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September 30, 2020

The Honorable Lindsey Graham
Chairman
The Honorable Dianne Feinstein
Ranking Member
Committee on the Judiciary
United States Senate

The Honorable Jerrold Nadler
Chairman
The Honorable Jim Jordan
Ranking Member
Committee on the Judiciary
United States House of Representatives

Federal Criminal Restitution: Department of Justice Has Ongoing Efforts to Improve Its Oversight of the Collection of Restitution and Tracking the Use of Forfeited Assets

The impact of crime on victims often has significant emotional, psychological, physical, social, and financial consequences.¹ One of the goals of federal criminal restitution is to restore victims of federal crimes to the position they occupied before the crime was committed. The Department of Justice (DOJ) is responsible for collecting restitution payments from defendants who have been ordered by a federal court to pay restitution as part of their sentences, and has delegated these activities to Financial Litigation Units (FLU) within each of its 94 U.S. Attorney's Offices (USAO).² In certain cases where the defendant has forfeited his or her assets and no longer has the ability to satisfy a restitution order, the USAO may make a request to the Money Laundering and Asset Recovery Section to restore forfeited assets to the defendant's victims pursuant to the restitution order. For an overview of the federal restitution process, see enclosure I.

The collection of federal criminal restitution has been a longstanding challenge. In 2001, we reported that the amount of uncollected criminal debt—of which restitution is a component—had

¹Victims of federal crimes may include individuals, corporations, state and local governments, or federal agencies.

²Prosecutors in DOJ's Criminal Division and the Criminal Divisions of the 94 USAOs represent the United States in criminal matters. For crimes that involve victims, prosecutors are responsible for identifying and notifying victims of the case, determining victim losses in conjunction with the federal agents investigating the case, prosecuting the matter, and negotiating the terms of plea agreements, which may include restitution. The FLUs' collection efforts on restitution debts may include filing liens, identifying debtor assets, garnishing debtor wages, and serving notice of late payments.

more than doubled from September 30, 1995 through September 30, 1999.³ Specifically, we found that DOJ had not collected most of the outstanding criminal debt due to, among other factors, the nature of the debt—in that it involves criminals who may be incarcerated or deported or who have minimal earning capacity, and a lack of coordination between relevant DOJ components.

The Justice for All Reauthorization Act of 2016 requires DOJ to evaluate its performance in seeking and recovering restitution.⁴ It also called for GAO to provide two reports—a preliminary report and an update—on the federal criminal restitution collection process.⁵ We issued our initial report in February 2018 and made two recommendations to the Attorney General to improve oversight of the collection of federal criminal restitution.⁶ This is the second report and addresses the Attorney General’s implementation of the recommendations we made in our initial report. In 2018, we reported that 1) while DOJ was developing analytical tools to monitor the collection of restitution, it had not established related performance measures or goals, and 2) performance measures and goals would allow DOJ to gauge USAOs’ success in collecting restitution and, by extension, the department’s success in achieving a major management initiative.

In 2018, we also reported that while DOJ tracked the amount of compensation provided to victims through forfeited assets, it did not have assurances that forfeited assets were being used to compensate eligible victims to the greatest extent possible.⁷ We found that DOJ could account for cases in which forfeited assets were used to compensate eligible victims who were not owners or lienholders. However, DOJ did not have information on the overall universe of victims who could have been eligible to receive compensation from forfeited assets. Further, we found that the department did not have insight into any reasons why funds from forfeited assets were not actually being used to compensate eligible victims.

Based on our findings, we recommended that the Attorney General:

- Develop and implement performance measures and goals for each USAO related to the collection of restitution, and measure progress towards meeting those goals; and
- In cases where forfeited assets were not used to compensate victims, gather information on reasons why forfeited assets were not used for victims, and, if warranted based on this information, take action to increase the use of forfeited assets to compensate eligible victims.

³GAO, *Criminal Debt: Oversight and Actions Needed to Address Deficiencies in Collection Processes*, [GAO-01-664](#) (Washington, D.C.: July 2001). According to this report, approximately 66 percent of outstanding criminal debt was restitution owed to nonfederal victims, including individual victims and other entities such as banks, organizations and insurance companies.

⁴Pub. L. No. 114-324, § 18, 130 Stat. 1948, 1962-64 (2016) (codified at 18 U.S.C. § 3612(j)).

⁵18 U.S.C. § 3612(k).

⁶GAO, *Federal Criminal Restitution: Most Debt Is Outstanding and Oversight of Collections Could Be Improved*, [GAO-18-203](#) (Washington, D.C.: February 2018).

⁷[GAO-18-203](#).

This report addresses the Attorney General’s implementation of the recommendations.

To identify the status of DOJ’s progress in developing and implementing performance measures and goals for each USAO related to the collection of restitution, and measure progress towards meeting those goals, we reviewed relevant DOJ policies and guidance related to DOJ’s process for developing performance measures and goals for each USAO related to the collection of federal criminal restitution. We also interviewed DOJ officials on their progress in developing and implementing the performance measures and goals for each USAO—including how the department plans to measure each USAOs progress toward meeting those goals.⁸ Lastly, we obtained and analyzed documentation and interviewed DOJ officials on the department’s reported challenges experienced in developing and implementing performance measures and goals for each USAO.

To identify the status of DOJ’s progress in gathering information on reasons why forfeited assets were not used to compensate eligible victims, and, if warranted, taken any action to increase the use of forfeited assets to compensate victims, we interviewed DOJ officials from the Executive Office for United States Attorneys (EOUSA); Asset Forfeiture Management Staff; Justice Management Division; and the Money Laundering and Asset Recovery Section. We also obtained and analyzed documentation to identify the extent to which the department is gathering information on the reasons why forfeited assets were not used to compensate eligible victims and whether DOJ used this information to consider whether action is necessary to increase the use of forfeited assets.

We conducted this performance audit from January 2020 to September 2020 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Overview of DOJ and Its Components Roles and Responsibilities in Restitution Debt Collection

Efforts to collect restitution debt are carried out by FLU staff in DOJ’s 94 USAOs. The USAOs’ Criminal Divisions and Asset Forfeiture units also play a role in coordinating with the FLUs to ensure that they can collect debts for victims and the federal government. The EOUSA assists with this debt collection mission by providing legal and policy guidance and administrative support to FLUs, organizational guidance to USAO management, developing and implementing policies and procedures to direct FLUs activities, and by serving as a liaison between DOJ headquarters and the USAOs. The EOUSA is also responsible for evaluating the performance of the USAOs.

During the DOJ’s restitution debt collection activities, if a defendant does not provide payment, FLU staff then use various enforcement actions to collect the restitution debt. These can include, among other actions, filing liens against an offender’s property, coordinating with asset forfeiture staff to use forfeited assets to pay the restitution debt, and garnishing wages an offender may earn.

⁸Specifically, we interviewed officials from DOJ’s Executive Office for U.S. Attorneys, USAO, and Justice Management Division.

DOJ Has Made Progress in Developing Performance Measures and Goals, but Has Experienced Some Challenges

According to DOJ officials, the department expects to finalize and implement the performance measures and goals to evaluate each USAO related to the collection of restitution, during the first quarter of fiscal year 2021. While DOJ has made progress developing performance measures and goals for each USAO related to the collection of restitution, including measuring progress towards meeting those goals, it has experienced some challenges, which have delayed implementation beyond the department's initially planned October 2020 time frame.

The DOJ officials we interviewed stated that EOUSA has developed a core set of metrics to assess each of the 94 USAO's debt collection efforts. They added that since 2018 EOUSA has been working with the Justice Management Division's Debt Collection Management staff to develop a business intelligence analytical tool, the Composite Comparison Dashboard, to assist in analyzing these metrics using data derived from the DOJ's Consolidated Debt Collection System. After several iterations, the dashboard was completed and pilot tested from December 9, 2019 through February 14, 2020.⁹ The purpose of DOJ's Dashboard Pilot was to ensure that the dashboard is working properly and provides a useful and appropriate tool to help both EOUSA and individual USAOs in assessing debt collection efforts. At the conclusion of the pilot, the FLU coordinators involved identified 61 items of concern with the Composite Comparison Dashboard. In May 2020, DOJ's Debt Collection Management staff, EOUSA, and the pilot participants met to discuss these items, which they narrowed to 29—17 of which affected the user experience and 12 of which affected the functionality of the dashboard. DOJ officials told us that these items will be reassessed and ready for re-testing in August 2020. The dashboard is expected to enable EOUSA to compare debt and enforcement data across districts.

According to DOJ officials, the department's data collection efforts alone do not provide a complete picture of a USAO's district-specific efforts. The Composite Comparison Dashboard will allow the department to compare districts based on performance metrics including enforcement activity, payments, efficiency, prejudgment, and collectability. Figure 1 provides summary information on each performance metric(s) identified.

⁹According to DOJ officials, there were nine USAOs that participated in the pilot, which included the districts of Arizona, Georgia Southern, Kansas, Michigan Eastern, Missouri Western, Nebraska, North Carolina Western, Texas Northern, and Utah.

Figure 1: Department of Justice’s Composite Comparison Dashboard: Metrics for Comparison—U.S. Attorney’s Offices (USAO) Districts

Metrics for comparison	Enforcement activity	<p>Percentage of debts with investigative events within the last 12 months.^a</p> <p>Conducting thorough asset investigation, captured by discovery events, will ensure that all available assets are identified and recoveries on behalf of victims of crime are maximized.</p>	<p>Percentage of debts with recovery events within the last 12 months.^b</p> <p>Using these enforcement tools and remedies to recover available assets will result in larger monetary recoveries.</p>	
	Payments	<p>Percentage of debts with a payment within the last 6 months.</p> <p>Regular payments indicate that districts are properly working their caseload.</p>		
	Efficiency	<p>Percentage of debts with a payment within 90 days after judgment.</p> <p>Payments received within the first 90 days after judgment can often be attributed to investigation and enforcement activities that were conducted prior to sentencing.</p>		
	Prejudgment	<p>Criminal prejudgment activity.</p> <p>This metric displays the total number of enforcement events taken on prejudgment debts in the past 12 months.^c DOJ officials stated that effective prejudgment coordination and collaboration is essential to maximizing the ability to seek restitution, conduct asset investigations, and collect criminal monetary penalties on behalf of victims of crime. The officials added that conducting presentence investigations helps identify all available assets so they can be recovered before they can be dissipated.</p>	<p>Criminal prejudgment collections.</p> <p>This metric displays the total collections in the past 12 months that are attributed to work done prior to sentencing. According to DOJ officials, experience has shown that the best time to identify assets is prior to sentencing (as early in the criminal case as possible). Presentencing procedures are available to freeze and preserve assets pending the outcome of criminal cases so they will be available for payment of restitution to victims.</p>	
	Collectability	<p>Percentage of collections not in suspense.</p> <p>This metric displays the percentage of collections for the past 12 months of the debt balance that is not in suspense. DOJ officials stated that because restitution must be imposed regardless of a defendant’s ability to pay and lasts for 20 years plus the term of incarceration, suspense allows a district to focus on debts or a portion of a debt with the highest probability of collection.</p>		

Source: GAO analysis of Department of Justice data. | GAO-20-676R

^aInvestigative events include credit bureau reports, depositions, Financial Crimes Enforcement Network (FinCEN) reports, financial investigations, and interrogatories, among other events.

^bRecovery events include motion for application of bond money, fraudulent transfer, bank garnishment, pension/insurance garnishment, and wage/salary garnishment, among other events.

^cEnforcement events capture a much broader range of activities and include those categorized above as investigative and recovery events. There are 77 enforcement events.

In addition to the metrics identified in figure 1, DOJ officials told us that the dashboard will allow each USAO to compare its district’s debt and enforcement data with composite data from a group of USAOs that have commonality with the initial district based on a variety of factors, such as: district size, number of Assistant U.S. Attorneys (full-time equivalent), number of support staff (full-time equivalent), criminal debt type, priority code, and private counsel (civil debts only).

According to DOJ officials, given the uniqueness of each USAO, the department has experienced challenges in developing measures and goals that provide the USAOs with sufficient flexibility to account for each office’s workload, priorities, and available resources. DOJ officials added that it was equally challenging to develop a tool (i.e., the Composite Comparison Dashboard) which will analyze metrics using DOJ’s Consolidated Debt Collection System data. As a result, DOJ officials stated that several iterations of the Composite Comparison Dashboard

had to be designed, developed, and tested. For example, during user acceptance testing of the dashboard's functionality, it was discovered that some factors under consideration could not be validated due to the large number of districts being compared and the dynamic nature of the data. DOJ officials said that certain factors had to be eliminated, and additional restrictions had to be placed on other factors. DOJ officials reported that the challenges mentioned have directly impacted and resulted in delays—initially, DOJ's proposed completion time frame was October 2020—in the department's efforts to develop and implement performance measures and goals for the USAOs related to the collection of restitution. We will continue to monitor DOJ's progress and time frames for implementation, which as of September 2020, was scheduled to take place during the first quarter of fiscal year 2021.

DOJ Has Taken Steps to Better Track the Use of Forfeited Assets

On February 9, 2019, DOJ modified the Consolidated Asset Tracking System (CATS) to obtain information on the use of forfeited assets, including reasons why forfeited assets were not used to compensate eligible victims.¹⁰ Department officials said that after evaluating these modifications they have determined that no further action or adjustments to their current practices are warranted to increase the use of forfeited assets to compensate eligible victims.

As mentioned, DOJ completed its modification to CATS in order to gather information on reasons why forfeited assets were not used to compensate eligible victims. The system modifications made to CATS included the addition of dropdown menus containing 10 reasons—30 new data variables that users can select to identify why victims were not compensated with funds from forfeited assets. DOJ's CATS guidance states the data system enhancements and upgraded features assist the department in tracking victim compensation information throughout the forfeiture process, and may also ensure that victims are compensated in a timely manner.

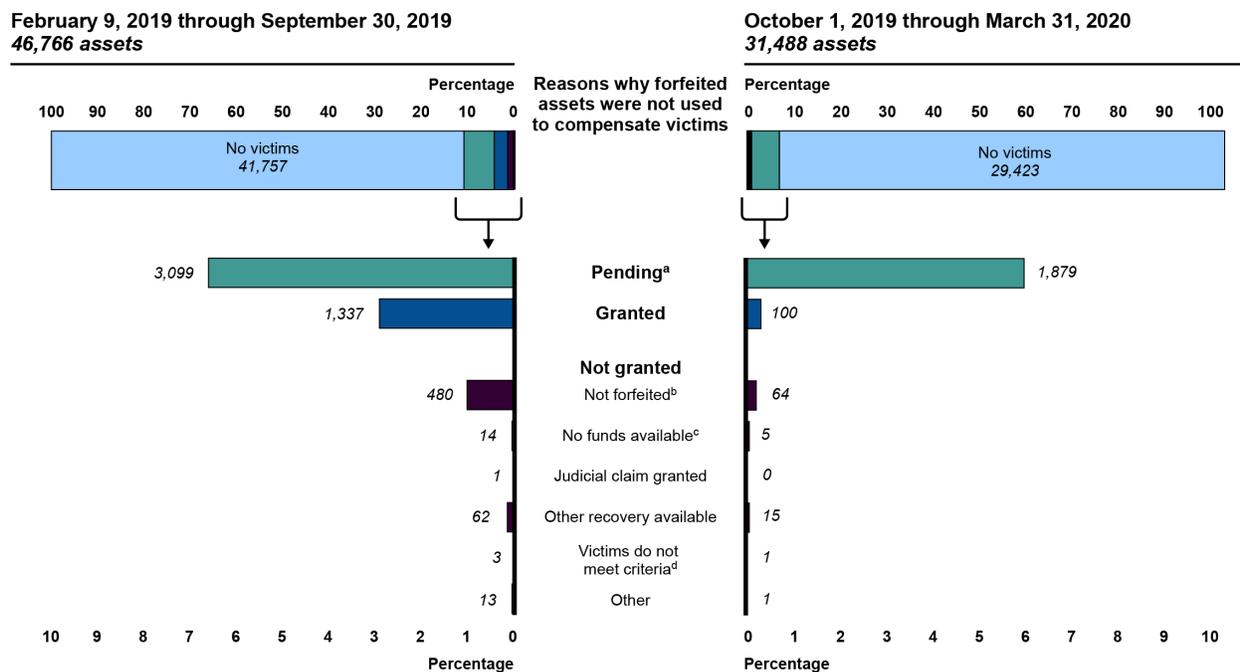
DOJ officials also stated the new CATS data system modifications require users to answer specific questions regarding reasons why victims were not compensated with funds from forfeited assets and that certain "blocks" are automatically triggered in this process if the questions are not addressed by the user. For example, according to DOJ officials, if CATS users indicate victims are associated with a particular asset, users are required to select from a dropdown menu the reason why forfeited assets were not used to compensate victims. If the Money Laundering and Asset Recovery Section has not approved a victim remission or restoration,¹¹ CATS users must select a reason from the dropdown menu on the newly created "victim release screen" detailing why the asset was not used to compensate victims. Another report is also created to identify assets in their respective cases that are either pending a decision on the use of forfeited assets to compensate victims, or awaiting data entry on the victim release screen.

¹⁰CATS tracks information about an asset's "lifecycle" including seizure, custody, notification, forfeiture, claims, petitions, equitable sharing, official use, and disposal.

¹¹When victims are eligible for compensation using forfeited assets, DOJ employs two processes: restoration and remission. The restoration process involves USAO staff requesting funds on behalf of a victim when there is both an order of forfeiture and an order of restitution. Under the restoration process, USAO staff request DOJ's Money Laundering and Asset Recovery Section to use the forfeited asset to pay a restitution debt. If DOJ approves the request for restoration, the funds from the forfeited property are then transferred to the Clerk of the Court who disburses this money to the victim. The remission process requires a victim of a crime to directly petition DOJ to receive funds from the forfeited property.

As shown in figure 2, the DOJ’s victim monitoring statistics report extracted from CATS provides information on whether requests to compensate victims with forfeited funds were granted, not granted (including the reasons), or are in a pending status for eligible victims. DOJ officials said that EOUSA has established a quarterly review of the victim monitoring statistics data to ensure that all USAOs are fully complying with their CATS data entry obligations. The officials added that the required data fields and reporting tool provides the department with a measured approach to enhancing the accuracy of the data associated with victim’s cases. DOJ officials stated that the report serves as a safety net to assist USAOs with verifying data fields but also to ensure maximum efforts are applied to the compensation of victims.

Figure 2: Department of Justice’s Reported Reasons Why Forfeited Assets Were Not Used to Compensate Victims, February 9, 2019 - March 31, 2020



Source: GAO analysis of Department of Justice data. | GAO-20-676R

Note: On February 9, 2019, the Department of Justice (DOJ) completed its modification of CATS and begin gathering and reporting information on the reasons why forfeited assets were not used to compensate eligible victims—and March 31, 2020 is the latest date that we received data from the department. A DOJ official stated that an asset identification number is generated for each asset (i.e., vehicle, bank account, or cash) when it is entered into CATS. The asset count is a unique count of asset identification numbers. The official added that if multiple petitioners are listed on a single asset identification number, the report will show a count of one because the multiple petitioners are filing for the same asset.

^aThe assets in a pending status are either pending a decision on the use of forfeited assets to compensate victims, or awaiting data entry on the “victim release screen.”

^bNot forfeited—this option would be selected if the asset was not forfeited.

^cNo funds available—this option would be selected if no net proceeds remain on a forfeited asset.

^dVictims do not meet criteria—this option would be selected if a victim does not meet the regulatory requirements of 28 C.F.R. § 9.2.

DOJ officials provided us with copies of updated user guides and training videos they have developed for proper implementation of CATS modifications and stated that they conduct data checks and reviews to ensure that the data are reliable, accurate, and appropriately recorded. Specifically, DOJ officials told us they have developed and implemented training and data quality control procedures so that CATS users understand the new requirements and correctly apply them in entering the new data to ensure the information is reliable. The DOJ officials also stated that through the new modified data fields added to CATS, users have several check points to ensure reliable data. Based on the information now available following the February 2019 modifications to CATS, DOJ is able to gather reasons why forfeited assets were not used, and has made the determination that no further adjustments to its current practices are warranted to increase the use of forfeited assets to compensate eligible victims. DOJ officials believe the actions taken help assure that eligible victims receive compensation through forfeited assets to the maximum extent practicable and that no further action is warranted.

GAO has concluded that DOJ has met the intent of our 2018 recommendation on gathering information on the reasons why forfeited assets were not used for victims.¹² These actions will help DOJ ensure that reasons for not using forfeited assets are provided in all cases, improve the quality of the department's data, and help it better manage its asset forfeiture program. Therefore, GAO considers this recommendation to be implemented.

Agency Comments

We requested comments on a draft of this report from DOJ. Officials from DOJ provided technical comments, which we incorporated into this report as appropriate.

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We are sending copies of this report to the appropriate congressional committees, the Attorney General, and other interested parties. In addition, the report is available at no charge on the GAO website at <http://www.gao.gov>.

If you and your staff have any questions, please contact me at (202) 512-8777, or goodwing@gao.gov. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. Major contributors to this report were Christopher Ferencik (Assistant Director), Frederick T. Lyles, Jr. (Analyst-in-Charge), Joseph Cruz, Dorian Dunbar, Elizabeth Poulsen, Adam Vogt, Eric Hauswirth, Christine Davis, Amanda Miller, Jan Montgomery, Paula Rascona, and Heather Keister.



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Enclosure

¹²[GAO-18-203](#).

Enclosure I: Restitution Overview

During the course of a federal criminal investigation, federal prosecutors identify and notify victims, as well as determine their losses in conjunction with the federal agents investigating the case. If a defendant pleads guilty or is found guilty at trial, the prosecutor has the burden of proving the victims' losses in court. To facilitate this, a Victim-Witness coordinator within the U.S. Attorney's Office (USAO) responsible for the case provides victims the opportunity to explain their losses in detail, usually through a Victim Impact Statement. This information is then provided to a federal probation officer who uses it to begin a presentence investigation report (PSR).

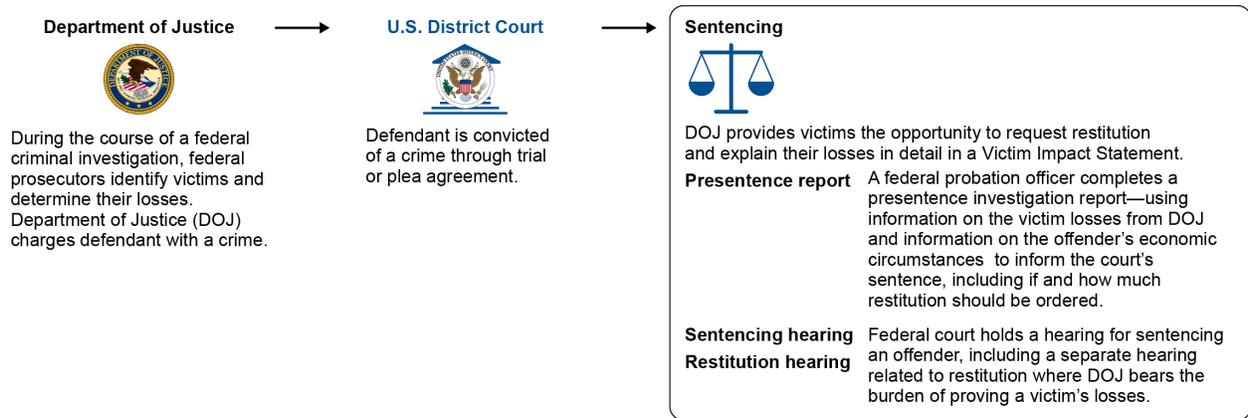
To develop the PSR, probation officers use information provided by the USAO and may contact victims and verify their loss amounts. Additionally, probation officers investigate an offender's economic circumstances—such as if the offender has a job, any assets or any dependents. If a judge determines that restitution is to be ordered, the judge must order restitution for the full amount of a victim's losses for offenses without consideration of the economic circumstances of the defendant.¹³ Judges may decline to order restitution in certain instances, for example, where restitution is discretionary, or in certain cases where the number of identifiable victims makes restitution impracticable or the complexity of calculating restitution would unduly prolong the sentencing process. If the court does not order restitution, or orders only partial restitution, the judge must provide the reason, and judges usually do so in a written Statement of Reasons document.¹⁴ Figure 3 provides an overview of the federal restitution process.

¹³Courts may order restitution as a single, lump-sum payment, installment payments at specified intervals (a payment schedule), in-kind payments (an asset used in lieu of a cash payment), or any combination of these. If the court determines that a lump-sum payment cannot be made due to the offender's economic circumstances, the court must order installment payments.

¹⁴The Statement of Reasons is a form provided by the Judicial Conference to allow the court to fully document its findings on penalties and reasons for imposing criminal sentences in cases, including reasons for deviating from the United States Sentencing Commission's sentencing guidelines if the court chooses to do so. 18 U.S.C. § 3553(c) provides, "If the court does not order restitution, or orders only partial restitution, the court shall include in the statement the reason therefor. The court shall provide a transcription or other appropriate public record of the court's statement of reasons, together with the order of judgment and commitment, to the Probation System and to the Sentencing Commission[], and, if the sentence includes a term of imprisonment, to the Bureau of Prisons."

Figure 3: Overview of the Federal Restitution Process

Federal criminal proceedings



Postsentencing



Source: GAO analysis of federal judiciary and DOJ information. | GAO-20-676R

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