The author(s) shown below used Federal funds provided by the U.S. Department of Justice and prepared the following final report:

Document Title:	**Building a Comprehensive White-Collar Violations Data System, Final Technical Report**
Author(s):	**Sally S. Simpson, Peter Cleary Yeager**
Document No.:	**248667**
Date Received:	**March 2015**
Award Number:	**2012-R2-CX-K016**

This report has not been published by the U.S. Department of Justice. To provide better customer service, NCJRS has made this federally funded grant report available electronically.

Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.

Final Technical Report[1]

Building a Comprehensive White-Collar Violations Data System

Sally S. Simpson and Peter Cleary Yeager

[1] Report submitted to the Bureau of Justice Statistics, Grant No. 2012-R2-CX-K016

This document is a research report submitted to the U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.

Contents

Abstract…..……..….....3

I. Overview of the White-Collar Crime Data Series……..5

II. Conceptualizing the Series……..……10

III. Prior Efforts to Measure White-Collar Offenses……..…….....19

IV. Design Elements for Anticipated Data Series.…….....45

V. Assessing Available Data..……....70

VI. Criminal and Civil Case Data: Strengths and Weaknesses……...99

VII. Lessons learned from the Agency Briefs…….……...109

VIII. Conclusions and Recommendations…….……..112

Bibliography……..121

Statutes Cited…….…125

Appendix: Agency Briefs……127

This document is a research report submitted to the U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.

ABSTRACT

Despite its voluminous collections of data on conventional crimes and the legal responses to them, the Nation has long lacked systematic data on white-collar offenses and the sanctions employed against them. Because this void hampers research on and policy development for such offenses, scholars and political leaders have advocated the development of an ongoing data system that would systematically capture, measure, and describe these violations and the legal responses to them. The federal Bureau of Justice Statistics (BJS), as the country's leading repository for the collection, analysis and dissemination of data on crime and justice processing, is uniquely situated to develop a data series on white collar offenses. This BJS-funded project proposes a design for such a series at the federal level and assesses opportunities and challenges in its implementation.

The design elements for the data system include a definition of white-collar offenses that distinguishes them clearly from other forms of offending and that corresponds to both professional and popular conceptions of such violations. To achieve these goals we use a role-centered definition that locates the motivations and opportunities for violations in legitimate occupational and organizational roles. The data system comprises all violations of federal laws—those sanctioned by regulatory/administrative, civil or criminal procedures—to represent accurately the array of offenses and sanctions employed against them. From the federal agencies and departments that enforce laws against white-collar offenses, it would systematically and regularly collect enforcement case data on key factors: sources of identification of cases of offenses, characteristics of offenses and offenders, and case outcomes.

Project staff assessed enforcement data characteristics, quality and availability in two ways: through meetings and interviews with enforcement and data management personnel from selected departments and agencies, and through examination of criminal and civil data held by BJS as well as data made publicly available on a sample of agency web sites. Among the findings and conclusions from these approaches are that (1) currently available data held by the federal government's enforcement units could contribute valuably to the formation of a data series, but the data vary in terms of completeness and ease of accessibility across agencies; (2) some agency personnel see the effort to build the data system as valuable to their own efforts to improve the quality of their enforcement data; (3) the two agencies from which the project sought agreements to share data with BJS to initiate the series both demonstrated early reluctance to share the data; (4) agency web sites with publicly available enforcement data are a promising source of information for the data series; (5) with current data sources we are commonly not able to identify individuals who offend in legitimate occupations because role often cannot be determined unless persons are listed as co-defendants with organizations; even then distinguishing white-collar civil and criminal cases (as defined herein) from conventional offenses can be uncertain because the available data do not clearly differentiate between legitimate and illegitimate organizations; (6) demonstration projects between Department of Justice enforcement divisions and agencies that share jurisdiction with them have promise for both assessing data quality and completeness and promoting ongoing data-sharing for the white-collar offenses data system; (7) BJS should continue its efforts to develop the data system. Among other steps it should seek to form an ongoing working group that includes relevant personnel from key enforcement units and agencies to share information on enforcement data management challenges, needs and goals, to discuss the purposes and goals of a white-collar offenses data system, and to discover the synergies between the enforcement units' efforts to

This document is a research report submitted to the U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.

improve their own data systems and the ongoing development of the new BJS data system for white-collar offenses.

This document is a research report submitted to the U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.

I. Overview of the White-Collar Crime Data Series

A. Framing the Issue

Since its inception the Bureau of Justice Statistics (BJS) has collected, analyzed, published, and disseminated information on crime, criminal offenders, victims of crime, and the operation of justice systems at all levels of government. A notable exception to this comprehensive coverage is the lack of information about white-collar offenses, offenders, and justice system responses, even though the collection of such data was one of the original tasks outlined for the agency.[2] Although the United States has long had annual accounting systems for conventional crimes (including data collected and held by BJS) that have underwritten countless research investigations and informed public policy deliberations, the data landscape for white-collar offending is significantly more constrained. There is no systematic accounting of white-collar offenses and available data are substantially limited in scope and content. BJS does hold some case and defendant-level criminal and civil enforcement data[3] on "white-collar" crime from which it has issued select reports on Federal Enforcement of Environmental Laws (Scalia, 1999) and white-collar offending at the state- and federal-level (BJS, 1986; Mason, 1987), but the information is not organized in

[2] BJS was created under the Justice Systems Improvement Act of 1979 to "promote the collection and analysis of statistical information concerning crime, juvenile delinquency, and civil disputes." It was mandated, among other tasks, to collect "information concerning criminal victimization, crimes against the elderly, and *white-collar crime"* (emphasis added).

[3] The civil data have not been explored or used to the same extent as the criminal case processing data.

This document is a research report submitted to the U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.

such a way that enforcement actions against individual or organizational defendants can be followed over time or linked across criminal, civil, and regulatory justice systems. Indeed, regulatory enforcement data on organizations are for the most part absent, and details about offenders and victims are sparse. Consequently, it is impossible to track the extent of known white-collar violations in the United States over time, to describe the characteristics of cases and defendants, or to capture the full array of sanctions levied in a particular case or against perpetrators.

The inability of the federal government consistently and accurately to report known instances of white-collar offending has far-reaching consequences for general knowledge, scientific investigation, and evidence-based policy in this important area. "Policies are formed and legislation is passed, often seemingly rationalized by little more than carefully selected anecdotes that seem to support a particular policy when taken in isolation—and that can easily be countered by other anecdotes that are supportive of an opposing point of view" (Dunworth and Rogers, 1996: 499-500). Such an empirically deficient approach toward white-collar crime virtually ensures "combativeness and policy mistakes".[4]

[4] This policy-related observation was made by Dunworth and Rogers after their assessment of data on big business litigation in Federal courts, but it is equally apt for white-collar crime.

This document is a research report submitted to the U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.

Confounding the development of a comprehensive data collection and management system is the lack of conceptual clarity surrounding the definition of white-collar crime. Because white-collar crime is not a legal category, definitions abound. Criminologists and legal scholars have defined and classified white-collar crime in a variety of ways. Some definitions focus on offenses committed by companies and their managers to achieve the goals of the business, while others emphasize offenses committed by individuals that may or may not involve organizational or business resources but tend to be tied more to self-interest and guile (e.g., embezzlement or tax fraud). Consistent with Sutherland (1949), social scientists often prefer offender-based definitions of white-collar crime which call attention to the social position of the actor. For Sutherland, white-collar crime was "committed by a person of respectability and high social status in the course of his occupation" (1949: 9). The behaviors he had in mind were not necessarily (or even typically) pursued, prosecuted, and punished in the criminal justice system. Instead they were handled commonly through civil and administrative justice processes. But they met the general criteria of criminal behavior, i.e., offenses defined by the "legal definition of social injuries and (ultimately the) legal provision of penal sanctions" (Sutherland, 1983: 52). Although Sutherland's definition emphasized individual-level characteristics, his empirical research focused on the offenses of corporations—an inconsistency that caused definitional

This document is a research report submitted to the U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.

confusion and the subsequent parsing of white-collar crime into criminal behavior systems that helped to organize, classify, and make sense of the extensive range of behaviors captured by Sutherland's conceptual and empirical work (Clinard et al., 1994).

In contrast, offense-based definitions of white-collar crime focus on the means through which the offense is perpetrated and its characteristics, as in Edelhertz's (1970: 3) definition: "an illegal act or a series of illegal acts committed by nonphysical means and by concealment or guile to obtain money or property, to avoid the payment or loss of money or property, or to obtain personal or business advantage". Edelhertz recognized distinct types of white-collar offending within this broad definition, including personal crimes (individuals who act by themselves for personal gain in a non-business setting); abuses of trust (people operating within legitimate businesses and other organizations or professions who violate their duties to an employer or client); business crimes (crimes that further business interests but are not the primary focus of the firm); and con games (illegal acts by an illicit organization whose business is white-collar crime) (Edelhertz, 1970: 19-20). This focus on the offense itself rather than the social position of the actor emphasized the diverse and extensive nature of fraudulent behavior.

The Bureau of Justice Statistics originally incorporated both offender- and offense-based approaches into a single definition of white-collar crime. The

This document is a research report submitted to the U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.

second edition of the Dictionary of Criminal Justice Data Terminology (1981: 215), for instance, described white-collar crime as "nonviolent crime for financial gain committed by means of deception by persons whose occupational status is entrepreneurial, professional or semi-professional and utilizing their special occupational skills and opportunities; also nonviolent crime for financial gain utilizing deceptions and committed by anyone having special technical and professional knowledge of business and government, irrespective of the person's occupation." Practically, however, most criminal justice data management systems do not collect information about the offender's occupational status or special knowledge utilized to commit the offense. This reality ultimately restricted the operational definition of white-collar crime to "nonviolent crime for financial gain committed by means of deception" (Mason, 1986: 2) and produced a classification scheme in which forgery, counterfeiting, fraud, and embezzlement constituted white-collar crime. Notably, the classification of white-collar crimes in this manner was not driven not by conceptual considerations but rather by data limitations.

B. Justification for the Series

Recognizing existing data deficiencies and the need for research and development on the topic, BJS contracted with Professor Sally S. Simpson (University of Maryland) and Professor Peter C. Yeager (Boston University) to

This document is a research report submitted to the U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.

assess the feasibility of developing a statistical series that would integrate criminal and civil data that BJS receives from the Executive Office for U.S. Attorneys (EOUSA) and the Administrative Office of the U.S. Courts (AOUSC) with enforcement data from federal regulatory agencies. The ultimate goal of this effort is to describe comprehensively the federal response to white-collar violations and offer recommendations for series design and content. This Technical Report summarizes the conceptual and methodological approach adopted by Simpson and Yeager to map the data landscape. It also utilizes and assesses data from specific agencies to demonstrate the feasibility of this approach.

II. Conceptualizing the Series

A. Principles and Aims

The conceptual basis for the data series comprises a number of key principles and aims. A data series on white collar violations of federal laws should, of course, meet the standards of reliability and validity. In practice these translate to the requirements that the measurement schema being employed are comprehensive, clear and replicable, and that what is being measured comports with a concise, analytically-based and clear definition of the phenomenon of interest.

This document is a research report submitted to the U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.

Because white collar offenses comprise a large and diverse array of illegal behaviors, a data series for them must, in pursuit of comprehensiveness, be able to integrate diverse existing databases into a single system of accounting. This requires a coding system with two important characteristics that exist in a certain tension with each other: that it be broad enough to capture the key points in the law enforcement handling of cases of white collar offending, and that its data collection categories be adequately concise to capture reliably and consistently these data points from among the widely varying federal data systems in which the violations and enforcement data originate.

Finally such a series should be maintained in timely fashion, and it must be an ongoing endeavor with regularly scheduled additions of data on new cases—and new developments in existing cases—to the database. And as a routine component of the maintenance and growth of the series, there should be ongoing assessments of data quality, of the series' utility for both policy and research purposes, and of potential improvements in collection and measurement. Such efforts will not only ensure the quality of the data series, but should also have the effect of working synergistically with parallel efforts of participating federal agencies to improve their own data management processes toward the more uniform, effective and useful measurement of white collar offenses and enforcement in the federal government.

This document is a research report submitted to the U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.

The principal justification for and value of a data series on white collar offenses are the contributions it will make to research and public policy. An ongoing series of the sort envisioned here would not only provide unprecedented opportunities for research on patterns of white collar law-breaking and the federal response to it. Its availability would also promote such research in an area of investigation that has been sharply limited by the lack of available data. To the extent that the data series on white collar offenses permits and promotes this research—much as the well-established National Crime Victimization Series and the FBI's Uniform Crime Reports have long underwritten the voluminous research on conventional crimes—to that extent will law enforcement, legislators and judicial personnel have access to a body of knowledge that will contribute to improved policies for addressing this form of offending.

Key to a successful data series is an efficient and uniform system for data collection and coding of information. This database system needs also to capture information on the key factors or 'moments' in the handling of cases of white collar offending. Figure 1 offers a simplified schematic presentation of those key factors.

This document is a research report submitted to the U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.

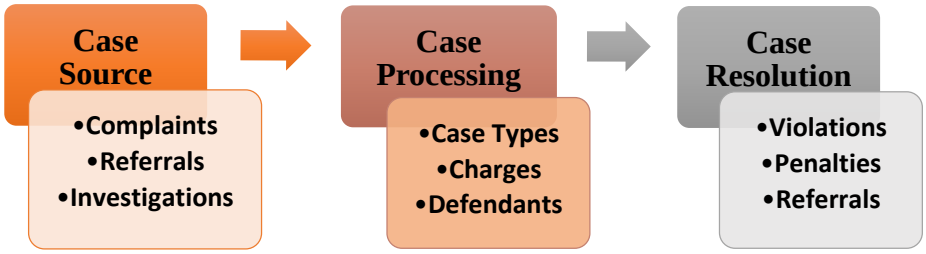


Figure 1

The three primary types of information for inclusion in the series are the sources of identification of cases of violation, data on offenses and offenders that are processed for enforcement, and information on case outcomes, including sanctions and referrals for further legal action. The latter is especially relevant for cases originally processed and/or sanctioned by regulatory agencies that later refer them to U.S. Justice Department attorneys for criminal prosecution. For each of the three categories of data it is necessary to construct a parsimonious coding system that permits and guides the translation of contributing enforcement agencies' diversely structured and variably inclusive data into reliable and homogeneous indicators of the key variables. The development of an effective 'crosswalk' system for the purposes of this translation is essential to the construction of the data series on white collar offenses.

This document is a research report submitted to the U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.

B. Methodological Matters

A white-collar crime data series should classify conceptually similar acts using a sensible, commonly understood and culturally shared *definition*. Among other reasons this is because such a series requires both legal and cultural legitimacy—in an arena that is highly contested and often misunderstood. Because U.S. laws hold that legal entities such as corporations are generally to be treated under the law as persons, the series would encompass both offending individuals and organizations (inclusive of for-profit, nonprofit and governmental actors). The *scope* of the series would include all federal agencies' criminal, civil, and regulatory enforcement cases that are consistent with the definition. Although there is broad variation in the types and quality of data available from regulatory, civil and criminal law sources, the *breadth* of extracted data would capture key offense, offender, and sanctions variables that are commonly defined, counted, and measured across sources. The series should *link* initiated and processed cases of offending *across the distinct legal fields*, and track respondents and defendants (individually and co-offenders) *across stages in the justice process* over time. In sum, it should maximize data comprehensiveness and compatibility and set a strong foundation for future agency collaborators in the series.

This document is a research report submitted to the U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.

Challenges in Regulatory Data. On the face of it, the collection and integration of regulatory data into a Federal White-Collar Crime Statistical Series should be straightforward. Each regulatory agency was created by Congress through enabling legislation that defines its purposes, tasks, and powers. Agencies monitor actor compliance with specific statutes and regulations using a wide array of mechanisms (e.g., inspections, self-reports). These agencies conduct investigations, obtain reports from firms, keep records of investigative findings, and hold hearings to establish violations of regulations and laws. Investigations may result in case referral for criminal, civil judicial, and/or administrative proceedings.

The reality, however, is much more complicated. Because agencies vary in their specific tasks and powers, the data they collect and maintain also varies. First, the *quantity* of data varies greatly between agencies. Some agencies investigate and pursue hundreds of violations yearly while the capacity of others is much smaller. Second, the *mix of data* also diverges by agency. A number of regulatory agencies have broad authority to pursue civil litigation and criminal investigations using their own investigators and attorneys, others do not. The Environmental Protection Agency (EPA), for instance, can pursue violations of law as civil administrative cases, civil judicial cases, or criminal investigations (EPA investigators have warrant and arrest authority, although on finding evidence

This document is a research report submitted to the U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.

of criminal offenses it must refer the cases to Justice Department attorneys for prosecution). Other agencies' powers, however, are more restricted. Enforcement activity by the Federal Trade Commission (FTC), for instance, is limited to administrative proceedings or the pursuit of civil actions in Federal court. Cases thought to merit criminal charges are referred to the Department of Justice Antitrust Division for investigation and prosecution.[5] Similarly, the Securities and Exchange Commission (SEC) has the authority to bring a civil case in federal court or before an administrative law judge within the SEC. Criminal enforcement of the Federal securities laws is pursued through the U.S. Department of Justice and the individual U.S. Attorneys General throughout the country. Third, case data held by specific agencies will not always be exclusive to a single agency because cases stemming from the same incident for the same conduct may be brought simultaneously in different venues. For example, a defendant in a criminal securities fraud case brought by Justice Department prosecutors may also be subject to civil justice processing by the SEC. Further, there is some evidence that criminal actions by the government are more likely to be brought in cases involving both environmental and employee safety laws.[6] In such situations the

[5] Because the Department of Justice Antitrust Division and the FTC share statutory authority for certain sections of the Clayton Act, and because the FTC can challenge conduct under the Sherman Act, the two agencies must coordinate with one another to determine, as each case arises, which agency is most appropriate for handling the matter.

[6] See, e.g., http://www.oshalawupdate.com/2012/12/18/osha-criminal-referrals-on-the-rise/.

This document is a research report submitted to the U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.

two agencies' case data will overlap to the extent that they report on the investigations that led to referrals to the Justice Department for criminal prosecution.

This "duplication" of cases is complicated by whether individuals and organizations within a case share similar or distinct sanction processes. So, for example, a case of securities fraud may name five defendants in a civil case—two organizations and three individuals—but parallel criminal charges may be brought only against the organizations and not the individuals. Given that one of the key goals of the white-collar crime statistical series is to track case-specific sanctions against defendants across justice processes, this nettlesome problem must be resolved.

Challenges in Criminal and Civil Data. Federal criminal and civil data sources, available from the Executive Office of the U.S. Attorneys (EOUSA) and Administrative Office of the U.S. Courts (AOUSC), must be merged with the regulatory agency data in order to describe comprehensively the federal response to white-collar violations.[7] The EOUSA data track criminal and civil cases and defendants from matters presented to and/or pursued by the U.S. Attorneys, while the AOUSC data contain civil and criminal case and defendant court filings and

[7] Both EOUSA and AOUSA data are extracts from the case management systems used by federal prosecutors and federal courts, respectively, for their specific administrative purposes. Therefore, the type of information we might require for the data series on white-collar offenses may not always be available or accessible.

This document is a research report submitted to the U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.

outcomes in the U.S. Courts. Both data sources contain fairly detailed case descriptions. However, there are notable insufficiencies in these data. Although we will provide more details later in this report, several key differences in what is recorded (and required to be reported) and how cases are counted between these sources impact data comparability, completeness, and reliability.

On the criminal side of things, the EOUSA data include a variable for referring agency and a flag (drawn from the variable participant type) to highlight whether the case-defendant is an organization (which includes collective groups of all types). The AOUSC data lack this flag and do not report referring agency. Neither source offers much detail about organizational defendants, nor is the flag a required data element. AOUSC data provide more detail on the violations charged in a case (up to five unique charges) but the EOUSA reports only the lead charge (and do not contain the statute violated for Matters Referred for Prosecution).

For civil court cases both data sources are less useful for our purposes. For instance, the AOUSC civil data lack referring agency, a participant type flag, and plaintiff/defendant information; it also is not possible to disaggregate defendants in the same case. In addition, the data make it impossible to distinguish regulatory agency action from DOJ action, from third party action, and so on. Because the unit of analysis in the EOUSA data is case-defendant and the data currently lack case or docket numbers, it is not possible to link defendants within the same case, a

This document is a research report submitted to the U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.

connection that the criminal case data allow. Both data sources report one statute associated with the case, but it is unclear if the case type variable[8] is the same across the two datasets.

From this brief review, it is clear that the design and structure of a comprehensive white-collar crime data series will be challenged by the strengths and weaknesses of the kinds of data available to build the series. To better understand what this means for our current efforts, in the next section we summarize and assess how others have approached this problem.

III. Prior Efforts to Measure White Collar Offenses

This project is far from the first attempt to conceptualize and measure white collar violations in a systematic manner. Although we have drawn and built upon these earlier efforts, we have not adopted full-scale any approach as each has its strengths and limitations. Most notably, there are differences in the focus and scope of white-collar crime across studies that, in turn, affect the source and kind of data utilized (Johnson and Leo, 1993). It is also important to keep in mind that the empirical studies were designed to answer specific research questions and not to build a data series. Below, we briefly summarize these efforts and highlight the

[8] The AOUSC and EOUSA data include offense categorizations (such as "environmental offenses" and "antitrust") but it is unclear if these categories encompass the same statutes across the two databases. If it were possible to verify which statutes are included in these categories, and confirm that they are consistent across databases, they would be useful for efficiently identifying particular offenses of interest, without having to search for specific titles and sections of statutes.)

This document is a research report submitted to the U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.

key elements that have informed our project, beginning with the seminal work of Edwin Sutherland.

A. Research-Based Efforts: Goals and Purposes

Edwin Sutherland. Although his definition of white-collar crime focused on individuals, giving rise to offender-based approaches ("crime committed by a person of respectability and high social status in the course of his occupation," 1983: 11), Sutherland's empirical research focused on companies. Sutherland provides no rationale for this disconnect but it is possible that it was more expedient at the time to sample, identify, and track firms as compared to individuals. Moreover, the fact that crimes by business attack the fundamental principles of American institutions—a key element of white-collar crime for Sutherland—is also a strong justification for the company focus. To quote Sutherland (1983:13), "white collar crimes violate trust and therefore create distrust; this lowers social morale and produces social disorganization. …Ordinary crimes, on the other hand, produce little effect on social institutions or social organization."

Sutherland studied the life history of 70 of the largest publicly- and privately-owned *corporations* in the United States with regard to their violations of law. Specifically, he used case and offense data reported by federal agencies and the New York Times to examine restraint of trade, misrepresentation in

This document is a research report submitted to the U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.

advertising, unfair labor practices, financial fraud and violation of trust, violations of war regulations, and a small number of miscellaneous offenses.[9] To measure legal violations, Sutherland employed *formal decisions and orders* of the court and administrative agencies *against a firm*, including stipulations accepted by the court or agency, settlements ordered or approved by the court, confiscation of food (in violation of the Pure Food Act), and a few other *ex post facto* cases that had been dismissed earlier. Sutherland thus relied on cases prosecuted, litigated, and brought in *regulatory/administrative, criminal, and civil justice venues.* This approach allowed him to then examine offending patterns over time, within firms, across industries, and by legal venue.

Sutherland's *unit of count* is a decision within a case. His rules for counting decisions were as follows: (1) when three companies are defendants in a law suit in which a decision is made, the decision is counted three times—once for each firm. (2) If parallel cases are brought in different legal venues and found against one company for essentially the same overt behavior, two decisions are counted. (3) One decision may summarize multiple charges and behaviors that have taken place over many years (e.g., price-fixing). In effect, all the charges and years are rolled

[9] Sutherland did not specifically sample firms on any basis other than size (68 of the companies were listed on two lists of the 200 largest non-financial corporations in the United States) and specialization—excluding corporations in one industry and public utility corporations—although he did examine 15 of the largest power and light corporations for comparison purposes.

This document is a research report submitted to the U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.

into a decision with a corresponding count of one (1983: 19). Depending on the rule, Sutherland's methods may increase the potential for over-counting or undercounting offenses.

The key elements of Sutherland's approach are as follows: (1) The decision to track offending by legitimate businesses; (2) offending is captured across criminal, regulatory, and civil venues (including private suits); (3) offense types are constrained to five broad categories of crimes and some miscellaneous violations; (4) an offense occurs only when a decision is determined against the firm; (5) time is censored by the life history of the firm and the conclusion of the study (1949).

Yale Studies. A very different approach was adopted by Stanton Wheeler and his collaborators at Yale University (Wheeler et al., 1988; Weisburd et al., 1991; Weisburd and Waring, 2001).[10] These researchers studied *individual* offenders in seven federal courts between *1976 and 1978* who were prosecuted for and *found guilty* of violating one (or more) of eight offenses in the *federal criminal code*. This approach is consistent with a statute-based strategy for counting and measuring white-collar crime and an offense-based definition of white-collar crime. Wheeler and his colleagues (1982: 642) define white collar crimes as

[10] A number of other researchers were involved in these efforts, but our concern here is how white collar offenders and offenses were defined and measured in the Yale studies. Thus, we cite the works most relevant for our purposes.

This document is a research report submitted to the U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.

"economic offenses committed through the use of some combination of fraud, deception, or collusion." The specific offenses selected for study included securities violations, antitrust violations, bribery, bank embezzlement, mail and wire fraud, tax fraud, false claims and statements, and credit- and lending-institution fraud.

Once all offenders who met the inclusion criteria were identified, the researchers then stratified and sampled among the offenders. Because there were so few securities fraud and antitrust offenders,[11] all of these offenders were selected for the study, whereas a random sample of the other offenders was drawn. With sample in hand, the study then focused on the characteristics of the offenders AND the offense committed. Offender and offense information in the study came primarily from Pre-Sentence Investigative reports—documents prepared by the probation officer, often with input from law enforcement and prosecutors—that judges can use to inform sentencing decisions.

The Wheeler et al. (1988) approach to counting and measuring white-collar crime has several key features, including the decision to focus on: (1) criminal offenses; (2) individuals and not organizational offenders, although the researchers track whether a corporate indictment was issued in the case; (3) a limited number

[11] The fact that so few of these cases are criminally prosecuted says something about the limitations of the criminal data source.

This document is a research report submitted to the U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.

of specific offenses (eight) and federal courts (seven) from which to select offenders; (4) the sentencing stage of the criminal justice process (i.e., guilt had been determined); and (4) a constrained set of years (1976-78)[12]. In addition, the study depends completely on the availability of PSI reports to link relevant offender and case information.

Wisconsin Study. The NIJ-funded research project on corporate crime (Clinard et al., 1979; Clinard and Yeager, 1980; 2006) has more in common with Sutherland's approach to white-collar crime than it has with Wheeler's. In the Wisconsin study, the researchers focused on legitimate corporate actors and tracked offending across administrative, civil, and criminal justice venues—actions taken by a total of 25 federal agencies (Clinard and Yeager, 2006:110). Unlike Sutherland, however, the Wisconsin study adopted a definition of crime that was consistent with the subject of their research. Corporate crime was defined as "any act committed by corporations that is punished by the state, regardless of whether it is punished under administrative, civil, or criminal law" (Clinard and Yeager, 1980:16). Corporate crime is a subtype of white-collar crime that has distinct features in that it is organizational in nature and occurs in the context of complex corporate relationships.

[12] Weisburd and Waring (2001) extended this time period by collecting official measures of criminality (arrests) from FBI rap sheets for the original sample through 1990.

This document is a research report submitted to the U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.

The Wisconsin study's sample of companies was substantially larger than Sutherland's (477 of the largest publically-owned U.S. manufacturing companies, plus an additional 105 public companies in the wholesale, retail, and service industries), but the increase in the sample size negatively affected the length of time firms could reasonably be followed (1975-1976).

The Wisconsin project operationalized crime more broadly than did either Sutherland or the Yale studies. Researchers gathered information at a point earlier in the justice process and included *all known initiated cases and enforcement actions taken* against a corporation. This technique is comparable to studies of street crime that operationalize crime using police statistics (crimes known to police). While the previous studies can be criticized for ignoring the winnowing or funneling process whereby cases are diverted out of the legal system (if brought at all), the Wisconsin study can be criticized for including actions that companies may not, in fact, have committed or for which they are not legally responsible.

The range of violations covered in the Wisconsin study was far broader than that covered by Sutherland, but there was overlap as well. The specific types of violations included administrative, environmental, financial, labor, manufacturing, and unfair trade practices (Clinard and Yeager, 2006: 113-116). An additional special feature of the Wisconsin study was that researchers created a *classification scheme to rank violations as serious, moderate, or minor*. The authors point out

This document is a research report submitted to the U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.

that because most agencies did not have severity criteria (Clinard and Yeager, 2006: 118), their determinants of ranking were tied to things such as repetition of the same offense by the company, intent, the spread of the crime within a company, harm to victims (calculated in several different ways), firm refusal to take pro-social actions (such as recall, reinstate or rehire employees, refusal to honor agreements), threatening actions by the firm, and the length of time of the violation.

A main goal of the study (1979) was to understand the etiology and patterns of, as well as responses to, corporate crime. Therefore, in addition to capturing initiated and enforcement actions against companies from a variety of different sources, the study also utilized information about firm characteristics (such as company size, financial performance, and market characteristics) to analyze the relationship between these and firm offending records.

Yeager Study. Yeager's (1987, 1991) research focused on the enforcement of federal environmental laws against business polluters. It examined the social and political factors that shaped both offending and enforcement decisions. While its data base was a narrowly construed one—compliance and enforcement among industrial violators of the federal Clean Water Act in New Jersey—its construction illustrates some of the key matters that a data series on white collar offenses must manage.

This document is a research report submitted to the U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.

For example, at the time of the research the Environmental Protection Agency's compliance and enforcement data systems varied significantly by regulatory region in the U.S. Only Region II, which includes New York and New Jersey, maintained longitudinal electronic records on polluting facilities. Moreover, the two states varied in their enforcement authorities. In New Jersey, the EPA itself monitored industrial compliance and enforced the law against violators, while in New York State the Agency had delegated enforcement of the Clean Water Act to the state's environmental regulators, as allowed by the law. Yeager's analysis focused on the New Jersey data, which avoided the need to ascertain any differences between the two states in data coding protocols and enforcement priorities.

The unit of count for the study was the firm-violation, the goal being to ascertain the number of violations of the law for each company over the period of time during which its effluent had been regulated. Because the EPA data were kept at the facility level, it was necessary to aggregate violation (and sanctions) counts for facilities owned by the same company. This was possible because the data included the name of the facility owner, but at times the aggregation required careful matching of names as some facilities were owned by subsidiaries of major corporations.

This document is a research report submitted to the U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.

Because of the way information was entered into the data base, it was also necessary to construct analyses of offenses (counts) that normalized them across facilities and firms. Many violations were reported on self-monitoring reports that facilities were required to submit to EPA on schedules set for each facility, e.g., monthly or quarterly. Therefore, the number of offenses reported per year could in part be an artifact of the number of reports required during the year, requiring normalization of the counts.

Simpson Studies. Two separate white-collar (corporate) crime studies conducted by Simpson (1985; 2007) also inform our strategic approach to the BJS data series. The first study tracked the offending behavior of 52 "survivor" companies over a 55-year time period (1927-1981) in the United States. The companies were randomly selected from seven basic manufacturing industries. The only criteria for selection were that they stayed in business for most if not all of this time period (in some form), they continued to operate within the industry in which they operated in 1927, and that the firms were US-based. The study focused on only one type of illegal activity—alleged anti-competitive behavior—and used two data sources to connect criminal, civil, and regulatory offending information with companies. Cases were drawn from the Federal Trade Commission Case Decisions and Trade Cases, which contain "texts of decisions rendered by federal and state courts . . . involving antitrust, Federal Trade Commission, and other trade

This document is a research report submitted to the U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.

regulation law problems" (Trade Cases, Introduction). Simpson also was interested in corporate crime etiology and enforcement, so additional data were drawn from sources such as Compustat, U.S. Census of Manufacturers, firm 10K Reports, and the Statistical Abstract of the United States. These data were matched with firm offending records to examine the economic and political context in which offending occurred. To establish the proper temporal ordering between economic characteristics and offending, *cases were coded according to the year in which the offense allegedly occurred* (as per agency case documents), not when the case was brought. Offense *counts* were created when *a case was brought against a company*. Cases were tracked over time so that resolutions could also be ascertained and classified by outcome (e.g., settlement, guilty finding, cease and desist order). If a case was appealed, that was noted in the data. Simpson also created a *seriousness* measure to rank the anti-competitive offenses. Offense type was not utilized to ascertain seriousness because there were so many different kinds of cases captured within the same offense type. Instead, two categories of seriousness were created (serious and trivial) based on the degree of harm each act engendered and victim class similarity (e.g., suppliers, customers, competitors). Serious violations, such as all forms of price-fixing, predatory pricing, conspiracy to monopolize and control territories, interlocks, and illegal mergers, were those in which the cost of the act was high for another or potential competitor, resulting in a

This document is a research report submitted to the U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.

substantially less competitive market. Most (but not all) cases of unfair advertising and warranty violations were coded as trivial, i.e., those acts that, while widely dispersed, have marginal economic effects on victims. A middle category of seriousness (moderately serious) was created but not utilized due to the higher potential for coding errors within this category.

The second Simpson study (Simpson, Garner, and Gibbs, 2007), funded by the National Institute of Justice, used a triangulated research strategy that included interviews with inspectors, secondary data analysis, and factorial surveys to assess the deterrent effects of different kinds of state responses to firms that failed to comply with environmental regulation, specifically the *National Pollutant Discharge Elimination System as authorized by the Clean Water Act*. Therefore, the study was designed to compare the effect of cooperative versus punitive approaches on corporate recidivism. Only the construction of the secondary analysis data set is relevant for our purposes here.

Simpson, Garner, and Gibbs (2007) randomly selected *firms in four manufacturing industries* (pulp, paper, steel, and oil) in 1995. This strategy produced a distribution of 30 pulp and paper companies (the two industries were combined because of substantial overlap in the firms and facilities in the two industries), 18 steel companies, and 19 oil companies (N=67). The companies were followed through the end of 2000 by which time, due mostly to mergers, the

This document is a research report submitted to the U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.

total number of firms was reduced to 55. The study relied on information collected by the EPA in their Performance Compliance System (PCS) database and docket files (*administrative, civil, and criminal case files*) to measure company violations. Enforcement data in both data files (PCS and EPA dockets) were likely to overlap to some degree, but there was no method for tracking the same violation by the same offender across data sources.

The violation data (pollution and compliance schedule violations, as well as EPA enforcement activity) are captured at the *facility level*, but because the focus of the study was on the firm and not the facility, *facility violations were counted, aggregated and matched to the specific companies in the sample*. If a company owned several facilities, the firm offending count was a sum of the violations counted at each of its facilities. *Annual aggregation* (normalization of count) was also necessary as some compliance schedule requirements are monthly or quarterly. A unique feature of this study is that it captured both inspection data and "self-report" data—information that allowed researchers to create <u>measures of opportunity</u> and to construct <u>rate variables</u> (number of violations/number of reports required).

The EPA study also collected economic and structural information about the firms in the sample that allowed the researchers to address two additional research questions: (1) Are certain characteristics of companies associated with a greater

This document is a research report submitted to the U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.

offending risk? (2) Do firm characteristics affect the type of intervention and punishment a company receives when a violation occurs?

Schlegel SEC study. Another study of white-collar crime, funded by the National Institute of Justice, was undertaken by Kip Schlegel and his research associates at Indiana University (Schlegel, Eitle, and Gunkel, 1994). The topic of this project was *securities lawbreaking*. To study securities fraud and the enforcement response, Schlegel and his associates collected quantitative data on *enforcement actions taken* by Self-Regulatory Organizations (National Association of Securities Dealers, the NY Stock Exchange, and the American Stock Exchange), the Securities and Exchange Commission, and the US Department of Justice. Arguing that the study must consider fraud in its broadest context, the researchers justify this approach by suggesting "it is a far more taxing yet potentially more rewarding approach to try to examine what has not been caught, or what has been caught by different means, and to study the net closely to determine the changes to be made and the alternatives available" (Schlegel et al., 1994: 37).

The length of the available archival record varied, depending on the data source. SEC enforcement actions (called "releases") were bound and published in a document called the SEC docket. These data spanned 1985 to 1991. DOJ data on security actions were analyzed for the years 1984-1991. The self-regulatory data extended from 1988 through 1992. All actions during these time periods were

This document is a research report submitted to the U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.

extracted from the archival record for both *individuals and companies*. There were relatively few of the latter, and they were found mainly in the administrative legal realm—less so in criminal and civil actions.[13] Comparisons were made as to what kinds of offenses were discovered and sanctioned, the nature of the offense, the victim(s) involved, the distribution of offenses over time, perpetrator characteristics (males, females, firm), and the distribution of sanction type over time. The different data sources varied in their *level of analysis*. Civil cases were case-based records while the criminal and administrative cases were organized by individual defendant. Consequently, the study recorded the number of offenders involved (including firms), but did not record each offender's case disposition—in part because most sanctions during the time of the study involved injunctions (Schlegel et al., 1994: 39).

Analysis of the data focused on cases formally entered/actions initiated and cases disposed and resolved. The researchers also tracked when administrative actions involved a "*parallel proceeding*" in civil or criminal court. Like previously discussed studies, Schlegel and his associates collected additional data from other sources, including interviews with relevant enforcement staff and a written survey administered to select offices of the FBI.

[13] In the criminal area, only four cases involved firms or companies during the period of the study.

This document is a research report submitted to the U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.

Schlegel and his collaborators highlight some of the data difficulties they encountered in their use of archival records. Specifically, they note that information varied within and between the different archival sources. This fact, coupled with the presentational and stylistic differences in the authors of the SEC litigation releases, made it difficult to capture the same information from the sources, create a consistent coding instrument, and reliably interpret the meaning of the information (1994: 134). Undoubtedly, these problems are not unique to the Schlegel study.

Karpoff Studies. Jonathan Karpoff and his colleagues have built a series of detailed databases from *publicly available data sources*. These databases have been created to investigate company (and in some cases manager) participation in a variety of different corporate offenses (financial misrepresentation, bribery, environmental violations), and to assess the legal and extra-legal consequences associated with enforcement. To some degree, each research question generates its own database because different crimes are of interest to the researchers. So, for instance, if the researchers are interested in foreign bribery (Karpoff, Lee, and Martin, 2014), a sample of publicly traded companies against whom enforcement actions for foreign bribery have been initiated by the U.S. Department of Justice (DOJ) and Securities and Exchange Commission (SEC) is generated. If financial misrepresentation is of interest, the researchers generate a list of firms targeted by

This document is a research report submitted to the U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.

SEC enforcement actions for financial misrepresentation (Karpoff, Lee, and Martin, 2008). Environmental violations (Karpoff, Lott, and Wehrley, 2005) follow the same process, but enforcement data are gathered from The Wall Street Journal Index, under its "Environment" and "Environmental Crime" listings, and NOT from the EPA (no doubt because EPA data are facility- and not firm-based). Across all of the studies, there are common primary data sources from which information is drawn:

> [T]the SEC website (www.sec.gov), which contains SEC press and selected enforcement releases related to enforcement actions since September 19, 1995; the Department of Justice, which provides information on enforcement activity through a network of related agencies with particular emphasis on high-profile enforcement actions available at www.usdoj.gov; the Wolters Kluwer Law & Business Securities (Federal) electronic library, which contains all SEC releases and other materials as reported in the SEC Docket since 1973 and select Federal Securities Law Reporter releases from 1940 to 1972; Lexis-Nexis' FEDSEC:SECREL and FEDSEC:CASES library, which contains information on securities enforcement actions; the PACER database, which contains lawsuit-related information from federal appellate, district and bankruptcy courts; the SEC's Electronic Data Gathering, Analysis, and Retrieval (EDGAR) system; and Lexis-Nexis' All News and Dow Jones' Factiva news source, which includes news releases that reveal when firms are subject to private civil suits and regulatory scrutiny (see Karpoff, Koester, Lee, and Martin, 2014: 10-11).

We call attention to the Karpoff data because it demonstrates that useful data can be electronically scraped from publicly available sources, and that once collected the data can be used for a multitude of different purposes. Over time, archival data scraping will become even easier as more and different kinds of sources become electronically available and increasingly sophisticated software becomes available.

This document is a research report submitted to the U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.

B. Applied Efforts

There are a number of archival data collection efforts in the white-collar crime area that have been used by consulting firms to advise government, law firms, and corporations about issues relevant to policy, regulation, and litigation. National Economic Research Associates (economic consultants), for instance, used data from FinCen enforcement actions and BankersOnline.com BSA/AML penalties list to report on recent trends in Bank Secrecy Act and anti-Money Laundering enforcement (2014). The data can be used to identify the types of institutions targeted for enforcement actions, how patterns of enforcement have changed over time for penalties with and without fines, counts of filings, comparison of BSZ/AML with other kinds of Suspicious Activity Report (SAR) activities (including check fraud, mortgage fraud, and identity theft), and the ratio of SARs filings to enforcement actions, among other purposes. Similarly, NERA recently published a report on securities class action litigation (Comolli and Starykh, 2014) that utilized federal court filings to assess litigation trends. Case filings were broken down by circuit courts, type of violation, foreign country domicile and year, and by sector.

Consultants are not the only ones to utilize available data in the white-collar crime area to generate reports and assist clients. The legal practice of Morvillo Abramowitz Gran Iason & Anello PC has generated a document in which they

This document is a research report submitted to the U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.

report on all of the SEC Enforcement Division's new case filings for the entire calendar year 2013.

There is little evidence that the data collected and utilized by consultants and legal practitioners have been subjected to rigorous verification and validation.[14] Given what we know from our efforts at data cross-validation, there are apt to be substantial source discrepancies as well as large amounts of missing cases and information that affect overall comprehensiveness and quality of the applied databases.

A somewhat different approach has been taken by the National White Collar Crime Center (NWCCC). In association with the Bureau of Justice Assistance, the NWCCC has administered three national victimization surveys, most recently in 2010 in which 2,503 adults reported (via telephone) household white-collar victimization experiences within the past 12 months. The purpose of the survey is to discern the prevalence and types of white-collar victimizations, whether victims reported to law enforcement or other agencies that could assist victims, and perceptions of crime seriousness. The 2010 survey, compared with earlier versions, also offered a more comprehensive assessment of "corporate" crimes. Unfortunately, and not unlike the previous versions, the telephone-based response

[14] The different databases put together by Karpoff and his associates have been evaluated and cleaned for data problems such as case redundancy and contradictory details (personal communication with Gerald Martin).

This document is a research report submitted to the U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.

rate was very low (13% for the landline samples and 18% for cellular, Huff et al. 2010:38). Such low response rates seriously challenge comparisons between data sources to determine convergent and nomological validity. As acknowledged by the survey administrators, such deficiencies affect the ability "to assess the true frequency of various types of white collar crime" (Huff et al. 2010: 13).

Even with these caveats, the authors of the survey compare victimization rates from the 2010 survey to data from the 2008 National Crime Victimization Survey to "show" the extensive nature of white-collar victimizations. The NCVS "computed a victimization report rate of 135 households per thousand (13.5%) for property crime and 19.3 individuals age 12 or over per thousand (1.93%) for violent crimes. Even at an understated rate of 24.2% (for households), white collar crime victimization is occurring much more frequently than property crime and violent crime combined" (Huff et al. 2010: 22, emphasis added). Unfortunately, such comparisons and conclusions are problematic. The NCVS has a response rate of 95%, providing confidence that the property and violent crime rates are closer to the true rates in the population. With a response rate of 13% and 18%, the epistemic correlation for white-collar victimization will likely be low. And although the NWCCC assumes that the numbers will understate the prevalence, frankly it is unclear the direction in which the data might be biased. If the respondents are interested to report their experiences with white-collar crime

This document is a research report submitted to the U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.

because they have been victimized, the bias will move in the direction of over-estimating—not underestimating—victimization levels.

Drawing from the survey results, what does "white collar crime" look like from the perspective of the victim? On average, 24% of the respondents reported some kind of white-collar victimization in their household within the past 12 months (respondents could report one or more victimizations per household). Credit card fraud is the most commonly reported offense (38.7%), followed by price misrepresentation (28.8%), unnecessary repair (22.8%), and monetary loss on the internet (14.3%). More than half of the victimizations (54.7 %) were reported to at least one entity but, because nearly 46% were not reported, there is likely a great deal of bias in the cases known to authorities generally let alone law enforcement specifically. Not surprisingly, because credit card fraud was the most commonly reported victimization, credit card companies were notified most often (30.9%), followed distantly by police (18.8%), banks (15.6%) and the perpetrating business/person (14.8%).

For those interested in the hidden figure of corporate crime, the survey data do not allow differentiating offenses committed by legitimate businesses (organization or employee representing the company) from those perpetrated by individuals or illicit organizations. Unfortunately, this is more than a simple coding problem. It derives from how questions are constructed. For example, "In

This document is a research report submitted to the U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.

the last 12 months, has anyone succeeded in getting someone in your household to invest money or time in a business venture such as a work-at-home plan, a franchise, or stock purchase that turned out to be fake or fraudulent?" Similarly, "In the past 12 months, has someone in your household paid for repairs to a vehicle, appliance, or a machine in your home that were later discovered unperformed OR that were later discovered to be completely unnecessary?" Crimes by businesses are bound with those committed by individuals or illicit organizations. The problem is also compounded in the coded response categories for reporting the victimization. To the question "To whom was this incident reported," a potential response category is: "Business/person involved in the swindle." In only one part of the survey (hypothetical scenarios) are legitimate organizations and their employees differentiated from individual fraudsters, but the differences between legitimate businesses and criminal enterprises remain unexamined.

The differences between legitimate businesses/managers, individual perpetrators of white-collar crimes, and illicit organizational schemes are important to tease out. Conceptually, these are quite different and distinct offenders. Importantly, the survey also reveals that white-collar offenses are viewed as slightly more serious than traditional crime, and that organizational level offenses are viewed more harshly than those committed by individuals, but we do not know

This document is a research report submitted to the U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.

the mechanisms that drive the perceptions. Is it social organization, type of crime, degree of harm, whether a business is licit or illicit? While more clarity is needed to answer these key questions, the issues raised demonstrate the importance of not mixing apples and oranges in this same way for a series on white-collar violations.

Overall, victimization surveys like the NWCCC effort appear better suited to estimate the dark figure of non-corporate kinds of white-collar offending as these acts are more likely to be recognized and reported by crime victims. Moreover, it is extremely difficult to measure victimization at the corporate level. Although corporations are often victims of price-fixing, industrial espionage, insider trading, hacking, and employee theft, the firm (like individual victims) may not know it has been victimized.

C. Broad Measurement Models

Several projects funded by BJS have addressed the problem of building a federal database on white-collar crime or a white-collar crime reporting system. In the section below, we highlight details from two of these projects.

Reiss and Biderman. In their examination of the social organization of conceptualizing, classifying, and counting white-collar law violations, Reiss and Biderman (1980) emphasize that a successful approach to classifying and counting illegalities, their consequences, and dispositions depends on causal models. That

This document is a research report submitted to the U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.

is, to build a meaningful data series requires sensitivity to substantive theories of white-collar offending, the social organization of data collection and reporting, and the kinds of information these systems provide. Yet, the authors concluded (at that time) that the current state of agency information made it difficult to develop social indicators on white-collar crime.

Defining white-collar violations as those violations of law to which penalties are attached and that involve the use of a violator's position of significant power, influence, or trust in the legitimate economic or political institutional order for the purpose of illegal gain, or to commit an illegal act for personal or organizational gain (1980: 4), Reiss and Biderman focused exclusively on federal statistical systems of data, acknowledging multiple and varied sources or information routinely collected on white-collar crime. Yet the authors were optimistic that some data can be consolidated into a coherent statistical series ("uniform statistical reporting system") under the following requirements. Paraphrasing from the Executive Summary of their report (xxxii-xxxvi), the authors recommend:

1. The statistics must draw from administrative, civil, and criminal jurisdictions.

2. The series should be monitored for ways in which changes in overlapping and concurrent jurisdiction may affect the statistical series.

This document is a research report submitted to the U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.

3. A standard definition of white-collar crime and classification procedures for events (detection, case processing, and outcome) must be adopted.
4. Multiple counts of the same events must be taken into account.
5. Decision rules as to how to count white-collar crime violations must be clearly defined.
6. Agencies must report information in a consistent manner to allow merging of data.
7. Central coordination of the processing and reporting of information to insure uniformity and compliance must be established.
8. Relevant violations of law, regulations, or standards must be systematically and regularly reported by each and every agency, whether it is operating under a mandate for law enforcement, regulation, or adjudication.
9. Agencies must have explicit criteria for defining referrals and their sources so that their sources of variability can be investigated and so that referrals can be reliably merged.
10. Standardization of data collection, analysis, and reporting must be achieved.

This document is a research report submitted to the U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.

11. Within the data systems, it should be possible to identify successive violations by the same violators.

Wellford and Ingraham. Charles Wellford and Bartram Ingraham (1990) offered a tripartite division of white-collar crime into business and professional crimes, occupational crimes, and individual frauds (see also Clinard and Quinney, 1967). In their BJS report, the authors suggested that a federal white-collar crime reporting system could be created by using agency data from the Securities and Exchange Commission, the Internal Revenue Service, the FBI, and the Office of the Comptroller of the Currency (with five federal regulatory agencies under its umbrella). Their approach documented how specific agencies collect and manage their case data *and* provided an early version of a judicial system crosswalk in which administrative, civil, and criminal justice systems are compared for banking violations along 11 dimensions. Specifically, data comparisons should center on: Who can be targeted (individual or entity), the cause of the action, investigation of the case, forum, presiding officer, rules of procedure, publicity, burden of proof, decision-maker, appeals, and sanctions.

Both approaches are sensitive to Sutherland's point that although criminal laws define certain behaviors as criminal acts, responsible officials most typically respond civilly or administratively to essentially the same acts. (However, as we have learned from interviews conducted with regulatory agency personnel,

This document is a research report submitted to the U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.

decisions for how cases flow into the different justice systems may also be affected by offender characteristics.)[15] The definitions also are inclusive of individuals and firms as offenders, and differentiate self-interest from organizational gain. Finally, the two approaches correspond with data already collected by BJS that detail offense categories by representative crime (e.g., embezzlement, fraud, forgery, counterfeiting, antitrust, food and drug, other regulatory offenses, tax law, bribery, wildlife offenses, environmental, all others). However, as we have already noted, these classifications do not neatly correspond across legal venues.

Although we see the merits of both approaches, a single definitional approach (e.g., Reiss and Biderman's) is more parsimonious than the typological approach of Wellford and Ingraham. Like Reiss and Biderman, our definitional approach is parsimonious yet consistent with key elements in both approaches.

IV. Design Elements for Anticipated Data Series

Our approach to the data series on white-collar offenses incorporates a number of key design decisions. These decisions range from defining the phenomenon of interest—white collar offenses—to constructing a sampling frame from which to select initial data sources that represent the range of relevant offenses for the series, to identifying the key variables of interest for inclusion. In

[15] The type of offender (legitimate business versus perceived bad actor) can affect the case referral process.

This document is a research report submitted to the U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.

this section we describe and explain the design decisions that together constitute the architecture for constructing the data series.

A. A Systemic Approach to Defining White-Collar Offenses

In order to be most useful, a definition of white collar law-breaking must meet a number of criteria. First, it should be clear in its terms and concise in its construction. Second, it should clearly distinguish the focal phenomena from related matters. In this case it must identify traits that distinguish white-collar offenses from other types of violations of law. It is their distinctive traits that lend specific theoretical significance and unique policy relevance to types of offending. Finally, the definition should meet the test of cultural legitimacy. That is, if it is to have analytic power and policy relevance it must resonate with both popular and professional understandings of the nature of such offenses. For example, the definition should distinguish the offenses of interest from the much broader category of fraud, which contains many sorts of offenses (e.g., con games, personal income tax evasion) that do not fit with dominant cultural notions of either white-collar offenders or offenses.[16]

[16] While this is not the place for a full explication of such dominant understandings, we simply note here that most of the research literature adopts, explicitly or implicitly, definitions of white-collar offenses that distinguish them from garden-variety frauds. One exception is Edelhertz's (1970: 19-20) early definition: "an illegal act or a series of illegal acts committed by nonphysical means and by concealment or guile to obtain money or property, to avoid the payment or loss of money or property, or to obtain personal or business advantage." Similarly, most journalistic coverage of white collar crime concerns cases of offenses committed for financial gain by persons and organizations in the context of legitimate economic or professional functions.

This document is a research report submitted to the U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.

As we have noted earlier, research and programmatic statements on white collar offenses have developed a number of definitions of this type of law-breaking. Prominently among them are two types: *offender-based* definitions that focus on attributes of the violator (e.g., status, occupation) and *offense-based* definitions that focus on characteristics of the act (e.g., fraud, deception, violations of trust). Both of these types fail to meet one or more of the criteria noted above. What is required is a definition of white collar violations that isolates a unique context of motivation and opportunity, one that distinguishes it from other forms of offending and that resonates with common public and policy understandings of the phenomenon. For purposes of this work we assert the following definition:

> **White-collar offenses are any violations of (federal) law committed by persons or organizations in the conduct of their legitimate occupational roles or organizational functions.**

We emphasize a number of features of this definition. First, it parenthetically references federal law only because of the scope of this project, although we have no reason to believe that the definition could not be applied usefully at the state level. Second, it includes violations committed by both individuals and organizations. By organizations we mean any formally organized and recognized entities pursuing legitimate ends in any of society's institutions, including the market, government, religion, politics and the not-for-profit sector (e.g., charities, private schools, civic organizations).

This document is a research report submitted to the U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.

Third, the definition does not limit offenses to only those prosecuted under criminal law. Instead, it includes all violations of federal laws whether they are sanctioned by administrative (regulatory), civil or criminal law processes. Researchers from Sutherland (1949) onward have long noted that many types of white collar offenses are handled largely with noncriminal legal processes, and criminal prosecutions of corporations are especially rare, a fact recently manifested in the pattern of sanctions employed against responsible financial organizations in the wake of the 2008 financial crisis. Notably, decisions as to whether to prosecute cases criminally or to proceed with noncriminal procedures commonly reflect preferences and practical considerations (e.g., relative burdens of proof, available legal resources, collateral consequences, resistance to criminal prosecution by powerful violators) rather than only assessments of criminal blameworthiness (see, e.g., Brown, 2001; Yeager, 2015). It is noteworthy, too, that in comprising the full range of the federal government's sanctioning processes the definition asserted here corresponds to those employed in the two earlier studies that took up the matter of formulating a national data system for white collar offenses (Reiss and Biderman, 1980; Wellford and Ingraham, 1990).

Fourth, rather than being other offense- or offender-centered, our definition is *role-centered.* Its subject is offenses that abuse or misuse legitimate occupational or professional roles to achieve a benefit, whether material or

This document is a research report submitted to the U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.

psychological, and whether personal or organizational. Constraining the definition to legitimate work roles is not a mere academic matter. It emphasizes instead that the motivations, temptations and opportunities afforded by these roles have distinctive implications for public policy approaches to punishing and limiting such offenses, implications that differentiate them from other types of offenses that manifest similar behavioral forms (e.g., individual check-kiting, organized scam rings).

Relatedly, the definition is not statute-restricted. It does not restrict white-collar offenses only to those infractions that violate (and are pursued under) laws expressly aimed at the control of commercial or occupational activities. So, for example, violations of federal Occupational Safety and Health Administration (OSHA) rules that lead to the death of workers and to a prosecution of corporate (and/or individual corporate managers) under the law of homicide are included as white-collar offenses. So would be the theft of credit card numbers by a food server, because the employee's legitimate occupational role provided the unique opportunity (and perhaps some of the motivation) for the offense. In contrast, members of organized credit card theft rings would not be included among white-collar offenders because they offend in the context of *illegitimate* roles.

In sum, the project definition of white-collar offenses locates intent in occupationally- and organizationally-situated motives and opportunities,

This document is a research report submitted to the U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.

distinguished by the dimension of legitimacy. The mode of behavior involves abuses of relations of power, authority and trust related to legitimate occupations and organizations. The actors are commonly violators who largely commit only such offenses and no other types, such as conventional violent and property crimes. In terms of numbers of lives affected and dollar losses these offenses are among the most serious violations of law that societies confront. Notably, however, unlike the case for conventional crimes the seriousness of white-collar offenses is not well-indexed by the gravity of the sanctioning responses to them. Criminal sanctions are rare, especially for the offenses of powerful perpetrators, and even large civil fines are small relative to the size and wealth of many such offenders.

Definitional Extensions. Finally, the project definition can be situated among other, related definitions of offenses in a typological manner. This exercise not only helps to demonstrate axes of connection between our working—or core—definition and broader ones, but it also provides avenues of extension that can be employed in the face of constraints in existing federal data systems for white-collar offenses. For example, some such systems may lack information regarding the role in which the perpetrator was acting when the offense was committed. To the extent that they are used, any such extensions should be as prudent and limited as possible if the construct of white-collar violations is to meet adequately the key definitional criteria noted above.

This document is a research report submitted to the U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.

One way to conceptualize the relationship between our core definition and broader constructs is illustrated in Figure 2.

Figure 2

The core can be extended outward to draw in other offenses such as illegitimate enterprises feigning legitimacy; individuals taking advantage of

This document is a research report submitted to the U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.

existing opportunities to deceive, or criminals creating new opportunities to run scams and cons. The first stage extension (B) from the core definition is to offenses that most resemble those in the core definition. These are the full-time criminal activities organized to mimic legitimate businesses and professional organizations and to use the masquerade to illegally enrich the perpetrators. Here are diploma mills, fake medical clinics, home improvement scammers and even organized crime offenders, to the extent that the latter control ostensibly legitimate operations as either fronts for or means of illegal activities (e.g., unions, casinos, waste removal companies). These offenders are often sustained and enhanced by highly organized routines and relationships that are similarly illegitimate but often quite sophisticated.

The next extension (C) is to offenses committed by people whose law violations are neither organized in criminal enterprises nor committed in occupational roles. Persons may commit these offenses more than once, but they are neither orchestrated with others nor are the perpetrators career criminals in the sense that they organize their lives importantly—even principally—around the commission of crimes. Here are citizens committing income tax fraud, writing bad checks, or lying to gain welfare benefits to which they are not legally entitled (typically committed by poor persons on the margins of eligibility). These offenses are similar to those comprised by the core definition on a number of

This document is a research report submitted to the U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.

dimensions relevant to many WCC definitions in the literature: nonviolent fraudulent acts enabled by (non-occupational) aspects of roles and circumstances of trust.

The final extension (D) adds 'career' offenders, those persons whose income generation and identities are organized principally—or in large measure—through illegal activities. They work either alone or in small informal groups of confederates. These offenders include such offenders as insurance fraudsters, computer hackers, identity thieves, and others whose livelihoods and identities are organized around criminal acts.

All of the extensions illustrated in the figure add types of offenses and offenders that raise matters of public policy and social control that differ from those associated with the project's core definition. Hence the need to consider carefully the implications of making any such extensions in the face of limitations in existing federal data sources.

B. Offense Domains

Having defined the matter of interest, the next step in the construction of a data series is identifying the range and types of white collar offenses, and the data repositories for them. There is a broad range of such violations under U.S. law, and dozens of organizations and web sites that hold and/or publish data on them.

This document is a research report submitted to the U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.

Mapping these offenses and data sources is necessary for both sampling and analytic purposes. Given the nature and size of the task, building a federal data series on white collar violations is a developmental process that necessarily will proceed in stages over a period of years. It entails forging relationships with agencies, arranging ongoing mechanisms for data sharing, formatting data from diverse sources into standard categories for counts and analyses, and working with cooperating agencies over time to improve progressively the quality of data. To begin the task, therefore, we need a sampling frame of the universe of offenses from which to choose initially selected offense types and the organizational sources of data on them.

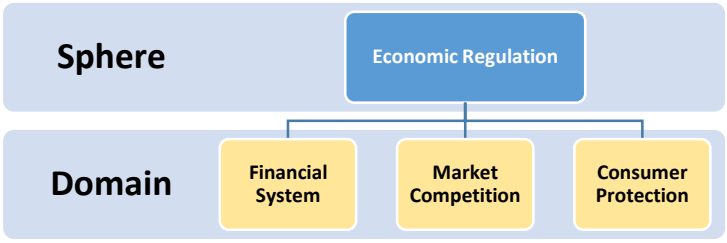
This step is also important for analytic reasons. Offense classifications by type are useful to the search for explanations, which are often crime- or person-centered, an idea long established in research on conventional offenses (see, e.g., Gibbons, 1965; Clinard and Quinney, 1967; Moffitt, 1993; Clinard et al., 1994) but challenged of late by generalists (Gottfredson and Hirschi, 1990). White collar offenses have also been sociologically typified, if not in as detailed a manner as conventional crimes. In particular white collar violations in business can be classified according to the institutional spheres in which they occur. This classification distinguishes between economic and social regulation (see, e.g., Yeager, 1993: 9; Wiedenbaum, 1979). Economic regulation refers to rules and

This document is a research report submitted to the U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.

agencies that sanction violations of the rules of market competition and exchange, the rules essential to the efficient functioning of capitalist markets. Social regulation, on the other hand, sanctions violations of rules that protect against the harmful effects of market activities—market 'externalities' in the language of economics—such as environmental pollution, the manufacture and sale of unsafe products, and the exposure of employees to unsafe work conditions.

Each sphere comprises a number of types—or domains—of regulations and their associated violations. Economic regulation includes rules that protect against abuses in the financial system (e.g., misleading investors, insider trading, contract fraud[17]), against unfair competitive behaviors (e.g., monopolistic practices, price-fixing), and against unfair manipulation of consumers (e.g., false advertising, selling fraudulent products and services). We illustrate this sphere and its associated domains of enforcement in Fig. 3.

Figure 3

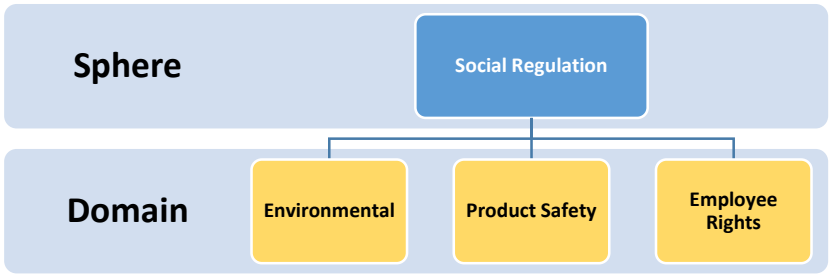


[17]The most publicized types of contract fraud are those against government programs, such as overcharging in military contractor fraud and Medicare and Medicaid fraud. Such frauds can also victimize private-sector businesses as well. By extension one can also include here the various forms of consumer fraud and employee theft, as these offenses violate the rules of fair and efficient market exchange.

This document is a research report submitted to the U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.

Social regulation includes rules that protect against harms to the environment (e.g., air and water pollution), against the marketing of unsafe products to consumers (e.g., autos, pharmaceuticals, toys), and against violations of employee rights (e.g., unsafe workplaces, discrimination in hiring and promotion).[18] Fig. 4 illustrates this sphere and its domains of enforcement. There is great variability within these specific domains as to statute, offense and offender types, offense seriousness (scope and harm), and enforcement responsibility. Yet, this kind of framing or classification will be more likely to yield cases consistent with our working definition for the series than an approach that organizes white-collar offenses by statute, broad offense types (e.g., fraud), or enforcement response (criminal, civil, or regulatory).

Figure 4



[18] The domain of employee rights includes the offenses of sexual harassment in the workplace and sexual assault of co-workers. Just as does the former type of offense, sexual assault of co-workers is enabled by the context of employment and the power relations within that context. This is an example of a crime that would be prosecuted under conventional assault statutes but that constitutes a white-collar offense because of the specific structures of motive and opportunity that condition its occurrence. Similarly, and for the same reason, the sexual assault of a client or customer in the workplace would also constitute a white-collar offense.

This document is a research report submitted to the U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.

C. Sampling Domains

Given the breadth of white collar offenses and the large number of federal data systems that track them, it is necessary to launch the data series with a small sample of enforcement data. We employed a number of criteria for selection of the first sets of offenses for inclusion in the series. First, they should be representative of the spheres of offenses as defined above. Second, each set should comprise offense types that are sanctioned with the array of federal enforcement responses: administrative/regulatory, civil and criminal sanctions. Third, the selection should target agencies whose data on offenses are plentiful, accessible, and that generally include largely types of violations that meet the definitional criteria for inclusion in the series, as defined above. Underlying this sample selection plan—to begin with the most accessible and relevant data (the 'low hanging fruit')—were the goals of demonstrating both the potential for and some of the challenges facing the series, and building a foundation of data for analysis that would demonstrate to other agencies the value of their eventual participation in the series.

Numerous agencies and departments are charged with enforcing the laws against the broad array of federal white collar offenses. Principal organizations are listed in Table 1. These organizations vary substantially in the numbers of laws and regulations they enforce, the volume of offenses they process annually, and in the structures, operations, and accessibility of their enforcement data systems.

This document is a research report submitted to the U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.

Table 1: Federal Agencies Regulating White Collar Offenses	
Centers for Medicare and Medicaid Services	National Labor Relations Board
Commodity Futures Trading Commission	Nuclear Regulatory Commission
Consumer Financial Protection Bureau	Occupational Safety and Health Admin.
Consumer Product Safety Commission	Office of the Comptroller of the Currency
Environmental Protection Agency	Securities and Exchange Commission
Equal Employment Opportunity Commission	U.S. Coast Guard
Federal Aviation Administration	U.S. Department of Agriculture
Federal Deposit Insurance Corporation	U.S. Department of Commerce
Federal Energy Regulatory Commission	U.S. Department of Defense
Federal Housing Finance Agency	U.S. Department of Energy
Federal Reserve System	U.S. Department of Health & Human Services
Federal Trade Commission	U.S. Department of the Interior
Food and Drug Administration	U.S. Department of Justice
Internal Revenue Service	U.S. Department of Labor
National Highway Traffic Safety Admin.	U.S. Department of Transportation
	U.S. Department of Treasury

Other federal units that keep data on white collar offenses are the Administrative Office of the U.S. Courts, the Executive Office for U.S. Attorneys, and the U.S. Sentencing Commission.

Based largely on our experiences over the years in working with federal agency enforcement data,[19] early on in this project we settled upon the Environmental Protection Agency (EPA) and the Securities and Exchange Commission (SEC) as our primary regulatory agencies of focus, eventually supplemented by examination of publicly accessible data from the Federal Trade

[19] Collectively we have conducted research on data from the majority of these federal agencies, but with greatest experience with those from the Environmental Protection Agency, the Occupational Safety and Health Administration, and with anti-competitive/antitrust offense data. In addition, in recent years we have discussed enforcement data with information technology specialists and enforcement officials at the Securities and Exchange Commission, the Food and Drug Administration, the U.S. Department of Justice, the Occupational Safety and Health Administration, and the Environmental Protection Agency.

This document is a research report submitted to the U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.

Commission (FTC), the new Consumer Financial Protection Bureau (CFPB), and the Food and Drug Administration. Importantly, the EPA and SEC met the selection criteria noted above, although accessibility proved to be more challenging than we had anticipated (see Section V).

The EPA, established in 1970 by President Richard M. Nixon, is a major federal agency in the sphere of social regulation. It undertakes or oversees the majority of enforcement activities under the nation's environmental laws, although it shares this regulatory domain with several other units of government, including the Departments of the Interior, Agriculture and Commerce, and the U.S. Coast Guard. In particular the EPA is responsible for enforcing the nation's principal environmental laws, including the Clean Air Act (42 U.S.C. §7401 *et seq.*), the Clean Water Act (33 U.S.C. §1251 *et seq.*), the Resource Conservation and Recovery Act (42 U.S.C. §6901 *et seq.*), the Comprehensive Environmental Response, Compensation, and Liability Act (also known as the 'Superfund' law) (42 U.S.C. §9601 *et seq.*), the Safe Drinking Water Act (42 U.S.C. §300f *et seq.*), and the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. §136 *et seq.*).

Violations of environmental laws are sanctioned with the range of enforcement responses. The EPA employs non-judicial administrative civil actions (notices of violation, administrative orders), civil judicial actions and criminal

This document is a research report submitted to the U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.

actions. In the latter two types of sanctioning the agency refers cases to the U.S. Department of Justice for filing in the federal courts. The agency also shares enforcement with many of the states' regulatory authorities to whom EPA has delegated responsibility for enforcement of the laws. The vast majority of violations of federal environmental laws fit the core definition of white collar offenses (committed in the pursuit of occupational or organizational roles).[20] Finally, the EPA has long maintained enforcement and compliance data systems that are among the most advanced among federal law enforcement agencies, if not the most advanced. Indeed, the agency makes its extensive violations and enforcement data available on-line at the EPA web site (www.EPA.gov), and during the project period the agency was further refining its data systems in the direction of greater integration of its enforcement data.

The Securities and Exchange Commission, established in 1934, is a principal agency in the sphere of economic regulation. In the domain of rules protecting the integrity and efficiency of the financial system in the U.S., it shares enforcement responsibilities with the Federal Reserve, the Treasury Department, the Office of the Comptroller of the Currency, and the Commodity Futures Trading Commission. The SEC has primary responsibility for enforcing the nation's

[20] This point was underscored in a March 2013 meeting that project staff had with several EPA officials. An EPA staffer asked how we were defining white collar offenses and, upon hearing the definition, replied that virtually everything that EPA did fit the definition.

This document is a research report submitted to the U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.

securities laws, including the Securities Act of 1933 (15 U.S.C. §77a *et seq.*), the Securities Exchange Act of 1934 (15 U.S.C. §78a *et seq.*), the Investment Company Act of 1940 (15 U.S.C. §80-1 *et seq.*), the Investment Advisers Act of 1940 (15 U.S.C. §80b-1 *et seq.*), the Sarbanes-Oxley Act of 2002 (Pub.L. 107-204, 116 Stat 745; codified at various sections of the U.S.C.), and the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (Pub.L. 111-203, 124 Stat. 1376; codified at various sections of the U.S.C.).

The SEC shares enforcement responsibilities under some of these laws. For example, under Dodd-Frank it shares enforcement responsibility with the new Consumer Financial Protection Bureau that was created by the statute, and under Sarbanes-Oxley it shares responsibility with the Public Company Accounting Oversight Board (again, created by the statute). It also shares securities enforcement responsibility with a number of self-regulatory organizations, such as the Financial Industry Regulatory Authority (FINRA) and the Municipal Securities Rulemaking Board, and with 20 registered stock and futures exchanges.

The SEC also utilizes the full range of sanctioning activities. It employs administrative sanctions such as cease-and-desist orders and securities trading suspensions, and files civil suits in the federal district courts seeking such sanctions as injunctions, monetary penalties and disgorgement of illegal profits. It refers cases of suspected criminal activity to Department of Justice prosecutors. It is

This document is a research report submitted to the U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.

likely that most enforcement cases fit the core definition of white collar offenses, although some proportion may involve frauds and thefts committed outside of legitimate occupational or organizational roles (Schlegel, Eitle, and Gunkel, 1994). According to agency personnel the SEC maintains an effective enforcement case tracking system,[21] and the agency's publicly available data (www.SEC.gov) provide quite detailed information on the nature of the offenses and offenders in cases it sanctions.

D. Unit of Count

As with any data series, a key decision is determining what is to be counted. In criminological data, researchers and policy makers may be interested in any of a number of types of counts that are distinct from each other: offenses, offenders, cases. For example, in prosecutions of corporate crime a single legal case may charge a number of offenses against several individuals, as well as against the organization itself. In addition, in such matters the federal government may bring parallel civil and criminal cases against all or a subset of the defendants. In creating the data series on white collar offenses, the goal is to specify a focal unit of count that enables the analysis of the range of counts that are of policy and conceptual interest.

[21] Phone meeting with SEC enforcement personnel, May 21, 2013.

This document is a research report submitted to the U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.

Toward that end we have specified the case-defendant as the unit of count. In the first instance this enables counts of the number of *violators* of particular types and time periods. Case and other identification numbers for the legal actions taken by the Government will also permit analyses of *cases*, for example by type or time period.

It will be necessary to use care in identifying and linking defendants and cases where case numbers for the same legal matter vary across regulatory and criminal justice units, such as the regulatory agencies, the Executive Office for U.S. Attorneys, and the Administrative Office of the U.S. Courts. The same may be said for linking parallel civil and criminal proceedings against the same legal matter.

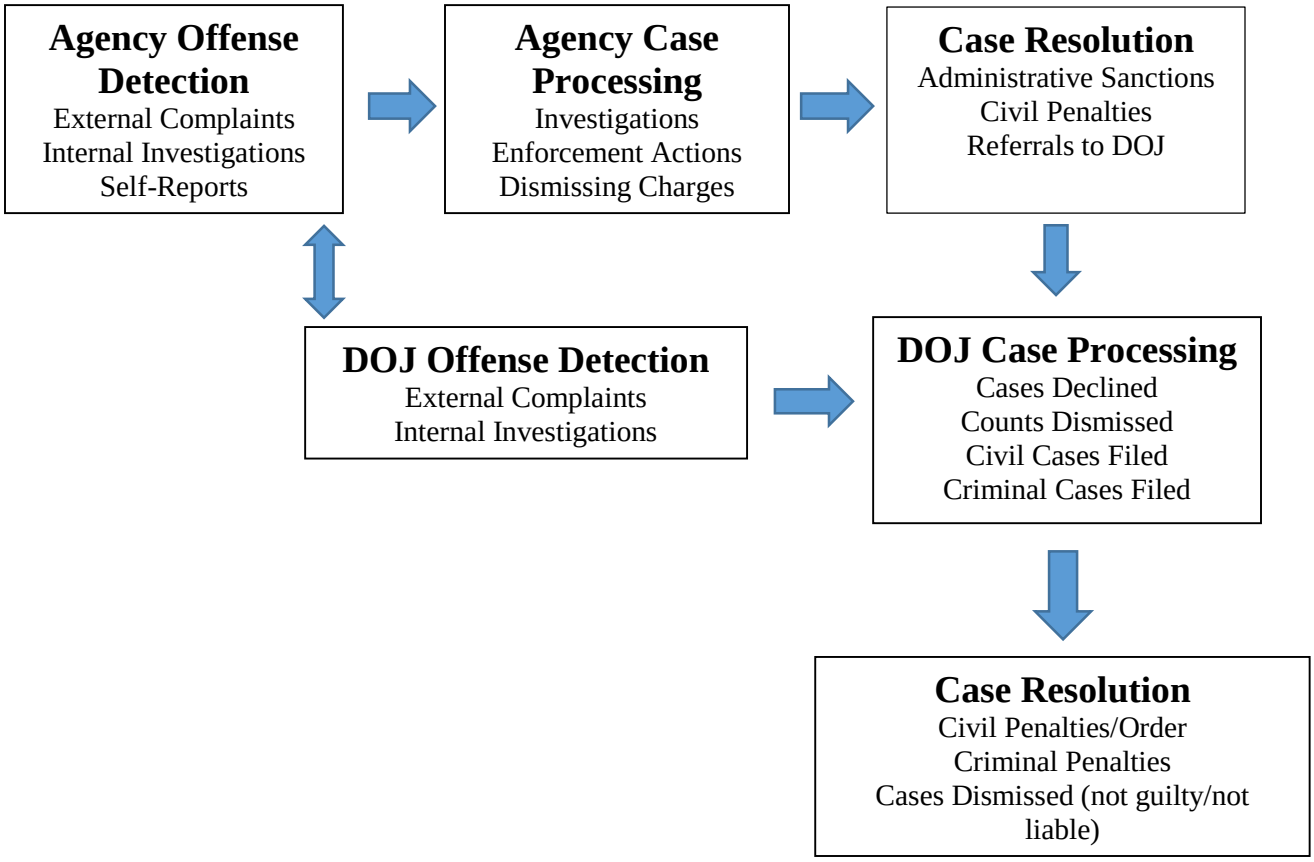
E. Key Data Points for the Series

The series on white collar offenses should comprise data generated by the key stages in case processing of violations. These elements include information on how the suspected offenses were detected, number and nature of offenses or charges, number and characteristics of offenders (e.g., individuals or organizations), and sanctions imposed.

Figure 5 illustrates the general agency case management processes through which the relevant enforcement data are generated.

This document is a research report submitted to the U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.

Figure 5



The processes begin with the initial detection of offenses, whether by regulatory agencies or the Department of Justice, and whether by internal investigations, outside complaints or self-reports. Depending on the nature of the violation, the detecting organization may forward the matter to a more appropriate investigative entity. There follows further investigation that determines facts, evidence and responsible parties, and either the pursuit of charges against defendants or case dismissal. Cases pursued by regulatory (administrative) agencies typically result in the application of administrative or civil sanctions, or the referral of cases to federal prosecutors for civil or criminal filings in the courts. The Department of

This document is a research report submitted to the U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.

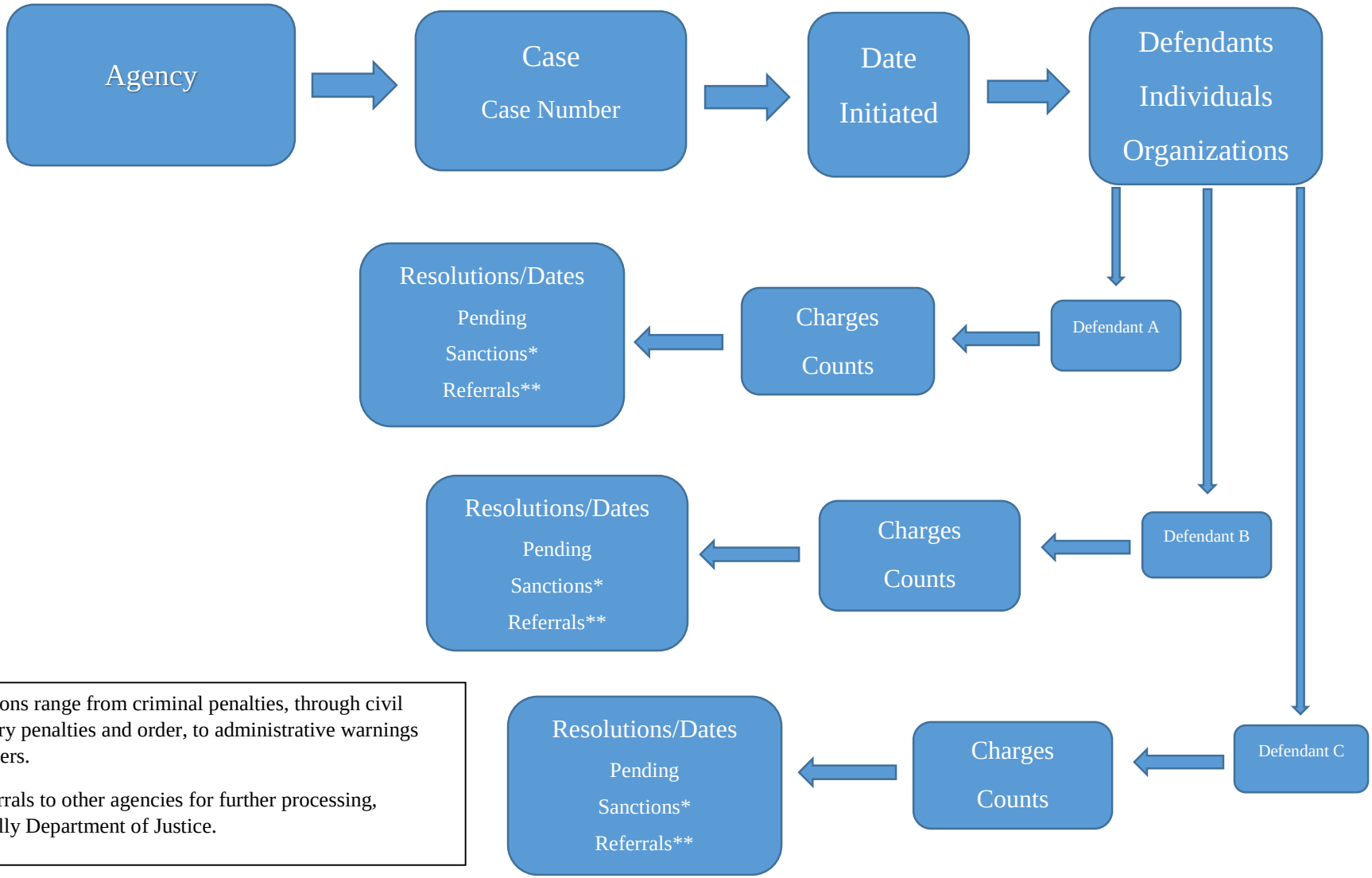
Justice prosecutors may take any of several actions in response, including filing the cases or dropping some or all of the charges. The Department may also generate its own cases through complaints received and internal investigations, through such units as the Criminal Division and the Environment and Natural Resources Division.

In civil cases filed by U.S. attorneys, typical sanctions being sought include monetary penalties/restitution and court orders (whether consent orders or imposed by the court). In criminal cases the sanctions include fines, probation and terms of incarceration. Notably in cases of corporate law-breaking, criminal prosecutors may use non-prosecution or deferred prosecution agreements with offenders. Such agreements operate much like pre-conviction probation in allowing offending companies to cease their violations and to implement changes to prevent future offenses, in exchange for prosecutors' agreement not to pursue formal charges against them. In a minority of filed cases defendants will be found not guilty or not liable.

Coding of the variables of interest is to be done at the *defendant level* rather than the case level, in keeping with the unit of count, the case-defendant. Figure 6 illustrates schematically the extraction of case-defendant data from agencies' data, which are commonly registered in terms of enforcement cases or matters.

This document is a research report submitted to the U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.

Figure 6



*Sanctions range from criminal penalties, through civil monetary penalties and order, to administrative warnings and orders.

**Referrals to other agencies for further processing, especially Department of Justice.

This document is a research report submitted to the U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.

The variables of interest to the data series range from information on the origins of cases (in investigations, complaints or referrals), through information on offenses and offenders, to case resolution data. Key to the design are case and defendant identifiers, which among other purposes are necessary for tracking of cases through the data systems managed by the various enforcement agencies that process them. The identifiers include case numbers, nature of defendants (organizational or individual), and defendant characteristics (age, gender, occupation, type of business or industry). Violations data of interest include the type of legal action taken (administrative, civil or criminal), the number and types of offenses charged, dates of violations and of initiation of legal actions, and seriousness of violations. Case resolution data comprise number and types of violations sanctioned, types of resolution (e.g., dismissal, fines, incarceration), amounts of any fines or periods of incarceration, whether the case(s) was referred to another agency, and whether there were appeals. An important aspect of the data series is the ability to track what happens to defendants who are diverted out of the legal system or from one system to another.

We anticipated that the various agency and DOJ data bases would not routinely collect information on all of the factors of interest to the series. To ascertain the degrees to which the data systems included these factors we canvassed them using the form shown in Table 2.

This document is a research report submitted to the U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.

Table 2: Inventory of Data Elements

Data Elements	Available	Not Available	Data Source	Comments
Case Origin Internal Investigation/Referral from another agency/Complaint				
Case Number(s)				
Defendant(s) Identities:				
For Organizational Defendants: Distinction between legitimate and criminal purpose organizations				
For Individual Defendants:				
Age of Defendants				
Gender of Defendants				
Occupation/Positions of Defs.				
Address(es) of Defendant(s)				
Type of Industry/Business SIC, NAICS, Other Indicators				
Type of Legal Action Taken Administrative/Civil/Criminal				
Data Action Initiated/Filed				
Violations Alleged (each defendant)				
Number of counts by statute				
Number of counts by regulation				
Other Description of Offense(s)				
Date(s) of Alleged Violations				
Seriousness of Violations				
Date(s) of Case Resolution For each defendant				
Violations Penalized For each defendant				
Number of counts by statute				
Number of counts by regulation				
Resolution(s) (each defendant) E.g., Case dropped, Order, Injunction, Fine, Disgorgement, Incarceration				
Fine/Disgorgement Amounts				
Probation (months)				

This document is a research report submitted to the U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.

Incarceration (months)				
Case(s) referred to other agency For each defendant				
Agency to which case(s) referred				
Case numbers for referred cases				
Resolution(s) of referred cases For each defendant (e.g., referrals declined; charges/counts penalized; penalties imposed)				
Case(s) Resolution(s) Appealed				
Venue of appeal(s)				
Outcome(s) of appeal(s)				

F. Approaches to Data Gathering

We employed several methods to determine the nature, quality and accessibility of agencies' enforcement data for white collar offenses. These include meetings with agency representatives, interviews with both present and former agency officials, and assessments of the publicly available enforcement data on agencies' web sites, as with the use of Table 2. In Section V below we describe the results of these efforts, including the focused data briefs the researchers prepared for the Securities and Exchange Commission, the Environmental Protection Agency, the Federal Trade Commission, the Food and Drug Administration, and the Consumer Financial Protection Bureau.

This document is a research report submitted to the U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.

V. Assessing Available Federal Data

A. Introduction

In this section we describe the findings from our research into agencies' data systems. Our research efforts comprised: (1) a comprehensive web search of federal departments, commissions, and regulatory agency sites to describe available data that might be useful for a white-collar crime series; (2) meetings with officials from both regulatory agencies and units of the U.S. Department of Justice; and (3) close inspection of the publicly available data for several of these agencies.

The research team compiled a list of federal agencies with enforcement responsibilities and data that could fit (at least in part) with our definition of white-collar violations. Forty-four separate entities were identified in this manner. Websites were then searched to discern information availability and access as well as the kind of data collected and held. Finally, to get a better sense of the scope of the agency data, we calculated the percent of total *criminal referrals* the agency contributed in 2010 using an extract from the LIONS database.

The meetings ranged from gatherings with members of several agencies to those with officials from single agencies. A few of the meetings took place in phone conversations. The officials included enforcement attorneys, information technology personnel, and other specialists. The agencies represented in these discussions include the fraud and environmental crime units of the Department of

This document is a research report submitted to the U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.

Justice, the Environmental Protection Agency (EPA), the Federal Trade Commission (FTC), the Securities and Exchange Commission (SEC), the Administrative Office of the U.S. Courts, the Office for Victims of Crime, and the Department of Health and Human Services. Publicly available violations and enforcement data were examined as presented on the agency web sites of the EPA, SEC, FTC, FDA and CFPB.

Project staff also examined the criminal and civil data contained in the Federal Justice Statistics Program for their potential utility in a white-collar crime series. PACER (Public Access to Court Electronic Records), a public electronic database of federal court cases, was used to cross-check FJSP data for completeness.

In this section, we first report what we discovered from agency website searches. Next, we review our findings and conclusions from meetings and interviews with agency enforcement and information technology personnel. We then discuss the utility for a data series on white-collar offenses of the data publicly available on selected agency web sites. Finally, we review the FJSP data for their potential value for such a series. The aim in the section is to establish both strengths and weaknesses of data sources in order to determine their current levels of utility for the series as well as needed future developments to improve their usefulness.

This document is a research report submitted to the U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.

B. Findings and Conclusions from Comprehensive Review of Agency Websites

As noted above, the federal agency search identified 44 departments, commissions, centers, agencies, and bureaus that could hold relevant data for the series. The mission statement for 33 of these agencies fit with our definition of white-collar crime for this project (the fit was closer for some than for others). Of these agencies, 12 had online data and/or codebooks available; 14 had some accessible but limited information; and seven had no online data or codebooks that could be searched.

In terms of the kind of information gleaned from the sites, we assessed whether data were publicly available, partially available or restricted; what enforcement data were reported (e.g., final orders, stipulations, inspections), including the form it took (quantitative data, PDF); the number of cases reported, the years for which data are available, and the types of offenses reported (i.e., the scope of the data); and the breadth of legal coverage (criminal, civil judicial and/or administrative).

Overall, the search revealed that several available on-line data sources may be useful for the white collar violation series in both the social (OSHA, EPA, MSHA, and NLRB) and economic (SEC, OCC, FDIC) enforcement realms.

This document is a research report submitted to the U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.

However, the data may not be readily quantifiable (reported in PDF files, for instance), in which case data scraping would be required to access and code relevant information from the sites. Further, sites report data at different points in the decision process. The Federal Reserve and the NLRB, for instance, report only final orders, whereas the International Trade Administration within the Department of Commerce, releases summary information (limited) that describes investigations. Some sites report only civil or administrative outcomes while others offer a mix of enforcement outcomes (such as the Environmental Protection Agency and the Antitrust Division of the DOJ).

There is also great variety in the level of case detail provided by each agency. In some sites (see, e.g., Federal Housing Finance Agency), cases are described in great detail (from when the alleged illegal activity occurred, nature of the action, who is named as co-defendants and their role in the violation, factual allegations, to the specifics of the enforcement action). Other sites highlight yearly accomplishments in which select (and therefore incomplete) cases and outcomes of interest are described (see, e.g. http://www.ftc.gov/reports/annual-highlights-2013/enforcement) or aggregate counts of enforcement activities such as total inspections, enforcement actions, and violations are summarized.

This review confirmed the original suspicions of the research team regarding the varied nature and quality of online data. However, the search did reveal that

This document is a research report submitted to the U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.

some agency data are better (more comprehensive, broader in scope, and more easily accessible) than others. For these reasons, we recommend that the white-collar crime series incorporate the most complete and comprehensive data systems from the available agencies. To examine and describe the extent to which agencies meet these criteria, we have developed five agency briefs. The goal of these briefs is to describe the full enforcement terrain that is captured within agency data and show how that portrait comports with data collected from other sources.

C. Findings and Conclusions from Discussions with Agency Personnel

The purposes of project staff's discussions with agency personnel were (1) to communicate the nature and needs of the proposed data series on federal white-collar offenses; (2) to ascertain the nature of agencies' violations and enforcement data systems and their potential usefulness for the series, and (3) to encourage agencies' involvement in future activities toward the development of the series, including the regular sharing of data for inclusion in it.

In summary form the key conclusions from these discussions are several:

- Agencies vary substantially in the structures and the qualities of their enforcement and compliance data systems. The data systems range from those comprising largely legal documents (e.g., court filings, administrative orders) kept in electronic form in computer files to

This document is a research report submitted to the U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.

those comprising developed electronic records that track the compliance and enforcement records of the regulated entities over time.

- The agency data systems have been created first to serve the needs of investigative and enforcement personnel in the conduct of their work (e.g., tracking case developments and workload allocation) and, secondarily (in some instances), for use by citizens seeking on-line information on compliance and enforcement. In addition, agency data on compliance and enforcement can be responsive to changing enforcement priorities and budgets, complicating analyses of enforcement trends. There has been no consistent or government-wide template of key factors for agencies to track as investigations unfold, as cases are filed and work their way through the legal process, and as sanctions are issued for violators. Notably the data systems were not created with an eye toward their utility for external research or for combination with other agencies' enforcement and compliance data.
- Agency personnel were frank in discussing the limitations of their data systems, whether for their own investigative/enforcement purposes or for the purposes of research. Challenges include

This document is a research report submitted to the U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.

variations across federal regions and districts in the completeness and consistency of data input and the lack in some agencies of electronic data files that can be easily searched for purposes of constructing counts and rates of offenses, offenders and case outcomes (e.g., sanctions). Linking specific cases across agencies and even within agencies presents additional challenges.

- Personnel from a number of agencies indicated either that their agencies were pursuing improvements in their data management systems or were interested to do so. Some suggested that the BJS effort to construct a data series on white collar offenses might provide the opportunity for agencies to share information on best practices for the development of their data systems.
- The BJS effort to have agencies enter into memoranda of understanding (MOUs) to share their enforcement and compliance data with the Bureau for purposes of the data series stalled in both efforts made during the present project. After successful initial meetings with officials at both the Environmental Protection Agency and the Securities and Exchange Commission, during which the nature and characteristics of their data were discussed, project staff efforts to engage in subsequent discussions regarding the terms of

This document is a research report submitted to the U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.

> data sharing with BJS failed when agency personnel became unavailable to continue the discussions. Somewhat speculatively we infer that among the possible reasons for the cessation of these conversations are the perceived budgetary costs to the agency of selecting and preparing data for transfer on an ongoing basis, and uncertainty about the potential political risks to the agency of data sharing, such as those that might arise from second- or third-party analyses of enforcement and compliance data from single agencies or from agencies in combination.

What follows are discussions of key points from program staff conversations with agency officials that underlie the above conclusions.

Federal Criminal and Civil Data. In a separate section below we assess the strengths and weaknesses of the criminal and civil data as presently included in the Federal Justice Statistics Program. Here we note relevant points about the criminal and civil data made by Department of Justice officials in our project meetings.

The Justice Department to date has not organized its data processes with an eye toward measuring the incidence and prevalence of white-collar offenses. Instead, as with most agencies the focus has been on creating and managing data systems that meet its programmatic needs for prosecuting and tracking cases. One

This document is a research report submitted to the U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.

important limitation of the existing data systems is that offenses are not identified with the level of detail needed to categorize them as *white-collar offenses as defined in this project.* For example, the data kept by the Administrative Office of the U.S. Courts register offenses by *statute* rather than by more precise descriptors of the offenses. Many cases are prosecuted under various fraud statutes, but these laws cover numerous crimes that would not qualify as white-collar crimes, such as fraudulent individual claims against federal welfare programs or frauds perpetrated by organized criminal groups.[22] In addition, this data system does not consistently record whether organizations are defendants in cases, and does not make possible the discovery of parallel civil and criminal cases against the same violators.

LIONS (Legal Information Office Network System) is the system that tracks U.S. attorneys' monthly case data. It records only the first offense listed in an indictment, and not necessarily the most serious violation. In addition, the data system is said to be missing considerable information. For example, it may not include some major cases brought by litigating units (e.g., inspectors general) without the involvement of U.S. attorneys' offices. On the other hand, if criminal

[22] Two possible remedies for this are consulting the fee-based data system PACER (Public Access to Court Electronic Records) to access specific cases' docket sheets, a time-intensive process, and to rely on information on referring agency (where such information is available), since referring agencies such as the EPA and the SEC generally pursue offenses that constitute white-collar violations as defined. The strengths and weaknesses of using PACER to cross- validate case data for this project are described in the next section of this Report.

This document is a research report submitted to the U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.

cases are *shared* by both U.S. attorneys and other litigating units, and data are available from both sources, it is important to avoid double-counting cases.

Another potential source of data for white-collar offenses are specialized investigative and prosecutorial units, such as the Health Care Fraud Prevention and Enforcement Action Team (HEAT) and the Financial Fraud Enforcement Task Force. These are multi-agency groups formed in 2009 to combat federal offenses such as fraud against the Medicare and Medicaid programs and financial frauds such as mortgage-backed securities offenses, procurement frauds, identity theft and Ponzi schemes. These units have their own data bases and may be a rich source of information on cases of white-collar offenses. Department of Justice officials raised a number of cautions about such data, however. The health care fraud data contain information on a number of important factors: filing date, type of fraud, unique offender identifier, name of company, etc. But if the cases are brought only by assistant U.S. attorneys attached to local (federal) district strike forces, the cases may not be included in the centralized data system (the Legal Information System Network, or LIONS, which is part of the FJSP data under the EOUSA heading). Similarly, case data associated with the Financial Fraud Enforcement Task Force are decentralized among numerous working groups. It was noted that data management was not among the official goals for the Task Force, and that data collection was fragmented.

This document is a research report submitted to the U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.

A further implication for measuring white collar offenses of data compiled by such task forces is that their prosecutorial work necessarily focuses on specific priorities, such as "target rich" areas where rates of offending are expected to be high and types of offending that pose the greatest public and policy-level concerns (e.g., mortgage fraud and related securities frauds). Such priorities shape the profiles of offenses and offenders in particular ways that may not be representative of the universe of such violations and violators, a consequence that is only made more salient by the fact that enforcement priorities often shift over time. Of course the same can be said of virtually all forms of enforcement against white-collar offenses, whether by criminal, civil or regulatory authorities.

Department of Health and Human Services: The Data Bank. Another example of a focused source of white collar offense data are two data systems kept by DHHS that track sanctions for misconduct by medical practitioners and companies in the health care field. The National Practitioner Data Bank compiles reports from such sources as malpractice insurers, hospitals, state licensing boards and professional societies. These sources report sanctions they have imposed on practitioners for violations of professional standards and related rules, such as license suspensions and revocations and censures. The Healthcare Integrity and Protection Data Bank compiles reports from federal and state government agencies, and from health plans. The reports concern sanctions ranging from

This document is a research report submitted to the U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.

reprimands and license revocations to civil judgments and criminal convictions. For the latter data LIONS is the key source. Current planning calls for these two databases to be merged. In general this is a quite comprehensive set of data and one that would add an important component to a data series on white collar offenses: those committed by professionals working in a domain vital to both individual and public well-being.

DHHS officials noted some caveats regarding these data. Consistency in the reporting and entering of data is uncertain. Among other reasons, DHHS cannot compel hospitals and other medical entities to report sanctions. Officials were also uncertain about the completeness of criminal case data. Because the purpose of the database is to ascertain simply whether criminal convictions were related to medical misconduct, information on sanctions is unnecessary for the purpose and may not be included in the data. Nonetheless such missing data would appear to be available, requiring only procedures for regularly extracting it from sources such as LIONS.

Regulatory Agency Data. Project staff had detailed conversations with enforcement and/or information technology personnel at three major federal regulatory agencies: the Environmental Protection Agency (EPA), the Securities and Exchange Commission (SEC), and the Federal Trade Commission (FTC). These agencies were selected because they represented enforcement against white-

This document is a research report submitted to the U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.

collar offenses in the spheres of social (EPA) and economic regulation (SEC and FTC). The EPA and SEC were also selected because experience and project team research has shown that these two agencies maintain substantial data bases on offenses, offenders and enforcement. Further, each agency is responsible for most enforcement cases while both offer assistance (including investigative and staff) to DOJ and US Attorney's Offices in the pursuit of criminal cases. Thus, EPA and SEC also track some criminal case files which may be useful to assess and verify case data from other sources. It is also important that the three agencies enforce cases largely against white-collar violations as defined in this project. Their data include little "noise" of the sort represented by cases against organized criminals or persons not offending in the course of their legitimate occupations.

Environmental Protection Agency

The U.S. Environmental Protection Agency maintains some of the most advanced data management systems in the federal regulatory system. In combination the EPA's systems track both compliance/noncompliance with the federal environmental statutes and enforcement actions taken against noncomplying facilities. They also track some data on criminal referrals that EPA makes to the Department of Justice. To date these systems have primarily been used for internal management purposes and for providing searchable compliance

This document is a research report submitted to the U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.

and enforcement data to the public on the Agency's elaborate web site. The EPA maintains a commitment to the public utility of its data and has regularly engaged in improving its data systems. During the time frame of this project the EPA was further developing and integrating its compliance and enforcement data systems, a process estimated to be completed by fall 2014. In all, the Agency's data hold substantial promise for inclusion in a data series on white-collar offenses.

As noted earlier, the EPA is responsible for enforcing numerous federal statutes, including the Clean Air Act, the Clean Water Act, the Safe Drinking Water Act, the Resource Conservation and Recovery Act, and the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), and the Federal Insecticide, Fungicide, and Rodenticide Act. The Agency is responsible for most of the enforcement activity under these statutes, although as with all regulatory agencies it must refer suspected criminal cases to the U.S. Department of Justice. In addition, it shares enforcement of CERCLA with the U.S. Coast Guard, which is responsible for enforcement in coastal zones, the Great Lakes, and ports and harbors.

Also worth notice is that primary enforcement of some environmental statutes rests with other units of the federal government. These statutes are focused on specific environment-related activities. For example, non-criminal enforcement of the Endangered Species Act (16 U.S.C. § 1531 *et seq.*) is shared

This document is a research report submitted to the U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.

among the National Oceanic and Atmospheric Administration's Marine Fisheries Service, the Department of the Interior's Fish and Wildlife Service, the Treasury Department, the U.S. Coast Guard, and the Department of Agriculture. The Surface Mining Control and Reclamation Act (30 U.S.C. § 1201 *et seq*.) is enforced by Interior's Office of Surface Mining Reclamation and Enforcement, while civil and criminal cases are initiated by the Department of Justice. In addition, enforcement of a number of federal environmental statutes may be undertaken by private parties under citizen suits' provisions.

Thus, while the EPA is the agency most responsible for enforcing the nation's environmental laws, ultimately a comprehensive statistical series on environmental offenses and enforcement will integrate data from these other sources of monitoring and enforcement as well.

As noted above, the vast majority of EPA's enforcement cases involve offenses that constitute white-collar violations: violations of the nation's environmental statutes by companies, municipalities, farms, nonprofit organizations (e.g., universities, hospitals), and government entities. According to EPA compliance and enforcement officials, the infrequent exceptions would be such cases as those involving the prohibited use of pesticides in homes or violations by fraudulent businesses.

This document is a research report submitted to the U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.

The principal information system for EPA's enforcement and compliance data is the Integrated Compliance Information System (ICIS). It is a secure system available only to EPA and state officials enforcing federal environmental laws.[23] It underlies two data web tools: the Online Tracking Information System (OTIS), a secure system accessible to employees of government environmental agencies, and Enforcement and Compliance History Online (ECHO), available to the public via EPA's web site and which contains compliance and enforcement data for three major EPA enforcement programs.[24]

ICIS, the Agency's most comprehensive enforcement and compliance data system, includes all actions enforcing the federal environmental laws that have been undertaken by the EPA (including convictions in referred criminal cases), and all Clean Water Act enforcement actions taken by state environmental authorities under delegation from the EPA. By the end of 2014 ICIS was to have been enhanced by the incorporation of data on enforcement cases undertaken by state enforcement agencies under EPA delegation to enforce the Clean Air Act.

Enforcement data are kept at the level of the *facility* that is being regulated under federal environmental statutes, and include names and addresses of the

[23] Upon delegation by the EPA, states can enforce various federal environmental laws. For example, under the Clean Water Act's National Pollution Discharge Elimination System (NPDES), EPA has delegated enforcement to all but a handful of states.
[24] These are the Clean Air Act's stationary source program, the Clean Water Act's direct discharge program, and the Resource Conservation and Recovery Act's hazardous waste generation program.

This document is a research report submitted to the U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.

regulated facilities. The data include violations as discovered by required periodic self-reports (e.g., monthly, quarterly) or via government inspections, and sanctions ranging from warning letters to criminal penalties. The EPA distinguishes between informal and formal enforcement actions, with warning letters generally considered an informal enforcement action and formal action comprising notices of violation, administrative orders, civil orders and penalties, and criminal penalties.[25]

For all of their relative comprehensiveness, the ICIS data also present a number of limitations of varying degrees of importance. First, while federal officials enter informal enforcement data for cases they enforce, state agencies to whom EPA has delegated enforcement of federal laws do not enter all of their informal enforcement cases. Second, the EPA distinguishes between major and minor polluters—a distinction related to the pollution load being discharged—and enforcement policy prioritizes the major dischargers. Moreover, some data are less available for the latter. For example, nationally the self-report compliance/noncompliance data under the Clean Water Act were 93 percent complete for major dischargers but only 41 percent complete for minor dischargers (fiscal year 2009 data).[26] Relatedly, data management officials noted that for

[25] It was noted in our discussions that the distinction between formal and informal enforcement actions varies somewhat by media being protected, and that enforcement policies are documented for each environmental medium.
[26]Referring to the entry of facility discharge monitoring reports into the data. See U.S. Environmental Protection Agency, NDPES Data Completeness Table (FY 2009), June 2010. Available at http://www.epa.gov/Compliance/resources/reports/performance/cwa/2009-data-completeness-chart.pdf.

This document is a research report submitted to the U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.

smaller facilities Clean Water Act violations are included commonly only when found in inspections, and that the quality of data for minor facilities is lower than for major dischargers.

Third, as noted the data are registered by facility name, rather than by corporate ownership names where the facility is named differently or owned as a subsidiary of a larger corporation. This, combined with the fact that corporate ownership may change over time, complicates research seeking to identify violation rates, trends and sanctioning responses at the corporate level. This matter also connects to a policy-level concern expressed by EPA officials: that the Agency's case data lack unique identifiers such as corporate IDs that would allow it to connect easily to the enforcement data of other agencies on the same facilities. Agency officials noted that it would be desirable to be able to link EPA data with those at OSHA, the Department of Energy, the Department of Justice, the FBI, and the U.S. Census. Differences in data structures among agencies complicate this process presently.

Nonetheless, the EPA appears to be at the forefront of federal regulatory agency efforts to address such challenges over time and to improve its data systems by increasingly filling gaps and integrating the violations and enforcement data across the environmental media the statutes are designed to protect. The prospect that the BJS initiative to create a data series on white-collar offenses and the

This document is a research report submitted to the U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.

federal enforcement response to them would both further those efforts and develop synergy between them and those of other enforcement agencies would seem promising.

In addition to regulatory enforcement the EPA also engages in civil and criminal enforcement activities and maintains data on these. Civil administrative actions are enforcement activities undertaken by the EPA or by states under EPA delegation and do not involve judicial action. Sanctions include notices of violation and administrative orders, sometimes including penalties. Civil judicial actions are formal lawsuits filed in courts either by the U.S. Department of Justice on behalf of the EPA or by States' Attorneys' General, and bring sanctions including consent decrees, civil penalties, injunctions and supplemental environmental projects as part of settlements. The EPA's Criminal Investigation Division (CID) conducts investigations and makes arrests in the more serious cases, typically those allegedly involving willful or knowing violations of environmental laws. The EPA refers such cases to the Department of Justice for criminal prosecution. Sanctions include fines and imprisonment. Project staff also met with representatives of the Agency's criminal enforcement program.

The CID has approximately 200 law enforcement agents allocated among 47 field offices, 70 forensic scientists, and 45 attorneys specializing in environmental crimes enforcement. In fiscal year 2010, CID opened 1824 leads, of

This document is a research report submitted to the U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.

which 348 (19 percent) became formal investigations, which led to 208 cases (60 percent) prosecuted with indictments. The majority of open cases—51 percent—involved alleged violations of the air and water pollution laws.[27] A substantial minority of criminal cases are prosecuted as Title 18 offenses,[28] charging such violations as false statements (18 U.S.C. § 1001), mail fraud (18 U.S.C. § 1341), wire fraud (18 U.S.C. § 1343), conspiracy (18 U.S.C. § 371), and obstruction of justice (18 U.S.C. § 1501 *et seq*.). In such cases, having offender identification information will be key to correct classification as to white-collar versus non-white-collar offenses. In addition, some environmental crime cases are not handled by EPA, but instead are filed with DOJ by other agencies, such as Interior's Fish and Wildlife Service and the U.S. Coast Guard. Future work will require assessments of the quality of data consistency and information availability across these agencies in order to ensure reliable measurement of environmental white-collar crimes.

According to EPA criminal enforcement officials, the Agency maintains the Criminal Case Reporting System (CCRS) that tracks outcomes in cases referred to DOJ and that includes information on defendants, fines and sentences in cases of criminal convictions. They noted that identifying the specific statutes under which

[27] See *EPA's Criminal Investigation Division* by Tara Donn, Special Agent, Denver Area Office, and U.S. EPA available at http://www.ncsl.org/documents/environ/TDonn62311.pdf.
[28] Estimated at around 15 percent in project staff meeting with criminal enforcement officials.

This document is a research report submitted to the U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.

criminal liability was found would require inspection of case documents. The officials said that while data on both criminal and civil cases are kept, these two types of enforcement case have unique numbering systems so that connecting parallel civil and criminal cases against the same defendants is more involved. It was noted, however, that such parallel cases are infrequent occurrences.

As earlier noted, after several fruitful meetings with EPA officials project staff efforts to arrange discussions about future EPA data sharing with BJS toward development of a statistical series on white-collar offenses ran aground when the officials became unexpectedly unavailable to discuss that prospect. Their reluctance may be due to perceived budgetary costs of such an arrangement, to a sense that Agency data are still undergoing major developments including their integration across all environmental media and therefore they wish to be able to assure high quality data before sharing them, or to concern for adverse political ramifications from possible uses of the data. These reasons are speculative as staff never learned of them or others from EPA staff. However, more recent contact with EPA in connection with an exploratory study of consistencies and gaps in the enforcement data kept by the Department of Justice, the Federal Justice Statistics Program, and the EPA suggests that a promising opening for further work remains (see below).

This document is a research report submitted to the U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.

Project staff also met with enforcement and data officials from the Department of Justice's Environmental Crimes Section (ECS).[29] The purpose of the meeting was to understand the Section's enforcement data and connections between them and EPA and Federal Justice Statistics Program data. ECS is staffed with 37 prosecutors who handle its environmental cases, with U.S. attorneys in the 94 federal districts bringing other environmental crime cases.[30] ECS staff estimated that its office handled from 20 to 25 percent of all federal environmental criminal prosecutions, with the remainder being led by federal prosecutors in the districts. EPA's CID refers cases to ECS, but some cases are referred directly to ECS attorneys by CID enforcement agents with whom the attorneys have developed relationships over time. ECS staff estimate that the Section opens about 100 cases a year and closes the same number annually (though the opened and closed cases are not perfectly overlapped).

According to ECS staff, its case management system is outdated but cases are entered methodically and can be tracked throughout the criminal process. They also noted that the data permit linking separate cases brought against defendants for the same violations, whether by sorting on the DOJ number assigned to the cases or using a "related" tab that links cases. While most ECS cases would

[29] ECS is located within DOJ's Environment & Natural Resources Division.
[30] State and local governments also prosecute environmental crimes, often in cases in which the offenses violate both state and federal laws.

This document is a research report submitted to the U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.

appear to constitute white collar offenses, some would not, such as hunting and other wildlife offenses.

Among the challenges associated with ECS enforcement data is lack of consistency with other federal environmental criminal data, leading to risks of both double-counting of cases and missed cases, depending on which data systems one is using. For example, data kept by the Executive Office for United States Attorneys does not include all of the ECS enforcement cases. In addition, the ECS case management system data may not reflect all environmental cases brought by U.S. attorneys in the districts. But for criminal cases jointly prosecuted by ECS attorneys and federal prosecutors in the districts, both data systems include them, so that using both sources without adequate vigilance could lead to double-counting. Such double-counting may also occur for cases jointly brought by ECS and other regulatory agencies, such as the Securities and Exchange Commission. Staff also noted that it is difficult to track repeat offenders in the ECS data system.

ECS staff expressed interest in working with BJS to more precisely locate data gaps and to develop means of addressing them. See discussion of the proposed Proof-of-Concept project in the recommendations section below.

This document is a research report submitted to the U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.

Securities and Exchange Commission

The U.S. Securities and Exchange Commission is the principal organization enforcing the nation's securities laws. It enforces a substantial number of federal securities statutes, most prominently including the Securities Act of 1933 (15 U.S.C. § 77a *et seq*.), the Securities Exchange Act of 1934 (15 U.S.C. § 78a *et seq.*), the Investment Company Act (15 U.S.C. § 80a-1 *et seq.*), the Investment Advisors Act (15 U.S.C. § 80b-1 *et seq*.), the Foreign Corrupt Practices Act (15 U.S.C. § 78dd-1 *et seq*.), the Sarbanes-Oxley Act (PL 107-204, 116 Stat 745, codified in Sections 11, 15, 18, 28, 29), and the Wall Street Reform and Consumer Protection Act, also widely known as the Dodd-Frank law (PL 111-203, H.R. 4173). In addition it has statutory authority to oversee the enforcement activities of a number of self-regulatory organizations (SROs) that police the securities industry, including the Financial Industry Regulatory Authority (FINRA), the National Futures Association, the Municipal Securities Rulemaking Board, and 20 registered stock and futures exchanges. The SEC also shares enforcement authority under some statutory provisions with a number of other federal organizations, including the Federal Reserve Board, the FBI, the Federal Deposit Insurance Company, the Office of the Comptroller, the Consumer Financial Protection Bureau, and the Public Company Accounting Oversight Board-- a nonprofit corporation established by the Sarbanes-Oxley Act of 2002.

This document is a research report submitted to the U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.

The SEC enforces the federal securities laws against such offenses as insider trading, misrepresentation of information on securities, manipulating securities' market prices, and selling unregistered securities. The Commission uses both administrative and civil law processes. Administrative procedures, which can involve hearings before the Commission's administrative law judges, utilize an array of sanctions, including registration revocation, suspension of stock trading privileges, and disgorgement of funds. The SEC can also file civil suits in the federal district courts, seeking such sanctions as injunctions, disgorgement of funds, and civil monetary penalties. When its investigations reveal evidence of criminal conduct, the SEC refers the cases to the Department of Justice for prosecution. However, it refers few such cases, whether considered in absolute numbers or relative to the securities case referrals of other federal units. For example, in fiscal year 2010 the SEC referred only 16 suspects for criminal prosecution for securities fraud, while the FBI referred 435 suspects and the U.S. Postal Service referred 49.[31] Most of the SEC's enforcement is undertaken via civil and administrative penalty processes.

Project staff conducted a lengthy phone meeting with an official in the SEC's Division of Enforcement to discuss the Commission's enforcement data.

[31] See the project staff agency brief "U.S. Securities and Exchange Commission: Annual Case Statistics, FY 2010," in Appendix of this report.

This document is a research report submitted to the U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.

Personnel in the Enforcement Division created its data management system, which the official described as "robust." The system tracks data points from the opening of an inquiry, through its evolution into an SEC investigation, to case conclusions. The system also included an intake data base which comprises tips, complaints and referrals (TCR), which are then triaged into the SEC's case tracking system. In 2010, 15,400 potential cases were entered into the TCR data.

The enforcement data system captures the statutory provisions violated, the federal districts in which civil court cases are filed, and administrative actions. The official said that the SEC conducts good collaborative investigations with DOJ prosecutors, but that the SEC's enforcement data system does not track parallel civil and criminal cases. Relatedly, it was noted that if federal prosecutors win criminal fines in securities cases, the SEC may abandon its pursuit of civil fines in those cases so as not to over-punish violators.

Finally, the official outlined three model types of Commission cases and said the quality of the SEC's electronic data varied by these types. The first type comprises cases in which there are lengthy investigations (e.g., two years) but for which it is ultimately determined that no enforcement action should be taken. The second type involves similarly investigated cases but in which enforcement action is taken and the case is settled by the SEC and the defendants. In both of these types of cases the SEC has good electronic data. The third type of case is more

This document is a research report submitted to the U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.

complex because it involves multiple defendants whose individual allegations are resolved in different ways. For example, in a particular case one of the defendants may wish to settle the charges early, while another chooses to litigate the charges over a period of years. The SEC's data system contain information of varying quality in these more complex legal matters.

Unfortunately project staff were unable to pursue questions of data quality and accessibility with agency officials past this point. Upon request of the official we sent information on case variables of interest to a data series on white-collar offenses, and a model version of a memorandum of understanding governing data-sharing processes and agreements between agencies and BJS. As with the experience with the EPA, it was at this point that communications ceased when the SEC declined to respond to further inquiries to set meetings to discuss data measures and data sharing. Again, we do not know why communications ended, but in the case of the SEC additional possible factors were the reorganization of the Division of Enforcement during this period, in particular with the appointment of a new Director of Enforcement and at a time when the Commission was (1) involved in a number of major investigations and enforcement actions in connection with the financial crisis of 2008-9, and (2) under considerable media scrutiny.

However, it is worth noting that the SEC publishes considerable data on its enforcement cases on its web site, as shown in the project staff report "U.S.

This document is a research report submitted to the U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.

Securities and Exchange Commission: Annual Case Statistics, FY 2010" (see Appendix). While much of this is in the form of documents rather than in the form of electronic coded categories of data, the availability of this quantity of data indicates that the Commission's enforcement cases are a promising prospect for inclusion in an eventual data series on white collar offenses.

The Federal Trade Commission

The FTC's mission includes enforcement of laws that protect market competition and the interests of consumers. This comprises cases to prevent mergers that would limit competition in industries and to sanction fraud and deception in the marketplace. The Commission enforces numerous federal statutes, principal among them the Federal Trade Commission Act (15 U.S.C. § 41 *et seq*.). The FTC also has enforcement authority under other federal statutes, such as the Clayton Act (15 U.S.C. § 12 *et seq*.), the Truth-in-Lending Act (15 U.S.C. § 1601 *et seq*.), the Fair Credit Reporting Act (15 USC § 1681 *et seq*.), and the Do-Not-Call Implementation Act of 2003 (15 U.S.C. § 6151). It shares enforcement jurisdiction for the Clayton Act with the Department of Justice, state enforcement agencies and private parties.

The FTC may sanction offenses by individuals or organizations either through administrative enforcement or by filing civil cases in the federal courts.

This document is a research report submitted to the U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.

Administrative sanctions include consent orders and monetary penalties; court sanctions include orders, injunctions and civil penalties. As with all other regulatory agencies, the FTC refers potential criminal cases to the Department of Justice.

Project staff met with FTC officials from the Bureau of Competition and the Bureau of Economics. More information on FTC enforcement data was gleaned in a follow-up telephone meeting with a member of the Bureau of Economics.

These officials reported that the FTC's case management system was antiquated and that case details weren't routinely logged into it. A five-year-old electronic data base tracks enforcement of orders but the FTC staff said many cases had incomplete fields, the data base lacked a rigorous codebook, and there weren't good ways to assess data quality. The vast majority of consumer protection cases are filed as civil matters in the federal courts, and staff members indicated that PACER case documents are a good source for identifying key case details in FTC's court cases.

In sum, FTC case data exist most accurately largely in the Commission's legal (text) documents for cases (e.g., complaints, consent orders) rather than in coded categories, indicating that at present some form of data-scraping would be required to extract case details with any efficiency. These documents contain

This document is a research report submitted to the U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.

information on the nature of the violations charged, defendants' names (allowing for distinctions to be made between individual and organizational offenders) and resolutions for each count or offense. There is no data base on case referrals to DOJ, but the Office of the General Counsel tracks case appeals and their outcomes.

Notably the FTC officials expressed interest in working on a pilot project with BJS to determine the quality of their enforcement data, as well as interest in the BJS work with other agencies' white-collar offense data systems because of the expected synergies toward improved data collection and management that could be derived from inter-agency information sharing and collaboration. As earlier noted, these potential synergies provide one of the brightest prospects for the BJS project of building a data series on white-collar offenses and the federal enforcement response.

VI. Federal Data Sources on White-Collar Crime: Strengths and Weaknesses

A. Criminal Data

The Federal Justice Statistics Program (FJSP)

FJSP data are collected by the Bureau of Justice Statistics from five federal agencies and are maintained by the National Archive of Criminal Justice Data (NACJD) at the Interuniversity Consortium for Political and Social Research

This document is a research report submitted to the U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.

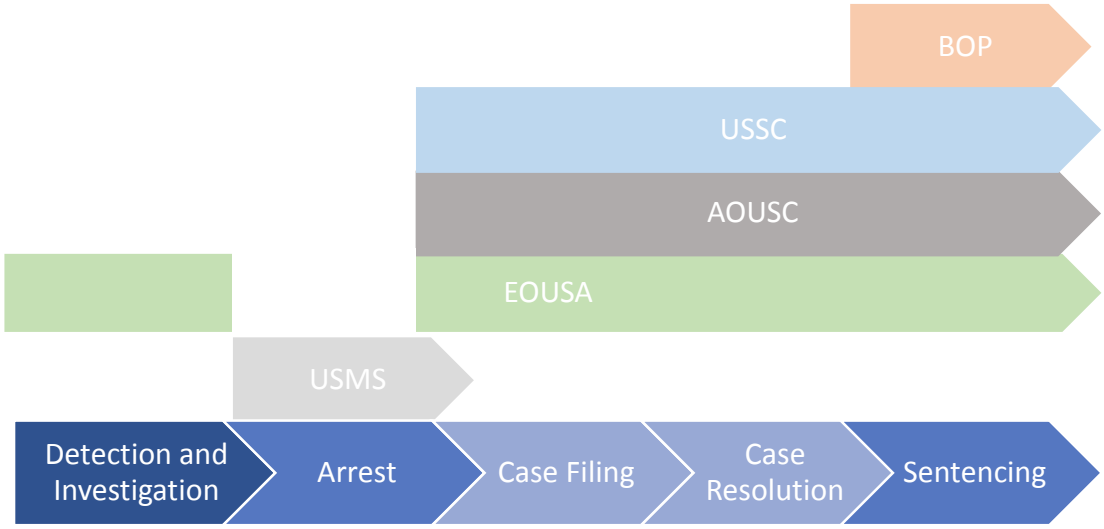
(ICPSR). The agencies that contribute to the FJSP are the U.S. Marshals Service, the Executive Office for United States Attorneys (EOUSA), the Administrative Office of the United States Courts (AOUSC), the United States Sentencing Commission (USSC), and the Bureau of Prisons (BOP).

Each agency interacts with offenders at distinct periods in a case's life cycle, though multiple agencies may collect data about the same case at the same time. This presents the opportunity to evaluate the quality of data at the points where agency data intersect. The FJSP uniquely offers a case identifier that may be linked across agency files, offering a straightforward method for evaluation of interagency consistency. However, not all stages of the criminal justice process contain agency data overlap (see Figure 7, below). This is relevant to a white-collar crime series in that, unlike street crimes, the early stages of a case are much less likely to be conducted by the U.S. Marshals. Corporate crime, in particular, is more likely to involve attorneys than it is law enforcement at these stages. The Marshals' data, then, are less useful in a series on white-collar crime that includes organizations as offenders. However, the data are not completely unserviceable given that the working definition of white-collar crime for this project includes individual offenders—and these criminals may well be arrested by the U.S.

This document is a research report submitted to the U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.

Marshals.

Figure 7: Simple Stages of Criminal Justice



Records from the Bureau of Prisons similarly exclude organizational offenders but, unlike the Marshals Service, the BOP data generally are redundant with information contained in reports by three other agencies in the FJSP—AOUSC, EOUSA, and USSC. The only advantage BOP data would bring to the white-collar crime series is that they contain demographic information about offenders. However, these benefits apply only to those white collar offenders who are imprisoned. The lack of demographic data across all sources is one notable weakness of the FJSP.

Given the role-centered definition of white-collar offenses employed by this project, the FJSP data also lack variables that would identify the occupational role of offenders as it relates to their offense. Instead, the best means of isolating white-

This document is a research report submitted to the U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.

collar crime for the series are via offense (categories and statute specific) and agencies involved. A problem with this approach is that the offense categories (e.g., environmental or "other regulatory offenses") are difficult to unpack in order to isolate white-collar offenders.

Offense category variables are consistent across all datasets in the series, though the operationalization of the coded values are unavailable—at least to these researchers. That is, the precise characteristics that result in offenses being coded in one particular category as opposed to another are not made transparent. Specific statutes are available for some datasets (for most files in the EOUSA, AOUSC, USSC, and BOP), though the number of statutes available varies from one to up to seventeen. While some statutes imply crimes consistent with our definition of white-collar crime (e.g., violations of securities reporting [15 U.S.C. §§77-78], failure to certify financial reports [18 U.S.C. §1350]), not all statutes are so easily cataloged. The archetypical "white-collar" offense, mail fraud, neither requires nor implies the perpetrator's role in occupational activities. Thus, offense provides a means to isolate some but certainly not all white-collar crimes.

Another way in which the FJSP can be used to identify white-collar crime is to extract cases that are referred by agencies whose enforcement activity typically corresponds with our definition. Cases referred by the Federal Trade Commission, Securities and Exchange Commission, Food and Drug Administration, and

This document is a research report submitted to the U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.

Environmental Protection Agency are almost all consistent with our definition. Unfortunately, however, not all agencies collect and report this information. Referring agency is only available from the EOUSA and suffers from (limited) missing data.

Finally, offenses consistent with our definition may be related to "participant type," which indicates whether defendants are organizations or individuals. Unfortunately, this variable is not a required data element or uniformly available (only in the four datasets from the EOUSA can participant type be used to distinguish organizations from individuals), and it does not distinguish between legitimate and illegitimate organizations. But in combination with other data in the FJSP (e.g., statute, referring agency) it may increase confidence in the determination of white-collar offenses as defined in our core definition. Future work with these data could ascertain the degree of accuracy with which "participant type" and other variables identify cases of white-collar offenses as defined.

Executive Office for United States Attorneys (EOUSA)

The EOUSA data are extracted from the agency's case management system (Legal Information Office Network System, or LIONS) and assembled into four criminal data files – matters in, matters concluded, cases filed, and cases

This document is a research report submitted to the U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.

concluded. The "matters" files contain all alleged violations on which a U.S. attorney spent one or more hours, while "cases" files contain only those in which a formal case was filed in court. The matters files provide the only look into the investigatory process through the FJSP, though it is still limited in scope (as described below).

The EOUSA are the only data source through which white-collar crime can be isolated via all three methods discussed above. Only one statute—the lead statute-- is provided for cases filed and concluded. While data entry personnel are not required to enter referring agency, the field is well-populated (>90%), and it is available across all four datasets; the participant type variable is also available across all EOUSA sources.

Unfortunately, because the EOUSA data are divided into four datasets, it is not possible to track a case's life cycle within a single dataset, from referral to sentencing. However, the series does contain information on case referral, the decision to file or not to file formal charges, the initial and final charges, the decision, and any resulting sentences. The BJS's linking system should permit tracking between datasets.

One notable concern with the EOUSA data pertains to the "terminated" files – there is no objective rule for determining the basis of a case's termination

This document is a research report submitted to the U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.

because attorneys make the decision on a case-by-case basis. For instance, cases marked terminated may indicate that an attorney or division is no longer working on that case, or that it was referred out, or it was terminated for some other reason. Consequently, the case data may be incomplete (e.g., if a case is "terminated" before sentencing, disposition and sentencing values will be missing).

Administrative Office of the United States Courts (AOUSC)

The AOUSC data cover cases from the initial court filing through the sentencing process. Thus, data from this part of the FJSP should include all cases in the EOUSA "Cases Filed" dataset. However, the linking system is imperfect, and there is no known formal comparison between the two. The AOUSC's main advantage over the EOUSA data is that it contains up to five statutes per case filed, rather than the one provided by the EOUSA. However, the court data do not contain agency or participant type. Thus, attempts to identify white-collar crimes are limited to statute-specific crimes. However, if the linking system to EOUSA is improved, the AOUSC data may prove useful.

Public Access to Court Electronic Records (PACER)

PACER is a publicly accessible search service that contains all court documents for federal appellate, district, and bankruptcy courts. The site charges users a small fee to search records and a separate fee to access documents

This document is a research report submitted to the U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.

associated with specific cases. The main advantage to PACER is that, with its publicly accessible court documents, it is by far the richest data source available for case data (after filing). PACER is searchable by party name (e.g., "Securities and Exchange Commission"), date of filing and conclusion, and type of case.

However, PACER also has several drawbacks, the primary one being its cost. Searching is arduous because search results are very sensitive to data entry variation and the rich text files must be accessed through individual cases. Documents must be compiled one-by-one. Relatedly, PACER lacks efficient search parameters that are suitable for our data series. Case type may not be reliably entered (and is not defined for the user), and party searches (such as by agency) depend on the accuracy of data entry. Comparisons between PACER and agency data have revealed that agency data nearly always contain cases that are not returned by PACER, most often due to a party's name being misspelled or not captured at all in the PACER database. PACER's primary benefit is in its ability to provide *supplemental* case data for case lists assembled via other methods and for cross-validation purposes.

This document is a research report submitted to the U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.

B. Civil Data

The Federal Justice Statistics Program

The FJSP has only recently developed the civil case series to parallel its criminal data. Rather than being drawn from five agencies, the civil case files are drawn only from the EOUSA and AOUSC. BJS is still finalizing the civil data, so our observations about the data and their utility for the white-collar data series should be understood as preliminary.

EOUSA's civil data (divided into four datasets, like the criminal data) contain many of the key variables found in the criminal data. This makes sense given that the FJSP is an extract from the agency's case management system, which contains both criminal and civil cases. This means that, for our purposes, it is possible to determine whether a defendant is an individual or an organization (but with the limitations noted for the criminal data). Additionally it is possible to isolate cases by the agency that referred it, and both statute and offense categories are provided.

However, the pilot civil data are also missing certain key variables. For instance, while the data's unit of analysis is the case-defendant, there is no way to determine if defendants are related to the same case (unlike the criminal data which contain the case ID number and the defendant ID number). In addition, the civil

This document is a research report submitted to the U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.

data must be filtered by the case type – not all civil cases in the system are affirmative; some are defensive (i.e., a party sues the SEC), and some involve the enforcement of a previous administrative order. Missing data are problematic, as are "unknown" values for variables such as "monetary relief"—the key sanction for civil cases. Less than rigorous data entry all too often compromises data quality. In addition, like the criminal data, EOUSA data do not contain variables of interest related to business and individual characteristics. However, *unlike* the criminal data, no linking system allows the extraction of these variables from other agencies' datasets.

The AOUSC civil data are similarly challenged. And like the criminal AOUSC data, the civil files lack participant type and agency information. Statute information is available, but for only a single charge (removing the primary advantage of the AOUSC data over EOUSA). However, the AOUSC files are more complete than the EOUSA files for case judgment information – the files contain the amount awarded for each case in the dataset (unlike the EOUSA files). Thus, the AOUSC data can be used to assess, verify, and supplement the sanction information in the EOUSA.

This document is a research report submitted to the U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.

VII. Lessons learned from the Agency Data Briefs

One of the main tasks of this project was to map how regulatory agencies process offenses, especially identifying similarities and differences in legal/legislative authority, decision processes, available sanctions, levels of analysis, and ultimately the kinds of data collected, so that BJS can develop and implement the means to standardize coding and presentation of data across the variety of data sources (i.e., create a crosswalk in which criminal, civil, and regulatory classifications of white-collar offenses are specified). To meet this goal, the project team prepared briefs on five regulatory agencies: the SEC, EPA, FTC, FDA, and the CFPB. In each of the briefs (which are attached to this Final Report in the Appendix), we describe the federal enforcement domain of the agency (classification), the scope of enforcement activities, and case sources and processing details. Whenever possible, these data points are compared with information generated from other sources, such as an extract from LIONS or PACER. The detailed agency briefs allow us to draw conclusions about the utility of specific agencies' publicly available data for the white-collar violations series, and also to compare defendant and case information with data already held by BJS.

One of the first observations that can be drawn from the agency briefs is that the scope of enforcement varies considerably by agency. Scope is affected to some extent by the mission of the agency. The FDA, for instance, is responsible for

This document is a research report submitted to the U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.

foods, biological products, medical devices, electronic products that give off radiation, cosmetics, veterinary products, and tobacco products. The Consumer Financial Protection Bureau emerged out of Dodd-Frank legislation with a more circumscribed mission--to ensure that consumers are protected from unfair, deceptive and abusive acts and practices especially in the area of consumer financial products and services. Scope is also affected, however, by the statutes that agencies are tasked to enforce and who else operates within the enforcement domain. While the FTC now oversees the administration and enforcement of more than 70 laws, in many cases the agency serves in an advisory or reporting capacity, leaving enforcement to other agencies. Conversely, while the environmental enforcement domain is vast and populated with many different players, the EPA is the agency responsible for the highest proportion of investigative and enforcement activity within the domain.

A review of the agency briefs reveals multiple sources of data across agencies. Although most agencies report civil judicial and administrative actions, a few (e.g., EPA) also report referred closed criminal cases. Some agencies are repositories for consumer complaints (FTC and CFPB), but it is unclear how—if at all—the complaint data inform enforcement activities. The SEC also has a new office to manage tips, complaints, and referrals, but there is little information about this division on the SEC website. It would be helpful to know whether the tips,

This document is a research report submitted to the U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.

complaints, and referrals result in case generation. Generally, the SEC does not provide information about case source or origin. However, it does offer a great deal of detail on case processing, resolution, and outcomes.

The EPA, on the other hand, appears to have the most sophisticated data systems compared with the other agencies we evaluated. The internal ICIS system is a multi-media integrated data system that includes information on all stages of case processing from case inception and handling to resolution. The information in ICIS is provided at the case level and includes important details that facilitate case tracking over time. In addition, EPA also collects facility inspection and self-reported compliance data. The FDA also maintains a database with information regarding inspections and citations, which is searchable by compliance status of firm, project area, firm name, location, and inspection date.

With the exception of the CFPB (which only reports administrative cases), all of the agencies report information about civil judicial cases and some also report information about criminal cases (either referred to DOJ) or cases in which the agency worked with the DOJ to assist with case development and prosecution. (EPA, for instance, keeps these data but not in a publically available database.) The rich details in the agency data regarding civil enforcement and criminal referrals can be compared with data in the FJSP (LIONS) and PACER to verify counts and, with some effort, determine the causes of variation between data sources. Our

This document is a research report submitted to the U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.

assessment of data quality in some cases finds agency data that are more complete than counts in LIONS and PACER (see the SEC brief). However, until more systematic investigation is conducted comparing agency and FJSP counts and case details, it is premature to draw conclusions about the veracity of any of the data sources.

Finally, the agency briefs give us a good sense of whether data held by specific agencies are a good fit with our definition of white-collar offending. Generally, we found that all agencies hold relevant data for the series, with some more salient than others. Nearly all of the EPA activity is consistent with the definition and, in most cases, the SEC, FDA, and FTC data permit the determination of whether the offenses are committed by legitimate businesses/professionals in the course of their occupations.

VIII. Conclusions and Recommendations

The development of a data series on federal white-collar offenses by the Bureau of Justice Statistics would constitute a major advance in the nation's catalogue of statistical information on crime and the federal response to it. For decades researchers have asserted the necessity of such information for enabling a full understanding of crime and social control in the U.S., and more recently policy-makers have joined the call to provide such data toward the cause of better

This document is a research report submitted to the U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.

informed policy responses to such offense patterns as those associated with the financial crisis of 2008-9. Combined with ever more sophisticated software tools for compiling and managing data, these important purposes indicate an especially opportune moment for the development of such a data series.

Such a series would also fill an important gap in BJS's otherwise wide-ranging collection of data on the nation's experience of crime and punishment. The addition of white-collar offenses would serve well the Bureau's interest in creating a taxonomy of crime based on a behavioral definition of offenses that focuses on the dimensions of actor, intent, mode and seriousness. Federal white-collar offenses, which comprise violations of federal laws by both individuals and organizations, commonly locate on unique positions on these dimensions. The **actors** are typically offenders who do not commit other kinds of crime; they "specialize" in taking advantage of their occupational and/or organizational positions to commit offenses and very often are one-time violators. **Intent** is tied to occupationally- and organizationally-situated motives and opportunities that vary over time and place (e.g., for greater profits, incomes, reduced risks of detection, etc.). The **mode** of behavior involves abuses of relations of power, authority and trust that are inherent in legitimate occupations and organizations. And white-collar offense are commonly recognized as the most financially **serious** violations of law, especially in the aggregate as compared to conventional offenses

This document is a research report submitted to the U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.

but also in terms of major financial offenses taken singly. It is also the case that white-collar violations are often costly in other ways. Offenses in the social regulatory sphere are associated with illnesses, injuries and deaths, particularly in the case of corporate offenses that put citizens, employees and customers at risk (e.g., with toxic pollution exposures, dangerous workplaces and products that fail to meet national safety standards). In this connection it is worth noting that a number of federal enforcement agencies, such as the EPA, SEC and OSHA, make formal distinctions as to offense seriousness in their enforcement regimens.

It is also important that such a series be constructed in a way that has transparent legitimacy in light of the important public purposes it would serve. This requirement has a number of aspects. First, it must comprise offenses that are widely recognized as the sort of white-collar violations that observers—researchers, media and policy-makers—have long noted are both understudied and less seriously sanctioned relative to conventional crimes. It must, in other words, minimize inclusion of offenses that are not recognizably white-collar in intent and mode. The role-centered definition of white-collar offense employed in this project is designed to ensure this result.

Second, it must include offenses that are sanctioned by federal laws under any enforcement regime, whether regulatory, civil or administrative processes are employed. This broad scope of offenses is especially important in connection with

This document is a research report submitted to the U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.

organizational (e.g., corporate) violations of law. The vast majority of such violations are sanctioned through either administrative or civil legal processes; only a very small fraction are criminally prosecuted. Moreover, decisions as to whether to use criminal versus non-criminal procedures to sanction offenses are commonly made on criteria other than the seriousness of offense and often even apart from such criteria as intent to offend.

The administrative or regulatory sanctions data also contribute to an important analytic and public policy purpose. Combining these data with the civil and criminal data permits not only analyses of the totality of offenses and the federal enforcement response to them; it also makes possible analyses of the "funnel" of cases through which offenses and offenders travel, from weaker to stronger sanctions. It allows researchers and policy-makers to address questions such as under what conditions are cases processed in one arena versus another, what proportions of offenses work their way through to criminal sanctioning, what decisions and processes drive cases from one to another of the enforcement arenas, and—given eventual longitudinal data in such a data series—what are the relative deterrent consequences of the various forms of sanctions.

Third, because the construction of a white-collar offense data series is a complex undertaking that will require some years of development, it is important that the early stages of development include samples of offenses that is defensibly

This document is a research report submitted to the U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.

representative of the universe of such violations. Key dimensions of representativeness are the nature of offenders—organizations and individuals—and the nature of offenses. Regarding the latter, we have proposed sampling on a distinction widely used in the professional literature: that between social and economic offenses. Our focus on the data of the Environmental Protection Agency and the Securities and Exchange Commission reflects this important purpose.

As noted above the project reached an impasse with these focal agencies at the point at which we were seeking to negotiate a memorandum of understanding for their data sharing with BJS. We believe this barrier is surmountable, and that it will take convincing agencies that their participation in the project has identifiable benefits and minimal risks for them. For example, a number of agency officials expressed interest in the prospect that their participation might inform their agencies' own abilities to improve their enforcement data systems and data quality, given the potential synergies that can arise from discussions and collaborations with other agencies, including BJS. The effort to build a data series can build in this interest. For example, working with BJS staff to improve data structures and management should provide agencies with more reliable and efficient access to data analyses useful for realizing the agencies' missions, as would regular feedback from BJS on the completeness and reliability of their data, and opportunities to learn from the collective experiences of participating organizations

This document is a research report submitted to the U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.

about advances in data management practices and state-of-the-art technologies for data extraction and handling (e.g., software advances for mining quantifiable data from text documents, or data-scraping techniques).

Overcoming agency resistance to data-sharing for the statistical series on white-collar offenses will require a "breakthrough" with a major agency to demonstrate both the feasibility and benefits of participation. We believe that the "proof-of-concept" project on environmental offenses currently being planned will provide a solid opportunity for such a breakthrough. The project involves examining, comparing and cross-validating the case data maintained by the Department of Justice's Environmental and Natural Resources Division (ENRD), the Environmental Protection Agency, and the FJSP civil and criminal case data. The project would focus on a specific time frame and statute(s) (such as the Clean Water Act), and would produce evidence of any gaps or variations in cases and types of information on them, information that can then be used to rationalize the data and to suggest improvements in data management. Both ENRD and EPA have agreed to participate in this project, both organizations having an interest in ensuring the accuracy and reliability of their case data. Importantly, this project should also help to demonstrate the utility of such collaborative work on enforcement data and build confidence in the working relationships and data

This document is a research report submitted to the U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.

sharing mechanisms that participation in the larger project of building a data series on white-collar offenses requires.

We enthusiastically propose that BJS continue to pursue not only this demonstration project, but that it use it as a springboard to continue efforts to build the data series. The success of the demonstration project should provide legitimacy to future BJS requests for agency involvement, and the reassuring evidence necessary to securing that involvement.

Toward the future development of the data series, we make several recommendations:

1. We recommend the formation by BJS of an ongoing working group that includes representatives of key enforcement units and agencies to discuss and compare notes on enforcement data management challenges, needs and goals, and to brainstorm on means of meeting and achieving these. Ideally included in such a working group would be enforcement units within DOJ and representatives of major regulatory agencies. Among the latter we recommend minimally the EPA, SEC, FTC, CFPB and DHHS, which together—based on the findings of this project—represent both the two broad spheres of offenses (economic and social) and wide variation in the quality and sophistication of their enforcement data systems.

This document is a research report submitted to the U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.

Such a working group can achieve a number of important purposes. It can provide for information sharing between agencies and help to dissolve barriers between them. It can generate both ideas and increased commitment to improving agencies' data systems. And, importantly, with sponsorship by BJS it can clarify for enforcement units the Bureau's mission and expertise, make apparent the mutual benefits of data sharing and the value of the white-collar offenses data series, and build essential relationships between Bureau and agency personnel. A successful working group would enhance access to agency data, perhaps initially in additional demonstration projects, and ultimately provide for regular data sharing for the series. Despite the access difficulties experienced in this project, we recommend continued outreach to agency personnel beyond the working group effort, especially as good relations and ideas are generated.

2. Based on accumulating knowledge regarding the interests and concerns of agencies, and working closely with the relevant agency personnel, the development of agency-specific memoranda of understanding that address their specific interests and concerns.

3. We recommend that the series be built incrementally, over a period of years, using criminal and civil data held by BJS and regulatory data drawn from agencies across spheres (economic and social) but within domains. The within domain comparisons are critical for purposes of data verification and ultimately

This document is a research report submitted to the U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.

establishing a statistically sound series. Within domain comparisons should be sensitive to the fact that the data from each source are collected for different purposes. Key elements to consider include:

i. Standard unit of count (person-case)

ii. Comparable time periods

iii. Tracking and processing of offenders/cases through similar decision points

iv. Classification of disposition/sentence outcomes

4. We encourage research into technological advances in data management, and in particular advances in software for "reading" text and extracting key variables for inclusion in the data series. Such advances make possible the use of agency materials that otherwise would be too labor-intensive to mine for data, especially on an ongoing basis. Not only would such data increase the range of enforcement cases included in the series, it would also enable analyses of data quality across data systems.

It is difficult to overstate the importance of the creation of an ongoing data series on white-collar offenses. Both research and public policy—closely related activities, it is worth noting—would benefit greatly from a thoughtfully and carefully crafted data system. And so would the quality of participating agencies' enforcement data management systems. Policy in particular is often importantly driven by what can be *seen*, and what can be seen most clearly and consistently is

This document is a research report submitted to the U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.

what can be *counted* or measured. It seems not too much to say that public safety, confidence in law, and justice all require the sort of information that a data series on white-collar offenses would provide.

We envision the data series as a dynamic system—one that will progressively include additional information about white-collar violations as the series develops. Over time, working with the different data providers will also enable upgrades of existing data systems. Pursuing progress in these directions will present numerous challenges, as illustrated in this Report. But it is difficult to imagine a more important set of developments in the Nation's efforts to understand and address such an important form of offending.

Bibliography

Brown, Darryl K. "Street Crime, Corporate Crime, and the Contingency of Criminal Liability." *University of Pennsylvania Law Review* 149 (2001): 1295-1360.

Bureau of Justice Statistics. "White-Collar Crime: Federal Offenses And Offenders." Washington, DC, 1987.

Clinard, Marshall B., and Peter C. Yeager. *Corporate Crime*. New York: The Free Press, 1980.

—. *Corporate Crime*. New Brunswick, NJ: Transaction Publishers, 2006.

Clinard, Marshall B., and Richard Quinney. *Criminal Behavior Systems: A Typology*. New York: Holt, Rinehart & Winston, 1967.

Clinard, Marshall B., Peter C. Yeager, Jeanne Brissette, and David Petrashek. *Illegal Corporate Behavior*. Washington, DC: U.S. Government Printing Office, 1979.

This document is a research report submitted to the U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.

Clinard, Marshall B., Richard Quinney, and John Wildeman. *Criminal Behavior Systems: A typology.* New York: Taylor & Francis, 1994.

Comolli, Renzo, and Svetlana Starykh. "Recent Trends in Securities Class Action Litigation: 2013 Full-Year Review." National Economic Research Association, New York, 2014.

Dictionary of Criminal Justice Data Terminology. 2nd Edition. Bureau of Justice Statistics, 1981.

Dunworth, Terence, and Joel Rogers. "Corporations in court: Big business litigation in U.S. Federal Courts, 1971-1991." *Law & Social Inquiry* 21, no. 3 (1996): 497-592.

Edelhertz, Herbert. *The Nature, Impact, and Prosecution of White-Collar Crime.* Washington, DC: National Institute of Law Enforcement and Criminal Justice, 1970.

Gibbons, Don C. *Changing the Lawbreaker: The Treatment of Delinquents and Criminals.* Montclair, NJ: Allenheld, Osmun & Co., 1965.

Gottfredson, Michael, and Travis Hirschi. *A General Theory of Crime.* Stanford: Stanford University Press, 1990.

Huff, Rodney, Christian Desilets, and John Kane. *The 2010 National Public Survey on White Collar Crime.* Fairmont, WV: National White Collar Crime Center, 2010.

Johnson, David T., and Richard A. Leo. "The Yale White-Collar Crime Project: A Review and Critique." *Law & Social Inquiry* 18, no. 1 (1993): 63-99.

Karpoff, Jonathan M, John R. Lott, and Eric Wehrly. "he reputational penalties for environmental violations: Empirical evidence." *Journal of Law and Economics*, 2005: 653-675.

Karpoff, Jonathan M., Allison Koester, D. Scott Lee, and Gerald S. Martin. *Database Challenges in Financial Misconduct Research.* Social Science Research Network, 2014.

Karpoff, Jonathan M., D. Scott Lee, and Gerald S. Martin. *The economics of foreign bribery: Evidence from FCPA enforcement sctions.* SSRN, 2014.

This document is a research report submitted to the U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.

Karpoff, Jonathan M., Scott Lee, and Gerald S. Martin. "The Cost to Firms of Cooking the Books." *Journal of Financial and Quantitative Analysis* 43, no. 3 (2008): 581-612.

Laursen, Christopher. *BSA/AML Enforcement Trends and D&O Liability.* New York: National Economic Research Association, 2014.

Mason, Donald A. *Tracking Offenders: White-Collar Crime.* Washington, DC: Bureau of Justice Statistics, 1986.

Moffitt, Terrie E. "Adolescence-limited and life-course persistent antisocial behavior: A developmental taxonomy." *Psychological Review* 100 (1993): 674-701.

Reiss, Albert J, and Albert D. Biderman. "Data Sources on White-Collar Law-Breaking." National Institute of Justice, U.S. Department of Justice, 1980.

Scalia, John. *Federal Enforcement Of Environmental Laws, 1997.* Washington, DC: Bureau of Justice Statistics.

Schlegel, Kip, David Eitle, and Gunkel Steven . *Securities Lawbreaking: The Enforcement Response.* Final Report, Washington, DC: National Institute of Justice, 1994.

Simpson, Sally S. "The decomposition of antitrust: Testing a multi-level, longitudinal model of profit-squeeze." *American Sociological Review* 51, no. 6 (1986): 859-875.

Simpson, Sally S. "The Economics of Antitrust: Illegal Actions by Survivor Firms in Basic Manufacturing." PhD Thesis, Department of Sociology, University of Massachusetts, Amherst, 1985.

Simpson, Sally S., Joel Garner, and Carole Gibbs. *Why do corporations obey environmental law? Assessing punitive and cooperative strategies of corporate crime control.* Washington, DC: National Institute of Justice, 2007.

Sutherland, Edwin H. 1983 [1949]. *White Collar Crime: The Uncut Version.* New Haven: Yale University Press.

Weidenbaum, Murray L. *The Future of Business Regulation: Private Action and Public Demand.* New York: Amacom, 1979.

This document is a research report submitted to the U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.

Weisburd, David, and Elin Waring. *White-Collar Crime and Criminal Careers.* Cambridge: Cambridge University Press, 2001.

Weisburd, David, Stanton Wheeler, Elin Waring, and Nancy Bode. *Crimes of the Middle Classes.* New Haven: Yale University Press, 1991.

Wellford, Charles F., and Barton L. Ingraham. *Toward a National Uniform White-Collar Crime Reporting System.* Washington, DC: National Institute of Justice, 1990.

Wheeler, Stanton, Austin Sarat, and Kenneth Mann. *Sitting in Judgment: The Sentencing of White-Collar Criminals.* New Haven: Yale University Press, 1988.

Yeager, Peter C. "Law, Crime, and Inequality: The Regulatory State." In *Crime and Inequality*, edited by John Hagan and Ruth D. Peterson, 247-276. Palo Alto, CA: Stanford University Press, 1993.

Yeager, Peter C. "Structural bias in regulatory law enforcement: The case of the U.S. Environmental Protection Agency." *Social Problems* 34, no. 4 (1987): 330-344.

—. *The Limits of Law: The Public Regulation of Private Pollution.* Cambridge: Cambridge University Press, 1991.

Yeager, Peter Cleary. "The Practical Challenges of Responding to Corporate Crime." In *The Oxford Handbook of White-Collar Crime*, edited by Shanna R. Van Slyke, Michael Benson and Francis Cullen. New York: Oxford University Press, 2015.

This document is a research report submitted to the U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.

Statutes Cited

7 U.S.C. §136

15 U.S.C. § 12

15 U.S.C. § 41

15 U.S.C. § 77

15 U.S.C. § 78

15 U.S.C. § 80a-1

15 U.S.C. §80b-1

15 U.S.C. § 1601

15 USC § 1681

15 U.S.C. § 6151

16 U.S.C. § 1531

18 U.S.C. § 371

18 U.S.C. § 1001

18 U.S.C. § 1341

18 U.S.C. § 1343

18 U.S.C. §1350

18 U.S.C. § 1501

30 U.S.C. § 1201

33 U.S.C. §1251

42 U.S.C. §300f

42 U.S.C. §6901

42 U.S.C. §7401

42 U.S.C. §9601

This document is a research report submitted to the U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.

Sarbanes-Oxley Act, PL 107-204, 116 Stat 745, codified in Sections 11, 15, 18, 28, 29

Dodd-Frank Act, PL 111-203, H.R. 4173

This document is a research report submitted to the U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.

Appendix: Agency Briefs

This document is a research report submitted to the U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.

U.S. Securities and Exchange Commission
Annual Case Statistics, FY2010

Miranda A. Galvin, Peter C. Yeager, and Sally S. Simpson

The Securities and Exchange Commission (SEC, or "the Commission") is tasked with the duty "to protect investors, maintain fair, orderly, and efficient markets and facilitate capital information."[1] In this regard, the SEC operates within the domain of financial regulation. The domain includes numerous other government and independent regulatory organizations. Other federal government regulators include the U.S. Commodities Futures Trading Commission (CFTC), the Office of the Comptroller of the Currency (OCC), and the Federal Reserve Board. Independent regulatory organizations, known as self---regulatory organizations (SROs), include the Financial Industry Regulatory Authority (FINRA), the National Futures Association, the Municipal Securities Rulemaking Board, two clearing agencies (e.g. the National Securities Clearing Corporation and the Depository Trust Company), and 20 registered stock and futures exchanges.[2] The SEC is given statutory authority to oversee these self---regulatory organizations (SROs). The regulation of securities markets may therefore be conceived of as a nested model of enforcement in which both the SROs and the SEC are responsible for enforcing federal securities laws, while the SROs are also responsible for enforcing their own rules.

Federal securities laws encompass a vast number of statutes and even more rules promulgated by either the SEC or the SROs. However, securities market enforcement may be understood as governed primarily by the Securities Act of 1933, the Securities Exchange Act of 1934, the Trust Indenture Act of 1939, the Investment Company Act of 1940, the Investment Advisers Act of 1940, the Sarbanes---Oxley Act of 2002, the Wall Street Reform and Consumer Protection Act (Dodd---Frank Act) of 2010, and the Jumpstart Our Business Startups Act of 2012. According to various statutes, the SEC shares some enforcement responsibility with other federal agencies, including the Federal Reserve Board, the Federal Deposit Insurance Company, the Office of the Comptroller, and the Consumer Financial Protection Bureau, as well as with the Public Company Accounting Oversight Board (PCAOB), a nonprofit corporation established by the Sarbanes--- Oxley Act of 2002. However, these agencies typically regulate different entities than the Commission; for example, PCAOB is responsible for overseeing corporate auditors, while the SEC is responsible for overseeing the public companies audited. Other than in criminal cases the SEC has principal jurisdiction in most matters relating to securities offenses, but shares it with other agencies for some types of offenses and offenders.

[1] U.S. Securities and Exchange Commission. The Investor's Advocate: How the SEC Protects Investors, Maintains Market Integrity, and Facilitates Capital Formation. http://www.sec.gov/about/whatwedo.shtml. Accessed 22 April 2014

[2] Securities offenses may be discovered by any number of agencies that may then refer these offenses for criminal prosecution. In 2010, for example, at least 19 other agency units referred at least one suspect for a securities fraud violation to the United States Attorney's Office. The bulk of referrals came from the Federal Bureau of Investigation (435), while 49 suspects were referred by the United States Postal Service. In comparison, the SEC referred only 16 suspects in 2010, and not all were for a securities offense. Source: United States Department of Justice. Office of Justice Programs. Bureau of Justice Statistics. Federal Justice Statistics Program: Suspects in Federal Criminal Matters, 2010

This document is a research report submitted to the U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.

The SEC has the power to respond to cases through both administrative and civil means. Administrative cases may or may not involve a hearing before an administrative law judge (ALJ), and can invoke a wide range of sanctions, including registration revocation (temporary or permanent), suspension of an organization's stock trading privileges, and disgorgement.[3] Civil cases can lead to a variety of outcomes, including injunctions, disgorgement, and civil monetary penalties. The Sarbanes---Oxley Act of 2002 granted the SEC new tools for enforcement, specifically the authority to distribute civil monetary penalties collected to wronged parties ("Fair Funds"), broadened powers to bar, censure, or restrict individuals' participation in the securities market, and expanded injunctive actions. In the Act's first year of implementation, the SEC utilized specific provisions to prevent more than $37 million from being distributed to company officers during the course of an investigation and collected more than $750 million for Fair Funds distribution to wronged investors.[4] The SEC cannot bring criminal charges under its own power, but refers cases for criminal prosecution to Department of Justice prosecutors.

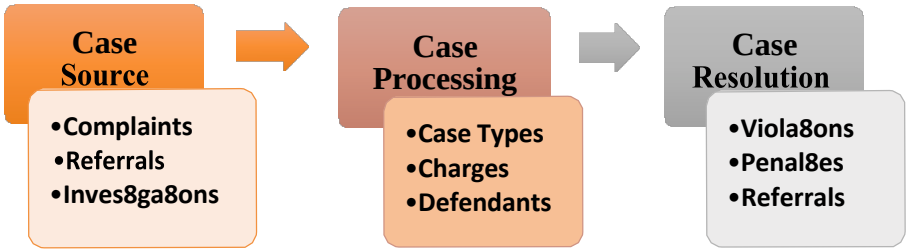


Fig. 1: Stages of enforcement action and information generated in each stage

The types of information of interest for a data series on white collar offending include data on case sources, case processing and case resolutions or outcomes, as indicated in the graphic. On its website[5] the SEC provides nearly exhaustive information on case processing and resolution, while providing little to no information as to the processes and sources of case origination. During this fiscal year the SEC instituted a new office responsible for managing tips, complaints, and referrals,[6] yet little information about this division is available. It is also worth noting that what data are provided on the website are embedded within drafted releases and electronic case documents and are not readily available in a quantitative format.

Case Sources and Processing

As noted in Figure 1, an agency may become aware of a potential violation of law through a variety of means, such as complaints, referrals, and investigations. Complaints comprise information from consumers or market participants regarding suspected illegal activity. In fiscal year 2010 the Office of Market Intelligence became responsible for receiving and evaluating this information; previously the SEC had maintained an email tip service.[7] Referrals refer to those suspected violations of securities law or SEC rules detected by an outside government or regulatory agency (e.g., the CFTC, SROs, a state task force)[8] that subsequently notifies the SEC in order to allow its investigators to more fully evaluate the behavior in question. Finally, the SEC may initiate a case based on information generated by internal

[3] U.S. Securities and Exchange Commission. Office of Administrative Law Judges. http://www.sec.gov/alj.shtml. Accessed 22 April 2014

[4] William H. Donaldson, Testimony Concerning Implementation of the Sarbanes---Oxley Act of 2002, before the Senate Committee on Banking, Housing, and Urban Affairs. Sept 9, 2003. http://www.sec.gov/news/testimony/090903tswhd.htm. Accessed 22 April 2014.

[5] www.sec.gov.

[6] U.S. Securities and Exchange Commission, FY 2010 Performance and Accountability Report. http://www.sec.gov/about/secpar/secpar2010.pdf . Accessed 22 April 2014. However, as a result of the Dodd---Frank Act, the SEC was required to create another tip---related office: the Office of the Whistleblower. It is not clear how this new office and tip line interact with the responsibilities of the OMI. See Annual Report on Dodd---Franks Whistleblower Program FY 2011, http://www.sec.gov/about/offices/owb/whistleblower---annual---report---2011.pdf Accessed 22 April 2014.

[7] Infra note 8, page 11.

[8] U.S. Securities and Exchange Commission, "How Investigations Work." http://www.sec.gov/News/Article/Detail/Article/1356125787012#.U1cSb01OWUk. Accessed 22 April 2014.

This document is a research report submitted to the U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.

agency activity, such as might emerge from an ongoing enforcement investigation or during routine compliance management.

Case origination statistics are not available on the SEC's website (Table 1), and the Office of Market Intelligence does not provide statistics on its activity. However, some information may be gleaned from annual agency Performance and Financial Reports. Specifically, in 2010, 21.9 percent of investigations were sparked by internal referrals (interoffice) or prospects (e.g., generated during examination processes, data analysis).[9] Additionally, 303 investigations were initiated as a direct result of complaints. An unknown number of examinations were also prompted by "cause exams." Cause exams are part of the SEC's compliance activities, and may or may not result in a formal enforcement investigation, pending the results of the exam.[10] The total number of investigations, however, is not provided, nor can it be assembled from the reported data.

Case Sources	Data Availability
Tips	NA
Complaints	NA
Referrals	NA
Investigations	NA

Table 1: Case Origination Data

Once a case has been initiated and violations have been substantiated, the SEC may seek either administrative or civil sanctions against individual and organizational defendants. Most administrative cases are heard before an Administrative Law Judge (ALJ). Once formal proceedings are initiated, a hearing is held. After the hearing the ALJ will issue an order making findings and, if illegal conduct is found, impose sanctions. In some cases, both the order instituting proceedings (OIP) and the order making findings (OMF) are issued on the same day. A myriad of sanctions are available through an ALJ hearing, as noted above.

The SEC lists publicly all administrative actions at the points of both case initiation and case conclusion (though when both an OIP and an OMF are issued on the same day, a case will only be listed once). SEC instituted 425 formal administrative proceedings in 2010.[11] Additionally, the Commission suspended five individuals without formally instituting proceedings. In these latter cases, the individuals suspended had been sanctioned by either a criminal court or a state Bar Association and thus do not require a formal hearing for sanctions to be imposed, though they arguably represent new matters. The SEC also imposes some administrative sanctions without formal proceedings, namely suspensions of trading privileges for a company's stock. In 2010, the SEC issued a total of 51 trading suspensions.[12]

---

[9] Supra note 8, p.52

[10] Supra note 8, p.48

[11] The number of case---defendants is significantly greater than the number of cases. While case documentation exists for the full group of respondents, separating out case defendants for counts of these individuals and organizations would require substantial coding efforts. The counts were obtained through use of publicly available case listings. All administrative proceedings (available at http://www.sec.gov/litigation/admin.shtml) are organized by year and quarter from 1995 to present; counts for FY 2010 include the fourth quarter of 2009 (Oct. 1 – Dec. 31, 2009) and the first three quarters of 2010 (Jan. 1 – Sept. 30, 2010). In order to avoid double counting cases in which the initial and final orders were issued separately (and thus the same case appeared in multiple posts), the case list was copied from the website into Microsoft Excel. It is important to note that while the SEC maintains a separately accessible list of Accounting and Auditing actions, these releases are also posted in the Administrative and Litigation case lists, reducing the need to perform separate analysis on this data source. In order to determine which listings were new proceedings, we coded each release as containing one or more of the following: an order instituting administrative proceedings (OIP), an order making findings or imposing a sanction (OMF), or other (e.g. appointment of a tax administrator, proposal and disbursement of Fair Funds). Recognizing that a single case may involve multiple actions (e.g., an OIP followed by up to one OMF per defendant), we performed both automatic duplicate field searches and manual comparisons of party name to ensure that case counts of new and old proceedings did not double---count cases with multiple releases. There were no duplicates detected in OIP postings.

[12] Trading suspensions issued by year and quarter can be found on the Commission's website (http://www.sec.gov/litigation/suspensions.shtml) and are not included in the listing of administrative procedures, though the two share a system of release numbers (e.g. release 34---70186 is a trading suspension, but 34---70185 and 34---70187 are both administrative releases). Trading suspensions are only posted at the start of the suspension and thus an analysis for duplicate postings was not necessary.

This document is a research report submitted to the U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.

Suspensions may be reissued if the offensive behavior has not been resolved, though in no case were consecutive trading suspensions issued in 2010. Altogether the SEC brought 481 administrative actions during the fiscal year (Table 2).

Civil cases are processed in a similar pattern and are heard in federal district courts. Formal proceedings are initiated through the filing of a civil complaint; arguments and responses are heard in court, and subsequently findings are made and sanctions imposed. The SEC instituted 207 civil cases in 196 matters in 2010 (Table 2).[13] A matter here refers to the totality of all linked parties against whom action was taken in response to suspected illegal activity, or set of related illegal activities; thus it is possible (though not common) for the SEC to file multiple civil cases in the same matter.[14] In only 11 instances did the SEC bring separate cases against defendants suspected of involvement in related illegal activity. Many civil actions initiated prior to fiscal 2010 were resolved during the year (e.g., by final order or settlement agreement), and therefore the total volume of civil cases handled that year is significantly greater than those filed.

	Data Availability	Counts	Comments
Administrative Actions	Y	481	Includes formal proceedings instituted, trading suspensions, and individual suspensions
Civil Case Filings	Y	207	New cases filed in 2010
Criminal Referrals	NA	NA	Completeness of litigation releases uncertain; releases timed to post-referral events
Case Numbers	Admin, Civil	NR	
Date Case Initiated	Admin, Civil	NR	
Number of Defendants	Admin, Civil	***	Can be counted in available administrative, civil and criminal case documents
Types of Violation	Admin, Civil	NR	Violations are usually provided in both statute and narrative format.
Dates of Violations	Admin, Civil	NR	Varies in specificity; year readily available
Defendant Chars.	Admin, Civil	NR	Characteristics vary by case but usually include age, gender, residence, and employment information for individuals, or location and business type for organizations
Case Seriousness	NA	NR	

Table 2: Case Processing Data NA = Not Available NR=Not Relevant

Criminal conduct uncovered during the course of an SEC investigation is subsequently referred to either the Department of Justice or directly to an Office of the U.S. Attorney for prosecution. The exact processes involved in this relationship are not explicitly clear from publicly available data. According to the SEC's Annual Performance Report, 2010 saw 139 criminal investigations[15], though the extent to which these investigations translated into referrals for prosecution is unknown. The SEC posted 10 litigation releases pertaining to criminal activity in 2010, but only two referenced new filings. The remaining eight litigation releases pertained to verdicts reached, sentences imposed, and other significant developments in cases filed prior to FY2010. The degree of completeness of litigation releases remains unclear, and they are timed to later case developments rather than to SEC criminal referrals themselves.

[13] As is the case for administrative proceedings, documents and litigation releases are grouped by case, the number of case---defendants is significantly greater than the number of complaints filed, and the generation of case---defendant statistics is a labor---intensive exercise. Litigation releases are available to the general public on the SEC's website (available at http://www.sec.gov/litigation/litreleases.shtml). In general, the SEC provides a PDF copy of the civil complaint filed for new cases (181 matters comprising 192 cases). However, a thorough review of litigation releases found that posted complaints were not exhaustive of all new action; in 2010, an additional 27 matters referenced a new civil case filed yet did not provide a PDF copy of the complaint. In addition, in 12 releases a complaint was posted in error (e.g., it was not filed in FY 2010 or pertained to the appointment of an administrator); none of these erroneous postings contained multiple complaints. Of the correctly posted complaints, 9 releases included a total of 20 complaints, resulting in the necessity to distinguish between matters and cases.

[14] The SEC's online data are organized by *matter*, though can be disaggregated to case---defendant through careful analysis and coding of provided documentation.

[15] Supra note 8, p. 52

This document is a research report submitted to the U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.

It is worth noting that the SEC provides extensive documentation for those determined to query its files. However, the nature of the data (electronic Internal and court documents or summary releases) nevertheless requires significant time investments and a systematic coding system. In Table 2 it is clear that currently available data on SEC activity largely provides most data points of interest.

Case Resolutions

This section presents information on SEC cases resolved in 2010, whether by dismissal or with sanctions that close the matter. The data available for the case resolution stage are as rich and problematic as are the data related to case initiation. Releases are structured similarly and are archived in the same space. It is not possible to distinguish between cases filed in 2010 and cases filed in previous years that had significant action taken in FY2010 without reading the accompanying release or orders.

As discussed above, the SEC has a myriad of sanctioning outcomes available to it once a case has been initiated. In addition, cases may be suspended or dismissed; however, these outcomes are relatively rare and usually are due to related criminal proceedings. A case may be appealed to the Commission, "which performs a de novo review and can affirm, reverse, modify, set aside, or remand for further proceedings." If direct Commission action is the source of an appeal, the decision may be brought to a United States Court of Appeals.[16]

Not all forms of action have clearly differentiated initiation

FY 2010	Data Availability	Counts	Comments
Case Numbers	Admin, Civil	NR	
Date(s) of Resolution	Admin, Civil	NR	Both litigation releases and administrative files contain dates filed; if respondents are sanctioned on different days, the documents will be filed under the full matter title but will reference specific respondents
Administrative Cases Resolved	Y	528[1]	Includes suspensions, OMFs issued, and dismissed cases; cases can be disaggregated into case-defendant
No. of Admin cases dismissed	Y	1	
Number of Defendants	Y	***	
Number of violations penalized	NA	NA	Statutes violated usually contained in the OIP; "counts" of each violation are not provided
Number of sanctions imposed	Y	***	Detailed in OMF
Civil Cases Resolved	NA	NA	Number of cases
Number of civil cases dismissed	Y	1	Agency suspended charges
Number of Defendants	Y	***	
Number of violations penalized	Y	***	Statutes violated usually contained in the original complaint if not release containing final order; "counts" of each violation are not provided
Number of sanctions imposed	Y	***	Releases contain information on both the number and type of sanctions imposed for each defendant, but may not be exhaustive due to the summary nature of litigation releases Detailed information on civil penalties can be ascertained by accessing court documents
Criminal Cases Resolved	N	***	Accuracy of counts uncertain
Cases Declined	NA	NA	
Number of Defendants	Y*	***	In filed cases, significant actions
Number of violations penalized	Y*	***	Statutes violated usually contained in the original complaint or court documents from other sources; delineated by defendant
Number of sanctions imposed	Y*	***	
Appeals	Admin Cases Only	1	No civil appeals were found in the SEC's litigation releases for FY2010. The SEC posts appeals of administrative decisions

Table 3: Case Resolution Data
***Available for provided cases**

[16] U.S. Securities and Exchange Commission. Office of Administrative Law Judges. http://www.sec.gov/alj#.UyMEhE2YaUk . Accessed 22 April 2014.

This document is a research report submitted to the U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.

and conclusion points. For example, trading suspensions represent both the initiation and conclusion of agency action against a company for reporting violations. In 2010, the SEC concluded
56 matters resulting in suspension.[17] For administrative actions heard before an ALJ, however, there are separate orders initiating proceedings and orders making findings, though they may be found in the same document. The SEC concluded 471 such cases in 2010; of these, 258 cases also filed an OIP at the same time, meaning that according to these data, the case was formally initiated and concluded on the same day.[18] In all 528 cases were resolved in FY 2010 (Table 3).

The SEC was also involved in several other administrative matters that continued to be active. Most often, these cases related to Fair Funds distribution plans. Of the 84 cases that contained neither an OIP nor an OMF, 69 releases contained information pertaining to 38 ongoing Fair Funds actions. Multiple actions generate releases during the course of Fair Funds distribution, including the appointment of an administrator, the proposal of a plan, the acceptance of said distribution plan, distribution of funds, and the termination of distribution. These are not considered to be new sanctions; the sanction of a Fair Funds account is recorded in a case's OMF. It is also worth noting that SEC was involved in 13 other administrative matters that did not pertain to violations of securities laws and are thus not included in the case resolution or processing counts herein.[19]

Only one appeal and one case of the agency dropping charges were recorded in 2010, suggesting both that this information is available publicly and that these actions are rare.

The way in which the SEC makes civil data available limits the amount of case resolution data that may be easily collected. Releases contain limited text to describe significant case actions, such as the granting of an injunction, the reaching of a verdict, and the reaching of a judgment. In 2010, significant actions were taken in 155 civil cases in which the SEC was engaged. These cases were originally filed as early as calendar year 2001. Because sanctions are described in portable document files that require individual manual or computerized coding, presently it is difficult to quantify the types of sanctions and values of civil monetary awards.

Criminal litigation releases also contain information on significant action in criminal cases related to SEC activity. Significant action (e.g. indictment, arrest, verdict) was taken in 10 criminal matters in 2010.

Other Data Sources

The SEC provides relatively complete data on administrative actions, less complete information on civil cases, and the least complete data on criminal cases. Thus, the final portion of this brief will turn to other available data sources to supplement and validate the SEC's data. Civil case files may be supplemented through the federal website Public Access to Court Electronic Records (PACER). For a nominal fee this site allows users to search for circuit, appeals, bankruptcy, and civil court files by a number of parameters.

A detailed search initially yielded a significant difference in the number of apparent civil cases filed as reported by PACER[20] and SEC records. Both sets of records were cross---checked for completeness. Most complaints posted on the SEC

[17] These 56 matters involve the same 51 companies and 5 individuals that are counted in the case origination statistics.

[18] Most administrative cases resolved in 2010 were initiated in the same fiscal year. In only 37 cases were OMFs (resolutions) reported for cases that did not also file an OIP in 2010, meaning the case initiated prior to 2010. The majority (n=33) of these cases appeared only once in the data and contained only an OMF; four cases appeared multiple times in the data but did not provide OIPs at any point.

[19] These cases involved the appointment of tax administrators (6), reinstatement of practice privileges (3), denial or approved motions to modify or set aside previous OMFs (3), and notice of a formal hearing after a previously issued OIP (1).

[20] In order to best target PACER cases in which the Securities and Exchange Commission brought action against an individual or entity, the researchers searched for all cases in which "Securities and Exchange Commission" or "SEC" (using exact match) was a party. The search term "SEC" (not exact match) was not originally used due to the over---inclusion of irrelevant cases. To filter out cases against the Commission, the case counts only considered those in which the SEC was listed as plaintiff, movant, or petitioner. This originally returned 533 cases. However, it became apparent that the same matter could appear multiple times within the search under different case numbers; significant actions (e.g. motions) were recorded under different case numbers despite involving the same individuals. An effort to identify and remove duplicates was made both automatically (using Microsoft Excel) and manually (by

This document is a research report submitted to the U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.

website did appear in PACER filing results, but not all cases present in the SEC's litigation releases appeared in the PACER records search using the specified party search terms "SEC" and "Securities and Exchange Commission." The most common reason that a case did not appear in PACER search results was that the party name was listed as some variation on the search terms (e.g. "U.S. Securities and Exchange Commission", "Securities and Exchange Commission" [sic]). However, in no case was the data absent from the PACER system in entirety; searching by case number invariably returned case information.

	SEC	PACER	EOUSA
Administrative Cases Initiated	481	NA	NA
Before Data Cleaning	730		
Civil Cases Initiated	207	176	39[23]
Before Data Cleaning	404	533	
Civil Cases Referred	NA	NA	35
Criminal Investigations	139	NA	NA
Criminal Cases Referred	NA	NA	12

Table 4: Source Comparisons

Of the 237 unique cases found in PACER, 27 were absent from the SEC litigation records in 2010. This was primarily due to actions related to cases initiated in previous years (n=26). In only one case did a new action appear in PACER without appearing in SEC litigation releases[21], suggesting that this is, at worst, a recordkeeping anomaly. PACER appears to over---count SEC activity. Some search results listing the SEC as plaintiff were in fact actions against the Commission. In addition, PACER returns multiple case numbers related to the same civil case;[22] in two particularly egregious matters, search results returned more than 50 and 70 unique case numbers for each of two cases. Overall, PACER court records were found to suffer from data entry errors and inconsistencies that limit their usefulness in determining the volume of agency enforcement activity. Duplicate cases (n=296 of 533 search results), secondary enforcement activity [e.g. motions to enforce subpoenas] (n=17), and party---role data entry errors (n=18) inflate counts. Taking into account only new filings of civil suits PACER returns 176 cases.

PACER also contains criminal case filings. However, a search of criminal court documents revealed no cases in which the SEC was an interested party in 2010. This should not be viewed as indicative of agency inactivity, but rather as a limitation in the data source. Comparing the SEC's public agency data and PACER's data, it appears that the SEC's civil and criminal files are more complete than would be generated by broadly searching PACER. The SEC's litigation releases contain all of the matters returned by PACER, in addition to several others that were omitted using a party---based search procedure. Unlike PACER, the SEC provides detailed court documents with rich information at no cost. However, PACER's services may be useful for generating supplemental data once a pool of cases has been established using SEC (or other) records.

Data from the Federal Justice Statistics Program offer new dimensions of SEC involvement in criminal and civil cases. According to data from the Executive Office of the US Attorney[24], 16 suspects in 12 matters were referred by SEC for prosecution in 2010; this reflects new activity initiated by the SEC (Table 4). In addition, 11 ongoing criminal matters involving 13 suspects were concluded; the majority (eight) were declined, including both cases with organizational defendants. Two resulted in guilty verdicts for postal, wire, and radio fraud. In one case the defendant was sentenced to three years' probation while in the other the defendant was sentenced to 87 months incarceration. In the third case,

---

comparing party names). This reduced the cases eligible for count to 244. PACER records were compared with SEC generated data through a multistage process. First, the authors searched party names in all SEC litigation releases for 2010. If a case could not be located in the FY2010 data, the authors then searched the SEC website. If this also failed to return SEC generated case information, the authors reviewed the legal documents in a case to determine the nature of the case, the parties involved, and the dates initiated. Seven duplicates were detected during the document review phase, leaving a final count of 237 unique matters.

[21] The case did appear in the SEC News (available online), though was not captured by the original data collection.

[22] Case determined by the parties involved in the suit.

[23] The U.S. Attorney's Office filed 39 civil cases on the SEC's behalf in FY2010. This number is not meant to be representative of agency activity in civil court, and thus should not be compared to the number of civil cases filed by the SEC according to agency or court data.

[24] The FJSP data are available through ICPSR with an approved data protection plan. In order to isolate criminal matters related to SEC activity, matters were filtered by investigative agency, if one was provided. While this is the best approximation of criminal matters resulting directly from SEC enforcement activity, the U.S. Attorney's case management system, LIONS (from which the FJSP data are drawn), does not strictly require that a value be entered for the agency variable. Thus, a certain amount of missing data can be expected.

This document is a research report submitted to the U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.

charges were attached to a different criminal case against the defendant. Further, it is worth noting that fully 50% of defendants referred by the SEC for prosecution in 2010 faced a lead charge of mail, postal, or wire fraud. Only 12.5% of the cases specified securities fraud as the lead charge, and 6.25% specified false claims and statements. Given the lack of context information in these offense data, one cannot determine whether cases involve defendants who are suspected of white collar offenses as defined for this project.

The SEC also refers some cases for civil prosecution. According to the Executive Office of the U.S. Attorney, the agency referred 39 civil matters in 2010. Of these, approximately one---third (14) involved charges against businesses. The U.S. Attorney's Office filed 36 civil cases on behalf of the SEC, some of which may have been referred in previous years. Consistent with the referral patterns, approximately one---third (13) of cases filed were against businesses. The most common cause for action was violation of securities laws, though other causes included the enforcement of subpoenas and warrants, torts, Freedom of Information Act requests, and frauds. Of the 32 cases originally referred by the SEC that closed in FY 2010, one---fourth have an unclear disposition, listed as having "necessary action taken." In nearly one---third of cases, the type of relief sought is unknown. However, in every case in which a specified amount of monetary relief was requested, the amount granted exceeded this value; 71% of cases exceeded an award of $100,000, and 33 exceeded $1,000,000.

Summary: Strengths and Weaknesses of Publicly Available Data

Publicly available data on securities offenses are plentiful, especially as made available on the SEC web site. They are strongest on the agency's own administrative and civil cases. From these data one can determine the numbers of cases, the nature of violations, and the numbers and types of defendants, individual or organizational. In most cases the data permit the determination of whether the offenses are those of white collar offenders as defined for this project: those committing securities violations in the course of legitimate occupations. Since relatively few criminal cases are brought against white collar securities offenders, the SEC web site provides a strong substantive source of data on securities cases of the sort the series seeks to count.

But these public data also have a number of important limitations for use in a data series on white collar offenses. They are available only in litigation documents and reports that must be read, not in easily digested and coded tabular formats. Hence converting them to statistical data for a series is a labor intensive operation unless and until reliable software for such conversions is made available. In addition the large number of such documents posted during a period (e.g., a fiscal year) must be closely examined to discern new cases from those filed in earlier periods, and important developments from those of less interest. As the SEC is the only source of information on administrative (or regulatory) cases, they cannot be validated by other publicly available data sources.

Comparisons of the SEC web site data with PACER data on civil securities cases indicate that the SEC data is as complete and more comprehensive. All of the 176 civil cases in PACER, for example, were also contained within the SEC records. The PACER data required substantially more time to clean than SEC data, present similar format limitations, and impose an additional cost.

The SEC's public data are less useful with respect to criminal sanctions. The website reports on only some referrals, and only at later points in the criminal justice process. On the other hand, the nonpublic EOUSA data provide information on SEC referrals to U.S. attorneys' offices for cases of suspected criminal conduct. However, it is not clear how complete these records are in comparison to nonpublic SEC case files.

But the Executive Office of U.S. Attorneys' data are also limited. Not all fields are required when responsible parties enter a matter or case into the system, including the field indicating referring party. To the extent this field is not reliably filled in, there will be an undercount of SEC referrals. Moreover, criminal offense data often do not permit a determination as to whether the violations fit the operational definition of white collar offenses.

Future work on the usability and reliability of data sources for measuring white collar securities offenses includes consideration of nonpublic data from the Administrative Office of the U.S Courts, more closely evaluating inconsistencies and gaps in data and in reporting protocols (e.g., via interviews with data managers), and assessing the

This document is a research report submitted to the U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.

consistency of case numbering protocols for tracking cases across organizational boundaries (SEC, offices of the U.S. attorneys, main Justice, the federal courts) as they work their way through the legal process from complaints and investigations through sanctions, dismissals and appeals.

This document is a research report submitted to the U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.

U.S. Environmental Protection Agency
Annual Case Statistics, FY2010

Megan E. Collins, Sally S. Simpson, and Peter C. Yeager

The following agency brief provides a synopsis of the white collar enforcement activities carried out by the United States Environmental Protection Agency (EPA) in Fiscal Year 2010. The EPA is a federal regulatory agency tasked with protecting human health and the environment; as such the EPA is the agency responsible for the highest proportion of investigative and referral activity within the environmental domain of white collar crimes.[1] EPA enforcement takes the form of administrative actions, civil judicial actions, and criminal actions[2] in addition to cleanup[3] and federal facility enforcement. This document will highlight the administrative, civil, and criminal enforcement activities performed by the EPA within the domain of all federal environmental offenses.[4]

Overview of Federal Environmental Enforcement Domain

The scope of federal environmental enforcement is vast, and—in addition to the EPA—includes many different agencies within the United States government. The Environmental and Natural Resources Division (ENRD) of the U.S. Department of Justice, which enforces civil and criminal environmental laws that protect air, land, water, and other natural resources, reported having eighteen different federal "client agencies" in 2010. ENRD's federal criminal and civil enforcement of environmental laws primarily consists of the *Clean Air Act* (CAA; 42 U.S.C. § 7401 et seq.), *Clean Water Act* (CWA; 33 U.S.C. § 1251 et seq.), *Resource Conservation and Recovery Act* (RCRA; 42 U.S.C. § 6901 et seq.), the *Comprehensive Environmental Response, Compensation, and Liability Act* (CERCLA or Superfund; 42 U.S.C. § 9601 et seq.), the *Safe Drinking Water Act* (SDWA; 42 U.S.C. § 300f et seq.), and the *Lead Hazard Reduction Act.*[5]

Every three years, the EPA sets National Enforcement Initiatives which are reviewed on a yearly basis. For fiscal years relevant for this brief (2008-2010), initiatives consisted of CWA (stormwater, combined sewer overflow, sanitary sewer overflow, and concentrated animal feeding operations), CAA (new source review, prevention of significant deterioration, and air toxics), RCRA (financial assurance and mineral processing), CERCLA (financial assurance), and Indian country. National initiatives are selected by the EPA's Office of Enforcement and Compliance Assurance (OECA), and serve the purpose of setting priorities based on specific environmental problems, risks, or patterns of non-compliance.[6] Because initiatives change across time periods (e.g. the fiscal years 2005-2007 enforcement priority was

[1] In this series of agency briefs, the scope of federal white collar offenses is classified into two grand domains, "Social Regulation", and "Economic Regulation". The environmental domain is classified under the "Social Regulation" grand domain.

[2] Administrative actions refer to non-judicial enforcement actions taken by EPA or a state under its own authority to enforce Federal Statutes, involving a notice of violation or administrative order, Civil judicial actions are formal lawsuits filed in court. Criminal actions are when EPA or a state enforces a criminal action, which may be followed by a court conviction and penalty (http://www2.epa.gov/enforcement/enforcement-basic-information)

[3] Cleanup enforcement involves identifying companies or persons responsible for contamination at a site, and negotiating with them to perform the cleanup, by ordering them to perform the cleanup, or having them pay for by another party or the Agency to do it.

[4] While the EPA contributes to all three types of enforcement under the environmental domain (criminal, administrative, and civil), some agencies only contribute to one or two types of enforcement.

[5] ENRD client agencies include USAID, USDA, USFS, DOC, DOD, DOE, EPA, GSA, USGS, DHS, HUD, DOI, NASA, NRC, State, DOT, Treasury, and VA. (http://www.justice.gov/enrd/ENRD_Assets/ACCOMPLISHMENT_REPORT_2010_FINAL_5_18_11_Internet-508.pdf)

[6] http://www.epa.gov/fedrgstr/EPA-GENERAL/2007/October/Day-12/g20164.pdf

This document is a research report submitted to the U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.

Petroleum Refining), longitudinal assessments of EPA activities will likely reveal disproportionate enforcement of the current initiatives. Thus, the data presented in the current report must be interpreted with the 2008-2010 initiatives in mind.

Within the domain of environmental enforcement, the EPA investigates and refers the highest volume of cases under relevant acts, compared to other agencies. On the criminal side, for example, in Fiscal Year 2010, 64.6 percent of environmental matters[7] that were referred to United States Attorneys were referred by the EPA[8] (see Table I).

Table I: Criminal Environmental Matters Referred to U.S. Attorneys, FY2010

Department	Referrals	Percent
Department of Agriculture	16	4.0
Department of Commerce	15	3.8
Department of Defense	1	0.3
Department of Education	1	0.3
Department of Health and Human Services	2	0.5
Department of Homeland Security	33	8.3
Department of Interior	36	9.1
Department of Justice	12	3.0
Department of Transportation	4	1.0
Environmental Protection Agency	256	64.6
Independent Agencies (not including EPA)	9	2.3
Transferring Districts	1	0.3
Other	10	2.5
Total	396	100.0

Data Source: Legal Information Office Network System (LIONS)

The majority of the remaining referrals came from the Departments of Interior, Homeland Security, Agriculture, Commerce, and Justice. It should be noted that the number of referrals attributed to some federal agencies may be undercounted due to internal record keeping practices. This can be due to varied regional data management systems and preferences, or the status of matters referred (i.e. if a matter is not yet a formal case, or if the case is still open, it is unlikely to be included in publicly available data). Additionally, the EPA was the investigative agency for 81.2 percent of all CWA, SDWA, RCRA, CAA, and Superfund criminal cases terminated by the Executive Office for U.S. Attorneys (EOUSA)[9] in fiscal year 2010 (see Table II). Thus it is clear that the majority of federal criminal environmental enforcement activity stems from the work of the EPA.

[7] "Matters" are records of federal criminal matters that have been received by United States attorneys or filed before United States magistrates—not all matters are formally charged as cases. Environmental crimes are classified in the LIONS database as: "Criminal violations of environmental statutes such as Resource Conservation and Recovery Act (RCRA); Clean Air Act (CAA); Clean Water Act (CWA), as amended by the Oil Pollution Act (OPA); the Act to Prevent Pollution from Ships (APPS); the Rivers and Harbors Act; the Deepwater Port Act; the Ports and Waterways Safety Act; the Safe drinking Water Act (SDWA); the Marine Resources Research and Sanctuaries Act ("The Ocean Dumping Act," Title 33 Chapter 27); the Comprehensive Environmental Response Compensation and Recovery Act (CERCLA); the Emergency Planning and Community Right to Know Act (EPCRA); the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA); the Toxic Substance Control Act (TSCA), the Hazardous Materials Transportation Act (HMTA), Nonindigenous Aquatic Nuisance Prevention and Control Act; and the Outer Continental Shelf Lands Act, as well as Title 18 offenses arising out of these violations."

[8] The unit of analysis is environmental crime suspects in matters referred (suspects can be individuals or organizations).

[9] These data are records of defendants in federal criminal cases terminated; this means that United States attorneys concluded the cases in United States District Court during fiscal year 2010. Disposition code and reason are provided in the EOUSA's Federal Justice Statistics Program Database.

This document is a research report submitted to the U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.

Table II: Federal Criminal Cases Terminated by EOUSA, FY2010

	CWA	SDWA	RCRA	CAA	Superfund	Percent
Environmental Protection Agency	24	1	18	23	3	81.2
All Other Agencies	9	0	7	0	0	18.8
Total	33	1	25	23	3	100.0

Data Source: FJSP: Defendants in Federal Criminal Cases—Terminated, 2010

Similar to criminal cases, the most common source of environmental domain civil matters referred to the U.S. Attorney's Office is the EPA (38.6 percent), followed by the Department of Interior (30.3 percent) (see Table III). The vast majority of civil cases in the environmental domain (88.5 percent) involved businesses as respondents; only 11.5 percent of cases involved individuals as respondents. Environmental domain cases referred by the EPA overwhelmingly involved businesses as participants (88.3 percent).[10]

Table III: Civil Environmental Matters Referred to U.S. Attorneys, FY2010

Department	Referrals	Percent
Department of Agriculture	29	7.3
Department of Commerce	19	4.8
Department of Defense	15	3.8
Department of Energy	5	1.3
Department of Housing and Urban Development	1	0.3
Department of Homeland Security	4	1.0
Department of Interior	121	30.3
Department of Justice	10	2.5
Department of Labor	1	0.3
Department of State	2	0.5
Department of Transportation	15	3.8
Environmental Protection Agency	154	38.6
Independent Agencies (not including EPA)	20	5.0
Other	3	0.8
Total	399	100.0

Data Source: Legal Information Office Network System (LIONS)

.

Case Sources and Processing

Publicly Available EPA Enforcement Data

The EPA utilizes multiple data systems, public and restricted, to quantify and track enforcement activities; a total of nine national data systems are currently maintained.[11] A useful database for the purpose of tracking federal judicial and administrative EPA cases and observing aggregate trends is the Integrated Compliance Information System (ICIS). Unlike many of the databases produced by the EPA, ICIS is a *multimedia* data system, and contains information

[10] Executive Office for United States Attorneys (EOUSA) Legal Information Office Network System data.

[11] The data systems include Air, Hazardous Waste, ICIS, Multimedia (ECHO, IDEA, OTIS, Envirofacts), Toxics/Pesticides, and Water. The largest publicly available database is ECHO (Enforcement and Compliance History Online), which falls within the Multimedia Data System, and provides inspection information (e.g. permit, inspection, penalty information) on approximately 800,000 EPA regulated facilities. ECHO provides detailed facility-specific information. http://www.epa.gov/compliance/data/systems/index.html

This document is a research report submitted to the U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.

regarding enforcement cases and outcomes.[12] It is useful for our purposes because it contains information on federal administrative and federal judicial cases under nine environmental statutes.[13]

The publicly available ICIS database[14] is a subset of the larger ICIS database maintained by the EPA. The public version includes non-sensitive information on Federal enforcement and compliance (FE&C). Data are supplied and updated by EPA's Offices of Regional Counsel and Office of Civil Enforcement case attorneys. Information is recorded at the case level, and includes case details (case number, case name), violation information (law section, violation date), defendant name(s), dates of milestone events,[15] and penalty amounts.

Records of EPA's criminal enforcement also can be found in the Legal Information Office Network System (LIONS) database, maintained by the case management staff of the Department of Justice's Executive Office for the U.S. Attorneys (EOUSA).[16] However, unlike the ICIS-FE&C data, LIONS contains defendant-level records, including information about suspects in criminal and civil matters and cases introduced and closed by United States attorneys or magistrates. These data include cases referred to the United States Attorney's Office by the EPA, and provide details regarding lead charge, litigating responsibility, general offense category, and sentence. The EOUSA data do not capture any of the defendants or cases that are processed or prosecuted outside the U.S. Attorney's Office, such as cases prosecuted by individual agencies, or other branches within the Department of Justice working independently of EOUSA.

Other public sources of data include the Administrative Offices of the United States Courts (AOUSC) and the EPA Enforcement and Compliance History Online (ECHO), however each of these sources have shortcomings that limit their utility in building a comprehensive white collar database. For example the AOUSC data, which include civil and criminal cases processed in federal court, do not identify the referring agency; as such the involvement of the EPA or other particular agencies cannot be isolated. The ECHO data include comprehensive descriptions and documentations of inspection records at the facility level. However, at this point in time, it does not appear that these data may be downloaded from the EPA website; instead each case must be individually queried. This tool appears to be more useful for researching specific cases than providing useful and systematic details for a comprehensive database.

The EOUSA and AOUSC data (which can be translated to case level data), milestone activities reported by the EPA (in ICIS-FE&C), and other data available through the EPA website (such as ECHO) each include fields that can be compared in an effort to verify counts and case reporting (e.g. referrals, cases opened, and cases closed in a particular fiscal year). The types of information of interest for a data series on white-collar crime include data on case sources, case processing and case resolution as indicated in Figure 1.

---

[12] "ICIS-FE&C Data Elements Included in the IDEA Data Download" document, which describes the dataset and its limitations may be downloaded in pdf format from: http://echo.epa.gov/files/echodownloads/ICIS_FEC_Data_Download.pdf

[13] Federal administrative and federal judicial cases under the following environmental statutes: CAA, CWA, RCRA, EPCRA, TSCA, FIFRA, CERCLA/Superfund, SDWA, MPRSA.

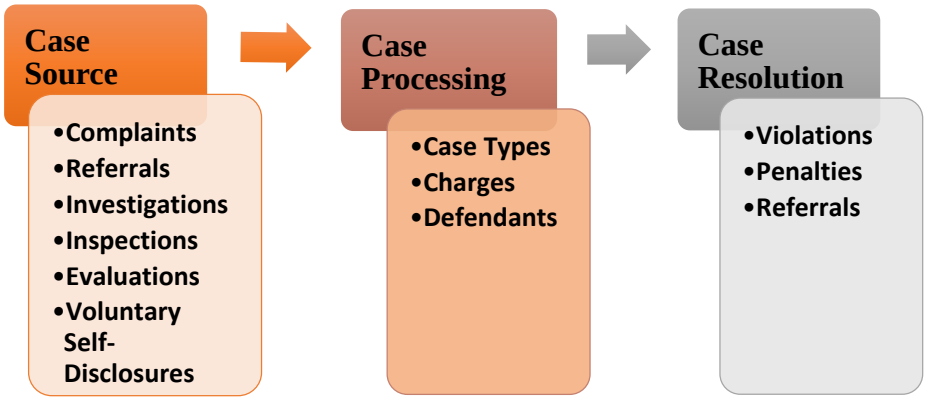
[14] Publicly available EPA data may be downloaded from: http://echo.epa.gov/data_downloads

[15] Milestones are "a predefined set of tracking events associated with the enforcement action. The individual milestones available will vary depending on whether the enforcement action is state or federal and whether it is administrative or judicial." (http://www.epa.gov/compliance/resources/publications/data/systems/icis/icis-users-guide.pdf)

[16] A non-sensitive subset of the LIONS data can be obtained from the United States Attorneys' website: http://www.justice.gov/usao/reading_room/data/CaseStats.htm#data or via the Federal Justice Statistics Program, maintained by the Bureau of Justice Statistics: http://www.bjs.gov/index.cfm?ty=dcdetail&iid=262

This document is a research report submitted to the U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.

Figure I: Stages of Enforcement Action and Information Generated in Each Stage



Case Initiation

Criminal, administrative, and civil EPA cases can originate from a number of sources (see Figure I and Table IV). Violations or suspected violations can be reported to local bureaus over the phone or online.[17] For issues beyond the scope of local enforcement, citizens can contact state and territorial level EPA offices.[18] Ultimately, tips and complaints are funneled through the agency, and an EPA employee investigates. Thus, case creation can be initiated at the local, state, or federal level.[19] The ICIS-FE&C database capture some of these forms of case as milestone events that took place in fiscal year 2010. While the language is not always consistent between EPA documents and the data descriptions provided, Table IV highlights examples of available case initiation data.

Much federal enforcement activity results from voluntary disclosures or inspection. In FY2010, for instance, EPA reported that 561 companies and 1,218 facilities initiated voluntary disclosures.[20] The publicly available ICIS-FE&C data flagged 407 cases as "voluntary self-disclosures" in FY2010. [21] Incentives such as lower fines or penalties for self-evaluation and self-disclosure of violations are offered for voluntary disclosures.[22] In terms of inspections, the agency conducted 21,000 inspections and evaluations[23] in fiscal year 2010; 237 inspections were conducted by tribal inspectors using federal credentials—these were on behalf of the EPA but not considered "EPA Activity."

---

[20] These data were calculated using ICIS, and presented in "Fiscal Year 2010 EPA Enforcement & Compliance Annual Results" http://www.epa.gov/compliance/resources/reports/endofyear/eoy2010/fy2010results.pdf

[21] It is not clear why the number of voluntary disclosures reported by the EPA does not match the number included in the publicly available data. Potential explanations include the fact that they are measured in different units (i.e. companies and facilities versus cases); or, possibly because the public data would not include disclosures that were not yet formally charged, or resolved without formal action being taken.

[22] According to EPA, incentives for self-policing are as follows: "Where violations are found through voluntary environmental audits or efforts that reflect a regulated entity's due diligence (i.e., systematic efforts to prevent, detect and correct violations, as defined in the policy), and all of the policy's conditions are met, EPA will not seek gravity-based penalties and will generally not recommend criminal prosecution against the company if the violation results from the unauthorized criminal conduct of an employee. Where violations are discovered by means other than environmental audits or due diligence efforts, but are promptly disclosed and expeditiously corrected, EPA will reduce gravity-based penalties by 75% provided that all of the other conditions of the policy are met." http://www.epa.gov/Region2/capp/cip/policy.htm

[23] The EPA conducts inspections for most statutory and regulatory programs. Inspections include visits to a facility or site to gather information and determine compliance. The Clean Air Act requires evaluations instead of inspections. A full compliance evaluation "looks for all regulated pollutants at all regulated emission units, and it addresses the compliance status of each unit, as well as the facility's continuing ability to maintain compliance at each emission unit." A partial compliance evaluation is more thorough than a

This document is a research report submitted to the U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.

Table IV: ICIS-FE&C Case Initiation Data

Case Sources	Data Availability[1]	Counts[2]	Cases[3]
Tips	NA		
Complaints	Complaint Filed With Court Complaint/Proposed Order Amended Complaint Written Notice of Violation Notice of Violation Sent	369 1983 21 76 10	220 1589 14 24 3
Referrals	Referred to Department of Justice Referred to Headquarters Supplemental Referral	89 3 70	74 3 25
Voluntary Self-Disclosures	Voluntary Self Disclosure flag		407
Investigations	NA[4]		

[1] Data from ICIS-FE&C "Milestones Activities/Dates" table; all events conducted at the state level have been removed.
[2]"Counts" refer to each time a particular milestone activity occurred in the database in fiscal year 2010
[3]"Cases" refer to the number of unique activity IDs listed for each milestone activity
[4]Not available in a disaggregated format. Number of investigations and evaluations is available in "Fiscal Year 2010 EPA Enforcement & Compliance Annual Results".

Case Processing

Close examination of EPA case processing data reveals the complexities and difficulties involved in quantifying the agency's annual enforcement actions. Comparing across data sources within the EPA (e.g., the public EPA databases and reports produced by the EPA), we see different counts of comparable activities for FY 2010. For example, the EPA Enforcement and Compliance Annual Results reports that 233 civil judicial enforcement cases were *referred* to the Department of Justice in fiscal year 2010, in addition to forty-five supplemental referrals. The ICIS-FE&C data indicate when a case is "Referred to Department of Justice" and "Referred to Headquarters", and also provides identifiers for civil judicial cases. However, these public data show only forty-one unique civil judicial cases referred to DOJ in fiscal year 2010, and one case referred to headquarters. If we expand the parameters to include all types of judicial referrals, the total cases reported in ICIS-FE&C (74 cases are referred to DOJ and 3 are reported to headquarter) is still far below that provided by EPA in their Annual Enforcement and Compliance Results. Additionally, EOUSA data reveal that in fiscal year 2010, 148 respondents were referred to the U.S. attorney by the EPA for civil cases.

It is unclear why the publicly available ICIS and EOUSA data do not align with the data reported in the EPA publication. One possibility is that some of the referred cases are still open and thus would not be included in a public database that could potentially expose sensitive information. Yet, this interpretation is speculative. What is clear is that there is some kind of internal assessment or decision rule at EPA that produces different counts depending on the data source utilized.

EPA ECHO data, which can be queried on the EPA website, report 241 EPA enforcement cases were filed/issued in court (judicial enforcement) and 2,970 cases had complaints/proposed orders issued in fiscal year 2010.[24] Additionally, 2,530 new administrative dockets were filed in fiscal year 2010—some of these dockets were components of a single case, so the number is likely inflated with regard to the number of administrative cases

"cursory review of individual reports", and includes "a documented compliance assessment focusing on a subset of regulated pollutants, regulatory requirements, or emission units at a given facility." (http://www.epa.gov/Compliance/monitoring/inspections/index.html#evaluation)

[24] http://www.epa-echo.gov/echo/compliance_report_icis.html

This document is a research report submitted to the U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.

initiated.[25] However, the ICIS-FE&C data contained 11,330 enforcement action milestone events for 4,176 unique federal civil, judicial, and administrative cases in fiscal year 2010.[26] Among these milestones were 1,636 complaints/proposed orders, 220 complaints filed with court, twenty-six written notices of violation, three notices of violation sent, and two pesticide registration notices sent. As with other data presented in this brief, it is apparent that the reported number of cases or actions taken in a given fiscal year changes depending on the data source referenced. Again, it may be the result of different terminology, different levels of measurement, and/or different practices involving the entering/updating of sensitive information.

On the criminal side, EPA's Enforcement & Compliance Annual Results report indicated that 346 criminal enforcement cases were opened, and 289 defendants were charged in fiscal year 2010. The data maintained by EOUSA indicate that 112 criminal cases referred by the EPA were filed in 2010; these cases included 174 defendants, of which twenty-eight defendants were organizations. Most organizations and individuals were referred for fraud or transportation offenses.[27] The EPA also referred a variety of matters including those for violations of immigration, customs, intimidation, racketeering, auto theft, and embezzlement laws. Of the organizational cases referred, nine resulted in the filing of new charges, though the disposition of most (seventy-nine percent) is unknown. The differences in the reported number of criminal cases opened by EPA and EOUSA may reflect the fact that not all cases opened by the EPA are referred to EOUSA. Additionally, the sanitized data provided by EOUSA are unlikely to include ongoing or pending cases, whereas the EPA report, which simply included an aggregate total, could report all cases without risk.

In the Table below (VI), the type of data that are publicly available are compared by source (EPA ICIS FE&C and the EOUSA). It is clear that data of interest for a white collar crime series are available, including information regarding civil, criminal, and administrative cases and respective defendants. However, these data are not exhaustive (e.g. EOUSA data only refer to matters, cases and respondents referred to the U.S. Attorneys for prosecution, and do not include issues handled internally), are not all maintained in the same database, and are not all measured in the same unit. Instead the data are in numerous different databases, kept by different agencies, which use different units of analysis, terminology, and data maintenance procedures. As such, although information is extensive, merging across sources would not be seamless.

[25] http://yosemite.epa.gov/oa/rhc/epaadmin.nsf/Dockets+by+Year+Filed?OpenView&RestrictToCategory=2010&Start=1601

[26] Unique cases were identified by the "Activity ID" field in the ICIS-FE&C download; this is a unique identifier assigned to individual cases. Each activity ID number may be included multiple times within the database, as it is referenced with each milestone activity relevant to the case.

[27] The most commonly cited lead charges for EPA-referred criminal cases involving organizations charged with fraud are: 42§7413 (n=3) and 42§6928 et seq. (n=7); among those charged with transportation offenses, the most common lead charge statute is 33§1319 et seq. (n=4).The most commonly cited lead charges for EPA-referred criminal cases involving individuals charged with fraud are: 42§7413 (n=36) and 42§6928 et seq. (n=13); among those charged with transportation offenses, the most common lead charge statute is 33§1319 et seq. (n=37).

This document is a research report submitted to the U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.

Table VI: ICIS-FE&C and EOUSA Data

FY 2010	Data Availability	Counts	Comments
Case Numbers	Incomplete		ICIS-FE&C: "ACTIVID" (activity identifier) is an internal numeric key identifier used to uniquely identify enforcement case activities.
Date Case Initiated	Yes		
Num. of Viols./Def.	Incomplete		Available for some defendants in EOUSA, but has a maximum number of violations recognized.
Types of Violation	Yes		Both the ICIS-FE&C and the EOUSA criminal datasets include statute level information; as such, frequencies of charging and/or referring specific environmental enforcement statutes can be obtained.
Dates of Viols.	Incomplete		Codebook indicates that date of violation should be available; does not appear to be included in public download
Defendant Chars.	Yes		The ICIS-FE&C data include defendant/respondent name, facility UIN," primary name, and location address. The EOUSA civil and criminal data include a flag that identifies if the defendant/respondent is an individual or a business
Case Seriousness	Incomplete		EOUSA criminal case data includes a field "priority", which indicates if the case is a national and/or district priority
Administrative Cases	Yes	***	ICIS-FE&C includes "referred to DOJ count"—unclear if this is a complete measure.
Civil Referrals	Yes	148	EOUSA contains civil respondents referred to the U.S. Attorney
Criminal Referrals	Yes	112	EOUSA contains criminal cases referred to the U.S. Attorney

[1] Not available in a disaggregated format. Number of investigations and evaluations is available in "Fiscal Year 2010 EPA Enforcement & Compliance Annual Results".

Case Resolutions

Both ICIS-FE&C and EOUSA data provide information about case conclusions, settlements, and sanctions. The ICIS-FE&C milestone activity variable reports a total of 526 settlements lodged, and 4,005 settlements entered in fiscal year 2010 (Table VII) across the most common statutes enforced by the EPA. Most settlements were lodged and entered under the Clean Water Act (95 and 1,015, respectively), Clean Air Act (146 and 701), and CERCLA/Superfund (202, 441). Additionally, "milestone activities" reported in ICIS-FE&C included Final Order Issued (n=3,556), Enforcement Action Closed (n=2,397), NPDES Closed (n=162), Pipeline Closed (n=456), Final Order Lodged (n=552), Final Order Entered (n=529), Expedited Settlement Offered (n=88), Concluded (n=215), Compliance Achieved (n=112). [28]

Table VII: ICIS-FE&C Settlements by Statute

Settlements	CAA	CERCLA	CWA	EPCRA	FIFRA	MPRSA	RCRA	SDWA	TSCA	Total
Lodged	146	202	95	14	0	0	53	8	8	526
Entered	701	441	1015	430	239	1	467	527	184	4005

The publicly available ICIS data also contain information on the penalties incurred in cases settled in fiscal year 2010 (Tables VII).[29] *Federal Penalty Assessed* (ENFCFPA) is defined as the "Federal Penalty assessed against the defendant(s) as specified in the final entered Consent Decree or Court Order" for civil enforcement actions, and "the penalty assessed in the Consent/Final Order" for administrative actions. Interest payments associated with the fines are not

[28] These data are from the publicly available ICIS database.

[29] http://www.epa-echo.gov/ideadownloads/2012/ICIS_FE&C_summary.pdf

This document is a research report submitted to the U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.

included. The *Total Compliance Action Amount* (ENFCCAA) figure refers to the settlement level value of "injunctive relief and the physical or nonphysical costs of returning to compliance" (injunctive relief refers to the actions an entity must undertake to achieve and maintain compliance). *Cost Recovery Awarded Amount* (ENFCRAA) is "the amount of cost recovery ordered or agreed to be repaid by the responsible party or parties and due the Superfund in accordance with either an administrative or judicial settlement". These data provide additional detail regarding penalties assessed for the cases captured in the ICIS-FE&C database.

Table VIII: ICIS-FE&C Penalties Assessed

	Count	Minimum	Maximum	Mean	Total
Federal Penalty Assessed	144	$ 0	$ 15,000,000.00	$ 683,798.52	$ 98,466,989
Total Compliance Action Amount	159	$ 500.00	$ 3,700,000,000.00	$ 64,126,468.82	$ 10,196,108,542
Cost Recovery Awarded Amount	99	$ 0	$ 49,549,379.00	$ 2,203,078.24	$ 218,104,746

Criminal outcome data obtained through the EOUSA data are limited. Of eighty-six criminal cases concluded by the U.S. Attorneys in 2010, fifty-three cases were pled in district court, eleven were pled in magistrate court, three were disposed by the government from district court, six disposed by the government from District Court, and three by jury trial verdict in District Court.[30] The EOUSA also reported concluding 230 matters in 2010 (see description of "matters" in footnote six); ten of these cases were initially received before 2005, though the majority of cases (seventy-four percent) were received in 2008 or later. Slightly more than twenty-eight percent of cases concluded in 2010 were received the same fiscal year. In the Federal Justice Statistics Program's current form, it is not possible to track cases from their initial referral to EOUSA (in the EOUSA database) to sentencing (in the U.S. Sentencing Commission Database), as there are many technical and security obstacles that make linking cases particularly difficult. As such, we are unable to report on sanctions imposed for fiscal year 2010 criminal cases using the data that are currently publicly available.

Table IX: ICIS-FE&C and EOUSA Datasets

FY 2010	Data Availability	Counts	Comments
Case Numbers	NA	NR	Case numbers are not available, however sterile identifiers for cross-activity comparison are available in some data: ICIS-FE&C: "ACTIVID" (activity identifier) is an internal numeric key identifier used to uniquely identify enforcement case activities. EOUSA: "SEQNUM" and "CASE_ID" do not include actual case numbers, but a within-organization identifier (cannot be used to link data across agencies).
Date(s) of Resolution	Y	***	ICIS-FE&C: "ENFCSLD" settlement lodged date; and "SUBSCAD" sub-activity/milestone date.
Defendant Characteristics	Y	***	ICIS-FE&C: "DEFFENNM" defendant name; "FCLTUIN" facility UIN; "FCLTYNM" primary name; "FCLTYAD" location address.

[30] An additional two cases were declined: one for jurisdictional/venue problems and another cited office policy.

This document is a research report submitted to the U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.

Administrative Cases Resolved			
Case/Defendants	Y	13,524	In 2010 13,791 formal administrative counts were resolved for 13,524 cases (ICIS-FE&C); defendant names are also included and can be tabulated
No. of cases dismissed	Inc.	***	ICIS-FE&C: "ENFOOUT" (enforcement outcome) includes fields such as "DOJ Declined", "Dismissed by Tribunal", and "US Attorney Declined"
Number of violations penalized	NA	NR	
Number of sanctions imposed	Inc.	NR	ICIS-FE&C: various measures of total penalty assessed; such as Federal penalty assessed amount, and total compliance action amount
Civil Cases Resolved			
Case/Defendants	Y	219	Civil cases concluded (EOUSA data—unit of analysis is respondent) ; defendant names are also included and can be tabulated
No. of cases dismissed	Inc.	19	Voluntary dismissals (EOUSA data, civil cases concluded)
Number of violations penalized	NA	NR	
Number of sanctions imposed	Inc.	NR	ICIS-FE&C: various measures of total penalty assessed; such as Federal penalty assessed amount, and total compliance action amount
Criminal Cases Resolved			
Case/Defendants	Y	86	Criminal cases concluded (EOUSA data), 107 criminal defendants
Number of violations penalized	NA	NR	Cannot identify cases referred by EPA when analyzing outcome/sentence data
Number of sanctions imposed	NA	NR	Cannot identify cases referred by EPA when analyzing outcome/sentence data
Appeals	Inc.	12 0	Criminal Appeals (EOUSA Cases Concluded) Civil Appeals (EOUSA Civil Cases Concluded); the reliability of this figure is questionable, as zero appeals were reported for all 75,735 cases in the database

Table IX identifies the kinds of data publicly available to count and measure EPA-related case resolutions (i.e. ICIS-FE&C and EOUSA data). Although this table demonstrates that many data fields of interest are publicly available, it also reveals that all measures are not available from the same data source; and that the fields are not exhaustive or measured in the same unit.

Supplemental data are available from other sources and comparisons are reported in Table X. For example, data from the "Fiscal Year 2010 EPA Enforcement & Compliance Annual Results" report summarize enforcement totals using internal EPA data. The publicly available ICIS data indicate that for administrative formal cases in fiscal year 2010 3,432 final orders were issued, and 2,353 enforcement actions within 1,880 cases were closed.

This document is a research report submitted to the U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.

Table X: Supplemental Data Sources

	ICIS-FE&C	EPA Report	EOUSA	PACER
Administrative Cases				
Initiated	1589 complaints/ proposed orders	NA	NA	
Concluded	1880 cases with enforcement actions closed	3332 civil enforcement cases concluded (judicial and administrative)	NA	
Civil Cases				
Initiated	41 cases referred	172 civil judicial complains filed 233 civil judicial referrals	148 respondents referred	
Concluded	205 cases closed and concluded	200 civil judicial enforcement cases	219 respondents concluded	9 concluded (EPA was defendant in seven, plaintiff in one, movant in one)
Criminal Cases				
Initiated	NA	346 new environmental crime cases opened	112 referrals	NA
Concluded	NA		86 concluded	0

In addition to the supplemental sources highlighted in Table X, resources such as the EPA's website and its user interfaces provide supplemental information, often with rich detail. For example, according to an EPA-affiliated website 43 environmental appeals were filed, and 38 were closed in fiscal year 2010.[31] Data from the EPA website indicate that of 31 civil cases concluded in fiscal year 2010 all respondents were organizations. Of the thirty-one conclusions, twenty-seven resulted in consent decrees, two reached settlement agreements, one received a consent decree and final order, and one was issued a stop sale, use, or removal order.[32] Additionally, publicly available ECHO data report that in fiscal year 2010, 238 cases received judicial settlements, 109 judicial cases were concluded, 3,998 final administrative orders were issued, and 2,055 administrative enforcement actions were closed.[33]

Summary: Strengths and Weaknesses of Available Data

The quantity and availability of data collected and maintained by the EPA is unsurpassed by any other agencies evaluated in the course of this project. The publicly available ICIS-FE&C data, in addition to internally produced reports, and interactive interfaces on the agency's website merely scratch the surface of what is maintained by the EPA. The data tap into key elements of case processing that are the essential building blocks of any data series, including case initiation, handling, and resolution. Yet, even with such comprehensive and user friendly interfaces, there are several challenges to repurposing these data for a white-collar crime statistical series. The publicly downloadable data provided by the EPA include both civil and administrative cases, but not criminal cases. Criminal data are collected and held by EPA, but the data are not publicly available in any systematic way. Terminology is often inconsistent with other data sources, making merging, cross-comparison, and verification efforts difficult. Similarly, the data maintained and provided by the EOUSA only include civil and criminal matters and cases referred to the Executive Office for U.S.

[31] http://yosemite.epa.gov/oa/EAB_Web_Docket.nsf/Closed+Dockets?OpenView,
[32] http://cfpub.epa.gov/enforcement/cases/
[33] http://www.epa-echo.gov/echo/compliance_report_icis.html

This document is a research report submitted to the U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.

Attorneys, and miss anything handled, prosecuted, or dismissed "in-house", or exclusively by partnering agencies. Unfortunately, other datasets such as AOUSC or Public Access to Court Electronic Records (PACER) do not indicate which agency referred the cases being processed; as such they cannot be relied on for information regarding EPA-initiated or involved enforcement efforts.

Finally, year-to-year trends of EPA enforcement activity should not be interpreted without context. The EPA bases enforcement priorities on specific environmental problems, risks, or patterns of non-compliance that are salient at the time. A longitudinal assessment of EPA data might reveal disproportionate enforcement of the current initiatives, which may not have been a priority area in earlier years. Thus, changes in enforcement activity reflected in the data may not represent a change in compliance, but instead a change in enforcement focus.

This document is a research report submitted to the U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.

U.S. Federal Trade Commission
Annual Case Statistics, FY2010

Miranda A. Galvin, Peter C. Yeager, and Sally S. Simpson

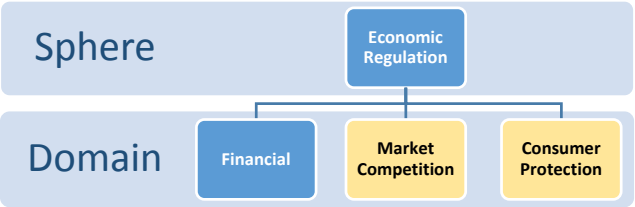


Fig. 1: The FTC's Regulatory Domain

The Federal Trade Commission's (FTC) mission comprises preventing business practices that undermine competition and protecting the interests of consumers. In the sphere of economic regulation, the FTC enforces rules to ensure the competitiveness of markets and to protect consumers from deception and other unfair practices in the marketplace. The FTC seeks to accomplish its goals without "burdening legitimate business activity."[1]

In practical terms, the FTC is responsible for preventing mergers and other business practices that would unfairly limit competition (e.g., anticompetitive agreements), and addressing fraud and deception in the marketplace. The consumer protection mission of the FTC is shared with the Consumer Financial Protection Bureau, created as part of the 2010 Wall Street Reform and Consumer Protection Act, as well as other agencies such as the Consumer Product Safety Commission. In addition, the FTC shares its merger review power with the Department of Justice's Antitrust division and the Congressional finance committees. The Commission has a working relationship with the Antitrust division that typically results in the Antitrust division reviewing mergers within regulated industries, while the FTC division oversees all other mergers.[2]

The FTC was established in 1914 to address anticompetitive mergers and has since grown in importance. The Commission is now responsible for overseeing the administration and enforcement of more than 70 laws.[3] Of these, 25 laws relate at least in part to maintaining competition, including the Clayton Act, the Truth in Lending Act, and the Telemarketing and Consumer Fraud and Abuse Prevention Act. However, many of these laws require the Commission to act in an advisory or reporting role, rather than in an enforcement one. Fifty-six laws relate to consumer protection, including the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, the Consumer Leasing Act, and the Credit Card Accounting Responsibility and Disclosure Act of 2003. The FTC shares enforcement authority with the Department of Justice and state-level and private parties (i.e., injured businesses) under the Clayton and the Sherman Antitrust Acts.[4]

The FTC has the power to respond to cases through both administrative and civil actions, as well as to conduct investigations and make reports to Congress. Administrative means include both adjudication and rule-making. In the latter case, the FTC does not respond directly to suspected violations but rather generates a new rule with the intention of generating reform at the industry-level. Adjudication, however, occurs at the firm level and thus is of interest in the development of a white-collar crime statistical series. Unless the respondent does not contest the FTC charges and waives judicial review, a case will be heard before an administrative law judge. Final orders may be appealed all the way to the

[1] U.S. Federal Trade Commission. About the Federal Trade Commission, http://www.ftc.gov/about-ftc. Accessed 15 May 2014.
[2] Staff Meeting at U.S. Federal Trade Commission, 8 May 2013.
[3] U.S. Federal Trade Commission. Statutes Enforced or Administered by the Commission, http://www.ftc.gov/enforcement/statutes. Accessed 15 May 2014.
[4] See Appendix A. U.S. Federal Trade Commission. Enforcement Authority, http://www.ftc.gov/about-ftc/what-we-do/enforcement-authority. Accessed 15 May 2014.

This document is a research report submitted to the U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.

protection violations are handled through such civil means.[5]

The types of information of interest for a data series on white collar offending include data on case sources, case processing and case resolutions or outcomes, as indicated in Figure 2. On its website[6] the FTC provides nearly exhaustive information on case processing and resolution, while providing little to no information as to the processes and sources of case origination. It is also worth noting that what data are provided on the website are embedded within drafted releases and electronic case documents and are not readily available in a quantitative format. All actions within a case are documented on a continually updated case-timeline webpage.[7]

Case Sources and Processing

An agency may become aware of a potential violation of law through a variety of means, such as complaints, referrals, and investigations (Fig. 2). Complaints comprise information from consumers or market participants regarding suspected illegal activity. The FTC offers consumers a direct means to report suspected issues via the Consumer Sentinel Network. The FTC releases a calendar year report on the Consumer Sentinel complaints, and reports that more than 1.3 million complaints were made in calendar year 2010[8] (Table 1). The bulk of these were for fraud (54%) and identity theft (19%). The total numbers of investigations, referrals, and tips are not provided, nor can they be assembled from the reported data.

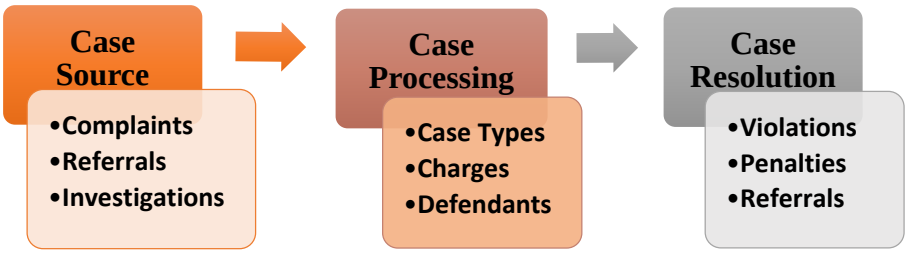


Fig. 2: Stages of enforcement action and information generated in each stage

Once a case has been initiated and violations have been substantiated, the FTC may seek either administrative or civil sanctions against individual and organizational defendants. Most administrative cases are heard before an Administrative Law Judge (ALJ), though the FTC also may issue warning letters.[10] After the hearing the ALJ will issue an order making findings and, if illegal conduct is found, impose sanctions. Multiple types of sanctions are available through an ALJ hearing, including civil monetary penalties and orders to divest assets.

Case Sources	Data Availability
Tips	NA
Complaints	~1,300,000[9]
Referrals	NA
Investigations	NA

Table 1: Case Origination Data. NA=Not Available.

The Commission uses civil court action to seek injunctions and monetary equitable relief in antitrust and consumer protection cases. In the latter type of cases the FTC most often pursues court enforcement rather than administrative adjudication.[11] Civil cases are heard in federal district courts. Formal proceedings are initiated through

[5] See Appendix A. U.S. Federal Trade Commission, Enforcement Authority, http://www.ftc.gov/about-ftc/what-we-do/enforcement-authority. Accessed 15 May 2014.
[6] www.ftc.gov
[7] The FTC recently changed its website. The previous enforcement search tool allowed for the search of cases by mission, opening date, and closing date, as well distinguished merger from non-merger competition cases.
[8] U.S. Federal Trade Commission. Consumer Sentinel Data Book for January-December 2010, http://www.ftc.gov/sites/default/files/documents/reports_annual/sentinel-cy-2010/sentinel-cy2010.pdf. Accessed 27 May 2014.
[9] Calendar-year reports are available on the FTC's website. In 2009 and 2010, the FTC reports more than 1.3 million annual complaints. The reports do not allow determination of fiscal year counts.Federal Trade Commission. Consumer Sentinel Network Reports. http://www.ftc.gov/enforcement/consumer-sentinel-network/reports Accessed 16 May 2014.
[10] Warning letters were previously available on the Commission's website but are no longer as of May 2014.
[11] U.S. Federal Trade Commission, A Brief Overview of the Federal Trade Commission's Investigative and Law Enforcement Authority, http://www.ftc.gov/about-ftc/what-we-do/enforcement-authority. Accessed 3 June 2014.

This document is a research report submitted to the U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.

	Data Availability	Counts	Comments
Administrative Actions	Y	40	In rare instances, a case may not be "tagged" as administrative or civil; searching on this term alone would return incomplete counts. Also, it is not possible to separate types of administrative actions automatically.
Civil Case Filings	Y	45	Included in this count are both cases in which the FTC was plaintiff and cases in which the United States Attorney filed the complaint on the FTC's behalf.
Criminal Referrals	NA	NA	
Case Numbers	Y	NR	Both administrative docket number and civil case filing numbers
Date Case Initiated	Y	NR	
Number of Defendants	Y	NR	Contained in the complaint document
Types of Violation	Y	NR	Contained in the complaint document; also possible to search by mission or type of action
Dates of Violations	Y	NR	
Defendant Chars.	Y	NR	Corporate characteristics available in complaints
Case Seriousness	NA	NR	

Table 2: Cases Initiated Data NA = Not Available; NR=Not Relevant

the filing of a civil the filing of a civil complaint. Arguments and responses are heard, and subsequently findings are made and sanctions imposed. In some cases, the FTC case page references a parallel proceeding. To the extent that this is reliably and consistently done, it contributes to the accuracy of a white-collar crime statistical series.

The FTC initiated 40 administrative cases and 45 civil cases in FY 2010 (Table 2). [12] Of these 85 cases, 26 related to competition and 59 to consumer protection. All but one competition case was handled through administrative procedures, while only 15 consumer protection cases were managed with these procedures.

Suspected criminal conduct that is uncovered during the course of an FTC investigation is subsequently referred to either the Department of Justice or directly to an Office of the U.S. Attorney for prosecution. The FTC's Criminal Liaison Unit acts as a chief source of evidence for federally prosecuted consumer fraud offenses. Very little information is provided about the unit, and no enforcement reports are available. It is thus not possible to attain information from the FTC's publicly available data on criminal cases stemming from the agency's investigations.

[12]The number of administrative and civil cases opened in FY 2010 was arrived at by searching the FTC's cases and proceedings database (http://www.ftc.gov/enforcement/cases-proceedings). The search function does not operate consistently, though it did cooperate on 20 May 2014 to allow for a query of cases started 1 October 2009 through 30 September 2010. The list of cases provided was copied into Excel, and each case was subsequently coded for the type of action (administrative or civil), mission (competition or consumer protection), and whether the case was opened and/or closed in fiscal year 2010. The number of civil cases initiated was thus arrived at through the same process. The search returned 95 results, but of these ten were not opened in FY2010, leaving 85 cases initiated in 2010. It is important to note that the database was also queried on 16 May 2014 and returned only 89 results; it is not immediately clear why some cases were omitted. It is important to note the technological limitations of accessing public data.

This document is a research report submitted to the U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.

The FTC files provide extensive documentation for those determined to query them. Cases are organized by matter, contain detailed timelines of case progression, and contain information on parallel proceedings and appeals. However, the nature of the data (electronic internal and court documents or summary releases) requires significant time investments and a systematic coding system. In Table 2 it is clear that currently available data on FTC activity provides most data points of interest to a data series on white collar offenses.

Case Resolutions

The data available for FTC cases resolved in 2010 are as rich and problematic as are the data related to case initiation. Case resolution information is available through the same means as case initiation and processing data. Using search features, it is possible to isolate cases that were "updated" in fiscal year 2010. Cases are updated when they are resolved with sanctions, and also when earlier and later legal steps are taken in cases. In the latter situation, for example, cases are updated when consent orders are terminated or funds are disbursed to victims. For FY 2010 79 cases (of 105 updated) contained case resolutions. Thirty-two[13] of these cases were administrative in nature, and 47 were the result of civil procedures. Almost half of cases resolved were filed the same year: 23 administrative and 14 civil cases were both initiated and resolved in 2010.

Consumer protection made up the bulk of resolutions, with 61 such cases resolved in 2010. The remaining 18 cases sanctioned violations of the rules of competition. These competition cases were exclusively resolved administratively. In comparison, only 14 of the consumer protection cases were resolved using administrative action, with the remaining 47 handled in civil court.

It is important to note, however, that using the query tool is assuredly an undercount of resolved cases; cases in which a sanction was imposed in FY2010, that then were updated in 2012 for an appeal or a consent order was terminated, for example, will not be located using the query tool's "updated date" feature. For this reason, Table 3 does not include definitive case counts at this stage. Of the 105 cases that were updated in fiscal year 2010, 26 were most recently updated for an event other than case dispositions. Of these, the most common reason for updating a case was for victim compensation (n=9). Other reasons included the appointment of a monitor or receiver, the filing of contempt charges after a judgment, modifying or supplementing a previous order, terminating an order, or filing petitions.

[13] This number was determined by coding all cases in the FTC's cases and proceedings database (http://www.ftc.gov/enforcement/cases-proceedings) that were updated between 1 October 2009 and 30 September 2010. The automatic search feature did not return any cases updated during this time period, however the number could be arrived at manually by scrolling through case lists (which are listed in time order as updated). The list of cases provided was copied into Excel, and each case was subsequently coded for the type of action (administrative or civil), mission (competition or consumer protection), and whether the case was opened and/or closed in fiscal year 2010. The number of civil cases initiated was thus arrived at through the same process. The search returned 105 results, but of these, 26 were not resolved in FY2010, returning 79 total cases.

This document is a research report submitted to the U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.

FY 2010	Data Availability	Counts	Comments
Case Numbers	Admin, Civil	NR	In some cases, multiple case numbers will be provided; these are often consecutive, though some case numbers begin with the letter X. It is not clear what purpose these multiple case numbers have.
Date(s) of Resolution	Admin, Civil	NR	Both litigation releases and administrative files contain dates filed; if respondents are sanctioned on different days, the documents will be filed under the full matter title but will reference specific respondents
Administrative Cases Resolved	Y	***	This is possible to attain by systematic coding of every case file, though is not ascertainable through the available query tool.
No. of Admin cases dismissed	NA		It is not possible to isolate dismissed cases
Number of Defendants	Y	***	
Number of violations penalized	Y	***	Statutes violated usually contained in the Complaint and order; "counts" of each violation are not provided
Number of sanctions imposed	Y	***	Detailed in order
Civil Cases Resolved	Y	***	This is possible to attain by systematic coding of every case file, though is not ascertainable through the available query tool.
Number of civil cases dismissed	NA	NA	
Number of Defendants	Y	***	Electronic files name applicable defendants
Number of violations penalized	Y	***	Statutes violated usually contained in the original complaint if not release containing final order; "counts" of each violation are not provided
Number of sanctions imposed	Y	***	Releases contain information on both the number and type of sanctions imposed for each defendant, but may not be exhaustive due to the summary nature of litigation releases Detailed information on civil penalties can be ascertained by accessing court documents
Criminal Cases Resolved	NA	NA	There is no information on criminal cases or investigations resulting from agency activity
Cases Declined	NA	NA	
Number of Defendants	NA	NA	
Number of violations penalized	NA	NA	
Number of sanctions imposed	NA	NA	
Appeals	Y	***	Case filings include appeals as they are filed and decided

Table 3: Case Resolution Data

*****Available in case timelines but not independently searchable using query tool**

This document is a research report submitted to the U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.

Other Data Sources

The FTC provides relatively complete data on administrative actions, less complete information on civil cases, and the least complete data on criminal cases. Thus, the final portion of this brief will turn to other available data sources to supplement and validate the FTC's data. Civil and criminal case data can be found in both the federal website Public Access to Court Electronic Records (PACER) and the Federal Justice Statistics Program (see Table 4).

Civil case records form the Commission may be supplemented through PACER. For a nominal fee this site allows users to search for cases in criminal, appeals, bankruptcy, and civil court files by a number of parameters.

A detailed search initially yielded a significant difference in the number of apparent civil cases filed as reported by PACER[14] and FTC records. Both sets of records were cross-checked for completeness. Most complaints posted on the FTC website did appear in PACER filing results, but not all cases present in the FTC's adjudicative proceedings list appeared in the PACER records search using the specified party search terms "FTC" and "Federal Trade Commission." The most common reason that a case did not appear in PACER search results was that the plaintiff was in fact the Department of Justice. Thus the FTC appears to track in its publicly available data cases that it had referred to DOJ. One new case filing was listed in PACER under a different FTC role (i.e. the FTC was listed as a counter-defendant), and thus was excluded from the original counts. However, in no case was the data absent from the PACER system in entirety; searching by case number invariably returned case information.

Of the 48 unique cases found in PACER, eight were absent from the FTC adjudication record search results in 2010. This was primarily due to the FTC case proceedings' query tool; when records were searched by party name rather than release date, seven of the eight anomalous records were located. The remaining case was a petition to enforce a civil investigative demand and was dismissed; thus, no record of the enforcement action exists on the FTC website. PACER appears to over-count FTC activity; party-based searches return multiple case numbers related to the same civil case.[15] Overall, PACER court records were found to suffer from data entry errors and inconsistencies that limit their usefulness in determining the volume of agency enforcement activity. Duplicate cases (n=41 of 98 search results), secondary filing activity (n=4) and party-role data entry errors (n=8) inflate counts. Taking into account only new filings of civil suits PACER returns 45 cases, though this is *not* a perfect overlap with the 45 cases found in the FTC data. PACER returns some cases missed by the FTC's query tool (due to listing after the date of filing, e.g.), while not capturing some cases reported by the FTC (e.g. ones brought on behalf of the FTC by the Department of Justice). Thirty-seven of the 45 cases were present in both data sets.

	FTC	PACER	EOUSA
Administrative Cases Initiated	40	NA	NA
Civil Cases Initiated	45	45	19
Before Data Cleaning	NA	98	
Civil Cases Referred	NA	NA	
Criminal Investigations	NA	NA	NA
Criminal Cases Referred	NA	NA	0

Table 4: Source Comparisons

NA=Not Available

[14] In order to best target PACER cases in which the Federal Trade Commission brought action against an individual or entity, the researchers searched for all cases in which "Federal Trade Commission" or "FTC" (using exact match) was a party. (The search term "FTC" [not exact match] was not used due to the over-inclusion of irrelevant cases.) This procedure returned 98 cases. To filter out cases against the Commission, the case counts only considered those in which the FTC was listed as plaintiff, movant, or petitioner. This restricted list contained 89 cases. However, it became apparent that the same matter could appear multiple times within the search under different case numbers; significant actions (e.g. motions) were recorded under different case numbers despite involving the same individuals. An effort to identify and remove duplicates was made both automatically (using Microsoft Excel) and manually (by comparing party names). Forty-one duplicates were detected during the document review phase, leaving a final count of 48 unique cases. PACER records were compared with FTC generated data through a multistage process. First, the authors searched party names in all FTC litigation releases for FY 2010. If a PACER case could not be located in the FY 2010 data, the authors then searched the FTC website using the general search feature. If this also failed to return agency generated case information, the authors reviewed the legal documents in a case (through PACER) to determine the nature of the case, the parties involved, and the dates initiated.

[15] Case determined by the parties involved in the suit.

This document is a research report submitted to the U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.

Comparing the FTC's public data and PACER's data, it appears that the FTC's civil files are more complete than would be generated by broadly searching PACER. Unlike PACER, the FTC provides detailed court documents with rich information at no cost. However, the effort to access the FTC's own data is hampered by an erratic query tool. Meanwhile, PACER's services may be useful for cross-checking the FTC data and generating supplemental data, such as defendant characteristics.

PACER also contains criminal case filings. While the Department of Justice bears the responsibility for filing criminal cases investigated by the FTC, the PACER system allows for the listing of referring agencies as "interested parties." However, a search of criminal court documents revealed no cases in which the FTC was an interested party in 2010 (or any other year). Because the EOUSA data also do not report any criminal case filings referred by the FTC in FY 2010, it is not possible to make a statement about the quality of either data source.

Data from the Federal Justice Statistics Program offer new dimensions of FTC involvement in criminal and civil cases. According to data from the Executive Office of the US Attorney[16], the FTC did not refer any cases for prosecution in 2010, nor were any existing matters closed.

In addition to filing its own civil cases, the FTC also refers other cases to the Department of Justice for civil prosecution. According to the Executive Office of the U.S. Attorney, the agency referred 23 civil matters in 2010. Of these, approximately three-quarters (17) involved charges against businesses; activity against individuals is less common. The U.S. Attorney's Office filed 19 civil cases on behalf of the FTC, some of which may have been referred in previous years. [17]Approximately three-fourths (14) of cases filed were against businesses. The most common sanctions being sought were civil penalties or the enforcement of an existing order. Of the 21 cases originally referred by the FTC that closed in FY 2010, 57 percent were closed without a trial in favor of the U.S., and another 15 percent were settled out of court. In nearly 60 percent of cases, the type of relief sought is nonmonetary (e.g., injunction, asset freeze).

Summary: Strengths and Weaknesses of Publicly Available Data

Publicly available data on FTC enforcement cases are plentiful, especially as made available on the FTC web site. They are strongest on the agency's own administrative and civil cases. From these data one can determine the numbers of cases, the nature of violations, and the numbers and types of defendants, individual or organizational. In most cases the data permit the determination of whether the offenses are those of white collar offenders as defined for this project: those committing securities violations in the course of legitimate occupations. Although relatively few criminal cases are brought against white collar competition and consumer protection offenders, the FTC web site provides a strong substantive source of data on cases of the sort the series seeks to count.

But these public data also have a number of important limitations for use in a data series on white collar offenses. They are available only in litigation documents and reports that must be read, rather than in easily digested and coded tabular formats. Hence converting them to statistical data for a series is a labor intensive operation unless and until reliable software for such conversions is made available. As the FTC is the only source of information on administrative (or regulatory) cases, they cannot be validated by other data sources.

Comparisons of the FTC web site data with PACER data on civil cases indicate that the FTC data is as complete and more comprehensive. Though the FTC and PACER return the same number of cases filed in FY 2010, PACER's number is reflective of the eight cases in which data was available on the FTC site but did not appear in the original search; the counts are thus not perfectly overlapped; eight cases present each data source were not present in the other. The PACER data require

[16] The FJSP data are available through ICPSR with an approved data protection plan. In order to isolate criminal matters related to FTC activity, matters were filtered by investigative agency if one was provided. While this is the best approximation of criminal matters resulting directly from FTC enforcement activity, the U.S. Attorney's case management system, LIONS (from which the FJSP data are drawn) does not strictly require that a value be entered for the agency variable. Thus, a certain amount of missing data can be expected.

[17] The FTC does list at least some referred cases that are subsequently filed by the Department of Justice. However, this is not a complete tracking of referred cases (i.e. from referral to filing decision).

This document is a research report submitted to the U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.

substantial, time-intensive cleaning, present similar format limitations (in that they do not present readily quantified data), and impose the additional cost of users fees.

The FTC's public data are of no use in identifying cases in which criminal sanctions are imposed; the criminal enforcement section of the website does not contain any list of cases. It is not possible to track criminal case activity, for example, at the prosecutorial decision to file. On the other hand, while the nonpublic EOUSA data should provide information on FTC referrals to U.S. attorneys' offices for cases of suspected criminal conduct, no such records were located in the EOUSA data for fiscal year 2010.

The query tool on the FTC's website does not always function as designed. In the course of preparing this brief, at multiple points the tool failed to return results or yielded inconsistent counts with the same search parameters. Systematic treatment of all cases (i.e., coding and quantifying all agency case data, without imposing date limits using the query tool) will return more results than use of the query tool to target specific actions or time periods. This is particularly relevant for documenting case resolutions. The "updated date" returns many cases in which the last action was not a resolution, and fails to return cases in which a resolution was made but last action was taken at a later date. Any attempt to curtail the list of cases using date-based queries will thus return inaccurate counts. Initiation dates are also problematic to the extent that case postings are separated in time from actual case initiation or filing.

The Executive Office of U.S. Attorneys' data are also limited. Not all fields are required when responsible parties enter a matter or case into the system, including the field indicating referring party. To the extent this field is not reliably filled in, there will be an undercount of FTC referrals. Moreover, statute-based data often do not permit a determination as to whether the violations fit the operational definition of white collar offenses. For example, statutes do not indicate whether an individual committed a crime in the course of his occupation.

Future work on the usability and reliability of data sources for measuring white collar securities offenses includes consideration of nonpublic data from the Administrative Office of the U.S Courts, more closely evaluating inconsistencies and gaps in data and in reporting protocols (e.g., via interviews with data managers), and assessing the consistency of case numbering protocols for tracking cases across organizational boundaries (FTC, offices of the U.S. attorneys, main Justice, the federal courts) as they work their way through the legal process from complaints and investigations through sanctions, dismissals and appeals.

This document is a research report submitted to the U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.

U.S. Food and Drug Administration
Annual Case Statistics, FY2010

Megan E. Collins, Sally S. Simpson, and Peter C. Yeager

The following brief provides a synopsis of the white collar enforcement activities carried out by the United States Food and Drug Administration (FDA) in fiscal year 2010. The FDA exists within the U.S. Department of Health and Human Services with the purpose of overseeing four core areas: medical products and tobacco, foods and veterinary medicine, global regulatory operations and policy, and operations. The objectives of the FDA are to protect public health by "assuring the safety, effectiveness, quality, and security of human and veterinary drugs, vaccines and other biological products, and medical devices. The FDA is also responsible for the safety and security of most of our nation's food supply, all cosmetics, dietary supplements and products that give off radiation."[1]

Overview of Food and Drug Administration Domain

The FDA oversees a wide array of regulatory activity. Specifically, the FDA has authority to undertake administrative and judicial enforcement activities. The administrative actions taken by the FDA include product recalls, debarment of individuals and companies convicted of felonies, withdrawals of product approvals, license revocations, and disqualification of clinical investigators. The judicial actions taken include seizing products in violation of regulations, injunctions, criminal prosecutions, and certain civil monetary penalties.[2]

The scope of FDA regulation includes: foods, drugs (prescription and non-prescription), biological products (including vaccines, blood, and tissue), medical devices, electronic products that give off radiation (including microwave ovens, x-ray equipment, and sunlamps), cosmetics, veterinary products, and tobacco products.[3] The FDA does not regulate areas pertaining to advertising (except for prescription drugs, medical devices, and tobacco products), some consumer products (except those that give off radiation), illegal drugs of abuse, health insurance, meat and poultry (except for game meats), restaurants and grocery stores, or vaccines for infectious animal diseases.[4]

The agency's authority and responsibilities are similar to some other federal agencies, which can cause for some confusion among consumers. For example, the FDA shares regulation responsibility in the area of pesticides with the U.S. Department of Agriculture (DOA) and the Environmental Protection Agency (EPA). Similarly, regulation of water is a shared responsibility, as the FDA oversees the labeling and safety of bottled water, while EPA implements standards for drinking water from municipal supplies.[5] Other agencies with regulatory authority in areas similar to the FDA include: the Federal Trade Commission (advertising), Alcohol and Tobacco Tax and Trade Bureau (alcohol), Consumer Product Safety Commission (CPSC), Drug Enforcement Administration (drugs of abuse), Food Safety and Inspection Service (meat and poultry), and Animal and Plant Health Inspection Service (vaccines for animal diseases).[6]

[1] http://www.fda.gov/AboutFDA/Transparency/Basics/ucm192695.htm
[2] http://www.fda.gov/AboutFDA/Transparency/TransparencyInitiative/ucm254426.htm
[3] http://www.fda.gov/AboutFDA/Transparency/Basics/ucm194879.htm
[4] http://www.fda.gov/AboutFDA/Transparency/Basics/ucm203499.htm
[5] http://www.fda.gov/AboutFDA/Transparency/Basics/ucm203499.htm
[6] http://www.fda.gov/AboutFDA/Transparency/Basics/ucm194879.htm

This document is a research report submitted to the U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.

Table I: Criminal Food and Drug Matters Referred to U.S. Attorneys, FY2010

Department	Referrals	Percent
Food and Drug Administration	99	57.6
Food and Consumer Service	15	8.7
U.S. Postal Service	14	8.1
All other Agriculture	8	4.7
Federal Bureau of Investigation	8	4.7
Bureau of Immigration & Customs Enforcement	7	4.1
Drug Enforcement Administration	4	2.3
U.S. Marshals Service	4	2.3
U.S.D.A. Hazardous Materials Account	3	1.7
DHHS Office of Inspector General	2	1.2
General Services Administration	2	1.2
All other Health and Human Services	1	0.6
Army	1	0.6
Department of Justice Inspector General	1	0.6
Other	1	0.6
Metropolitan Police Department	1	0.6
National Park Service	1	0.6
Total	172	100.0

The breadth of agencies involved in the oversight of food and drug regulation is demonstrated in the Department of Justice's Executive Office for United States Attorneys (EOUSA) Legal Information Office Network System (LIONS) database. Table I provides a summary of agencies referring criminal "food and drug" matters to the EOUSA during fiscal year 2010.[7] It is clear that while the FDA refer the majority of food and drug matters received by EOUSA, other agencies such as the Food and Consumer Service, and the U.S. Postal Service, also handle such matters.

Case Sources and Processing

Publicly Available FDA Data

The FDA provides seven data sets as part of the federal Open Government initiative. These datasets include one database of product recalls initiated by firms (based on company press releases), in addition to six incident-specific databases.[8] Additionally the "openFDA" website is set to launch in September 2014. This will allow easy access to public FDA data, and allow for coding and downloading of data by those in the public and private sectors. These datasets will include adverse event reporting, recalls, and documentation.[9]

[7] "Matters" are records of federal criminal matters that have been received by United States attorneys or filed before United States magistrates—not all matters are formally charged as cases. The LIONS codebook does not explicitly define "food and drug" offenses, beyond that they are considered to be regulatory public order offenses.
http://www.justice.gov/usao/reading_room/data/Info/APPENDIX_A_NOVEMBER_2010.PDF

[8] The incident specific data sets describe the following isolated recalls: Abbott Infant Formula Recall, Shell Egg Recalls, Hydrolyzed Vegetable Protein Containing Products Recalls, Pistachio Product Recalls, Peanut Product Recalls, Plainview Milk Cooperative Ingredient Recall, and Fraudulent 2009 H1N1 Influenza Products.
http://www.fda.gov/aboutfda/transparency/opengovernment/default.htm

[9] http://open.fda.gov/about/

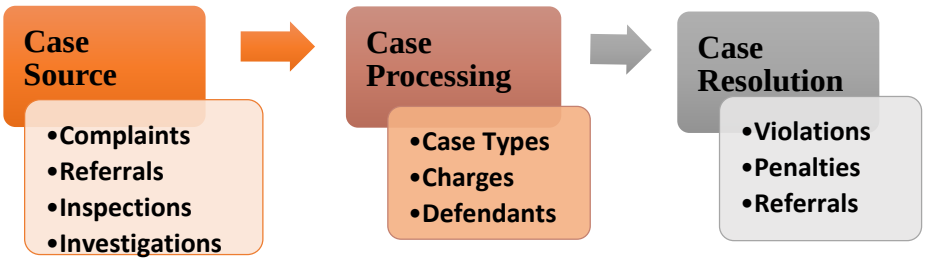
This document is a research report submitted to the U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.

The FDA maintains three publicly available, downloadable databases with information regarding inspections conducted; these include Inspection Observations, Citations, and Classifications. The Inspections Observations database includes descriptions behind any 483 forms (described in detail below), which are completed when a potential violation may have been observed.[10] The Inspections Observations data include the center name (e.g. Biologics, Drugs, Foods, etc.), cite ID, cited statute, short text description, and long text description. The Inspections Citations data, which report citations issued following an inspection, include the firm name, location, inspection date, center, cited statute, and long description of the infraction.[11] The Inspection Classification Database contains searchable information on the status of firms subject to FDA inspections (although some inspection information is withheld until enforcement actions are taken). This database includes fields such as classification (compliance status of a firm), project area (e.g. food safety and applied nutrition, drug evaluation and research, etc.), firm name, location, and inspection date.[12]

In addition to inspection data, Warning letters, which are typically generated from inspections, may be downloaded for particular time periods. These publicly available data include information such as the date the warning letter was issued, the company, issuing office, subject, if a response letter was posted, closeout date, and a link to the letter.[13] Other enforcement actions are also classified in publicly available data—for example a running list of firms and individuals debarred by the FDA is maintained on the website.[14] Clinical Investigator Disqualification Proceedings are also public and available for download.[15] These data include the name, center, status, date of status, date the Notices of Initiation of Disqualification Proceedings and Opportunity to Explain (NIDPOE) was issued, and link to the NIDPOE letter (to be described in detail below).

Data regarding the FDA's criminal and civil enforcement activity can be found in the LIONS database, which is maintained by the case management staff of the EOUSA[16]. These are defendant-level records, containing information about suspects in criminal and civil matters and cases referred to, prosecuted, and closed by United States attorneys or magistrates. These data include cases referred to the United States Attorney's Office by the FDA, and provide details regarding lead charge, litigating responsibility, general offense category, and disposition.

Figure I: Case Processing



Case Initiation

[10] http://www.fda.gov/ICECI/Inspections/ucm250720.htm
[11] http://www.fda.gov/ICECI/Inspections/ucm346077.htm
[12] http://www.accessdata.fda.gov/scripts/inspsearch/
[13] http://www.accessdata.fda.gov/scripts/warningletters/wlSearchExcel.cfm
[14] http://www.fda.gov/ICECI/EnforcementActions/FDADebarmentList/default.htm
[15] http://www.accessdata.fda.gov/scripts/sda/sdNavigation.cfm?sd=clinicalinvestigatorsdisqualificationproceedings
[16] A non-sensitive subset of the LIONS data can be obtained from the United States Attorneys' website: http://www.justice.gov/usao/reading_room/data/CaseStats.htm#data or via the Federal Justice Statistics Program, maintained by the Bureau of Justice Statistics: http://www.bjs.gov/index.cfm?ty=dcdetail&iid=262

This document is a research report submitted to the U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.

The FDA Office of Regulatory Affairs (ORA) oversees all field activities conducted by the agency, including inspections and enforcement. The agency inspects regulated facilities to determine compliance with regulations and the Food, Drug, and Cosmetic Act (21 U.S.C. Chapter 9).[17] The FDA conducts numerous types of investigations, such as routine and for-cause inspections of companies and individuals that manufacture, distribute, or test regulate products, as well as criminal investigations.[18] In fiscal year 2010, the FDA conducted a total 21,012 inspections.[19]

Table II: Case Initiation Data

Case Sources	Data Availability	Cases
Tips	NA	
Complaints	**	
Referrals	Yes (Referrals to EOUSA: LIONS Database)	43 civil 80 criminal
Voluntary Self-Disclosures	**	
Investigations	Yes (Inspection Classification Database)	21,012

When objectionable conditions are observed by investigators, they are documented on an FDA Form 483. The FDA provides summaries of regulation areas cited on 483s, by fiscal year. These summaries do not describe all observations, but demonstrate the number of times an area of regulation was cited as an observation during inspections. The regulatory areas observed in 483s filed in fiscal 2010 are summarized in Table III (Inspection Observations Database). What is not clear is if the disproportionate representation of foods in the database is a function of a higher percent of food centers, more frequent inspections, or disparate enforcement intensity (among other possible explanations).

Table III: Inspectional Observation Summaries from FDA Form 483, FY2010

Center Name	483s Issued
Foods	2,976
Devices	976
Drugs	746
Incidental Text	362
Bioresearch Monitoring	343
Biologics	275
Veterinary Medicine	275
Parts 1240 and 1250	176
Human Tissue for Transplantation	133
Radiological Health	24
Special Requirements	17
Total 483s in System	**6,303**

This table does not represent the complete set of 483's issued in FY2010; some were manually prepared and not available in this format. The sum of 483's for all Product Areas is higher, as a 483 may include citations related to multiple product areas, and counted more than once, under each relevant product center. The actual total 483s in the system is **5,710**. http://www.fda.gov/ICECI/Inspections/ucm255532.htm

[17] http://www.fda.gov/ICECI/Inspections/ucm222557.htm
[18] *Ibid.*
[19] http://www.accessdata.fda.gov/scripts/inspsearch/

This document is a research report submitted to the U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.

Case Processing

Before taking formal enforcement actions, the FDA typically notifies companies and individuals of potential violations.[20] For example, the FDA may issue Warning Letters, which inform those inspected of violations documented that could lead to enforcement action if the violation is not corrected. In fiscal year 2010, the FDA issued 661 Warning Letters. These were most often issued by the FDA's Center for Devices and Radiological Health (18.0 percent), Center for Drug Evaluation and Research (13.3 percent), and the Center for Food Safety and Applied Nutrition (8.5 percent). The Warning Letters were most often due to illegal drug residue (6.2 percent), unapproved new drugs or misbranding (5.7 percent), medical device reporting regulation or misbranding (4.4 percent), and premarket approved, misbranded, or adulterated products (4.4 percent).[21] The FDA may also issue Untitled Letters, which cite violations, but do not always meet the criteria for a Warning Letter. Of the 21,012 inspections conducted in fiscal year 2010, 7,379 were followed by voluntary actions taken by the firm inspected; 849 firms had official action taken, and 12,784 had no action taken (Inspection Classification Database).[22]

Other types of violation notices include Import Alerts, which include information affecting new imports, and NIDPOEs, which are sent to clinical investigators, alerting them that the FDA is considering disqualifying them from future investigations.[23] In fiscal year 2010, four NIDPOE notices were issued (Disqualification Proceedings Database).[24]

Initial administrative actions are decided on and undertaken by the FDA. These actions can include import refusals; biologic license revocations or suspensions; orders of retention; recall, destruction and cessation of manufacturing of human cell, tissue, and similar products; disqualified, restricted, restrictions removed, and assurance lists for clinical investigators; recalls and market withdrawals; and debarment (these administrative actions can be appealed to federal courts).[25] In fiscal year 2010, six inspectors were disqualified and two were restricted following disqualification proceedings (Disqualification Proceedings Database); additionally nine individuals were permanently debarred, and one was debarred for five years (FDA Debarment List).[26,27] Unlike administrative actions, judicial actions (such as criminal convictions) are decided on and undertaken by the federal courts, at the request of the U.S. Department of Justice (DOJ) and FDA.

In fiscal year 2010, the FDA referred fifty-two civil (forty businesses and twelve individuals) and 272 criminal (fifty-eight businesses and 214 individuals) matters to the EOUSA (see Table V).[28] As previously defined, these matters are not yet formal cases, but issues referred to EOUSA by the FDA. In the same year, EOUSA opened formal cases against forty-three civil and 119 criminal defendants, based on matters referred by FDA (Table V).

Table V: Civil and Criminal Matters and Cases Referred to EOUSA by FDA, FY2010

[20] http://www.fda.gov/AboutFDA/Transparency/TransparencyInitiative/ucm254426.htm
[21] http://www.accessdata.fda.gov/scripts/warningletters/wlSearchExcel.cfm
[22] http://www.accessdata.fda.gov/scripts/inspsearch/
[23] *Ibid.*
[24] http://www.accessdata.fda.gov/scripts/sda/sdNavigation.cfm?sd=clinicalinvestigatorsdisqualificationproceedings
[25] http://www.fda.gov/AboutFDA/Transparency/TransparencyInitiative/ucm254426.htm
[26] http://www.accessdata.fda.gov/scripts/sda/sdNavigation.cfm?sd=clinicalinvestigatorsdisqualificationproceedings
[27] http://www.fda.gov/ICECI/EnforcementActions/FDADebarmentList/default.htm
[28] Note that these data are defendant level. Case level data were not available for civil matters or cases, so all are presented at the defendant level for purposes of consistency and comparison. There were 191 matters (46 business and 145 individual) referred in FY2010 involving the 272 defendants mentioned in the text.

This document is a research report submitted to the U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.

	Civil					Criminal			
	Matters In		Cases In			Matters In		Cases In	
	Bus.	Indiv.	Bus.	Indiv.		Bus.	Indiv.	Bus.	Indiv.
Asset Forfeiture	1		1		Murder		1		1
Review of Admin. Action	14	1	14	1	Embezzlement		2		5
Bankruptcy		2		2	Fraud	10	36		30
Constitutionality of Statute	3		3		Counterfeiting	1	1		
Commercial Lit./Gen. Claims	9	4	8	4	Motor Vehicle Theft	1	12		
Civil Penalty	2		1		Drug Trafficking	6	39	1	14
FOIA	2	2	2	2	Other Drug Offenses				2
Fraud	2				Food and Drug	27	72	5	33
Health Care Fraud	4				Custom Laws		4		1
Land Condemnation	1		1		Other Regulatory Offenses	9	18	2	7
Post-Convict. Prisoner Lit.		1		1	Racketeering and extortion			1	
Subpoena/Summons/Warrant	2	1	1	1	Perjury, contempt, intimid.		5		
Torts		1		1	Nonviolent sex offenses		1		
					Conspiracy, aiding, abetting	1	11		8
					Unexpected	3	12	1	8
Total	40	12	31	12	Total	58	214	10	109

These data come from the EOUSA LIONS database for FY 2010

There is clearly a wide array of data available with regard to case processing activities conducted by the FDA. However, as made clear by Table VI, there still exist gaps in our knowledge. While the FDA may refer some administrative cases to federal court if compliance is not achieved through other means (e.g. Warning Letters), it is not clear if this figure is exhaustively captured by the EOUSA LIONS civil database. Additionally, measures of case seriousness do not appear within the publicly available data—though seriousness may be indicated in the text of some documents such as Warning Letters or Dismissal Proceedings.

Table VI: Case Processing Data

FY 2010	Data Availability	Counts	Comments
Case Numbers	No		
Date Case Initiated	Yes		Inspection, Warning Letter, Dismissal dates; EOUSA LIONS data provide partial dates
Num. of Viols./Def.	Incomplete		Not all observations or citations listed from inspections; cap on how many violations may be listed in EOUSA LIONS data
Types of Violation	Yes		
Dates of Viols.	No		However, dates of inspections are included
Defendant Chars.	Incomplete		Company/Individual name and location included in databases, no identifiers listed in EOUSA LIONS
Case Seriousness	No		
Administrative Cases	No		However administrative actions such as warning letters are available
Civil Referrals	Yes	43 cases 52 matters	EOUSA LIONS (unit of analysis is defendant, not case/count)
Criminal Referrals	Yes	119 cases 272 matters	EOUSA LIONS (unit of analysis is defendant, not case/count)

Case Resolutions

This document is a research report submitted to the U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.

As the case processing description indicates, most FDA matters are concluded without the necessity of generating a formal case, or going to trial. Instead, the high volume of inspections and investigations often result in formal or informal warning letters, and are followed by voluntary acts of compliance. However, it is also demonstrated in the LIONS data, that the FDA does refer a number of matters to EOUSA each year, and many are made into formal cases.

In fiscal year 2010, thirty-three civil and 137 criminal defendants' cases were concluded. These cases were referred to the EOUSA by FDA, and captured in the LIONS data. Most of the civil respondents' cases were closed once "necessary action" was taken (n=13), or after a judgment, order, or decision was reached, without a trial (13 in favor of U.S., 1 in favor of opposition). The remainder of civil respondents' cases were concluded by settlement without litigation (n=3), voluntary dismissal (n=2), and post-disposition action (n=1). Most of the criminal defendants' cases were concluded with guilty pleas (n=98), while others were dismissed (n=15), or found guilty by jury trial (n=2). Additionally, cases for twenty-two criminal defendants were either declined or pending.

Table VI: Case Resolution Data

FY 2010	Data Availability	Counts	Comments
Case Numbers	No		
Date(s) of Resolution	Yes		
Defendant Characteristics	No		No identifiers listed in LIONS except whether the defendant is an individual or business
Administrative Cases Resolved			
Case/Defendants	No		
No. of cases dismissed	No		
Number of violations penalized	No		
Number of sanctions imposed	No		
Civil Cases Resolved			
Case/Defendants	Yes	33	EOUSA LIONS (unit of analysis is defendant, not case/count)
No. of cases dismissed	Yes	2	
Number of violations penalized	No		
Number of sanctions imposed	No		
Criminal Cases Resolved			
Case/Defendants	137	137	EOUSA LIONS (unit of analysis is defendant, not case/count)
Number of violations penalized	No		
Number of sanctions imposed	No		
Appeals	No		

Summary: Strengths and Weaknesses of Available Data

This document is a research report submitted to the U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.

It appears that the FDA has more publicly available data than some other agencies covered in this series. Transparency initiatives have resulted in the numerous investigation, warning, and recall databases discussed in this brief. As a result, thorough information about specific events and companies is made available. However, these data are not necessarily exhaustive (e.g. the public spreadsheet of post-inspection 483s is missing manually prepared forms, which are not included in the electronic database). Additionally, the FDA does not provide much data about incidents that are made into formal cases; the only information available on cases was extracted from LIONS. Currently, when DOJ files a case for the FDA, the enforcement action may be made public through a press release; another release may be published following the case's closure.[29] While these press releases are available on the FDA's website, there is no comprehensive, publicly available list of court actions pursued by the FDA. Legal case searches using the Public Access to Court Electronic Records (PACER) and Lexis Nexis Academic databases revealed that the FDA did not bring any cases to trial itself (i.e. independent of DOJ) in fiscal year 2010, but was a defendant on a number of occasions.

The biggest obstacles that must be overcome for the FDA data to be of use for a white collar statistical series, are increased access to information regarding matters that are *not* settled with non-judicial action, such as a warning letter, and additional opportunities to verify the level of comprehensiveness and accuracy with the data that are currently available. At the moment, it appears the only validation source is an FDA report published after fiscal year 2010, "FDA Enforcement Statistics Summary, Fiscal Year 2010".[30] The numbers included in this document are consistent, although not identical, to those derived from the publicly available databases on the agency's website. For example, the Warning Letter download from the FDA website indicated that there were 661 Warning Letters sent in fiscal year 2010, whereas the Enforcement Summary stated that 673 were sent; additionally, the online Debarment List indicated that ten debarments occurred in fiscal year 2010, whereas the Enforcement Summary stated that there were thirteen. It is possible that these discrepancies can be explained by some entries being manually processed, and therefore not included in the digital databases, the timing of case filing, or issues involving privacy.

[29] http://www.fda.gov/newsevents/newsroom/pressannouncements/2010/default.htm

[30] http://www.fda.gov/downloads/ICECI/EnforcementActions/UCM247845.pdf

This document is a research report submitted to the U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.

Consumer Financial Protection Bureau
Annual Case Statistics, FY2013[1]

Megan E. Collins, Miranda A. Galvin, Sally S. Simpson, Peter C. Yeager

The CFPB is an independent federal agency tasked with protecting consumers by supervising the implementation of federal consumer financial laws. The Bureau was created under Title X of the 2010 Dodd-Frank Wall Street Reform and Consumer Protection Act (the Dodd-Frank Act). Operations began in July of 2011.[2] The CFPB's purpose is "to implement and, where applicable, enforce Federal consumer financial law consistently for the purpose of ensuring that all consumers have access to markets for consumer financial products and services and that markets for consumer financial products and services are fair, transparent, and competitive."[3] The agency's core functions include: writing rules, supervising companies, and enforcing federal consumer protection laws; restricting unfair, deceptive, or abusive practices; taking consumer complaints; promoting financial education; researching consumer behavior; monitoring financial markets for new consumer risks; and enforcing laws that outlaw discrimination and other unfair treatment.[4]

The CFPB's mission consists solely of consumer financial protection. This positions its regulatory domain within the broader sphere of economic regulation (see Figure 1). At its inception the agency assumed the enforcement responsibilities of over one dozen consumer protection laws[5] from seven different primary agencies.[6] This resulted in a comprehensive—but not exhaustive[7]—consolidation of consumer

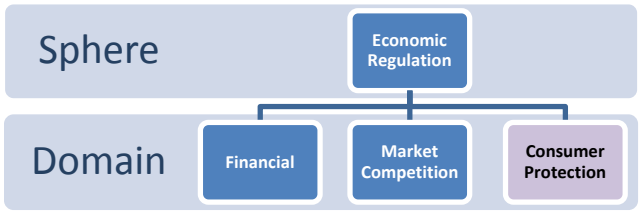


Fig. 1: The CFPB's Regulatory Domain

[1] Note that this brief covers fiscal year 2013, while others in this series report on fiscal year 2010. Because CFPB was not formed until 2010 and did not begin operating until July 2011, fiscal year 2013 was chosen as more representative of a "typical" year of activities compared to the earlier start-up years.
[2] The Dodd-Frank Act, Public Law 111-203, Section 1021.
[3] 12 U.S. Code § 5511 - Purpose, objectives, and functions.
[4] http://www.consumerfinance.gov/the-bureau/.
[5] The statutes transferred to the CFPB include, but are not limited to: the Alternative Mortgage Transaction Parity Act of 1982 (12 U.S.C. 3801 et seq.); the Equal Credit Opportunity Act (15 U.S.C. 1691 et seq.); portions of the Fair Credit Reporting Act (15 U.S.C. 1681 et seq.); the Home Mortgage Disclosure Act of 1975 (12 U.S.C. 2801 et seq.); the Home Ownership and Equity Protection Act of 1994 (15 U.S.C. 1601); the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2601 et seq.); the Secure and Fair Enforcement for Mortgage Licensing Act (12 U.S.C. 5101 et seq.); and the Truth in Lending Act (15 U.S.C. 1601 et seq.). http://files.consumerfinance.gov/f/2012/01/Congressional_Report_Jan2012.pdf.
[6] The statutes transferred to the CFPB include, but are not limited to: the Alternative Mortgage Transaction Parity Act of 1982 (12 U.S.C. 3801 et seq.); the Equal Credit Opportunity Act (15 U.S.C. 1691 et seq.); portions of the Fair Credit Reporting Act (15 U.S.C. 1681 et seq.); the Home Mortgage Disclosure Act of 1975 (12 U.S.C. 2801 et seq.); the Home Ownership and Equity Protection Act of 1994 (15 U.S.C. 1601); the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2601 et seq.); the Secure and Fair Enforcement for Mortgage Licensing Act (12 U.S.C. 5101 et seq.); and the Truth in Lending Act (15 U.S.C. 1601 et seq.). http://files.consumerfinance.gov/f/2012/01/Congressional_Report_Jan2012.pdf.
[7] While the CFPB was designed to serve as a primary agency for consumer protection, the agencies previously tasked with the enforcement of consumer protection statutes still retain authority over some statutes. For example, the FTC still pursues fraudulent advertising cases that mislead consumers; the Federal Deposit Insurance Corporation still retains consumer protection

This document is a research report submitted to the U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.

protection authority. The Dodd-Frank Act outlined specific objectives for the CFPB, seeking to ensure that consumers were appropriately informed and protected from unfair financial practices, and to provide for market transparency and accountability.[8] The CFPB focuses on the illegal behavior of companies and individuals within those companies acting for company gain. While it is possible that individuals acting in organizational roles for personal gain are under the purview of the CFPB, the laws for which the Bureau has enforcement activity make this type of behavior unlikely to appear in agency cases. Dodd Frank also directs the agency to conduct education programs, act as a mediator and investigator of consumer complaints, monitor markets and disseminate relevant information. Finally, the agency is granted rulemaking authority, akin to that held by the Securities and Exchange Commission or Federal Trade Commission.

While not all of the agency's directives are relevant to a white collar crime statistical series, several are. The investigation of consumer complaints and market monitoring, for example, are important sources of discovery of potential violations. The agency is also tasked with assuring compliance. Accordingly, only some of the data promulgated by the agency are desirable for inclusion in the series. Consumer complaints, for example, are not necessarily indicative of a violation. Administrative cases, however, include substantiated violations, and thus are a potentially rich source of data.

The CFPB has, thus far, acted in primarily administrative roles. The Consumer Complaint Database is an administrative process, and the only other source of agency promulgated data relates to administrative hearings (though civil monetary penalties can be meted out during these cases). The CFPB only recently referred its first criminal matter to the Department of Justice[9], illuminating the relationship between the two agencies. The CFPB also files civil claims, though the agency itself releases little to no information about this process.

Publicly Available CFPB Data

The CFPB maintains a number of public and protected databases. Some data can be directly downloaded from the Bureau's website, but other datasets are restricted. Access to the restricted data either requires permission from the Bureau or right of use through a Freedom of Information Act request.

The Consumer Complaint Database is a publicly available compilation of complaints the Bureau has received about financial products and services.[10] Conduct alleged in complaints is not verified prior to being included in the database. However, the Bureau does take some steps to authenticate the complaints.[11] For example, in order to be included in the database the complaints cannot be duplicative of anther complaint to the Bureau from the same consumer, cannot be a whistleblower complaint, must involve a consumer financial product or service within the scope of CFPB jurisdiction, and must be submitted by a consumer or a representative of a consumer with an authenticated relationship with the company.[12] The public database is live and updated each evening with anonymous complaint submission data. Populated fields include: complaint ID, product, sub-product, issue, sub-issue, state, ZIP code, date received, date sent to company, company, company response, whether the response was timely, and if the consumer disputed the response.[13,14]

Criticisms of the Consumer Complaint Database entries have been raised by trade organizations, who object that it is inappropriate to publish data that are not generated through randomly selected consumers, leading to potentially

---

responsibilities. Additionally, consumer protection in the social regulatory sphere (e.g. product and food safety) has not been affected by the creation of the CFPB.

[8] Public Law 111-203, Section 1021 (b)

[9] Nate Raymond. 2013. "U.S. brings charges in first criminal case for consumer agency." Reuters. http://www.reuters.com/article/2013/05/07/us-cfpb-criminal-idUSBRE9460LO20130507

[10] http://www.consumerfinance.gov/complaintdatabase/

[11] Disclosure of Consumer Complaint Data [Docket No. CFPB-2012-0023] http://files.consumerfinance.gov/f/201303_cfpb_Final-Policy-Statement-Disclosure-of-Consumer-Complaint-Data.pdf

[12] *Ibid.*

[13] http://files.consumerfinance.gov/f/201403_cfpb_consumer-response-annual-report-complaints.pdf

[14] https://data.consumerfinance.gov/dataset/Consumer-Complaints/x94z-ydhh.

This document is a research report submitted to the U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.

unrepresentative findings (i.e., selection bias). However, the CFPB has received support from state agencies, asserting the data do not need to be random to be informative, particularly for the purpose of decreasing risk, increasing customer service, and identifying best practices.[15]

The data do not distinguish complaints of major and minor significance, or distinguish between those based on confusion about a requirement from those that are violations. Additionally the database is updated regularly and additional complaints are added on a rolling basis. Therefore the number of complaints filed in fiscal year 2013 may appear to increase over time as additional complaints are added to the database.[16]

Another data source, which is available to law enforcement and requires permission for access, is the Repeat Offenders Against Military (ROAM) Database.[17] This database is a joint effort with state Attorneys General and the Department of Defense to track companies and individuals who repeatedly scam military personnel. The database, which was approved in 2012 and has been developed gradually, synthesizes publicly available data from multiple sources including final judgments, formal judicial and administrative findings, and other formal allegations, with the intention of supplementing with private data as the series develops.[18] While other agencies, such as the Federal Trade Commission, also collect information on consumer complaints from the military community (e.g., via Military Sentinel), ROAM differs in the kind of data it collects. Specifically, unlike Military Sentinel ROAM reports on completed enforcement actions.

As part of its yearly reporting activities, the CFPB releases the Loan Application Register data (HMDA). These data, compelled as part of the Home Mortgage Disclosure Act and collected beginning in 2007, are provided by banks and other financial institutions. The data comprise approximately fifteen to twenty million mortgage records each year. Records contain information regarding the property, its location, the loan, the loan applicant, and the lender, and can be sorted by year or by specific filters (e.g., property type). The CFPB is tasked with conducting assessments to verify the accuracy of the reported data.[19] While the HMDA data do not specifically highlight infractions or enforcement activity, they may be useful for identifying patterns of discriminatory lending (i.e. violations).[20]

In addition to formal databases, CFPB activity can be found on the "Administrative Adjudication" page of the Bureau website.[21] This page includes administrative proceeding files (consent orders and stipulations) for CFPB cases. These documents are provided in portable document format (PDF) for each individual case, and include information such as business name, violations, fees, and provisions.[22] These administrative files are the most fruitful publicly available agency source of Bureau Activity for a white-collar crime series but there are some limitations. For instance, while it appears that all closed cases are made available through this portal, investigated administrative matters, or ongoing cases, are not documented publicly. Further, these files do not include civil or criminal actions initiated by the Bureau.

Case Sources and Processing

---

[15] Disclosure of Consumer Complaint Data [Docket No. CFPB-2012-0023] http://files.consumerfinance.gov/f/201303_cfpb_Final-Policy-Statement-Disclosure-of-Consumer-Complaint-Data.pdf

[16] For example, in October 2012, credit card complaints dating back to 12/1/11 were added; in March 2013 mortgage complaints dating back to 12/1/11 and bank account and service complaints, private student loan complaints, and other consumer loan complaints dating back to 3/1/12 were added; in May 2013 credit reporting complaints dating back to 10/22/12 and money transfer complaints dating back to 4/4/13 were added; and in November 2013, debt collection complaints dating back to 7/10/13 were added to the database. http://files.consumerfinance.gov/f/201403_cfpb_consumer-response-annual-report-complaints.pdf.

[17] Data may be accessed by contacting ROAMDatabases@cfpb.gov; http://www.consumerfinance.gov/blog/a-new-tool-for-protecting-the-military-community/

[18] http://files.consumerfinance.gov/f/2012/01/Project-ROAM-CFPB.pdf

[19] http://files.consumerfinance.gov/f/201310_cfpb_hmda_resubmission-guidelines_fair-lending.pdf.

[20] http://cfpb.github.io/api/hmda/.

[21] http://www.consumerfinance.gov/administrativeadjudication/.

[22] *Ibid.*

This document is a research report submitted to the U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.

The CFPB's many data sources capture multiple stages of the enforcement process (see Figure 2). However, most capture specific *types* of cases, rather than specific stages. In addition, each case type may originate from various sources. However, publicly available data on case sources is quite limited, being largely confined to information on consumer complaints.

The Bureau's Consumer Response team receives complaints directly from consumers through its website, toll-free telephone line, mail, email, facsimile, and referral from other agencies.[24] The Consumer Response team then screens all complaints based on numerous criteria (e.g., whether the complaint falls within Bureau's enforcement authority, is complete, duplicates prior submissions by the same individual). These cases then appear in the consumer complaint database, or, if further action is taken, in administrative files. Unfortunately, a case cannot be linked to a specific complaint unless that complaint is mentioned within the agency drafted administrative consent order.

Because the agency's enforcement purview is relatively narrow compared with other agencies (e.g., consumer financial laws and products), the kinds of complaints it receives are concentrated in certain areas. Most common are complaints regarding mortgages, credit cards, bank accounts or service, and credit reporting (see Table 1). The types of credit card complaints that are commonly submitted by consumers involve billing disputes, identity theft, fraud, embezzlement, annual percentage or interest rates, closing or cancelling of accounts, credit reporting, credit card payment, debt protection, collection practices, late fees, and other fees. The most common occasions of mortgage complaints include applying for loans (application, originator, mortgage broker), receiving a credit offer (credit decision/underwriting), signing the agreement (settlement process and costs), making payments (loan servicing, payments, escrow accounts), and when unable to pay (loan modification, collection, foreclosure).[25]

Product	Complaints	Sub-Products
Bank Account or Service	13,121 (13.2%)	Certificate of deposit (673); Cashing a check without an account (91); Checking account (10,153); Other financial product/service (1,244); Savings account (960)
Consumer Loan	2,898 (2.9%)	Installment loan (366); Personal line of credit (265); Vehicle lease (222); Vehicle loan (1,945)
Credit Card	13,590 (13.7%)	Unspecified (13,590)
Credit Reporting	12,384 (12.5%)	Unspecified (12,384)
Debt Collection	4,410 (4.4%)	Unspecified (860); Auto (149); Credit card (1,083); Federal student loan (113); Medical (405); Mortgage (222); Non-federal student loan (134); Other (phone, health club, etc.) (1,444)
Money Transfers	295 (0.3%)	Domestic (US) money transfer (167); International money transfer (128)
Mortgage	49,890 (50.2%)	Conventional adjustable mortgage (ARM) (5,102); Conventional fixed mortgage (13,861); FHA mortgage (4,190); Home equity loan or line of credit (1,859); Other mortgage (23,528); Reverse mortgage (296); Second mortgage (271); VA mortgage (783)
Student Loan	2,833 (2.8%)	Federal student loan (36); Non-federal student loan (2,797)
Total	99,421 (100%)	

Table 1: Consumer Complaint Products and Sub-products, FY 2013[23]

In fiscal year 2013, 99,421 complaints were filed with the CFPB and recorded in the Consumer Complaint Database. The database also specified sub-products within the eight primary products (i.e., within the primary category of "Mortgage" the sub product clarifies the specific type of mortgage; see Table 1). There was little substantive overlap in complaints

[23] Consumer Complaint Database. https://data.consumerfinance.gov/dataset/Consumer-Complaints/x94z-ydhh.
[24] http://files.consumerfinance.gov/f/2012/01/Congressional_Report_Jan2012.pdf.
[25] *Ibid.*

This document is a research report submitted to the U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.

across products, except for across Debt Collection and Student Loans. However, the CFPB ensures that despite the same sub-products being referenced, these complaints are unique and not duplicate entries by the same complainant. Complaints are cataloged only once, though the sub products of federal student loans and non-federal student loans are specifications of both debt collection and student loan complaints. Sub products should simply be considered as elaborations of primary product complaints.

The Bureau also has a supervision program that determines if providers are in compliance with federal consumer financial laws, assesses whether companies appropriately monitor their own compliance, and identifies risks to consumers in various markets. The Bureau's activities include a large bank supervision program (focusing on compliance at banks, thrifts, and credit unions with assets over ten billion dollars, their affiliates, and certain service providers), and supervision of non-bank providers of consumer financial products and services (e.g. certain financial services companies without a bank, thrift, or credit union charter, such as mortgage lenders and brokers, credit bureaus, and payday lenders).[26]

On top of its role in mediating complaints, the CFPB may initiate action against companies. Investigations can be prompted by Bureau staff or referred by other regulators and the United States Department of Housing and Urban Development (HUD). Currently, the Bureau oversees a joint task force on foreclosure scams with the Special Inspector General for the Troubled Asset Relief Program (SIGTARP) and the U.S. Department of the Treasury. The task force was formed to target scams directed at homeowners applying for Home Affordable Modification Program (HAMP), which is a foreclosure prevention program managed by Treasury. The whistleblower hotline allows current or former employees, contractors, vendors, and competing companies to submit information or tips, and provides as much confidentiality as is allowed by the law.[27]

Case Sources	Data Availability	Cases
Tips	NA	NA
Complaints	Consumer Complaint Database	99,421
Referrals	NA	NA
Voluntary Self-Disclosures	NA	NA
Investigations	NA	NA

Table 2: Case Initiation Data
NA: Not available

It should be noted that while there is a wide array of data available on the CFPB website, the applicability to constructing a white collar enforcement database is limited. Table 2 catalogues the limited information on case initiation available on the Bureau's website. The Consumer Complaint Database identifies the quantity, nature, and outcome of complaints for a given year. Unfortunately the same type of comprehensive database is not available for Bureau-led investigations or referrals from other agencies, nor for tips and self-disclosures.

Case Processing. The Consumer Financial Protection Bureau handles two types of cases – those which are substantiated violations, and consumer complaints, which may not be formal violations (opposed to undesirable interactions between consumer and company). Subsequently, the type of case (i.e. the originating source of the case) determines the course of case processing. When complaints have been entered into the system by consumers, the Office of Consumer Response reviews complaints to determine if they fall under the agency's enforcement authority and is authentic. A company then has 15 calendar days in which to initially respond. Once a company has issued a response, the complainant is allowed to provide feedback, at which point a complaint is considered "closed". The Bureau then determines how to proceed by prioritizing, reviewing and investigating complaints in cases where the company fails to provide a timely response (i.e., within fifteen days of the complaint) or if the complainant disagrees with the company's response, while also considering

[26] http://files.consumerfinance.gov/f/2012/01/Congressional_Report_Jan2012.pdf.
[27] *Ibid.*

This document is a research report submitted to the U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.

the nature of the complaint itself. [28] The Bureau's Office of Consumer Response works to determine why a company may have failed to provide a timely response, and/or whether the company's response warrants additional review in concordance with consumer financial protection laws. In doing so, Consumer Response may elicit additional information from consumers and companies, or refer complaints to the Bureau's Division of Supervision, Enforcement, and Fair Lending & Equal Opportunity, the unit responsible for enforcement action.[29] Potential violations may also be found through the supervision and monitoring activities of the Bureau.[30]

In addition to complaint processing, the Bureau also pursues administrative enforcement actions both in response to and independently of consumer complaints. The Office of Administrative Adjudication, an independent judicial office within the Bureau, holds hearings to decide on formal charges and actions brought by the CFPB. Such charges are based on evidence that federal laws under the purview of the Bureau have been violated.[31] Administrative cases are heard before an Administrative Law Judge. Unfortunately, the CFPB only provides documentation on completed cases, precluding a discussion of administrative matters opened in fiscal year 2013. It is possible to put together case processing data on these completed cases, though such methods may return only a subset of cases processed. Cases that are terminated before a consent order, for example, will not be in these files, nor will ongoing cases.

FY 2013	Data Availability	Counts	Comments
Case Numbers	NA	NA	Complaint identification numbers are available. However, not every complaint develops into a case or is even representative of a violation. Docket numbers are available for concluded administrative cases
Date Case Initiated	Incomplete	NR	Month and year of initiation are contained in concluded administrative cases.
Num. of Violations	Y	***	Statutes violated are listed in concluded administrative case files
Num. of Defendants			
Types of Violation	Y	NR	
Dates of Viols.	Incomplete	NR	Month and year of violation are contained in administrative case materials provided.
Defendant Chars.	Incomplete	NR	Defendant name included in Consumer Complaint Database, and in Administrative Adjudication PDFs
Case Seriousness	NA	NR	
Administrative Cases	Y	7	Can access only case stipulation or consent orders, and only in PDF format. It does not appear to be possible to determine how many cases are initiated per year because the process data are available only for closed cases.
Civil Referrals	NA	***	
Criminal Referrals	NA	***	

Table 3: Case Processing Data Available from the CFPB

Case Resolutions

Because companies are given only a 15-day window to respond to a complaint lodged by a consumer, 99.9 percent of complaints received in fiscal year 2013 have been closed. Most consumer complaints (75.6 percent) were closed with an

[28] Consumer Financial Protection Bureau. Consumer Response: A Snapshot of Complaints Received through June 30, 2014. http://files.consumerfinance.gov/f/201407_cfpb_report_consumer-complaint-snapshot.pdf

[29] http://files.consumerfinance.gov/f/201403_cfpb_consumer-response-annual-report-complaints.pdf.

[30] *Ibid.*

[31] http://www.consumerfinance.gov/administrativeadjudication/.

This document is a research report submitted to the U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.

	Total
Closed with Unknown Response	2,882
% down	2.9
Closed with Explanation	75,115
% down	75.6
Closed with Monetary Relief	9,020
% down	9.1
Closed with Non-Monetary Relief	12,329
% down	12.4
Untimely Response	75
% down	0.1
Total	99,421
% down	100.0

Table 4: Outcomes of Consumer Complaints

explanation (see Table 4). Additionally, most consumers (78.3 percent) did not dispute the outcome of their complaint. As stated earlier, the Bureau's Office of Consumer Response is tasked with identifying why in 75 cases companies appear to have failed to provide a timely response, why consumers may have disputed the outcome, and what next steps to take. Thus, while the complaint may be marked closed, it is not necessarily the conclusion of case activity by the Bureau. Often the closure of a consumer complaint may initiate an investigation.

Seven administrative cases were adjudicated by the CFPB in fiscal year 2013 (as indicated by the dates the consent order and stipulation documents were signed) [32]. The consent orders cover different kinds of conduct which have been resolved by monetary, compliance, and administrative provisions that were agreed upon by the company and CFPB. Similarly, the stipulation documents included a consent agreement and waivers, and were signed off by company directors and Cordray. Based on the content of available PDF consent order and stipulation documents, these seven cases alleged twenty-five violations by ten companies; multiple companies may be charged in the same administrative case. Violations of statutes 12 USC §§ 5531 and 5536 were listed for each case, which state the Bureau's authority in the adjudication (see Table 5).

While these administrative cases provide richer case details than the consumer complaint database (which also lacks the ability to distinguish genuine violations from unfounded complaints), the administrative case files still do not provide all of the information that is desirable for inclusion in a white-collar statistical series. As Table 6 demonstrates, defendant characteristics are not provided within the agency files (though supplementary sources may be useful). Civil and criminal case files are absent entirely from the Commission's datafiles; a search of their website returns not even a discussion of civil or criminal case processes. This is a significant disadvantage of using Bureau data without supplementary sources.

Statute	Description	Count
12 CFR § 1002.6	ECOA Rules concerning evaluation of applications	1
12 CFR Part 1026	CFPB Truth in Lending (Regulation Z)	3
12 USC §§ 2601 et seq.	Real estate settlement procedures	1
12 USC § 5531	CFPB authority prohibiting unfair, deceptive, or abusive acts or practices	7
12 USC § 5536	CFPB prohibited acts	7
15 USC § 45(a)(1)	FTC unfair methods of competition unlawful; prevention by Commission	1
15 USC §§ 1601 et seq.	Consumer credit cost disclosure	2
15 USC §§ 1681 et seq.	Credit reporting agencies	2
15 USC §§ 1691 et seq.	Equal credit opportunity	1

Table 5: Administrative Adjudication Statutes in Cases Closed in FY2013[33]

[32] *Ibid.*

[33] Consumer Financial Protection Bureau. Office of Administrative Adjudication. http://www.consumerfinance.gov/administrativeadjudication/

This document is a research report submitted to the U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.

FY 2013	Data Availability	Counts	Comments
Case Numbers	Inc.	NR	Complaint identification number in Consumer Complaint Database; file number included on consent order and stipulation documents
Date(s) of Resolution	Inc.	NR	Not included in Consumer Complaint Database; date consent order and stipulation documents signed is noted
Defendant Characteristics	Inc.	NR	Company name included in Consumer Complaint Database and on administrative documents
Administrative Cases Resolved			
No. of cases dismissed	NA	NA	
No. of Defendants	Y		
No. of violations penalized	Inc.	***	Docket information doesn't clearly link penalty to specific violation
Number of sanctions imposed	Y	***	
Civil Cases Resolved			
No. of cases dismissed	NA	NA	
No. of Defendants	NA	***	
Number of violations penalized	NA	NA	
Number of sanctions imposed	NA	NA	
Criminal Cases Resolved			
Cases Declined	NA	NA	
No. of Defendants	NA	NA	
No. of violations penalized	NA	NR	
No. of sanctions imposed	NA	NR	
Appeals	NA	NA	

Table 6: Case Resolution Data
NA: Not Available NR: Not Relevant

Other Data Sources

In addition, civil and criminal case data can be found in the federal website Public Access to Court Electronic Records (PACER). For a nominal fee this site allows users to search for cases in criminal, appeals, bankruptcy, and civil court files by a number of parameters. A search of PACER court filings for "Consumer Financial Protection Bureau" and "CFPB" returned eleven civil cases filed in fiscal year 2013 in which the Bureau is bringing affirmative action (i.e., is listed either as a plaintiff or petitioner). However, PACER records have been shown to be less complete than agency records in previous work (see data briefs on SEC and FTC, this series). Without agency data, it is not possible to determine the quality of PACER's data in relation to the CFPB.

Data from the Federal Justice Statistics Program may also be able to offer new dimensions of the CFPB's involvement in criminal and civil cases. However, the series has not yet released FY 2013 data, precluding an evaluation of the CFPB's involvement via this source. In the future, data collected Executive Office of the US Attorney[34] may prove useful, as they have with SEC, FTC, FDA and EPA.

[34] The FJSP data are available through ICPSR with an approved data protection plan. In order to isolate criminal matters related to agency activity, matters can be filtered by referring agency if that information was provided. The U.S. Attorney's case management system, LIONS (from which the FJSP data are drawn) does not strictly require that a value be entered for the referring agency variable. Thus, a certain amount of missing data can may be expected.

This document is a research report submitted to the U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.

Summary: Strengths and Weaknesses of Available Data

The CFPB is quite different from other agencies profiled in this series. Because The CFPB primarily serves to oversee aspects of consumer protection and facilitate exchanges between consumers and companies, the publicly available data have limited value for a white-collar crime data series. The Consumer Compliance Database contains a high volume of complaints with details about the complaint and outcome. However, it is unlikely that many of these incidents fall within the definition of white collar offending utilized in this series, and the details included in the database are insufficient for identifying relevant cases. Case data may be used by researchers to assess trends in offending, based on reporting patterns, but such examinations are outside the purview of this series.

The most useful information likely comes from the administrative docket documents, which are currently only available in PDF format. These are useful in the rich detail that they provide, but limited in their utility. These documents would likely require more than data scraping software to fully comprehend, given the use of legal and legislative jargon in the text. Unfortunately, the CFPB does not provide civil or criminal case files in any form, unlike the comprehensive files provided by other agencies (e.g. SEC, FTC, EPA).

Supplementing the CFPB's agency managed data may be possible through either PACER or FJSP records. PACER contains civil cases filed by the Bureau that would otherwise be uncounted in the statistical series of white-collar crime and can be used both to compile a list of cases as well as mine court documents for defendant and offense characteristics. Unfortunately, it is not yet possible to assess the quality of these data relevant to the CFPB, as researchers cannot compare case counts across sources.

This document is a research report submitted to the U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.