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Report to the Ranking Minority Member, Permanent Subcommittee on Investigations, Committee on Governmental Affairs, U.S. Senate

July 2001

CRIMINAL DEBT

Oversight and Actions Needed to Address Deficiencies in Collection Processes

GAO

Accountability * Integrity * Reliability

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Abbreviations

AOUSC	Administrative Office of the United States Courts
BOP	Bureau of Prisons
DCIA	Debt Collection Improvement Act of 1996
EOUSA	Executive Office for United States Attorneys
FLU	Financial Litigation Unit
IFRP	Inmate Financial Responsibility Program
JCC	Judgment in a Criminal Case
MOU	memorandum of understanding
MVRA	Mandatory Victims Restitution Act of 1996
NFC	National Fine Center
OIG	Office of the Inspector General
OMB	Office of Management and Budget
SFFAS	Statement of Federal Financial Accounting Standards
USAO	United States Attorneys' Offices
USSC	United States Sentencing Commission

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United States General Accounting Office
Washington, D.C. 20548

July 16, 2001

The Honorable Susan M. Collins
Ranking Minority Member
Permanent Subcommittee on Investigations
Committee on Governmental Affairs
United States Senate

Dear Senator Collins:

This report responds to your request that we review the federal government's collection of criminal debt, primarily fines and restitution. The collection and management of such criminal debt has been a long-standing problem for the federal government. This report discusses the following factors that have an impact on the effectiveness of the criminal debt collection process:

- the nature of criminal debt, the assessment of mandatory restitution, interpretation of payment schedules set by judges, and limitations due to state laws;
- inadequate policies and procedures, and inadequate adherence to established procedures by the Department of Justice and the U.S. courts, and in the districts visited, a lack of coordination in assessing and collecting criminal debt; and
- the current oversight environment, which does not leverage the central agency roles of the Department of the Treasury and the Office of Management and Budget in the government's collection of criminal debt.

We make recommendations related to these issues that, if successfully implemented, should improve the collection of criminal debt.

As arranged with your office, unless you publicly announce its contents earlier, we plan no further distribution of this report until 30 days after the date of this report. At that time we will send copies to the Chairman of your subcommittee as well as the Chairman and Ranking Minority Member of the Committee on Governmental Affairs. We will also provide copies to the Attorney General, the Secretary of the Treasury, the Director, Office of Management and Budget, and the Director, Administrative Office of the United States Courts. Copies will also be made available to others upon request.

If you have any questions about this report, please contact me at (202) 512-3406 or J. Lawrence Malenich, Assistant Director, at (202) 512-9399. GAO staff acknowledgments are listed in appendix VI.

Sincerely yours,

Gary T. Engel
Director
Financial Management and Assurance

Executive Summary

Purpose

This report responds to your request that GAO review the federal government's collection of criminal debt, primarily fines and restitution.[1] The collection and management of such criminal debt has been a long-standing problem for the federal government. As reported in the U.S. Attorneys' statistical reports,[2] outstanding criminal debt more than doubled from about $5.6 billion as of September 30, 1995, to over $13 billion as of September 30, 1999. Approximately 66 percent of the reported amount as of September 30, 1999, is restitution owed to nonfederal victims, including individual victims and nonfederal entities (e.g., banks, organizations, and insurance companies), some of whom may be relying on the federal government for potential reimbursement.

As discussed with your staff, we set out to determine (1) the key reasons for the growth in reported uncollected criminal debt, (2) whether adequate processes exist to collect criminal debt, and (3) what role, if any, the Office of Management and Budget (OMB) and the Department of the Treasury (Treasury) play in overseeing and monitoring the government's collection of criminal debt.

Scope and Methodology

To meet the objectives, we interviewed key officials, reviewed applicable policies and procedures, and selected cases for review. We reviewed all 44 criminal debt cases[3] that were greater than or equal to $14 million at the four federal judicial districts with the largest amount of outstanding criminal debt as of September 30, 1999. These four districts—the Central District of California, the Eastern and Southern Districts of New York, and the Southern District of Florida—accounted for about $5.6 billion (or 43 percent) of the over $13 billion of the reported outstanding criminal debt as of this date. At each of the four districts, we also selected and reviewed a

[1]The courts assess fines as punishment, whereas restitution is intended to make identifiable victims whole.

[2]*United States Attorneys Annual Statistical Report for Fiscal Year 1999*, U.S. Department of Justice. This is an unaudited annual report.

[3]These debts relate to 42 debtors and are referred to as "high-dollar" cases throughout the report.

stratified random sample of 35 criminal debt cases from a population of 8,650 debts with a dollar value of $5,000 or greater but less than $14 million (for a total of 140 random cases).[4]

Background

The collection of outstanding criminal debt has been a long-standing problem, with many of the problems that GAO has been reporting on since October 1985[5] still remaining. Since that time, as reported in the U.S. Attorneys' statistical reports, the balance of outstanding criminal debt has grown from $260 million to over $13 billion. The Congress attempted to address some of these problems through the Criminal Fines Improvement Act of 1987. This act transferred the responsibility for accounting for and processing criminal debt from the Department of Justice (Justice) to the courts and gave them the responsibility for establishing a centralized accounting system. In 1990, the Administrative Office of the United States Courts began developing a centralized entity, called the National Fine Center, to record, track, and report on federal criminal debt. The National Fine Center was expected to automate and centralize criminal debt processing for the 94 districts throughout the country and provide a management information system to replace the existing fragmented approach for receiving payments and to alleviate long-standing weaknesses in accounting for, collecting, and reporting on criminal monetary penalties imposed on federal criminals.

However, an independent consulting firm concluded that the task of developing a National Fine Center, involving several agencies in two branches of government, proved to be more complex than expected and that the needs of the districts could not be met through a centralized approach. Thus, with the consent of the Congress, the centralized approach was terminated. As a result, the criminal debt collection process continues to be fragmented, involving both judicial and executive branch entities in 94 districts across the country.

[4]Many of the results of our analysis of the stratified random sample of debts are presented throughout this report as percentage estimates that are expressed at a 95 percent confidence level. All percentage estimates have sampling errors of ±9 percentage points or less. For estimates other than percentages, sampling errors associated with these estimates do not exceed 10 percent of the value of those estimates (See appendix I, "Scope and Methodology").

[5]*After the Criminal Fine Enforcement Act of 1984—Some Issues Still Need to Be Resolved* (GAO/GGD-86-02, October 10, 1985). Also see "Related Products" at the end of this report.

Currently, the receipting of collections and recordkeeping for criminal debt is primarily the responsibility of the U.S. courts, while Justice is responsible for collecting criminal debt (Justice has delegated this responsibility to its Financial Litigation Units within the 94 U.S. Attorneys' offices). The criminal debt collection process typically begins when an offender is convicted and a judge orders the offender to pay a fine and/or restitution as stipulated in a Judgment in a Criminal Case. In addition to the Financial Litigation Units, caseworkers from Justice's Bureau of Prisons and the U.S. courts' probation officers may assist in collecting monies owed. Collections of fines are typically received by the courts and deposited into the Crime Victims Fund[6] whereas collections of restitution payments are received by both the courts and the Financial Litigation Units in 18 districts and disbursed to the applicable victims or entities as directed by the court.

Results in Brief

According to Justice officials, and based on our observations, there are four key factors some of which are not within the Financial Litigation Units' or probation offices' control—that have contributed to the significant growth in the amount of uncollected criminal debt. These factors are (1) the nature of the debt, in that it involves criminals who may be incarcerated or deported or who have minimal earning capacity; (2) the assessment of mandatory restitution regardless of the criminal's ability to pay, as required by the Mandatory Victims Restitution Act of 1996;[7] (3) interpretation by the Financial Litigation Units of payment schedules set by judges which limit collection activities; and (4) state laws that may limit the type of property that can be seized and the amount of wages that can be garnished.

[6]42 U.S.C. Section 10601 requires criminal fine payments to be deposited into the Crime Victims Fund except for payments for fines related to the Endangered Species Act, Lacey Act Amendments of 1981, Railroad Unemployment Insurance Act, Federal Water Pollution Control Act, Postal Service Fund, and county public schools. For these exceptions, the Treasury is entitled to use the funds collected, whereas funds deposited into the Crime Victims Fund are generally used to provide grants for victim assistance and compensation programs.

[7]18 U.S.C. 3663A requires the court to order restitution for offenders convicted of (1) a crime of violence as defined by18 U.S.C. 16; (2) an offense against property under title 18 of the U.S.C. including any offense committed by fraud or deceit; or (3) an offense related to tampering with consumer products (18 U.S.C. 1365), in which an identifiable victim has suffered a physical injury or pecuniary loss. See also 18 U.S.C., secs. 2248, 2259, 2264, and 2327.

Also contributing to the growth of uncollected debt is the lack of adequate processes to collect such debt at the four districts visited. Specifically, the four Financial Litigation Units visited did not always follow their policies and procedures and could improve their policies and procedures to ensure that collection actions were prompt and adequate. In addition, the four probation offices we visited did not always follow their procedures that could have allowed for increased collections from offenders under supervision. Further, because the district entities involved with assessing, collecting, and accounting for criminal fines and restitution did not adequately coordinate their efforts or share financial information about offenders, they hindered the government's ability to increase collections. Of the $3.76 billion of debt assessed in our high-dollar cases, there was approximately $148 million (or about 4 percent) in collections through September 30, 1999. In addition, we estimate that 4 percent of the judgment amounts for our sampled population had been collected through September 30, 1999.

Since the effort to centralize the collection process was terminated in 1996, collection responsibilities continue to be divided between Justice and the courts, with neither having a central management oversight role. Further, neither OMB nor Treasury has identified the need to take an active oversight role in the collection of the growing balance of outstanding criminal debt. Such oversight is needed, however, because the lack of coordination and cooperation among the many entities involved in the criminal debt collection process has been a long-standing problem. Oversight of the collection of such debt could be achieved by leveraging OMB's and Treasury's current respective central agency roles related to financial reporting and debt management.

Taking into account the factors that are not controllable, the present management practices and processes do not provide assurance that offenders are not afforded their ill-gotten gains and that innocent victims are compensated for their losses to the fullest extent possible. Until top management at Justice and the courts place a higher priority on ensuring that the entities involved in the criminal debt collection process more effectively and efficiently pursue collection efforts, the assessment of criminal fines and restitution as an effective punitive tool may be jeopardized, and valuable, limited resources will continue to be wasted on duplicative efforts.

Our recommendations are designed to increase the effectiveness and efficiency of the federal government's criminal debt collection processes.

Principal Findings

Factors Contributing to the Growth in Uncollected Criminal Debt

Justice officials have stated that criminal debt, by its very nature, is difficult to collect. Criminal defendants may be incarcerated or deported, with little earning capacity; they often spend money on attorneys, who are paid up front; and their assets acquired through criminal activity may be seized by the government prior to conviction. Thus, by the time fines or restitution are assessed, offenders may have no assets left for making payments on the assessments. In addition, regardless of its collectibility, most criminal debt must be pursued for 20 years plus the period of incarceration and cannot be "written off" unless the debtor is deceased or the debt is forgiven by a court order.

Before the passage of the Mandatory Victims Restitution Act in 1996, the courts could typically consider an offender's ability to pay in deciding whether to assess restitution. However, the Mandatory Victims Restitution Act of 1996 reformed restitution law by requiring the court to order full restitution to each victim in the full amount of each victim's losses, without regard to the offender's economic situation. Consequently, the assessment of mandatory restitution has resulted in a dramatic increase in the balance of reported uncollected criminal debt. To illustrate, four of the cases we reviewed involved offenders convicted of bombing the World Trade Center. Each offender received a 240-year prison sentence and was ordered to pay $250 million in restitution plus a fine ranging from $250,000 to $4.5 million. These four cases alone increased the criminal debt balance by over $1 billion. As of May 2000, the four offenders had collectively paid approximately $3,000. Under these circumstances, there is very little, if any, chance that a significant portion of the $1 billion restitution owed by these offenders will be collected.

Another factor affecting collections is that, in some districts, judges are stipulating payment terms (e.g., $300 per month) in their judgments,[8] and the Financial Litigation Units that we visited are interpreting such terms as precluding them from making any collection efforts (other than filing a lien). In some districts, including three of the four districts we visited,

[8]The Second, Third, and Fifth Circuits require the sentencing court to set a payment schedule at sentencing. Some judges in the Ninth Circuit are also setting payment schedules, but they are not required to do so.

judges often stipulate payment terms because probation officers are not authorized to do so. However, according to a Chief Judge we interviewed in one of these districts, the terms were not intended to preclude the Financial Litigation Units from pursuing collection efforts, such as searching for and liquidating assets. As a result of the Financial Litigation Units' interpretation, prompt collection efforts are not being pursued at these districts and the government may be potentially losing opportunities to collect criminal debt.

An additional factor affecting collections is state legislation, such as laws that limit the type of property that can be seized and the amount of wages that can be garnished. For example, some states, such as Florida, have unlimited homestead exemptions, prohibiting the seizure of a primary residence regardless of the amount of equity in the home.

Inadequate Criminal Debt Collection Processes and Lack of Coordination Contribute to the Low Collection Rate

At the four Financial Litigation Units that we visited, procedures for enforcing collection—such as filing liens, searching for offender assets, pursuing other legal remedies (such as wage garnishment or writs of execution[9]), and issuing demand letters—did not exist or were not always being followed. Prompt action is essential for maximizing potential collections because the likelihood of collection decreases as debts age. For example, in most cases, Financial Litigation Units are required to promptly file liens to ensure that property that could be used toward payment of the debt is not transferred or sold. However, only one of the four Financial Litigation Units we visited had established a specific time frame for the filing of liens—within 45 days of the judgment being entered into the tracking system. In 10 percent of the high-dollar cases, there was no evidence that required liens were filed, and in the cases in which liens were filed, the Financial Litigation Units took an average of 410 days from the judgment date to file the lien. Based on our sample, we estimate that required liens were not filed for 30 percent of the sampled population. For

[9]A writ of execution is issued by a court to enforce a judgment. For example, a writ of execution permits the U.S. Marshals Service to seize an offender's property as complete or partial payment on a fine or restitution or the writ can be applied against an offender's income or bank account in a process called garnishment.

the random cases[10] we reviewed in which liens were filed, the average number of days from the judgment date to the filing of a lien was 639 days.[11] Not promptly filing liens or not filing them at all significantly increases the potential for offenders to liquidate their assets and not repay debts owed.

According to the U.S. Attorneys' Manual, the Financial Litigation Units should "promptly and vigorously" perform asset discovery work. However, in 48 percent of the high-dollar cases and in an estimated 66 percent of the sampled population, we found little or no evidence of asset discovery work. We also found that the procedures did not (1) establish time frames or (2) require the Financial Litigation Units to document why such procedures were not used. Unless steps are promptly taken and documented to identify whether an offender has assets, the offender may have time to hide or liquidate assets that could have been available to pay toward the debt.

A critical element of any effective collection process is the human capital component. However, we found that a historical problem for the Financial Litigation Units, which still exists, is the lack of asset investigators and the limited number of debt collection staff. At the four Financial Litigation Units we visited, staffing levels for collecting criminal debt have only slightly increased from an average of 8.7 staff in 1995 to 9.3 in 1999, even though the number of assessments and debts pending has significantly increased. Specifically, the number of criminal debts pending for the four Financial Litigation Units we visited increased from an average of 4,406 to 6,373 cases per district, or about 45 percent, and the average dollar amount of outstanding debts per staff increased by over 160 percent.

Probation officers are required to ensure that offenders' financial information used to develop pre-sentence reports and installment schedules is adequately verified. However, in 20 of 42 high-dollar and 40 of

[10]Because of certain circumstances (such as the offender was in prison), certain attributes for which we test were not applicable to all the cases in the stratified random sample. For example, some probation office procedures are required only once an offender's period of probation begins. Therefore, in our testing of compliance with these procedures, if the offender was still in prison, the attribute being tested would not be applicable for that case. In circumstances in which attributes do not apply to all cases, estimating the results to an appropriate population would introduce significant sampling error intervals. Therefore, we have presented only the actual results for the applicable cases in each circumstance.

[11]We were unable to determine the date a lien was filed in four of the high-dollar cases and in 12 random cases in which liens had been filed. Therefore, these cases were not used to calculate the average days.

the 125 random[12] cases we reviewed, probation officers had not taken adequate steps to verify an offender's assets during the pre-sentence investigation. Also, similar to weaknesses we reported in June 1998,[13] probation officers sometimes did not follow their guidelines for establishing installment schedules based on financial criteria or for reviewing subsequent changes in financial circumstances that could have allowed for increased installment payments. In response to GAO recommendations issued in the June report, the U.S. courts issued revised guidance in September 2000. If effectively implemented, this revised guidance should help address weaknesses related to the establishment of installment schedules by probation officers and should result in increased collections.

To facilitate the collection process and reduce duplication of efforts, the entities involved with assessing and collecting criminal debt (investigative agencies, prosecuting attorneys, and probation offices) should share financial information obtained about the offender with the Financial Litigation Units. However, in over half the cases we reviewed, we found little evidence of coordination among the entities involved in the criminal debt collection process and a lack of specific procedures to ensure that efforts are coordinated. For example, we found that investigating case agents and prosecutors do not always share financial information with Financial Litigation Units, hindering the Financial Litigation Units' ability to assess an offender's ability to pay. Specifically, in 52 percent of the high-dollar cases and in an estimated 61 percent of the sampled population, we found little or no evidence of coordination through correspondence with case agents or prosecuting attorneys. In addition, we found that Financial Litigation Units typically were not monitoring the collection efforts of probation officers, as advised by the U.S. Attorneys' Manual, and that, contrary to district procedures, probation officers were not always informing Financial Litigation Units of an offender's upcoming release from probation. Furthermore, at the four districts we visited, the Financial Litigation Units and the clerks' offices maintained separate databases to track criminal debt collections. This lack of coordination is a long-standing problem that has not been adequately addressed and has resulted in

[12]See footnote 10 in executive summary.

[13]*Fines and Restitution: Improvement Needed in How Offenders' Payment Schedules Are Determined* (GAO/GGD-98-89, June 29, 1998).

inefficient processes and duplication of effort. Because of the many agencies and district offices involved in assessing and collecting criminal debt—including two branches of the federal government and 94 districts—effective and efficient criminal debt collection hinges on the ability of these entities to work together.

Oversight Roles of OMB and Treasury

As previously noted, management oversight of the criminal debt collection process has been divided between the executive and judicial branches. The National Fine Center was an attempt to centralize the criminal debt collection process, a move that would have increased management oversight. However, since the effort to centralize and automate the collection process was terminated in 1996, the collection responsibilities continue to be divided between Justice and the courts, with neither having a central management oversight role.

Presently, neither OMB nor Treasury has identified the need to take an active role in overseeing the federal government's process for collecting the billions of dollars of outstanding criminal debt. A primary function of OMB as a central agency is to evaluate the performance of federal programs and to serve as a catalyst for improving interagency cooperation and coordination. In its central role, OMB is also responsible for reviewing debt collection policies and activities.[14] As such, OMB could work with Justice and other executive branch agencies that are due restitution to ensure that these entities report and disclose relevant criminal debt information in their financial statements and subject such information to audit. In implementing provisions of the Debt Collection Improvement Act of 1996 (DCIA), Treasury, through its Financial Management Service, could assist Justice and the courts in identifying the types of delinquent criminal debt that would be eligible for referral to Treasury for collection actions. In turn, by better accounting for and reporting its delinquent criminal debt, Justice and the courts would enhance their own management oversight over this problem. Collectively, these efforts would place greater emphasis on the management of criminal debt and could increase collections.

[14]For example, OMB provides guidance to agencies to assist them in implementing legislation, such as the Debt Collection Improvement Act of 1996 (see OMB Circular No. A-129, *Policies for Federal Credit Programs and Non-Tax Receivables*).

Recommendations

Our recommendations, detailed in chapter 5, are designed to increase the effectiveness and efficiency of the federal government's criminal debt collection process. To help address the long-standing problems in this area, including fragmented processes and lack of coordination, we recommend that the key entities involved in the criminal debt collection process establish a joint task force to develop a strategic plan to improve the processes and coordination among all entities involved and to reduce the duplication of effort.

In the interim, to help improve collections and stem the growth in uncollected criminal debt, we make specific recommendations related to the following:

- establishing or revising procedures and processes for prioritizing, managing, and collecting criminal debt and reinforcing established criminal debt collection procedures that are not being adequately followed;
- revising the language in the Judgment in a Criminal Case forms to clarify that payment terms established by judges are minimum payments and should not prohibit or delay collection efforts;
- improving the coordination and sharing of information among the entities involved in the assessment and collection process; and
- having Treasury, in its role under the DCIA, assist Justice and the courts in identifying the types of delinquent criminal debt that would be eligible for referral to Treasury for collection actions.

Agency Comments and Our Evaluation

Justice and OMB agreed with our recommendation for working together in the form of a joint task force to develop a strategic plan to improve criminal debt collection processes and establish an effective coordination mechanism among all entities involved in the process. The Administrative Office of the United States Courts (AOUSC) and Treasury did not state whether they agreed or disagreed with the establishment of and their participation in this task force. We believe that the involvement of AOUSC, as well as Treasury, given its central agency role of preparing the federal government's financial statements and implementing DCIA, is critical to the success of the task force.

Justice generally agreed with the premise of the report and recognized the need for improvements in the criminal debt collection area. Justice also agreed with 10 of our 12 recommendations specifically addressed to it and

partially agreed with the other 2. The AOUSC commented that most of our recommendations directed to it had already been implemented and that it is pursuing those related to working with Justice to refer eligible debt to Treasury and reduce duplication of the recordkeeping function. Treasury agreed with our recommendation specifically addressed to it regarding assisting Justice and the courts in identifying eligible delinquent debt for referral to Treasury.

Justice and the AOUSC both commented on the methodology used to develop the report findings. For example, Justice and AOUSC stated that closed cases (i.e., debts paid in full) should have been reviewed. We disagree. To address the requestor's objectives of determining the key reasons for the growth in reported uncollected criminal debt and determining whether adequate processes exist to collect criminal debt, we selected cases that involved debt amounts outstanding as of September 30, 1999. Reviewing closed cases would not have addressed why debts have not been collected nor would it have provided a sound basis for determining whether there are adequate processes for collecting criminal debt at the four districts visited. In addition, since we used debts outstanding as of September 30, 1999, many of which were more than 3 years old, ample time for collection activity had passed before we reviewed the cases, enabling us to assess the level of collection efforts performed.

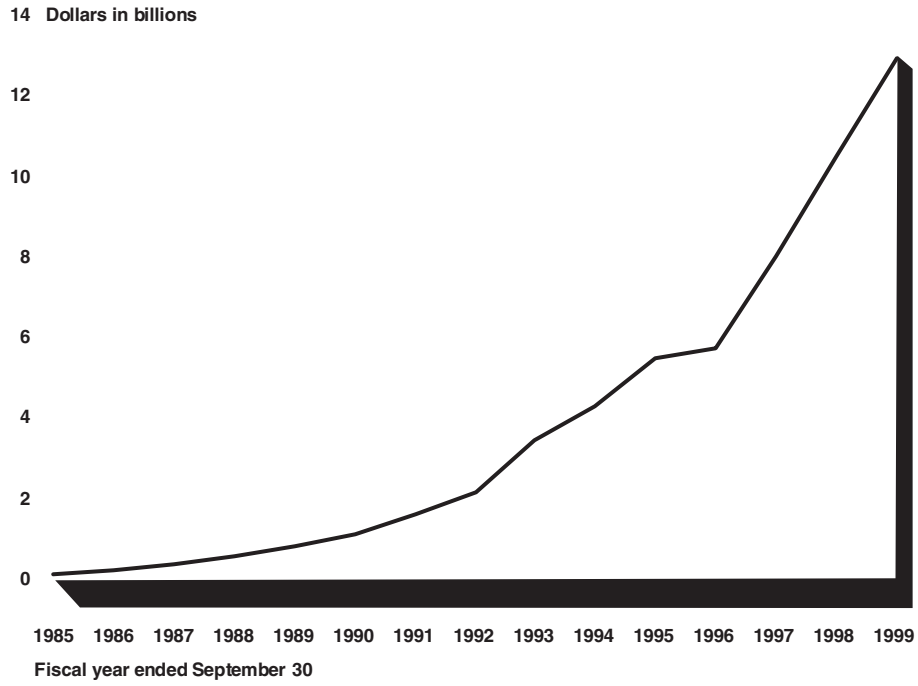
In addition to commenting on our methodology, the AOUSC stated that the effect of the Mandatory Victims Restitution Act of 1996 (MVRA) should have received greater attention in the report. We believe that we have provided sufficient balance in the report as evidenced by an entire chapter devoted to uncontrollable factors, such as MVRA, that contribute to the growth in outstanding criminal debt. See "Agency Comments and Our Evaluation" in chapter 5 of this report, for more discussion.

Introduction

The collection of outstanding criminal debt has been a long-standing problem, with many of the issues that we have been reporting on since October 1985[1] still remaining. Since that time, as reported in the U.S. Attorneys' statistical reports, the balance of outstanding criminal debt has grown from $260 million to over $13 billion (see figure 1). The Congress attempted to address some of these problems through the Criminal Fines Improvement Act of 1987 when it transferred the responsibility for accounting for and processing criminal debt from Justice to the courts and gave them the responsibility for establishing a centralized accounting system (see appendix II, "History of Criminal Debt Collection Legislation"). In 1990, the Administrative Office of the United States Courts (AOUSC) began developing a centralized entity, called the National Fine Center (NFC) to record, track, and report on federal criminal debt. The NFC was expected to automate and centralize criminal debt processing for the 94 federal judicial districts and provide a management information system to replace the existing fragmented approach for receiving payments and alleviate long-standing weaknesses in accounting for, collecting, and reporting on criminal monetary penalties imposed on federal criminals.

[1]GAO/GGD-86-02, October 10, 1985. Also see "Related Products" at the end of this report.

Figure 1: Growth in Outstanding Criminal Debt Since 1985



Source: Unaudited Executive Office for United States Attorneys (EOUSA) data (presented in actual dollars).

Note: MVRA, which requires that the assessment of restitution be based on actual loss and not on the offender's ability to pay, was enacted in 1996.

However, after several years of developing a National Fine Center that was criticized by GAO[2] and the Congress, the AOUSC engaged an independent consulting firm in February 1996 to perform a full review of the project. The consulting firm concluded that the task of developing a National Fine Center, involving several agencies in two branches of government, proved to be more complex than expected and that the needs of the districts could not be met through a centralized approach. Thus, with the consent of the Congress, the NFC was terminated. As such, the criminal debt collection

[2]*National Fine Center: Expectations High, but Development Behind Schedule* (GAO/GGD-93-95, August 10, 1993) and *National Fine Center: Progress Made but Challenges Remain for Criminal Debt System* (GAO/AIMD-95-76, May 25, 1995).

process continues to be fragmented, involving both judicial and executive branch entities in 94 districts across the country.

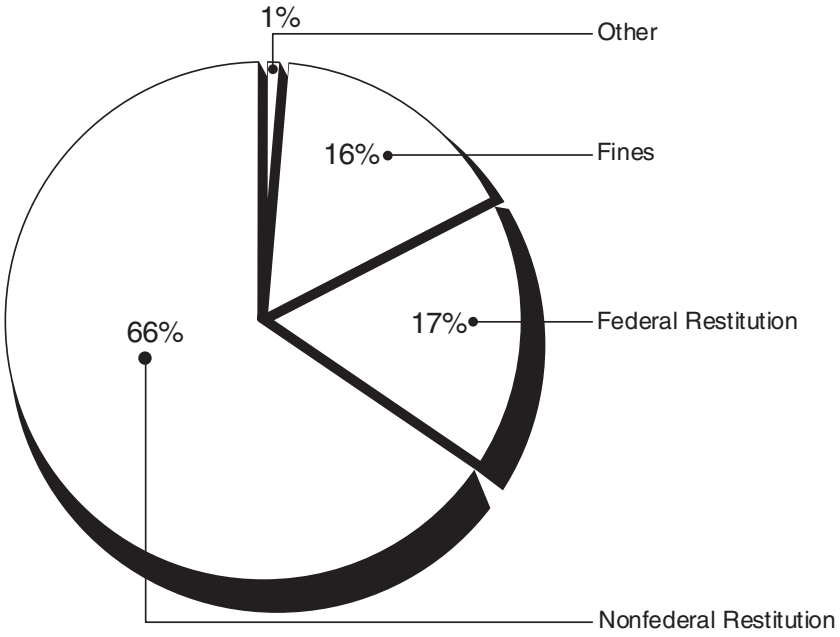
Also, around the time of the consultant's report, the Mandatory Victims Restitution Act of 1996 (MVRA) was enacted, requiring that restitution be assessed at the full amount regardless of an offender's ability to pay. Since that time the balance of reported uncollected criminal debt has increased dramatically. Reported uncollected criminal debt has more than doubled from about $5.6 billion as of September 30, 1995, to approximately $13 billion as of September 30, 1999, with about 66 percent of that amount attributed to restitution owed to nonfederal parties. The collectibility rate however has not increased proportionally.

Background

Criminal debt arises when a court orders an offender to pay fines and/or restitution as part of the punishment for violating a federal criminal law. Unless the offender immediately pays the debt, Justice is responsible for enforcing its collection. Justice has delegated this responsibility to its Financial Litigation Units (FLU) in the United States Attorneys' Offices (USAO) across the country. As of September 30, 1999, the Executive Office for United States Attorneys (EOUSA) database reflected approximately $13.1 billion in reported outstanding criminal debt, of which about $5.6 billion (or 43 percent) was accounted for by the four districts we visited (see figures 2 and 3 for a breakout of the major types of criminal debt involved).

Figure 2: Total Reported Criminal Debt by Major Type as of September 30, 1999

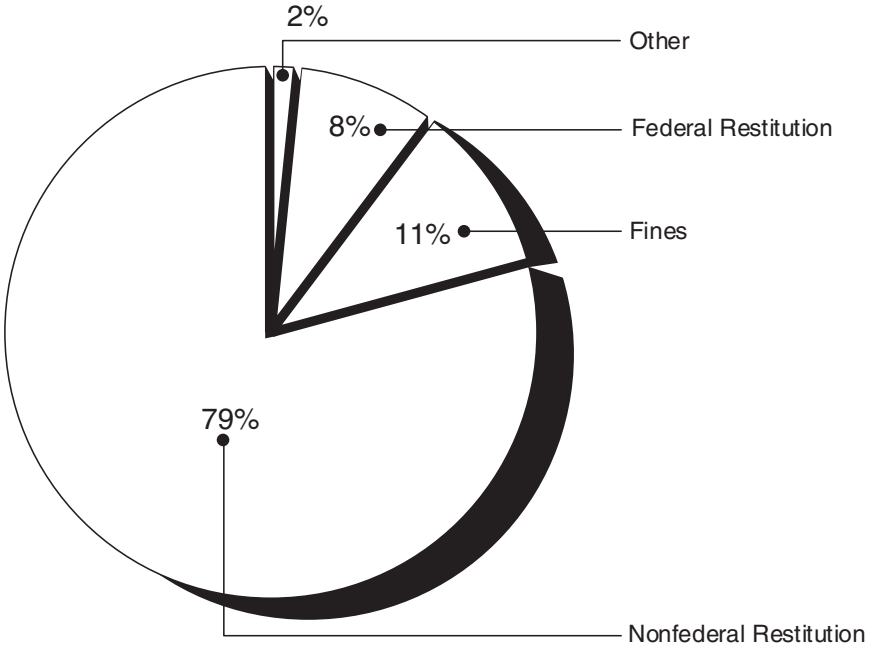
(Total Outstanding Criminal Debt = $13.1 Billion)



Source: Unaudited EOUSA data on outstanding criminal debt as of September 30, 1999.

Figure 3: Total Reported Criminal Debt by Major Type, as of September 30, 1999, at the Four Selected Districts

(Outstanding Criminal Debt = $5.6 Billion)



Source: Unaudited EOUSA data on outstanding criminal debt as of September 30, 1999.

Each of the 94[3] districts has a USAO, an executive branch agency, and a U.S. district court that includes district judges, a clerk's office, and a probation office within the judicial branch of government. The districts operate independently from one another with guidance provided by the offices indicated in table 1.

[3]There are 94 districts throughout the country, but the USAOs and probation offices for two of them are combined resulting in 93 USAOs and probation offices.

Table 1: Guidance Provided to USAOs and U.S. Courts

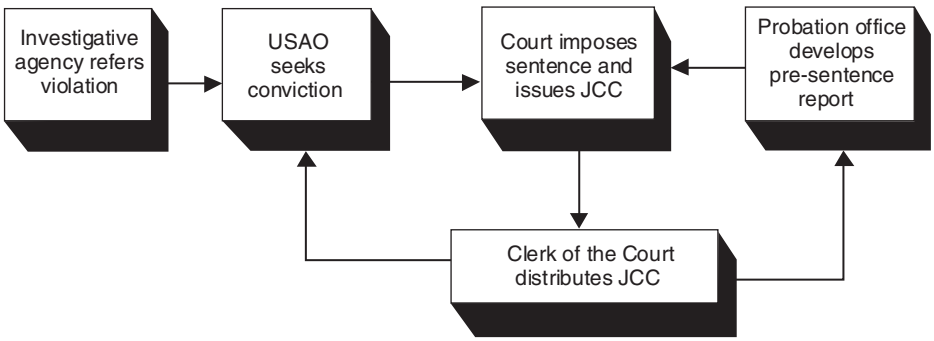
Entity	Centralized office/entity providing guidance	Type of guidance provided
USAOs	Justice's Executive Office for United States Attorneys (EOUSA)	Provides general executive assistance, administrative support, and other operational support.
U.S. courts, probation offices, and clerk's offices	The Judicial Conference of the United States	Policymaking body for the judiciary. Recommends to the various courts ways to promote uniform management procedures.
	Administrative Office of the U.S. Courts (AOUSC)	Implements Judicial Conference policies and provides national standards and promulgates administrative and management guidance.
	U.S. Sentencing Commission	Provides sentencing guidelines.

In addition to general guidance provided by Justice, the Judicial Conference, and the U.S. Sentencing Commission (USSC), each district office develops supplemental guidance for criminal debt collection procedures. Within each district, the USAO, probation office, and the clerk's office enter into a memorandum of understanding (MOU) that documents how criminal debt collection activities will be accomplished. Each of the USAOs also has a Financial Litigation Plan that details district guidance on collecting criminal debt. The following sections provide additional detail on (1) assessing criminal fines and restitution and (2) accounting for and collecting criminal debt in this currently decentralized and fragmented environment.

Assessing Criminal Fines and Restitution

Agencies such as Justice's Federal Bureau of Investigation and the Drug Enforcement Administration investigate violations of federal law and refer the results of their investigations to a local USAO (see figure 4 for a general overview of the criminal debt assessment process). The country is divided into 94 federal judicial districts, with a federal district court in each district. Each of the 94 districts is located in one of 12 regional circuits, and each circuit has a Court of Appeals.

Figure 4: Process of Assessing Criminal Fines and Restitution



Note: JCC = Judgment in a Criminal Case.

After the USAO obtains the conviction of an offender, the court issues a Judgment in a Criminal Case (JCC), which details terms of the sentence and orders the payment of a fine and/or restitution, if applicable. To assist judges in determining the fine and/or restitution amount, a probation officer prepares and provides to the court a pre-sentence report that includes financial information related to an offender's ability to pay a fine and information related to victims' losses. In preparing the pre-sentence report, probation officers are to use financial information obtained from the investigating agency, the trial, and the offender. In deciding whether to assess a fine and, if so, the amount to assess, courts are to consider an offender's income, earning capacity, and financial resources; the potential burden placed on an offender's family; and any restitution or other obligations that the offender is required to make. For example, if large amounts of restitution are ordered, the assessment of fines is typically waived based on the offender's inability to pay a fine.

USSC guidelines provide guidance on the minimum and maximum fine amounts for the U.S. courts to impose based on the offense. The statute requires the court to order the payment of a fine immediately unless, in the interest of justice, the court provides for payment on a date certain or in installments. According to the guidelines and the statute, judges may consider whether paying the fine in a lump-sum would have an unduly severe impact on the offender or any dependents, and if so, should establish an installment schedule for paying the fine. The installments should be in equal monthly payments over the period established by the court, unless the court establishes another schedule. The length of time

over which scheduled payments should be made is the shortest time in which full payment can reasonably be made, generally not to exceed 12 months. In addition, judges may waive fines if they believe that offenders will be unable to pay and are unlikely to become able to pay (e.g., if they are sentenced to life in prison or cannot afford to hire private counsel).

Judges may also order restitution to be paid to the victims of a crime. In accordance with statute, before MVRA was enacted in April 1996, the court typically waived or reduced the restitution amount based on the offender's ability to pay. However, under MVRA, the court typically must order restitution to each victim in the full amount of each victim's loss, without regard to an offender's economic situation.[4] If the court believes that an offender cannot immediately or fully pay the restitution amount in the foreseeable future, the court can order the offender to make nominal installment payments.

In some districts, judges must set the payment schedules and document them in the JCC, and in other districts, judges can delegate to probation officers the authority to set payment schedules. However, within the last few years, more judges have been required to establish payment schedules as a result of several circuit court decisions that have affected policies in this area. For example, some circuit courts have held that courts are prohibited from ordering a defendant to pay criminal fines or restitution in accordance with a payment schedule set by a probation officer or a prison official because the setting of a payment schedule is an inherently judicial function that may not be delegated to others.[5] In addition, some circuit courts have prohibited the imposition of an immediate payment order of the entire amount unless the defendant can pay the entire amount immediately.[6] Finally, some circuit courts have interpreted the MVRA to

[4]Exceptions include cases in which (1) the number of identifiable victims is so large that paying restitution would be impractical or (2) determining complex factual issues related to the cause or amount of the victims' losses would complicate or prolong the sentencing process to a degree that the burden of the sentencing process would outweigh the need to provide restitution to the victim.

[5]See, e.g., *United States v. Porter*, 41 F. 3d 68 (2d Cir. 1994); *United States v. Mortimer*, 94 F. 3d 89 (2d Cir. 1996); *United States v. Graham*, 72 F. 3d 357 (3d Cir. 1995), cert. denied 516 U.S. 1183 (1996); *United States v. Miller*, 77 F. 3d 71 (4th Cir. 1996); and, *United States v. Pandiello*, 184 F. 3d 682 (1999).

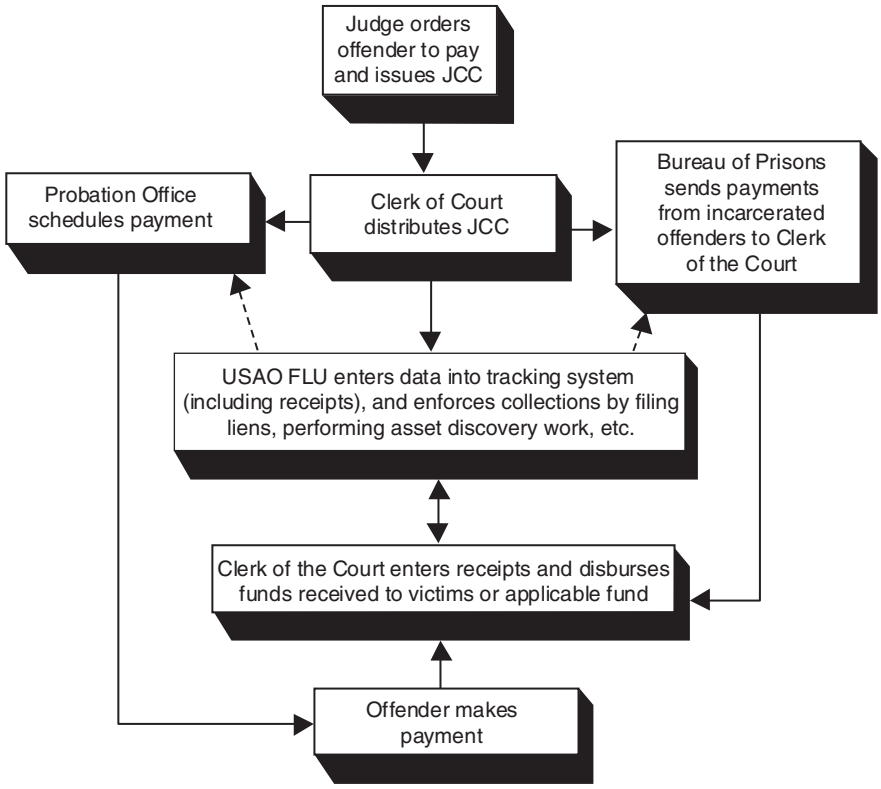
[6]See, e.g., *United States v. Mortimer*, 52 F. 3d 429, 436 (2d Cir. 1995).

require the court to set the payment schedule in all cases at sentencing.[7]

Criminal Debt Collection Process

After the assessment process, the criminal debt collection process varies depending on the other sentencing terms imposed on the offender. Figure 5 shows the typical post-MVRA criminal debt collection process.

Figure 5: Typical Post-MVRA Criminal Debt Collection Process



Note: JCC = Judgment in a Criminal Case.

[7] See, e.g., *United States v. Coates*, 178 F. 3d 681 (3d Cir. 1999) and *United States v. Myers*, 198 F. 3d 160 (5th Cir. 1999).

The FLUs within the USAOs' Civil Divisions have been delegated the responsibility for collecting criminal debt. After receiving a JCC, the FLU enters information from the JCC into the FLUs' case tracking system and performs certain collection actions depending on such factors as the amount of the debt. The FLUs' collection efforts include filing liens (based on debtor's address or county of known residence), identifying debtor assets, garnishing debtor wages, and serving notice of late payments. To facilitate collection and reduce duplication of effort, the entities involved with assessing and/or collecting criminal debt (investigative agencies, prosecuting attorneys, and the courts) should share the financial information they have obtained about the offender with the FLUs.

Offenders are encouraged to participate in the Bureau of Prisons (BOP) Inmate Financial Responsibility Program (IFRP). This program provides a means of collecting voluntary periodic deductions from inmates' wages earned from a prison occupation. The amounts are generally small and are deducted periodically (e.g., monthly, quarterly, or semiannually). When released from prison or as ordered by the judge at sentencing, the offender is assigned to a probation officer. If the criminal debt has not been paid, the probation officer or the court, depending on the district, should establish an installment schedule for payment. Probation officers may restrict offenders from performing certain activities, such as traveling outside the district, if they are not making their required payments. Probation officers may also request that the court revoke supervision[8] (i.e., send an offender to prison) if the offender is willfully refusing to make payments.

Since, as noted above, the NFC effort did not succeed, the FLUs in each district maintain their own databases to meet their enforcement responsibilities. Restitution payments from offenders in most districts are submitted to the clerk's office. The clerk's office records these payments and provides a copy of the payment information to the FLUs so that they can update their databases. Most criminal fines are paid to the clerk's office and deposited into Justice's Crime Victims Fund, which provides grants for victim assistance programs and compensation to victims.

Payments for restitution assessed after MVRA are paid to and disbursed by the clerk's office; however, the handling of payments and disbursements for pre-MVRA restitution vary by district. In 18 districts, the clerk's office

[8]The term "supervision" incorporates the circumstances of an offender on probation or supervised release (i.e., from prison).

accepts only post-MVRA restitution payments; therefore, the FLUs in these districts maintain an additional system to receive pre-MVRA restitution payments from offenders and to disburse payments received to applicable victims. Restitution is often owed to many victims, and disbursements must be prorated based on the amounts owed to each victim. The clerk's office disburses checks to victims, whereas the FLU uses an independent financial institution to receive payments and disburse checks to victims. AOUSC officials have indicated that they are working with the staff in the remaining districts to assist them in assuming the receipting of collections responsibilities for pre-MVRA payments.

Objectives, Scope, and Methodology

Our objectives, as agreed to by the subcommittee staff, were to determine (1) the key reasons for the growth in reported uncollected criminal debt, (2) whether adequate processes exist to collect criminal debt, and (3) what role, if any, the Office of Management and Budget (OMB) or the Department of the Treasury (Treasury) plays in overseeing and monitoring the government's collection of criminal debt.

To determine the key reasons for the growth in reported uncollected criminal debt and whether adequate processes exist to collect criminal debt, we (1) interviewed officials from the Executive Office for United States Attorneys (EOUSA), the Administrative Office of the United States Courts (AOUSC), and five selected district offices,[9] (2) reviewed applicable policies and procedures for collecting criminal debt, (3) obtained a database from EOUSA of all outstanding criminal debt as of September 30, 1999, and (4) reviewed all criminal debt cases greater than or equal to $14 million at the four districts with the largest amount of outstanding criminal debt as of September 30, 1999. These four districts—the Central District of California, the Eastern and Southern Districts of New York, and the Southern District of Florida—accounted for $5.6 billion (or 43 percent) of the over $13 billion of outstanding criminal debt as of this date. At these four districts, we reviewed all 44 cases greater than or equal to $14 million, which accounted for $3.7 billion (or 66 percent) of the $5.6 billion. We also

[9]The five districts include the four districts with the largest amount of outstanding criminal debt as of September 30, 1999—the Central District of California, the Eastern and Southern Districts of New York, and the Southern District of Florida—and the Northern District of California, where we documented our initial understanding of the criminal debt collection process. For the purposes of this report, "the four districts we visited" refers to the four districts where we performed our detailed testing.

selected and reviewed 35 random criminal debt cases with a dollar value of $5,000 or greater but less than $14 million at each of the four districts (for a total of 140 random cases); thus, we had a total of 184 cases selected for our review. We did not independently verify the completeness or accuracy of these data or test information security controls over the system used to compile these data because that verification was not necessary to meet the objectives of this report.

To determine what role, if any, OMB and Treasury play in overseeing and monitoring the government's collection of criminal debt, we interviewed officials from these entities and reviewed applicable laws and regulations.

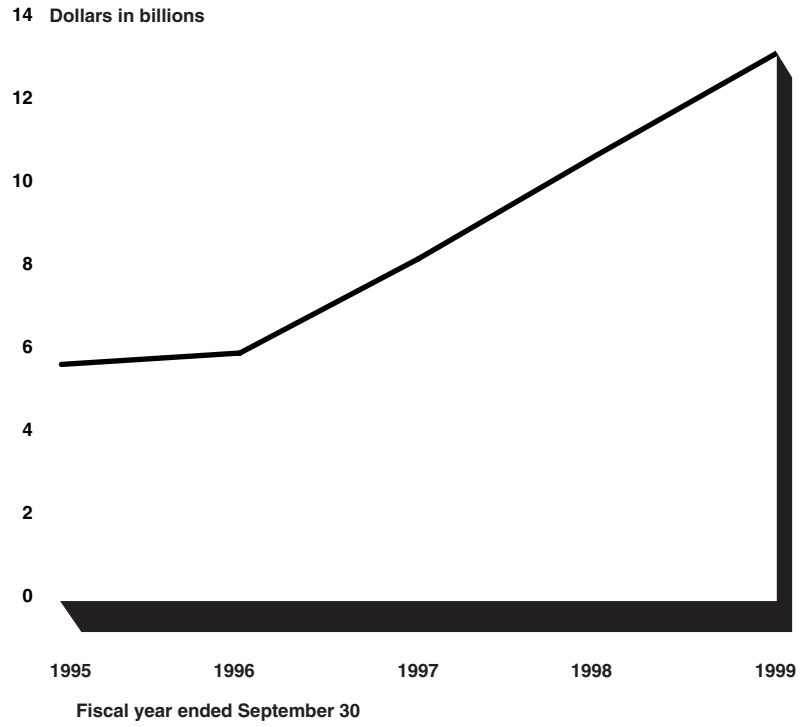
We performed our work from April 2000 through April 2001 in accordance with U.S. generally accepted government auditing standards. We requested comments on a draft of this report from the respective agencies. These comments are discussed in the "Agency Comments and Our Evaluation" section of the report and are reprinted in appendix III through appendix V.

See appendix I for a more detailed discussion of our scope and methodology.

Factors Contributing to the Growth in Uncollected Criminal Debt

According to statistics from the EOUSA, the amount of criminal debt has grown significantly since fiscal year 1995 (see figure 6). Several factors contributing to the growth in reported uncollected criminal debt, some of which are not within the FLUs' or probation offices' control, include (1) the nature of the debt, including the government's limited ability to write off certain debt deemed to be uncollectible, (2) the assessment of mandatory restitution, (3) interpretation of payment schedules set by judges, and (4) limitations due to state laws.

Figure 6: Reported Criminal Debt Outstanding From September 30, 1995, Through September 30, 1999



Source: Unaudited data provided by EOUSA.

Note: MVRA was enacted in 1996.

Nature of the Debt

The nature of criminal debt, including how and why it is levied, can make the debt more difficult to collect. Criminals may not be willing to comply with the law, and forcing compliance is difficult because criminals are

already convicted felons who may be serving time in prison or may have been deported. Moreover, offenders in prison have limited earning capacity, and so potential collections are limited. In 57 percent of the high-dollar cases we reviewed and in an estimated 20 percent of our sampled population, the offender was still in prison. Further, significant time may pass between an offender's arrest and sentencing, giving offenders time to hide fraudulently obtained assets, such as funds in offshore accounts, shell corporations, or family members' names and accounts.

Even though the courts are required to consider an offender's ability to pay when assessing fines, collection cannot always be assured. Fines are sometimes assessed to make a statement about the nature of the crime and its impact on society. Restitution, as discussed below, is typically assessed without regard to an offender's ability to pay; therefore, collection may be unrealistic.

Asset seizure and forfeiture are important components of law enforcement efforts to deprive criminals of the proceeds and instruments of their crimes. Several years may pass between an offender's arrest and sentencing. Federal laws authorize agencies to seize assets before a criminal conviction, thereby potentially overcoming one difficulty in collecting fines and restitution—defendants diverting their assets before conviction. However, the FLUs are not permitted to pursue liquidation of assets for debt collection until after an offender is convicted and sentenced.

Proceeds from forfeiture are typically used to make owners (e.g., a mortgager) whole and to fund law enforcement activities, and are not necessarily used to fulfill restitution orders. Therefore, the use of forfeiture, as we reported in June 1994,[1] could decrease amounts that might otherwise be available for paying restitution to crime victims and reducing outstanding criminal debt. According to Justice statistics, of the estimated $536 million of forfeited cash and property[2] recovered during fiscal year 1999, approximately $39 million (or 7 percent) was applied to restitution in victim-related offenses. The remaining amounts were either converted to cash and used for law enforcement purposes or retained for official law

[1]*Restitution, Fines, and Forfeiture: Issues For Further Review and Oversight* (GAO/T-GGD-94-178, June 28, 1994).

[2]Not all of these seizures were related to cases in which fines or restitution was ordered.

enforcement use. In our case reviews, only 2 of the 44 high-dollar cases provided that the proceeds from the sale of assets be used to pay restitution. None of the JCCs for the random cases stated such terms. In the 2 high-dollar cases, the JCCs specifically stated that the proceeds of the sale of seized and forfeited assets should be used to pay victims.

Finally, according to 18 U.S.C. 3613, most criminal debts must remain "on the books" for 20 years plus the period of incarceration and cannot be "written off" until the statute of limitations expires, the debtor is deceased, or the court approves a petition of remission filed by the USAO. Therefore, even if Justice determines that certain debts are not collectible, these debts must remain "on the books," and the FLUs must periodically reassess their collectibility in accordance with USAO policies (see chapter 3) regardless of the status of the offender or previous actions to collect these debts. For example, in accordance with USAO policies, a $30,000 debt must be reassessed annually even if the FLU was unsuccessful in previous attempts to identify assets and the offender is serving a sentence of life in prison.

The U.S. Attorneys' Manual states that if the FLU determines that a fine will likely never be collected, it can seek a petition for remission[3] of all or part of a fine from the judge. According to the Manual, seeking remission is preferable to placing it "in suspense" and continuing to pursue collection. However, we found no evidence that the FLU had requested a petition for remission in the cases we reviewed, even though some cases appear to have met the criteria for remission. According to FLU officials, obtaining a court order to write off delinquent debt is a time-consuming process and is not considered a priority among the many other tasks (e.g., working on open cases) the FLUs must perform.

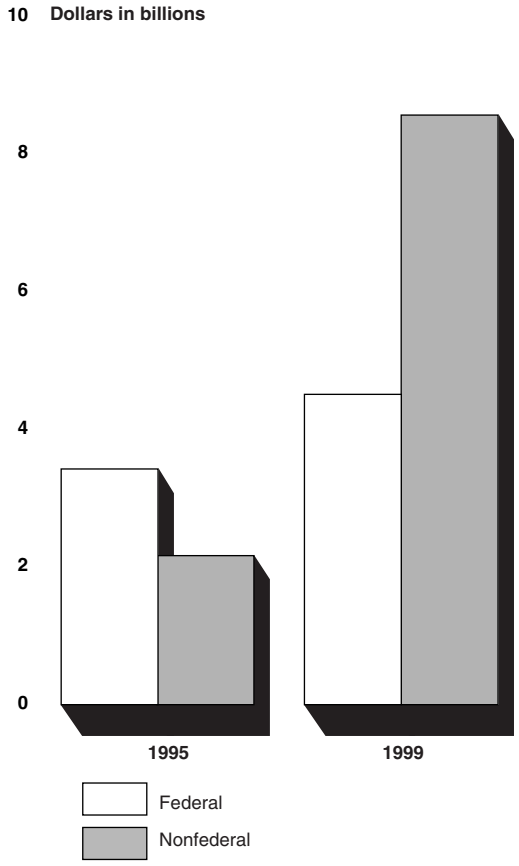
Assessment of Mandatory Restitution

Before the Mandatory Victims Restitution Act of 1996 (MVRA), the assessment of restitution, like the assessment of fines, was typically based on an offender's ability to pay. However, MVRA requires that assessment of restitution be based on actual loss and not on the offender's ability to pay. Assessments of restitution have significantly increased since the passage of the act. As of September 30, 1995, approximately $3.4 billion (102,158 cases) in criminal debts was owed to the federal government in fines and federal restitution and about $2.2 billion (15,126 cases) was owed in

[3]The FLU can request that the judge approve a petition for remission of a debt, which thereby dismisses the debt and allows the FLU to write off such amounts.

nonfederal restitution. Although federal and nonfederal criminal debt amounts have increased from September 30, 1995, to September 30, 1999, the increase for nonfederal debt (i.e., restitution) is far greater (see figure 7).

Figure 7: Reported Federal Criminal Debt (Fines and Federal Restitution) and Nonfederal Criminal Debt (Nonfederal Restitution) as of September 30, 1995 and 1999



Source: Unaudited USAO Statistical Reports.

When assessed amounts are not based on an offender's ability to pay, the likelihood of collecting the full amount may be unrealistic. For example, in addition to each offender receiving a 240-year prison sentence, the four offenders convicted of bombing the World Trade Center were each ordered to pay $250 million in restitution plus fines ranging from $250,000 to

$4.5 million. These four cases alone increased the criminal debt balance by over $1 billion. All four offenders refused to provide financial information and, as of May 2000, these offenders had collectively only paid approximately $3,000. Under these circumstances, it is unlikely that a significant portion of the restitution owed by these offenders will be collected. In another example, an offender was convicted in March 1997 of conspiracy, mail fraud, and tax evasion; sentenced to 20 years imprisonment and 3 years of supervised release; and ordered to pay a fine of $1 million and restitution of over $475 million. FLU records show that as of September 30, 1999, the offender had paid only $25. FLU records also show the offender refused to participate in the Inmate Financial Responsibility Program. Before sentencing, the offender also refused to provide the probation officer with a personal financial statement that would identify income, expenses, assets, and liabilities. Other work by the probation officer, including obtaining a credit report, doing an online property search, and reviewing tax return information, did not disclose assets available to pay down the debt.

Payment Schedules Set by Judges

In some districts, the judges may delegate the authority to set payment terms to probation officers. In those districts where it has been held that the courts may not delegate the authority to set payment schedules (including two of the districts we visited), judges must include them in the JCC. We found that the payment schedules set by judges can significantly influence collection efforts. EOUSA and FLU officials we interviewed indicated they believe that when a judge orders specific payment schedules in the JCC, they are precluded from making any collection efforts (other than filing a lien), such as pursuing liquidation of assets, until an offender is released from probation. However, the view of AOUSC officials and the Chief Judge in one of these districts is that the inclusion of payment schedules in the JCC does not preclude the FLU from identifying and pursuing assets but merely sets a minimum amount that must be paid while an offender is under supervision. The EOUSA and FLU interpretation inhibits the FLUs from taking prompt collection efforts, and the government may lose opportunities to collect criminal debt.

In 16 of the 44 high-dollar and 41 of the 140 random cases we reviewed, judges stipulated terms in the JCCs regarding how or when fines or restitution should be paid; in the remaining cases, the fine or restitution was due immediately (see table 2 for terms stipulated in our selected cases). In the cases where judges stipulated payment terms, we found that the FLUs typically wait until after the offender is released from prison and

probation before performing collection actions (e.g., searching for and liquidating assets). As a result of such delays, opportunities to maximize collections may be missed.

Table 2: Terms Stipulated in JCCs Related to GAO's Selected Cases

Terms	High-dollar cases	Random cases[a]
Due immediately—no additional payment terms	28	99
Due after release from prison[b]	1	17
Percentage of gross income due on a periodic basis	2	10
A specific or equal amount due on a periodic basis	2	5
"At least" amounts due on a periodic basis	8	3
Other terms	3	6

[a]In circumstances in which attributes do not apply to all cases, estimating the results to an appropriate population would introduce significant sampling error intervals. Therefore, we have presented only the actual results for the applicable cases in each circumstance. See footnote 10 in executive summary.

[b]All but 6 of these offenders had been released from prison as of the time of our review.

Source: Data obtained from terms documented in JCCs.

As we reported in 1999,[4] the payment schedules set by judges vary by district. For example, in 1 of the high-dollar cases and in 17 random cases, including 13 random cases selected from the Eastern District of New York, the judges stipulated that the amount was not due until the offender was released from prison. In these instances, the FLUs typically do not perform any collection actions other than filing a lien. In 2 high-dollar and 10 random cases, 9 of which were from the Southern District of New York, judges established a payment schedule based on a percentage of gross income to be paid on a periodic basis (e.g., 10 percent of gross monthly income to be paid monthly). In 8 high-dollar and 3 random cases from the Central District of California, the judge established a minimum amount that must be paid on a periodic basis (e.g., at least $300 to be paid each month). We found that probation officers typically did not recommend an increase in payment amounts, and the FLUs typically did not attempt to increase them or pursue liquidation of assets, even if financial circumstances

[4]*Federal Courts: Differences Exist in Ordering Fines and Restitution* (GAO/GGD-99-70, May 6, 1999).

improved.[5] The following examples show the effects of terms being stipulated in the JCCs.

- In one case, in February 1998, an offender was convicted of bank fraud and ordered to pay $113 million in restitution jointly and severally with coparticipants through quarterly payments of *at least* $2,400.[6] Since the payment schedule was specified in the order and the offender was making the minimum payments, neither the FLU nor the probation officer recommended or attempted to pursue the net proceeds of $80,000 from the sale of her house and $19,200 from the sale of two cars. While on probation, the offender was permitted to move to another country with court approval. As of February 2001, clerk records show that this offender had paid $28,800 and all coparticipants combined had paid less than $100,000.
- Another offender was convicted of wire fraud, sentenced in November 1997 to 6 months of home detention to be served concurrently with 3 years of probation and ordered to pay over $74 million in restitution jointly and severally with coparticipants. The judge ordered the defendant to make quarterly payments of *at least* $750 after she completed home detention. Based on financial statements the offender provided, her pre-sentence report showed that she had over $40,000 in unencumbered assets[7] and $5,000 of unsecured debt, resulting in a net worth of over $35,000. The probation office had not recommended the pursuit of liquidation, nor had the FLU attempted liquidation of any assets owned by the offender. According to the FLU, because the judge included the payment schedule in the judgment, the FLU will not pursue collection until after the offender is released from supervision. As of April 2000, the offender had paid $6,000.
- In April 1998, another offender in our selection was convicted of conspiracy to commit mail fraud and ordered to pay a $20,000 fine in quarterly installments over a 3-year probation period even though just before his sentencing, the offender reported $5,000 in cash, $12,400 in his checking account, and over $100,000 of equity in his home. In this example, it appears that the offender may have had the ability to pay his whole fine or a significant portion of it immediately; however, since the

[5]Probation officers do not have authority to pursue liquidation of assets, but they can recommend that the FLU pursue such liquidation.

[6]A judge may order debtors to be individually liable or jointly liable with other offenders.

[7]Assets not tied up by a legal claim and thus available for collection (i.e., no lienholder).

judge set a payment schedule in the JCC, neither the FLU nor the probation office reassessed the offender's ability to pay or pursued a lump-sum payment. According to clerk records, the offender had paid $14,400 as of June 2000.

State Laws

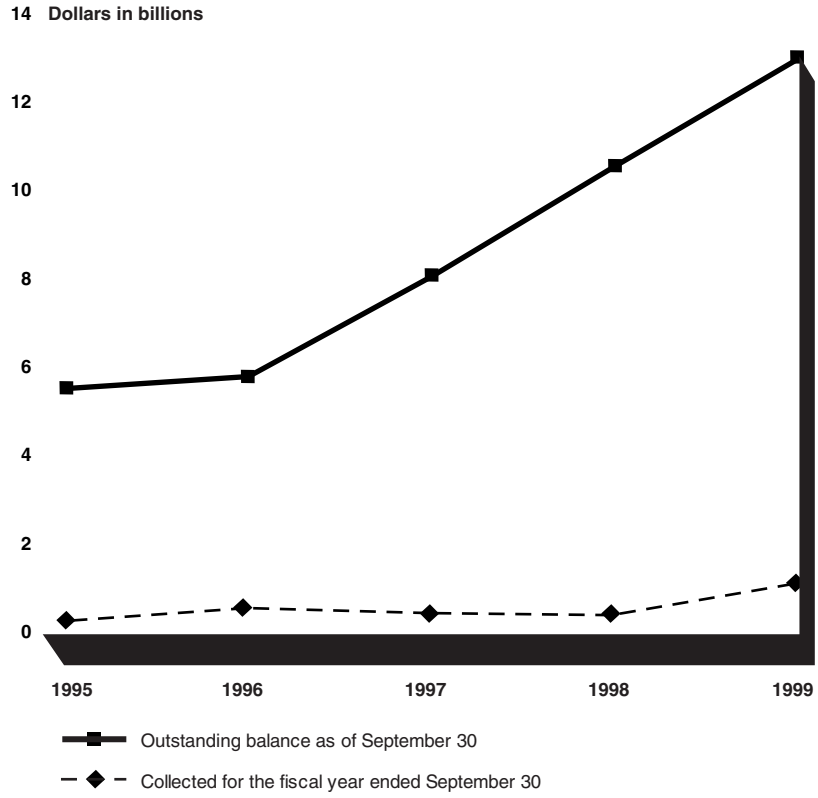
According to EOUSA officials, state law can also restrict the FLU's ability to perform certain collection efforts and therefore contribute to the growth in outstanding criminal debt. State law may limit the type of property that can be seized and the amount of wages that can be garnished. For example, certain states, such as Florida, have unlimited homestead exemptions, prohibiting the seizure of a primary residence regardless of the amount of equity in the home and thus prohibiting the FLU from requiring an offender to borrow against a primary residence.

During our case-file reviews, we found several instances in which real property and personal property were registered in the offender's spouse's name (or other family member). These assets may be difficult to liquidate unless the state is a "community property" state, such as California, in which each spouse is entitled to one-half interest in property owned or income earned by the other spouse.

Inadequate Criminal Debt Collection Processes and Lack of Coordination Contribute to Low Collection Rate

Because of the many agencies and districts involved in the collection process, improving the rate of criminal debt collection, which has averaged about 7 percent for fiscal years ending September 30, 1995 through 1999, hinges in part on the ability of these entities to work together and to implement effective processes (see figure 8). The four FLUs we visited did not have effective policies and procedures or did not always follow their policies and procedures to ensure that collection actions were prompt and adequate for increasing the potential for collecting the maximum amount of criminal debt. In addition, the four probation offices we visited did not always follow their procedures that could have allowed for increased collections from offenders under supervision. Further, because the entities involved in the criminal debt collection process did not adequately coordinate their efforts or share financial information about offenders, they weakened the government's ability to increase collections. Of the $3.76 billion of debt assessed in our high-dollar cases, approximately $148 million (or about 4 percent) was collected through September 30, 1999. In addition, we estimate that 4 percent of the judgment amounts for our sampled population had been collected through September 30, 1999.

Figure 8: Reported Criminal Debt Outstanding and Collected From September 30, 1995, Through September 30, 1999



Source: Unaudited data provided by EOUSA.

Note: MVRA was enacted in 1996.

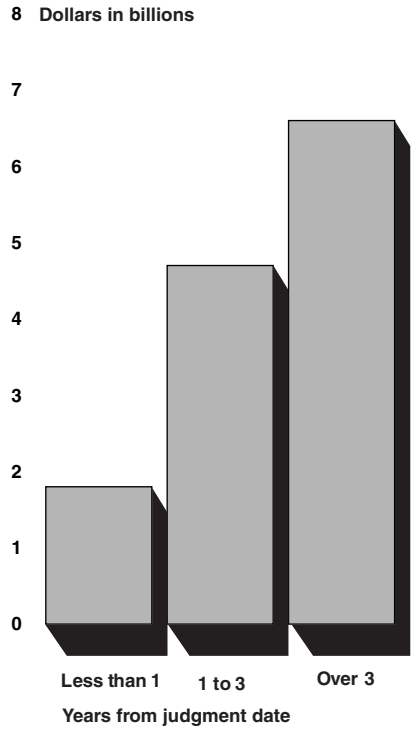
Financial Litigation Units

As stated in *Standards for Internal Control in the Federal Government*,[1] transactions should be promptly and accurately recorded to maintain their relevance and value to management in controlling operations and making decisions. Also, collection actions must be promptly performed, because, as industry statistics have shown, the likelihood of recovering amounts owed decreases dramatically with the age of delinquency. Many of the

[1]*Standards for Internal Control in the Federal Governmen*t (GAO/AIMD-00-21.3.1, November 1999).

outstanding debts as of September 30, 1999, were over 3 years old (see figure 9).

Figure 9: Age of Reported Criminal Debts Outstanding as of September 30, 1999



Source: Unaudited EOUSA data.

In reviewing our selected cases at the four FLUs we visited, we found that the FLUs did not always follow their established procedures or lacked procedures for performing the following actions in a timely manner:

- entering cases into their tracking systems;
- filing liens;
- performing asset discovery work, such as researching asset databases;
- using other enforcement techniques, such as wage garnishment;
- monitoring and reassessing cases;
- sending demand, delinquent, or default letters; and
- assessing interest and penalties.

We also found that the lack of asset investigators, as well as the limited number of collection staff, a historical problem for the FLUs, weakens their ability to aggressively follow up on and enforce collections. In addition, we found that the FLUs' tracking systems do not capture certain data, such as court-ordered terms or status of offender, that are needed to effectively assist in managing the debt portfolio.

Entering Cases into the FLUs' Tracking Systems

The EOUSA Resource Manual, along with local guidance for the four FLUs we visited, outlines the procedures that should be followed once the FLU receives a JCC. According to this guidance, the FLUs are to enter criminal debts into their collection tracking systems in a "timely fashion," but no later than 14 days after receiving the JCC. Although procedures exist for entering the data, we noted during our reviews that no policies or procedures existed to ensure that a copy of the JCC is promptly sent to the FLUs.

18 U.S.C. Sec. 3612(b)(2) requires the clerk's office to transmit a certified copy of the JCC to the Attorney General (i.e., USAO) within 10 days after the judgment or order. However, according to FLU officials, this copy is typically sent to the prosecuting attorney within the USAO's Criminal Division and not to the FLU within the USAO's Civil Division. The prosecuting attorney is to then forward a copy to the FLU. Since the FLUs we visited were not required to, and did not typically, stamp the date they received a copy of the JCC, we were unable to determine when they received the copy and how long they had the copy before entering the criminal debt information into their systems.

The average length of time for entering the 44 high-dollar cases was 288 days; for the sampled population, we estimate that the length of time was 289 days.[2] For most cases, FLU officials could not provide us with explanations as to why these cases were not entered into their tracking systems within 30[3] days of the JCC date. Unless the FLUs promptly receive a copy of the JCC and promptly enter the data into the tracking systems,

[2]Because the FLUs did not typically stamp the date that they received the copy of a JCC, we could only determine the time that had passed between the judgment date and the entry of the data.

[3]The figure of 30 days was calculated by adding the 10 days authorized for the clerk to provide the JCC to the USAO plus the 14 days allowed by FLU guidance to enter JCC information into its tracking system, plus 6 nonbusiness days.

time-sensitive collection actions, such as filing liens and performing asset discovery work, are delayed and opportunities to maximize collections may be missed.

Filing Liens

FLUs are required to file notices of liens on offenders' properties, pursuant to 18 U.S.C. Sec. 3613, to establish the government's claims on these assets and to prevent the sale or transfer of such property. The first liens filed by the FLU are typically filed according to the offender's home address; additional liens should be filed if the FLU identifies assets in other locations. The U.S. Attorneys' Manual specifies that liens are required to be filed in all cases over $650 but does not establish a specific time frame for filing. Only one of the FLUs in the four districts we visited—the Southern District of Florida—had established a time frame for filing a lien; this district requires liens to be filed within 45 days of the judgment date. Instead of specifying a time frame, the other three districts require that liens be filed to "guarantee enforcement to the fullest extent of the law." However, during our reviews we found that liens often were not filed or not filed promptly.

Specifically, we found that required liens had not been filed in 10 percent of the high-dollar cases and in an estimated 30 percent of the sampled population. In another 27 high-dollar cases and 68[4] random cases, we found that over 60 days[5] elapsed between the judgment date and when the lien was filed. The filing of liens is further delayed if judgments are not promptly received and entered into the collection tracking system. For the 38 high-dollar and 96[6] random cases in which liens had been filed, the average number of days from the date the case was entered into the system until a lien was filed were 142 and 356 days, respectively; and from the judgment date to filing were 410 and 639 days, respectively.

In most cases, the FLUs were not able to determine why a lien was not filed or not promptly filed. Not promptly filing liens or not filing them at all

[4]See footnote 10 in executive summary.

[5]The figure of 60 days was calculated by using the 45 days established by the Southern District of Florida plus 15 days.

[6]See footnote 10 in executive summary. Also, we were unable to determine the date a lien was filed in four high-dollar and 12 random cases in which liens had been filed. Therefore, these cases were not used to calculate the average days.

significantly increases the potential for offenders to liquidate their assets and avoid repaying debts owed to the government. For example, an offender in our selection was fined $25,000 in 1989. During 1991, the offender reported receiving net proceeds of $180,000 from selling a home and $18,000 from selling a boat (the offender did not specify whether the proceeds from the sale of the boat were gross or net). The offender's last payment was received in 1995. As of May 2000, no lien had been filed, and the offender owed over $15,000 plus over $13,000 of interest. According to FLU officials, the file does not indicate why the lien was not filed. Had the FLUs promptly filed a lien, the proceeds from these sales might have been applied towards payment of the fine.

Performing Asset Discovery Work

The U.S. Attorneys' Manual specifies that the USAO should "execute on" (i.e., seize) an offender's property as soon as possible after sentencing. According to this manual, in order to identify property owned by the offender, the USAO should "promptly and vigorously" perform asset discovery work, which includes procedures such as reviewing the pre-sentence report, requesting financial statements and tax returns from the debtor, obtaining credit reports, and researching on-line property locator services. However, we found that the four FLUs we visited performed very limited asset discovery work and that established procedures did not specifically identify when these procedures were required to be performed. For example, in 48 percent of the high-dollar cases and in an estimated 66 percent of the sampled population we found no evidence that the FLU attempted to identify the debtor's assets. According to USAO officials, asset discovery work is performed only if the FLU believes, based on its judgment, that the offender may have assets. Moreover, there is no requirement to document these judgments or whether they were made.

Not promptly identifying whether an offender has assets increases the risk that the offender may have time to hide or liquidate assets that could have been available to pay toward the debt. For example, an offender was convicted of tax fraud, sentenced in 1994, released from supervision in 1995, and ordered to pay about $344,000 in restitution. As of May 2000, the offender had paid only $750. Our review of the FLU file showed that the FLU did not perform asset discovery work before May 2000. Since this offender had been selected for our review, the FLU performed an asset search to identify assets that could possibly be liquidated and also scheduled a deposition with the offender to determine whether there were assets that could be liquidated. However, over 6 years has passed since the

offender was sentenced; therefore, the offender could have previously liquidated or hidden his assets.

We also found that district guidance at the four FLUs we visited specifies that asset discovery work should be performed, but the guidance does not (1) establish time frames for performing the work or (2) prioritize debt cases based on factors that indicate increased potential for collections. Lack of time frames and prioritization increases the risk of delays in performing asset discovery work and thereby the potential for missing opportunities to maximize collections. In addition, asset discovery work is further delayed if the judgment is not promptly received and the information is not promptly entered into the case tracking system. Factors that could help prioritize collection efforts include the type of crime or the type of victim. For example, collection rates tend to be higher for offenses related to white-collar crimes than for those related to violent crimes. Or cases involving hundreds of nonfederal victims may take higher priority over those with a relatively insignificant fine amount owed to the federal government.

Using Other Enforcement Techniques

The U.S. Attorneys' Manual states that USAOs are to "litigate vigorously" to enforce the collection of debts "to the fullest extent of the law" and that the "government should execute on an offender's property as soon as practicable after sentencing." FLUs are authorized by law to perform a wide range of enforcement techniques, such as wage garnishment and asset seizure, to collect criminal debt. If offenders willfully do not pay their criminal debt, FLUs can summon them to appear in court. In court, offenders can be ordered to answer questions under oath or in writing about their financial status or explain why they have not complied with the court's order for paying a debt. FLUs can also obtain a court order, called a writ of execution, that permits the U.S. Marshals Service to seize an offender's property as complete or partial payment of a fine or restitution. Writs of execution can also be applied against an offender's income or bank account in a process called garnishment.

In October 1985, we reported[7] that the FLUs we visited rarely used the techniques we have just discussed due to several factors, including limited resources. Based on our reviews at the four districts we visited, the FLUs

[7] GAO/GGD-86-02, October 10, 1985. The FLUs were referred to as collection units when this report was issued.

are still rarely using any of these enforcement techniques, and the guidance does not specify when and how frequently these techniques should be used. For example, we found only one case in which the FLU garnished wages. According to FLU officials, enforcement techniques are not pursued until the FLU determines that an offender has assets or sufficient earnings and is willfully not paying amounts owed. However, as noted above, the FLU is performing limited asset discovery work to determine whether assets do exist that could be pursued, as indicated in the example where the FLU performed an asset search in May 2000, 5 years after the offender's release from supervision, and only after the case had been selected for our review. Based on that search, the FLU scheduled a deposition with the offender to determine whether there were assets that could be liquidated. In another example, an offender was convicted of embezzlement, false imprisonment, and tax evasion and was sentenced in 1998 to 20 months of imprisonment and 3 years of probation. The offender was also ordered to pay approximately $67,000 in restitution in monthly installments of at least 10 percent of gross monthly income. After sentencing, but before surrendering for incarceration, the offender sold property and realized a profit of about $13,000. According to FLU officials, the FLU could have forfeited the property, but they could not explain why this option was not pursued.

Monitoring and Reassessing Cases

The FLUs use event codes[8] in their collection tracking systems to document actions taken to pursue collection and the status of cases. According to the U.S. Attorneys' Manual, criminal debts that are placed in suspense must be periodically reviewed to determine whether the offender's status has changed and to reassess the offender's ability to pay (see table 3). For example, the code "DDNL" is used to place an account in suspense when a debtor cannot be located. This policy allows FLUs to keep criminal debts "open" as legally required while limiting the time and effort to be spent on a case. According to the manual, debts placed in suspense must be periodically reviewed to reassess an offender's ability to pay.

[8]An event code is a code entered into the FLU database that identifies a collection action (e.g., lien filed) or why a debt should be placed in suspense (e.g., no ability to pay).

Table 3: Required Frequency of Review for Criminal Debts in Suspense

Debt amount	Frequency of review (at a minimum)
Greater than $25,000	Each year
$25,000 to greater than $10,000	Every 2 years
$10,000 or less	Every 3 years

Source: U.S. Attorneys' Manual.

In September 1993, Justice's Office of the Inspector General (OIG) reported that the FLUs were not adhering to the prescribed policies for reviewing debts in suspense. During our reviews, we also found that the FLUs we visited were still not consistently using the event codes, including suspense codes, and they were not following their prescribed procedures for reassessing an offender's ability to pay. Specifically, we found that the event code as of September 30, 1999, was inconsistent with the information in the case file for 14 percent of the high-dollar cases and for an estimated 20 percent of the sampled population. For example, an offender was fined $100,000 in October 1989. The offender reported over $420,000 in net worth on a personal financial statement dated September 1989 and was making payments towards the fine until September 1997, at which time the offender still owed $82,000 plus interest and penalties. However, the FLU had not reviewed the case from September 1997 through April 2000, well over the 1-year frequency-of-review guidelines for debt over $25,000.

In addition, the FLUs did not promptly monitor cases and update their records, resulting in an inaccurate principal balance in EOUSA records. In 40 percent of the high-dollar cases and for an estimated 65 percent of the sampled population, the FLU had not revisited the case within established time frames. For example, an offender in our selection was ordered to pay restitution of $20 million in November 1991. The offender had paid over $50,000 before his death in 1993. However, as of September 30, 1999 (over 6 years after the offender's death), the FLU was showing that the offender still owed a balance of over $19.9 million. Had the FLU revisited this case in a timely manner, this amount would have been written off.

We found that the September 30, 1999, balance for GAO-selected cases was overstated by more than $450 million. Five of the high-dollar cases we reviewed involved one case with several defendants who were jointly and severally liable for all or some parts of the total restitution owed. To avoid double counting in joint-and-several cases, the FLUs are to open one record

for the lead defendant and track all other codefendants or coparticipants under the lead defendant's record. However, the FLU inappropriately opened separate records for these defendants, thereby overstating the amount owed as of September 30, 1999, by more than $430 million.

Sending Demand, Delinquent, and Default Letters

The EOUSA Manual requires the FLUs to send a demand letter to offenders "as soon as" a case is entered into the criminal tracking system, notifying offenders of their debt and the consequences of not paying the debt (i.e., interest and penalties would be assessed). While three of the four districts in our review have incorporated this guidance into their local procedures, local procedures for the fourth, the Central District of California, state that the FLU should not send demand letters to an offender who is under the supervision of a probation officer.

In October 1985, we reported that demand letters were sent in only 17 percent of the cases reviewed in five districts, and of those sent, the average number of days the FLUs took to send the letters was 143.[9] Not sending or not promptly sending demand letters continues to be a problem for the USAOs. The problem could be attributed, in part, to the lack of specific guidance as to when demand letters should be sent. For example, EOUSA guidance states that demand letters be sent "as soon as" a case is entered into the criminal tracking system; however, it does not address situations that may not be applicable to this guidance, such as debts entered into the tracking system that are not yet due.

We found that the FLUs had not sent demand letters required by the EOUSA Manual in 69 percent of the high-dollar cases and in an estimated 45 percent of the sampled population. Sending demand letters is further delayed by the amount of time it takes the FLUs to receive the judgments and enter information from them into their tracking systems. For the high-dollar and random cases for which demand letters were sent, the average number of days the FLUs took to send the first letter from the date the judgment was entered into the tracking system, was 163 and 433[10] days, respectively. Also, for those same high-dollar and random cases, the

[9] GAO/GGD-86-02 , October 10, 1985.

[10] See footnote 10 in executive summary.

average number of days the FLUs took, from the judgment date, to send the first letter was 481 and 712[11] days, respectively.

In accordance with 18 U.S.C. 3612(d), delinquency notices should be sent within 10 working days after a fine or restitution is determined to be delinquent (i.e., a payment more than 30 days late). A payment that is not made within 90 days after it is determined to be delinquent is in default, and a default notice should be sent within 10 working days. However, we found that neither delinquency nor default notices were sent in 21 of the 24 high-dollar cases and 58 of the 101 random cases[12] in which the debt was determined to be delinquent or in default. Failing to promptly inform an offender of the penalties for not making payments diminishes the incentive for the offender to make prompt payments.

Assessing Interest and Penalties

In accordance with 18 U.S.C. 3612(f), interest and penalties are required to be assessed on unpaid fines or restitution[13] over $2,500 unless the court waives this requirement (i.e., if the judge specifically states in the JCC that interest and/or penalties are waived). The law also permits the Attorney General to waive interest and penalties if it is determined that efforts to collect are not likely to be effective. However, according to the U.S. Attorneys' Manual, a determination of whether to waive interest and penalties should be considered only after the principal has been paid.

In September 1993, the Justice OIG reported that 8 of the 10 offices they visited did not pursue penalties and that 2 had waived both interest and penalties for all delinquent debts. The OIG recommended that the EOUSA emphasize the need for assessing interest and penalties. However, we found that the four FLUs we visited still were not consistently assessing interest and penalties. While in some instances, the FLUs assessed required interest, in 4 out of 7 high-dollar and in 12[14] out of 49 random cases that required interest and penalties to be assessed, the FLUs had not done so. Moreover, the FLUs generally do not assess penalties. EOUSA officials

[11]See footnote 10 in executive summary.

[12]See footnote 10 in executive summary.

[13]Prior to MVRA, interest and penalties were not required to be assessed on restitution debts.

[14]See footnote 10 in executive summary.

believe that assessing interest and penalties is not productive because the principal debt itself is often difficult to collect. As shown in table 4, inconsistently applying interest and penalties leads to inconsistent data and an understated balance.

Table 4: Examples of Inconsistencies in Applying Interest

Judgment date	Judgment amount	Interest applied	Payments received	Balance as of September 30, 1999
April 15, 1993	$13,250,000	$23,174,496	$200	$36,424,296
August 22, 1997	$37,372,826	$0	$0	$37,372,826

Source: Data obtained from FLU files and unaudited EOUSA data.

According to the EOUSA database, as of September 30, 1999, the outstanding debt balance included over $400 million of interest and penalties assessed by the FLUs. However, because the FLUs do not consistently assess interest and penalties, the reported amounts do not accurately represent how much total principal, interest, and penalties are due. In addition, failure to assess interest and penalties reduces the amount that could be recovered and passed along to victims or the federal government and eliminates a tool designed to provide debtors an incentive for prompt payments.

Human Capital Issues

Effective and prompt collection actions are affected by the adequacy of human resources. We recently designated human capital a governmentwide high-risk area,[15] emphasizing that an organization's people—its human capital—are its most critical asset in managing for results. Our high-risk report explains that human capital problems lead to programmatic problems and risks and that human capital shortfalls are eroding the ability of many agencies to effectively, efficiently, and economically perform their mission. In addition, according to the Comptroller General's *Standards for Internal Control in the Federal Government*,[16] only when the right personnel for the job are on board and are provided the right training,

[15] *High-Risk Series: An Update* (GAO-01-263, January 2001).

[16] GAO/AIMD-00-21.3.1, November 1999.

tools, structure, incentives, and responsibilities is operational success possible.

The lack of asset investigators and the limited number of collection staff have presented a historical problem for the FLUs. In October 1985, we reported that debt collection, especially criminal debt collection, receives low priority and suffers from staffing problems.[17] In that report, we stated that personnel spent more time on accounting for criminal fines than on enforcing collection. We also reported that the FLUs, who are responsible for civil and criminal collections, were staffed with one attorney and from 1 to 10 collection clerks, depending on the size of the district (generally the same staffing levels as in 1999). In July 1990, we reported that FLUs stated that they have insufficient trained staff to aggressively follow up on and enforce collections.[18] In September 1993, the Justice OIG reported that as data entry responsibilities increase, less time is spent on actual criminal debt collection actions.

Staffing levels for the four FLUs we visited have only slightly increased from an average of 8.7 individuals during 1995 to 9.3 individuals during 1999, even though the number of assessments and debts pending have significantly increased. Specifically, the number of debts pending for the four FLUs we visited increased from an average of 4,406 to 6,373 cases per district, or about 45 percent, and the average dollar amount of outstanding debts per staff increased by over 160 percent. Table 5 reflects the average number of criminal cases compared with the average number of staff (i.e., workload) for fiscal years 1995 and 1999 for the four FLUs we visited. In addition to the criminal case workload data presented in table 5, the FLUs are also responsible for collecting civil debt that other federal agencies refer to them. The number of outstanding civil debts for all FLUs increased from 44,786 debts as of the end of fiscal year 1995 to 146,421 at the end of fiscal year 1999.

[17] GAO/GGD-86-02, October 10, 1985.

[18] *U.S. Department of Justice: Overview of Civil and Criminal Debt Collection Efforts* (GAO/T-GGD-90-62, July 31, 1990).

Table 5: Average Number of Criminal Cases Per Staff, Fiscal Years 1995 and 1999, for the Four FLUs We Visited

Fiscal year	Number of cases	Number of staff	Average number of cases per staff	Average dollar amount of cases per staff
1995	4,406	8.7	506	$57.2 million
1999	6,373	9.3	685	$150.9 million

Source: EOUSA.

Further, none of the four FLUs we visited had full-time resources dedicated[19] to or specializing in performing searches to identify hidden assets, and they had few resources available for enforcing collections. When assets are not promptly identified, offenders have more time to hide fraudulently obtained assets, such as funds in offshore accounts, shell corporations, or family members' names and accounts. Once assets are identified, the FLUs should pursue collection through the use of enforcement techniques (i.e., legal remedies); however, most of the individuals assigned to the FLUs we visited were not attorneys or paralegals, whose skills are needed to pursue such techniques.

EOUSA officials have historically recognized the need for additional training and staff, but they indicate that budget constraints limit the FLUs' ability to provide the additional training or hire additional staff that would enable them to collect debt more effectively. In addition, an official from the FLU in the Southern District of New York in Manhattan indicated that this district often has difficulty in filling its lower-paying positions, such as those for debt collection agents.

In conjunction with documenting our initial understanding of the debt collection process, we visited the Northern District of California. During this visit, we were briefed on a project that this district had initiated in 1999 to employ dedicated asset investigators. According to the EOUSA, the project, which provided for one full-time and four part-time former criminal investigators, has been very successful. The district reported that over 1,000 cases were investigated and over $10 million has been or is in the process of being recovered as a result of those investigations. As noted

[19]One of the FLUs we visited had individuals from the U.S. Marshals Service assist in asset discovery work on a part-time basis.

above, three of the four districts where we performed our testing did not have dedicated asset investigators, and the collection staff was not performing significant asset discovery work.

FLU Tracking Systems

The FLUs' tracking systems do not capture key information needed for the FLUs and EOUSA to effectively manage the debt portfolio. As we reported in June 1994,[20] the FLUs' tracking systems do not indicate the terms of the fine or restitution orders. This continues to be a problem for the FLUs we visited. For example, although a JCC may state that an offender owes at least a certain amount on a periodic basis, this information would not be reflected in the systems. The tracking systems also do not capture an offender's expected release dates from prison and probation, information that could assist the FLUs in determining time frames for reassessing an offender's ability to pay. In addition, the systems do not permit the FLUs to allocate outstanding debts between amounts likely to be collected and those not likely to be collected. For example, even if an offender is making monthly installment payments, the FLU must either put the entire balance in suspense or none of the balance in suspense.

Probation Offices

The four probation offices we visited did not consistently adhere to certain policies and procedures for developing pre-sentence reports and collecting criminal debt. The AOUSC provides guidance to probation officers for (1) developing pre-sentence reports, (2) establishing installment schedules, and (3) monitoring installment schedules. However, we found that the probation offices we visited were not always following these procedures, thereby decreasing the usefulness of financial information in pre-sentence reports and the potential for maximizing criminal debt collections. In June 1998,[21] we recommended that the AOUSC establish, as policy, specific guidance on how probation officers should determine how offenders should pay their fines and restitution, including criteria establishing what types of assets should be considered for immediate lump-sum payments or substantial payments, how installment schedules should be established, and the type and amount or range of expenses that should ordinarily be considered necessary when determining the amount of payments under

[20] GAO/T-GGD-94-178, June 28, 1994.

[21] *Fines and Restitution: Improvement Needed in How Offenders' Payment Schedules Are Determined* (GAO/GGD-98-89, June 29, 1998).

installment schedules. To address these recommendations, the AOUSC issued revised guidance in September 2000 that, if properly implemented, should help address the reported weaknesses. However, as the AOUSC and we pointed out in that report, unless probation officers effectively *implement* these guidelines, such weaknesses will continue to exist.

Developing Pre-Sentence Reports

Prior to sentencing, probation officers perform "financial investigations" of offenders' financial condition for inclusion in pre-sentence reports. This includes collecting, verifying, and analyzing financial information regarding the offender. Probation officers depend on offenders to provide certain financial information; however, offenders are not always cooperative. In 10 of the 42 high-dollar and 18 of the 125 random cases[22] we reviewed, the offender did not provide this information, thus decreasing the usefulness of the pre-sentence report for debt collection purposes.

Regardless of whether the offender provides this information, probation officers are responsible for taking steps to determine an offender's ability to pay, such as obtaining pay stubs, reviewing tax returns, searching for assets, and running credit reports. However, in 20 of the 42 high-dollar and 40 of the 125 random cases,[23] we found that probation officers did not take adequate steps to develop the financial condition section of the pre-sentence report. For example, one probation officer included information provided by the offender and obtained a credit report to verify liabilities but did not take the steps needed to identify assets or verify income. In another case, the offender did not provide information, and there was no evidence in the file that the probation officer attempted to obtain financial information by other means. The probation officer for another case obtained prior years' income tax returns to verify income information provided by the offender but did not take the steps needed to identify assets. Since the offender most likely would not report income obtained through criminal activities on his tax returns, other steps should have been taken to assess the reasonableness of reported income versus the offender's lifestyle.

Probation officials indicated that they often have limited time frames for preparing the pre-sentence reports and have to obtain the offender's

[22]See footnote 10 in executive summary.

[23]See footnote 10 in executive summary.

consent and cooperation to obtain certain information and documents (e.g., tax returns). Further, probation officials have indicated that their investigations focus on analyzing information provided by the offender and not necessarily on identifying unreported assets.

Establishing Installment Schedules

According to 18 USC 3572(d), offenders should pay their fines and restitution "immediately, unless, in the interest of justice, the court provides for payment on a certain date or in nominal installments." As noted earlier, depending on the district, installment schedules are established by a judge and documented in the JCC or by probation officers while an offender is under their supervision. Therefore, once a probation officer is supervising an offender, the officer either (1) monitors the court-ordered installment schedule or (2) establishes and then monitors the installment schedule. Probation officers were required to establish installment schedules in 10 of the 42 high-dollar cases and in 72 of the 125 random cases. However, probation officers did not establish installment schedules in 3 of the 10 high-dollar cases and 15 of the 72 random cases[24] as required. In the other cases, the probation officers were not required to establish an installment schedule because the (1) offender was still in prison or (2) the court stipulated an installment schedule. As discussed in chapter 2, judges may stipulate payment terms in the JCC. These terms can influence actions taken by probation officers and the FLUs to collect criminal debt. See table 6 for the status of offenders in our selected cases as of May 2000.

[24]See footnote 10 in executive summary.

Table 6: Status of Offenders in GAO's Selected Cases

Status	High-dollar cases	Random cases[a]
In prison	24	28
Under probation	8	32
Released from prison and probation	8	64
Other (e.g., fugitive, deported, died)	2	16

[a]In circumstances in which attributes do not apply to all cases, estimating the results to an appropriate population would introduce significant sampling error intervals. Therefore, we have presented only the actual results for the applicable cases in each circumstance. See footnote 10 in executive summary.

Source: Data obtained from probation files.

Unless a court has set a payment schedule, probation officers should establish installment schedules (or reassess court-established schedules) to collect outstanding criminal debt from offenders once they are released to their supervision. Probation officers should recommend that offenders make a full lump-sum or a significant one-time partial payment based on their ability to pay and establish an installment schedule for the balance not paid. The guidelines require probation officers to request that offenders periodically report on their financial circumstances by preparing personal financial statements listing their assets—such as bank accounts, securities, and real estate—that could be used for lump-sum payments against their fines and restitution. The FLU should be notified if lump-sum payments are made, and identified assets should be reported to the FLU so it could pursue collection. According to AOUSC guidelines, probation officers should set an installment payment schedule based on the offender's monthly cash flow if full payment is not possible. The monthly cash flow is determined by deducting necessary monthly expenses from monthly income. Necessary expenses are broadly defined as those for the offender's continued employment and for the basic health and welfare of the offender's dependents, which could include home rent or mortgage, utilities, groceries and supplies, insurance, transportation, medical treatment, and clothing.

We found deficiencies in the establishment of installment schedules, including inadequate recommendations for significant partial payments, in

3 of 7 high-dollar and 16 of 57 random cases[25] in which installment schedules were established. Specifically, we found that probation officers did not consider an offender's reported assets, such as bank accounts and second homes that might have been available for full or partial payment of a fine or restitution. Instead, probation officers typically established installment schedules and did not recommend lump-sum payments or liquidation of assets. For example, an offender was convicted of tax fraud in September 1994, sentenced to 5 months in prison and 1 year probation, and ordered to pay approximately $344,000 in federal restitution. Although the offender reported having significant assets on his financial submission for use in preparing the pre-sentence report, the probation officer did not recommend a significant partial payment. Instead, the probation officer established a $25-per-month installment schedule which the offender stopped paying after he was released from probation. Even if the offender had continued to make these payments, it would have taken over 1,000 years for the debt to be paid off.

We also found that probation officers used arbitrary methods, such as negotiated amounts and good-faith payments, to establish the installment payment schedules, instead of linking them to income, expenses, or other financial criteria as required. For example, an offender who was ordered to pay $5,900 in restitution entered into a payment agreement with the probation office that called for $10 monthly payments, even though financial submissions indicated that the offender had a positive monthly cash flow (income minus necessary monthly expenses) of about $360. At a rate of $10 a month, it would take the offender over 49 years to pay off the debt.[26]

Monitoring Installment Schedules

Offenders under supervision are to submit to their probation officers (1) monthly supervision reports listing income and necessary expenses and (2) on a less frequent basis, updated personal financial statements. Probation officers are required to scrutinize these reports, including the type and amount of offender-reported "necessary expenses." In addition, probation officers may request that offenders increase or decrease installment payment amounts if their ability to pay changes (with court

[25]See footnote 10 in executive summary.

[26]According to FLU guidance, monthly payments should be at least $60 in order for them to be cost effective.

approval if the court set the payment schedule). However, we found that probation officers did not follow their guidelines for reviewing an offender's financial circumstances. Following the guidelines could have allowed for increased installment payments for 1 of the 13 high-dollar and 12 of the 77 random cases[27] in which an installment schedule had been established by either the probation officer or the judge. We also found that in the cases in which the judge set a minimum amount that must be paid or set other payment terms, probation officers typically did not recommend increased payment amounts or liquidation of assets, even if an offenders' financial circumstances improved (see examples and related discussion in chapter 2).

For example, for the offender with the $25-per-month payment, the probation officer did not attempt to increase the amount even though the offender reported (1) significant assets on his financial submission for use in preparing the pre-sentence report, (2) ownership of two vehicles (a 1990 Lexus and a 1991 Ford Bronco), (3) a net positive cash flow on his monthly reports, and (4) bank accounts without listed balances. In another example, an offender was convicted of mail fraud, sentenced in 1998 to 3 years of probation, and ordered to pay restitution in the amount of $12,000. The judge ordered restitution to be paid in $100 quarterly payments (i.e., $33 per month) unless modified by the probation officer. For the July 1999 reporting period, 9 months after being sentenced, the offender reported a positive monthly cash flow of over $1,500; however, the probation officer did not recommend that the payment amount be increased. Not adequately monitoring an offender's financial circumstance results in missed opportunities to seek an increase in an offender's installment payments.

Probation officers have considerable leverage over an offender under supervision and can take actions if offenders are not making agreed-upon installment payments. For example, probation officers can withhold consent for a debtor to travel outside the district, or they can seek to revoke probation. Even though installment payments typically range from $25 to $100 per month, offenders do not always make the agreed-upon installment payments. In several cases, we found no evidence that probation officers took action to enforce the installment schedules (i.e., sought to revoke probation and send the offender back to prison) when the offender failed to make agreed-upon installment payments. Probation officers indicated that they must prioritize their time in light of the number

[27]See footnote 10 in executive summary.

of offenders they are supervising. They stated that their first priority is to ensure that offenders do not engage in criminal activity or violate other terms of probation (e.g., are not using drugs during the probation period).

However in a couple of instances, we found that when probation officers recommended against an offender being released from probation based on nonpayment of criminal debt in accordance with an established installment schedule, the judges rejected the recommendations. For example, in April 1999, a judge for one of our sample cases granted an offender an early release from probation even though the probation office had recommended against the release stating that the offender, who had been convicted of mail fraud in April 1997 and ordered to pay $175,000 in restitution, had not made sufficient restitution payments. Before his release, the offender had paid only $600. As of June 2000, the last payment from this offender was for $50 received in May 1999.

Coordination Among the Entities Involved

In over half the cases we reviewed at the four districts visited, we found little evidence of coordination among the entities involved in assessing and collecting criminal debt and a lack of policies and procedures to ensure that efforts are coordinated. For example, we found little evidence that prosecutors and probation officers had shared financial information with FLUs, thus potentially weakening the FLUs' ability to assess an offender's ability to pay. In addition, we found that FLUs typically were not monitoring the collection efforts of probation officers, as advised by the U.S. Attorneys' Manual, and that, contrary to district procedures, probation officers were not informing FLUs of an offender's upcoming release from probation. Furthermore, at the four districts we visited, the FLUs and the clerks' offices maintained separate databases to track criminal debt collections. This lack of coordination is a long-standing problem that has not been adequately addressed. The failure to adequately address this problem results in inefficient processes and duplication of efforts. Because of the many agencies and districts involved in assessing and collecting criminal debt—including two branches of the federal government and 94 districts—enhancing the effectiveness and efficiency of criminal debt collection hinges on these entities working together.

Sharing Financial Information With FLUs

Investigating agencies and prosecuting attorneys typically obtain substantial financial information concerning criminal debtors during the investigation of a case and prosecution of offenders. However, no national requirements exist for sharing financial information with the FLUs, and

only two of the four districts we visited have incorporated specific (but different) procedures for sharing financial information in their MOUs.

The Justice OIG reported in September 1993 that (1) prosecuting attorneys (who are on the criminal side of the USAOs) did not always provide the FLUs (who are on the civil side of the USAOs) with available financial data on a regular, systematic basis and (2) no formal requirement exists for attorneys to provide this financial information to the FLUs. The OIG recommended that a formal national requirement be established for prosecuting attorneys to provide debtor financial information to the FLU staff after an offender has been sentenced. However, based on our case file reviews, we found that sharing financial information with the FLUs continues to be a problem in the four districts we visited. Specifically, in 52 percent of the high-dollar cases and in an estimated 61 percent of the sampled population, we found no evidence in the FLU files of correspondence with the investigating case agents or prosecuting attorneys. According to FLU officials, this type of correspondence may have occurred but was not documented in the case file. As stated in the *Standards for Internal Control in the Federal Government*,[28] internal control and all transactions and other significant events need to be clearly documented and the documentation should be readily available for examination.

After an offender is sentenced, district guidance requires the FLUs to obtain a copy of the financial information contained in the pre-sentence report from either the probation officers or the prosecuting attorney. In October 1985, we reported that guidance did not exist for probation offices to share information with the FLUs and that probation officers did not routinely provide such information to the FLUs. In September 1993, the Justice OIG reported that 154 of 185 FLU files they reviewed did not contain a copy of the pre-sentence report. Recently issued guidance now specifically requires probation officers to share financial information from pre-sentence reports with the FLUs.

In most of the high dollar and random cases reviewed, we found no evidence in the FLU files that the FLUs had reviewed a copy of the pre-sentence report. As a result of this lack of coordination, the FLUs do not have valuable financial information needed to assess an offender's ability to pay, to enforce collections, and to reduce duplication of effort in identifying

[28] GAO/AIMD-00-21.3.1, November 1999.

assets. For example, an offender in our sample reported over $420,000 of net worth in a personal financial statement dated September 1989 that was used by the probation office to prepare the pre-sentence report. In another example, prior to sentencing, an offender provided a bank statement showing a balance of over $73,000; however, there was no evidence that actions were taken to pursue these funds. In both examples, there was no evidence in the FLU's files that the FLU had obtained a copy of the pre-sentence report. If the information had been shared with the FLUs, they could have used this report as a starting point for performing asset discovery work.

Communication Between FLUs and Probation Offices

In October 1985, we reported that although the U.S. Attorneys' Manual advises the FLUs to monitor the collection efforts of probation offices, there was little involvement by the FLUs in probation office collections.[29] The guidance requires the FLUs to maintain contact with probation offices regarding the offender's compliance or failure to pay criminal debt. However, district guidance for the four districts we visited states that the FLUs are to assist the probation offices, if requested. During our reviews, we found that the FLUs typically did not monitor collection efforts of probation officers and that probation officers rarely requested assistance or notified the FLUs before an offender was released from probation. In general, the FLUs did not pursue collection until they determined that an offender had been released from probation.

In commenting on our June 1998 report related to establishing offender's payment schedules,[30] the AOUSC stated that greater emphasis should be placed on Justice's role in collecting fines and restitution because Justice has primary responsibility for collecting criminal debt. We believe that the current district guidance, which states that FLUs should assist if requested, adversely affects the FLUs' ability to enforce debt collection and puts them in a reactive instead of a proactive role.

For example, in March 1989, an offender was ordered to pay $26 million in restitution to hundreds of investors who had invested in the offender's fraudulent company. In April 1995, the offender was released from prison and in 1997 made several payments before moving to a different district. In

[29] GAO/GGD-86-02, October 10, 1985.

[30] GAO/GGD-98-89, June 29, 1998.

April 1999, he agreed to make $500 monthly payments to one of the financial institutions he owed money to plus 50 percent of the income from future speaking engagements and 100 percent of the income from the "movie rights" he sold pertaining to a published novel he wrote. As of June 2000, the FLU had not pursued collection because, according to the FLU, the offender is "under the supervision of probation," and the probation office had not requested its assistance. There have been no recorded payments since 1997. An Internet search that we performed revealed that the offender is involved in many activities from which he is most likely deriving additional income, including publications, a spot on a radio program, and a full-time salary.

Several months before an offender is to be released from probation with an outstanding debt, procedures at the four districts we visited require probation officers to notify the applicable FLU. However, there was rarely evidence of such notification in the FLU's files. As we reported in chapter 3, the FLU's tracking system does not adequately track the status of an offender; consequently, unless the probation officer notifies the FLU, the FLU will not always know when an offender is scheduled to be released from supervision. In 3 high-dollar and 7[31] random cases we reviewed, the offenders stopped making installment payments when they were released from supervision. In these instances, there was no indication in the file that the probation officer notified the FLU of the offender's release or the status of the offender's criminal debt obligations, including the terms of the installment agreement. For example, an offender was sentenced in October 1989 to 2 years in prison and 5 years of probation for income tax evasion. The offender was also ordered to pay a $100,000 fine. During supervision, the offender made over $17,000 in payments, with the last payment occurring in September 1997, 1 month before the offender's release from supervision. There was no evidence in the FLU file that it had been notified of the release, and no collection actions were taken by the FLU for this case until it was selected for our review in April 2000.

Lack of communication between the FLUs and the probation offices about offenders' installment schedules, assets, and release dates hinders timely notification of the status of an offender's compliance with payment arrangements and related events, thus decreasing the potential for collections.

[31]See footnote 10 in executive summary.

Databases for Tracking Collections and Disbursements

In each of the four districts we visited, the clerk's office and the FLU maintain separate databases to account for criminal debt collections, resulting in duplicative and inefficient data entry for both entities. Although the courts are responsible for processing collections and disbursements for most criminal debt, clerk's office officials have stated that they do not have the systems in place to calculate required interest. Instead, the clerk's offices rely on the FLUs' tracking systems to calculate interest, if assessed. Posting information to these databases typically requires the exchange of hardcopy information between the clerk and the FLU so that both databases can be updated to properly reflect collections and disbursements. The National Fine Center (NFC) was supposed to eliminate this duplication; however, since the NFC effort failed (as noted in chapter 1), both entities continue to maintain separate systems for tracking collections and disbursements.

Highlighting this inefficiency is the fact that each month both entities must post payments received from offenders participating in the Bureau of Prisons (BOP) Inmate Financial Responsibility Program (IFRP), in which a portion of prisoners' earnings is used to pay their outstanding debt. Hundreds of inmates typically participate in the program. Monthly or quarterly payments received from each inmate are generally small dollar amounts, but they are collectively large in volume. For example, a typical monthly report from BOP for the Eastern District of New York contains about 400 inmate debt payments. Since both the FLU and the clerk's office track payments, each entity must determine what debt balance (i.e., special assessment,[32] fine, or restitution) to apply these 400 payments to and then post each payment. If the payment is for restitution, amounts collected must be prorated to the victims (sometimes hundreds of victims) before checks can be disbursed.

Maintaining these separate, nonintegrated systems also places greater emphasis on the need for timely coordination and communication so that data in these systems are accurate and the information is timely. For the cases we reviewed in which payments had been collected, there was typically a delay between the time that the clerk posted a payment and the time that the FLU posted the same payment. We also found that the FLUs typically did not inform the clerk of payments they received, resulting in

[32]Special assessments are fixed amounts assessed for each count on which the defendant is convicted, typically ranging from $5 to $200 per count. Payments received from offenders apply first to special assessments, then to restitution, and then fines.

several significant differences in the payment records. For example, an offender was convicted of Racketeer Influenced and Corrupt Organizations Act (RICO) violations, wire fraud, and bribery and was sentenced in 1996 to 60 months of incarceration and 3 years of supervised release. The offender was ordered to make restitution in the amount of $412 million. According to clerk's office records, $3,050 had been paid as of September 30, 1999, while FLU records showed that over $11.7 million had been paid as of the same date. District guidance at the four districts we visited did not specifically require the FLUs to notify the clerk's offices of payments they received or require the FLUs and the clerks to periodically reconcile payment data recorded in the two systems. Without timely notification of payments received or periodic reconciliations, differences between the two systems will continue to exist.

We also identified inefficient practices involving the processing of disbursements to victims. In 76 districts, the clerk's offices are receiving all types of criminal debt payments from offenders and disbursing checks to restitution victims; however, in 18 of the 93 USAOs, the FLUs receive restitution payments from offenders for offenses that occurred before the MVRA and are disbursing checks for restitution only to pre-MVRA victims. Having these two entities in 18 of the districts perform similar functions results in wasted resources. According to AOUSC officials, they are working with the remaining clerk's offices to process pre-MVRA restitution. In addition, the four clerk's offices we visited generally set a low or no threshold amount for disbursing a check to a victim. As a result, we found instances in which the clerk's office issued checks for less than $10 to victims ranging from individuals to large financial institutions. In one example, restitution was owed to several companies ranging from $500 to $75,000. Once every month or so, checks were being disbursed to these companies. In October 1998, 12 checks were issued ranging from 20 cents to $62, and 4 of these checks were returned as undeliverable, including one for 20 cents and another for 53 cents. Disbursing such small amounts is not cost-effective unless these are the final checks to be issued (i.e., the offender most likely will not be submitting additional payments).

Oversight Roles of OMB and Treasury

Historically, management oversight of the criminal debt collection process has been divided between the executive and judicial branches with Justice responsible for enforcing collections and the courts responsible for receipting and disbursement of collections. This condition still exists today. In 1984, there was recognition of the increased need for centralized management of the collection process, and in 1987 efforts to establish the National Fine Center (NFC) began. The NFC was an attempt to automate and centralize the criminal debt collection process, which would have increased management oversight. However, since that effort was terminated in 1996, as noted in chapter 1, the collection responsibilities continue to be fragmented between Justice and the courts, with neither having a central management oversight role.

Moreover, neither OMB nor Treasury has identified the need to take an active role in overseeing the federal government's process for collecting the billions of dollars of outstanding criminal debt. While the collection of such debt has been a long-standing problem, the substantial growth in the outstanding balance is a relatively recent development. Because serious coordination and cooperation problems among the fragmented entities involved continue to exist and because of the low collection rates, such oversight is needed.

Effective oversight of the collection of criminal debt could be achieved by leveraging OMB and Treasury's current respective central agency roles. For example, a primary function of OMB as a central agency is to evaluate the performance of executive branch programs and serve as a catalyst for improving interagency cooperation and coordination. In its central role, OMB is also responsible for reviewing debt collection policies and activities. For example, OMB provides guidance to agencies in the form of circulars to assist them in meeting enacted legislation, such as the Debt Collection Improvement Act of 1996 (DCIA).[1] As such, OMB could work with Justice and certain other executive branch agencies to ensure that these entities report and/or disclose relevant criminal debt information in their financial statements and subject such information to audit. In implementing provisions of the DCIA, Treasury, through its Financial Management Service, could assist Justice in identifying the types of delinquent criminal debt that would be eligible for reporting and referral to Treasury for collection actions. In turn, by better accounting for and reporting its delinquent criminal debt, Justice would enhance its own

[1]OMB Circular No. A-129, *Policies for Federal Credit Programs and Non-Tax Receivables.*

management oversight of this problem. Collectively, these efforts would place greater emphasis on the management and collection of criminal debt.

Although Justice and the courts develop unaudited annual statistical data for informational purposes,[2] neither entity is accounting for any of these debts as receivables, disclosing the debts in financial statements, or having the receivable information subjected to audit. In addition, neither entity is referring eligible criminal debt to Treasury for collection. Having Justice and the courts properly account for, report, and manage criminal debts, with assistance from OMB and Treasury, would heighten management awareness and ultimately result in a more effective collection process.

Accounting For, Reporting, and Managing Criminal Debt

According to Statement of Federal Financial Accounting Standards (SFFAS) No. 1, *Accounting for Selected Assets and Liabilities*, and SFFAS No. 7, *Accounting for Revenue and Other Financing Sources and Concepts for Reconciling Budgetary and Financial Accounting*, a receivable should be recognized once amounts that are due to the federal government are assessed, net of an allowance for uncollectible amounts. Also, in accordance with this OMB Circular No. A-129, *Policies for Federal Credit Programs and Non-Tax Receivables*, agencies are to (1) service and collect debts in a manner that best protects the value of the federal government's assets and (2) provide accounting and management information for effective stewardship, including resources entrusted to the government (e.g., for nonfederal and federal restitution). Although both the courts and Justice have tracking systems in place, neither entity performs an analysis of criminal debts to estimate how much of the outstanding amounts are uncollectible (i.e., neither entity establishes an allowance for uncollectible accounts for amounts due to the federal government). Justice's tracking system allows for amounts to be recorded as "in suspense"; however, these amounts do not necessarily represent amounts that are uncollectible.

In EOUSA's unaudited fiscal year 1999 annual statistical report, the FLUs classified as "in suspense" about $9.9 billion of the approximately $13.1 billion, or 75 percent of the reported uncollected criminal debt

[2]The Annual Statistical Report summarizes and presents data related to criminal prosecutions and civil litigation conducted by the U.S. Attorneys for each fiscal year. The courts also generate annual statistics related to sentences imposed (e.g., type of crime and prison terms).

balance as of September 30, 1999. However, since the collectibility of outstanding criminal debt has not been assessed, the amount in suspense does not represent an estimate of the amount that is expected to be uncollected (see chapter 3). Unless FLUs or the courts assess the collectibility of this debt, set expectations as to the amount of debt that can be collected, and compare expectations against actual collections, management cannot effectively monitor program performance in debt collection.

OMB oversees implementation of the Chief Financial Officers Act, as expanded by the Government Management Reform Act of 1994, which requires audited financial statements for the U.S. government, as well as the 24 major federal executive branch agencies and departments, including Justice. Justice prepares audited financial statements, but is not recording or disclosing receivables for relevant criminal debt in them, and the U.S. courts are not required to prepare financial statements or to disclose this information. Therefore, criminal debt is not being reported in the U.S. government's financial statements. Financial statement disclosure by Justice would increase oversight of the process because reported amounts would be subject to audit under these acts. Such audits would include assessments of internal control and compliance with applicable laws and regulations related to the criminal debt process. Disclosure by the U.S. courts would also increase oversight, but the reported amounts would currently not be subject to audit.

Referring Debt to Treasury

The DCIA requires executive, judicial, and executive branch agencies to transfer eligible nontax debt or claims[3] over 180 days delinquent to Treasury for collection actions. Although referring delinquent criminal debt could increase collections and oversight of such debt, neither Justice nor the courts are currently referring delinquent criminal debts to Treasury. During our reviews, we found that prior to DCIA, the FLUs referred certain debts to the former Tax Refund Offset Program and were successful in collecting payments. For example, an offender was ordered in December 1987 to pay a $10,000 fine and $24,700 in restitution. For tax years 1993 through 1995, the FLU referred this debt to the offset program. In March 1996, the offender's 1995 tax refund of $1,756 was offset and applied toward payment of the fine.

[3]Claims include debts owed to the United States or debts being collected by the United States on behalf of others.

Justice officials believe that the courts should be responsible for referring criminal debt to Treasury because the law specifies that the courts are responsible for accounting for criminal debt collection activities. Court officials indicated that they do not currently have the systems in place—and may not be aware of other collection actions or legal remedies being pursued by the FLUs—that could prohibit referral. The courts' tracking systems are not complete because the courts (1) rely on the FLUs' tracking systems to calculate interest due, (2) do not track pre-MVRA restitution cases in 18 of 94 districts, and (3) do not always record a debt (i.e., establish a receivable) until the first payment is received from an offender.

Treasury officials stated that they rely on the agencies to notify them of delinquent debts that should be referred for collection. Justice has not been reporting this debt on its Report on Receivables[4] and is not accounting for criminal debts as receivables or reporting them on its financial statements or other financial submissions. Treasury officials have stated that Treasury is willing to assist Justice and the courts in identifying types of criminal debts that would be eligible for referral and having the debt referred to Treasury for collection actions.

[4]Executive branch agencies are required to periodically submit to Treasury a Report on Receivables, which details the status of such agencies' receivables.

Conclusions, Recommendations, and Agency Comments

Conclusions

The collection of criminal debt has been a long-standing problem for the federal government. Efforts over the past 15 years to centralize and automate the process have not been successful. Outstanding amounts continue to increase partly because many of the problems we reported on as far back as 1985 still exist. However, a dramatic increase in the balance of reported uncollected criminal debt is primarily attributable to the Mandatory Victims Restitution Act of 1996 (MVRA), which requires that restitution be assessed regardless of the ability of the offender to pay or the potential for collection.

Major continuing problems are that the many entities involved in assessing and collecting criminal debt (1) do not always use available enforcement techniques or (2) do not coordinate efforts so that resources are used most effectively. Without additional high-level oversight and cooperation between the entities, criminal debt collection is likely to remain ineffective. Further, the assessment of criminal fines and restitution as an effective punitive tool may be in jeopardy.

Recommendations

Addressing the long-standing problems in the collection of outstanding criminal debt—including fragmented processes and lack of coordination—will require a united strategy among the entities involved with the collection process. Therefore, we recommend that

- the Attorney General, the Director of the Administrative Office of the U.S. Courts (AOUSC), the Director of the Office of Management and Budget (OMB), and the Secretary of the Treasury work together in the form of a joint task force to develop a strategic plan to improve the criminal debt collection processes and establish an effective coordination mechanism among all entities involved in these processes. The strategy should address managing, accounting for, and reporting criminal debt. This strategy includes determining an approach for assessing the collectibility of outstanding amounts so that a meaningful allowance can be reported and used for measuring debt collection performance and having OMB work with Justice and certain other executive branch agencies to ensure that these entities report and/or disclose relevant criminal debt information in their financial statements and subject such information to audit.

In the interim, while the task force is being established, we are making the following specific recommendations to the entities involved in criminal debt collection:

To help improve collections and stem the growth in reported uncollected criminal debt, we recommend that

- the Secretary of the Treasury, through the Department of Treasury's (Treasury) Financial Management Service, assist the Department of Justice and the courts in identifying the types of delinquent criminal debt that would be eligible for referral to Treasury for collection actions;

- the Attorney General and the Director of the AOUSC continue to work together to (1) reduce duplication of data entry for collections and disbursements, (2) require the Financial Litigation Units (FLUs) and the courts to periodically reconcile payment data recorded in their separate tracking systems, and (3) revise district guidance so that the FLUs can take a more proactive role in monitoring collection efforts of probation offices;

- the Attorney General

  - establish policies and procedures that require Justice investigating case agents and prosecuting attorneys to share relevant financial information with the FLUs within an established time frame after an offender is sentenced,
  - require FLUs to document correspondence with case agents and prosecuting attorneys in the FLU files, including whether and why efforts were not coordinated,
  - require FLUs to use collectibility analyses to prioritize criminal debt collection efforts on debt types deemed through historical experience to be more collectible,
  - reinforce current policies and procedures for entering cases into criminal debt tracking systems; filing liens; issuing demand letters, delinquent notices, and default notices; performing asset discovery work; using other enforcement techniques; and using event codes, including suspense codes,
  - revise current policies for issuing demand letters, specifying when a demand letter should be sent and within what time frames,
  - require FLUs to establish time frames for procedures related to criminal debt collection activities that do not currently have established time frames,

- require FLUs to document in their files instances where asset discovery work was not performed and why it was not performed,
- establish a policy for the FLUs to date stamp when Judgments in a Criminal Case are received,
- revise interest and penalty policies so that interest and penalties are consistently assessed and reported,
- adequately measure criminal debt collection performance against established goals,
- revise the FLU's databases to (1) capture needed information such as terms of fine and restitution order, status of offender (expected release date from prison or probation) and (2) allow FLUs to allocate outstanding amounts between amounts likely to be collected and those that are not likely to be collected, and
- perform an analysis to assess whether the FLU's human capital resources and training are adequate to effectively perform their collection activities; and

- the Director of the Administrative Office of the U.S. Courts

  - ensure and monitor effective implementation of guidance for (1) developing pre-sentence reports, (2) establishing and monitoring offenders' compliance with installment schedules, (3) providing financial information reported in the pre-sentence report to the FLUs within an established time frame after sentencing, and (4) notifying FLUs within an established time frame before an offender is released from supervision,
  - revise guidance to encourage the clerk's office to provide a copy of the Judgment in a Criminal Case to both the FLU and the prosecuting attorney within the established time frame,
  - continue to work with the clerk's offices to process all pre-MVRA restitution so that the same entity in all districts is responsible for receiving and disbursing pre- and post-MVRA restitution,
  - revise the language in the Judgment in a Criminal Case forms to clarify that payment terms established by judges are minimum payments and should not prohibit or delay collection efforts, and
  - establish cost-effective thresholds for disbursements made by check to victims for restitution payments.

Agency Comments and Our Evaluation

A draft of this report was provided to Justice, AOUSC, OMB, and Treasury for their review and comment. The following discussion highlights these agencies' most significant comments and our evaluation. Letters from

Justice, AOUSC, and Treasury are reprinted in the appendixes. OMB provided oral comments, which are incorporated into this section. Justice and the courts also provided us with technical comments that we considered and addressed, where appropriate.

Establishment of a Task Force

Justice and OMB agreed with our recommendation that they work together in a joint task force to develop a strategic plan to improve criminal debt collection processes and establish an effective coordination mechanism among all entities involved in the process. We recommended that this task force also address managing, accounting for, and reporting criminal debt, as well as developing an approach for assessing the collectibility of outstanding amounts so that a meaningful allowance can be reported and used for measuring debt collection performance. AOUSC and Treasury did not state whether they agreed or disagreed with the establishment of and their participation in this task force. We believe that the involvement in the task force of AOUSC and Treasury—given Treasury's central agency role of preparing the federal government's financial statements and implementing DCIA—is critical to the success of the task force.

We recommended that one of the responsibilities of the task force be to address issues in accounting for and reporting criminal debt. As we note in the report, accounting standards require a receivable to be recognized once amounts due to the federal government are assessed, net of an allowance for uncollectible amounts. In addition, OMB guidance requires agencies to provide accounting and management information for effective stewardship, including resources entrusted to the government (e.g., nonfederal restitution). Treasury and OMB agreed that criminal debt should be reported on either Justice's or the court's financial statements. The courts did not specifically address accounting and reporting issues, and Justice stated that it would not be proper to report criminal debt receivables on Justice's financial statements and that it believes administration and possession of the receivables is the responsibility of the courts. Justice's comments related to this issue, plus the lack of a response from AOUSC regarding their position on this issue, illustrate the need for cooperation and coordination in the criminal debt collection area.

We also recommended that OMB work with Justice and other executive branch agencies, while the task force is being established, to report and/or disclose criminal debt information in the agencies' financial statements and to subject such information to audit. OMB disagreed with this recommendation, stating that these reporting issues would be better

handled by the task force. In light of Justice's and OMB's responses, we have deleted the recommendation for OMB to work with Justice and other executive branch agencies, while the task force is being established, and incorporated this recommendation into the task force recommendation.

Agency Specific Comments

Justice generally agreed with the premise of the report and recognized the need for improvements in the criminal debt collection area. Justice also agreed with 10 of our 12 recommendations specifically addressed to it and partially agreed with the other 2. The AOUSC commented that most of our recommendations directed to it had already been implemented and that it is pursuing those related to working with Justice to refer eligible debt to Treasury and reduce duplication of the recordkeeping function. Treasury agreed with our recommendation specifically addressed to it regarding assisting Justice and the courts in identifying eligible delinquent debt for referral to Treasury.

Justice and the AOUSC also commented on the methodology used to develop the report findings. In addition, the AOUSC commented on the focus of the report and on the lack of recognition given to actions the courts have taken to improve the criminal debt collection process.

Justice and AOUSC's Comments on Our Methodology

Justice and AOUSC, in commenting on the methodology we used to select and review cases, stated that closed cases (i.e., debts paid in full) should have been reviewed and that many of the cases reviewed had already been determined by Justice to be uncollectible debt and had been placed "in suspense." We disagree. To address the requestor's objectives of determining the key reasons for the growth in reported uncollected criminal debt and whether adequate processes exist to collect criminal debt, we selected cases that involved debt amounts outstanding as of September 30, 1999. Since we used debts outstanding as of September 30, 1999, many of which were more than 3 years old, ample time for collection activity had passed before we reviewed the cases, enabling us to assess the level of collection efforts performed. Reviewing closed cases or focusing on those cases that had not been placed in suspense by the FLUs would not have addressed why debts have not been collected nor would it have provided a sound basis for determining whether there are adequate processes for collecting criminal debt at the four districts visited.

The amount of outstanding criminal debt continues to grow and has grown substantially over the past several years. However, the collection rate for fiscal years ending September 30, 1995 through 1999, has averaged about 7

percent. The report clearly points out that this is partly due to the uncontrollable factors discussed in chapter 2, but also to the lack of (1) adequate collection processes, (2) coordinated efforts to collect such debt, and (3) management oversight. Thus, to determine why outstanding amounts continue to increase, we selected and reviewed cases with the largest outstanding debt balances as of September 30, 1999, at the four districts with the largest amounts of outstanding debt including debts in suspense as well as debts not in suspense. In addition, we reviewed a stratified randomly selected sample of 35 cases in each of the four districts. Selecting closed cases or cases that had not been placed in suspense would have provided anecdotal information about successful collections, but would not have addressed our objectives of determining the reasons for the growth and determining whether adequate processes exist, especially given the overall low collection rate.

We also found that debts recorded as "in suspense" do not necessarily represent amounts that are uncollectible. For example, even if offenders were making monthly installment payments, the FLU must put either the entire debt balance in suspense or none of the balance in suspense. In addition, to determine why amounts had not been collected, regardless of whether they were in suspense, we assessed the collection efforts that had been performed and found that adequate steps, such as performing asset discovery work, were not always taken or documented prior to the FLU's placing such debts in suspense. Further, we found little evidence that prosecutors and probation officers had shared financial information with FLUs, thus potentially weakening the FLUs' ability to assess an offender's ability to pay (i.e., determine collectibility).

Justice also commented that many of the cases we reviewed involved incarcerated debtors and pre-date existing criminal debt policies. We point out in chapter 2 that incarceration may limit an offender's ability to pay while in prison, however the high dollar cases we reviewed typically involved debtors who had defrauded innocent victims of millions of dollars, resulting in the large restitution amounts being owed. Although the offender's earning potential may be limited while incarcerated, other debt collection techniques such as identifying and pursuing assets, should be performed. Further, as we point out in the report, only about 20 percent of the stratified randomly selected cases involved offenders who were incarcerated at the time of our review.

In chapter 3 we point out that much of the outstanding criminal debt as of September 30, 1999, involved cases that were over three years old.

However, many of the procedures that should be used are typical debt collection tools (e.g., filing liens, issuing demand letters) that should be applied to effectively collect criminal debt. We found that the FLUs were not always performing these procedures. In addition, we found that the FLUs we visited were not always following their prescribed procedures for reassessing an offender's ability to pay. Had these cases been revisited as required, any new policies could have been applied to outstanding debts at that time.

Finally, AOUSC also questioned why cases under $5,000 were not reviewed. Our review focused on the largest–dollar cases ($14 million or greater) as well as a stratified randomly selected sample of cases between $5,000 and $14 million. We excluded those under $5,000, which, as shown in table 7 in appendix I, comprised only $8.9 million of the $5.6 billion of outstanding debt at the four districts visited, or less than 0.2 percent of the total dollar amount of outstanding debt at such districts, an amount that we deemed immaterial.

Justice

Justice agreed with 10 of the 12 recommendations specifically addressed to it. In addition, Justice partially agreed with the other 2 recommendations, which related to (1) requiring FLUs to use collectibility analyses to prioritize criminal debt collection efforts on debt types deemed through historical experience to be more collectible, and (2) adequately measuring criminal debt collection performance against established goals. Justice indicated that it is already performing the recommended functions, however we believe that the intent of these 2 recommendations should be further discussed so that additional improvements can be made in these areas. As to performing a collectibility analysis, Justice stated that it is already performing an analysis in accordance with its suspense policies. However, we found that the FLUs' suspense policies are not the same as performing an effective collectibility analysis since debts may be placed in suspense without performing an adequate assessment of collectibility. Also, having historical collectibility analyses would allow the FLUs to prioritize new debts based on factors that indicate increased potential for collections.

Justice also stated that it is already measuring criminal debt collection performance against established goals. However, it is our understanding that these efforts focus on reporting collection activity and analyzing collection practices, not on establishing goals and measuring performance against such goals, as we recommend. In addition, we believe that

performing a collectibility analysis is an essential first step in adequately setting goals and measuring performance.

Administrative Office of the U.S. Courts

In addition to commenting on our methodology, the AOUSC commented that the effect of the Mandatory Victims Restitution Act of 1996 (MVRA) should have received greater attention in the report and that the report should give greater recognition to actions that the courts have already taken to improve criminal debt collection. We believe that we have provided sufficient balance in the report as evidenced by an entire chapter devoted to uncontrollable factors, such as MVRA, that contribute to the growth in outstanding criminal debt. This chapter precedes chapters devoted to procedural and coordination issues so that the reader is made aware of the significance of uncontrollable factors and the context in which the adherence to required policies and procedures and coordination of efforts take place. In addition, mandatory restitution is listed as a factor in the transmittal letter at the beginning of this report and is discussed in many places throughout the report.

The AOUSC also commented that more recognition should be given to actions it has taken to improve criminal debt collection. One such action includes a comprehensive policy and procedural manual issued in September 2000, several months after our district visits, and not widely distributed until December 2000. In our report we point out that if the AOUSC effectively implements its revised guidance related to (1) developing pre-sentence reports, (2) establishing and monitoring offenders' compliance with installment schedules, (3) providing financial information reported in the pre-sentence report to the FLUs within an established time frame after sentencing, and (4) notifying FLUs within an established time frame before an offender is released from supervision, then reported weaknesses in these areas are likely to be addressed. Since the guidance was issued after our visits, we were not able to assess whether these policies have been effectively implemented and have therefore recommended that AOUSC ensure that such policies are effectively implemented.

Finally, AOUSC stated that it had implemented most of our recommendations; however, the letter did not specifically address each recommendation. While we recognize that the revised guidance should help improve collections, the policies must be effectively implemented before our recommendation is satisfied. The policy and procedural manual does not address our recommendations to (1) revise the language in the Judgment in a Criminal Case forms to clarify that payment terms

established by judges are minimum payments and should not prohibit or delay collection efforts and (2) establish cost-effective thresholds for disbursements made by check to victims for restitution payments. In addition, we were not provided with details of additional actions taken by the courts to address such recommendations.

Scope and Methodology

To accomplish our objectives (see chapter 1), we obtained an understanding of the collection processes by interviewing officials from the Executive Office for United States Attorneys (EOUSA) and the Administrative Office of the United States Courts (AOUSC) and reviewing applicable policies and procedures they provided. In addition, we visited the Northern District of California to "walk through" the collection process at the district level. This included (1) interviewing USAO and district court officials, (2) obtaining and reviewing supplemental policies and procedures developed by the district, including their memorandum of understanding (MOU) and Financial Litigation Plan, and (3) reviewing several collection case files. Based on this visit and our review of applicable guidance, we developed a data collection instrument to be used to document the results of our testing.

To determine the key reasons for the growth in reported uncollected criminal debt, we held discussions with the EOUSA, AOUSC, and district officials. We also analyzed data that the EOUSA provided to us related to criminal debt, including the database of outstanding criminal debt as of September 30, 1999. We did not independently verify the completeness or accuracy of this data or test information security controls over the system used to compile this data because that verification was not necessary for the purposes of this report.

To determine whether adequate processes exist to collect criminal debt, we obtained a database from the EOUSA of all outstanding criminal debt as of September 30, 1999, and selected a sample of cases to review. As agreed with the subcommittee staff, to obtain significant dollar coverage, we selected a sample of outstanding criminal debts at the four districts with the largest amounts of outstanding criminal debt as of September 30, 1999. These districts were the Central District of California, the Eastern and Southern Districts of New York, and the Southern District of Florida. Combined, they accounted for about $5.6 billion (or 43 percent) of the approximately $13 billion outstanding balance as of that date. At each of the four districts, we held discussions with representatives of the USAO, probation office, and clerk's office to reconfirm the understanding of the collection process that we obtained during our walk-through of the Northern District of California. We also requested and reviewed documentation relating to the procedures for collecting criminal debt within each of the four districts.

To ensure that we obtained significant dollar coverage within these four districts, we selected all cases greater than or equal to $14 million. In

addition, we selected, at each office, a stratified random sample of 35 criminal debt cases from a population of all cases $5,000 or greater but under $14 million. We did not review cases under $5,000 because they were deemed to be immaterial. In total, we selected 184 cases for review (see table 7 for details regarding our selection).

Table 7: Details of Cases Selected

Groups	Number of cases per stratum	Dollar amount per stratum	Items tested in each stratum	Justification for number of items tested in each stratum
$14 million or greater	44	$3.7 billion	All items	To obtain significant dollar coverage
$5,000 or greater but less than $14 million	8,650	$1.9 billion	35 at each of the 4 districts selected (140 in all)	To provide coverage of the rest of the population of criminal debt at the four locations
Less than $5,000	16,718	$8.9 million	None	Average amount of strata ($532) was deemed to be immaterial
Total	25,412	$5.6 billion		

Source: Unaudited EOUSA data.

For each case selected, we reviewed the files maintained by the FLU, probation office, and clerk's office to determine whether their policies and procedures were followed. At the USAOs, we reviewed the FLU files to determine whether the FLUs followed their own procedures for (1) entering cases into their tracking systems, (2) enforcing collections (e.g., filing liens and issuing demand letters), and (3) assessing an offender's ability to pay. At the probation offices, we reviewed the probation files to determine whether probation officers followed their policies and procedures for (1) assessing an offender's ability to pay and (2) establishing, monitoring, and enforcing installment schedules. We also compared the payment records maintained by the FLUs with those maintained by the clerk's offices to determine whether these payment amounts agreed. Further, we reviewed the files at the three entities to determine whether evidence existed that the federal entities involved in assessing and collecting criminal debt coordinated collection efforts. The results of these reviews were documented in a data collection instrument.

When we found errors, we developed and submitted questions to the FLUs, probation offices, and clerk's offices regarding instances of noncompliance with policies and procedures identified during our reviews. In addition, we obtained and analyzed these entities' written responses to our questions. Also, see table 8 for number of occurences by selected district for items projected throughout the report.

Table 8: Number of Occurrences by Selected District for Each Item Statistically Projected for the 140 Random Cases

	Central District of California	Southern District of Florida	Eastern District of New York	Southern District of New York
Population	2,476	2,733	1,785	1,656
Sample size	35	35	35	35
Number of occurences for items projected				
FLU had not filed required liens	6	11	15	12
Little or no evidence that FLU attempted to identify the debtor's assets	21	25	22	25
No evidence of correspondence with case agents or prosecuting attorneys was found in the FLU files	18	26	20	20
Event code as of September 30, 1999, was inconsistent with the information in the case file	5	3	11	13
FLU had not revisited the case within established time frames	18	26	21	26
FLU had not sent the required demand letters	22	18	14	5
Status of the offender (in prison)	4	8	8	8

To determine what role, if any, OMB and Treasury play in overseeing and monitoring the government's collection of criminal debt, we interviewed OMB and Treasury officials.

We performed our work from April 2000 through April 2001 in accordance with U.S. generally accepted government auditing standards. We requested comments on a draft of this report from the Attorney General, the Director of the Administrative Office of the U.S. Courts, the Director of the Office of Management and Budget, and the Secretary of the Treasury, or their designees. These comments are discussed in the "Agency Comments and Our Evaluation" section and are reprinted in appendix III through appendix V.

History of Criminal Debt Collection Legislation

Over the past two decades, Congress has enacted legislation related to the collection of criminal debt. The table below presents legislation significantly affecting the assessment and collection of such debt.

Law	Purpose
Victim and Witness Protection Act of 1982 (P.L. 97-291, 96 Stat. 1248)	• Reflects desire of Congress to establish restitution as an important remedy in federal law. • Establishes court's ability, when sentencing a defendant convicted of a federal offense, to order, in addition to or in lieu of any other penalty authorized by law, that the defendant make restitution to any victim of the offense.
Victims of Crime Act of 1984 (P.L. 98-473, 98 Stat. 2170)	• Provides that certain federal fines and forfeitures owed by offenders be allocated to crime victims. • States that certain payments were to be deposited into the Crime Victims Fund and distributed by Justice as grants to eligible crime victim compensation programs and to states for eligible crime victim assistance programs.
Criminal Fine Enforcement Act of 1984 (P.L. 98-596, 98 Stat. 3134)	• Establishes the Attorney General as the responsible party for receiving payments on criminal fines and for establishing a criminal fine collection process. • Requires defendants to pay interest and penalties in certain situations. • Requires clerk's offices to provide to Justice a certified copy of judgments for fines exceeding $500.
Criminal Fine Improvements Act of 1987 (P.L. 100-185, 101 Stat. 1279)	• Transfers the responsibility for receiving criminal fine and assessment payments from Justice back to the courts. • Addresses the need to establish procedures and mechanisms within the judicial branch for processing criminal debt. • Provides that the Director of the AOUSC may specify that payment be made to the clerk of the court or in the manner provided for under section 604(a)(18) of title 28.
Mandatory Victims Restitution Act of 1996 (P.L. 104-132, Title II, 110 Stat. 1227)	• Effective April 24, 1996, restitution must be ordered as part of a sentence for certain offenses in cases with an identifiable victim regardless of the offender's economic circumstances. • The financial circumstances should be considered in how the offender will pay the restitution (e.g., establishment of an installment payment plan). • Enacted as part of the Antiterrorism and Effective Death Penalty Act of 1996.

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

Executive Office for United States Attorneys

Office of the Director

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June 5, 2001

Mr. Gary T. Engel
Director
Financial Management and Assurance
United States General Accounting Office
441 G Street, NW, Room 5970
Washington, DC 20548

Dear Mr. Engel:

As requested, this letter provides comments from the Executive Office for United States Attorneys (EOUSA) on the General Accounting Office's (GAO) draft report regarding criminal debt collection processes. We appreciate the opportunity to provide comments. Generally, we agree with the premise in the draft report that improvements and additional resources are needed to increase the effectiveness and efficiency of the federal government's criminal debt collection process. EOUSA will review, revise, and promulgate, as necessary, procedures for the collection of criminal debt consistent with the recommendations in the draft report and the issues raised in this response.

Before addressing the findings, recommendations, and conclusions in the draft report, we would like to note four concerns regarding the cases reviewed in the study which form the underlying basis for the draft report's findings, conclusions, and recommendations.

See comment 1.

1) No Closed Cases were Reviewed: The sample examined by the GAO auditors included only pending collection cases. Without reviewing any cases that were closed because they were paid in full, the draft report presents an incomplete picture of the collection efforts, successes and failures. For example, the Financial Litigation Unit (FLU) (the section within the USAO responsible for collections) in one of the USAOs visited, collected over $102,466,989 for fiscal years 1990 through 2000 – an average of $9.3 million a year from criminal debtors. During this time period, the FLU in that office opened 21,922 criminal debts and closed 17,054.

See comment 1.

2) Many of the Debts Reviewed were Uncollectible: Most of the large dollar debts and many of the random debts that were reviewed already had been identified by the FLUs as uncollectible and placed into suspense.[1] For example, in one USAO, all but 2 of the 46 cases reviewed had been placed in suspense (11 cases are in suspense because the defendants are making only minimal payments and 33 cases are in suspense because they are uncollectible). By concentrating on cases that already have been identified by the FLUs as cases in which additional efforts to collect are not likely to be successful, the draft report fails to recognize the successful efforts of the USAOs.

See comment 1.

See comment 2.

3) Many of the Cases Reviewed Involve Incarcerated Debtors: According to Table 6 in the draft report, of the 42 high dollar cases that the auditors reviewed, 24 debtors remain incarcerated. As you may know, incarcerated debtors present unique problems in debt collection. First, these debtors have no or, at best, a limited means of income. In fact, the average monthly payment from an incarcerated debtor is $50. Second, many Judgments in a Criminal Case (JCC) issued by the courts do not require payments to be made until after the period of incarceration. As explained below, terms set forth in a JCC can severely limit the ability of the FLUs to collect criminal debts. The draft report's reliance on cases in which the majority of the debtors are incarcerated results in an incomplete picture of criminal collections and the policies and procedures employed by the USAOs.

See comment 1.

4) Many of the Cases Reviewed Predate Existing Policies: The draft report does not provide information on the age of the cases reviewed. Of the cases reviewed, 134 of the 184 (73%) were opened prior to 1996. This is significant in light of the findings in the draft report that the FLUs are not following policies and procedures in the handling of the cases. Every district is required to have in place a Financial Litigation Plan (Plan) that outlines the district's policies and procedures with respect to the collection of civil and criminal debt. Those Plans are reviewed and updated to take into account any changes in the law, changes in policy issued by EOUSA, or changes that may take place within the district. Each of the four districts visited provided GAO with a copy of its current Plan. Most of

[1]Debts are placed into suspense when: (1) a stay of enforcement is in effect; (2) the debtor is deported; (3) the debtor has no ability to pay; (4) the debt is not due; (5) the debtor cannot be located; or (6) the debtor can only make nominal payments that will never result in payment in full. The determination as to whether a debt should be placed into suspense is made by the USAO in accordance with the procedures set forth in the United States Attorneys' Manual (USAM) at 3-12.400-420 and district policy.

the cases reviewed, however, predate the policies outlined in the Plans provided to GAO and may not now reflect the policy that was in place at the time the cases were opened. For example, the draft report states that the average number of days to file a lien was 142 days for large dollar cases and 356 days for the random cases. Prior to 1992, it was the FLU's policy in one USAO to only file liens if there was reason to believe the defendant owned property. Since 1992, the FLU's policy has been to file a lien in all restitution cases and in any case in which the defendant is fined more than $500. Because the draft report reviewed cases prior to 1992 (defendants in 39% of the cases reviewed in that district were sentenced prior to 1992), liens in these cases were often not filed at the time of judgment because the defendant did not own property. When the policy changed in 1992, the entire caseload was reviewed and liens were filed in all cases. This accounts, in part, for what appears to be a delay in filing liens.

See comment 3.

In reviewing the federal government's collection of criminal debt, the draft report focused on three areas: (1) the key reasons for the growth in reported uncollected criminal debt; (2) the processes used in the collection of criminal debt; and (3) the role of the Office of Management and Budget (OMB) and the Department of the Treasury (Treasury) in overseeing and monitoring the government's collection of criminal debt. We would like to address each section of the draft report.

I. Factors Contributing to the Growth in Uncollected Criminal Debt

The draft report identifies the four most significant factors contributing to the growth in reported uncollected criminal debt: (1) the nature of the debt; (2) the assessment of mandatory restitution; (3) terms imposed by judges; and (4) state legislation.

A. Nature of the Debt

See comment 4.

As noted in the draft report, criminal debt by its very nature is difficult to collect. The report recognizes that, unlike civil debts, "most criminal debts remain 'on the books' for 20 years plus the period of incarceration and cannot be 'written off' until the statute of limitations expires, the debtor is deceased, or the court approves a petition for remission." The draft report goes on to find, however, that the FLUs had not sought, in any of the cases reviewed, court approval for remission of the debt. In its finding, the draft report does not recognize that federal law provides that only fines, not restitution, can be remitted. See 18 U.S.C. § 3573. In addition, while the United States Attorneys' Manual (USAM) states that a petition for remission is preferable to placing a debt in suspense; it does not, however, mandate that this process be undertaken for each debt. See USAM 3-12.510. Rather, it is the responsibility of each United States Attorney to develop a policy based on a variety of factors, including whether the judges in that district are amenable to the process. Since a fine is penal in nature, many districts have reported, anecdotally, that judges are reluctant to grant a petition for remission.

B. Assessment of Mandatory Restitution

See comment 1.

As a result of the passage of the Mandatory Victims Restitution Act of 1996 (MVRA), there has been a dramatic increase in restitution impositions, whether they are collectible or not. In looking at the high-dollar cases in the four districts, the draft report states that of the $3.76 billion of debt assessed in those cases, only $148 million has been collected. Although the draft report mentions the uncollectibility of the debt arising from the conviction of the World Trade Center defendants (totaling more than $1.5 billion in outstanding fines and restitution), it did not recognize that most of the other high dollar cases are similarly uncollectible. As stated above, most of the high-dollar cases reviewed already have been evaluated by the FLUs as uncollectible and placed into suspense.

See comment 5.

C. Terms Imposed by Judges

See comment 6.

The draft report recognizes that the collection of criminal fines and restitution is often limited by factors outside the control of the USAOs. One such factor identified is that judges sometimes stipulate payment terms in their judgments. The draft report notes that the FLUs' interpretation of such terms inhibits them from taking prompt collection efforts. The FLUs' interpretation is legally sound.

Once the court determines the amount of restitution owed to each victim, Congress has mandated that the court must establish the manner and schedule according to which restitution is to be paid. 18 U.S.C. § 3664(f). After considering the economic circumstances of the defendant, the court may order a lump sum payment, partial payments at specified intervals, or in-kind payments. 18 U.S.C. § 3664(f). Although the preference is for immediate payment, the court, in the interest of justice, can provide for payment on a date certain or in installments. 18 U.S.C. § 3572(d)(1). While 18 U.S.C. § 3664(k) does provide that victims or the United States may notify the court of any known change in a debtor's financial condition which would justify a modification of the payment terms, the FLU may not take steps to liquidate assets beyond the court's established terms without judicial modification of those terms.[2] See, e.g., United States v. Mortimer, 52 F.3d 429 (2d Cir. 1995); United States v. Coates, 178 F.3d 681 (3rd Cir. 1999); United States v. Myers, 198 F.3d 160 (5th Cir. 1999). To take such action would be violative of a

[2]The procedures for the imposition and collection of fines can be found at 18 U.S.C. §3572. This provision is also applicable for the enforcement of an order of restitution. See 18 U.S.C.§ 3664(m)(1)(A)(i). If a defendant defaults on his or her payment schedule, the FLU is required to notify the defendant of the default. 18 U.S.C. § 3612(e). If the default is not cured within 30 days, the entire balance of the fine or restitution then becomes due. 18 U.S.C. § 3572(i). Absent a default or modification of the court order, the government has no basis to demand additional payments.

See comment 7.

court order. Accordingly, in those cases where payment terms are set forth in the JCC (according to Table 2 of the draft report, this occurs in 45% of the cases reviewed), collection efforts are limited.

D. State Legislation

Prior to the passage of the MVRA, state law, in some instances, restricted the efforts of the FLUs to use certain collection remedies. For example, wage garnishment was not available to USAOs in states, like Florida, that did not allow this collection remedy. While the MVRA addressed some of these situations by limiting the exemptions available to criminal debtors, this change can only be applied to cases in which the date of conviction is after April 24, 1996. As noted above, 73% of the cases reviewed in the draft report were opened prior to 1996, and therefore the full effect of the changes as a result of the MVRA will not be realized. In addition, despite the changes made by the MVRA, state law can still have an effect on the FLUs ability to collect. For example, in Florida, a recorded lien against one spouse does not attach to the property owned by both spouses as a tenancy by the entirety. It is as if the property were owned by a third party. Thus, property jointly owned by the defendant and his or her spouse is not available to satisfy even a criminal judgment against one of the owners. Florida law recognizes tenancy by the entirety in personal as well as real property.

II. Criminal Debt Collection Processes and Coordination Among the Entities

A. Criminal Debt Collection Processes

In reviewing criminal debt collection processes in the FLUs, the draft report discusses procedures, resources, and tracking systems.

1. Procedures

The draft report found that the FLUs did not always follow established procedures or lacked procedures for performing actions in a timely manner. We agree that procedures must be in place and followed for the successful collection of criminal debt. Nonetheless, the discretionary judgment of the FLU in taking or not taking a certain action must also be considered. For example, one finding is that demand letters were not sent or liens were not filed in all cases. The draft report, however, fails to recognize that sending demand letters or filing liens may not be appropriate in all cases. For example, in one of the USAOs, only 4 of the 46 cases reviewed did not contain demand letters. This is because in each of those cases the defendant had already entered into a payment agreement with either the USAO or Probation and was complying with the agreement. To send a demand letter in such cases could be considered improper harassment. In another example, one of the USAOs did not file a lien in a case in which the defendant was deported and therefore unavailable to pay the debt. The FLU must possess the discretion to determine when or if procedures are necessary or futile.

See comment 8.

See comment 9.

The draft report also fails to recognize legal barriers that may prevent the FLUs from taking enforcement actions. As explained above, action may not have been taken because a debt is not currently due under the terms imposed by the court. Interest and penalties may not have been assessed in the cases reviewed because there was no statutory authority to do so for pre-MVRA restitution debts nor for fines imposed prior to 1985. In addition, the court has the authority to waive interest pursuant to 18 U.S.C. § 3612(f)(3). Moreover, the delinquent and default provisions found in 18 U.S.C. § 3572 did not apply to restitution debts prior to the passage of the MVRA.

See comment 10.

See comment 1.

As noted above, 73% of the cases reviewed for the draft report were opened prior to 1996. Every district is required to have in place a Financial Litigation Plan which outlines the district's policies and procedures with respect to the collection of civil and criminal debt. Those Plans are reviewed and updated to take into account any changes in the law, changes in policy issued by EOUSA, or changes that may take place within the district. Each of the four districts visited by GAO representatives provided GAO with a copy of its current Plan. Most of the cases reviewed predated the policies outlined in the Plans provided to GAO and may not now reflect the policy that was in place at the time the cases were opened. Moreover, resources that are available today, such as the Internet, access to credit bureau reports, presentence reports, etc., were not available when the cases reviewed by GAO were opened. We fully expect that policies and procedures set forth in the Plans provided to GAO are currently being followed by the FLUs for newly opened cases and are being applied to the older cases as time and resources permit.

See comment 11.

2. Human Resources

The draft report found, and EOUSA agrees, that lack of resources has severely impacted the FLUs' ability to collect criminal debt. Although it did not provide additional resources to meet its mandate, the MVRA requires that the Department of Justice ensure that "orders of restitution made pursuant to the [MVRA] are enforced to the fullest extent of the law." As noted in the report, the FLUs have seen a dramatic increase in their criminal caseload as a result of the passage of the MVRA in 1996. In spite of the ever growing caseload and the relatively unchanged FLU staffing levels, the last ten fiscal years have been marked by a general increase in the amount of criminal debt collected. EOUSA is committed to requesting and identifying a source of funding to support additional resources. Recently, EOUSA has identified funds to expand the Financial Litigation Investigator Program to include criminal debts.[3] In addition, we are in discussions with the Office of Victims of Crime to expand the criminal investigator team pilot project that is currently in place in the USAO for the Northern District of California and referenced in the draft report.

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[3]This successful program has been in place since 1998 for civil debt collection. Until recently, this program was funded exclusively from the Three Percent Fund which is limited to the enhancement of civil debt collection.

In the interim, EOUSA has been focusing efforts on "achieving more with less." To this end, we have developed a document generation package which allows for automated and batch processing of documents by the FLU, and provided training and dedicated several issues of our Financial Litigation newsletter, DebtBeat, to streamlining the debt collection process. As stated above, there has been an increase in collections despite relatively unchanged staffing levels.

3. Tracking Systems

The draft report points out the limitations in our current tracking system. We are aware of the problems faced by the FLUs in tracking joint and several debts and the limitations in the information that can be captured by the system. EOUSA is working to address these issues and is hopeful that the new tracking system that is currently under development will remedy this finding.

B. Coordination Among the Entities

See comment 12.

The draft report suggests that there are no policies and procedures in place to ensure that efforts are coordinated among the entities involved in assessing and collecting criminal debt.[4] This finding ignores the policies promulgated by EOUSA as well as the various programs that have been instituted in the districts. For many years EOUSA has required that the FLUs conduct joint training with the Clerk of the Court's office and the U.S. Probation Office. EOUSA has also required the USAOs to enter into a Memorandum of Understanding that sets forth the responsibilities of each office for the collection of criminal debt. Included in EOUSA's model criminal AUSA workplan is the requirement to coordinate with the FLU on cases in which a financial obligation may be imposed. Recently, two 2½ day training courses solely about criminal debt collection issues were conducted and an additional course is scheduled for next fiscal year.

Locally, each USAO has developed special programs to ensure coordination with the Clerk's office and the Probation Office. For example, in one of the districts, the Probation Office has given the FLU on-line access to a specially created database of information developed by probation during its supervisory contacts with the debtors. The FLU also has access to the Clerk's on-line docketing system and Financial Management Program. Moreover, the FLUs send debtor statements to debtors that are currently under supervision as well as those debtors

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See comment 13.

[4]The draft report implies that the FLUs did not receive a copy of a presentence report in the cases reviewed. As stated to the auditors prior to the commencement of this review, the presentence reports were redacted from the FLU files. It is DOJ's position that since this document is prepared by the United States Probation Office (Probation), an agency of the Judicial Branch, and only provided to the USAO pursuant to statutory authority, the presentence report cannot be disclosed to GAO by the USAOs. See 18 U.S.C. § 3552. It should also be noted that prior to 1990, presentence reports could not be disclosed to the FLUs.

who have been released. These debtor statements ensure that payments are directed to the Clerk of the Court and that the proper account is credited.

C. Communication Between FLU and Probation

See comment 14.

The draft report suggests that the FLU holds back on enforcement efforts on debtors under supervision and implies that this impedes collection. During the past few years the Administrative Office of the United Sates Courts (AOUSC) has expended considerable effort in training probation officers on their responsibility to ensure that fines and restitution are paid. The first responsibility for ensuring that these debts are paid should remain with the Probation office. The probation officer has a relatively smaller case load and has monthly contact with the debtor. The current system in which the probation officer asks for assistance from the FLU when court intervention is needed works well and prevents duplication of effort.

D. Databases for Tracking and Disbursing Payments

The draft report correctly identifies the inefficiencies in having the FLUs and the Clerks' offices maintain separate databases. Representatives from EOUSA meet regularly and continue to work with representatives from the AOUSC to develop a system and processes that will eliminate the current duplication of efforts in tracking payments. Completion of this project should eliminate many of the bookkeeping functions that FLUs now perform on criminal debts, and will allow FLUs to focus more effort on the actual enforcement and collection of criminal debts. In addition, this new system, along with the capability to send payments electronically via the Internet (using Treasury's new Internet Payment and Accounting system), should allow the courts to take advantage of the Treasury Offset Program (TOP) for criminal debts.[5] In addition, EOUSA is continuing its discussions with AOUSC regarding the possibility of having the 18 courts which currently are not receipting and disbursing pre-MVRA debts take over this function.

III. Role of the Department of the Treasury and Office of Management and Budget

A. Referring Debts to Treasury

The draft report recommends that criminal debts be referred to Treasury for collection. This is based on the Debt Collection Improvement Act's (DCIA) requirement that executive,

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[5]An issue arises, however, with the referral of non-federal restitution debts for offset. Problems can occur when, for example, a joint tax refund payment is offset to satisfy the obligation of only one of the payees. When this occurs, the co-payee can file an injured spouse claim and have a portion of the offset reversed. Unlike federal restitution which is deposited into the Treasury and can be easily reversed, non-federal restitution is disbursed to a third party victim. The victim may have subsequently used the money to pay for things such as medical bills, etc. EOUSA is exploring available remedies should this situation arise.

judicial, and executive branch agencies transfer eligible nontax debts over 180 days delinquent to Treasury for collection action. The DCIA created two important programs within the Department of Treasury to assist agencies in the collection of debts. The first, known as the Treasury Offset Program (TOP), is an extension of the previously established IRS Tax Refund Offset Program, with the difference that now most federal payments (not just tax refunds) can be offset to satisfy a federal debt. With the caveat noted in footnote 7, EOUSA agrees with the draft report's recommendation that criminal debts should be referred to Treasury for this purpose. As stated above, EOUSA continues to work with AOUSC on this endeavor.

See comment 15.

The second program established by the DCIA is the referral of debts to Treasury for purposes of cross-servicing. In this capacity, Treasury oversees a contract for private collection agencies' services. EOUSA disagrees with the draft report's recommendation that criminal debts should be referred to Treasury for this purpose for several reasons. First, the DCIA itself provides an exception to the requirement that debts must be sent to Treasury for those debts that have been sent to the Department of Justice (DOJ) for litigation. Second, the remedies available to the USAOs are legal remedies and are more powerful than remedies available to collection agencies. These remedies include moving for revocation of supervised release and indicting a recalcitrant debtor for failure to pay. Third, the privatization of the collection of criminal debt would result in fewer dollars going to the Crime Victims Fund or to victims of crime because private collection agencies are paid a percentage of amounts collected.

B. Reporting of Criminal Debts on Financial Statements

See comment 1.

To properly respond to this recommendation, EOUSA consulted with the Justice Management Division (JMD), the division responsible for the DOJ's financial statements. DOJ does not believe it would be proper to report criminal debt receivables on the Department's financial statements. The receivables are not DOJ's assets, as 18 U.S.C. § 3611 gives administration and possession of those receivable to AOUSC. Similarly, it is unlikely DOJ can reliably report the criminal receivables as Non-entity Assets on a custodial basis because DOJ is not in control of the all source records nor the timing or reporting of collections, and systems are not in place to provide timely transactional data related to collections and other balance adjustments to DOJ. Unless the systemic issues cited in the GAO report are addressed, it is questionable whether auditable balances would be available for Non-entity reporting. As a practical matter, DOJ should not assume responsibility for balances outside its control when those balances are material and would adversely impact DOJ's audit opinion.

IV. Recommendations

The draft report lists 12 recommendations to improve the effectiveness of the collection of criminal debt. EOUSA and the USAOs are committed to ensuring that victims of crimes are compensated for their losses and that all financial obligations imposed in criminal cases are collected. Accordingly, EOUSA will review, revise, and promulgate, as necessary, procedures

consistent with the draft report and the issues raised in the response. Each recommendation and how EOUSA will address it follows:

1. Establish policies and procedures that require Justice investigating case agents and prosecuting attorneys to share relevant financial information with the FLUs within an established time frame after an offender is sentenced.

See comment 16.

EOUSA agrees that the identification of assets early in the process is important to the collection of criminal debts. Policies and procedures related to this recommendation can be found in the USAM and the district's MOU for Collection and Processing of Criminal Fines, Restitution and Special Assessments. To the extent additional policies and procedures are necessary, EOUSA will work with other components within the Department to develop policies and procedures consistent with this recommendation. As stated in the draft report, however, enforcement action, such as liquidation of assets, can only be pursued if not otherwise limited by the terms set forth in the JCC or Department policy.[6]

2. Require FLUs to document correspondence with case agents and prosecuting attorneys in the FLU's files, including whether and why efforts were not coordinated.

EOUSA will submit this recommendation to the Financial Litigation Advisory Committee, a committee composed of FLU Assistant United States Attorneys, to determine the best approach for implementation.

3. Require FLUs to use collectibility analyses to prioritize criminal debt collection efforts on debt types deemed through historical experience to be more collectible.

See comment 1.

EOUSA agrees that performing a collectibility analysis to prioritize criminal debts is important to improving the debt collection process. The FLUs currently undertake a collectibility analysis by identifying and placing debts into a suspense category in accordance with the criteria set forth in the USAM and local USAO policy. See footnote 1. By separating out debts in which additional efforts to collect are not likely to be successful, the FLUs are able to concentrate their efforts on those debts that may be collectible.

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[6]As stated in USAM 3-10.540, approval of the United States Attorney must be obtained prior to executing upon a debtor's residence. Execution upon the debtor's personal or real property should not result in the debtor's family becoming a public charge.

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4. Reinforce current policies and procedures for entering cases into criminal debt tracking systems; filing liens; issuing demand letters, delinquent notices, and default notices; performing asset discovery work; using other enforcement techniques; and using event codes, including suspense codes.

EOUSA agrees that our current policies and procedures can be reinforced. The USAM serves as a reference manual for policies. EOUSA is currently in the process of creating the United States Attorneys' Procedures (USAP) Manual where all of our current procedures will reside. In addition, EOUSA will reinforce policies and procedures relating to the above recommendation through training courses and regular communications with the FLUs

5. Revise current policies for issuing demand letters, specifying when a demand letter should be sent and within what time frames.

As stated above, in addition to the USAM, EOUSA is in the process of creating the USAP. In doing so, we will review, revise and promulgate, as necessary, policies and procedures consistent with the recommendations in this draft report and the issues raised in this response, including identifying situations in which sending a demand letter may be inappropriate.

6. Require FLUs to establish time frames for procedures related to criminal debt collection activities that do not currently have established time frames.

EOUSA agrees that time frames are important to the debt collection process. However, we also recognize that any time frame established must be flexible and must account for the differences that exist in the 93 FLUs and for the unique circumstances that may exist (e.g., deported debtor). Accordingly, EOUSA will submit this recommendation to the Financial Litigation Advisory Committee to determine the best approach for implementing this recommendation.

7. Require FLUs to document in their files instances where asset discovery work was not performed and why it was not performed.

EOUSA will submit this recommendation to the Financial Litigation Advisory Committee to determine the best approach for implementing this recommendation.

8. Establish a policy for the FLUs to date stamp when JCCs are received.

To the extent that USAOS are not date stamping documentation that is received in the FLU, EOUSA will establish a policy to address this.

9. Revise interest and penalty policies so that interest and penalties are consistently assessed and reported.

EOUSA agrees that the FLUs should be assessing interest and penalties consistently and in accordance with statutory requirements. EOUSA will review its current policies and procedures and will revise accordingly. EOUSA will also discuss this matter with AOUSC to ensure that their new system reports this information consistently.

10. Adequately measure criminal debt collection performance against established goals.

See comment 1.

EOUSA agrees that criminal debt collection efforts should be measured against established goals. The collection activity in an individual USAO is monitored by EOUSA through semi-annual reports of collection activity that FLUs are required to provide to EOUSA (i.e., Appendices C & D of a district's Financial Litigation Plan). A Financial Litigation Checklist is also completed by the FLUs at the end of every fiscal year. In addition, each USAO is required to submit a Financial Litigation Plan that serves as a "road map" for collection practices in the FLU.

EOUSA reviews these reports as well as the annual checklist and the Financial Litigation Plan to determine whether the USAOs are following proper procedures and best practices in the areas of civil and criminal debt collection, enforcement and management of the FLU. The information gathered from the semi-annual reports and the checklist is analyzed in the annual State of the District reports. These reports are sent to each United States Attorney to provide feedback on the USAO's goals and accomplishments in financial litigation and to serve as a management tool for the United States Attorney. In addition, EOUSA's Evaluation and Review Staff performs evaluation of each USAO's debt collection process every three years. This peer review evaluation also provides feedback to the United States Attorney on the performance and accomplishments of the FLUs.

11. Revise the FLU's databases to (1) capture needed information such as terms of fine and restitution order, status of offender (expected release date from prison or probation) and (2) allow FLUs to allocate outstanding amounts between amounts likely to be collected and those that are not likely to be collected.

EOUSA agrees that improvements are needed to the current database. EOUSA is currently developing requirements to add criminal debts to the Department's new civil debt collection tracking system. This recommendation will be considered in the requirements analysis.

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12. Perform an analysis to assess whether the FLUs human capital resources and training are adequate to effectively perform their collection activities.

EOUSA agrees that human resources and training are vital to the success of the criminal debt collection process. We will perform the analysis recommended. As stated in this response, EOUSA is committed to requesting and identifying a source of funding to support additional resources. EOUSA is also committed to ensuring that FLU personnel receive the highest standards of training. Recently, EOUSA provided two 2 ½ day courses dedicated solely to criminal debt collection issues with an additional course scheduled for next fiscal year. In addition, EOUSA attorneys have visited over 45 districts to provide training on the MVRA for prosecutors, probation officers, clerks of courts, and FLU personnel. Training on the MVRA was also provided to over 200 victim-witness coordinators.

The report also recommends the establishment of a joint task force made up of representatives from Justice, the Courts, OMB and Treasury. EOUSA looks forward to participating in such a joint task force and to discussing methods and strategies for improving the criminal debt collection process.

V. Conclusion

While EOUSA agrees that improvements are needed to increase the effectiveness and efficiency of the federal government's criminal debt collection process, in light of our comments above, we do not believe that serious deficiencies exist in the collection process with the exception of the lack of human resources.

See comment 17.

The USAOs continue to make their best efforts to collect criminal debts owed the United States and third party victims. As a result of these efforts, in FY 1999, the USAOs collected over $1.1 billion on behalf of victims of crime. The $13 billion of outstanding criminal debts noted in the report does not accurately reflect our real potential recoveries. In reviewing these debts, the USAOs have identified that approximately 75% of the outstanding balance is currently not collectible. Of the remaining amount, the USAOs have collected approximately one-third of the remaining amount. Despite of the significant factors limiting the USAOs ability to collect criminal debt as outlined above, collections have increased over the past decade. We appreciate all suggestions that will help us even more of this date.

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Thank you for the opportunity to comment on the draft report. EOUSA appreciates GAO undertaking a review of the criminal debt collection processes and will implement the recommendations, as appropriate, to improve our collection of criminal debts. If you have any questions regarding the above, please contact Laurie Levin, Assistant Director, Financial Litigation Staff, at (202) 616-6444.

Sincerely,

Lynneth Hallbrooks

for Mark T. Calloway
Director

GAO Comments

1. See "Agency Comments and Our Evaluation" section.

2. We disagree that many of the Judgment in a Criminal Case (JCC) forms that we reviewed require payments to be made after an offender is released from incarceration. As noted in table 2 of the report, judges stipulated that debt amounts were not due until the offender was released from prison in only 18 of the 184 JCCs that we reviewed (1 of the high-dollar and 17 of the random cases). Also, as noted in the table, all but six of these debtors had been released from prison as of the time of our review. As such, the FLU's collection efforts for most of these cases should not have been limited.

3. We found delays in the filing of liens in all four districts we visited. Some of the random cases we reviewed in the one district noted were opened prior to 1992. However, either a lien had not been filed in these cases or the cases were opened within two and a half years prior to that date. Therefore if the liens were promptly filed during 1992, this delay should not have significantly affected the average number of days to file a lien. If a lien was not filed, then the case was not included in determining the average number. In addition, as noted under "Agency Comments and Our Evaluation," filing liens is a typical debt collection procedure that should be expected even without a specific policy. Also, Justice points out that, prior to 1992, the FLU in this one district would only file a lien if there was a reason to believe the defendant owned property. As noted in the report, we found that the FLUs did not always perform adequate procedures to determine whether defendants owned property.

4. We recognize in the report that one of the factors contributing to the growth in uncollected debt is that most debts cannot be written off for a significant period of time, usually 20 years plus the period of incarceration. We also state in the report that only fines can be remitted and that seeking a petition for remission of all or part of a fine from the judge is preferable to placing it in suspense and continuing to pursue collection. However, as we point out, we found no evidence that the FLU had requested a petition for remission in the cases we reviewed, even though some of the debts involving fines appear to have met the criteria for remission.

5. Throughout the report we recognize that mandatory restitution is a key factor contributing to the growth in uncollected criminal debt. Most of

the high-dollar cases we reviewed involved offenders convicted of white-collar crimes that included defrauding innocent victims and resulted in large amounts of restitution being owed to these victims. We included the criminal debt arising from the conviction of the World Trade Center defendants to illustrate the impact of mandatory restitution (i.e., assessing full restitution based on victims' losses regardless of ability to pay). In the World Trade Center cases, the losses were calculated to compensate victims injured by the bombings. Most of the restitution cases we reviewed involved offenders who defrauded victims of significant assets.

6. As we point out in our report, the FLU's interpretation of payment terms in JCCs is limiting FLU collection efforts. As such, we include the listing of payment schedules in JCCs as a factor contributing to the growth of criminal debt. However, the view of the AOUSC officials and the Chief Judge in one district we visited is that the inclusion of payment schedules in the JCC was not intended to preclude the FLU from identifying and pursuing assets, but merely sets a minimum amount that must be paid while an offender is under supervision. Although the EOUSA disagrees with this view, it does acknowledge that the FLUs could seek modification of a court order if assets were identified. However, we found that in those cases in which terms were included, the FLUs typically would not perform collection actions (such as searching for assets) until after the offender was released from supervision and as a result, opportunities to maximize collections may have been missed. If the courts, as we recommended, revise the language in the JCCs to clarify that payment terms established by judges are minimum payments and should not prohibit or delay collection efforts, this problem is likely to be addressed.

7. This percentage does not accurately reflect the percentage of cases where payment terms were set forth in the JCC. Collection efforts should not be limited in those cases where the judge set an "at least" amount that must be paid. Further, as noted in table 2, all but six of the debtors in cases where the JCCs stated that the debt was not due until the offender was released from prison had been released from prison as of the time of our review. As such, the FLU's interpretation of the payment terms would only have been a factor in those six cases where the offender was still in prison.

8. We clearly point out in the report that part of the problem related to issuing demand letters is the lack of specific guidance on when demand

letters should be sent. For example, EOUSA guidance states that demand letters should be sent "as soon as" a case is entered into the criminal tracking system; however, it does not address situations that may not be applicable to this guidance, such as debts entered into the tracking system that are not yet due. As such, our reported finding relates to the issue of whether demand letters were sent in accordance with available guidance. Further, if the intent of the demand letter is to notify offenders of their debt and the consequences of not paying the debt (i.e., interest and penalties), then a demand letter should be issued as soon as possible regardless of whether the offender has entered into a payment agreement. If, however, the FLU explained why a demand letter was not appropriate, we did not consider it to be an error even though it may have been required by their current policies and procedures.

9. If the FLU explained why certain actions (e.g., filing liens) were not appropriate (e.g., the offender was deported), we did not consider it to be an error, even though it may have been required by their current policies and procedures.

10. We did not consider the lack of certain actions as errors if the FLU explained why the action (e.g., assessing interest and penalties or issuing delinquent and default notices) was not appropriate (e.g., not applicable prior to MVRA or for fines imposed prior to 1985). In fact, we specifically state in a footnote that assessment of interest and penalties was not required for pre-MVRA restitution debts. We also specifically point out that the court has the authority to waive interest and that the law also permits the Attorney General to waive interest and penalties if it is determined that efforts to collect are not likely to be effective. However, according to the U.S. Attorneys' Manual, a determination about whether to waive interest and penalties should be considered only after the principal has been paid. The intent of the discussion is to illustrate the effects of failing to consistently apply interest and penalties irrespective of whether they may be subsequently waived.

11. We are encouraged that resources (e.g., the Internet) to perform debt collection actions (e.g., identifying assets) are more readily available today, however we found that the FLUs typically were not using these resources on the cases we reviewed, including more recently opened cases. Further, if the FLUs had been following their procedures for revisiting cases, the FLUs could have used resources currently available to pursue collection.

12. The lack of coordination among the entities involved in assessing and collecting criminal debt has been a historical problem for the federal government and continues to be a problem based on our reviews at the four largest districts. As Justice states on page 7 of its letter, the memorandums of understanding set forth the responsibilities of each office, but they do not necessarily facilitate coordination. For example, as noted in our report, the FLUs are to assist probation offices in their collection responsibilities only if requested, putting the FLU in a more reactive than proactive role.

13. We note in our report that there was no evidence of a pre-sentence report in most of the files we reviewed. Justice commented in footnote 4 of its letter that pre-sentence reports were redacted from the FLU files. EOUSA officials stated during our first district visit that, if a pre-sentence report was removed from the files, a note would be included in the file stating that the report was removed. During our reviews, we found a few notes in the files indicating that copies of the pre-sentence reports had been reviewed, but typically there was no evidence that a copy of the pre-sentence report had been obtained or reviewed. As it related to cases opened prior to 1990, had the FLUs been revisiting cases as required, pre-sentence reports could have been obtained for these cases.

14. We disagree and believe that the FLUs should work with probation officers to collect debts and not wait for assistance to be requested. We agree that the probation officer's monthly contact with debtors can help in assessing collectibility. However, we also point out that probation officers' first priority is to ensure that offenders do not engage in criminal activity or violate other terms of probation. Further, installment payments accepted by probation officers typically range from $25 to $100 per month, and we found in the applicable cases we reviewed that the probation officers typically did not recommend that larger amounts be paid, even if the offender appeared capable of making larger payments.

15. We did not specifically state that criminal debts should be referred to Treasury for purposes of cross-servicing, but that criminal debt should be referred to Treasury for collection actions. We recommended that Treasury work with Justice and the courts to identify the types of delinquent debt that would be eligible for referral to Treasury and believe that the task force should also address referral issues.

16. We believe that Justice's current policies and procedures encourage information sharing, but they do not specifically require case agents and prosecuting attorneys to provide financial information to the FLUs in a timely manner. As such, we recommended that these other components of Justice be required to provide information within an established time frame. We are encouraged that EOUSA, to the extent necessary, will work with other components within Justice to develop policies and procedures consistent with our recommendation. Also, we believe that if AOUSC implements our recommendation for revising the language in the JCC, Justice's collection efforts should no longer be limited by its interpretation of payment terms in JCCs.

17. Justice points out that the $13 billion of outstanding criminal debt does not accurately reflect "real" potential recoveries. We agree and point out throughout the report that there are many factors contributing to the growth in outstanding criminal debt. However, based on our reviews at the four largest districts, we believe that more needs to be done to improve criminal debt collection processes. This includes ensuring that criminal debt receivables are appropriately accounted for, net of an allowance for uncollectible amounts, based on an adequately performed collectibility analysis. As such, we recommended that a task force be established to address criminal debt collection issues, including debt reporting. Also, although Justice may have collected over $1.1 billion in fiscal year 1999, amounts collected during a given fiscal year do not necessarily reflect actions taken by the FLUs to collect on such debt, but also include collections by other offices (e.g., probation offices or debts immediately paid to clerks' offices). In addition, $500 million of the stated $1.1 billion collected during fiscal year 1999 related to one case involving an antitrust violation. As noted in our report, collections over the past 5 years have averaged about 7 percent—an indicator that more should be done to increase collections.

Comments From the Administrative Office of the U.S. Courts

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

LEONIDAS RALPH MECHAM
Director

CLARENCE A. LEE, JR.
Associate Director

ADMINISTRATIVE OFFICE OF THE
UNITED STATES COURTS

WASHINGTON, D.C. 20544

June 6, 2001

Mr. Gary T. Engel
Director, Financial Management and Assurance
United States General Accounting Office
441 G Street NW, Room 5970
Washington, DC 20548

Dear Mr. Engel:

Thank you for the opportunity to review the draft General Accounting Office (GAO) report entitled *Criminal Debt: Oversight and Actions Needed to Address Deficiencies in Collection Processes*. Based on our recent discussions with GAO staff, we understand that you are incorporating many of the suggested technical corrections outlined during a meeting with GAO representatives on May 18, 2001. However, we believe there still are a number of concerns with certain aspects of the report. Our specific concerns are summarized below.

The judiciary takes seriously its part in the receipting and disbursing of court-imposed fines and restitution payments. We already have made great strides both at the national and local levels to address the operational concerns raised in the draft report. As such, we believe the report should give greater recognition to actions we already have taken to clarify and enhance procedures to be followed by probation and clerks' offices.

See comment 1.

1. The Report Should More Adequately Address the Key Reason for the Growth in Outstanding Criminal Debt.

The draft mentions several factors that have contributed to the growth of criminal debt. Significantly, on page 92, the report concludes that "a dramatic increase in the balance of reported uncollected criminal debt is primarily attributable to the Mandatory Victims Restitution Act of 1996 which requires that restitution be assessed regardless of the ability of the offender to pay or the potential of collection." Despite this important conclusion, the report's focus is mostly on procedural matters, which leaves the wrong impression that the outstanding debt is mainly attributable to procedural deficiencies and coordination issues between the Department of Justice (DOJ) and the courts. In order to answer the primary question posed by the United States

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Senate Government Affairs Committee's Subcommittee on Investigations, that is, to determine the key reasons for the growth in uncollected criminal debt, the report should make it clearer that implementation of the Mandatory Victims Restitution Act (MVRA) has resulted in a large surge in criminal debt, but it has not resulted in any appreciable increase in compensation to the victims of crime, in most cases, because of the defendants' inability to pay. In fact, over 85 percent of all federal criminal defendants are indigent at the time of their arrest and are eligible for court-appointed counsel because of their inability to pay for representation.

See comment 2.

See comment 1.

2. The Study Methodology Employed Should be Reexamined.

The cases studied by GAO all involve debt greater than $5,000. According to Table 7 in Appendix I, 66 percent of federal criminal cases resulting in criminal debt involve a debt under $5,000. According to the report, however, GAO determined these cases to be "immaterial." By focusing instead on the minority of cases involving larger debts, the review cannot be described as reflecting a representative sample.

The report indicates that in each of the districts reviewed, the auditors selected only the cases greater than or equal to $14 million in criminal debt (44 cases total), accounting for 43 percent of the total $13 billion in outstanding debt (including the four World Trade Center bombing cases which account for over $1 billion). The auditors also reviewed a random sample of criminal debt cases with a dollar value between $5,000 and $14 million (140 cases). Cases in the former category are mostly older cases that have already been determined by DOJ to be uncollectible and have been placed in suspense status by DOJ. For instance, the defendants in the World Trade Center bombing cases were sentenced in May 1994, and these cases have been determined by DOJ to be uncollectible and are in suspense status. The sample of other cases selected by GAO do not represent the average criminal debt, but the highest criminal debt cases. The report suggests that much of this debt is uncollectible, but it provides no analysis of the extent to which the cases studied involved collectible debt.

The methodology ignores the many successful cases that have been paid in full and are now closed. Although the courts have no enforced collection responsibilities, probation officers work diligently to reinforce the Financial Litigation Units efforts to collect criminal debt. Due to their extraordinary efforts, across the country, districts have collected millions of dollars for the victims of crime. Chief Judge William J. Zloch of the Southern District of Florida, one of the four districts GAO studied, noted that "....last year the Justice Department recognized our local financial litigation unit with a national Attorney General's Crime Victims Fund Collections Award acknowledging their efforts for collecting almost $28 million. The local financial unit was quick to give credit to the probation office which assisted them in the collection process.... In its current state, however, the report fails to acknowledge the years of hard work, dedication and effort that we have taken on a local level in this district to improve our performance in this area."

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See comment 1.

3. The Report Should Give Greater Recognition to the Guidance Available to Probation Officers.

In September 2000, the Administrative Office issued *Criminal Monetary Penalties: A Guide to the Probation Officer's Role*, Monograph 114, a comprehensive policy and procedural manual. Approved for distribution by the Judicial Conference of the United States, over 7,000 copies were distributed to probation offices, and the monograph is electronically readily available to probation staff on the judiciary's Intranet site. The monograph provides uniform revised procedures and guidance on: preparing presentence investigation reports and recommendations to the court on the imposition of criminal monetary penalties; establishing and monitoring offenders' compliance with installment payment schedules; providing financial information directly to the DOJ's Financial Litigation Units after sentencings and after offenders' release from prison to supervision; and notifying Financial Litigation Units within established time frames before an offender completes supervision or transfers to another district. The monograph also promotes and reinforces communication and coordination among the various court units and government agencies responsible for various aspects of the collection process.

In addition, the Federal Judicial Center updated its *Financial Investigation Desk Reference for U.S. Probation and Pretrial Officers* to assist officers in fully implementing the policies and procedures contained in Monograph 114. The desk reference also gives suggestions to officers on how to perform financial investigations for inclusion in presentence investigation reports and during supervision. The desk reference was also widely distributed to probation offices and is available on the Federal Judicial Center's web site.

Moreover, shortly before the monograph was distributed, the AO developed and issued materials to assist the courts in implementing the procedures and processes contained in the monograph. The materials included: a sample action plan designed to address coordination issues; lesson plans for training officers on the revised procedures; and a model memorandum of understanding, to be negotiated by the chief probation officer, clerk of court, and United States Attorney, to assist courts in reinforcing defined duties and responsibilities for each court unit and the DOJ's Financial Litigation Unit, to reduce duplication and streamline procedures. In addition, the Federal Judicial Center worked with AO staff and probation officers to produce a two-hour satellite broadcast addressing implementation issues that first aired live in November 2000. The broadcast continues to air, two or three times a month, on the Federal Judicial Television Network.

See comment 3.

4. The Report Should Recognize Efforts to Reduce Duplicate Recordkeeping.

The report should give greater recognition to voluntary actions that clerks' offices have taken to reduce recordkeeping duplication in the collection process. Although they are not required to do so by law, 76 out of the 94 clerks' offices voluntarily agreed to accept pre-MVRA restitution payments, and we continue to work with the remaining 18 districts to assist them in assuming these duties. This has reduced duplicate recordkeeping by DOJ and the courts.

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Although this task is very time-consuming and labor-intensive, all clerk's offices also receipt the hundreds of small dollar amount payments from inmates in Federal Bureau of Prison institutions.

See comment 4.

5. The Report Should Recognize Efforts Taken at the National and Local Levels to Improve Coordination.

The report should recognize that national coordination has been excellent and that districts have been working hard to improve coordination. Since Congress determined that the National Fine Center was not a viable solution, we have been actively addressing coordination issues at the national level, as evidenced by quarterly meetings with DOJ officials to identify, discuss, and resolve debt collection process and procedural problems.

Also, efforts are well underway to implement a national integrated financial accounting system in the courts. Working with DOJ staff, functional requirements have been completed for a civil/criminal accounting module for the accounting system, which includes interest and penalty calculation capabilities for criminal debt accounting. We are also already working with Treasury to establish access to the electronic funds transfer network which will allow clerks' offices to electronically receive offset funds from Treasury after a debt has been referred by DOJ to Treasury for collection. In fact, we are now testing this capability in the District of Maine. Prior to implementation of the civil/criminal accounting module, scheduled to begin in FY 2002, each district clerk's office and the Financial Litigation Units will be expected to reconcile its records. Once the system is operating, regular accounting information will be made available to the litigation units to facilitate their debt collection activities. The accounting module is expected to be implemented fully in the courts by FY 2004.

See comment 5.

Districts have also made substantial improvements in coordination. According to Chief Judge Zloch, the collaborative efforts in the Southern District of Florida extend back several years. Recognizing the complexities of this area, a committee was formed and periodic meetings were held to improve the coordination of the three agencies involved in the collection process. Likewise, Chief Judge Michael B. Mukasey from the Southern District of New York, another of the four districts GAO studied, noted "....in our district, there is absolutely no impediment to communicating and coordinating information between FLU and our office. Officers routinely speak with FLU pursuant to our local protocol and MOU. Additionally, FLU is notified three (3) months prior to supervision terminating."

See comment 6.

6. The Report Should Not Criticize the Courts for Coordination Problems that Appear to Have Occurred Within the United States Attorneys' Offices.

Copies of the presentence reports are routinely forwarded to the United States attorneys' offices in every case, and there is no information to suggest that this is not occurring. Any distribution problems within that office should not be presented as a procedural problem for the courts.

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Similarly, the report should not criticize the courts for failing to make copies of the judgments available to the Financial Litigation Units. Title 18, United States Code, section 3612(b)(2) requires the court to provide a certified copy of the judgment to the United States attorney's office ten days following sentencing. There is no information presented to suggest that this is not occurring. Nevertheless, in order to improve communication, Monograph 114 recognizes the coordination difficulties within the United States attorneys' offices and instructs the courts to forward additional copies of the presentence report and the judgment directly to the United States attorneys' offices Financial Litigation Units.

7. The Report Should Clarify that the Courts Have No Debt Collection Enforcement Role.

See comment 7.

There were several places throughout the draft report that suggest that the courts have a greater debt collection enforcement role than the statutes provide. For example, the report suggests that DOJ and the courts are jointly responsible for referring delinquent debts to the Treasury Department for offset collections. The courts' role is limited to providing a mechanism to electronically receive offset payments from Treasury after a debt has been deemed delinquent by DOJ. As noted above, the Administrative Office is working with Treasury to establish access to the electronic funds transfer network that will allow clerks' offices to electronically receive offset funds from Treasury in order to properly receipt the payment when a debt is referred by DOJ to Treasury for collection.

See comment 8.

See comment 9.

The report also suggests that DOJ and the courts should be jointly responsible for assessing the collectibility of outstanding criminal debt, setting expectations as to the amount of debt that can be collected, and comparing expectations against actual collections. As the report notes elsewhere, DOJ is responsible for collecting criminal debt. The receipting and recordkeeping for criminal debt is primarily the responsibility of the courts. Title 18, United States Code, Sections 3664(m) and 3612(c), lay out DOJ's responsibility for debt collection. Moreover, 18 U.S.C. § 3573 makes it clear that only the DOJ can move for remission and, thus, make a determination concerning collectibility. The courts have no role in determining the collectibility of outstanding criminal debt, but nonetheless, in recognition of the fact that the courts cannot control the large amounts of restitution that must be ordered, some courts have assumed the responsibility to set targets on an assessment of collectibility. For example, in 2000, the Southern District of Florida determined that $3,116,750 in restitution was collectible and 99 percent of that amount, or $3,084,681 was successfully collected.

See comment 10.

8. The Report Should be Revised to Reflect Changes to Several Figures (1, 3, 4, 5, 6, 7, and 8) and Table 1.

The MVRA went into effect for all offenses that were concluded on or after April 24, 1996. Figures 1, 3, 6, 7, and 8 in the report should be revised to depict the amount of outstanding criminal debt attributed to the MVRA. Figure 4 should be revised to include a box indicating that the presentence report is shared with the United States attorney's office and defense counsel prior

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to sentencing. Figure 5 gives the impression that the courts are responsible for most of the collection process. However, the figure only depicts the receipting process, not the enforced collection activities performed by DOJ. The figure should be revised to include the major role DOJ plays in the collection process or, as an alternative, a similar diagram should be included in the report that details DOJ's role in the process. In addition, Table 1 should include Congress, since it provides statutory directives to DOJ and the courts.

See comment 11.

Although the report only describes the conditions in four districts and cannot be generalized to the entire system, we believe that performance can always be improved. We have implemented most of the recommendations, and as further recommended, we will continue to work with DOJ in developing a process to receive offset payments from the Treasury Department and continue to reduce duplication of the recordkeeping function, whenever possible.

We appreciate the open dialogue and your responsiveness and hope that our resulting efforts will improve performance in this area.

Thank you for the opportunity to comment on the draft. Of course, we are available to provide any further assistance or clarification that you may need.

Sincerely,

Clarence A. Lee, Jr.

Clarence A. Lee, Jr.
Associate Director

GAO Comments

1. See "Agency Comments and Our Evaluation" section.

2. We are unsure how the AOUSC calculated that over 85 percent of all federal criminal defendants are indigent at the time of their arrest. However, as we point out in table 7 of the report, the majority of debts (about 65 percent) outstanding as of September 30, 1999, for the four districts we visited, were for amounts less than $5,000 and represent only $8.9 million (less than 1 percent) of the $5.6 billion outstanding balance for these districts. We did not review any cases with outstanding debt amounts below this threshold because they were deemed immaterial. Criminal fines should be based on ability to pay. As such, debt arising from indigent debtors typically would involve fines of less than $5,000 and therefore were not selected for review. Restitution amounts are based on actual losses typically resulting from the conviction of white-collar crimes, involving offenders who have defrauded victims of significant assets. As we point out in figure 3 of our report, 87 percent of the total amount outstanding in the four districts we visited were nonfederal and federal restitution debts and only 11 percent were debts involving fines.

3. We commend the efforts of the 76 clerks' offices that voluntarily agreed to accept pre-MVRA restitution payments. However, as we point out in our report, having two entities in 18 districts responsible for accepting pre-MVRA restitution payments results in wasted resources. In addition, at each of the four districts we visited, the clerk's offices and the FLUs maintain separate databases to account for criminal debt collections, resulting in duplicative and inefficient data entry. Posting information to these databases typically requires the exchange of hardcopy information between the clerk and the FLU so that both databases can be updated to properly reflect collections and disbursements. As the AOUSC points out, the posting of hundreds of small-dollar-amount payments from inmates is a time-consuming and labor-intensive task, a task also being performed by Justice. Therefore, as we recommended, it is important that AOUSC continue to work with the 18 districts to accept pre-MVRA payments and for AOUSC and Justice to continue to work together to reduce the duplication of data entry for collections and disbursements.

4. As we point out in our report, the collection of criminal debt has been a long-standing problem for the federal government, and efforts over the past 15 years to centralize and automate the process have not been

successful. The National Fine Center (NFC) was supposed to eliminate the need for the clerks' offices and the FLUs to maintain separate databases to account for criminal debt collections. However, an independent consulting firm concluded that the task of developing a national fine center, involving several agencies in two branches of government, proved to be more complex than expected and that the needs of the districts could not be met through a national approach. Thus, with the consent of the Congress, the centralized approach was terminated. Since the NFC effort was terminated, both entities continue to maintain separate systems for tracking collections and disbursements, resulting in duplicative and inefficient data entry. We commend the efforts under way to improve coordination, including the planned implementation of a national integrated financial accounting system with a criminal accounting module, as discussed in the AOUSC's comments, by fiscal year 2004. However, based on our reviews at the four districts that had the largest amount of outstanding criminal debt as of September 30, 1999, more needs to be done in the interim to reduce the duplication of efforts and enhance coordination. We therefore recommended that Justice and AOUSC work together to improve such coordination.

5. Our report points out that we found little involvement by the FLUs in probation office collections and that district guidance for the four districts we visited stated that the FLUs are to assist the probation offices, if requested. This results in the FLUs' taking a reactive instead of a proactive role. During our reviews, we found little evidence that the FLUs typically monitored collection efforts of probation officers or that probation officers requested assistance or notified the FLUs before an offender was released from probation. As such, notification may have occurred, but it was not documented in the files. And in at least 10 instances, including 4 from the Southern District of Florida, the offenders stopped making installment payments when they were released from supervision.

6. We do not criticize the courts for the lack of pre-sentence reports in the FLU files but note that in many cases there was no evidence that the pre-sentence reports were in the FLU files. We also point out that the FLUs are required to obtain a copy of the financial information contained in the pre-sentence report from either the probation officer or the prosecuting attorney. Similarly, we do not criticize the courts for failing to make copies of the judgments available to the FLUs but state that the judgment is typically sent to the prosecuting attorney within

the USAO's Criminal Division and not to the FLU within the USAO's Civil Division. The prosecuting attorney is to then forward a copy to the FLU. We are encouraged that the recently issued guidance requires the courts to provide copies of pre-sentence reports and judgments directly to the FLUs. Therefore, we recommended effective implementation of these policies to help address reported weaknesses in this area.

7. We believe that "providing a mechanism to electronically receive offset payments from Treasury" is a significant role. We point out in our report that the FLUs referred certain debts to the former Tax Refund Offset Program and were successful in collecting payments but that neither Justice nor the courts are currently referring delinquent criminal debts to Treasury. We also believe that since the courts (1) order defendants to pay criminal debt (i.e., initiate a receivable) and (2) are responsible for the receipting and recordkeeping for criminal debt, they must also play a role in identifying the types of debts that are eligible for referral and in determining how collections will be disbursed.

8. Probation offices can and should play a role in assessing collectibility for offenders under their supervision. As Justice points out in its comments, probation officers have a relatively smaller caseload and have monthly contact with the debtor. As such, probation officers are in a good position to assess a debtor's ability to pay while the debtor is under their supervision. In addition, since the clerk's offices are responsible for receipting and recordkeeping, they play a role in determining when and what debt has been paid, factors that are necessary for assessing collectibility.

9. We did not review the court's procedures in the Southern District of Florida for setting targets for the assessment of collectibility. However, it is our understanding that these targets were based on what probation officers expected to receive from the offenders (e.g., $50 per month per an established payment plan) and were not necessarily based on an assessment of the offender's ability to pay amounts in excess of these established payments. Also, the assessment does not include an assessment of collectibility for the entire district, but only for probation officers.

10. A note was added to figures 1, 6, and 8 to remind the reader of the MVRA enactment date, and MVRA is discussed throughout the report as a key factor in the increase of uncollected criminal debt. Figure 4 depicts the assessment process as it relates to the criminal debt

collection process, including the fact that the probation office assists the court by preparing the pre-sentence report. It is not intended to be all-inclusive. Figure 5 was revised to reflect additional collection responsibilities of the FLUs, and the title was changed to more accurately reflect the contents of the figure. The entities listed in table 1 are centralized offices that prepare and issue guidance related to criminal debt. We did not add the Congress to the table, because its function is to mandate, through legislation, actions that these centralized offices are required to take.

11. The four districts we visited had the largest amount of outstanding criminal debt as of September 30, 1999. Specifically, these four districts represented about $5.6 billion (or 43 percent) of the reported $13.1 billion of total outstanding criminal debt as of that date. Given the historical problems in this area and the conditions we found at these four districts, we believe that we can conclude that major improvements are needed in criminal debt collection processes.

Comments From the Department of the Treasury

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

COMMISSIONER

DEPARTMENT OF THE TREASURY
FINANCIAL MANAGEMENT SERVICE
WASHINGTON, D.C. 20227

May 25, 2001

Mr. Gary T. Engel
Director, Financial Management and Assurance
United States General Accounting Office
441 G Street, NW
Room 5079
Washington, DC 20548

Dear Mr. Engel:

This letter is in response to the General Accounting Office (GAO) draft report on criminal debt collection GAO-01-664, dated June 2001, "Criminal Debt – Oversight and Actions Needed to Address Serious Deficiencies in Collection Processes." The Report contains a recommendation that relates to the Financial Management Service's (FMS') role in the oversight of the collection of delinquent Federal debt.

See comment 1.

GAO recommends that "the Secretary of the Treasury, through its Financial Management Service, assist Justice and the courts in identifying the types of delinquent criminal debt that would be eligible for reporting and referral to Treasury for collection." FMS will continue to actively work within the scope of the DCIA to assist the Department of Justice (DOJ) and the Courts in identifying the types of delinquent criminal debt that would be eligible for reporting and referral to Treasury for collection action. However, it is the responsibility of DOJ and the Courts to report, certify, and refer delinquent debt. It is not, and should not be, Treasury's role to determine which of the two agencies is responsible for accounting for and reporting criminal debt.

See comment 2.

Treasury relies on agencies to certify that all debts referred are legally enforceable and that balances are accurate and up-to-date. Based on the draft report, it would appear that criminal debt balances are not properly stated. That is an internal financial management issue which DOJ and the Courts must address. Agencies must maintain accurate balances. If they begin referring debts without having internal systems to properly maintain balances, as Treasury makes collections, there would be serious potential for invalid offsets/collections. Agencies must resolve their internal issues first; outside agencies like Treasury cannot resolve these problems for them.

See comment 3.

We agree with GAO's recommendation that criminal debts should be reported on either DOJ's or the Courts' audited financial statements. Since the nature of these debts is distinctly different from that of administrative debts, we believe that criminal debt should be reported separately from Federal non-tax debt.

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Please have your staff contact Dean Balamaci, Director, Business and Agency Liaison Division, Debt Management Services, at (202) 874-6660, should they have any questions regarding this matter.

Sincerely,

Richard L. Gregg

cc: Donald V. Hammond

GAO Comments

1. See "Agency Comments and Our Evaluation" section.

2. Treasury correctly points out that Justice and the courts may have to address internal financial management issues related to ensuring that debts referred are legally enforceable and that debt balances are accurate and up-to-date before being referred to Treasury. However, we believe that delinquent debts could be certified on a case-by-case basis so that the referral process for eligible debts could begin.

3. Treasury commented that criminal debt should be reported separately from administrative nontax debts. We believe that the task force should address this as one of the reporting issues.

GAO Staff Acknowledgments

Bill Boutboul, Richard Cambosos, Dean Carpenter, Paul Foderaro, Kate Francis, David Grindstaff, Sophia Harrison, Casey Keplinger, and Dan Mesler made key contributions to this report.

Related GAO Products

Federal Courts: Differences Exist in Ordering Fines and Restitution (GAO/GGD-99-70, May 6, 1999).

Fines and Restitution: Improvement Needed in How Offenders' Payment Schedules Are Determined (GAO/GGD-98-89, June 29, 1998).

National Fine Center: Progress Made but Challenges Remain for Criminal Debt System (GAO/AIMD-95-76, May 25, 1995).

Restitution, Fines, and Forfeiture: Issues for Further Review and Oversight (GAO/T-GGD-94-178, June 28, 1994).

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

U.S. Department of Justice: Overview of Civil and Criminal Debt Collection Efforts (GAO/T-GGD-90-62, July 31, 1990).

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

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