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CIVIL DEBT COLLECTION

Justice's Private Counsel Pilot Program Should Be Expanded





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The Honorable John Glenn, Chairman
The Honorable William V. Roth, Jr.
Ranking Minority Member
Committee on Governmental Affairs
United States Senate

The Honorable Joseph R. Biden, Chairman
The Honorable Orrin G. Hatch
Ranking Minority Member
Committee on the Judiciary
United States Senate

The Honorable Jack Brooks, Chairman
The Honorable Hamilton Fish, Jr.
Ranking Minority Member
Committee on the Judiciary
House of Representatives

The Honorable Gary A. Condit, Chairman
The Honorable Craig Thomas
Ranking Minority Member
Information, Justice, Transportation,
and Agriculture Subcommittee
Committee on Government Operations
House of Representatives

Public Law 99-578¹ (1986) required the Comptroller General to evaluate the Attorney General's private counsel debt collection pilot program. The act, as amended, authorized a pilot program whereby the Attorney General is to make best efforts to contract with at least 4 private counsel firms in up to 15 judicial districts to litigate and collect nontax delinquent civil debts.² The purpose of the pilot program is to determine whether private counsels can (1) reduce civil case backlogs in U.S. Attorney offices (USAO) and (2) cost-effectively collect delinquent nontax civil debts. Our first report³ addressed the Department of Justice's efforts to comply with the law's provisions to follow federal contracting competition requirements,

¹This law amended 31 U.S.C. 3718.

²Congress extended the pilot program through September 30, 1996, and increased the maximum number of judicial districts that could participate from 10 to 15. P.L. 102-589 (1992).

³Department of Justice: Status of Implementing Private Attorney Debt Collection Pilot Program (GAO/GGD-89-90, Aug. 15, 1989).

obtain reasonable prices, and encourage minority-owned law firms to compete. We noted in that report that we could not evaluate the program's cost effectiveness because the U.S. Attorneys had not collected the necessary data.

This report assesses the overall results of the pilot program in the seven federal judicial districts where it was implemented. Specifically, this report (1) examines whether Justice's use of private counsels is a cost-effective mechanism for collecting delinquent nontax civil debt, (2) compares collection results and costs of the participating USAOs and private counsel firms, and (3) reviews the effect that private counsel firms had on reducing the caseload of nontax civil debt cases. It also assesses the future role of private counsel firms in collecting debts owed the government. Appendix I contains additional information on our objectives, scope, and methodology.

Results in Brief

We believe that the pilot program has generally been successful. Through September 1992,⁴ private counsel firms and USAOs participating in the pilot program in seven federal judicial districts collected \$122.5 million in debt, at a total estimated cost of \$5.3 million.

We believe private counsel firms were cost effective in collecting nontax civil debt. Those firms collected \$9.2 million at a cost of \$2.4 million. Pilot USAOs collected substantially more unpaid civil debt at only slightly higher estimated costs (\$113.3 million collected at a cost of \$2.9 million) than private counsel firms. However, it is difficult to make unambiguous conclusions about the relative efficiency of USAOs and private counsel firms. Differences in how USAOs and private counsel costs are measured and differences in the size of cases worked by USAOs and private counsel firms tend to skew dollar per case collected results in favor of USAOs. However, because of large differences in the number of cases handled, other measures favor the private counsels. When costs of collection are calculated on a cost per case basis, for example, USAOs cost \$422 for every case closed compared to \$243 for private firms.

Private counsel firms assisted in working through the existing debt caseload, addressing both large numbers of the debt collection cases that were backlogged at the program's inception, and later handling a majority of newly referred cases. Private counsel firms addressed 25,519

⁴Data through fiscal year 1992 were the latest available when we did our review.

(67.6 percent) of the 37,758 total debt cases referred to them for collection through September 1992.

More importantly, private counsel firms worked cases and collected debt that USAOS might not have otherwise addressed because of their workloads. Department of Education officials told us that without private counsels working their delinquent student loan cases, collection efforts on many of those cases would not have been made because USAOS either would not or could not have handled the volume of student loan cases. Six of seven pilot USAOS reported that their combined civil and criminal (e.g., criminal fines or restitution) debt caseload remained too high, and five told us that they needed the private counsels to help manage their overall debt caseloads.

From fiscal year 1985 through 1992, while the pilot USAOS applied decreasing numbers of staff years to debt collection work, the average number of debt collection cases pending in USAOS (exclusive of cases referred to private counsel firms) grew by 23 percent. That increase, however, reflects two distinctly different trends: (1) a tripling in the number of pending criminal debts, which are handled only by USAOS (or other Justice staff) and not by private counsel, and (2) a 76-percent decline in the average number of pending civil debts.

The combination of a decrease in the number of referred nontax civil debt cases and legislative requirements of the pilot program threatens Justice's overall ability to supplement its debt collection capability with private counsel firms. Current law requires Justice to make best efforts to ensure that at least four private counsel firms participate in the pilot program in each designated judicial district. Participating private counsel firms said they need a relatively large volume of cases to ensure profitable operations. Through fiscal year 1992, over 85 percent of the cases referred to private counsel firms were delinquent student loan cases. But because Education had virtually stopped sending cases for collection (opting instead for wage garnishment), Justice can no longer refer the volume of cases needed to support four private counsel firms in each participating district. We are including matters for congressional consideration that are intended to help Justice retain and enhance its use of private counsel firms to supplement its ability to meet changing civil debt collection needs.

Background

Justice is the government's collector of last resort. After federal departments or agencies exhaust all reasonable efforts short of litigation

to persuade debtors to pay what they owe, they are to refer the matter to Justice. Justice is to collect such civil debts (e.g., payments due on student loans or mortgages guaranteed by a federal agency) by filing suit and obtaining and enforcing judgments.

The responsibility for debt collection activities is divided among several Justice components. The office of the Associate Deputy Attorney General has overall responsibility to plan, supervise, and coordinate Justice's financial litigation and debt management efforts. Several Justice litigating divisions have major roles in litigating and collecting various kinds of civil and/or criminal debts (i.e., criminal fines, restitution, and special assessments) and are to work closely with the U.S. Attorneys in collecting those debts. For example, the Tax Division is responsible for recovering taxes from bankrupt debtors and individuals and corporations who owe delinquent taxes. Justice's Civil Division holds overall responsibility for litigation and collection of civil debt owed the government. The Civil Division generally handles only large civil debt cases and delegates most debt owed client agencies to the 93 U.S. Attorneys, the government's principal litigators.⁵ Each USAO has a criminal and civil unit, and each civil unit has a financial litigation unit (FLU) to pursue civil and criminal debts owed the government. Of the 8,083 total work years that the 94 USAOs applied to all activities in fiscal year 1992, 328 (37 Assistant U.S. Attorneys, 65 paralegal specialists, and 226 financial litigation agents) were applied to debt collection.

Justice's fiscal year 1994 appropriations act⁶ provided for an increase in debt collection resources. The act authorizes the Attorney General to credit to Justice's working capital fund up to 3 percent of all amounts collected pursuant to civil debt collection litigation activities beginning in fiscal year 1994. Justice can use those collections to pay for the costs of "processing and tracking" debt collection litigation but not for actual litigation expenses. The House Conference report accompanying the 1994 appropriations act⁷ described "processing and tracking" as including such services and functions as Justice's debt collection management unit, debt accounting operations group, and other activities and debt collection tools associated with the litigation and collection of debts (e.g., credit reports, asset investigations, and training). The report noted that if Justice

⁵Because a single U.S. Attorney administers offices in both Guam and the Northern Mariana Islands, there are 94 USAOs but only 93 U.S. Attorneys.

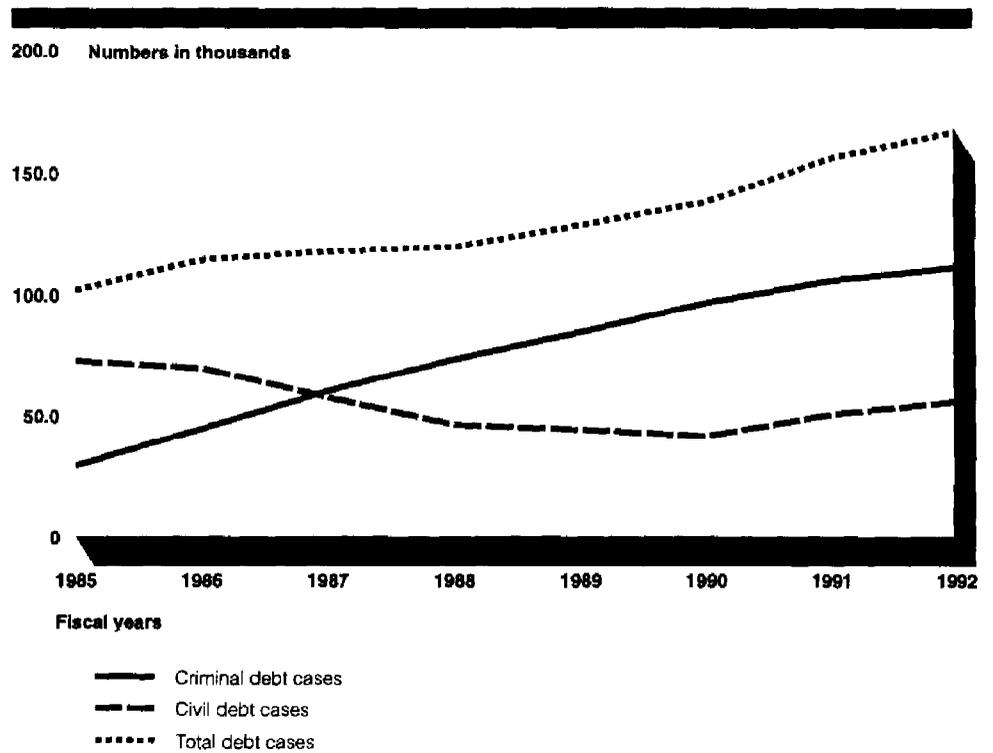
⁶P. L. 103-121, Section 108, 107 Stat. 1153, 1164 (1993).

⁷H.R. Rep. No. 103-293, 103rd Cong., 1st Sess. at 22 (1993).

collected \$900 million in civil debt during fiscal year 1994, \$27 million could be deposited in the working capital fund, and total debt collection resources available in 1994 could increase to an estimated \$44.3 million. As of April 1994, according to Justice officials, the working capital fund was accumulating money, but Justice had yet to release any of this money for debt collection activities.

According to statistics from Justice's Executive Office for U.S. Attorneys (EOUSA), the number of cases and amount of civil debt owed the government has grown significantly since fiscal year 1988. Figure 1 shows the change in the criminal and civil debt caseloads pending at the end of each fiscal year in USAOS. It demonstrates the growing and changing mix of pending USAOS' debt cases. Civil debt cases accounted for roughly 71.2 percent of the workload pending at the end of fiscal year 1985, but accounted for only 33.4 percent of the workload pending at the end of fiscal year 1992. USAOS recorded \$2.3 billion in outstanding criminal debt at the end of fiscal year 1992, an increase of \$2 billion (in current dollars) since the end of fiscal year 1985. Over the same period, the amount of civil debt outstanding grew from under \$1 billion to \$1.4 billion (in current dollars). Appendix II provides additional detail on USAOS' total civil and criminal debt caseload and balance.

Figure 1: Change in USAO Pending Criminal and Civil Debt Caseloads, Fiscal Years 1985 Through 1992



Source: GAO analysis of Justice data.

Description of the Private Counsel Debt Collection Pilot Program

To enhance the government's ability to collect nontax delinquent civil debts, Congress passed Public Law 99-578 in 1986. The law, as amended, authorized a pilot program whereby the Attorney General is to use best efforts to contract with at least 4 private counsel firms in each of not more than 15 judicial districts to determine whether such firms can reduce case backlogs and cost-effectively collect delinquent debts.

A key component of the pilot program is the Central Intake Facility (CIF). This facility, established in 1988, is where executive or legislative agencies are to refer their nontax delinquent debts to Justice for litigation. Previously, federal agencies referred their delinquent debt cases directly to the USAO in the district where the debtor resided. A private company operates CIF under the technical direction of Justice's Office of Debt Collection Management, which is responsible for managing the pilot program.

Among other things, CIF is to

- process all referrals from client agencies,
- enter debt account data on all debts accepted,
- distribute cases to pilot USAOS and private counsel firms in the judicial district where the debtor resides, and
- report periodically to Justice's Office of Debt Collection Management on collection progress.

In addition, CIF also established a computer software system (COLLECTOR) to assist in managing cases and tracking collections associated with the pilot program.

CIF's operations have changed since its inception. Justice extended its implementation nationwide beginning in October 1990, allowing for the centralized distribution of debts to nonpilot USAOS. This operation, however, known as the Nationwide Central Intake Facility, is separate from CIF's operations. Also, CIF is no longer responsible for receiving and depositing collections from debtors in the pilot districts. Beginning in January 1992, pilot program attorneys were to instruct debtors to mail payments directly to a "lockbox" operated by a bank in Atlanta, Georgia. A lockbox is a collection mechanism established at a bank to receive payments. Payments are sent directly to the lockbox bank by the payee. The bank deposits the payment in the appropriate account and forwards payment information to CIF, which posts debtor payments and notifies referring agencies of funds collected.

At the end of fiscal year 1992, 18 private counsel firms were participating with USAOS in 7 federal judicial districts in collecting nontax civil debt.⁸ Justice selected these districts to participate in the program in part because of the large numbers of uncollected debts in those areas. Districts began implementation on different dates; the first district started in October 1988, and the seventh started in July 1990. Table 1 summarizes the USAOS and private counsel firms participating in the seven pilot federal judicial districts as of September 30, 1992.

⁸One firm received separate contracts in two different federal judicial districts. This firm was counted twice.

Table 1: USAOs and Number of Private Counsel Firms Participating in the Debt Collection Pilot Program as of September 30, 1992

Judicial district/USAO	Number of participating private counsel firms	Date pilot program began in district
Eastern District of Michigan	3	Oct. 11, 1988
Eastern District of New York	3	Mar. 6, 1989
Southern District of Texas	1	May 8, 1988
Southern District of Florida	2	July 17, 1989
Central District of California	3	Sept. 25, 1989
District of Columbia	2	Apr. 16, 1990
Northern District of California	4	July 16, 1990

Source: Department of Justice.

Justice originally contracted with 25 private counsel firms in the 7 pilot districts. Justice received only three qualified proposals from firms in each of three pilot districts. All of these firms were offered and subsequently accepted contracts. In addition, Justice has contracted with private counsel firms in the Western District of Louisiana, Southern District of Florida (which is also one of the seven pilot districts), Middle District of Florida, and District of New Jersey to address foreclosure cases from the Department of Agriculture, Farmers' Home Administration, and the Department of Housing and Urban Development. According to Justice officials, Justice plans to contract with firms in the Eastern District of Pennsylvania and Northern District of Illinois to assist with foreclosure cases. Once accomplished, Justice will have implemented private counsel debt collection efforts in 12 of the 15 authorized districts. CIF does not track data relating to these foreclosures. As a result, this review did not include collections relating to foreclosures.

Participating USAOs and private counsel firms have numerous tasks as part of the pilot program. Among other things, each is to retrieve automated debt collection management reports daily from the COLLECTOR system, assign attorneys and debt collection staff to new cases, follow up on cases, and update the automated system with information concerning litigation progress. Pilot USAOs were also to designate an Assistant U.S. Attorney to supervise the work of private counsel offices in their district.

When the pilot program began, 9,345 civil debt cases valued at \$107.7 million were either active or awaiting action in the 7 pilot USAOs.⁹ For purposes of the pilot program, CIF defined those cases as backlogged and tracked them separately from newly referred cases. The USAOs retained 5,900 backlogged cases and CIF referred the remaining 3,445 backlogged cases to private counsel firms, according to pilot program guidelines for assigning cases. In general, those guidelines provided that cases were to be assigned on a random basis among the USAO and participating private counsel firms in each district, except for agency-referred debts over \$25,000,¹⁰ criminal fines; and tax, social security, and tariff debts, which were to be assigned only to USAOs. As of September 30, 1992, the pilot USAOs and private counsel firms were working on roughly 21,000 debt cases valued at \$254.9 million.

Pilot Program Generally Successful

We believe that the pilot program has generally been successful because the USAOs and private counsel firms cost-effectively collected delinquent nontax civil debts and reduced the backlog of debt cases. Through September 30, 1992, the pilot USAOs and private counsel firms collected \$122.5 million in debt at a total estimated cost of \$5.3 million.¹¹ Overall, pilot USAOs collected \$113.3 million at a total estimated cost of just under \$3 million, and private counsel firms collected \$9.2 million at a total cost of \$2.4 million.¹² In addition, private counsel firms assisted in working through the existing debt caseload, addressing large numbers of the debt collection cases that were backlogged at the program's inception and later handling a majority of newly referred cases. Table 2 summarizes the annual collections and costs data for pilot USAOs and private counsel firms.

⁹For this report, a referred debt case's value is the amount of the outstanding debt along with any interest, penalties, and fees that had accrued or been attached when Justice received the case from the referring agency.

¹⁰Justice revised this guideline as of September 1, 1990, to allow private counsel firms to be referred nontax civil debts up to \$100,000.

¹¹These collections represent only cash type payments received by Justice. Another \$25.8 million was collected from payments made directly to the referring agency and offsets acquired by federal agencies (e.g., Internal Revenue Service withholding money from a debtor's federal tax refund). Neither USAOs nor private counsel firms are credited for those collections, even though those cases were assigned to them.

¹²Justice reached similar results. According to the Attorney General's fiscal year 1992 report on the private counsel debt collection project, for fiscal years 1989 through 1992 pilot USAOs collected \$113.4 million in civil debt at a cost of \$3 million, and private counsel firms collected \$9.1 million at a cost of \$2.7 million.

Table 2: Comparison of Pilot USAOs' and Private Counsel Firms' Estimated Annual Collections and Costs

Dollars in thousands						
Fiscal year	Pilot USAOs		Private counsel firms		Total	
	Collections	Costs	Collections	Costs	Collections	Costs
1989	\$15,671.8	\$275.7	\$174.3	\$40.3	\$15,846.1	\$316.0
1990	16,059.9	723.1	1,636.2	367.5	17,696.1	1,090.6
1991	60,909.2	1,054.3	2,570.6	682.6	63,479.8	1,736.9
1992	20,632.8	903.2	4,813.2	1,269.4	25,446.0	2,172.6
Total	\$113,273.7	\$2,956.3	\$9,194.3	\$2,359.8	\$122,468.0	\$5,316.1

Source: GAO analysis of Justice data.

Table 3 summarizes the collection activity from pilot USAOs and private counsel firms for backlogged, newly referred, and all cases. From the inception of the pilot through fiscal year 1992, CIF referred 25,519 (67.6 percent) of the 37,758 total civil nontax debt cases to private counsel firms and the remaining 12,239 (32.4 percent) to the USAOs. Altogether, USAOs and private counsel firms closed 5,543 of the 9,345 backlogged cases and collected a total of \$11.8 million. Of the 28,413 newly referred cases, the USAOs and private counsel firms closed 11,198 and collected a total of \$110.7 million.

Table 3: Summary of Collection Activities by Private Counsels and Pilot USAOs From Backlogged and Newly Referred Civil Debt Cases, as of September 30, 1992

Dollars in thousands				
Case status		Number of cases	Cases yielding collections ^a	Amount collected
Backlogged cases				
Private counsels	Open	1,521	572	\$842.3
	Closed	1,924	581	1,465.9
	Subtotal	3,445	1,153	2,308.2
USAOs	Open	2,281	1,397	4,316.5
	Closed	3,619	1,766	5,141.3
	Subtotal	5,900	3,163	9,457.8
Total number open and closed backlogged cases				
	Open	3,802	1,969	5,158.8
	Closed	5,543	2,347	6,607.2
	Total	9,345	4,316	\$11,766.0

(continued)

Dollars in thousands

Case status		Number of cases	Cases yielding collections ^a	Amount collected
Newly referred cases				
Private counsels	Open	14,270	3,715	\$3,062.2
	Closed	7,804	1,779	3,823.9
	Subtotal	22,074	5,494	6,886.1
USAO	Open	2,945	1,286	9,532.3
	Closed	3,394	1,521	94,283.6
	Subtotal	6,339	2,807	103,815.9
Total number open and closed newly referred cases				
	Open	17,215	5,001	12,594.5
	Closed	11,198	3,291	98,107.5
	Total	28,413	8,292	\$110,702.0
All cases				
Private counsels	Open	15,791	4,287	\$3,904.5
	Closed	9,728	2,360	5,289.8
	Subtotal	25,519	6,647	9,194.3
USAOs	Open	5,226	2,683	13,848.8
	Closed	7,013	3,287	99,424.9
	Subtotal	12,239	5,970	113,273.7
Total number of all cases				
	Open	21,017	6,970	17,753.3
	Closed	16,741	5,647	104,714.7
	Total	37,758	12,617	\$122,468.0

^aIn 155 cases, collections are credited to both USAOs and private counsel firms. However, the amount of the collections is not double counted.

Source: GAO Analysis of Justice data.

As shown in table 3, of the original 9,345 backlogged cases, USAOs retained 5,900 (63.1 percent) cases valued at \$93.1 million. By the end of fiscal year 1992, 2,281 of those cases were still in open status, although USAOs had collected \$4.3 million from 1,397 of them. The USAOs had closed 3,619 cases and collected \$5.1 million from 1,766 cases. Thus, as of September 30, 1992, the USAOs had collected \$9.5 million from 3,163 of 5,900 backlogged cases and closed 1,853 (31.4 percent) without being credited for any collections.

Table 3 also shows that CIF referred the other 3,445 (36.9 percent) backlogged cases with a value of \$14.6 million to private counsel firms. At the end of fiscal year 1992, 1,521 cases were still open, although private counsel firms had collected \$0.8 million from 572 of those cases. Private counsel firms had closed 1,924 cases, collecting \$1.5 million from 581 of those cases. Thus, private counsel firms had collected \$2.3 million from 1,153 backlogged cases and closed 1,343 (39 percent) of the 3,445 originally referred backlogged cases without being credited for any collections.

Private counsel firms received and worked larger numbers of newly referred cases. Of the 28,413 newly referred cases, CIF referred 22,074 (77.7 percent) cases valued at \$72.3 million to private counsel firms. By the end of fiscal year 1992, they had closed 7,804 cases and collected \$6.9 million from a total of 5,494 cases. Pilot USAOs had collected over \$103.8 million from 2,807 of 6,339 newly referred cases. Those cases had a value of \$360.9 million.

USAOs Described Caseload as Too High, Private Counsel Firms as Needed

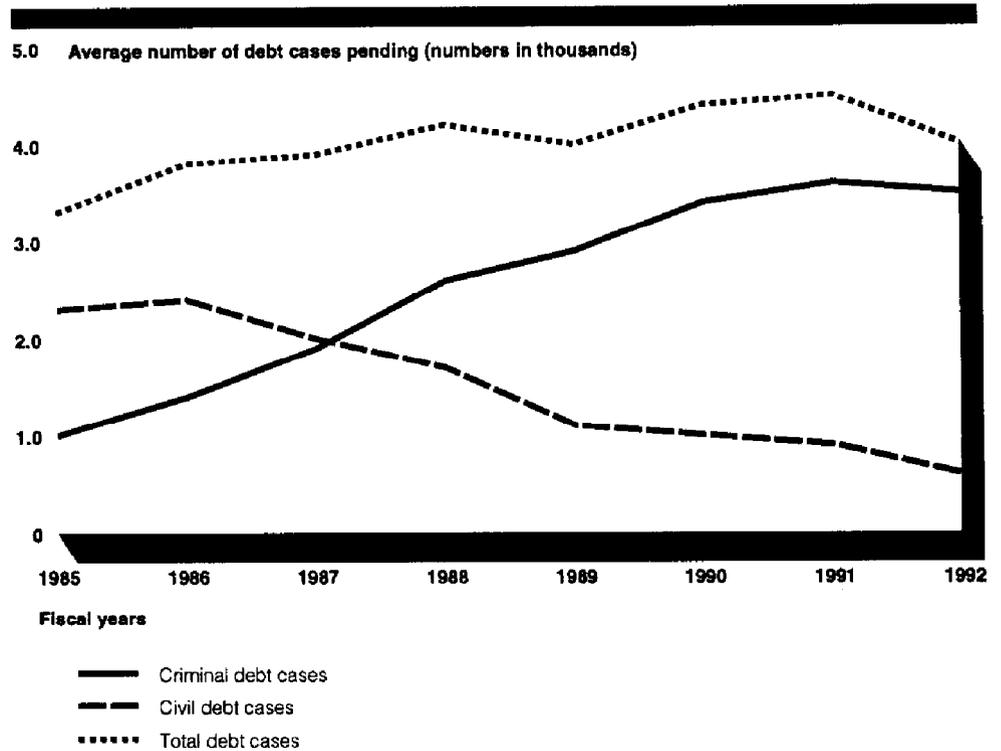
Despite CIF assigning over two-thirds of the nontax civil debt cases to private counsel firms, six of the seven pilot USAOs told us that their fiscal year 1992 civil and criminal caseload remained too high. Facing large numbers of backlogged debt collection cases with limited FLU staff, pilot USAOs expressed concern about managing their overall debt collection workload.

The average total number of criminal and civil debt cases pending at the end of the year in each of the pilot USAOs rose by nearly one-fourth from fiscal years 1985 through 1992. According to information from EOUSA, at the end of fiscal year 1985, each pilot USAO had an average of 977 criminal and 2,317 civil debt cases pending. By the end of fiscal year 1992, the average number of pending criminal debt cases had tripled to 3,492.¹³ However, partly because most civil cases had been referred to private counsel firms, the average number of pending civil debt cases had fallen to 557. Figure 2 shows the change in the average number of criminal, civil,

¹³According to an EOUSA official, the growth in the number and amount of pending criminal debts is attributable in part to the federal sentencing guidelines, which govern the imposition of criminal monetary penalties in federal court. For example, the guidelines require courts to impose fines in all criminal cases, except where the defendant establishes that he or she is unable to pay and is not likely to become able to pay any fine. In general, the maximum fine permitted by law as to each count of conviction is \$250,000 for a felony or any misdemeanor resulting in death. However, higher or lower limits may apply when specified by statute. United States Sentencing Commission, *Guidelines Manual*, section 5E1.2 (Nov. 1993). In cases where a defendant is ordered to make restitution and to pay a fine, any money paid by the defendant is first applied to the restitution. *Id.* at section 5E1.1.

and total debts cases pending in the pilot USAOs, exclusive of cases pending with private counsel firms. (App. III contains detailed information on the number of criminal and civil debts pending at the end of fiscal years 1985 through 1992 in the seven participating pilot federal judicial districts, along with summary figures for all other USAOs.)

Figure 2: Growth in the Pilot USAOs' Average Debt Caseload From the End of Fiscal Years 1985 Through 1992



Source: GAO analysis of EOUSA data.

While the pilot USAOs' average debt caseload grew, the number of work years they applied to debt collection activities declined. According to data from EOUSA, the seven pilot USAOs applied 49.5 work years to debt collection activities in fiscal year 1987¹⁴ and 51.5 work years in fiscal year 1988. Since then, the resources devoted to debt collection declined to 46.8 work years in fiscal year 1992.

¹⁴Data were not available for prior periods.

Some of the pilot USAOs' FLUS appeared to be understaffed judging from Justice workload models. According to EOUSA, decisions regarding FLU staffing requirements rely on information from the U.S. Attorneys' yearly budget requests, analyses by EOUSA, and a debt collection workload model developed in 1988. In general, that model shows that a trained debt collection agent can handle 350 cases at a time. EOUSA adjusts that target on the basis of the dollar size of the cases, age of the debts, whether the state in which the USAO is located allows for wage garnishment, and other factors. According to EOUSA, Justice had originally requested more than twice the number of work years to address debt collection activities in the pilot USAOs for fiscal year 1992. The initial budget request was for 105 work years for those pilot USAOs, but the Office of Management and Budget approved only 55.

With the growth in the number and amount of outstanding criminal debt, pilot USAOs have had to apply increasing FLU resources to criminal debt collection activities. Table 4 summarizes this change in the pilot FLUS. Pilot USAO FLUS spent 25.6 work years (52.5 percent) on criminal debt collection activities in fiscal year 1990, but 29.6 work years (63.2 percent) in fiscal year 1992.¹⁵

Table 4: Change in the Number and Percent of Pilot USAO FLU Resources Applied to Criminal and Civil Debt Collection Activities, Fiscal Years 1990-1992

Collection activity	Fiscal year 1990		Fiscal year 1991		Fiscal year 1992	
	Number of work years applied	Percent of total	Number of work years applied	Percent of total	Number of work years applied	Percent of total
Nontax civil debt	23.1	47.5	20.8	43.3	17.2	36.8
Criminal debt	25.6	52.5	27.2	56.7	29.6	63.2
Total	48.7	100.0	48.0	100.0	46.8	100.0

Source: GAO analysis of EOUSA data.

According to Justice officials, there are legal, practical, and policy reasons why only USAOs (or other Justice) staff may work on collecting criminal fines and restitution. The proceeds from most criminal fines and all special assessments go to the Crime Victims Fund, which is then distributed to the states to assist those victims of crime who have suffered because of criminal activity. Because private counsels, in collecting civil debts, get a portion of the collected debt as payment for their services, some change in

¹⁵An EOUSA official noted that these figures also included some time spent on tax, asset forfeiture, and Social Security-related issues but said that criminal debt collection activities still utilized more than half of the available FLU work years.

the law would be required to address payment of private counsels in the context of collecting criminal fines and restitution. In addition, a Justice official told us that, as a matter of policy, Justice is reluctant to turn over criminal monetary enforcement to non-Justice personnel because of concern for protecting sensitive information, such as that subject to grand jury secrecy requirements.

Thus, private counsel firms appear to have played an important role not just in civil debt collection, but also in providing USAOs with some flexibility in addressing the changing mix of their debt collection workloads. An Education official told us that collection efforts on many delinquent student loan cases would not have been made without private counsels because USAOs either would not or could not handle the volume of student loan cases.¹⁶ Justice officials also said that private counsel firms agreed to work many smaller dollar value cases that USAOs would not work. Five of the pilot USAOs commented that the continued use of private counsel firms was important to help them maintain a manageable caseload. Other Justice officials also told us that they believe private counsels are needed to help USAOs address unexpected influxes of civil debt. For example, Justice expanded the use of private counsel firms into a new pilot district in New Jersey during fiscal year 1993 to address a surge of foreclosure cases from the Department of Housing and Urban Development. Justice's planned implementation of new pilot districts to handle foreclosure cases in the Eastern District of Pennsylvania and the Northern District of Illinois is a similar example of being able to respond with private counsel firms to meet unforeseen debt collection needs.

Cost Effectiveness Comparisons Inconclusive

Pilot USAOs have collected more unpaid civil debt at relatively lower costs per dollar collected than private counsel firms. However, differences in how USAOs and private counsel costs are measured and in the case mix tend to skew collection results in favor of the USAOs. When unit costs are assessed on the basis of the number of cases closed, private counsel firms spent less per closed case than USAOs.

Table 5 summarizes our analyses of the aggregate collection and cost data for pilot USAOs and private counsel firms. On the one hand, pilot USAOs collected \$38.32 for every \$1 estimated in cost. Private counsel firms collected \$3.90 for every \$1 in cost. On the other hand, it cost USAOs an

¹⁶A number of those cases included Education student loan debt cases that (1) fell below the minimum debt criteria of \$600 set by program regulations (4 C.F.R. part 105) for agency referrals to USAOs and (2) did not have complete or up-to-date debtor background information.

estimated \$421.54 for every case that they closed compared to \$242.58 for every case that private counsel firms closed.

Table 5: Pilot USAOs' and Private Counsel Firms' Estimated Annual Collections Per Dollar of Costs and Cost Per Case Closed, Fiscal Years 1989-1992

Fiscal year	Collections per \$1 of cost		Cost per case closed	
	USAOs	Private counsel firms	USAOs	Private counsel firms
1989	\$56.84	\$4.32	\$228.04	\$347.78
1990	22.21	4.45	325.70	341.86
1991	57.77	3.77	536.80	342.83
1992	22.84	3.79	557.53	193.92
Average	\$38.32	\$3.90	\$421.54	\$242.58

Source: GAO analysis of Justice data.

Further, the comparisons of collections per \$1 of cost must be considered in relation to the case mix and how costs are measured. There are two fundamental problem areas in the debt collection comparison equation: (1) differences in the measurement of USAOs' and private counsels' costs and (2) types and size of cases assigned to each group. Together, these complications blur both the costs and collections aspects of any comparison. It is very unlikely that all of the difference between USAOs and private counsel firms on this measure is a function solely of these two factors, but it seems very likely that a portion of it is.

First, USAOs' and private counsel firms' costs are not strictly comparable. USAO costs are based on FLU salaries and overhead expenses, estimated by EOUSA with a relatively simple model. The model multiplies the estimated percentage of FLU staff time spent on cases referred from CIF with average FLU salaries by staff type (e.g., attorney, paralegal, or financial litigation agents) and estimated overhead costs for each pilot office. According to EOUSA officials, the pilot USAOs spend some time helping private counsel firms, and that time, providing various types of assistance, is included in the USAOs' costs. Private counsel firm costs equal contractual fixed proportions of debt collected (contingency fees) and reimbursement for some specific actual costs incurred (e.g., filing and recording fees). The contingency fees vary from firm to firm,¹⁷ ranging from 19.5 percent to 35 percent of debt collected, and are structured not only to cover salary and overhead costs but also to allow for profit. It is important to note that

¹⁷Each private counsel firm individually contracted its own fee arrangement with Justice. These fees remained unchanged through fiscal year 1992.

this payment arrangement yields no contingency fee payment to private firms in those cases where no funds are collected.

So long as the private counsel firms' contractual contingency fees are between roughly 20 and 33 percent, their collection-to-cost ratios will generally range between \$3 and \$5 in collections for every \$1 in costs, regardless of the cases' dollar values.¹⁸ On the other hand, because USAOs' costs are unrelated to their collection results, and because USAOs work larger value debt cases, their collections-to-costs ratios are not so constrained.

Justice has acknowledged in internal memorandums that the fundamental differences in cost calculations make it impossible to completely compare the two costs. Justice also recognized other limitations in trying to compare the activities of private counsels and USAOs. For example, Justice noted that, before May 21, 1991, debt collection efforts proceeded under the laws of several states.¹⁹ Because state laws varied, it was impossible to compare the activities between judicial districts. Justice also noted that various aspects of litigation can never be compared because litigation varies from case to case. We believe that although this may be true to some extent (statistical analysis can control for certain amounts of variation), it suggests that any analysis should also examine differences in the cases addressed by USAOs and private counsel firms.

Cases Worked by USAOs and Private Counsel Firms Tended to Differ Significantly in Number and Value

Differences in the number and value of cases worked by USAOs and private counsel firms affect cost and collection comparisons. Because USAOs tended to work on larger dollar cases, they had the possibility of securing large dollar collections that may have accounted for a portion of their apparent collections-to-costs advantage. Conversely, private counsel firms addressed and closed considerably more cases than did USAOs.

¹⁸This is true except in cases where the firms' costs are reimbursed directly by the debtor. Federal courts have awarded surcharges or fees to USAOs and private counsel firms in debt collection cases in which the government prevails. The Federal Debt Collection Procedures Act of 1990 (P. L. 101-647, title XXXVI) entitles U.S. Attorneys and private attorneys in the pilot program to include a 10 percent surcharge, in addition to the outstanding debt, to cover costs of processing and handling the litigation and enforcement of the debt. Another option for private counsel firms is to request attorney fees in accord with the terms of their contracts with Justice. Each contract between Justice and private counsel firms is to include language directing those firms to include language in all judgments seeking payment of attorney's fees. Federal judges have varied in what amount they will allow private counsel firms to claim in debt cases. If courts award sufficient surcharges or fees to USAOs and private counsel firms, the government in effect may receive free debt collection service. Because of various problems with analyzing data from COLLECTOR, we were unable to determine with accuracy the total amounts of attorney fees and surcharges collected.

¹⁹The Federal Debt Collection Procedures Act of 1990, *supra*, codified at 28 U.S.C. section 3001 *et seq.*, created a uniform federal framework for the collection of debts owed to the U.S. government.

Consequently, data on the cost per case closed tended to favor the private counsel firms.

Private counsel firms received twice the number of cases referred to USAOs, but their cases averaged less than 10 percent of the value of the USAOs' cases. The private counsel firms' 25,519 cases had a value of \$86.9 million and the USAOs' 12,239 cases had a value of \$454 million. Thus, the cases referred to private counsel firms averaged \$3,405, while cases referred to pilot USAOs averaged \$37,093. Table 6 shows the distribution of cases to participating pilot USAOs and private counsel firms for the eight federal departments and agencies that referred the largest numbers of nontax civil debt cases to Justice between the program's inception and September 30, 1992.

Table 6: Distribution of Cases Between Pilot USAOs and Private Counsel Firms, Through September 1992

Referring department or agency	Cases referred to USAOs			Cases referred to private counsel firms			Total cases referred		
	Number	Dollar value ^a	Average dollar value per case	Number	Dollar value ^a	Average dollar value per case	Number	Dollar value ^a	Average dollar value per case
Education	6,267	\$25,303	\$4,037	21,915	\$59,749	\$2,726	28,182	\$85,051	\$3,018
Veterans Administration	1,558	12,413	7,967	2,423	15,448	6,376	3,981	27,861	6,999
Small Business Administration	1,221	59,871	49,034	174	1,364	7,839	1,395	61,235	43,896
Housing and Urban Development	763	12,538	16,432	569	3,210	5,642	1,332	15,748	11,823
Health and Human Services	981	102,050	104,026	162	5,504	33,976	1,143	107,554	94,098
Justice	308	4,229	13,730	9	14	1,526	317	4,243	13,383
Defense	199	49,285	247,662	88	554	6,298	287	49,839	173,655
Agriculture	260	23,277	89,526	12	422	35,142	272	23,698	87,126
Other	682	165,022	241,968	167	633	3,788	849	165,655	195,118
Total	12,239	\$453,987	\$37,093	25,519	\$86,897	\$3,405	37,758	\$540,884	\$14,325

Note: The average dollar value per case calculation was based on using the actual dollar value not the rounded value shown in the dollar value column.

^aDollars in thousands.

Source: GAO analysis of Justice CIF data.

The relatively larger dollar value of the USAOs' cases allowed them to receive large collections from single cases. According to data from CIF, pilot USAOs collected \$70.6 million (or 62 percent of their total collections) from 14 cases alone, all of which produced more than \$1 million in collections. The largest collection in one case was \$21.6 million collected by the pilot USAO in the Eastern District of New York in fiscal year 1991. However, \$52,667 was the largest collection secured by a private counsel firm in any one case. USAOs collected \$52,668 or more in 178 cases, which yielded total collections of nearly \$94 million, or about \$528,000 per case.

Collections-to-cost ratio results do not take into account the sizable difference in the number of cases worked. Because the private counsels closed more cases than the USAOs and were paid only when they made collections, their cost per case was less. Private counsel firms were paid contingency fees of \$2.4 million and closed 9,728 cases, or an average cost of \$243 per closed case. USAOs closed 7,013 cases through September 1992. Having estimated costs of \$2.9 million for civil debt collection activities, the USAOs spent an average of \$422 per closed case.

Program Changes Needed to Ensure Flexibility

The combination of a substantial decrease in the number of referred nontax civil debt cases and legislative requirements of the pilot program may threaten Justice's overall ability to supplement its debt collection capability with private counsel firms and thus the government's capacity to collect additional nontax civil debt. Current law requires Justice to make best efforts to ensure that at least four private counsel firms participate in the pilot program in each designated judicial district. Participating private counsel firms said they need a relatively large volume of cases to ensure profitable operations. But because Education stopped referring cases for collection (opting instead for wage garnishment), Justice can no longer refer the volume of cases to multiple firms that the private counsel firms said is needed. Without some changes, the program may collapse, further limiting Justice's ability to address the debt caseload.

Education's delinquent student loan cases were important to the private counsels' participation in the pilot program when many firms participated at one location. Over 85 percent of the cases referred to private counsels between the inception of the pilot program through fiscal year 1992 were Education accounts. However, according to Justice's Office of Debt Collection Management, the number of student loan cases referred fell from 18,928 in fiscal year 1991 to 1,192 in fiscal year 1993. The decrease is due in part to Education having gained authorization to garnish wages of

employed debtors.²⁰ According to a senior Education debt collection official, following what was considered to have been a highly successful pilot test of its wage garnishment system in 1993, Education now plans to implement that system nationwide during fiscal year 1994. In the interim, Education has retained delinquent accounts rather than referring them to Justice for collection.

Before the number of Education's student loan referrals decreased, 7 of the 25 private counsel firms receiving contracts had discontinued participating in the program, citing the small number and/or unprofitability of Justice case referrals. Of the remaining 18 private counsel firms, 10 said that they were dissatisfied with the number of cases they received during 1992. An official with Justice's Office of Debt Collection Management told us that he believed the pilot program would die, because the absence of Education cases would mean that there would not be enough referrals to support all of the private counsel firms in each district. The official said that in the future, there may be only enough civil debt cases for one firm in each district. We do not know how many cases these firms believe they need to make their efforts worthwhile (although that number may vary by firm), but Justice's contracts with participating private counsel firms guaranteed that they would receive at least 25 civil debt cases each year, according to Justice officials.

At the end of fiscal year 1992, only one pilot district still had four private counsel firms participating, despite the requirement that the Attorney General make best efforts to have at least four private counsel firms participate in each of the pilot districts.²¹ Congress is considering taking action on this provision of the law, which would address this aspect of the pilot program. H.R. 3400 would, among other things, amend 31 U.S.C. 3718(b)(1)(A) by deleting the minimum number of firms the Attorney General must make best efforts to contract with for legal services. In testimony before the Senate Committee on Governmental Affairs in February 1994, we supported this change.²² This amendment would provide the Attorney General with flexibility to contract with private counsels commensurate with the volume of debt cases involved. This arrangement would help the USAOS, with their relatively limited resources, to concentrate on criminal debt and larger dollar civil cases.

²⁰P. L. 102-164, 105 Stat. 1049, 1066 (1991), the Emergency Unemployment Compensation Act of 1991, authorized Education to garnish wages administratively.

²¹31 U.S.C. 3718(b)(1)(A).

²²Improving Government: GAO's Views on H.R. 3400 Management Initiatives (GAO/T-AIMD/GGD-94-97, Feb. 23, 1994).

Of course, other options to address the changing debt collection caseload are available, but they may be less viable, considering prevailing budget constraints and other litigative priorities, such as violent crime. For example, USAOS could transfer attorney, paralegal, and other staff resources from elsewhere in their offices. But this approach would remove those staff from other civil or criminal casework. Or USAOS could use any available funded openings to hire new staff for their FLUS, rather than adding them to other office functions. The somewhat unstable nature of the civil workload, as exemplified by the sharp drop in Education cases and a recent influx of foreclosure cases in certain locations, may be reason to argue against hiring permanent staff to handle this work.

Justice officials have also argued for more permanent FLU staff resources, noting that FLU resources are becoming increasingly consumed with collecting criminal monetary penalties and that additional FLU staff generate more revenue for the government than they cost. (Justice has estimated that each additional dollar applied to civil debt collection activities yields between \$15 and \$32 in additional debt collections.) Money available from Justice's working capital fund may allow Justice to expand its civil debt collection activities, but Justice has yet to release any of those funds. Instability in the amount of funds available from the working capital fund may also preclude Justice from hiring permanent staff for civil debt collection activities.

Conclusions

We believe that the pilot program has demonstrated that private counsel firms are capable of assisting USAOS with nontax civil debt collection work. We also believe that the private counsel firms participating in the pilot program collected money for the government that the USAOS might not have otherwise collected because of the size and changing nature of their overall debt workload. Although USAOS collected more money than private counsel firms, the latter closed more cases at a lower unit cost.

Because collections made by private counsel firms require contingency fee payments that may offset the net recovery amount, it makes sense to assign these firms the smaller dollar cases. Unless the firms recover those contingency fees directly from the debtor over and above the amount of the debt, the government could pay relatively more for collection by using private counsel firms than would be the case if they were handled by USAOS.

The sharp decrease in the number of Education student loan cases referred to Justice for collection is resulting in some change in the pilot program. There may not be a sufficient volume of work to sustain the participation of four private counsel firms in each federal judicial district, but there may be enough work for one or two firms. And because of the growing criminal debt workload, the USAOs may not be able to address all of the remaining civil debt cases single-handedly. Thus, allowing Justice to have the option of contracting with private counsel firms to assist with debt collection activities when necessary is a generally positive approach to addressing the civil debt collection problem.

Matters for Congressional Consideration

Because of the success of the pilot program and the flexibility it provides in addressing debt collection, we believe that Congress should consider allowing the Attorney General to contract with private counsel firms to collect delinquent nontax civil debt on an as needed basis. We believe that Congress should consider expanding the Attorney General's authority to contract with such firms to all federal judicial districts and not limit it to 15 districts as currently authorized. In addition, because of the unstable nature of the caseload, we believe that Congress should consider deleting the requirement contained in 31 U.S.C. 3718(b)(1)(A) that the Attorney General use best efforts to contract with at least four private counsel firms in each district.

Comments From the Department of Justice

The Department of Justice provided written comments on a draft of this report (see app. IV). Justice concurred with our conclusions and matters for congressional consideration. It acknowledged that our report did not express any definite conclusions about the relative efficiency of the USAOs' and private counsel firms' civil debt collection efforts. However, Justice believed our presentation favored private counsel firms because we expressed a preference for comparing costs to close cases rather than Justice's costs to collect. Justice said that our discussion of cost effectiveness would have been better balanced if we had further explored measures of the costs to collect debt that were more favorable to USAOs.

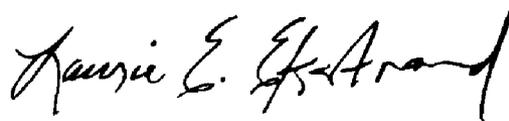
We believe that the report presents a balanced comparison of the costs and results of debt collection by private counsel firms and USAOs. We acknowledged in the report that USAOs collected more debt at less cost. However, we believe that the comparison of the costs to collect debt precludes any definitive conclusions because of differences in (1) the number, nature, and value of cases and (2) methods used to determine

collection costs. We also analyzed the cost to close cases to illustrate that there are measures other than the cost to collect debt to measure results. Although we acknowledge in the report that private counsel firms closed more cases at less cost, we do not conclude that they were more cost effective overall than USAOs, nor do we express a preference for either measure of comparison. As the report notes, we believe both private counsels and USAOs serve useful roles in civil debt collection.

Justice also suggested some technical changes to the report, which we made as appropriate.

We are sending copies of this report to the Attorney General. We will also make copies available to others upon request.

The major contributors to this report are listed in appendix V. Please contact me on (202) 512-8777 if you have any questions concerning this report.



Laurie E. Ekstrand
Associate Director, Administration
of Justice Issues

Contents

Letter		1
Appendix I Objectives, Scope, and Methodology		26
Appendix II Summary of Criminal and Civil Debt Caseload and Balance Outstanding in USAOs at the End of the Fiscal Years 1985 Through 1992		28
Appendix III USAO Criminal and Civil Debt Caseloads		29
Appendix IV Comments From the Department of Justice	GAO Comments	32 36
Appendix V Major Contributors to This Report		37
Related GAO Products		40
Tables	Table 1: USAOs and Number of Private Counsel Firms Participating in the Debt Collection Pilot Program as of September 30, 1992	8

Contents

Table 2: Comparison of Pilot USAOs' and Private Counsel Firms' Estimated Annual Collections and Costs	10
Table 3: Summary of Collection Activities By Private Counsels and Pilot USAOs from Backlogged and Newly Referred Civil Debt Cases, as of September 30, 1992	10
Table 4: Change in the Number and Percent of Pilot USAO FLU Resources Applied to Criminal and Civil Debt Collection Activities, Fiscal Years 1990-1992	14
Table 5: Pilot USAOs' and Private Counsel Firms' Estimated Annual Collections per Dollar of Costs and Cost per Case Closed, Fiscal Years 1989-1992	16
Table 6: Distribution of Cases Between Pilot USAOs and Private Counsel Firms, Through September 1992	18
Table III.1: Number of Criminal Debt Cases Pending in USAOs at the End of Fiscal Years 1985 Through 1992	29
Table III.2: Civil Debt Cases Pending in USAOs at the End of Fiscal Years 1985 Through 1992	30
Table III.3: Total Debt Cases Pending in USAOs at the End of Fiscal Years 1985 Through 1992	31

Figures

Figure 1: Change in USAO Pending Criminal and Civil Debt Caseloads, Fiscal Years 1985 Through 1992	6
Figure 2: Growth in the Pilot USAOs' Average Debt Caseload From the End of Fiscal Years 1985 Through 1992	13

Abbreviations

CIF	Central Intake Facility
EOUSA	Executive Office for U.S. Attorneys
FLU	financial litigation unit
USAO	U.S. Attorney Office

Objectives, Scope, and Methodology

The overall objective of this review was to assess the pilot program's overall results in the seven federal judicial districts where the pilot program was implemented. The specific objectives were to (1) examine whether Justice's use of private counsels is a cost-effective mechanism for collecting delinquent nontax civil debt, (2) compare collection results and costs from the participating USAOs and private counsel firms, (3) review the effect that private counsel firms had on reducing the caseload of nontax civil debt cases, and (4) assess the future role of private counsel firms in collecting debts owed the government.

To determine whether Justice's use of private counsel firms was a cost-effective mechanism for collecting delinquent nontax civil debt and to compare the results and costs from participating USAOs and private counsel firms, we calculated each office's collection results and estimated costs. We measured collection results using information from the Central Intake Facility (CIF) database. We limited our analysis to data through September 30, 1992, because that was the last complete fiscal year data at the time of our review. Although there have been some changes in Justice's civil nontax debt collection workload since then, we do not believe they affect the report's overall analysis and conclusions, except as explicitly noted. We treated collections in the same manner as CIF, using cash type collections processed through Justice's lockbox. Not included were criminal fines collected at sentencing by the clerks of the U.S. district courts, debts and settlements paid directly to agencies, property acquired for agencies, or offsets acquired by federal agencies against amounts owed them. We performed limited testing of CIF's database, but we did not perform a reliability assessment of the database or CIF's computer software system (COLLECTOR). In 1992, Justice's Inspector General performed a limited reliability assessment during their audit of the pilot program and found no significant problems regarding the accuracy of CIF data.¹ To estimate the costs of collecting debt, we analyzed data on private counsel firm costs recorded in CIF's database and applied a model of USAO costs developed by Justice's EOUSA. (The model is discussed in more detail on pp. 16, 17, and 18)

To determine what effect private counsel firms had on reducing the caseload of delinquent nontax civil debt at pilot USAOs, we analyzed CIF's caseload database. We determined the extent to which cases were backlogged in pilot USAOs at the inception of the pilot program and

¹U.S. Department of Justice, Office of the Inspector General, Audit Report: Private Counsel Debt Collection (Feb. 1992, 92-3).

analyzed the status of these cases, including disposition and results, as of September 30, 1992.

To assess the future of Justice's use of private counsel firms, we analyzed trends in the numbers of criminal and civil debt collection cases in the USAOS relative to Justice's resources and availability of private counsel firms and discussed the implications of those changes in the debt collection workload with Justice and Education officials. We also reviewed legislation being considered by Congress.

We did not examine debt collection tactics used by either USAOS or private counsel firms. Thus, we are not taking a position on the effectiveness or propriety of collection methods.

To supplement information gathered from the database and obtain participants' perspectives on the program, we conducted telephone interviews with officials at the 7 pilot USAOS, all 18 private counsel firms participating in the program as of September 30, 1992, and 6 of the 7 private counsel firms that terminated their pilot program contracts before September 30, 1992. One private counsel firm that terminated its contract did not respond to our calls. We did not verify any of the data reported by the private counsel firms or USAOS. We also visited the Justice Management Division, EOUSA, and the Department of Education in Washington, D.C.; CIF in Silver Spring, MD; and the USAO in the Eastern District of Michigan.

The Department of Justice provided written comments on a draft of this report. These comments are presented and evaluated on page 22 and are reprinted in appendix IV. We did our work between September 1992 and December 1993 in accordance with generally accepted government auditing standards.

Summary of Criminal and Civil Debt Caseload and Balance Outstanding in USAOs at the End of the Fiscal Years 1985 Through 1992

Dollars in thousands

Fiscal year	Criminal debt		Civil debt		Total	
	Number of cases	Balance	Number of cases	Balance	Number of cases	Balance
1985	29,219	\$260,319.6	72,393	\$887,648.5	101,612	\$1,147,968.1
1986	44,447	369,228.2	69,441	961,044.5	113,888	1,330,272.7
1987	59,982	515,936.3	57,425	926,117.9	117,407	1,442,054.2
1988	73,057	704,655.8	46,093	883,579.2	119,150	1,588,235.0
1989	84,171	968,487.8	44,039	1,025,133.0	128,210	1,993,620.8
1990	96,455	1,260,382.1	41,366	1,051,678.1	137,821	2,312,060.2
1991	105,649	1,714,470.7	50,355	1,362,885.8	156,004	3,077,356.5
1992	110,898	\$2,286,911.6	55,727	\$1,370,952.6	166,625	\$3,657,864.2

Source: U.S. Attorney Statistical Reports.

USAO Criminal and Civil Debt Caseloads

Table III.1: Number of Criminal Debt Cases Pending in USAOs at the End of Fiscal Years 1985 Through 1992

USAO	1985	1986	1987	1988	1989	1990	1991	1992	Change 1985 - 1992
Central District, California	1,037	1,255	2,113	2,425	2,496	3,238	3,612	3,762	2,725
Northern District, California	384	631	1,123	1,792	2,046	1,885	2,140	2,590	2,206
District of Columbia	493	636	677	752	636	1,525	1,662	1,691	1,198
Southern District, Florida	749	1,194	1,465	3,227	3,378	3,611	3,496	3,623	2,874
Eastern District, Michigan	1,203	1,022	1,352	1,550	1,727	1,848	2,171	2,490	1,287
Eastern District, New York	1,550	2,167	2,533	2,798	3,411	3,774	3,887	4,372	2,822
Southern District, Texas	1,423	2,819	4,231	5,601	6,553	7,907	7,958	5,918	4,495
Subtotal	6,839	9,724	13,494	18,145	20,247	23,788	24,926	24,446	17,607
All other USAOs	22,380	34,723	46,488	54,912	63,924	72,667	80,723	86,452	64,072
Total	29,219	44,447	59,982	73,057	84,171	96,455	105,649	110,898	81,679

Source: GAO analysis of EOUSA data.

**Appendix III
USAO Criminal and Civil Debt Caseloads**

Table III.2: Civil Debt Cases Pending in USAOs at the End of Fiscal Years 1985 Through 1992

USAO	1985	1986	1987	1988	1989	1990	1991	1992	Change 1985 - 1992
Central District, California	3,019	3,187	2,262	2,176	2,285	2,300	5,176	4,598	1,579
Northern District, California	1,599	1,534	1,235	1,321	1,341	1,180	2,674	2,359	760
District of Columbia	1,060	1,097	1,083	604	546	583	1,029	1,126	66
Southern District, Florida	1,347	1,303	1,166	1,039	1,109	1,181	1,705	2,112	765
Eastern District, Michigan	3,349	3,099	2,343	1,912	1,442	1,827	3,706	4,837	1,488
Eastern District, New York	3,403	3,916	2,808	1,748	894	1,273	1,906	1,995	(1,408)
Southern District, Texas	2,442	2,667	2,966	2,798	2,778	2,478	3,325	2,667	225
Subtotal	16,219	16,803	13,863	11,598	10,395	10,822	19,521	19,694	3,475
All other USAOs	56,174	52,638	43,562	34,495	33,644	30,544	30,834	36,033	(20,141)
Total	72,393	69,441	57,425	46,093	44,039	41,366	50,355	55,727	(16,666)

Note: According to EOUSA, the data shown here on civil cases pending in the seven pilot USAOs include cases assigned to private counsel firms.

Source: GAO analysis of EOUSA data.

**Appendix III
USAO Criminal and Civil Debt Caseloads**

Table III.3: Total Debt Cases Pending in USAOs at the End of Fiscal Years 1985 Through 1992

USAO	1985	1986	1987	1988	1989	1990	1991	1992	Change 1985 - 1992
Central District, California	4,056	4,442	4,375	4,601	4,781	5,538	8,788	8,360	4,304
Northern District, California	1,983	2,165	2,358	3,113	3,387	3,065	4,814	4,949	2,966
District of Columbia	1,553	1,733	1,760	1,356	1,182	2,108	2,691	2,817	1,264
Southern District, Florida	2,096	2,497	2,631	4,266	4,487	4,792	5,201	5,735	3,639
Eastern District, Michigan	4,552	4,121	3,695	3,462	3,169	3,675	5,877	7,327	2,775
Eastern District, New York	4,953	6,083	5,341	4,546	4,305	5,047	5,793	6,367	1,414
Southern District, Texas	3,865	5,486	7,197	8,399	9,331	10,385	11,283	8,585	4,720
Subtotal	23,058	26,527	27,357	29,743	30,642	34,610	44,447	44,140	21,082
All other USAOs	78,554	87,361	90,050	89,407	97,568	103,211	111,557	122,485	43,931
Total	101,612	113,888	117,407	119,150	128,210	137,821	156,004	166,625	65,013

Source: GAO analysis of EOUSA data.

Comments From the Department of Justice

Note: GAO comments supplementing those in the report text appear at the end of this appendix.



U. S. Department of Justice

Washington, DC 20530

JUN 10 1994

Henry R. Wray
Director,
Administration of Justice Issues
General Government Division
U.S. General Accounting Office
Washington, D.C. 20548

Dear Mr. Wray:

The following information is being provided in response to your request to the Attorney General, dated May 12, 1994, for comments on the General Accounting Office (GAO) draft report entitled, "Civil Debt Collection: Justice's Private Counsel Pilot Program Should Be Expanded." The GAO undertook three objectives: to evaluate the cost effectiveness of using private counsel to collect debt, to determine private counsel effectiveness in reducing case backlogs, and to compare collection results and costs of United States Attorneys Offices (USAO) and private counsel firms.

First, GAO determined that private counsel firms were cost-effective in collecting nontax civil debt. The GAO states that "So long as the private counsel firms' contractual contingency fees are between roughly 20 and 33 percent, their collection-to-cost ratios will generally range between \$3 and \$5 in collections for \$1 in costs, regardless of the cases' dollar values." Further, GAO noted that because USAO costs are unrelated to their collection results, and because they work larger-value debt cases, their collections-to-costs ratios are not constrained. (pages 24 and 25.) Given these two statements, we believe that to develop a most cost effective system for collecting nontax civil debt requires an appropriate mix of private counsel and USAOs. Thus, we would concur that judicious use of private counsel to collect nontax civil debt is cost effective.

Second, GAO determined that the use of private counsel had reduced case backlogs and concluded that the Attorney General should have the authority to use private counsel firms to collect delinquent nontax civil debt on an as needed basis. Further, we note that GAO supports the Attorney General's being able to exercise this authority in all districts and with less than four

Now on p. 17.

Mr. Henry R. Wray

2

participating firms in each district. We concur in this conclusion. This broader authority will allow the Department to more effectively manage its increasing workload with limited resources, particularly when there is an unanticipated and rapid growth in caseload. Because private counsel efforts benefit the federal coffers, and these efforts have been determined to be cost effective when appropriately used, we believe that workload management is sufficient justification for private counsel use regardless of relative cost effectiveness.

Finally, GAO did not express any definite conclusions about the relative efficiency of the USAOs and private counsel firms and noted many factors that it believed affect the reliability of any comparisons that may be made.¹ However, we believe that the GAO presentation favored private counsel. GAO expressed a preference for a comparison of private counsel and USAO costs to close cases, rather than a comparison of their costs to collect debts, because the former comparison will account for the volume of cases closed. Closing cases is an acceptable and necessary objective, but the costs associated with closing cases does not appear to be the best measure of cost effectiveness when evaluating the collection of debt. The Department believes that GAO discussion of relative cost effectiveness would be better balanced if GAO further explored cost measures which favor the USAOs for relative cost efficiency.

For example, when comparing costs to collect debts, it cost the USAOs about 2.6 cents for every dollar they collected, while it

¹ For example, the GAO opined that "Because USAOs tended to work on larger dollar cases, they had the possibility of securing larger dollar collections that enhanced their apparent collections-to-costs advantage." (page 26). Although the possibility of securing larger dollar collections from larger dollar cases is true merely because more dollars are in question, we believe the probability of larger collections is far from certain. Larger cases are more difficult and require more skilled personnel to complete (45% of an attorney's time on, e.g., Public Health Service cases compared with 5% of attorney time on student loan cases). Thus, the costs of collecting these cases would be higher. Further, the case closing rate would be lower because extended litigation would require cases to remain open longer.

Now on p. 17.

Appendix IV
Comments From the Department of Justice

Mr. Henry R. Wray

3

Now on p. 18.

cost private counsel about 26 cents to collect a dollar of debt.² The GAO discounts the cost to collections ratio because "pilot USAOs collected \$70.6 million (or 62.0 percent of their total collections) from 14 cases alone, all of which produced more than \$1 million." (Page 28). In contrast, the GAO noted that the largest collection secured by the private counsel firm in any one case was \$52,667. However, even excluding the \$70.6 million collected from these 14 large cases, we determined that the USAOs collected \$42.7 million--at least 4.6 times what the private counsel collected, at a cost of less than \$2.9 million.

Now on pp. 10 and 11.

Further analysis of the chart on page 15 of the draft report reveals that the USAOs collected more from all cases referred than did the private counsel, collected from a larger percentage of cases referred in all categories and closed more cases than did the private counsel. When comparing collection performance we believe the following facts are illuminating:

- Of the closed backlogged cases, the USAOs collected from 49 percent of closed cases, as opposed to 30 percent by private counsel, and collected 3.5 times as much as private counsel;
- Of the new cases referred and closed, the USAOs collected from 45 percent of cases closed, as opposed to 23 percent by private counsel, and collected 24.7 times as much as private counsel;
- Of all closed cases, the USAOs collected from 47 percent of the cases closed, as opposed to 24 percent by private counsel, and collected 18.8 times as much as private counsel;
- Of the backlogged cases remaining open, the USAOs are collecting from 51 percent of cases as opposed to private counsel who are collecting from 38 percent of cases and have collected 5 times as much as private counsel;

Now on pp. 2 and 9.

²The USAOs collected \$113.3 million at a cost of \$2.9 million (pages 3 and 13) while the private counsel collected \$9.2 million at a cost of \$2.4 million. As the report states, this works out to the USAOs collected \$38.32 for every dollar spent, while the private counsel firms collected \$3.90 for every dollar spent. (page 22).

Now on p. 15.

Appendix IV
Comments From the Department of Justice

Mr. Henry R. Wray

4

- Of the new cases, USAOs are collecting from 44 percent as opposed to the private counsel who are collecting from 26 percent and have collected 3.1 times as much as private counsel;
- Of all open cases, the USAOs are collecting from 51 percent compared with 27 percent for private counsel and have collected 3.5 times as much as private counsel.

We have forwarded minor comments on this report under separate cover and understand that changes will be made as appropriate. We appreciate the opportunity to comment on the draft report and hope that you find our comments both constructive and beneficial.

Sincerely,


Stephen R. Colgate
Assistant Attorney General
for Administration

Following are GAO's comments on Justice's June 10, 1994, letter.

GAO Comments

1. Justice said that we discounted the USAOs cost-to-collections ratio because 62 percent of the collections were from 14 cases that produced more than \$1 million each and that the exclusion of these cases from the ratio shows that the USAOs collected at least 4.6 times the amount collected by private counsel firms, at a cost of less than \$2.9 million. We mentioned these 14 cases in the report to illustrate our point that because the USAOs worked on the largest dollar value cases, they had the possibility of securing the largest dollar collections. Thus, in comparing the cost effectiveness of the USAOs and private counsel firms, the use of the cost-to-collections ratio favored the USAOs.
2. We agree with Justice that the data in table 3 show that in comparison to the private counsel firms, the USAOs collected more from all cases referred and collected from a larger percentage. However, the data show that the private counsels closed more newly referred cases and cases overall. We included table 3 in the report to show overall caseload status and collection results and to illustrate that both USAOs and private counsel firms serve useful roles in civil debt collection. However, because the data being compared are not equal, (i.e., there are differences in the nature and value of cases) we believe that any comparisons of USAOs and private counsel firms are inconclusive.

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Related GAO Products

National Fine Center: Expectations High, but Development Behind Schedule (GAO/GGD-93-95, Aug. 10, 1993).

Justice Department: Litigation and Collection of Civil Fines and Penalties (GAO/GGD-88-23FS, Jan. 7, 1988).

Justice Department: Impediments Faced in Litigating and Collecting Debts Owed the Government (GAO/GGD-87-7BR, Oct. 15, 1986).

Debt Collection: Billions Are Owed While Collection and Accounting Problems Are Unresolved (GAO/AFMD-86-39, May 23, 1986).

Justice Department: Improved Management Processes Would Enhance Justice's Operations (GAO/GGD-86-12, Mar. 14, 1986).

Financial Integrity: Justice Made Progress but Further Improvements Needed (GAO/GGD-86-9, Oct. 31, 1985).

After the Criminal Fine Enforcement Act of 1984—Some Issues Still Need to Be Resolved (GAO/GGD-86-02, Oct. 10, 1985).

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