BEATING THE RAP: How Current Federal Investigation into Mortgage-Backed Securities Compares to other High Profile Federal Investigations.
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Summary

Despite triggering a massive recession that sent the U.S. and world economy into a tailspin, no executives at the major U.S. banks and lending institutions have been prosecuted for fraudulent practices. The investigation into wrongdoing that led to and exacerbated the financial crisis has been weak and limited, even compared to past financial scandals and investigations conducted under Republican presidents.

- After the S&L crisis more than 1,000 bank and thrift executives were convicted of felonies[i] and after the Enron scandal over 20 of Enron's top leadership were convicted of or plead guilty to criminal charges, including the founder and the CEO.[ii]

- In the aftermath of the mortgage crisis **no executive of a major Wall Street bank or financial institution has been convicted of criminal charges** and federal prosecutions for financial fraud have dropped by half since the 1980s S&L investigations.[iii]

- Criminal prosecution for financial crimes has dropped. In 1995 bank regulators referred 1,837 cases to the Justice Department for criminal prosecution, while from 2007-2011 there was an average of only 72 per year.[iv]

- The Residential Mortgage Backed Security (RMBS) working group created by President Obama to investigate the mortgage and loan industry is underfunded and understaffed. The RMBS has a staff of merely 100 people, many of whom are only working part-time on the investigation and come from the U.S. Attorney's office and various state AG's offices and government agencies.[v] The S&L investigation had over 1,000 people and the investigation of Enron, a single company, had 100.[vi]

- The limited action of the federal investigation into mortgage and securities fraud appears to be moving towards civil rather than criminal charges. Yet, 16 criminal cases, featuring 33 defendants, were brought against Enron.[vii] After the Enron scandal the Corporate Fraud Task Force **brought 1,063 convictions, including 167 corporate presidents and CEOS**, and in its first year alone was involved in

more than 300 criminal fraud investigations.[viii]

- Although earlier investigations did not transform the financial system they did lead to new regulations and a degree of accountability, which is unlikely in the current situation if banks and their leaders are not prosecuted.

	Convictions and Guilty Pleas of Top Executives	Number of Federal Criminal Investigators
S&L Crisis	1,000[ix]	1,000[x]
Enron Scandal	23[xi]	100[xii]
Mortgage Crisis	0[xiii]	100*

***** This number represents the staff of the RMBS working group, but there is no concrete number of Federal investigators.[xiv] Reports show 50 staffers from DOJ, 40 from SEC and other from state AG offices and government agencies.[xv]

Overall, there has been a steady decline over the past few decades in criminal charges for financial crimes. In 2011, U.S. Justice Department **prosecutions for financial institution fraud dropped by 57.7% from 20 years ago** and by 28.6% over the last decade, according to analysis by Syracuse University's Transactional Records Access Clearinghouse.[xvi] Much of the fault lies with regulators who are, at least theoretically, best positioned to refer cases for prosecution. Between 2000 and April 2011 the Office of Thrift Supervision, which was created after the S&L crisis, **did not refer a single case to the Justice Department**.[xvii] Yet, the scale of the current crisis and money lost from thrift failures is much larger in 2008 than it was in 1989 during the original S&L crisis.[xviii]

The lack of prosecutions is not by chance, but a reflection of the resources, personnel, and commitment provided by the federal government. Roughly 1,000 people were on the team investigating the S&L crisis[xix] and several special government task forces were created.[xx] The Enron Justice Department investigation had 100 people and inquiries were conducted at the FBI, SEC, Labor Department, and General Accounting Office, as well as two Senate inquiries and two House committee investigations.[xxi] The recent investigation into Roger Clemens had 93 federal agents and officers assigned to it, nearly the same number as the investigation into fraud across the entire housing industry.[xxii]

The RMBS working group has struggled to get funding and staff.[xxiii] It is unclear who makes up the 100 person staff of the working group. Reports have said that only around 50 are from DOJ, although it is unclear if these are prosecutors or just other staff members, 10 FBI agents[xxiv], along with 40 from SEC and others from state AG offices.[xxv] The House rejected an additional $55 million requested by the Justice Department to fund the investigation in FY 2013.[xxvi] According to William Black, former litigation director of the Federal Home Loan Bank Board, the S&L investigation made 10,000 criminal referrals, but in recent years hundreds of FBI agents have been pulled off of white-collar crime investigations.[xxvii] In the spring of 2008 the FBI scaled back its

investigation into mortgage fraud and the Justice Department rejected calls to create a task force on mortgage-related issues[xxviii] – even though the Bureau itself had been one of the first to warn, in 2004, of an "epidemic" of fraud in the mortgage industry.[xxix]

The RMBS working group has issued several civil subpoenas, but none on behalf of a grand jury, which is the primary process for criminal investigation.[xxx] The SEC has brought cases against several mid-level bank employees, but senior executives have yet to be charged, unlike during Enron and S&L.[xxxi]

Yet even the comparatively robust prosecution in past financial crises has not led to long-term meaningful reform, and fines have been miniscule in comparison to soaring profits and executive compensation. Total fines on the banks for their role in the Enron fraud, the Internet bubble, violation of sanctions against foreign countries such as Iran, and money-laundering activities are **less than 1% of financial sector profits and bonuses during the same period**.[xxxii] Although earlier investigations did not transform the financial system, they did lead to new regulations and a degree of accountability. The S&L crisis spawned new agencies and oversight, while Enron led to the Sarbanes-Oxley Act and coincided with the criminal prosecution of executives at other companies, such as WorldCom, Adelphia and Tyco.

Citations

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