

United States General Accounting Office

Report to the Committee on Governmental Operations, Subcommittee on Governmental Operations, House of Representatives

BANK AND
CRIMINAL FRAUD

TO THE
HOUSE OF REPRESENTATIVES
COMMITTEE ON GOVERNMENTAL OPERATIONS
SUBCOMMITTEE ON GOVERNMENTAL OPERATIONS



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J.S. Department of Justice
National Institute of Justice

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Washington, D.C. 20548

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General Government Division
B-250439

NCJRS

October 5, 1992

JAN 13 1993

The Honorable Bob Wise
Chairman, Government Information,
Justice, and Agriculture Subcommittee
Committee on Government Operations
House of Representatives

ACQUISITIONS

Dear Mr. Chairman:

This fact sheet responds to your letter of August 19, 1992, regarding the Department of Justice's investigations and prosecutions of criminal bank and thrift fraud. As you know, we developed the material in this fact sheet largely in response to a request from the Senate Committee on the Judiciary. You asked about the recorded number of prosecutions and the number of investigations and cases that the U.S. Attorneys declined to proceed with, the amounts of fines and restitution that the government had collected, and what Justice officials have said regarding the adequacy of Justice's resources.

RESULTS

Justice activity against criminal misconduct involving banks and thrifts has increased over the past several years as more resources have been applied to investigations and prosecutions.¹ Appropriation acts following the Financial Institutions Reform, Recovery,

¹Justice's Special Counsel for Financial Institutions Fraud has noted to us that Justice investigates and prosecutes a broad range of conduct, not just criminal financial institution fraud. Fraud involves a specific statutory definition that does not embrace other violations that Justice might also prosecute as criminal misconduct involving a financial institution. For convenience in this fact sheet, however, we will refer to the entire range of criminal misconduct against financial institutions, including credit unions, as bank and thrift fraud.

and Enforcement Act (FIRREA) of 1989² and the Crime Control Act of 1990³ have funded an addition of nearly 1,000 special agents and attorneys to investigate and prosecute criminal bank and thrift fraud. Subsequently, Federal Bureau of Investigation (FBI) investigations into criminal bank and thrift fraud increased significantly, and Justice has indicted and convicted an increasing number of individuals for "major" frauds.⁴ Over the same period, however, the U.S. Attorneys declined to proceed with a large number of investigations and cases. (In general, an investigation becomes a case after an individual is charged with a crime through an indictment or information.)

According to Justice's reports to Congress on financial institution fraud,⁵ Justice charged 1,085 individuals and convicted 855 defendants in fiscal year 1991. Through the first 9 months of fiscal year 1992, Justice charged 975 individuals and convicted 833 defendants.

However, the U.S. Attorneys have declined to proceed with the majority of investigations and cases. The FBI generally becomes involved in investigations of misconduct in financial institutions after it receives information or criminal referrals from the institutions or their federal regulator agencies. Agents evaluate the referrals using procedures established in the local field office that received the referral.

²Financial Institutions Reform, Recovery and Enforcement Act of 1989, P. L. 101-73, 103 Stat. 183.

³Crime Control Act of 1990, P. L. 101-647, 104 Stat. 4789.

⁴The FBI defines major fraud cases to include alleged frauds that either contributed to an institution's failure or involved losses of \$100,000 or more; nonmajor cases are those alleging frauds of less than \$100,000. The U.S. Attorneys define major fraud cases differently. To the U.S. Attorneys, major fraud cases are those in which (1) the possible dollar loss to the financial institution(s) is \$100,000 or greater; (2) the defendant was an officer, director, attorney, or owner (including shareholder) of the financial institution; (3) the scheme(s) involved multiple borrowers in the same financial institution; or (4) there were other factors involved that warranted "major" status designation.

⁵See, for example, U.S. Department of Justice, Attacking Financial Institution Fraud, fiscal year 1992 third quarterly report to Congress.

Yet, rather than proceeding, the FBI has closed most of its investigations because the U.S. Attorney declined to proceed with them. In fiscal year 1991, of the 26,118 criminal referrals, complaints, and other information it received, the FBI closed 14,399 (55.1 percent) following U.S. Attorney declinations. Another 5,367 (20.5 percent) were referred either for local prosecution or to another federal agency. Through the first 10 months of fiscal year 1992, the FBI similarly closed 15,005 (52.6 percent of a total of 28,539 criminal referrals, complaints, and other pieces of information received) and referred another 7,238 (25.4 percent) for local prosecution or to another federal agency. FBI data indicated that most of the investigations were declined because the alleged fraud involved estimated dollar losses that were too small to warrant expending agent and attorney time.⁶

Justice also later declined the majority of investigations that proceeded (i.e., those that the U.S. Attorneys recorded as a "matter"). Data from the Executive Office for U.S. Attorneys (EOUSA) indicated that of the 7,841 matters disposed in fiscal year 1991 (either by charging a defendant through an indictment or information, declining the matter, or some other disposition),

⁶The Special Counsel has disagreed with our use of the term "investigation," maintaining that it is confusing. In particular, he would like to distinguish between investigations and referrals, suggesting that many of the declinations are not of investigations but of referrals that involve relatively minimal amounts of alleged losses, such as \$100 disappearing from a bank teller's cash drawer. He said that such referrals are never opened as an investigation.

According to data from the FBI, most referrals do involve relatively small amounts of alleged losses. The FBI's data on fraud cases can be disaggregated to a greater extent than similar data kept by the U.S. Attorneys' offices. The FBI categorizes data by failure cases and the amount of fraud involved. The categories used are (1) less than \$25,000, (2) \$25,000 - \$99,999, and (3) \$100,000 and over. For example, of the 3,287 referrals received by the FBI in July 1992, 2,852 (86.8 percent) alleged losses of less than \$25,000. However, the FBI categorizes each as an investigation and does not separately account for referrals with which it undertakes little, if any, activity. Thus, because neither the FBI nor the Special Counsel records distinguish between the number of referrals in total and those that result in full-fledged investigations, we can report only what the FBI records--the total received.

the U.S. Attorneys closed 4,007 matters with a declination (51 percent of the total). According to data from EOUSA, the most common reasons for those declinations included weak evidence, a lack of evidence of criminal intent, the suspect's being prosecuted by other authorities, and a lack of investigative or prosecutive resources. (Data for fiscal year 1992 were not available at the time we did our work.)

Most of the declinations were of investigations into nonmajor alleged frauds. Nationally, in fiscal year 1991, the U.S. Attorneys declined about 16 times more nonmajor than major investigations.

For major case investigations in fiscal year 1991, the U.S. Attorneys prosecuted about 35 percent and declined about 33 percent, and the FBI closed the remainder administratively (that is, when all leads had been exhausted and the special agent in charge believed further investigation was not warranted).⁷ Among selected field offices, the percentage of nonmajor and major case investigations closed because of U.S. Attorney declinations varied widely. (Additional information on Justice's investigations, prosecutions, and declinations is included in app. I.)

Justice's Special Counsel for Financial Institutions Fraud told us that the percentage of U.S. Attorney declinations reflects the changing emphasis given to major cases. He told us that with relatively scarce prosecutorial resources, the available attorneys should make larger cases a higher priority. The Special Counsel also testified earlier this year that he had not yet determined whether Justice's investigative and prosecutive resources are adequate.⁸ However, in its budget request for fiscal year 1993, the Bush administration requested an additional 50 FBI agents for bank and thrift fraud investigations and 60 additional attorney positions to address economic crime (although the budget submission did not directly mention that any of those additional positions would be applied to financial institution fraud). (App. II contains more information on the adequacy of Justice's resources to address financial institution fraud.)

Between October 1, 1988, and July 1992, the courts ordered \$846.7 million in fines and restitution in cases of major fraud alone.

⁷The FBI will also close an investigation administratively if it recategorizes or assigns a new file number to it.

⁸S. Hrg. 102-537 (Feb. 6, 1992).

According to information from Justice, as of July 1992, the government had collected about 4.5 percent of the total ordered, although not all of the remainder may be collectible. For example, Justice says that in most cases there is little or nothing to collect or recover at the conclusion of the criminal process when sentencing occurs.

Despite having exerted considerable effort recently to improve the amount and quality of its data, Justice recognized that the information it has on fines and restitution is not complete.⁹ This is partly because payments are received at a number of different points in the justice system. (App. III provides more information on the collection of fines and restitution ordered in criminal bank and thrift fraud cases.)

OBJECTIVES, SCOPE, AND METHODOLOGY

Our objectives were to provide information on Justice's activities against criminal bank and thrift fraud. Specifically, you asked us to provide information on investigations, prosecutions, and declinations; the amount of fines and restitution ordered and collected; and what positions Justice has taken regarding the adequacy of its available resources to carry out investigations and complete prosecutions of criminal bank and thrift fraud.

To address these objectives, we drew on information that we had assembled largely in response to a request from the Senate Committee on the Judiciary. We discussed the government's efforts with various Justice officials, along with officials in the federal financial regulatory agencies and executive branch agencies and departments that participate in identifying and pursuing wrongdoing in financial institutions. We analyzed data from the FBI and EOUSA, and data from the Office of Special Counsel for Financial Institutions Fraud, but we did not verify its accuracy. We did our work in accordance with generally accepted government auditing standards.

In commenting on this fact sheet, Justice officials, including the Special Counsel, commented that we had not adequately characterized Justice's efforts. For example, the Special

⁹For more information, see Report on Monetary Enforcement Efforts in Financial Institution Fraud Cases, Department of Justice (Mar. 1992). Excerpts are contained in Justice's Attacking Financial Institution Fraud, fiscal year 1992 second quarterly report to Congress.

Counsel maintained that we "obscure[d] the distinction between a 'fraud' referral, regardless of size or actual loss, and the mysterious disappearance of \$25."

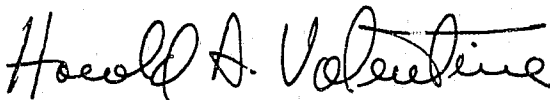
We disagree. We believe that we have made every effort to properly characterize Justice's efforts. However, given that FBI data can be disaggregated only to certain levels and U.S. Attorneys' data not at all, further distinctions by either Justice or us would require a review of closed case files, including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

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As agreed with the Subcommittee, we plan no further distribution of this fact sheet until 30 days from the date of this letter, unless you publicly announce its contents earlier. At that time, we will make copies available upon request.

The major contributors to this fact sheet are listed in appendix IV. If you have any questions concerning this report, please call me at (202) 566-0026.

Sincerely yours,



Harold A. Valentine
Associate Director, Administration
of Justice Issues

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ABBREVIATIONS

CID	Criminal Investigations Division
EOUSA	Executive Office for U.S. Attorneys
FBI	Federal Bureau of Investigation
FIF	financial institution fraud
FIRREA	Financial Institutions Reform, Recovery, and Enforcement Act
IRS	Internal Revenue Service

ADDITIONAL INFORMATION ON CRIMINAL BANK AND THRIFT FRAUD
INVESTIGATIONS, PROSECUTIONS, AND DECLINATIONS

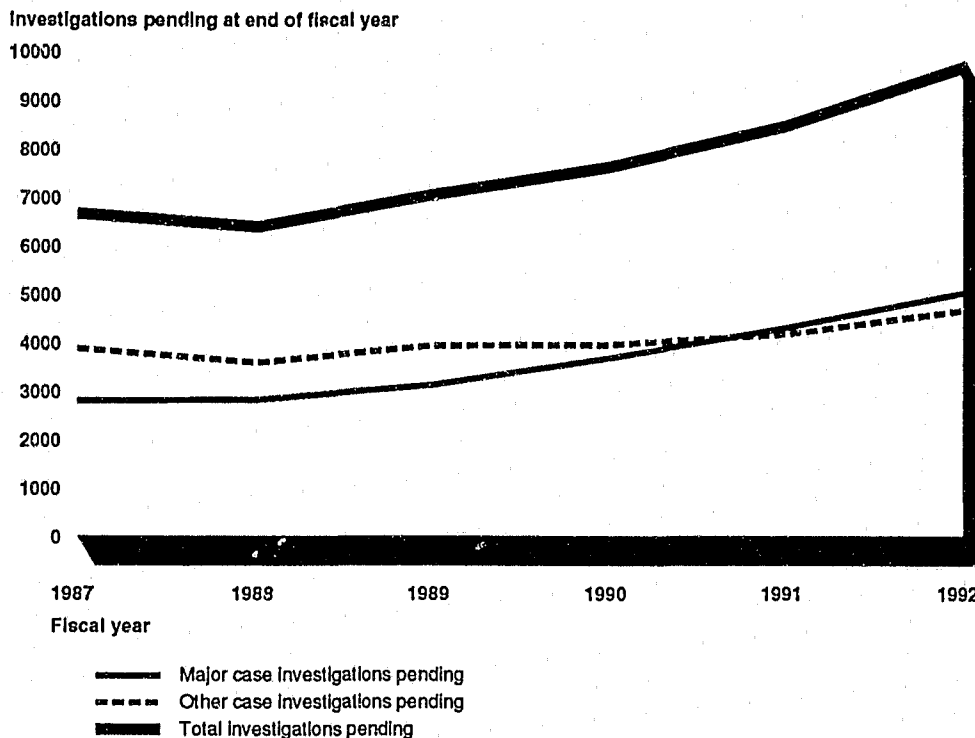
The Chairman asked us about the outcome of the Federal Bureau of Investigation's (FBI) investigative efforts on financial institution fraud. Specifically, he asked us how many financial institution fraud cases the FBI presented to U.S. Attorneys for prosecution for 1991 and 1992, respectively. He also asked us to determine what reasons the U.S. Attorneys listed for those cases that they declined to prosecute.

It is difficult to say that the FBI "presents" cases to U.S. Attorneys for prosecution. In some locations, the FBI makes the initial review of the referrals and then alerts the U.S. Attorney's office to those that might have merit. In others, the FBI reviews the referrals concurrently with the U.S. Attorney's office. Either way, most U.S. Attorney offices are significantly involved with the FBI during financial institution fraud (FIF) investigations.

JUSTICE'S CRIMINAL FIF INVESTIGATIVE
AND PROSECUTIVE WORKLOAD HAS INCREASED

The FBI's bank and thrift fraud investigation workload has grown steadily over the past 5 years. As of July 31, 1992, the FBI had 9,659 FIF investigations pending (i.e., active), an increase of 11.3 percent over the 8,678 pending at the end of fiscal year 1991 and 45.3 percent over the 6,649 pending at the end of fiscal year 1987. Figure I.1 shows the growth in the number of investigations pending.

Figure I.1: The FBI's Pending Financial Institution Fraud Investigations Workload Has Risen Since Fiscal Year 1987



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

Source: GAO analysis of FBI data.

Justice data show increases in major case results.¹ According to Justice's third quarterly report to Congress in fiscal year 1992, Justice charged 3,270 defendants with major financial institution offenses between October 1, 1988, and June 30, 1992. Those crimes involved over \$11.5 billion in estimated losses. Over the same period, Justice convicted 2,603 defendants in major bank and thrift fraud cases (110 defendants were acquitted,

¹Justice has data only on major fraud cases from fiscal year 1989 into 1992, and it does not report data for nonmajor cases. The FBI keeps data for both major and nonmajor cases since fiscal year 1987. The Special Counsel told us, however, that because of time lags in the FBI's reporting, data from the Executive Office for U.S. Attorneys (EOUSA) on indictments, informations, and convictions were better.

establishing a conviction rate near 96 percent). Table I.1 summarizes these results.

Table I.1: Justice's Major Case Results

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

^aData are for October 1, 1991, through June 30, 1992.

Source: Justice Department.

U.S. ATTORNEYS HAVE DECLINED
LARGE NUMBERS OF BANK AND THRIFT FRAUD
INVESTIGATIONS AND CASES

The FBI has closed most of its investigations following receipt of a criminal referral because the U.S. Attorney declined to proceed with them. The FBI may close an investigation because of declination in two circumstances:

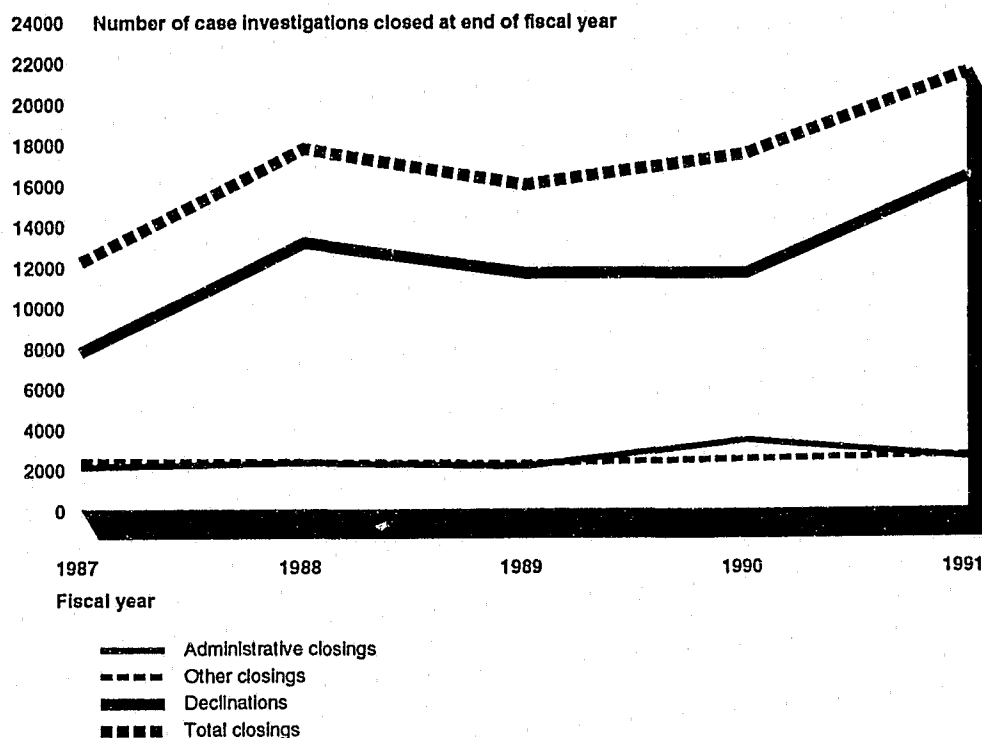
1. It involves an estimated dollar loss too small to warrant expending agent and attorney time. U.S. Attorney offices usually have policies that suggest a threshold dollar value (the "declination level") below which they may not pursue a case. Declination levels vary among the 94 districts, with levels ranging from \$5,000 to \$100,000. However, these "declination policies" may be written so that they leave much discretion to the U.S. Attorney about whether to pursue even small cases.
2. The U.S. Attorney's office declines prosecution for other reasons. According to Justice, there are many reasons for declining to prosecute a referred matter. For example, there may be no federal offense evident; the suspect (if he or she is known) may be being prosecuted on other charges or by other authority; the evidence may be weak, insufficient,

or inadmissible; the statute of limitations may have expired; or the office may lack investigative or prosecutive resources.

For example, of the 3,433 criminal referrals, complaints, or other pieces of information received during July 1992, the FBI closed 2,788 (81.2 percent) because of U.S. Attorney declinations: 1,914 (55.8 percent) because they involved alleged frauds below the U.S. Attorneys' prosecutive guidelines, and 228 (6.6 percent) because the U.S. Attorneys declined the other referrals for other reasons. The FBI referred another 646 (18.8 percent) for local prosecution or to another federal agency.

Figure I.2 shows the increase in the number of declinations and total investigation closings between fiscal years 1987 and 1991.

Figure I.2: The FBI Has Closed Increasing Numbers of Investigations Because of U.S. Attorney Declinations

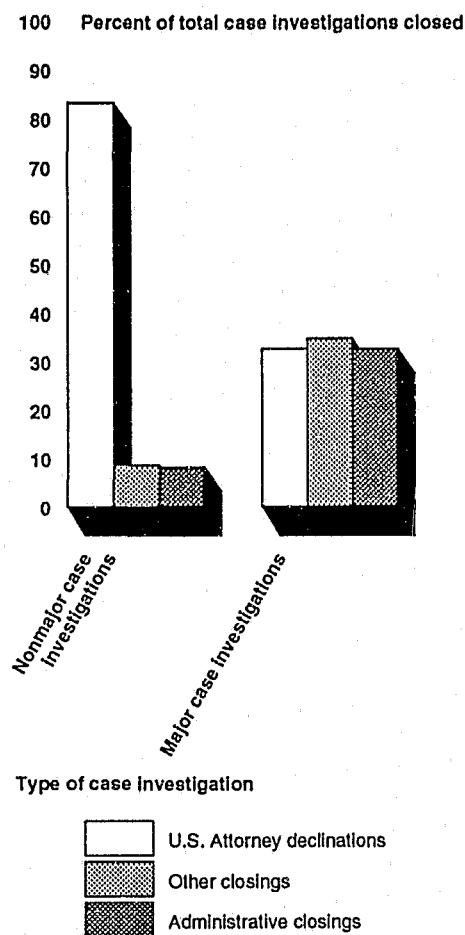


Source: GAO analysis of FBI data.

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

By fiscal year 1991, the U.S. Attorneys were prosecuting only a small percentage of the FBI's nonmajor investigations. As shown in figure I.3, the U.S. Attorneys prosecuted less than 9 percent of the FBI's nonmajor investigations and declined about 83 percent. (The FBI closed the other 8 percent administratively.) With major case investigations, on the other hand, the U.S. Attorneys declined about 33 percent, prosecuted about 35 percent, and the FBI closed the remainder administratively.

Figure I.3: In Fiscal Year 1991, the FBI Closed Relatively More Nonmajor Than Major Investigations Because of U.S. Attorney Declinations

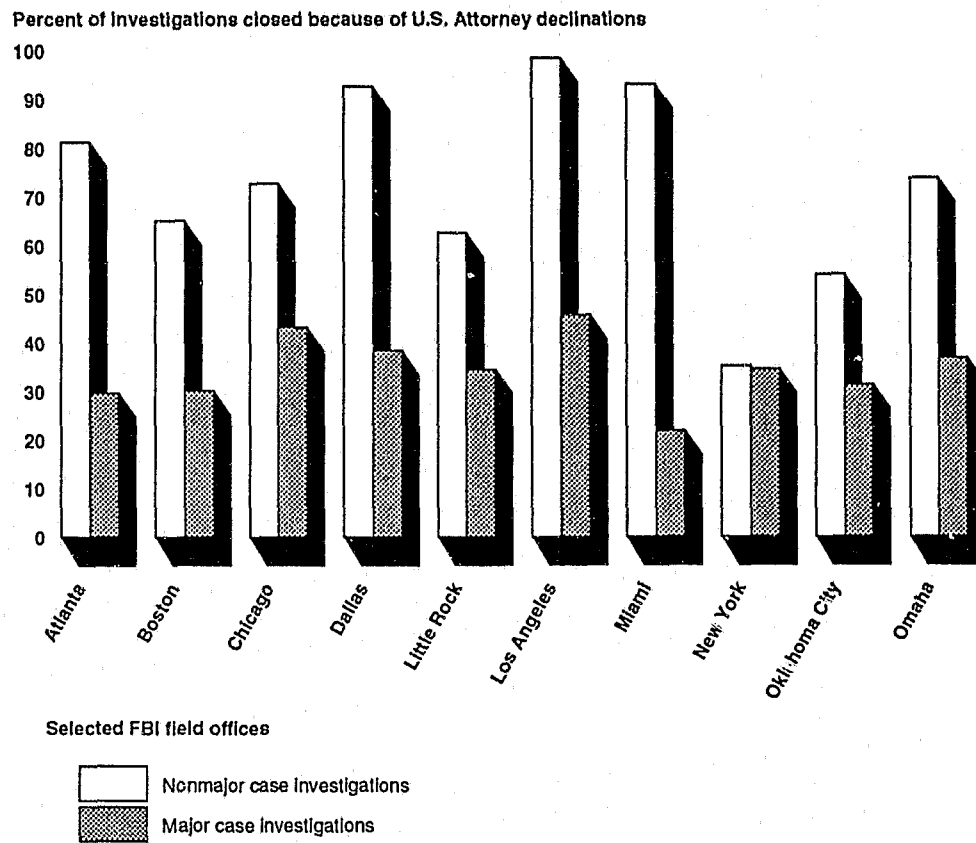


Source: GAO analysis of FBI data.

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

Figure I.4 shows variations in declinations for 10 selected FBI field offices.

Figure I.4: FBI Investigation Closings Following U.S. Attorney Declinations Varied Among Selected Field Offices in Fiscal Year 1991



Source: GAO analysis of FBI data.

According to the Special Counsel, the increase in the percentage of U.S. Attorney declinations reflects the changing emphasis given to major cases. He told us that with relatively scarce prosecutorial resources, the available attorneys should make larger cases a higher priority. Although the FBI could investigate smaller matters for training purposes, he said, the FBI should refer such matters to state or local prosecutors for further action rather than sending them to the U.S. Attorneys.²

At the case stage (i.e., after the U.S. Attorneys opened a matter), EOUSA data indicated that of the 7,841 matters disposed in fiscal year 1991 (either by charging a defendant with an indictment or information, declining the matter, or some other disposition), the U.S. Attorneys closed 4,007 matters (51 percent) with a declination. Of those declined, 481 (12 percent) were because the suspect was to be prosecuted by other authorities. Table I.2 lists the other reasons EOUSA data noted for those declinations.

²As noted earlier, of the 26,105 referrals, complaints, and other pieces of information received in fiscal year 1991, the FBI referred 5,367 (20.6 percent) for local prosecution or to another federal agency. Through July 1992, the FBI similarly referred 7,238 (25.4 percent) of the 28,539 received in fiscal year 1992.

Table I.2: Top Reasons U.S. Attorneys Listed for Declining Financial Institution Fraud Cases, Fiscal Year 1991

Reason	Number	Percent of total
Weak evidence	660	16.5
Lack of evidence of criminal intent	486	12.1
Suspect being prosecuted by other authorities	481	12.0
Lack of investigative or prosecutive resources	358	8.9
No federal offense evident	333	8.3
Minimal federal interest	271	6.8
Office policy ^a	255	6.4
Suspect being prosecuted on other charges	195	4.9
No known suspect	181	4.5
Pretrial diversion completed	169	4.2
Agency request	131	3.3
Jurisdiction or venue problems	73	1.8
Opened in error/office error	69	1.7
Restitution made or being made	58	1.4
Civil, administrative, or other disciplinary alternatives	56	1.4
Staleness ^a	33	0.8
General office declination	26	0.6
Suspect deceased	26	0.6
Statute of limitations	25	0.6
Suspect's cooperation	19	0.5
Suspect serving sentence	16	0.4
Petite policy ^a	16	0.4
Department policy	15	0.4
Suspect a fugitive	15	0.4
Witness problems	11	0.3
Offender's age, health, prior record, or personal matter	11	0.3
Declined per instructions from Justice	9	0.2
Motion hearing	5	0.1
Court policy	2	0.0
Juvenile suspect	2	0.0
Total	4,007	100.0

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

Source: GAO analysis of Justice Department data.

ADDITIONAL INFORMATION ON JUSTICE'S RESOURCES

The Chairman asked us what Justice's position is regarding the adequacy of its current resources to carry out investigations and to complete prosecutions. He asked what effect, if any, Justice's resources have had on its ability to prosecute cases referred by the FBI.

The Financial Institutions Reform, Recovery, and Enforcement Act (FIRREA) of 1989 and the Crime Control Act of 1990 provided Justice with additional resources to investigate and prosecute financial institution fraud. Following FIRREA, Congress appropriated over \$49 million to enhance the Justice Department's FIF enforcement programs in fiscal year 1990.¹ These appropriations funded 216 FBI special agents, 118 assistant U.S. Attorneys, 30 Tax and Criminal Division attorneys, and support staff. Crime Control Act authorizations resulted in appropriations that provided Justice with almost \$120 million additionally to investigate bank and thrift fraud. Those appropriations supported an addition of more than 600 agents and attorneys. Most of the additional resources went to local FBI and U.S. Attorney offices.

Still, questions about resource adequacy persist. The FBI does not yet appear to have sufficient resources to address all criminal referrals it receives. For example, because of a lack of resources, the FBI categorized 35 referrals it received in June 1992 as "unaddressed." In testimony before the Subcommittee on Consumer and Regulatory Affairs of the Senate Committee on Banking, Housing, and Urban Affairs, the Special Counsel could not say whether the current level of resources was adequate, in part because the investigators and prosecutors already in the field were not fully functional.² As noted in response to your first question, one relatively common reason Justice prosecutors declined cases in fiscal year 1991 was a lack of investigative and prosecutive resources.

For fiscal year 1993, the executive branch requested an additional 50 FBI agents for bank and thrift fraud but did not

¹The fiscal year 1990 FIRREA appropriations were \$49.2 million. Various adjustments, including the sequester and internal reprogrammings, established a total availability of \$49.4 million.

²S. Hrg. 102-537 (Feb. 6, 1992).

request additional attorney resources specifically to address financial institution fraud.³ The Special Counsel also testified in the February 1992 hearing that more investigators are needed than "people in court."

In addition, FBI and assistant U.S. Attorneys in various offices around the country have told us that several different agencies have also contributed to FIF investigations and prosecutions. They cited, for example, cases in which staff from the Secret Service, Customs Service, and Postal Service have played key roles in investigations. The agency most frequently mentioned, however, was the Internal Revenue Service (IRS).

IRS's Criminal Investigations Division (CID) is involved with FIF investigations in a number of locations around the country. IRS's primary focus in these investigations is on Title 26, U.S.C., tax violations, although it may also focus on Title 18 conspiracy and Title 31 money laundering violations. CID agents have participated in investigations of over 200 institutions since 1987, primarily through joint agency participation in grand jury investigations. In July 1991, IRS reported that CID agents in 7 regions were involved or had participated in investigating 290 bank and thrift fraud investigations. According to information from IRS, the largest numbers of those investigations were in California and Texas.

FBI and U.S. Attorney staff around the country often told us that they found IRS CID agents to be extremely valuable in their investigations and prosecutions, and they increasingly requested participation by CID. Similarly, a senior Treasury Department official said that IRS agents are a valuable commodity for most local U.S. Attorney Offices, because no other federal agency personnel have been so trained to handle such complex cases. Through August 1991, IRS CID spent 188.6 staff years on financial institution fraud.

IRS could have supported considerably more staff years during fiscal year 1991 if the administration had requested the appropriations. The Crime Control Act authorized an additional

³Justice's fiscal year 1993 congressional authorization and budget submission requested an additional 60 attorney positions to combat economic crime. The submission says that those positions are to address such criminal activity as insurance fraud, bankruptcy fraud, computer fraud, defense procurement fraud, pension plan fraud, and telemarketing fraud. Of the 60 positions, 24 are to address fraud in the health care industry.

\$16 million for fiscal year 1991 for IRS to work on bank and thrift fraud. That authorization would have supported an additional 120 special agents and 40 other personnel (revenue agents and support). However, according to a senior Treasury official, the Office of Management and Budget directed Treasury not to request funding for these positions. Consequently, the request was not included in the president's budget and was then never acted on by Congress.

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

ADDITIONAL INFORMATION ON FINES AND RESTITUTION

The Chairman asked what amount of fines and restitutions federal courts had ordered in FIF cases and what amount the federal government had collected. He also asked what problems the federal government had encountered in its collection efforts.

The Crime Control Act of 1990 requires the Attorney General to compile, collect, and report to Congress information on the results achieved in FIF cases, including restitution assessed and collected. Information from Justice indicated that the federal courts have ordered bank and thrift fraud offenders to pay substantial amounts of fines and restitutions in these major cases. According to Justice data, between October 1, 1988, and July 1992, the courts ordered \$846.7 million in fines and restitution in major fraud cases alone.¹ As of July 1992, the government had collected about 4.5 percent of the total ordered. Table III.1 shows the amount of fines and restitution ordered and collected in major fraud cases where the offenders were sentenced between fiscal year 1989 and July 1992.

Table III.1: Fines and Restitution for Financial Institution Fraud Offenders, as of July 1992 (Dollars in thousands)

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

Source: GAO analysis of Justice data.

¹In general, fines and restitution are due immediately, unless the sentencing court provides for payment on a specific date or in installments. If the court orders restitution, any fines imposed should not impair the ability of the defendant to make restitution.

Justice recognized that the information it has on the collection of fines and restitution is incomplete. Testifying before the Subcommittee on Consumer and Regulatory Affairs of the Senate Committee on Banking, Housing, and Urban Affairs, the Special Counsel noted that Justice has only part of the responsibility for monitoring the collection of fines and restitution.²

One reason that Justice's collections data are incomplete is that procedures for collecting and monitoring restitution vary around the country. In some districts, the Probation and Pretrial Services Division of the Administrative Office of the U.S. Courts monitors collection of restitution. In other districts, U.S. Attorney offices monitor collection. In addition, actual payments are received at a number of different access points at several agencies, which include Justice, the Federal Deposit Insurance Corporation, and the Probation Office of the U.S. Courts.³

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

²S. Hrg. 102-537, p. 11.

³Once it is fully operational, the National Fine Center will provide a central point for processing fines, restitutions, forfeitures of bail bonds and collateral, and assessments. Authorized by the Criminal Fines Improvements Act of 1987 (P.L. 100-185), the National Fine Center will not only physically receive payments of fines, restitution, and special assessments, it will provide current information on the payment of all fines, restitution, and assessments imposed by the federal courts nationwide. It will perform, in one location, the accounting and administrative support for fine collection and enforcement, accept payments, furnish current balances, compute interest, send monthly statements and notices to debtors, track delinquencies and defaults, and provide information to probation officers, clerks, U.S. Attorneys, and the Bureau of Prisons. In addition, the Fine Center will generate national statistics. We are reviewing the National Fine Center's operations as a part of another review.

Third, fine and restitution orders may be stayed by courts, pending appeal.

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

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SECRET

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Very truly yours,

John F. Kennedy

Enclosure

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