(4\)](#) [up](#) [853. Fraudulent Receipt of Property—18 U.S.C. § 152\(5\)](#) ▶



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### 853. Fraudulent Receipt of Property—18 U.S.C. § 152(5)

Subsection (5) prohibits the fraudulent receipt of a material amount of property from the debtor. This paragraph is specifically designed to reach defendants, including creditors, who receive assets from a debtor. In addition, the transfer of the assets must have occurred after the commencement of the bankruptcy case--i.e., after the filing of the bankruptcy petition.

Subsection (5), provides:

A person who...knowingly and fraudulently receives any material amount of property from a debtor after the filing of a case under title 11, with the intent to defeat the provisions of title 11;...shall be fined... and imprisoned...or both.

The elements are:

1. the defendant receives a material amount of property from a debtor;
2. such transfer occurred after the filing of a case under Title 11; and
3. the acts were done with the intent to defeat the provisions of Title 11.

Although the statute does not specify that the property received must be property of the bankruptcy estate, that appears to be the intent of the Congress. In addition, the statute requires that the property be received from the "debtor." The "debtor" is defined in 18 U.S.C. § 151 as "a debtor concerning whom a petition has been filed under Title 11." However the receipt of the property does not have to be directly from the debtor. *United States v. Cardall*, 885 F.2d 656 (reh'g denied)(10th Cir. 1989). In addition, the term "property" includes cash. *United States v. Wernikove*, 206 F.Supp 407 (E.D. Pa. 1962).

The term "material amount" is not defined in the statute. An early case held that \$500 is a material amount of property. *Knoell v. United States*, 239 F. 16 (3d Cir. 1917), *writ dismissed*, 246 U.S. 648 (1918). Other factors, in addition to value of the property, which may be relevant are the value of the property received as compared to the size of the bankruptcy estate, and the effect the improper receipt of property had on the distribution of the assets of the bankruptcy estate.

In addition to proof that the property was knowingly and fraudulently received from the debtor it must also be proven that the transfer in question was done "with the intent to defeat the provisions of [the Bankruptcy Code]. [T]he provisions of Title 11 of the Bankruptcy Law are defeated when a person without Court approval acts in a manner that diminishes the estate of the debtor, and thus interferes with the equitable use of distribution of any material part of the assets of the estate." *United States v. Cardall*, 885 F.2d 656, 678 n.43 (reh'g denied)(10th Cir. 1989). The indictment need not specify the particular clause or provision of law which is intended to be defeated. *Lurie v. United States*, 20 F.2d

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589 (6th Cir. 1927), *cert. denied*, 275 U.S. 563 (1927).

[cited in USAM 9-41.001]

◀ 852. Sample Indictment—False Claim, 18 U.S.C. § 152(4)

up

854. Sample Indictment—Knowingly Receiving Property of Debtor, 18 U.S.C. § 152(5) ▶

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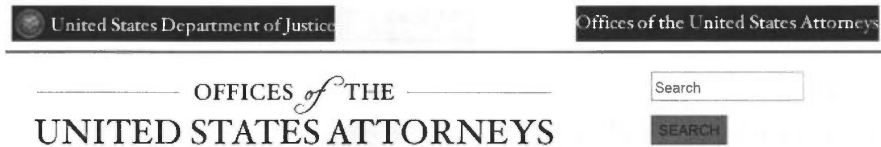
## 854. Sample Indictment—Knowingly Receiving Property of Debtor, 18 U.S.C. § 152(5)

On or about \_\_\_\_\_, in the \_\_\_\_\_ District of \_\_\_\_\_, JOHN DOE, defendant herein, with the intent to defeat the provisions of Title 11, knowingly and fraudulently received a material amount of property from Jane Roe, a debtor in Case No. \_\_\_\_\_, under Title 11, to wit: a silver tea service;

All in violation of 18 U.S.C. § 152(5).

[cited in [USAM 9-41.001](#)]

◀ [853. Fraudulent Receipt of Property—18 U.S.C. § 152\(5\)](#)      [up](#)      [855. Extortion and Bribery—18 U.S.C. § 152\(6\)](#) ▶



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## 855. Extortion and Bribery—18 U.S.C. § 152(6)

Subsection (6) of Section 152 is a very broad statute which covers all aspects of bribery and extortion in bankruptcy cases.

Subsection (6), provides:

A person who...knowingly and fraudulently gives, offers, receives, or attempts to obtain any money or property, remuneration, compensation, reward, advantage, or promise thereof for acting or forbearing to act in any case under title 11;...shall be fined...and imprisoned...or both.

There is no requirement that the act or forbearance from acting be unlawful itself. Acting or not acting with the requisite criminal intent is sufficient. For example, a bidder agreeing to withdraw the bid in return for money is covered. *United States v. Weiss*, 168 F. Supp. 728 (W.D. Pa. 1958). CAVEAT: Full public disclosure of any offers to act or to not act -- e.g., compromising of claims, or plan negotiations in Chapter 11 cases--will typically negate any suggestion of criminal intent.

[cited in [USAM 9-41.001](#)]

◀ [854. Sample Indictment—Knowingly Receiving Property of Debtor, 18 U.S.C. § 152\(5\)](#) [up](#) [856. Sample Indictment—Forbearance, 18 U.S.C. § 152\(6\)](#) ▶



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## 856. Sample Indictment—Forbearance, 18 U.S.C. § 152(6)

On or about \_\_\_\_\_, in the \_\_\_\_\_ District of \_\_\_\_\_

JOHN DOE, defendant herein, in the case of Southeast Banking, No. \_\_\_\_\_, a case under Title 11, knowingly and fraudulently agreed to pay Jane Roe, a competing bidder at a bankruptcy auction for the sale of a Beechcraft King Air aircraft, \$20,000 in return for Jane Roe agreeing not to make further bids for said aircraft.

All in violation of 18 U.S.C. § 152(6).

[cited in [USAM 9-41.001](#)]

◀ [855. Extortion and Bribery—18 U.S.C. § 152\(6\)](#)

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[857. Sample Indictment—Attorney's Fee, Bankruptcy Fraud, 18 U.S.C. § 152\(6\)](#) ▶



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## 857. Sample Indictment—Attorney's Fee, Bankruptcy Fraud, 18 U.S.C. § 152(6)

1. At all times pertinent to this indictment defendant, JOHN DOE, was an attorney specializing in bankruptcy law.
2. At all times pertinent to this indictment Richard Roe, debtor in bankruptcy case -----, was a client of JOHN DOE.
3. Prior to ----- date when Richard Roe filed bankruptcy, he owed JOHN DOE \$75,000 in legal fees.
4. Neither JOHN DOE nor his law firm was listed as a creditor in the bankruptcy case.
5. On or about \_\_\_\_\_, in the \_\_\_\_\_ District of \_\_\_\_\_, JOHN DOE, defendant herein, knowingly and fraudulently received a promise from Richard Roe in the form of a "Reviver Agreement" that his law firm would be paid \$75,000 by the debtor in return for forbearing to file a claim as a creditor against the debtor.

All in violation of 18 U.S. C. § 152(6).

[cited in [USAM 9-41.001](#)]

◀ [856. Sample Indictment—Forbearance, 18 U.S.C. § 152\(6\)](#) [up](#)

[858. Fraudulent Transfer or Concealment—18 U.S.C. § 152\(7\)](#) ▶



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## 858. Fraudulent Transfer or Concealment—18 U.S.C. § 152(7)

As indicated previously the concealment of property can be charged under either 18 U.S.C. § 152(7) or § 152(1). An important difference between these two paragraphs is that subsection (7) is not restricted to property of the bankruptcy estate.

Subsection (7) provides:

A person who...in a personal capacity or as an agent or officer of any person or corporation, in contemplation of a case under title 11 by or against the person or any other person or corporation, or with intent to defeat the provisions of title 11, knowingly and fraudulently transfers or conceals any of his property or the property of such other person or corporation;...shall be fined..., imprisoned..., or both.

The elements of the offense under subsection (7) which the government must prove are:

1. the defendant fraudulently transferred or concealed the defendant's property or the property of another; and
2. such act of transfer or concealment was done with the intent to defeat the provisions of Title 11, or in contemplation of a case under Title 11.

Subsection (7) of Section 152 reaches both pre-petition and post-petition transactions and prohibits not only concealment of assets, but also transfers of assets. "Transfers or conceals" is to be read in the disjunctive so that proof of either in conjunction with the other elements of the offense is sufficient. Concealment is not a necessary element of a prohibited transfer. *Burchinal v. United States*, 342 F.2d 982, 985 (10th Cir.), *cert. denied*, 382 U.S. 843 (1965).

To the extent this statute prohibits the concealment of property of a bankruptcy estate, this subsection overlaps with subsection (1). However, subsection (7) is not limited to property of the bankruptcy estate. This statute prohibits a defendant, with the requisite intent, from transferring or concealing "any of his property or the property of such other person or corporation." Therefore a pre-petition concealment or transfer, with the necessary intent, of the defendant's own property is prohibited. For example, the disposal of an individual debtor's pre-petition property with the intent to defeat the provisions of the Bankruptcy Code would be covered. Moreover, the property which is concealed or transferred does not have to be property of the defendant. For example, an individual could transfer or conceal property of a corporation.

NOTE: Subsection (7) does not specify from whom the property must be concealed. It is safe to assume that the same group listed in subsection (1)— a custodian, United States Trustee, United States Marshal, or other officer of the court-- would be included but others interested in the

bankruptcy may also be included.

NOTE: In addition to being done "knowingly and fraudulently" under subsection (7), the concealment or transfer of the property has to be done with a special *mens rea*. The special *mens rea* required is that the concealment or the transfer be done either (1) in contemplation of the filing of a bankruptcy case, or (2) with the intent to defeat the provisions of the Bankruptcy Code. The first alternative *mens rea*-- that the concealment or the transfer was done in contemplation of the filing of a bankruptcy case -- requires proof of a connection between the defendant's actions and the filing of the bankruptcy case. In most cases this is not a problem since the defendant frequently controls both the acts in question and the filing of the bankruptcy petition. In the case of an involuntary bankruptcy, however, the necessary connection between the bankruptcy filing and the defendant's actions may be harder to prove. Frequently, inferences based upon statements about the defendant's financial condition or attempts to avoid creditor collection efforts can establish that the acts in question were done in contemplation of a bankruptcy case. *United States v. Haymes*, 610 F.2d 309 (5th Cir. 1980)(statements that company would go bankrupt unless sales were increased and that any money left in the company's account would be tied up in the bankruptcy were admissible to establish that the transfers were in contemplation of bankruptcy).

The second alternative *mens rea*-- that the concealment or the transfer was done with the intent to defeat the provisions of the Bankruptcy Code-- requires that defendant's actions lessen or reduce the bankruptcy estate. In the context of an 18 U.S.C. § 152(5) violation, the Tenth Circuit defined the intent to defeat the provisions of the Bankruptcy Code as follows:

[T]he provisions of Title 11 of the Bankruptcy Law are defeated when a person without Court approval acts in a manner that diminishes the estate of the debtor, and thus interferes with the equitable use of distribution of any material part of the assets of the estate.

*United States v. Cardall*, 885 F.2d 656, 678 n. 43 (*reh'g denied*)(10th Cir. 1989).

NOTE: The concealment of the assets of a debtor is a continuing offense. The statute of limitations does not begin to run until the debtor is granted or denied a discharge. See this [Manual at 869](#)  
Statute of Limitations: 18 U.S.C. § 3284.

[cited in [USAM 9-41.001](#)]

857. Sample Indictment—Attorney's Fee,  
Bankruptcy Fraud, 18 U.S.C. § 152(6)

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859. Sample Indictment—Bust Out, 18  
U.S.C. § 152(7)



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## 859. Sample Indictment—Bust Out, 18 U.S.C. § 152(7)

From on or about \_\_\_\_\_ until on or about \_\_\_\_\_, in the \_\_\_\_\_ District of \_\_\_\_\_, JOHN DOE and JANE DOE, defendants herein, individually and as officers and agents of Bust Out Company -----, debtor, Bankruptcy Case No. \_\_\_\_\_ and in contemplation of the filing of bankruptcy proceedings by [against] said company, knowingly and fraudulently and with intent to defeat the provisions of Title 11, transferred to, and wilfully aided and abetted in the transfer to, themselves property belonging to the estate of the debtor, specifically, cash and clothing: by causing to be ordered and received large amounts of men's clothing; by paying for only a small portion of the clothing ordered; by causing to be sold and by secreting all but a small portion of the clothing ordered and received; and by keeping for themselves a large amount of the clothing and cash proceeds from the sale of the clothing, thereby causing a loss of assets to the debtor of cash and clothing, and by concealing the existence of the cash and clothing from the trustee, creditors and other officers of the court.


All in violation of 18 U.S.C. §§ 152(7) and 2.

[cited in [USAM 9-41.001](#)]

◀ [858. Fraudulent Transfer or Concealment—18 U.S.C. § 152\(7\)](#)

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[860. Sample Indictment—Fraudulent Transfer in Contemplation of Bankruptcy, 18 U.S.C. § 152\(7\)](#) ▶


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## 860. Sample Indictment—Fraudulent Transfer in Contemplation of Bankruptcy, 18 U.S.C. § 152(7)

On or about \_\_\_\_\_, in the \_\_\_\_\_ District of \_\_\_\_\_, JOHN DOE, defendant herein, in contemplation of a bankruptcy case under Title 11 of the United States Code by XYZ Company, specifically the case entitled XYZ Co, Case No. \_\_\_\_\_, filed \_\_\_\_\_ in this district, and with the intent to defeat the provisions of Title 11, knowingly and fraudulently transferred to ABC, Inc., a corporation owned in part by John Doe, 36 vehicles titled to XYZ Company. The vehicles are described as follows:

*Vehicle*  
1988 Ford Tractor

*Identification Number*  
N2345NJA00

All in violation of 18 U.S.C. §§ 152(7) and 2.

[cited in [USAM 9-41.001](#)]

◀ [859. Sample Indictment—Bust Out, 18 U.S.C. § 152\(7\)](#) [up](#) [861. Sample Indictment—Fraudulent Transfer of Property, 18 U.S.C. § 152\(7\)](#) ▶

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**861. Sample Indictment—Fraudulent Transfer of Property,  
18 U.S.C. § 152(7)**

On or about \_\_\_\_\_, in the \_\_\_\_\_ District of \_\_\_\_\_, JOHN DOE, agent for  
XYZ Company, then a debtor in Bankruptcy under Title 11, No \_\_\_\_\_, knowingly and fraudulently  
transferred accounts receivable of XYZ Corporation to another company with the intent to defeat the  
provisions of Title 11.


All in violation of 18 U.S.C. § 152(7).

[cited in [USAM 9-41.001](#)]

◀ [860. Sample Indictment—Fraudulent  
Transfer in Contemplation of Bankruptcy, 18  
U.S.C. § 152\(7\)](#)

[up](#)

[862. Sample Indictment—Fraudulent  
Transfer of Property in Contemplation of  
Bankruptcy, 18 U.S.C. § 152\(7\)](#) ▶

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☐ —

(This would be used where the transfer occurred before filing bankruptcy. If the concealment continues after bankruptcy, then either § 152(1) or (7) may be used.)

On or about \_\_\_\_\_, in the \_\_\_\_\_ District of \_\_\_\_\_, JOHN DOE, defendant herein, knowingly and fraudulently and in contemplation of bankruptcy and prior to the filing of the case of *In the matter of John Doe*, No. \_\_\_\_\_, did transfer [conceal] property of the debtor, to wit: 38 head of cattle.

All in violation of 18 U.S.C. § 152(7).

[cited in [USAM 9-41.001](#)]

◀ [861. Sample Indictment—Fraudulent Transfer of Property, 18 U.S.C. § 152\(7\)](#) [up](#) [863. Destruction or Alteration of Recorded Information -- 18 U.S.C. § 152\(8\)](#) ▶



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## 863. Destruction or Alteration of Recorded Information -- 18 U.S.C. § 152(8)

18 U.S.C. § 152(8) prohibits the concealment, obstruction, mutilation or falsification of recorded information -- i.e., books, documents, records, and papers-- before or after the filing of a bankruptcy petition. This section applies to not only existing information but also to fabricated information. The recorded information must relate, however, "to the property or financial affairs of a debtor."

Subsection (8) provides:

A person who...after the filing of a case under title 11 or in contemplation thereof, knowingly and fraudulently conceals, destroys, mutilates, falsifies, or makes a false entry in any recorded information (including books, documents, records, and papers) relating to the property or financial affairs of a debtor; shall be fined..., imprisoned..., or both.

To sustain the charge that a person concealed, destroyed or falsified records after the filing of a case in bankruptcy, the government must prove that:

1. a bankruptcy proceeding existed;
2. the defendant concealed, destroyed, or mutilated the documents;
3. such documents related to the property or financial affairs of the debtor; and
4. the defendant acted knowingly and fraudulently.

Devitt & Blackmar, 2 *Federal Jury Practice and Instructions*, §§ 48.14 & 48.15 (1990 Supplement) (deleted in later editions).

The act of concealing, destroying or falsifying records can occur either before or after the bankruptcy case is filed. Documents or information relating to the financial affairs of a debtor include anything that would provide the names and locations of possible sources of funds or assets or means of reorganization of the estate. *United States v. Roberts*, 783 F.2d 767 (9th Cir. 1985); *United States v. Metheany*, 390 F.2d 559 (9th Cir.), *cert. denied*, 393 U.S. 824 (1968).

An entry that accurately logs a fraudulent transaction is a "fraudulent entry" when the party making the entry is aware of the fraudulent nature of the transaction. *United States v. Center*, 853 F.2d 568, 571 (7th Cir. 1988). A credit placed on a company's books as a fabrication to cover up the transfer of an accounts receivable in contemplation of bankruptcy is a false entry in a document relating to property of the bankrupt. *United States v. Falcone*, 544 F.2d 607, 610 (2d Cir. 1976), *cert. denied*, 430 U.S. 916 (1977).

[cited in [USAM 9-41.001](#)]

◀ [862. Sample Indictment—Fraudulent Transfer of Property in Contemplation of Bankruptcy, 18 U.S.C. § 152\(7\)](#)

up

[864. Sample Indictment—Destroying or Mutilating Records of Debtor, 18 U.S.C. § 152\(8\)](#) ▶

864. Sample Indictment—Destroying or Mutilating Records of Debtor,... <https://www.justice.gov/usam/criminal-resource-manual-864-sample-i...>

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**864. Sample Indictment—Destroying or Mutilating Records of Debtor, 18 U.S.C. § 152(8)**


On or about \_\_\_\_\_, in the \_\_\_\_\_ District of \_\_\_\_\_, JOHN DOE defendant herein, knowingly and fraudulently destroyed and mutilated inventory records relating to the property of XYZ Company, which company was then in bankruptcy under Title 11, Case No. \_\_\_\_\_.


All in violation of 18 U.S.C. § 152(8).

[cited in [USAM 9-41.001](#)]

[863. Destruction or Alteration of Recorded Information -- 18 U.S.C. § 152\(8\)](#)   [up](#)   [865. Sample Indictment—Concealing Records of Debtor, 18 U.S.C. § 152\(8\)](#)

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**865. Sample Indictment—Concealing Records of Debtor, 18 U.S.C. § 152(8)**

On or about \_\_\_\_\_, in the \_\_\_\_\_ District of \_\_\_\_\_, JOHN DOE, defendant herein, knowingly and fraudulently concealed the income tax records relating to the financial affairs of XYZ Company, which company was then in bankruptcy under Title 11, Case No. \_\_\_\_\_.

In violation of 18 U.S.C. § 152(8).

[cited in [USAM 9-41.001](#)]

[864. Sample Indictment—Destroying or  
Mutilating Records of Debtor, 18 U.S.C. §  
152\(8\)](#)

[up](#) [866. Sample Indictment—Falsifying Records  
of the Debtor, 18 U.S.C. § 152\(8\)](#)



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On or about \_\_\_\_\_, in the \_\_\_\_\_ District of \_\_\_\_\_, JOHN DOE, defendant herein, knowingly and fraudulently falsified financial records of XYZ Company, then a debtor under Title 11, Case No. \_\_\_\_\_, relating to its property, by altering the debtor company's records to show that John Smith had paid his account in full, when JOHN DOE well knew the account had not been paid.

All in violation of 18 U.S.C. § 152(8).

[cited in [USAM 9-41.001](#)]

◀ [865. Sample Indictment—Concealing  
Records of Debtor, 18 U.S.C. § 152\(8\)](#)

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## 867. Withholding of Recorded Information—18 U.S.C. § 152(9)

Subsection (9) of Section 152 prohibits the fraudulent withholding of any recorded information--i.e., books, documents, records, and papers--related to the property or the financial affairs of the debtor. The recorded information must be withheld from a custodian, trustee, United States Trustee, United States Marshal, or other officer of the court. This subsection only applies if the withholding of information occurs after the bankruptcy petition is filed--i.e., the commencement of the bankruptcy case.

Subsection (9) provides:

A person who...after the filing of a case under title 11, knowingly and fraudulently withholds from a custodian, trustee, marshal, or other officer of the court or a United States Trustee entitled to its possession, any recorded information (including books, documents, records, and papers) relating to the property or financial affairs of a debtor, shall be fined..., imprisoned..., or both.

The elements that must be proved are:

1. that a bankruptcy proceeding existed;
2. that the defendant withheld from the trustee entitled to its possession, books, documents, records, or papers;
3. that such documents related to the property or financial affairs of the debtor; and
4. that the defendant withheld the documents knowingly and fraudulently.

Devitt & Blackmar, *2 Federal Jury Practice and Instructions*, §§ 48.14 & 48.15 (1990 Supplement) (deleted in later editions).

A debtor's basic duty to cooperate with the trustee is set forth in 11 U.S.C. § 521(3). Anyone who has property of the bankruptcy estate or exempt property of the debtor is required by 11 U.S.C. § 542(a) to deliver it to the trustee and to account for the property.

[cited in [USAM 9-41.001](#)]

[866. Sample Indictment—Falsifying Records of the Debtor, 18 U.S.C. § 152\(8\)](#)

[up](#)

[868. Sample Indictment—Withholding Records of the Debtor, 18 U.S.C. § 152\(9\)](#)

868. Sample Indictment—Withholding Records of the Debtor, 18 U.S.C. § 152(9) <https://www.justice.gov/usam/criminal-resource-manual-868-sample-i...>



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## 868. Sample Indictment—Withholding Records of the Debtor, 18 U.S.C. § 152(9)

On or about \_\_\_\_\_, in the \_\_\_\_\_ District of \_\_\_\_\_, JOHN DOE, defendant herein, knowingly and fraudulently withheld the canceled checks of XYZ Company relating to the financial affairs of the debtor from the trustee and the United States Trustee, XYZ Company, then being in bankruptcy under Title 11, Case No. \_\_\_\_\_.

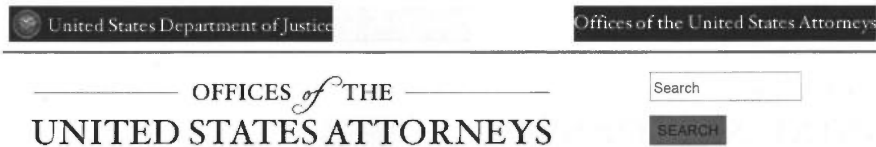
All in violation of 18 U.S.C. § 152(9).

[cited in [USAM 9-41.001](#)]

◀ [867. Withholding of Recorded Information—18 U.S.C. § 152\(9\)](#)

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## 869. Statute of Limitations—18 U.S.C. § 3284

Title 18 U.S.C. § 3284 contains a special statute of limitations which applies to concealment of assets cases:

The concealment of assets of a debtor in a case under title 11 shall be deemed to be a continuing offense until the debtor shall have been finally discharged or a discharge denied, and the period of limitations shall not begin to run until such final discharge or denial of discharge.

Where the debtor either receives a discharge or is denied a discharge by court order, the application of § 3284 is easy. The five year period begins with the date of the discharge or denial of the discharge. However, when a debtor receives neither a discharge nor a denial of the discharge, determining the statute of limitations is substantially more complex.

Currently there is no provision in the Bankruptcy Code for a corporate debtor to receive a discharge—i.e., a corporation is not granted a discharge from its debts. In addition, an individual debtor's bankruptcy case can be dismissed without a discharge being either granted or denied. QUERY: In a concealment of assets case where the debtor receives neither a discharge nor a denial of the discharge when, if ever, does the statute of limitations begin to run?

These issues have not been directly addressed by the courts in any recent cases. A literal reading of 18 U.S.C. § 3284 would mean that the statute would never run in the examples cited above since a discharge was neither granted nor denied. The District Courts in *United States v. Newman*, 63 F. Supp. 269 (S.D.N.Y. 1945); *United States v. Ganaposki*, 72 F. Supp. 982 (M.D. Pa. 1947); and *United States v. Nazzaro*, 65 F. Supp. 456, (S.D.N.Y. 1946) all held that under the statute prior to 18 U.S.C. § 3284 (which provided that the statute of limitation did not begin to run until the debtor received a discharge), the failure of the defendant to secure a discharge meant there was no statute of limitation. They held that this was the clear language Congress used, and, whether it was wise or not, it was well within Congress' power.

The District Court in *United States v. Fraidin*, 63 F. Supp. 271 (Md. 1945), concerned about the possibility of no statute of limitation under the old law, held that Congress really meant that the statute of limitations would also begin to run from the time the debtor was denied a discharge, even though Congress did not say it at the time. In 1948, Congress changed the statute to include the present "denial of discharge" language.

The Ninth Circuit, using the present 18 U.S.C. § 3284 language, in an individual bankruptcy case, reached the result that failure of the debtor to either receive a discharge or be denied a discharge resulted in no statute of limitation. *Winslow v. United States*, 216 F.2d 912, (9th Cir. 1954), *cert.*



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869. Statute of Limitations—18 U.S.C. § 3284 | USAM | Department o... <https://www.justice.gov/usam/criminal-resource-manual-869-statute-li...>

*denied*, 349 U.S. 922 (1955) (Winslow had full control to either receive a discharge, or if that was not possible, to secure an order denying a discharge. Since he did neither the statute of limitation did not begin to run.); *see also*, *Rudin v. United States*, 254 F.2d 45 (6th Cir.), *cert. denied*, 357 U.S. 930 (1958) (because a corporation could apply for a discharge within six months after its adjudication of bankruptcy, the statute of limitations did not begin to run for the corporate officer who concealed assets until six months after the corporation was adjudicated a bankrupt). NOTE: Under present law there is no provision for a corporation to apply for, or receive a discharge.

The District Court in *United States v. Zisblatt Furniture Co.*, 78 F. Supp. 9 (S.D.N.Y. 1948), *appeal dismissed*, 172 F.2d 740, (2d Cir. 1949), *appeal by U.S. dismissed at request of Solicitor General*, 336 U.S. 934, (1949), disagreed with all the previous District Courts and held that statutes of limitations are favored by the law and should be liberally construed in favor of the defendant. Since the corporation in *Zisblatt* had not applied for a discharge, the general statute of limitations began the date the individual defendant, who was an officer of the company, concealed the company assets.

Thus a debtor who receives neither a discharge nor a denial of the discharge and who commits the crime of concealment of assets could have the statute of limitations begin to run on the date of dismissal or on the last day a discharge could have been granted or may have no statute of limitations at all.

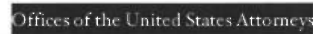
PRACTICE TIP: Although a false statement or declaration may also constitute a "concealment," *Burchinal v. United States*, 342 F.2d 982, 985 (10th Cir.), *cert. denied*, 382 U.S. 843 (1965), *only* the crime of concealment of assets receives the benefit of the extended statute of limitations provided by 18 U.S.C. § 3284. False statements, even for the purpose of concealing assets, are not covered by 18 U.S.C. § 3284. *United States v. Knoll*, 16 F.3d 1313, 1318 (2d Cir.), *cert. denied sub nom. Gleave v. United States*, 115 S. Ct. 574 (1994), *reh'g denied*, 115 S. Ct. 925 (1995).

[cited in [Criminal Resource Manual 858](#); [USAM 9-41.001](#)]

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## 870. Embezzlement against Estate—18 U.S.C. § 153

This section prohibits (1) embezzling property and (2) secreting or destroying any document belonging to the estate of the debtor. Unlike 18 U.S.C. § 152(8), only documents which are property of the estate are covered by this section. The Bankruptcy Reform Act of 1994 made substantial changes to this section. Section 153 was changed to extend coverage to more individuals who are in a position to embezzle funds from bankruptcy estates. The law now includes anyone who has access to property or documents of the estate by virtue of their participation in the administration of the estate in some official capacity. It also, for the first time, specifically covers employees and agents of those who have this access.

18 U.S.C. § 153 provides:

Whoever knowingly and fraudulently appropriates to his own use, embezzles, spends, or transfers any property or secretes or destroys any document belonging to the estate of a debtor which came into his charge as trustee, custodian, marshal, or other officer of the court, shall be fined... or imprisoned... or both.

The statute reaches all property that a court officer receives by reason of his or her position, regardless of whether it is ultimately determined to be property of the estate. *Meagher v. United States*, 36 F.2d 156 (9th Cir. 1929).

The statute also prohibits the destruction or concealment of documents belonging to the bankruptcy estate. Thus documents owned by third parties, even though they may relate to debts or assets of the bankruptcy estate, are excluded.

**PRACTICE TIP.** Where there is little evidence of intent to defraud, a prosecution for violating the general embezzlement statute, 18 U.S.C. § 645, should be considered. Although Section 645 covers only money, it encompasses employees and does not require proof of a fraudulent intent. *United States v. Sharpe*, 996 F.2d 125 (6th Cir.), *cert. denied*, 114 S. Ct. 400 (1993).

**CAVEAT:** Unlike subsection 18 U.S.C. § 152(8) this statute does not use the words "recorded information." Thus a possible argument could be made that information stored on a computer is not covered by this statute.


[cited in [USAM 9-41.001](#)]

[869. Statute of Limitations—18 U.S.C. § 3284](#)

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## 871. Sample Indictment—Embezzlement by Trustee or Employee, 18 U.S.C. §§ 153 and 645

(Prior to November 1994, § 153 did not cover employees of trustee or other officers of the court.)

From on or about \_\_\_\_\_, to on or about \_\_\_\_\_ in the \_\_\_\_\_ District of \_\_\_\_\_, JOHN DOE, defendant herein, knowingly and fraudulently appropriated to his own use funds which belonged to the Chase Bankruptcy Estate, Case No. \_\_\_\_\_ and which came into his charge and custody as Trustee of the Chase Bankruptcy Estate.


All in violation of 18 U.S.C. §§ 153 and 2.

[cited in [USAM 9-41.001](#)]

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[872. Sample Indictment—Embezzlement by Trustee or Employee, 18 U.S.C. §§ 153 and 645](#)


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## 872. Sample Indictment—Embezzlement by Trustee or Employee, 18 U.S.C. §§ 153 and 645

From on or about ----, to on or about ----- in the -----District of -----,

JOHN DOE,

defendant herein, being an employee of Richard Roe, trustee for the bankruptcy estate of John Chase, Bankruptcy Case No. -----, did unlawfully retain and convert to his own use [or to the use of another] approximately \$118,000 in money belonging to said estate, which money came into his hands by virtue of his employment with United States Trustee Richard Roe and the official position of Richard Roe.

All in violation of 18 U.S.C. § 645.

[cited in [USAM 9-41.001](#)]

[◀ 871. Sample Indictment—Embezzlement by Trustee or Employee, 18 U.S.C. §§ 153 and 645](#)
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## 873. Adverse Interest and Conduct—18 U.S.C. § 154

This section prohibits a custodian, trustee, marshal, or other officer of the court of a bankruptcy estate from (1) purchasing property of that bankruptcy estate, (2) refusing to permit a party in interest a reasonable opportunity to inspect the books and records relating to the bankruptcy estate after being ordered to do so by the court, and (3) refusing to permit a United State Trustee a reasonable opportunity to inspect the books and records relating to the bankruptcy estate. The acts proscribed in this statute need only be done knowingly. They do not have to be done fraudulently. A violation of this statute is an infraction punishable by a fine and removal from office. The first part of this section seeks to prohibit all self-dealing by an officer of the court.

Subsection (1) of Section 154 provides:

A person who, being a custodian, trustee, marshal, or other officer of the court...knowingly purchases, directly or indirectly, any property of the estate of which the person is such an officer in a case under title 11;...shall be fined...and shall forfeit the person's office, which shall thereupon become vacant.

The prohibition against the purchase of any property of a bankruptcy estate of which the person is an officer *may* continue after the officer resigns or is otherwise terminated. *In re Godel Mfg., Inc.*, 33 B.R. 693 (Bankr. D. Conn. 1983)(former trustee prohibited from acquiring interest in reorganized Chapter 11 company because of "appearance of impropriety"); *but see, In re Russo*, 762 F.2d 239 (2d Cir. 1985)(no per se prohibition against purchase of estate property by former trustee).

Subsection (2) of Section 154 provides:

A person who, being a custodian, trustee, marshal, or other officer of the court...knowingly refuses to permit a reasonable opportunity for the inspection by parties in interest of the documents and accounts relating to the affairs of estates in the person's charge by parties when directed by the court to do so;...shall be fined...and shall forfeit the person's office, which shall thereupon become vacant.

Subsection (2) requires a prior court order to issue directing the defendant to permit a reasonable opportunity for inspection of records relating to the affairs of the bankruptcy estate. Although the term "party in interest" is not defined in either Title 11 or Title 18, it generally means someone who has an interest in the proceeding-- e.g., the debtor, creditor or trustee.

Subsection (3) of Section 154 provides:

A person who, being a custodian, trustee, marshal, or other officer of the


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court...knowingly refuses to permit a reasonable opportunity for the inspection by the United States Trustee of the documents and accounts relating to the affairs of an estate in the person's charge,...shall be fined...and shall forfeit the person's office, which shall thereupon become vacant.

This allows the United States Trustee access to documents and accounts relating to the affairs of an estate without the necessity of a court order. Therefore, the principal difference between this subsection and Subsection (2) is that no prior court order is required.

◀ 872. Sample Indictment—Embezzlement by Trustee or Employee, 18 U.S.C. §§ 153 and 645 up 874. Sample Indictment—Adverse Interest, 18 U.S.C. § 154 ▶

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**874. Sample Indictment—Adverse Interest, 18 U.S.C. § 154**

On or about \_\_\_\_\_, in the \_\_\_\_\_ District of \_\_\_\_\_, JOHN DOE, defendant herein, being the trustee of the bankruptcy estate of \_\_\_\_\_ Case No. \_\_\_\_\_, did knowingly purchase property of that estate.

In violation of 18 U.S.C. § 154.

[873. Adverse Interest and Conduct—18 U.S.C. § 154](#) [up](#) [875. Fee Agreement—18 U.S.C. § 155](#)



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## 875. Fee Agreement—18 U.S.C. § 155

The intent of the section is to prevent parties in interest from dividing up the bankruptcy estate outside the control of the bankruptcy court. The term "party in interest" is not defined in either Title 11 or Title 18 but essentially covers anyone involved in a bankruptcy case. This section covers all agreements, whether expressed or implied, to pay fees or compensation from the assets of the bankruptcy estate. The fees or compensation being "fixed" must (1) relate to a bankruptcy case, (2) be paid from the assets of the bankruptcy estate, and (3) be for services related to the bankruptcy estate.


18 U.S.C. § 155 provides:

Whoever, being a party in interest, whether as a debtor, creditor, receiver, trustee or representative of any of them, or attorney for any such party in interest, in any receivership or case under title 11 in any United States court or under its supervision, knowingly and fraudulently enters into an agreement, express or implied, with another such party in interest or attorney for another such party in interest, for the purpose of fixing the fees or other compensation to be paid to any party in interest or to any attorney for any party in interest for services rendered in connection therewith, from the assets of the estate, shall be fined under this title or imprisoned not more than one year, or both.

A violation of this statute is a Class A misdemeanor. This section prohibits, in connection with a bankruptcy case, fee fixing agreements between parties in interest for *services* rendered-- but only if the payments are to come from the assets of the bankruptcy estate. Therefore, payments on pre-existing debts, payments by the debtor for services with post-petition earnings and purchases of property from the bankruptcy estate are not covered by this statute.

[◀ 874. Sample Indictment—Adverse Interest, 18 U.S.C. § 154](#) [up](#) [876. Sample Indictment—Fee Agreement, 18 U.S.C. § 155 ▶](#)



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**876. Sample Indictment—Fee Agreement, 18 U.S.C. § 155**

On or about \_\_\_\_\_, in the \_\_\_\_\_ District of \_\_\_\_\_, JOHN DOE, defendant herein and attorney for Richard Roe, debtor in Case No. \_\_\_\_\_, knowingly and fraudulently entered into an agreement with Richard Roe for Richard Roe to pay him \$5,000 from assets of the estate for his services, all without the approval of the court.

All in violation of 18 U.S.C. § 155.

[cited in [USAM 9-41.001](#)]

[875. Fee Agreement—18 U.S.C. § 155](#) [up](#) [877. Knowing Disregard of Bankruptcy Laws—18 U.S.C. § 156](#)



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## 877. Knowing Disregard of Bankruptcy Laws—18 U.S.C. § 156

This section punishes a bankruptcy petition preparer, i.e., bankruptcy petition or typing mills, whose knowing disregard of the Bankruptcy Code or Rules causes a bankruptcy petition or proceeding to be dismissed. A "bankruptcy petition preparer" is anyone, other than the debtor's attorney or that attorney's employee, who for compensation prepares bankruptcy documents for filing.

18 U.S.C. § 156(b) provides:

If a bankruptcy case or related proceeding is dismissed because of a knowing attempt by a bankruptcy petition preparer in any manner to disregard the requirements of title 11, United States Code, or the Federal Rules of Bankruptcy Procedure, the bankruptcy petition preparer shall be fined...imprisoned not more than 1 year, or both.

This offense is a Class A misdemeanor. The term "related proceeding" covers all proceedings in bankruptcy court. The acts proscribed in this statute need only be done knowingly. They do not have to be done fraudulently.

NOTE: Civil fines and injunctive relief against bankruptcy petition preparers who do not disclose their name, address, social security number, and their compensation for preparing documents are included in 11 U.S.C. § 110. The civil fines and injunctive relief under 11 U.S.C. § 110 are available for either an intentional or negligent disregard of the provisions of the Bankruptcy Code.

[cited in [USAM 9-41.001](#)]

◀ [876. Sample Indictment—Fee Agreement, 18 U.S.C. § 155](#)      [up](#)      [878. Sample Indictment—Knowing Violation of Bankruptcy Law or Rule, 18 U.S.C. § 156](#) ▶



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## 878. Sample Indictment—Knowing Violation of Bankruptcy Law or Rule, 18 U.S.C. § 156

On or about \_\_\_\_\_, in the \_\_\_\_\_ District of \_\_\_\_\_, JOHN DOE, defendant herein, a bankruptcy petition preparer, caused the bankruptcy case of Jane Doe, No. \_\_\_\_\_, to be dismissed because of the defendant's knowing violation of Bankruptcy Rule 1007(b) that required a statement of financial affairs to be filed with the debtor's chapter 11 bankruptcy petition.

In violation of 18 U.S.C. § 156.


[cited in [USAM 9-41.001](#)]

◀ [877. Knowing Disregard of Bankruptcy Laws—18 U.S.C. § 156](#)

[up](#)

[879. Bankruptcy Fraud—18 U.S.C. § 157](#) ▶

879. Bankruptcy Fraud—18 U.S.C. § 157 | USAM | Department of Justice <https://www.justice.gov/usam/criminal-resource-manual-879-bankrupt...>

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## 879. Bankruptcy Fraud—18 U.S.C. § 157

Title 18 U.S.C. § 157 prohibits devising or intending to devise a scheme or artifice to defraud and, for purposes of executing or concealing the scheme either (1) filing a bankruptcy petition; (2) filing a document in a bankruptcy proceeding; or (3) making a false statement, claim, or promise (a) in relationship to a bankruptcy proceeding either before or after the filing of the petition; or (b) in relation to a proceeding falsely asserted to be pending under the Bankruptcy Code. This section, which is patterned after the mail and wire fraud statutes, was added by the Bankruptcy Reform Act of 1994. This statute applies to any bankruptcy fraud scheme that continues or begins after October 22, 1994—the effective date of the Bankruptcy Reform Act of 1994.

Section 157 provides:


A person who, having devised or intending to devise a scheme or artifice to defraud and for the purpose of executing or concealing such a scheme or artifice or attempting to do so—

1. files a petition under title 11;
2. files a document in a proceeding under title 11; or
3. makes a false or fraudulent representation, claim, or promise concerning or in relation to a proceeding under title 11, at any time before or after the filing of the petition, or in relation to a proceeding falsely asserted to be pending under such title, shall be fined under this title, imprisoned not more than 5 years, or both.

Any defendant who undertakes a fraud scheme against anyone and then carries out or conceals the scheme by filing for bankruptcy or by filing any documents in the bankruptcy, violates this statute. This section is also applicable to the defendant who tries to defraud someone by falsely asserting that a case is in bankruptcy in order to forestall the victim's actions. The essence of this statute is the existence of a fraud scheme or attempted fraud scheme and any use of the bankruptcy system to carry out the scheme. For example, this statute should be applicable to petition mills that are set up to defraud the landlord of a few months rent, or to a bust out scheme. Likewise, a defendant who is actively defrauding anyone violates this statute by filing bankruptcy to delay or conceal the fraud. Case law from the wire, bank, and mail fraud statutes, 18 U.S.C. §§ 1341, 1343, and 1344, which have similar language, will be very useful in determining the scope of this statute.

[cited in [USAM 9-41.001](#)]

◀ [878. Sample Indictment—Knowing Violation of Bankruptcy Law or Rule, 18 U.S.C. § 156](#)      up      [880. Sample Indictment—Bankruptcy Fraud, 18 U.S.C. § 157, False Claim to be in Bankruptcy, 18 U.S.C. § 157](#) ▶


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## 880. Sample Indictment—Bankruptcy Fraud, 18 U.S.C. § 157, False Claim to be in Bankruptcy, 18 U.S.C. § 157

On or about \_\_\_\_\_, in the \_\_\_\_\_ District of \_\_\_\_\_, JOHN DOE, defendant herein, devised a scheme and artifice to defraud Sears Roebuck Co. of its right to collect debts owed to Sears Roebuck Co. by falsely claiming he was in bankruptcy and that Sears Roebuck Co. could not garnish his wages, and for the purpose of executing such scheme and artifice, delivered to Sears Roebuck Co. credit office a notice that said JOHN DOE had filed a Petition in Bankruptcy and was entitled to the protection of the automatic stay, when in truth and in fact, as JOHN DOE well knew, he had not filed a petition in bankruptcy and had not been granted an automatic stay under the Bankruptcy Code.

In violation of 18 U.S.C. § 157.

[cited in [USAM 9-41.001](#)]

[879. Bankruptcy Fraud—18 U.S.C. § 157](#)
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[881. Sample Indictment—Concealing a Scheme or Artifice to Defraud, 18 U.S.C. § 157](#)


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## 881. Sample Indictment—Concealing a Scheme or Artifice to Defraud, 18 U.S.C. § 157

(Ponzi and Bust Out schemes often use bankruptcy as a means of delaying and hindering creditors and investigators. By using bankruptcy to hide the scheme they will violate this section.)

1. From on or about \_\_\_\_\_ to on or about \_\_\_\_\_, in the \_\_\_\_\_ District of \_\_\_\_\_, JOHN DOE, defendant herein, devised a scheme or artifice to defraud investors of money by falsely promising that their investments of money with him would double every six months and that this return was possible because of his contacts with foreign investors who need to move money from their country to the United States. In fact, JOHN DOE had no foreign investors and was engaged in a scheme to use new investors' money to pay some return to the initial investors, while diverting substantial portions of the investments to his personal use.
2. On or about the \_\_\_\_\_ day of \_\_\_\_\_, Defendant JOHN DOE for the purpose of concealing from his investors the fact that he was unable to pay the promised return and that their money had been diverted to his personal use, filed a bankruptcy petition under title 11.

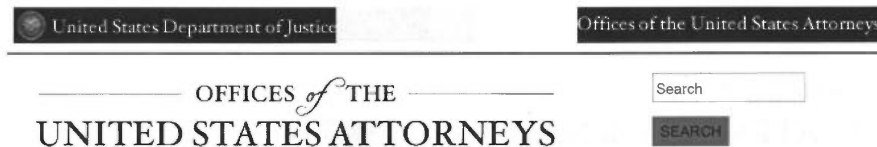
All in violation of 18 U.S.C. § 157.

[cited in [USAM 9-41.001](#)]

[880. Sample Indictment—Bankruptcy Fraud, 18 U.S.C. § 157, False Claim to be in Bankruptcy, 18 U.S.C. § 157](#)

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[882. Sample Indictment—Equity Skimming, 18 U.S.C. § 157](#)



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## 882. Sample Indictment—Equity Skimming, 18 U.S.C. § 157

(Sometimes the petitions are filed on behalf of the homeowner, delaying the collection efforts while the skim occurs. Sometimes the petition is filed by the petition mill/shell agency which is purportedly saving the home.)

1. From on or about \_\_\_\_\_ to on or about \_\_\_\_\_, in the \_\_\_\_\_ District of \_\_\_\_\_, JOHN DOE, defendant herein, devised a scheme and artifice to defraud American Bank and Richard Roe of money.
2. It was part of the scheme that defendant JOHN DOE, upon learning that American Bank was in the process of foreclosing on the home of Richard Roe, contacted Richard Roe and falsely claimed that he could refinance the mortgage with American Bank through government block grants that were available.
3. It was further part of the scheme that defendant JOHN DOE convinced Richard Roe to deed his property at 123 Home Street to JOHN DOE doing business as "Homeowners Protective Society" and to begin making his mortgage payments to said JOHN DOE.
4. It was further part of the scheme that following the execution of the quit claim deed by Richard Roe, defendant JOHN DOE filed bankruptcy on behalf of Richard Roe and did not disclose the transfer by quit claim deed, thus stopping and delaying collection and foreclosure efforts by American Bank.
5. It was further part of the scheme that defendant JOHN DOE continued to collect money from Richard Roe which would not be applied to the mortgage, but would be converted to the personal use of JOHN DOE.
6. On or about \_\_\_\_\_, Defendant JOHN DOE for the purpose of executing the scheme and artifice to defraud, caused a petition under title 11 to be filed on behalf of Richard Roe listing as creditor American Bank and as an asset the residence at 123 Home Street.

All in violation of 18 U.S.C. § 157.

[cited in [USAM 9-41.001](#)]

[881. Sample Indictment—Concealing a Scheme or Artifice to Defraud, 18 U.S.C. § 157](#) [up](#) [Criminal Resource Manual 901-999](#)



**U.S. Trustee Reports on Criminal Referrals  
2014/2015**

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New York City Bankruptcy Conference  
May 18, 2017      Ethics Panel



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

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**Report to Congress:**

**Criminal Referrals by the  
United States Trustee Program  
Fiscal Year 2015**

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

**April 2016**

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**EXECUTIVE SUMMARY**

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

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

The United States Trustee Program (Program or USTP) made 2,131 bankruptcy and bankruptcy-related criminal referrals during Fiscal Year (FY) 2015. This represents a 2.5 percent increase from the 2,080 criminal referrals made during FY 2014. The five most common allegations contained in the FY 2015 criminal referrals involved tax fraud, false oath or statement, concealment of assets, bankruptcy fraud scheme, and identity theft or use of false/multiple Social Security numbers.

Of the 2,131 criminal referrals, as of January 7, 2016, formal criminal charges had been filed in connection with 10 of the referrals, 1,276 of the referrals remained under review or investigation, and 845 of the referrals were declined for prosecution.

In FY 2015, the Program was an active member of the President’s Financial Fraud Enforcement Task Force (FFETF), two national working groups, and bankruptcy fraud and other specialized working groups and task forces in districts across the country. Program staff contributed to the prosecution of bankruptcy and bankruptcy-related crimes by serving as Special Assistant U.S. Attorneys in cases, assisting with investigations, and providing support as expert

and fact witnesses. The Program employs a variety of strategies to identify fraud including the Program's Internet email "Hotline" which enables individuals to report suspected bankruptcy crimes. A link to the FFETF's Web site also is provided on the Program's Web site to facilitate the reporting of financial crimes not involving bankruptcy.

### INTRODUCTION

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

The Program is the component of the Department of Justice whose mission is to promote the integrity and efficiency of the bankruptcy system for the benefit of all stakeholders – debtors, creditors, and the public. The Program consists of 21 regions with 93 field office locations nationwide and an Executive Office in Washington, DC. Each field office is responsible for carrying out numerous administrative, regulatory, and litigation responsibilities under title 11 (the Bankruptcy Code) and title 28 of the United States Code.<sup>1/</sup>

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

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<sup>1/</sup> The Program has jurisdiction in all federal judicial districts except those in Alabama and North Carolina.

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 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). 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 2015, the Program made 2,131 bankruptcy and bankruptcy-related criminal referrals. Each referral may be sent to multiple agencies, but it is counted only once in CETS. Similarly, each referral may contain multiple allegations. The breadth of allegations involved in criminal referrals is evident in Table 1, with referral allegations in 46 separate categories. The five most common allegations contained in the FY 2015 criminal referrals involved tax fraud (44%), false oath or statement (28.5%), concealment of assets (25%), bankruptcy fraud scheme (21.4%), and identity theft or use of false/multiple Social Security numbers (16.1%).

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Table 1: Criminal Referrals by Type of Allegation		
Type of Allegation	Referrals	
	Number	Percent*
Tax Fraud [26 U.S.C. § 7201, et seq.]	938	44.0%
False Oath/Statement [18 U.S.C. § 152(2) and (3)]	608	28.5%
Concealment [18 U.S.C. § 152(1) and (7)]	532	25.0%
Bankruptcy Fraud Scheme [18 U.S.C. § 157]	455	21.4%
ID Theft or Use of False/Multiple Social Security Numbers	344	16.1%
Mail/Wire Fraud [18 U.S.C. §§ 1341 and 1343]	171	8.0%
Perjury/False Statement	149	7.0%
Concealment/Destruction/Withholding of Documents [18 U.S.C. § 152(8) and (9)]	121	5.7%
Mortgage/Real Estate Fraud	78	3.7%
Sarbanes/Oxley [18 U.S.C. § 1519]	67	3.1%
Bank Fraud [18 U.S.C. § 1344]	66	3.1%
Forged Document(s)	65	3.1%
Conspiracy [18 U.S.C. § 371]	42	2.0%
Federal Program Fraud	33	1.5%
State Law Violation(s)	30	1.4%
Embezzlement [18 U.S.C. § 153]	29	1.4%
Post-Petition Receipt of Property [18 U.S.C. § 152(5)]	27	1.3%
Misuse of Seals of Courts; Seals of Departments or Agencies [18 U.S.C. §§ 505 and 506]	25	1.2%
Money Laundering [18 U.S.C. §§ 1956 and 1957]	23	1.1%
False Claim [18 U.S.C. § 152(4)]	21	1.0%
Investor Fraud	21	1.0%
Credit Card Fraud/Bust-Out	11	<1%
Threat of Violence	11	<1%
Corporate Fraud	9	<1%
Disregard of Bankruptcy Law/Rule by BPP [18 U.S.C. § 156]	9	<1%
Corporate Bust-Out/Bleed-Out	8	<1%
Professional Fraud	8	<1%
Extortion	7	<1%
Internet Fraud	7	<1%
Health Care Fraud [18 U.S.C. § 1347]	5	<1%
False Personation [18 U.S.C. § 912]	4	<1%
Racketeer Influenced and Corrupt Organizations (RICO)	4	<1%
Serial Filer	4	<1%
Bribery [18 U.S.C. § 152(6)]	3	<1%
Obstruction of Justice	3	<1%
Abusive Reaffirmation of Debt/Creditor Abuse	2	<1%
Criminal Contempt [18 U.S.C. § 402]	2	<1%
Larceny	2	<1%
Subornation of Perjury	2	<1%
Terrorism	2	<1%
Adverse Interest/Officer Conduct [18 U.S.C. § 154]	1	<1%
Collusive Bidding	1	<1%
Deprivation of Honest Services	1	<1%
Drug Offense	1	<1%
Insurance Fraud	1	<1%
Trespassing	1	<1%
1) Percent based on 2,131 referrals. One referral often contains more than one allegation, so the sum of the percentages for referrals will exceed 100 percent.		
2) Allegation information can change over time. Table 1 reflects information contained within CETS as of January 7, 2016.		

## II. OUTCOMES OF CRIMINAL REFERRALS

Table 2 shows the collective outcome/disposition of the 2,131 criminal referrals the Program made during FY 2015 as of January 7, 2016.<sup>2/</sup> Of the 2,131 referrals, 1,276 referrals (59.9%) remained under investigation or review, 10 referrals (0.4%) resulted in formal charges, and 845 referrals (39.7%) were declined for prosecution.

Table 2: Outcome/Disposition of FY 2015 Referrals (as of 01/07/2016)		
Outcome/Disposition <sup>1</sup>	Referrals	
	Number	Percent <sup>2</sup>
Under Review in United States Attorney's Office	677	31.8%
With Investigative Agency	599	28.1%
Formal Charges Filed (Case Active)	7	0.3%
Formal Charges Filed (Case Closed)	3	0.1%
– At least One Conviction or Guilty Plea	3	
– At least One Pre-trial Diversion	0	
– At least One Dismissal	0	
– At least One Acquittal	0	
Prosecution Declined by United States Attorney	845	39.7%
1) Outcome and disposition information will change over time. The information contained in Table 2 reflects information contained within CETS as of January 7, 2016.		
2) Rounded percent based on 2,131 referrals.		

The 10 cases referenced in Table 2 in which formal charges were filed between October 1, 2014, and January 7, 2016, are prosecutions that originated from a FY 2015 referral as derived from CETS.<sup>3/</sup> 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

<sup>2/</sup> The Program 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.

<sup>3/</sup> Table 2 reflects only disposition information related to referrals the Program made in FY 2015. It does not reflect the entirety of prosecutions with bankruptcy charges brought by the Department of Justice in FY 2015. A reporting of all prosecutions would include those that originated from Program referrals in prior fiscal years, as well as prosecutions related to referrals not made by the Program.



generally takes more than two years before there is a reportable action in CETS. Therefore, it is reasonable that a high percentage of cases referred in FY 2015 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 2015 represents a 2.5 percent increase from the number of referrals made in FY 2014.

<b>Table 3: Comparison Between Criminal Referrals in FY 2014 and FY 2015</b>		
<b>FY 2014</b>	<b>FY 2015</b>	<b>Percent Change</b>
2,080	2,131	2.5%

The Program has experienced near continuous growth in the number of bankruptcy and bankruptcy-related criminal referrals over the past nine years, with the exception of a slight decline in FY 2013. The Program's sustained efforts to detect and refer suspected criminal activity, including FY 2015's increase in referrals despite continued resource challenges, demonstrate the Program's continuing commitment to this important statutory duty.

### **IV. PROGRAM EFFORTS TO PREVENT BANKRUPTCY FRAUD AND ABUSE**

The Program is committed to identifying and referring for prosecution bankruptcy fraud and other crimes, and has systems in place to detect fraud schemes. The Program's Office of Criminal Enforcement (OCE) oversees and coordinates the Program's criminal enforcement efforts, and has strengthened the Program's ability to detect, refer, and assist in the prosecution of criminal violations. Through issuing guidance and resource materials, providing extensive training, participating in national working groups, and working with its law enforcement partners, the Program has established the necessary systems to combat fraud and abuse that threaten the integrity of the bankruptcy system.

Highlights of the Program's criminal enforcement efforts in FY 2015 include the following:

*Bankruptcy Fraud and Other Specialized Working Groups and Task Forces.* The Program is an active member of the President's Financial Fraud Enforcement Task Force and the Bank Fraud and Identity Theft Working Groups sponsored by the Department of Justice's Criminal Division. In addition, the Program participates in more than 75 local bankruptcy fraud working groups, mortgage fraud working groups, and other specialized task forces throughout the country. Members of these working groups and task forces include representatives from the USAOs, FBI, United States Postal Inspection Service, Internal Revenue Service-Criminal Investigation, Offices of the Inspector General (OIG) for the Social Security Administration and the Department of Housing and Urban Development, United States Secret Service, Office of the Special Inspector General for the Troubled Asset Relief Program, and Immigration and Customs Enforcement, among others.

*Special Assistant United States Attorneys and Other Staff Support.* Approximately 25 Program attorneys in field offices across the country are designated as Special Assistant U.S. Attorneys to assist USAOs in the investigation and prosecution of bankruptcy and bankruptcy-related crimes. Other Program staff also are called upon to assist with investigations and to provide expert or fact testimony at trial. For example, in FY 2015, an Assistant U.S. Trustee received a Cooperative Achievement Award from the U.S. Department of Health and Human Services (HHS) for her work as a member of the Multi-Program Grant federal investigative team that included representatives from the USAO, the FBI, HHS-OIG, and the Departments of Education and Agriculture. The award recognized the team for its successful investigation and prosecution of the former president of a chapter 11 debtor, whose company had received Head Start funding and other federal assistance. That individual pleaded guilty to theft of government property.

In addition, the OCE has three Program trial attorneys on detail who serve as part-time regional criminal coordinators. These individuals provide support, assistance, and training to

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

*Training.* During FY 2015, the OCE and Program staff presented more than 100 bankruptcy and bankruptcy-related fraud training programs that reached approximately 3,700 federal, state, and local law enforcement personnel, Program employees, private bankruptcy trustees, and members of the bar and other professional associations throughout the country. The Program customizes each presentation to maximize impact and utilizes a variety of educational formats to deliver training, including in-person presentations, online meeting technology, and video teleconferences. Notable for FY 2015 was the launch of a series of FBI bankruptcy fraud training conference calls created in partnership with the Financial Institution Fraud Unit of the FBI's Criminal Investigation Division, and presentation of a residential class for Assistant U.S. Trustees and Trial Attorneys at the Program's National Bankruptcy Training Institute on criminal enforcement topics including common fraud schemes that affect the bankruptcy system, detection and referral of potential criminal activity, and criminal discovery obligations.

*Bankruptcy Fraud Internet "Hotline."* In FY 2015, the Program documented 647 email submissions via the National Bankruptcy Fraud Hotline ([USTP.Bankruptcy.Fraud@usdoj.gov](mailto:USTP.Bankruptcy.Fraud@usdoj.gov)).

#### **SUMMARY**

The USTP's criminal enforcement program was enhanced again in FY 2015 through the actions described in this report. Through detecting and referring fraud schemes, collaborating with its law enforcement partners, and providing specialized training, the Program will continue its enforcement efforts to combat fraud and abuse and to protect the integrity of the bankruptcy system.



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

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**Report to Congress:**

**Criminal Referrals by the  
United States Trustee Program  
Fiscal Year 2014**

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

**May 2015**

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### 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 Department of Justice Reauthorization Act of 2005 (P.L. 109-162). Section 1175 states:

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

The United States Trustee Program (Program) made 2,080 bankruptcy and bankruptcy-related criminal referrals during Fiscal Year (FY) 2014. This represents a 0.3 percent increase from the 2,074 criminal referrals made during FY 2013. The five most common allegations contained in the FY 2014 criminal referrals involved tax fraud, false oath or statement, concealment of assets, bankruptcy fraud scheme, and identity theft or use of false/multiple Social Security numbers.

Of the 2,080 criminal referrals, as of January 22, 2015, formal criminal charges had been filed in connection with 12 of the referrals, 1,217 of the referrals remained under review or investigation, 850 of the referrals were declined for prosecution, and one referral was administratively closed.

In FY 2014, the Program was an active member of the President's Financial Fraud Enforcement Task Force (FFETF), two national working groups, and bankruptcy fraud and other specialized working groups and task forces in districts across the country. Program staff contributed to the prosecution of bankruptcy and bankruptcy-related crimes by serving as Special Assistant U.S. Attorneys in cases, assisting with investigations, and providing support as expert

and fact witnesses. The Program employs a variety of strategies to identify fraud including the Program's Internet email "Hotline" which enables individuals to report suspected bankruptcy crimes. A link to the FFETF's Web site also is provided on the Program's Web site to facilitate the reporting of financial crimes not involving bankruptcy.

### 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 outcomes of each criminal referral; (3) for any year in which the number of criminal referrals is less than for the prior year, an explanation of the decrease; and (4) the United States Trustee Program's efforts to prevent bankruptcy fraud and abuse, particularly with respect to the establishment of uniform internal controls to detect common, higher risk frauds, such as a debtor's failure to disclose all assets."

The Program is the component of the Department of Justice whose mission is to promote the integrity and efficiency of the bankruptcy system for the benefit of all stakeholders – debtors, creditors, and the public. The Program consists of 21 regions with 93 field office locations nationwide and an Executive Office in Washington, DC. Each field office is responsible for carrying out numerous administrative, regulatory, and litigation responsibilities under title 11 (the Bankruptcy Code) and title 28 of the United States Code.<sup>1/</sup>

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

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<sup>1/</sup> The Program has jurisdiction in all federal judicial districts except those in Alabama and North Carolina.

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 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). 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 2014, the Program made 2,080 bankruptcy and bankruptcy-related criminal referrals. Each referral may be sent to multiple agencies, but it is counted only once in CETS. Similarly, each referral may contain multiple allegations. The breadth of allegations involved in criminal referrals is evident in Table 1, with referral allegations in more than 45 separate categories. The five most common allegations contained in the FY 2014 criminal referrals involved tax fraud (38.3%), false oath or statement (33.0%), concealment of assets (27.3%), bankruptcy fraud scheme (23.6%), and identity theft or use of false/multiple Social Security numbers (17.3%).



# AMERICAN BANKRUPTCY INSTITUTE

Table 1: Criminal Referrals by Type of Allegation		
Type of Allegation	Referrals	
	Number	Percent*
Tax Fraud [26 U.S.C. § 7201, et seq.]	797	38.3%
False Oath/Statement [18 U.S.C. § 152(2) and (3)]	687	33.0%
Concealment [18 U.S.C. § 152(1) and (7)]	568	27.3%
Bankruptcy Fraud Scheme [18 U.S.C. § 157]	491	23.6%
ID Theft or Use of False/Multiple SSNs	360	17.3%
Perjury/False Statement	150	7.2%
Mail/Wire Fraud [18 U.S.C. §§ 1341 and 1343]	126	6.1%
Concealment/Destruction/Withholding of Documents [18 U.S.C. § 152(8) and (9)]	98	4.7%
Mortgage/Real Estate Fraud	74	3.6%
Forged Document	68	3.3%
Bank Fraud [18 U.S.C. § 1344]	63	3.0%
Sarbanes/Oxley [18 U.S.C. § 1519]	62	3.0%
Embezzlement [18 U.S.C. § 153]	43	2.1%
Federal Program Fraud	41	2.0%
Conspiracy [18 U.S.C. § 371]	33	1.6%
Misuse of Seals of Courts; Seals of Departments or Agencies [18 U.S.C. §§ 505 and 506]	28	1.3%
Money Laundering [18 U.S.C. §§ 1956 and 1957]	22	1.1%
Post-Petition Receipt of Property [18 U.S.C. § 152(5)]	22	1.1%
Disregard of Bankruptcy Law/Rule by BPP [18 U.S.C. § 156]	21	1.0%
State Law Violations	20	1.0%
Investor Fraud	18	<1%
Serial Filer	16	<1%
False Claim [18 U.S.C. § 152(4)]	14	<1%
Obstruction of Justice	14	<1%
Corporate Bust-Out/Bleed-Out	12	<1%
Internet Fraud	12	<1%
Credit Card Fraud/Bust-Out	11	<1%
Criminal Contempt [18 U.S.C. § 402]	10	<1%
Corporate Fraud	9	<1%
Professional Fraud	9	<1%
Health Care Fraud [18 U.S.C. § 1347]	7	<1%
Insurance Fraud	7	<1%
Extortion	4	<1%
Threats of Violence	4	<1%
Drug Offenses	3	<1%
Immigration Offense	3	<1%
Bribery [18 U.S.C. § 152(6)]	2	<1%
Structuring	2	<1%
Adverse Interest/Officer Conduct [18 U.S.C. § 154]	1	<1%
Embezzlement from Employee Pension Plans	1	<1%
False Personation	1	<1%
False Reports to Union	1	<1%
Federal and State Election Law	1	<1%
Larceny	1	<1%
Racketeer Influenced and Corrupt Organizations (RICO)	1	<1%
Subornation of Perjury	1	<1%
Terrorism	1	<1%

\* Percent based on 2,080 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 2,080 criminal referrals the Program made during FY 2014 as of January 22, 2015.<sup>2/</sup> Of the 2,080 referrals, 1,217 referrals (58.5%) remained under investigation or review, 12 referrals (0.6%) resulted in formal charges, 850 referrals (40.9%) were declined for prosecution, and one referral (<0.1%) was administratively closed.<sup>3/</sup>

Table 2: Outcome/Disposition of FY 2014 Referrals (as of 1/22/2015)		
Outcome/Disposition <sup>1</sup>	Referrals	
	Number	Percent <sup>2</sup>
Under Review in United States Attorney's Office	726	34.9%
With Investigative Agency	491	23.6%
Formal Charges Filed (Case Active)	9	0.4%
Formal Charges Filed (Case Closed)	3	0.1%
– At least One Conviction or Guilty Plea	3	
– At least One Pre-trial Diversion	0	
– At least One Dismissal	0	
– At least One Acquittal	0	
Prosecution Declined by United States Attorney	850	40.9%
Administratively Closed	1	<0.1%
1) Outcome and disposition information will change over time. The information contained within Table 2 reflects information contained within CETS as of January 22, 2015.		
2) Rounded percent based on 2,080 referrals.		

<sup>2/</sup> The Program 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.

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