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DEBT COLLECTION IMPROVEMENT ACT OF 1996

Agencies Face Challenges Implementing Certain Key Provisions

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Mr. Chairman and Members of the Subcommittee:

I am pleased to be here today to discuss our work on selected agencies' implementation of certain key provisions of the Debt Collection Improvement Act of 1996 (DCIA). Agencies have long had problems in managing credit programs and collecting non-tax debts. As such, it is essential that the government not only make and guarantee creditworthy loans, but also put effective practices in place to collect amounts that are owed. In this light, the DCIA, which was developed under the leadership of this Subcommittee, was intended, among other things, to maximize collection of billions of dollars of non-tax delinquent debt owed to the government by requiring agencies to (1) notify Treasury of debts delinquent over 180 days for purposes of administrative offset and (2) refer such debts to Treasury for centralized collection action known as cross-servicing. Moreover, to facilitate debt collection, the act also authorizes agencies to administratively garnish the wages of delinquent debtors and bars delinquent debtors from receiving federal financial assistance in the form of certain loans, loan insurance, or loan guarantees until they resolve their delinquencies.

My testimony today will cover selected agencies and focus on (1) difficulties they have experienced identifying and referring eligible debts to Treasury's Financial Management Service (FMS) or a Treasury designated debt collection center, (2) obstacles that have hampered prompt referral of eligible debts, and (3) whether exclusions from referral requirements were consistent with established criteria. Based on information reported to Treasury on debt referrals, exclusions, and other data, we focused our review on major programs at the Department of Agriculture's (USDA) Rural Housing Service (RHS) and Farm Service Agency (FSA) and the Department of Health and Human Service's (HHS) Centers for Medicare & Medicaid Services (CMS).[1] In addition, our review covered the extent to which nine large Chief Financial Officers (CFO) Act agencies use or plan to use administrative wage garnishment (AWG) to

[1]On June 14, 2001, the Secretary of HHS changed the name of the Health Care Financing Administration to the Centers for Medicare & Medicaid Services.

collect delinquent federal non-tax debt.[2] It also covered the advantages and disadvantages of using national credit reporting agencies, the Treasury Offset Program's (TOP) database, and HUD's Credit Alert Interactive Voice Response System (CAIVRS) to promptly identify delinquent federal debtors for the purpose of denying them federal financial assistance.

Let me first make a few overall comments about implementation of the DCIA. We testified before this Subcommittee in June 2000 that, although the DCIA was enacted in April 1996, FMS was still the only governmentwide debt collection center, and that it had not yet fully implemented the act's cross-servicing provision.[3] We emphasized that on a governmentwide basis, the vast majority of reported debt delinquent over 180 days was being excluded by agencies from referral requirements under exclusions allowed by the DCIA or Treasury. However, we cautioned that the reliability of the amounts reported as excluded was not being independently verified. We also stressed that agencies were not promptly referring all eligible debts to FMS. The picture left with your Subcommittee was that agency implementation would have to improve vastly if the debt collection benefits of the DCIA were to be more fully realized.

I am pleased to report that FMS is making progress in collecting delinquent federal non-tax debt through TOP. As you know, TOP is a mandatory governmentwide debt collection program that compares delinquent debtor data to certain federal payment data. When a delinquent debtor record matches a payment record, TOP recovers all or a portion of the delinquent debt by offsetting some or all of the federal payment scheduled to be issued to the debtor. During each of the last 3 years, FMS has reported collecting over $1 billion of such debt with TOP by offsetting tax refund payments. Tax refund offsets have been FMS' most effective means of debt collection and collections have increased, in part, as a result of systems changes the agency implemented. For example, the TOP system can offset against both

[2] The nine CFO Act agencies we included in our review are USDA, the Department of Education, the Department of Energy, the Environmental Protection Agency (EPA), HHS, the Department of Housing and Urban Development (HUD), the Small Business Administration (SBA), the Social Security Administration (SSA), and the Department of Veterans Affairs (VA). These agencies reported holding over 90 percent of the total delinquent debt amounts reported by the 24 CFO Act agencies on their respective Treasury Report on Receivables Due From the Public (TROR) as of September 30, 2000.

[3] *Debt Collection: Treasury Faces Challenges in Implementing Its Cross-Servicing Initiative* (GAO/T-AIMD-00-213, June 8, 2000).

the primary and secondary taxpayer, where the previous tax refund system could only offset against the primary taxpayer. In addition, the TOP system can accept new debts or increased debt balances all during the year, whereas the previous tax refund system could only accept them at the beginning of the tax season.

While there has been important progress, our follow-up work at selected agencies over the past several months has not allayed our concerns about the priority agencies have placed on implementing the DCIA. As I will highlight today, the agencies we reviewed have not taken effective actions to ensure that all eligible delinquent debt is promptly referred to FMS or a Treasury designated debt collection center for collection action. For example,

- As of September 30, 2000, RHS had reported that it referred to TOP $201 million of direct single family housing loans but had not referred any amounts to FMS for cross-servicing primarily due to systems limitations. Also, RHS' reported delinquent direct single family housing loans eligible for TOP may have been understated by about $348 million because it did not report all amounts that were due and payable.
- FSA did not have an adequate process or sufficient controls to adequately identify and report direct farm loans eligible for referral to FMS as of September 30, 2000. In addition, a large portion of the approximately $400 million of delinquent direct farm loans that became eligible for TOP during calendar year 2000 was not likely promptly referred because the agency refers debts to TOP only once annually during December. Further, FSA did not refer co-debtors for the $934 million of delinquent farm loans previously referred to TOP because of systems limitations that had existed for years. Moreover, the agency had referred only $38 million to FMS for cross-servicing because it suspended cross-servicing referrals pending development and implementation of its new cross-servicing policy.
- RHS and FSA have not referred to FMS for collection action any losses on their guaranteed single family housing and farm loans, respectively, even though they have experienced losses of about $132 million and about $293 million, respectively, on such loans since the enactment of the DCIA.
- CMS reported $4.3 billion of Medicare debt eligible for referral for collection action as of September 30, 2000, that had not been referred. Although CMS referred about $1.5 billion of this debt for collection action through August 2001, the agency made the vast majority of the referrals late in the year due to debt referral system problems, delays in

issuing referral guidance to its contractors, and a lack of monitoring of contractor referrals.

Moreover, agencies still have not utilized AWG as authorized by the DCIA to collect delinquent non-tax debt even though experts have testified before this Subcommittee that AWG can potentially be an extremely powerful debt collection tool.[4] Finally, at the present time, neither credit bureau reports, the TOP database, nor CAIVRS provides a comprehensive information source for federal credit agencies to use to identify all delinquent debtors for the purpose of denying federal financial assistance. Therefore, the effectiveness of the DCIA debtor bar provision is limited.

Simply stated, if the government is going to make significant progress in collecting the billions of dollars of delinquent non-tax debt and preventing delinquent debtors from obtaining additional federal financial assistance, the debt collection provisions of the DCIA must be given a high priority by agencies. This has not been the case at the agencies we reviewed as in many cases the agencies are showing needed corrective actions years in the future even though substantial amounts of eligible delinquent debt have not been referred.

We performed our work primarily at RHS, FSA, and CMS. We conducted interviews with agency officials responsible for the identification and referral of eligible delinquent debts to FMS or a Treasury designated debt collection center and reviewed pertinent policies, procedures, and reports related to such debt referrals. We statistically selected and determined whether loans that FSA had excluded from referral to FMS for collection action as of September 30, 2000, were consistent with established criteria dealing with bankruptcy, forbearance/appeals, foreclosure, and referral to the Department of Justice (DOJ) for litigation. RHS was not able to provide supporting documentation for certain loans it excluded from referral to FMS for collection action as of September 30, 2000. This scope limitation prevented us from determining whether such exclusions were consistent with established criteria. As agreed to with staff of this Subcommittee, we did not perform detailed testing on debts that had been excluded by CMS from referral for collection action because of ongoing work in this area being performed by HHS' Office of Inspector General. We did not

[4] Education has been garnishing wages of certain delinquent debtors since 1993 under separate authority from that granted by the DCIA (Section 488A of the Higher Education Act of 1965, as amended, 20 U.S.C. 1095a).

independently verify the reliability of certain information provided to us by RHS, FSA, and CMS (e.g., debts reported as over 180 days delinquent).

In addition, we surveyed nine large CFO Act agencies on their use and planned use of AWG and their debt reporting practices. Although we discussed with agency officials certain responses provided on the surveys, we did not independently verify the reliability of all the information that was provided. In addition, we conducted interviews with officials from several national credit reporting agencies and HUD regarding credit bureau reports and CAIVRS, respectively.

We also conducted interviews with FMS officials and officials of Treasury's designated debt collection center at HHS and reviewed pertinent documents provided by these officials regarding agency debt referral practices. We performed our work in accordance with generally accepted government auditing standards from November 2000 to September 2001.

RHS' Direct Single Family Housing Loan Program

RHS administers a Direct Single Family Housing (SFH) Loan Program to help low-income individuals or households purchase homes in rural areas. As of September 30, 2000, RHS reported having about $17 billion outstanding in direct SFH loans. As shown in table 1, RHS reported $383 million of direct SFH loans over 180 days delinquent including debts classified as Currently Not Collectible (CNC) on its TROR as of September 30, 2000.[5]

[5] CNC debts are debts the agency has written off for accounting purposes but has not discharged. Collection action can still be taken on such debts.

Table 1: RHS' Direct Single Family Housing Loans

	Debt amounts (in millions of dollars)
Debts over 180 days delinquent including debts in CNC	$383
Less: exclusions allowed by DCIA[a]	182
Debt eligible for Treasury offset	201
Debt referred for offset	201
Debt referred for cross-servicing	0

[a] Exclusions were for bankruptcy, forbearance/appeals, and foreclosure.

Source: TROR fourth quarter 2000 (September 30, 2000).

RHS excluded $182 million of this delinquent debt from referral to FMS for TOP and cross-servicing. In addition, RHS had not referred any debts to FMS for cross-servicing as of September 30, 2000, based, in part, on an exemption proposal which RHS stated, in its TROR as of the same date, had been approved by Treasury. However, Treasury officials told us that Treasury never approved a proposal to exempt RHS loans from cross-servicing. Accordingly, opportunities to collect these loans through Treasury's cross-servicing program are being missed.

Support for Not Referring a Significant Amount of Delinquent Direct SFH Loans Not Maintained

The DCIA requires federal agencies to refer all legally enforceable and eligible non-tax debts that are more than 180 days delinquent to Treasury for collection through administrative offset and cross-servicing.[6] We found that RHS did not maintain supporting documentation for direct SFH loans it excluded from such referral as of September 30, 2000. Consequently, we were not able to determine whether the agency's exclusion of $182 million of delinquent debt was based on relevant legislative and regulatory criteria. FMS officials told us that it is their expectation that agencies would retain the applicable data needed to justify not referring delinquent debt for collection action. Furthermore, the Comptroller General's *Standards for Internal Controls in the Federal Government* states that all transactions

[6] Federal agencies may, at their discretion, refer valid, legally enforceable debts for administrative offset and cross-servicing that are less than 180 days delinquent.

and other significant events need to be clearly documented and that the documentation should be readily available for examination. [7]

Systems Limitations Hampered Referral Activity

According to RHS officials, since implementing a new automated centralized loan servicing system in fiscal year 1997, RHS has been unable to readily identify direct SFH loans that are eligible for referral to FMS for cross-servicing. Essentially, the system does not contain sufficient data to differentiate loans eligible for cross-servicing from those that are not. Although RHS plans system enhancements for the third quarter of fiscal year 2002, which the agency believes will facilitate loan identification for cross-servicing, RHS officials advised us that relatively few referrals to FMS will likely be made in the near term. While we were performing our fieldwork, RHS began an interim process to manually identify such loans eligible for cross-servicing. According to RHS' debt referral plan, because the interim process is tedious and labor intensive, only about 100-200 loans will be referred per month to Treasury beginning in May 2001. RHS officials said that all direct SFH loans eligible for TOP will have to be reviewed for cross-servicing eligibility. RHS reported 23,032 direct SFH loans eligible for TOP as of September 30, 2000. The agency intends to refer about 30 percent of eligible direct SFH loans to cross-servicing in fiscal year 2002.

Exemption Request Denied

According to RHS officials, nothing had been done prior to our review to manually identify delinquent direct SFH loans for referral to FMS for cross-servicing because the agency had requested a Treasury exemption from cross-servicing for direct loans made under the SFH Loan Program. RHS had requested that it be allowed to continue to internally service the loans for up to 1 year after liquidation of the collateral, which, in some cases, could be years after the loans became delinquent. Treasury officials told us that Treasury had not approved the request, either formally or informally, and stated that Treasury discouraged RHS from making the request, which was not submitted to Treasury until November 2000. Treasury formally denied RHS' exemption request for the direct SFH Loan Program on May 14, 2001. The declination was based, in part, on the fact that similar loans were being referred for cross-servicing by other agencies and RHS had not

[7] *Standards for Internal Control in the Federal Government* (GAO/AIMD-00-21.3.1, Nov. 1999).

identified any new or unique collection tools applicable to direct SFH loans.

RHS May Have Significantly Understated Direct SFH Loans Eligible for Referral

When a debtor becomes delinquent 91 days on an installment payment for a direct SFH loan, RHS notifies the debtor via certified mail that the entire debt balance is accelerated and is due and payable. As shown in table 1, RHS reported $201 million of direct SFH loans as eligible for TOP as of September 30, 2000. However, this amount may have been understated by about $348 million because it only included the delinquent installment portion of the loans. According to FMS, the entire accelerated balance of the debt should be reported as delinquent and, absent any exclusions allowed by the DCIA or Treasury, should be reported as eligible for referral to FMS for collection as well.

FSA' s Direct Farm Loan Program

FSA provides, among other things, temporary credit to farmers and ranchers who are high-risk borrowers and are unable to obtain commercial credit at reasonable rates and terms. FSA reported having about $8.7 billion in direct farm loans as of September 30, 2000, and as shown in table 2, the agency reported about $1.7 billion of direct farm loans over 180 days delinquent including debts in CNC as of September 30, 2000.

Table 2: FSA's Direct Farm Loans

	Debt amounts (in millions of dollars)
Debts over 180 days delinquent including debts in CNC	$1,666
Less: exclusions allowed by DCIA[a]	732
Debt eligible for Treasury offset[b]	934
Debt referred for offset	934
Debt referred for cross-servicing	38

[a] The vast majority of the reported exclusions were for bankruptcy, forbearance/appeals, foreclosure, and DOJ/litigation.

[b] In addition, other exclusions from referrals to FMS for cross-servicing, including internal offset, were reported by FSA as of September 30, 2000.

Source: TROR fourth quarter 2000 (September 30, 2000).

FSA excluded substantial amounts of this debt from referral to FMS for TOP and cross-servicing. In addition, FSA officials told us that only $38 million was referred to FMS for cross-servicing as of September 30, 2000, because FSA suspended all cross-servicing referrals in April 2000 pending development and implementation of new cross-servicing guidelines for the agency.

Effective Process and Controls Lacking for Determining Eligibility for Referral of Direct Farm Loans

FSA did not have a process or sufficient controls in place to adequately identify direct farm loans eligible for referral to FMS. Certain types of debts were automatically excluded from referral without any review for eligibility. In other cases, FSA's Program Loan Accounting System did not contain information from the detailed loan files located at the FSA field offices that would be key to determining eligibility for referral. In addition, FSA did not have any monitoring or review procedures in place to help ensure that FSA personnel routinely updated the detailed debt files. Consequently, amounts of direct farm loans FSA reported to Treasury as eligible for referral were not accurate.

Excluded amounts for bankruptcy, forbearance/appeals, foreclosure, and DOJ/litigation totaled about $694 million, or about 95 percent of the $732 million that was excluded from referral to FMS for TOP and cross-servicing. Of this amount, $295 million was for DOJ/litigation and was comprised of judgment debts. According to FSA officials, deficiency judgments--court judgments requiring payment of a sum certain to the United States--are eligible for TOP and should be referred to FMS. However, FSA's Finance Office in St. Louis automatically excluded all judgment debts for direct farm loans from referral to FMS because automated system limitations precluded staff from identifying deficiency judgments. Our inquiries caused FSA officials to initiate a special project in May 2001 to identify all deficiency judgment debts for direct farm loans so that such debts could be referred to FMS.

Determinations as to whether direct farm loans are in bankruptcy, forbearance/appeals, or foreclosure and, therefore, excluded from referral to FMS, are made by FSA personnel in numerous FSA field offices across the country. Personnel in the FSA field offices we visited did not routinely update the eligibility status of farm loans in FSA's Program Loan Accounting System as was evident by the selected excluded loans we reviewed. Using statistical sampling, we selected and reviewed supporting documents to determine whether farm loans that selected FSA field offices located in California, Louisiana, Oklahoma, and Texas had excluded from

referral to FMS were consistent with established criteria dealing with bankruptcy, forbearance/appeals, foreclosure, and DOJ/litigation.[8] Based on the results of our sample, we estimate that about 575, or approximately one-half of the excluded loans in the 4 selected states, had been inappropriately placed in exclusion categories by FSA as of September 30, 2000.[9] Because of these numerous errors, we did not test other reported exclusions from referral to FMS for cross-servicing, such as loans being internally offset.

One of the most frequently identified inappropriate exclusions pertained to amounts discharged in bankruptcy, which should not have been included in delinquent debt. Fifty-two bankruptcies that we reviewed as part of our sample had been discharged in bankruptcy court prior to September 30, 2000. In fact, many had been discharged several years prior to that date. For example, one loan with a balance due of about $325,000 was reported as a delinquent debt over 180 days and excluded from referral requirements because of bankruptcy. However, a review of the loan file at the FSA field office showed that a bankruptcy court discharged the debt in 1986 and, therefore, the debt should not have been included in either the delinquent debt or exclusion amounts reported to Treasury as of September 30, 2000.

According to Farm Loan Managers in some of the FSA field offices we visited, they have not written off many direct farm loans discharged in bankruptcy because making new loans has been a higher priority use of their resources. In addition, FSA did not provide sufficient oversight to help ensure that field office personnel adequately tracked the status of discharged bankruptcies and updated the loan files and debt records in the Program Loan Accounting System. Also, it is important to note that delays in promptly writing off discharged bankruptcies not only distort the TROR for debt management and credit policy purposes, but also distort key financial indicators such as receivables, total delinquencies, and loan loss data. This makes the information misleading for budget and management decisions and oversight. Aside from erroneously inflating reported loans

[8]Field offices in these four states serviced about $272 million, or about 39 percent, of the total debts excluded from referral to FMS as of September 30, 2000, for bankruptcy, forbearance/appeals, foreclosure, or DOJ/litigation.

[9] We estimate that 48.5 percent plus or minus 15.7 percent of the population were inappropriately reported as exclusions from referral to TOP. When projecting these errors to the population of 1,187 loans, we are 95-percent confident that the errors in the population are between 389 and 761 loans.

receivables and delinquent loans, failure to process loan write-offs delays reporting closed-out debt amounts to the Internal Revenue Service (IRS) as income to the debtor.[10]

Referrals of Direct Farm Loans for Cross-Servicing Suspended

As previously mentioned, only $38 million of direct farm loans were reported by FSA as having been referred for cross-servicing because the agency suspended such referrals in April 2000 pending development and implementation of a new policy to refer to FMS for cross-servicing only debts where the 6-year statute of limitations has not expired. FSA issued revised guidelines in July 2001 to incorporate the 6-year statute of limitations and the agency is now in the process of reviewing loans at over 1,000 FSA field offices to determine eligibility for referral to Treasury under the new policy. FSA plans to resume referrals to FMS for cross-servicing by the end of calendar year 2001.

According to FSA officials, FSA decided to adopt the new policy because they believed that FMS informed them that accounts for which the 6-year statute of limitations had expired should not be referred for cross-servicing. However, FMS officials told us that FMS had not provided such guidance to FSA. FMS officials emphasized that FMS will accept debts that are older than 6 years because, although the debts cannot be referred to the DOJ for litigation, collection can still be attempted through other debt collection tools such as referral to private collection agencies.

Co-Debtors Not Referred for TOP

Even though FSA reported having referred $934 million of direct farm loans to FMS for TOP as of September 30, 2000, the agency has lost and continues to lose opportunities for maximizing collections on this debt because it does not refer co-debtors. According to FSA officials, the vast majority of direct farm loans have co-debtors, who are also liable for loan repayment. However, FSA's automated loan system cannot record more than one debtor because the system modifications necessary to accept Taxpayer Identification Numbers (TINs) for multiple debtors have not been made. According to a FSA official, the need to have co-debtor information in the system to facilitate debt collection was initially determined in 1986. However, we were told that to date, higher priority systems projects have

[10] The Federal Claims Collection Standards--which were last updated in November 2000--and OMB in its Circular A-129 both require agencies, in most cases, to report closed-out debt amounts to the IRS as income to the debtor.

precluded FSA from completing the necessary systems enhancements to allow the system to accept more than one TIN per debt. In other words, although FSA recognized years ago the need to take action, the agency has not considered this to be a high enough priority. According to FSA officials, FSA has now incorporated this requirement in the new Farm Loan Program Information Delivery System scheduled for implementation in fiscal year 2005.

Eligible Debt Not Promptly Referred to TOP

According to data provided by FSA officials, about $400 million of new delinquent debt became eligible for TOP during calendar year 2000. Although FSA officials stated that the debts became eligible relatively evenly throughout the year, debts eligible for TOP are referred by FSA only once annually, during December. Consequently, a large portion of the $400 million of debt likely was not promptly referred when it became eligible. As we have previously testified, industry statistics have shown that the likelihood of recovering amounts owed decreases dramatically with the age of delinquency of the debt.[11] Thus, the old adage that "time is money" is very relevant for referrals of debts to FMS for collection action. FSA officials told us that the agency agrees that quarterly referrals could enhance possible collection of delinquent debts by getting them to Treasury earlier and has plans to start a quarterly referral process in fiscal year 2003.

RHS and FSA Have Not Referred Losses on Guaranteed Loans to FMS

Since the DCIA was enacted in April 1996, RHS and FSA have also missed opportunities to potentially collect millions of dollars related to losses on guaranteed loans. As of September 30, 2000, neither RHS nor FSA treated such losses resulting from the SFH Program and the Farm Loan Program, respectively, as non-tax federal debts. Consequently, neither agency had policies and procedures in place to refer such losses to Treasury for collection through FMS' TOP or cross-servicing programs.

Guaranteed SFH loans and farm loans, as well as related losses, have been significant since the inception of the guaranteed programs. The RHS guaranteed SFH program has been expanding in recent years. The outstanding principal due on the guaranteed SFH portfolio grew from about $3 billion in fiscal year 1996 to over $10 billion as of September 30, 2000, and RHS has paid out losses of about $132 million on the guaranteed

[11] GAO/T-AIMD-00-213, June 8, 2000.

SFH program since fiscal year 1996. The outstanding principal due on guaranteed farm loans was about $8 billion as of September 30, 2000, and FSA has paid out about $293 million in losses since fiscal year 1996.

In January 1999 and June 2000, USDA's Office of Inspector General (OIG) first reported that RHS' and FSA's guaranteed losses, respectively, were not being referred to Treasury for collection. The OIG recommended that both agencies recognize the losses as federal debt and begin referring such debt to FMS for collection.

Although RHS has recently initiated action to begin developing policies for referring losses on guaranteed loans to FMS for collection action in the future, its efforts to make necessary regulatory and policy changes have not been fully completed resulting in continuing missed opportunities to potentially collect losses on guaranteed loans. FSA, on the other hand, has recently initiated action to begin implementing new policies for referring losses on all new guaranteed loans to FMS for collection action. Because these guaranteed loan programs are significant to RHS and FSA, the agencies' development as well as implementation of policies and procedures to promptly refer eligible amounts to Treasury for collection action is critical.

CMS' Medicare Program

Most of CMS' debts stem from overpayments made by its 55 claims administration contractors to Medicare providers and beneficiaries under 2 programs--Part A, Hospital Insurance, and Part B, Supplemental Insurance. Because of the ongoing business relationship with providers, the contractors are able to collect most Medicare debt by offsetting subsequent Medicare payments. However, for debts for which offset is not accomplished, the unpaid balances not collected within 180 days delinquent are subject to the debt referral requirements of the DCIA.

As shown in table 3, CMS reported that about $6.4 billion of delinquent Medicare debt was eligible for referral for collection action as of September 30, 2000.

Table 3: CMS' Medicare Debts

	Debt amounts (in millions of dollars)
Debts over 180 days delinquent including debts in CNC	$6,604
Plus: other [a] (unfiled cost reports)	1,591
Less: bankruptcy, appeals, litigation	1,809
Debt eligible for referral for collection action	6,386
Debt referred for collection action	2,046

[a] Certain Medicare institutional providers (MIPs) are paid interim amounts throughout the year based on historical service to Medicare beneficiaries. These MIPs are required to file cost reports each year that show actual costs incurred to provide Medicare services so that CMS can determine whether the MIPs have been overpaid or underpaid. MIPs that do not submit cost reports owe CMS the entire amount they received from the agency during the year. Because CMS does not recognize amounts associated with unfiled cost reports greater than 180 days delinquent as receivables for financial reporting purposes, it adds such amounts to the debts over 180 days delinquent that are reported on the TROR.

Source: Medicare Trust Fund TROR for fourth quarter 2000 (September 30, 2000).

Of the $6.4 billion of debt eligible for referral, CMS reported that about $4.3 billion of debt had not been referred to Treasury or a Treasury designated debt collection center.[12] Non-Medicare Secondary Payer (MSP) debt, which is primarily related to cost report audits, comprised about $2.6 billion of the debt not referred. The remainder was comprised of MSP debt, which occurs when Medicare pays for a service that subsequently is determined to be the responsibility of another payer.[13]

CMS' goal was to refer $2 billion of such debt in fiscal year 2001 and the remainder in fiscal year 2002. According to documents provided by HHS' Program Support Center (PSC), a Treasury designated debt collection center,[14] CMS has referred to the PSC about $1.5 billion in fiscal year 2001

[12] Based on our review of CMS' TROR as of September 30, 2000, all of the $4.3 billion of eligible debt that had not been referred was reported as eligible for referral to TOP. In addition, of the $6.4 billion, CMS reported that about $3 billion was eligible for referral to FMS for cross-servicing and about $1.8 billion of such debt had not been referred.

[13] MSP debts include certain cases in which beneficiaries (1) have other health insurance coverage provided by their employer or their spouse's employer, (2) have occupational injuries or illnesses that would be covered by workers' compensation, or (3) have injuries which are covered by liability insurance or a settlement arising from an accident.

[14] In 1999, Treasury designated the PSC a debt collection center for MSP debts and unfiled cost report debts.

through August 31, 2001. However, for reasons we will discuss, the vast majority of these referrals were not made until late in the fiscal year.

In September 2000, we reported that CMS had not fully implemented the DCIA. CMS had implemented pilot projects to begin referring Medicare debts delinquent over 180 days to the PSC.[15] Five contractors participated in the non-MSP pilot project and 15 contractors in the MSP pilot project. Under the pilot projects, the contractors were responsible for sending DCIA intent letters to debtors up to 6 years delinquent indicating that nonpayment would result in referral of the debt to a Treasury designated debt collection center. Once referred, the PSC was then responsible for reporting the debts to FMS for TOP and referring certain debts for cross-servicing. However, we reported that under these pilot projects, contractors referred only large-dollar-value, aged Medicare debts while leaving out a large amount of debt. In addition, we reported that collection prospects for large-dollar-value aged debts are much less than for newer debts involving smaller amounts. Thus, we recommended that CMS immediately refer all Medicare debts to the PSC as soon as they become over 180 days delinquent and were determined to be eligible, and refer the backlog of eligible debt as quickly as possible.

Suspension of Debt Referral System Hampered Referrals of Non-MSP Debts

Although CMS experienced some success in referring non-MSP debts to the PSC under its non-MSP pilot project, problems with its debt referral system and late guidance to contractors on debt referral thwarted efforts to refer such debt. Almost all of the $2 billion of debt that had been referred to the PSC as of September 30, 2000, was comprised of such debts. However, about $2.6 billion in non-MSP debt had not been referred. CMS' referrals of non-MSP debt were limited during the first 9 months of fiscal year 2001 mainly because the agency suspended the debt referral system in November 2000. A CMS official responsible for non-MSP debt referrals stated that the agency suspended the debt referral system to identify and correct numerous discrepancies found in the system's data (e.g., duplicate debts, differences in debt amounts between debt tracking systems, and debt referral systems) and the placement of additional edits in the system so that these types of errors would not occur in the future. CMS resumed referring non-MSP debts to the PSC through the debt referral system in June 2001.

[15] *Medicare: HCFA Could Do More to Identify and Collect Overpayments* (GAO/HEHS/AIMD-00-304, Sept. 7, 2000).

CMS' suspension of its debt referral system operations not only limited the five contractors that participated in the non-MSP pilot from referring debts to the PSC but also significantly delayed CMS from bringing all of its contractors into its debt referral program. In addition, late guidance to contractors also contributed to delayed referrals. Initially, CMS intended to have all of its contractors referring non-MSP debts to the PSC by October 2000. However, the agency did not issue program memoranda to each of its contractors providing them updated instructions for identifying and referring non-MSP debts to the PSC until April 2001.

In its guidance, in response to our recommendation in September 2000, CMS expanded the criteria for referring non-MSP debts to include Part B as well as Part A debts and lowered the referral threshold from $600 to $25. Subsequent to making the debt referral system operational and expanding the referral requirements to all contractors, CMS referred, through August 31, 2001, about $1.4 billion of non-MSP debts to the PSC.

CMS officials stated that the limited amount of non-MSP debt referrals through the first 9 months of the fiscal year was not a significant concern to them because they have a goal of $2 billion of referrals for fiscal year 2001, and they intend to meet that goal by the end of the fiscal year. A CMS official recently informed us that this fiscal year goal was met. However, as previously mentioned, the prompt referral of delinquent debts is critical because the likelihood of recovering amounts owed decreases dramatically with the age of delinquency of the debts.

Several Factors Contributed to Little Progress in Referring MSP Debts

CMS' eligible MSP debt totaled about $1.8 billion, which was about 40 percent of the approximately $4.3 billion of Medicare debt that had not been referred for collection as of September 30, 2000. Although CMS began referring MSP debts to the PSC in March 2000, the PSC's records indicate that CMS had referred only about $51 million, or 3 percent, as of August 31, 2001. This is particularly troubling since CMS was taking no other active collection actions on these debts.[16]

Limited contractor efforts, coupled with inadequate monitoring of contractor performance by CMS, contributed to the slow progress in referring MSP debts. None of the three large contractors we reviewed that

[16] For most MSP debts, contractors were only required to send initial demand letters to the employer and/or insurance company and follow up on any inquiries from them.

participated in the MSP pilot project promptly identified all eligible MSP debts and/or referred those debts to the PSC.[17] For example, one contractor held $255 million of Part A MSP debt over 180 days delinquent as of September 30, 2000. This contractor reported initiating the identification and referral process for only about $33 million, or about 13 percent, of this debt. The contractor official responsible for MSP debts stated that the contractor was under the impression that it needed to only make two file queries in February 2000 covering debts incurred from March 1997 through August 1998 to fulfill its requirements under the pilot project. However, CMS documentation indicated that the pilot project was to cover all MSP debts that were no more than 6 years old and CMS officials responsible for MSP debts stated that they had never instructed the contractor to limit its file queries.

Another contractor held about $61 million of Part A MSP debt over 180 days delinquent as of September 30, 2000. The contractor official responsible for MSP debts stated that the contractor believed that the MSP pilot project ended in August 2000, and as such did not perform any reviews of its MSP debt portfolio to identify additional MSP debts to refer between September 2000 and December 2000. Moreover, the contractor's records indicated that about $6.2 million, or approximately 48 percent, of the $12.8 million of debts for which it had sent DCIA intent letters prior to September 2000 had not been referred to the PSC. The contractor official responsible for MSP debts could not readily provide an explanation for why these debts had not been referred for collection action.

In addition, CMS did not develop and implement policies and procedures for monitoring the contractors' referral of MSP debts. Consequently, CMS did not monitor the extent to which contractors referred specific MSP debts to the PSC and did not identify specific contractors, such as those mentioned above, that were not identifying and referring all eligible debts so that it could take prompt corrective action. The Comptroller General's *Standards for Internal Control in the Federal Government* states that

[17] We reviewed the debt referral processes at four of the larger Medicare contractors. The Medicare contractors were selected based on the size of their debt portfolios and their participation in the pilot projects. The contractors we reviewed had $2.8 billion of debt, representing about 39 percent of all debts at the contractors. Three of the four contractors participated in the pilot project for MSP debts and two of the four contractors participated in the pilot project for non-MSP debts. The three contractors we reviewed that participated in the pilot project for MSP debts combined held about $357 million of Part A MSP debts or about 37 percent of the total Part A MSP debts over 180 days delinquent at CMS as of September 30, 2000.

internal control should be designed to assure that ongoing monitoring occurs in the course of normal operations. It should be performed continually and ingrained in the agency's operations.[18]

Some Action Taken to Get MSP Debt Referrals Back on Track

In May 2001, CMS issued a Program Memorandum to each of its contractors that required them to identify delinquent MSP debts and refer the debts to the PSC. Although issued 8 months after our September 2000 recommendation to do so, CMS expanded the criteria for selecting MSP debts for referral to include Medicare Part B debts, as well as Part A debts. The required dollar threshold for referral will be reduced in phases from $5000 to $25 so that the contractors will eliminate the backlog of higher dollar debt as well as refer the current debts so that another backlog is not created. The CMS Branch Manager stated that the memorandum was not issued sooner, in part, because CMS had to respond to contractor concerns about needing additional funding to automate their respective debt referral processes. However, the manager stated that after much consideration, CMS concluded that referrals could be done manually and that seeking additional funding for such referrals would likely cause further delays in referring MSP debts to the PSC.

In response to our work, CMS officials stated that they began to review MSP debt referrals at selected contractors. In addition, the CMS Branch Manager for MSP stated that the 10 CMS regional offices would in the future assume a more active role in ensuring that the contractors promptly refer eligible MSP debts to the PSC. However, CMS has not yet formalized a written strategy that includes precisely how contractor monitoring will be performed.

CMS Missed Opportunities to Collect Certain MSP Debts Through TOP

Missing information has also slowed collection efforts. According to a PSC official, a recent evaluation on PSC's performance in collecting certain types of debt found that only $13.9 million, or less than 40 percent, of the $36 million of MSP debt CMS contractors referred to the PSC in fiscal year 2000 could be sent to TOP. Other debts could not be sent to TOP for collection because they lacked TINS. TINS are necessary for FMS to match delinquent debts with federal payments to be offset.

[18] GAO/AIMD-00-21.3.1.

According to PSC and CMS officials responsible for debt collection, no written requirements were in place to help ensure that the Medicare contractors, the PSC, or the PSC's private collection agency obtained TINs for all MSP debts referred for collection. The PSC official stated that the PSC began to send letters to the debtors in August 2001 requesting TINs so that the debts can be referred to TOP and are also discussing with CMS officials how to effectively obtain TINs for MSP debts in the future.

Lack of Complete and Accurate Debt Information Hampers CMS' Debt Referral Monitoring

CMS will need to effectively monitor the debt referral practices of its 55 contractors to help ensure that all eligible Medicare debts are promptly identified and referred for collection, but it lacks a centralized database for all MSP debts at its various contractors. Therefore, the agency cannot effectively monitor the extent to which its various contractors promptly identify and refer the debts to the PSC for collection. Although CMS is in the process of developing a system that is to include a database of all MSP debts, CMS plans to phase the system in at the contractors, and the system is not scheduled to be fully implemented until fiscal year 2007.

In addition, CMS has identified problems with its contractors maintaining accurate debt information in its non-MSP debt tracking system, which is critical for monitoring contractor debt referral practices. CMS performed Contractor Performance Evaluations (CPEs) on 25 contractors and found that 19 of the contractors were not adequately updating information in the agency's debt tracking system for non-MSP debt. For five of these contractors, CMS considered the problems to be significant enough to require a written performance improvement plan.

Our work at the two selected contractors involved in the non-MSP pilot project corroborated CMS' own findings. During the non-MSP pilot project, CMS periodically sent the two pilot contractors we reviewed a listing of eligible debts from the agency's debt tracking system for possible referral to the PSC. Of the $1.3 billion of debt CMS selected in its debt listings for the two non-MSP pilot project contractors we reviewed, the contractors' personnel determined that $289 million, or about 23 percent, was actually ineligible for referral due to bankruptcy, appeals, or fraud. In addition, at one of the two non-MSP pilot project contractors we reviewed, we identified $21 million of debt misclassified as bankruptcy on the debt tracking system and therefore excluded from the referral requirements.

Because these debts were actually dismissed from the bankruptcy proceedings, they should have been reported as debt eligible for referral.[19]

It is also important to note that CMS' systems for debt tracking do not currently have the capability to provide information as to whether its contractors are promptly entering non-MSP debts into the debt referral system after they mail intent letters. We noted at one of the two non-MSP pilot project contractors we reviewed that CMS did not identify $5.2 million of debts that were pending referral for at least 9 months. In response to our work, CMS officials stated that they are in the process of modifying the debt tracking system so such monitoring will be done in the future.

Moreover, because CMS' Medicare debt comprises a significant portion of delinquent debt governmentwide, such debt must be reported accurately if the governmentwide debt information is to be useful to the President, the Congress, and OMB in determining the direction of federal debt management and credit policy. The eligible debt amounts reported by CMS to Treasury as of September 30, 2000, were not reliable. As previously discussed, certain contractors did not update their debt tracking systems for non-MSP debts. These tracking systems are the same ones used by CMS in determining the exclusion amounts for bankruptcy and appeals. In addition, CMS inappropriately excluded $149 million of non-MSP debts that had been referred to CMS regional offices for collection.[20] Also, CMS officials stated that CMS did not report any exclusion amounts for MSP debts. We noted that certain MSP debts were involved in litigation but no exclusions for litigation were included for such debts in the report to Treasury. In response to our work, CMS officials stated that CMS no longer reports the debts referred to regional offices as exclusions and is in the process of identifying and reporting exclusion amounts for MSP debts.

Problems Noted In CMS' Debt Referral Strategy

Finally, although CMS has issued Program Memoranda to each of its contractors instructing them to refer non-MSP and MSP debts, we

[19] The contractor did not update its internal systems for $8 million of these debts and thus was not pursuing any collection action on these debts after the dismissal. For the remaining $13 million, the contractor was pursuing collection action but did not properly update the tracking system.

[20] Prior to the DCIA referral process, contractors were required to transfer receivables to the regional offices for collection.

identified the following issues relating to the agency's current debt referral strategy.

- CMS chose as its first priority the referral of about $500 million of eligible non-MSP debts stemming from unfiled cost reports. CMS' Technical Advisor for debt collection stated that CMS focused on these debts because they involved high dollar amounts. However, the priority placed on referring such debts does not appear to coincide with prospects for collecting the debts, as the historical collection rate associated with such debt has been almost nonexistent. For example, of the $547 million of unfiled cost report debt that was referred through fiscal year 2000, the PSC collected only about $9,000. This low collection rate is due, in part, to the fact that such debt is often adjusted downward significantly, or even eliminated, upon submission of a cost report by the provider. [21]
- In February 2001, CMS issued guidance to its contractors to methodically terminate collection action or close out MSP debts delinquent more than 6 years and 3 months.[22] Because CMS will close out these debts, they will not be reported to FMS for TOP, which is FMS' most effective debt collection tool. [23] The CMS branch manager for MSP stated that she was not aware of any assessment performed to determine the expected dollar amount of the closed-out debts. CMS had already approved about $86 million of MSP debts for close-out at the contractors we reviewed. About $85 million of these debts were less than 10 years delinquent, and thus could still be referred to PSC for

[21] Although unfiled cost report debts are referred to TOP, the main goal of the PSC and its private collection agency for these types of debts is to resolve them by getting the providers to submit cost reports. If the PSC or its private collection agency is successful, the cost report is sent to CMS to determine if a Medicare overpayment actually exists.

[22] CMS officials stated that the 6-year, 3-month criterion was chosen because debts could not be litigated by DOJ for collection action beyond 6 years.

[23] According to documents provided by Treasury, it has collected over $1 billion of federal non-tax debt during each of the last 3 calendar years through TOP by offsetting tax refund payments. This by far is more than that collected by any other of FMS' debt collection tools. In addition, Treasury has found that the collection rate for the small amount of MSP debt that has been reported to TOP is about 10.5 percent, which is higher than the average rate of TOP collections.

reporting to TOP.[24] The CMS branch manager for MSP stated that collection efforts on older debts are not cost effective. However, CMS officials could not provide any documentation to support the assertion that it was not cost effective to attempt to collect older MSP debts with TOP.

- The Federal Claims Collection Standards--which were last updated in November 2000--and OMB in its Circular No. A-129 require agencies, in most cases, to report closed-out debt amounts to the IRS as income to the debtor. CMS has not yet established a process, including providing authorization to the PSC, to report closed-out MSP debt amounts to the IRS. CMS officials stated that CMS and its Office of General Counsel are currently discussing the reporting of closed-out MSP debts to the IRS.

In addition, while the recently issued Program Memoranda cover referral requirements for most of CMS' Medicare debts, the memoranda did not cover all Medicare debts including the following types.

- MSP Liability: MSP liability debts cover accidents, malpractice, and other non-Group Health Plan debts where Medicare is not the primary payer.
- Part A Claims Adjustments: Part A claims receivables are created by an adjustment of a previously paid claim. Some reasons for claims adjustments are duplicate processing of charges and/or claims, payment of noncovered items and services, or incorrect billing. These debts are not tracked on the CMS debt tracking system. These debts are generally offset from subsequent Medicare payments, and thus no further collection action is needed. However, there are no requirements for Medicare contractors to perform any other collection action on these debts, such as the issuance of a demand letter, should subsequent Medicare payments not be available for offset.

CMS was not able to provide a dollar amount for such types of debts over 180 days delinquent. However, as of September 30, 2000, we found that the four contractors we reviewed held about $9.6 million of MSP liability debts and $10.7 million of debt related to Part A claims adjustments. CMS

[24] Except for certain types of debts, 31 U.S.C. 3716(e)(1) provides that administrative offset is available for claims that have not been outstanding for more than 10 years. 31 C.F.R. 285.2 (d)(1), provides that TOP is available to collect non-tax debts referred within 10 years after the agency's right of action accrued.

officials stated that CMS intends to refer MSP liability debts as well as Part A claims adjustments to the PSC in the future.

Most Agencies Have Not Used AWG to Collect Delinquent Debt

The DCIA authorizes both federal agencies that administer programs that give rise to delinquent non-tax debts and federal agencies that pursue recovery of such debts, such as FMS, to administratively garnish up to 15 percent of a debtor's disposable pay until the debt is fully recovered.[25] None of the nine CFO Act agencies we surveyed used AWG as authorized by the DCIA to collect delinquent non-tax debt as of the date of completion of our fieldwork, over 5 years after the DCIA went into effect. Together these agencies reported holding about $40 billion of delinquent non-tax debt as of September 30, 2000, including $23 billion in consumer debt,[26] which is typically comprised of debts by individuals, many of whom are employed.[27] This is not to imply that AWG could be used to collect all such consumer debt because circumstances such as bankruptcy or appeals could limit the application of this debt collection tool.

Agencies identified various reasons for the delay in implementing AWG, including the need to focus priorities on the mandatory provisions of the DCIA and develop the required regulations or administrative hearing procedures to implement AWG. This is disappointing in light of the large population in the country's labor force and the fact that debt collection experts testified before this Subcommittee in 1995, prior to the enactment of the DCIA, that AWG can be an extremely powerful debt collection tool, as the mere threat of AWG is often enough to motivate debtor repayment.

Treasury's Role in AWG

Treasury issued regulations for AWG in May 1998 and agency guidance for issuing wage garnishment orders in November 1998 and February 1999.

[25] Disposable pay means that part of the debtor's compensation (including, but not limited to, salary, bonuses, commissions, and vacation pay) from an employer remaining after the deduction of health insurance premiums and any amounts required by law to be withheld.

[26] The agencies held over $25 billion in debts classified as CNC, which was not broken out by consumer and commercial debts on the agencies' TRORs. Although CNC debts are written off by the agencies for accounting purposes, AWG could be applicable to significant amounts of such debts.

[27] Consumer debt is more likely to be subject to AWG because the debtor is often an individual who is employed. Certain commercial debts could involve individual debtors, guarantors, or co-debtors and AWG may be applicable to such debtors.

The regulations are silent regarding when agencies can initiate AWG in the collection cycle. According to these regulations, prior to initiating AWG, an agency must give the debtor 30 days notice that includes, among other things, an opportunity to receive a hearing concerning the existence or amount of the debt or the terms of the proposed repayment schedule under the garnishment order. In addition, the regulations specify that agencies must issue garnishment orders to employers within specified timeframes that depend on whether the debtor responded to the notice in a timely manner.[28] Of course, before garnishment orders can be sent, the debtor's employer must be identified and located.

According to FMS, it has been working with its private collection agency (PCA) contractors to incorporate AWG into its cross-servicing program. On April 26, 2001, the PCAs were provided with the AWG PCA Operations & Procedures Manual, and in May 2001, the PCAs received the contract modification, which authorizes them to begin to use AWG once they sign and return the modification. Under FMS' procedures, the PCAs will be responsible for locating the debtor's employer if not already identified; requesting FMS' approval to send AWG notices to debtors; and obtaining garnishment orders, signed by FMS, to send to employers. FMS has requested all agencies that refer debts for cross-servicing to formally authorize FMS to use AWG as part of cross-servicing.

Future Implementation of AWG by Federal Agencies

Although none of the nine CFO Act agencies we surveyed were using AWG as authorized by the DCIA, all these agencies except EPA told us that they intend to implement this debt collection tool within the next 5 years. EPA stated that it is unsure whether it will implement AWG because most of its debts are commercial debts and the current volume of individual debts does not support using AWG.[29] Education, HHS, SBA, and SSA indicated that they plan to implement AWG themselves, while USDA, Energy, HUD, and VA indicated that they plan to rely solely on FMS to implement AWG as

[28] According to Treasury regulations, the agency shall send a withholding order to the debtor's employer within 30 days after the debtor fails to make a timely request for a hearing (i.e., within 15 business days after the mailing of the notice), or, if a timely request for a hearing is made by the debtor, within 30 days after a final decision is made by the agency to proceed with garnishment.

[29] EPA's commercial debts are comprised of debts issued under the Superfund program that provides federal clean-up authority and funds to address problems posed by abandoned or uncontrolled hazardous waste sites.

part of cross-servicing, including identifying the debtors' employers and sending notices and garnishment orders.[30]

According to agency responses to our survey and follow-up discussions with agency officials, HHS plans to implement AWG under the DCIA authority by the end of the calendar year 2001, SBA after March 2002, Energy after April 2002, Education during fiscal year 2002, and SSA in fiscal year 2003. The other three agencies we surveyed that are planning to implement AWG had not established specific dates for implementing AWG. Of the nine agencies we surveyed, only HUD, SBA, and SSA had a written plan for implementing AWG. SSA provided a written implementation plan for AWG that addresses the major milestones that must be accomplished as well as a project scope agreement that outlines how the process will work. Our review of the other plans provided by HUD and SBA showed that they represented little more than a general timeline for AWG implementation rather than a clear description and strategy for how the agency will actually perform AWG or when AWG will be fully implemented. For example, the two plans do not include the types of debts that will be subject to AWG or the policies and procedures for administering AWG. Further, none of the plans identified the processes the agencies will use to conduct hearings. Consequently, it is not clear when these agencies will be able to fully incorporate AWG into their debt collection processes.

Education Has Successfully Used Wage Garnishment Under Separate Authority

Education has been garnishing wages of certain delinquent debtors since 1993 under separate authority from that granted by the DCIA.[31] Under this authority, Education may garnish debtors' wages up to 10 percent of disposable pay to collect defaulted student loans. According to Education, since the agency started garnishing wages, the collection of defaulted student loans has increased dramatically, and the agency has reported using wage garnishment to collect over $306 million of principal and interest on defaulted student loans for fiscal year 1997 through March 2001.

Education uses its PCAs to perform collection activities, which include locating debtors and their employers. However, Education directly sends

[30] Education and HHS stated that they would authorize FMS to perform AWG for certain debts referred for cross-servicing, while SBA and SSA stated that debts referred for cross-servicing would be eligible for AWG.

[31] Section 488A of the Higher Education Act of 1965, as amended, 20 U.S.C. 1095a.

the official garnishment documents and orders to the employers. In 1999, authority to access the National Directory of New Hires (NDNH), which is maintained by HHS' Office of Child Support Enforcement (OCSE), was expanded from delinquent child support debt to also include defaulted student loans.[32] The NDNH includes information from state and/or federal agencies on employers' new hires, quarterly wages, and unemployment insurance.[33] Education officials stated that, going forward under the DCIA, no changes are planned regarding when AWG is initiated during the collection cycle and that Education will continue to send garnishment orders to employers.[34] The officials also stated that prior to implementing AWG under the DCIA, Education must, among other things, publish a public notice.

Certain Factors Could Limit FMS' Use of AWG

Although FMS' incorporation of AWG into the cross-servicing program would undoubtedly improve its collection success and make the FMS collection program more comprehensive, certain factors could limit its use. First, all delinquent debt reported by agencies as eligible for cross-servicing is not currently being promptly referred to FMS. Second, as of the date of completion of our fieldwork, none of the nine CFO Act agencies we surveyed had given FMS authorization to use AWG as part of cross-servicing.

Although debt referred for cross-servicing was not reported to Treasury separately by consumer and commercial debt, the four agencies of the nine CFO Act agencies we surveyed that plan to rely exclusively on FMS for AWG implementation (i.e., USDA, Energy, HUD, and VA) together reported having referred only $288 million of about $690 million of all types of debt that were reported as eligible for cross-servicing as of September 30, 2000.[35]

[32] Section 453 of the Social Security Act, as amended, 42 USC 653(j).

[33] The purpose of the NDNH is to provide a national repository of employment and unemployment insurance information that will enable State Child Support Enforcement IV-D agencies to be more effective in locating noncustodial parents; establishing child support orders; and enforcing child support orders, especially across state lines.

[34] Certain administrative debts that total less than one-half of 1 percent of Education's total delinquent debt amount will be eligible for AWG at FMS through cross-servicing.

[35] According to FMS' Performance Summary Report for July 2001, only 63 percent of debt reported by federal agencies as eligible for cross-servicing governmentwide as of September 30, 2000, had been referred to FMS.

As discussed previously, the USDA agencies we reviewed, RHS and FSA, have not identified and promptly sent debts to FMS for cross-servicing. Consequently, if AWG were to have been attempted using only those delinquent debts reported as referred for cross-servicing for fiscal year 2000, substantial amounts of delinquent debt would not have been subject to this debt collection tool.

Moreover, agencies relying on FMS to conduct AWG must first authorize FMS to perform AWG as part of its cross-servicing program after establishing the required hearing procedures and publishing the required regulations. As of the date of completion of our fieldwork, according to FMS, only two small agencies not included in our review, the Railroad Retirement Board and the James Madison Foundation, have provided FMS the authority to use AWG as part of cross-servicing. In addition, although most agencies support the use of AWG, according to FMS, the agencies are concerned about being able to handle the hearings that debtors may request. It is important to note, however, that the DCIA does not require hearing officials to be independent of the agency and certain agencies can provide hearing services for a fee. For example, VA provides hearing services to other federal agencies on federal salary offset for about $100 per hearing and, according to a VA official, the agency anticipates a similar fee to provide AWG hearings. Moreover, Education's experience for defaulted student loan debt is that relatively few debtors request a hearing compared to the number of AWG notices sent.[36]

[36] In fiscal year 2000, Education issued 90,658 Notices of Intent and only 8,921 debtors, or about 9.8 percent, requested a hearing.

Comprehensive Information Source For Denying Federal Financial Assistance Is Lacking

Current law bars certain delinquent federal non-tax debtors from obtaining federal financial assistance in the form of federal loans, loan insurance, or loan guarantees until the debtor resolves the delinquency.[37] This debtor bar provision does not expire as the debt ages, and it applies even if the creditor agency has suspended or terminated collection activity on the debt.[38] Thus, it can be used to bar such assistance for indefinite periods. For purposes of denying federal financial assistance, a debt is in delinquent status if it has not been paid within 90 days of the payment due date.[39]

During the hearing on DCIA implementation held by this Subcommittee in June 2000, concerns were raised that there were federal non-tax debtors who were delinquent on more than one federal debt. To help ensure that federal financial assistance is denied to delinquent debtors as required by the DCIA, federal credit agencies must have access to delinquent debtor information that (1) includes all debtors delinquent 90 days or more on federal non-tax debts, and (2) is maintained and updated until the delinquency is resolved under Treasury regulations. Although credit

[37] Section 3720B of title 31, United States Code, as amended by Section 845(a) of the Agriculture Appropriations Act, FY 2001, Public Law No. 106-387 (2000), bars delinquent federal non-tax debtors from obtaining federal financial assistance in the form of federal loans, loan insurance, or loan guarantees, except for disaster loans or a marketing loan or a loan deficiency payment under subtitle C of the Agricultural Market Transition Act. According to Treasury regulations, for the purpose of denying federal financial assistance, a person's delinquent debt is resolved only if the person (1) pays or otherwise satisfies the delinquent debt in full; (2) pays the delinquent debt in part if the creditor agency accepts such part payment as a compromise in lieu of payment in full; (3) cures the delinquency under terms acceptable to the creditor agency in that the person pays any overdue payments, plus all interest, penalties, late charges, and administrative charges assessed by the creditor agency as a result of the delinquency; or (4) enters into a written repayment agreement with the creditor agency to pay the debt, in whole or in part, under terms and conditions acceptable to the creditor agency.

[38] According to Treasury regulations, for the purpose of denying federal financial assistance, a debt is not in delinquent status if (1) the person seeking federal financial assistance has been released by the creditor agency from any obligation to pay the debt, or there has been a determination that such person does not owe or does not have to pay the debt; (2) the debtor is the subject of, or has been discharged in, a bankruptcy proceeding, and if applicable, the person is current on any court authorized repayment plan; or (3) the existence of the debt or the delinquency of the debt is being challenged under an ongoing administrative appeal and the appeal was filed by the debtor in a timely manner.

[39] Treasury has established 90 days delinquent as the trigger for denying federal financial assistance because it (1) allows sufficient time for debts to be referred to credit bureaus, and (2) is consistent with standard lending practices which classify a loan as non-performing at 90 days past due.

bureau reports, FMS' TOP database, and CAIVRS each contains certain information on delinquent federal non-tax debtors, for reasons we will discuss, none of them currently provides such all-inclusive and permanent data that could serve as an adequate data source for successfully barring future financial assistance to those currently delinquent or who did not meet their obligations in the past. In general, the constraints relate to scope of reporting, adequacy of the data for this purpose, and the fact that data are subject to being routinely purged from these data sources after a specified number of years. In view of these constraints, we continue to be concerned about delinquent federal non-tax debtors obtaining federal financial assistance.

Credit Bureau Reports

The DCIA requires federal agencies to report consumer and commercial non-tax debts to credit bureaus.[40] Related Treasury guidance states that federal agencies should report consumer debts monthly and commercial debts quarterly. Credit bureau reports include critical information for the debtor bar provision, including the number of days a debt is delinquent and whether the debtor is involved in bankruptcy.[41] As such, credit bureau reports are a relatively good information source for identifying certain delinquent federal non-tax debtors. However, the information that credit bureaus are currently able to provide is limited for the purpose of denying federal financial assistance because (1) certain agencies do not report all non-tax debt that is 90 days delinquent, which is the trigger associated with the bar provision; and (2) by law, certain adverse credit information can be retained and reported by credit bureaus for only 7 years.

In response to our survey of nine CFO Act agencies, which together reported holding about $40 billion of delinquent non-tax debt as of September 30, 2000, eight of the nine agencies indicated that they did not report to credit bureaus about $9.8 billion of their delinquent debt. Over $5.2 billion of the debt was not reported to credit bureaus because it is exempted from the credit bureau reporting requirement by statute; however, this is Medicare debt, and it is subject to the delinquent debtor

[40] 31 U.S.C. 3711(e).

[41] As previously mentioned, according to Treasury regulations, a debt is not delinquent for purposes of denying federal financial assistance if the debtor is the subject of, or has been discharged in, a bankruptcy proceeding.

bar provision.[42] In addition, about $3.4 billion is not reported because the debts are guaranteed loans made by USDA's Commodity Credit Corporation to foreign governments. Agency officials stated that reporting foreign debt to credit bureaus would serve no useful purpose and, therefore, would not be cost effective. Other reasons cited by the agencies for not reporting delinquent debt included (1) lack of automated capability or system limitations to report to credit bureaus and (2) the validity of the debt could not be firmly established.

Seven of the nine CFO Act agencies we surveyed indicated that they rely on FMS to actually report certain debts to credit bureaus as part of cross-servicing.[43] However, we noted that, as of September 30, 2000, these seven agencies together reported about $1.4 billion of debt eligible for cross-servicing but had referred only about $330 million to FMS. Consequently, a significant amount of delinquent debt is not likely being captured by credit bureaus, which limits federal credit agencies' use of credit bureau reports to identify delinquent federal non-tax debtors for the purpose of denying federal financial assistance.

The problem with relying on FMS to report delinquent debts to credit bureaus as part of cross-servicing is that the debts would typically not be reported until well beyond the 90-day delinquency trigger for denying federal financial assistance. Agencies are not required to refer eligible debts to FMS for cross-servicing until they are delinquent over 180 days. Once FMS receives the debts, in order to give debtors notice of credit bureau reporting and an additional opportunity to repay their debts, FMS waits at least 30 days for commercial debts and 60 days for consumer debts before reporting these debts to credit bureaus. Based on the reported debt referral practices of the seven agencies we surveyed that indicated they rely on FMS to report certain debts to credit bureaus, debts would seldom, if ever, be referred to FMS for cross-servicing in sufficient time for FMS to report the debts to credit bureaus at 90 days delinquent. Moreover, as discussed previously, we have testified before this Subcommittee that many debts at FMS for cross-servicing were delinquent over 4 years when they were initially referred by federal agencies.

[42] Medicare debt is exempted by 31 U.S.C. 3701(d) from the credit bureau reporting requirements imposed by 31 U.S.C. 3711(e). However, Section 3701(d) does not exclude Medicare debt from the debtor bar provision in 31 U.S.C. 3720B.

[43] Two of the nine agencies we surveyed responded that they do not rely on Treasury's cross-servicing for reporting any of their debts to credit bureaus.

Aside from the fact that not all delinquent federal non-tax debts are reported to credit bureaus, it is important to note that, under the Fair Credit Reporting Act, adverse credit information for consumer debts can generally only be reported by credit bureaus for up to 7 years. Therefore, credit agencies cannot rely on such reports to identify debtors with older delinquent consumer debts for the purpose of denying federal financial assistance. Further, we noted that one of the nine agencies we surveyed indicated that it requests the removal of certain debtors from credit bureaus when the agency discharges debts, even though discharged debts do not meet Treasury's criteria for debt resolution for the purpose of denying federal financial assistance.

FMS' TOP Database

FMS' TOP database is currently not available to agencies to identify delinquent debtors for the purpose of denying federal financial assistance. FMS is designing a new Internet-based program, known as the Barring Delinquent Debtors Program, to assist agencies in identifying delinquent debtors. The program will allow agencies to initiate a search of the TOP database to determine whether applicants for direct or guaranteed loans owe delinquent federal non-tax debt. Currently, FMS anticipates that the new program will be implemented during fiscal year 2002. Various legal and technical issues may influence implementation of the Barring Delinquent Debtors Program, including making the data available to (1) appropriate agency personnel and (2) authorized private lending institutions involved in federal lending activities, while maintaining systems and data security.

Ostensibly, the TOP database could provide federal credit agencies with pertinent information about delinquent debtors for the purpose of denying federal financial assistance. The TOP database includes the date delinquency began for each debt; therefore, the number of days a debt is delinquent can be readily determined. In addition, FMS allows agencies to continually update their debt information in the TOP database.

The TOP database's downside as an information source for identifying all delinquent federal non-tax debtors for the purpose of denying federal financial assistance is that a significant amount of delinquent debt eligible for TOP is not promptly reported to FMS. Specifically, as of September 30, 2000, the nine agencies we surveyed reported referring to FMS only about $24 billion of about $28 billion of debt eligible for TOP as of September 30, 2000. It is also important to note that debts that meet the criteria for at least one exclusion from referral to TOP, debts in foreclosure, are

nevertheless considered to be delinquent debts for the purpose of denying federal financial assistance. Therefore, debts in foreclosure, although delinquent debts for the debtor bar provision, would not be eligible for referral to TOP. Six of the nine agencies we surveyed reported having collectively about $1 billion of debts in foreclosure as of September 30, 2000. Such debts were excluded from TOP eligibility.

In addition, agencies are not required by the DCIA to report eligible debts for administrative offset until they are over 180 days delinquent. This is well beyond the 90-day trigger for the purpose of denying federal financial assistance.

Moreover, debt information in the TOP database lacks permanence for the purpose of denying federal financial assistance. Generally, debt information can be maintained in the TOP database for only up to 10 years.[44] In addition, TOP does not maintain debt information on debts that agencies discharge because agencies are prohibited from taking further collection action on them when they are reported to the IRS as income. Further, we noted that four of the nine agencies we surveyed indicated that they request the removal of certain debts from TOP when the debts are written off. Therefore, given the lack of permanence of the non-tax debt information in the TOP database, agencies could not rely solely on such information to identify all debtors with certain older delinquent non-tax debts for the purpose of denying federal financial assistance. According to Treasury officials, Treasury does not plan to alter the type of information currently maintained in the TOP database to include discharged debts or debts over 10 years delinquent.

CAIVRS

Currently, CAIVRS has limitations as an information source for identifying delinquent non-tax debtors for the purpose of denying federal financial assistance. First, agencies are not required to report delinquent debts to CAIVRS. Only five of the nine agencies we surveyed indicated that they report certain of their delinquent debts to CAIVRS. Specifically, these five agencies indicated that they report to CAIVRS about $23 billion, or about 58 percent, of the $40 billion of total delinquent debt the nine agencies reported holding as of September 30, 2000. Second, CAIVRS contains limited information on delinquent debts. For example, CAIVRS does not

[44] The statute of limitations for administrative offset is 10 years for most federal non-tax debt.

include the date of delinquency or the number of days the debt is delinquent, which is critical for denying federal financial assistance under the authority of the DCIA. Also, each agency that reports debts to CAIVRS can use its own discretion as to how long debts stay in the system. For example, three of the five agencies that we surveyed which report debts to CAIVRS indicated that they remove certain debts from CAIVRS at the time they are written off, and all five of these agencies indicated that they remove certain debts at the time they are discharged.

Delinquent Child Support Obligors

Another issue that may eventually have to be considered in implementing the debtor bar provision involves delinquent child support obligors. We are not aware of any governmentwide legal authority that expressly authorizes agencies to deny federal financial assistance in the form of loans, loan insurance, or loan guarantees to individuals owing past-due child support.[45] However, proposed legislation, H.R.866, the Subsidy Termination for Overdue Payments Act of 2001, would, if enacted, generally preclude agencies from providing federal financial assistance to an applicant without first obtaining a self-certification that the applicant is not more than 60 days delinquent in the payment of any child support obligation, or if so, is in compliance with an approved repayment plan.

Going forward, if an additional means beyond self-certification is contemplated to identify delinquent child support obligors for the purpose of denying federal financial assistance, it is important to note that only two of the three aforementioned information sources we reviewed--credit bureau reports and FMS' TOP database--contain information on delinquent child support obligors. In addition, a single credit bureau may not have information for all delinquent child support obligors and, as previously discussed, information in the TOP database is not currently available to agencies for the purpose of denying federal financial assistance.

[45] Section 4(f) of the Small Business Act, as amended, 15 U.S.C. 633(f), requires applicants for financial assistance under the act to certify that they are not more than 60 days delinquent in child support payments. In addition, Executive Order No. 13019 advises federal agencies that federal financial assistance to child support obligors subject to administrative offset should be denied to the extent permitted by law.

All states are required to report certain delinquent child support obligations to credit bureaus.[46] An official from HHS' OCSE told us that none of the states have requested a waiver from this requirement. However, OCSE has not audited the states' credit bureau reporting activities and does not know if the states report to the large national credit bureaus, as there is no requirement for them to do so. Based on our review of information provided by three national consumer credit bureaus, all states are not reporting child support obligors to all of these credit bureaus.[47] Therefore, the accessibility of complete information on persons with delinquent child support obligations could be limited for federal credit agencies.

Also, all states are required to participate in tax refund offset as a means of collecting delinquent child support. On behalf of the states, OCSE sends delinquent child support information to FMS for inclusion in the TOP database each week.[48] According to FMS, the TOP database includes child support debt from all 50 states. According to FMS officials, once the Barring Delinquent Debtors Program is available to federal credit agencies for the purpose of identifying delinquent federal non-tax debtors, information on delinquent child support obligors in the TOP database will also be available.

In summary, as we have discussed, agencies have not demonstrated a sense of urgency in integrating certain provisions of the DCIA into their debt collection processes. Many challenges lie ahead for agencies to successfully implement such provisions of the act. As a result, until these provisions are fully implemented, agencies will continue to miss opportunities to collect billions of dollars of delinquent federal non-tax

[46] Section 466(a)(7) of the Social Security Act, as amended, 42 U.S.C. 666(a) (7) requires states to report periodically to consumer credit bureaus the name of any noncustodial parent who is delinquent in the payment of support and the amount of overdue support owed. According to OCSE officials, each state sets its own criteria for reporting thresholds.

[47] We included Equifax, Experian, and Trans Union in our review of consumer credit bureaus, and Dun & Bradstreet and Experian in our review of commercial credit bureaus. Treasury recommends these credit bureaus in its Memorandum of Understanding with federal agencies regarding reporting delinquent debt for collection action.

[48] According to Treasury regulations, states include delinquent child support obligations for tax refund offset that are over $150 and delinquent for 3 months or longer for Temporary Aid to Needy Families (TANF) and over $500 for non-TANF. According to OCSE officials, although states are required to update their delinquent child support information monthly, most update more frequently because updated information enables them to potentially collect more through offset.

debt and the risk of delinquent federal debtors obtaining additional federal financial assistance is increased. To assist in addressing such challenges, we will be separately providing recommended actions to the respective agencies.

Mr. Chairman, this concludes my prepared statement. I would be pleased to respond to any questions you or other Members of the Subcommittee may have.

Contacts and Acknowledgments

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