

GAO

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

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May 2002

# CIVIL FINES AND PENALTIES DEBT

## Review of U.S. Customs Service's Management and Collection Processes



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### Abbreviations

ACE	Automated Commercial Environment
ACS	Automated Commercial System
CFP	civil fines and penalties
FDA	Food and Drug Administration
FP&F	Fines, Penalties, and Forfeitures
OMB	Office of Management and Budget
SEACATS	Seized Asset and Case Tracking System

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

May 31, 2002

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

Dear Senator Collins:

This report responds to your request that we review selected federal agencies' management and collection practices related to civil fines and penalties (CFP) debt.<sup>1</sup> As agreed to with your office, this work focused on the debt collection processes and procedures used by the Department of the Treasury's U.S. Customs Service, the Department of the Interior's Office of Surface Mining, and the Department of Health and Human Services' Centers for Medicare and Medicaid Services.<sup>2</sup>

This report provides the results of our review of Customs' management of and practices for collecting CFP debt. According to Customs' records, its gross CFP debt more than tripled from the start of fiscal year 1997 to the end of fiscal year 2000, rising from about \$218.1 million as of October 1, 1996, to about \$773.6 million as of September 30, 2000. During the same period, Customs annually reserved from 75 to 87 percent of its reported CFP receivables in an allowance for uncollectible accounts.

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<sup>1</sup>This work was part of a broad review that also looked at the management and collection of criminal fines and penalties at the Department of Justice and the U.S. courts. See U.S. General Accounting Office, *Criminal Debt: Oversight and Actions Needed to Address Deficiencies in Collection Processes*, [GAO-01-664](#) (Washington, D.C.: July 16, 2001).

<sup>2</sup>The Centers for Medicare and Medicaid Services was formerly the Health Care Financing Administration.

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As also agreed, our objectives were to determine (1) the primary reasons for the growth in Customs' reported uncollected CFP debt, (2) whether Customs' processes to collect CFP debt needed to be strengthened, and (3) what role, if any, the Office of Management and Budget (OMB) and Treasury play in overseeing Customs' collection of CFP debt. We provided separate reports on our work on the Office of Surface Mining and the Centers for Medicare and Medicaid Services.<sup>3</sup>

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## Results in Brief

The primary reason for the growth in Customs' reported uncollected CFP debt from fiscal year 1997 through fiscal year 2000 was the bankruptcy of a Customs broker in fiscal year 2000. According to Customs officials, the broker, who would have been responsible for preparing and submitting importers' import-related paperwork, handled the vast majority of business on the U.S.–Canadian border. The broker's bankruptcy resulted in Customs assessing 422 claims for about \$566 million and recording CFP receivables totaling about \$484 million during fiscal years 1999 and 2000. The remaining \$82 million of assessed amounts was eliminated through the CFP mitigation process and accordingly these amounts were not recorded as receivables. As of September 30, 2000, almost all of the recorded balance of these receivables remained outstanding. Customs' records indicated that it had closed 129 of the 422 claims and collected the total receivable amount of \$19,792 on these 129 closed claims. Customs' records indicated that no collections were expected for about \$481 million of the recorded receivables outstanding as of September 30, 2000.<sup>4</sup> These outstanding receivables and the corresponding amounts reserved for losses represented about 66 percent of Customs' total reported gross CFP receivables and about 72 percent of Customs' allowance for uncollectible CFP accounts, respectively.

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<sup>3</sup>U.S. General Accounting Office, *Civil Fines and Penalties Debt: Review of CMS' Management and Collection Processes*, [GAO-02-116](#) (Washington, D.C.: Dec. 31, 2001), and *Civil Fines and Penalties Debt: Review of OSM's Management and Collection Processes*, [GAO-02-211](#) (Washington, D.C.: Dec. 31, 2001).

<sup>4</sup>Accounting records reflect anticipated losses on accounts receivable as allowances for uncollectible accounts, reserves for losses, or similar terminology.

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We found that Customs can strengthen some of its CFP debt collection policies and procedures both by enhancing them and better adhering to them. The enhancements relate to (1) using promissory notes to collect certain CFP debts, (2) obtaining evidence that CFP claims related to carnets, which are international documents for merchandise that is temporarily imported and duty-free, are received by the designated association that issues carnets and guarantees any Customs claims associated with covered carnet merchandise, (3) monitoring the sufficiency of bond coverage for CFP debts,<sup>5</sup> and (4) obtaining evidence of debtors' inability to pay CFP debts. Better adherence to certain CFP debt collection policies and procedures relates to (1) requesting waivers of the statute of limitations, (2) issuing penalty and payment notices to importers after opening a case, (3) responding to petitions for relief from violators, and (4) issuing notices of redelivery to importers of unsafe goods.

Customs provides OMB and Treasury's Financial Management Service with information from Customs that is helpful in performing their oversight roles. OMB stated that it had broad oversight responsibility for monitoring and evaluating governmentwide debt collection activities, but that it is the specific responsibility of each agency to monitor, manage, and collect CFP debt and the responsibility of the agency's office of inspector general to provide oversight through audits of the agency's debt collection activities. In addition, the Financial Management Service officials stated that they rely on agencies to determine what debt should be referred to the Financial Management Service for collection and offset as required by the Debt Collection Improvement Act of 1996, and Customs does refer certain delinquent CFP debts to the Financial Management Service.

Our recommendations are designed to enable Customs to strengthen its CFP debt collection policies and procedures through enhancements and better adherence to existing requirements. One of our recommendations calls for monitoring the sufficiency of surety bond coverage, a concern we originally raised in our 1993 report on Customs' management of its receivables.<sup>6</sup> In commenting on a draft of the report, Customs and the Financial Management Service agreed with our recommendations and

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<sup>5</sup>The sufficiency of surety bond coverage is an outstanding issue that has existed since, and was noted in, our 1993 report on Customs' management of its receivables. U.S. General Accounting Office, *Financial Management: Customs Did Not Adequately Account For or Control Its Accounts Receivable*, [GAO/AIMD-94-5](#) (Washington, D.C.: Nov. 8, 1993).

<sup>6</sup>[GAO/AIMD-94-5](#).

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Customs provided, and we evaluated, general and technical comments that related to specific detailed information about its CFP debt collection process. Where appropriate, we modified the report's language to reflect Customs' comments. OMB stated that it had no comments.

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## Scope and Methodology

To accomplish our objectives, we reviewed Customs' accountability reports, including its audited financial statements, for fiscal years 1997 through 2000, and analyzed its CFP receivables and the related allowance for uncollectible accounts, as well as other financial information for the 4-year period. We also obtained an understanding of Customs' CFP debt collection policies and procedures and of applicable federal rules and regulations.

We nonstatistically selected 17 CFP claims from a list of fines and penalty receivables outstanding as of September 30, 1999, at the San Francisco Fines, Penalties, and Forfeitures (FP&F) Office. Our purpose in selecting these claims was to perform a walk-through to confirm our understanding of Customs' processes for managing and collecting CFP debt. We selected the 17 claims on the basis of several factors, including high dollar value and unpaid CFP receivable balances as of September 30, 1999.

From Customs' Seized Asset and Case Tracking System (SEACATS), we obtained a list of all

- 7,184 Customs CFP claims still outstanding (open) as of September 30, 2000, and
- 82,273 and 95,441 CFP claims during fiscal years 1999 and 2000, respectively, for which cases were canceled or the collection activity was terminated because amounts were paid in full or written off (closed).

These 184,898 claims had a total value of approximately \$7 billion. We sorted the population of CFP claims into four groups:

**Group 1** included 2,469 CFP claims for which Customs stopped collection activities during fiscal years 1999 and 2000 and wrote off the receivable amounts totaling approximately \$41 million. In addition, we included in group 1 the 173 CFP claims, totaling approximately \$28 million, that were written off during fiscal year 1998, since this was the largest amount written off from fiscal year 1997 through fiscal year 2000. From these 2,642

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CFP claims, we selected all claims involving write-offs of receivable amounts greater than \$1 million. The receivable total for the 8 selected claims in this group equaled about \$47 million, or just over two-thirds of the \$68 million written off during the 3-year period. We used these 8 claims to test various attributes of Customs' processes for collecting CFP claims at each of the applicable FP&F offices.

**Group 2** consisted of 32,675 CFP claims for which Customs represented that collection actions were not necessary or appropriate and had not been performed. According to Customs' records, these claims, totaling about \$4 billion, or 57 percent of the total dollar value of the entire population, involved cases in which (1) Customs decided that the alleged violation did not occur, (2) there was insufficient probable cause to support an alleged violation, (3) substantial mitigating factors caused Customs to decide to remit (forgive) the penalty in full without payment of any mitigated amount,<sup>7</sup> or (4) system input errors occurred, typically resulting in cancellation of the original case and its replacement with a new case. We statistically selected 36 claims from group 2 to confirm that Customs had not performed any collection actions for the reasons noted above. We did not include any of the claims from this group in our population to be selected for testing, since no collection actions were taken and the claims were therefore outside the scope of our audit.

**Group 3** consisted of 2,052 CFP claims involving various violation codes for which amounts were partially collected or the claims were closed without payment. These claims totaled about \$36 million, or less than 1 percent of the total dollar value of the entire population. We did not review the claims in this group because their average dollar amount was about \$18,000 and their total dollar amount was deemed immaterial.

**Group 4** consisted of the remaining 147,702 CFP claims, with a total receivable amount of approximately \$3 billion, for which Customs performed collection activities, made collections, and either closed the claims as paid in full or the unpaid amounts were still outstanding as of September 30, 2000. We sorted the population of CFP claims in this group into and performed certain steps for the following five strata:

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<sup>7</sup>According to a Customs official, decisions to remit the penalty in full without payment of any mitigated amount are usually based on a finding that the violations resulted from circumstances beyond the control of the violator and the violator is found to be without culpability (blame).

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- **Stratum 1** consisted of individual claims with a receivable amount greater than \$2.5 million. The receivable total for the 33 claims in this stratum was about \$2 billion, or 68 percent of the receivable total for the entire 147,702 claims in group 4. Because of their high dollar value, we reviewed all 33 claims. We used these 33 claims to test various attributes of Customs' processes for collecting CFP claims at each of the applicable FP&F offices.
  - **Stratum 2** consisted of all claims relating to a Customs broker that went out of business during fiscal year 1999. This broker's bankruptcy resulted in 422 CFP claims with an original assessed amount of almost \$566 million, of which about \$484 million was recorded as CFP receivables. The September 30, 2000, receivables balance for these claims was about \$484 million, or 16 percent of the dollar value of all 147,702 claims in group 4. We discussed the broker's bankruptcy with Customs officials and limited our procedures to reviewing related documents to determine whether Customs took appropriate steps, in accordance with its policies and procedures, to assess and resolve CFP claims resulting from the event.
  - **Stratum 3** consisted of all claims identified in SEACATS as involving a late paperwork violation for failure to file a timely entry summary,<sup>8</sup> which, in accordance with Customs' policies, typically results in the payment of a minimal amount. The 50,806 claims in this stratum totaled about \$10.6 million, or 0.4 percent of the dollar value of the 147,702 claims in group 4. During our walk-through at the San Francisco FP&F Office, we reviewed 3 claims that involved late paperwork violations and determined that the amount ultimately subject to collection by Customs might be as little as \$100 per claim. As agreed with your staff, we performed no further review of this stratum.
  - **Stratum 4** consisted of all claims with an assessed amount less than or equal to \$5,000. The 73,741 claims in this stratum totaled about \$47.5 million, or 1.6 percent of the dollar value of the 147,702 claims in group 4. As agreed with your staff, we did not review the claims in this stratum because the dollar amounts of individual claims were low and the total dollar amount of all 73,741 claims was deemed immaterial.

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<sup>8</sup>An entry summary is the documentation that enables Customs to (1) assess duties, (2) collect statistics on imported merchandise, and (3) determine whether other legal and regulatory requirements are met.

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- **Stratum 5** consisted of the remaining 22,700 CFP claims, some open and some closed, that were not included in one of the first four strata. These claims totaled about \$406 million, or 14 percent of the dollar value of the 147,702 claims in group 4. We sorted these claims by FP&F office and selected the four offices that managed the highest number of CFP claims during fiscal years 1999 and 2000.<sup>9</sup> From the 7,747 claims for the four selected offices, we drew a random stratified sample of 179 claims, which totaled about \$5.7 million, or 1.4 percent of this stratum's dollar value and 0.2 percent of the dollar value of the 147,702 claims in group 4. We used these 179 claims to test various attributes of Customs' processes for collecting CFP claims at the four selected FP&F offices.

We nonstatistically selected an additional 20 CFP claims that Customs labeled as fraud violations (fraud claims)<sup>10</sup> at the four selected FP&F offices. The cases were selected from the "FP&F Case Listing Logs for FY 2000" and the "1592/592 Cases Active During 2000" reports that were open as of September 30, 2000. The 20 claims were selected to further evaluate issues related to alleged fraud violations that we found when we tested the sample of CFP claims at the four FP&F offices. We selected the additional claims on the basis of such factors as assessed amounts, receivable amounts, loss of revenue,<sup>11</sup> and expired statute of limitations.

We performed detailed reviews of case files for all the CFP claims that we selected. We did not independently verify the completeness or accuracy of the data in the claims population or test information security controls over the systems used to compile the data because such verification was not necessary for the purposes of this request.

We interviewed Customs representatives to obtain explanations for any significant trends and instances of noncompliance with Customs' CFP debt collection policies and procedures, as well as about areas where enhancements could strengthen Customs' processes. We also interviewed OMB and Financial Management Service officials to determine what roles,

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<sup>9</sup>The four selected FP&F offices were in New Orleans, Louisiana; New York, New York (John F. Kennedy Airport); Los Angeles, California; and Seattle, Washington.

<sup>10</sup>These are commonly referred to as 1592/592 violations, which are Commercial Fraud and Negligence Penalties (Title 19, United States Code, Section 1592).

<sup>11</sup>Lost revenue consists of lawful duties, taxes, and fees not paid to the government.

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if any, OMB and the Financial Management Service play in overseeing and monitoring the government's collection of CFP debt.

We performed our work at Customs' FP&F offices at five locations;<sup>12</sup> the National Finance Center in Indianapolis, Indiana; and the Office of Regulations and Rulings in Washington, D.C., from September 2000 through March 2002. We conducted our work in accordance with generally accepted government auditing standards. We provided the Commissioners of Customs and the Financial Management Service and the Deputy Director of OMB's Office of Federal Financial Management with a draft of our report for review and comment. We received general and technical comments from Customs. These comments are discussed in the "Agency Comments and Our Evaluation" section and appendix I of this report and are incorporated in the report as applicable. Customs' and the Financial Management Service's letters are reprinted in appendixes I and II, respectively. We did not reprint Customs' technical comments. OMB stated that it had no comments.

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## Background

Customs, a bureau of the Treasury, provides the nation with its second-largest source of revenue. Customs assesses duties, taxes, and fees on goods brought into the United States from foreign countries. During fiscal year 2000, Customs reported \$22.9 billion in collections of duties, taxes, and fees. Part of Customs' collections consists of CFP, which are assessed when Customs determines that an importer violated trade and importation laws and regulations that Customs is responsible for enforcing.

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<sup>12</sup>The five FP&F offices were in New Orleans, Louisiana; New York, New York (John F. Kennedy Airport); San Francisco, California; Los Angeles, California; and Seattle, Washington.

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Fines and liquidated damages<sup>13</sup> arise from importer/brokers' violations of Customs' bond agreements or trade laws and regulations (e.g., late filing or nonfiling of entry summaries). Penalties arise from violations of the federal laws and regulations governing the import and export of goods (e.g., commercial fraud, gross negligence, negligence, and customs broker and recordkeeping penalties). These laws and regulations contain guidelines for establishing the amount of fines and penalties to be assessed. Customs regulations establish guidelines and criteria for negotiation or mitigation to a lower fine or penalty amount to settle the case. Also, Customs regulations allow the violator and/or surety<sup>14</sup> a period in which to file petitions challenging the fine or penalty amount assessed.

Initial assessments are typically at the maximum amount provided for by law and vary according to type of violation. For example, the CFP-assessed amount for a violation under Commercial Fraud, Gross Negligence, and Negligence Penalties (19 U.S.C. 1592) ranges from a minimum of two times the loss of revenue for negligence to an amount not to exceed the domestic value of merchandise for fraud.

For fiscal year 2000, Customs reported about \$119 million in CFP debt collections and approximately \$25.4 million of CFP debts that were written off. As of September 30, 2000, Customs reported about 7,180 outstanding CFP debts that represented about \$773.6 million in gross receivables. Customs reduced this gross amount by about \$36.4 million to adjust for validity and designated \$675.7 million as uncollectible, resulting in a net receivable balance of about \$61.5 million.

In 1993, we reported that Customs did not effectively manage its collection process to prevent or minimize delinquent receivables.<sup>15</sup> Factors that increased the likelihood of delinquent receivables included delays in finalizing amounts owed, poor monitoring of bond coverage, and delayed processing of protested bills. We also reported on the disparity between

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<sup>13</sup>Customs bonds provide security as liquidated damages of amounts deemed necessary for the protection of revenue or to assure compliance with pertinent laws, regulations, and instructions. *See generally*, 19 U.S.C. § 1623(a) and 19 C.F.R. § 113.1 and 113.62.

<sup>14</sup>A surety is a company or individual that issues a bond to the importer/broker covering the merchandise brought into U.S. commerce. Should the importer/broker fail to pay amounts to Customs, the surety would be responsible up to the amount of the bond in accordance with Customs regulations.

<sup>15</sup>[GAO/AIMD-94-5](#).

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Customs' gross receivables and the amounts expected to be collected. We noted during this review that Customs' assessment and mitigation processes continued to be primarily responsible for the significant reductions in the recorded CFP receivable amounts compared to the amounts it expected to be collected.

For the 4-year period covering fiscal years 1997 through 2000, Customs reported the following CFP receivables activity:

- \$9.3 billion of recorded CFP assessments,
- \$8.4 billion of recorded adjustments to reduce the originally recorded CFP assessments to reflect the postmitigation amounts that Customs collected or intended to collect,
- \$257.0 million of CFP receivables balances that were collected, and
- \$74.5 million of CFP receivables that were written off from balances that had typically been adjusted downward to the postmitigation amounts that Customs intended to collect.

The initially assessed amount for a CFP claim should not be viewed as the actual postmitigation CFP receivable amount that Customs is likely to pursue for collection from importers. Certain Customs' processes and practices typically result in significant reductions to initially assessed CFP amounts before or after a receivable is recorded. Customs records a CFP receivable once it determines that it has a legal right to the claim, which may or may not be the initial assessed amount of the CFP.

Once a CFP claim is closed by either (1) payment, (2) termination of collection activity and write-off of a postmitigated CFP amount, or (3) cancellation of the debt, Customs records an adjustment to its CFP receivables that is equal to the difference between the original amount recorded as a receivable and the postmitigation amount that Customs intends to collect. Customs' processes that often result in significant reductions to the initially assessed amounts or subsequently recorded receivables are Option 1, mitigation through a petition for relief or an offer in compromise, or cancellation of the CFP debt.

**Option 1.** When Customs knows all the facts concerning an alleged violation at the time of the initial review and the harm to the government is readily quantifiable and understood, an Option 1 resolution may be

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possible. Option 1 can be described as a “parking ticket” approach. It involves payment of a preset amount, which eliminates the mitigation process and allows quick claim settlement. Specifically, Customs’ penalty notice to a violator includes (1) a CFP amount assessed in accordance with a Customs-related statute or regulation for the particular violation, which the violator is given an opportunity to petition for mitigation, and (2) a lesser, or Option 1, amount that the violator can accept in settlement of the case. The most common types of claims that can be resolved through Option 1 are those related to filing late paperwork (late filing of an entry summary, invoice, or other entry document). An Option 1 resolution generally results in a significant reduction of the amount initially assessed.

**Petition for Relief.** A person who receives a notice of violation from Customs has 60 days to file a petition for relief or pay the amount initially assessed. Customs is not to establish a receivable until the petition period expires or until it reaches agreement on the amount of the CFP claim with a violator that has filed a petition.<sup>16</sup> Customs may also accept a petition after the petition period expires.

Petitioners may be granted mitigation for a number of reasons, including contributory Customs error, extraordinary cooperation with the investigation, immediate remedial actions, inexperience in importing, and prior good record. Mitigation of initial assessments may be substantial. For example, we reviewed a CFP claim involving delivery of restricted merchandise without Customs approval for which the violator was assessed \$500,000. The violator filed a petition that explained that a clerical error had been made on the entry form. Based on the facts of the case and the additional information in the petition, Customs granted mitigation and reduced the amount of the claim to \$250. In turn, Customs recorded a receivable amount of \$250 and subsequently collected that amount.

**Offer in Compromise.** An alleged violator may make an offer in compromise to settle a CFP claim at any time after the violation. Customs has specific authority under 19 U.S.C. 1617 and 19 CFR 161.5 to compromise claims, and Customs bases its decisions on whether to

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<sup>16</sup>In accordance with Statement of Federal Accounting Standards No. 7, *Accounting for Revenue and Other Financing Sources and Concepts for Reconciling Budgetary and Financial Accounting*, a receivable is not recognized on the basis of payment due dates but rather on the completion of the assessment process, under which assessments are enforceable claims for which a specific amount due has been determined.

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compromise claims on many factors, including, but not limited to, the following: (1) risk that the government may not recover a significant portion of the assessed amount if the claim is litigated and (2) the alleged violator's financial inability to pay the initially assessed amount or the amount established through the petition for relief. The compromises generally result in significant reductions of the amounts initially assessed.

An example of an offer in compromise that reduced an initial CFP assessment is a case in which Customs claimed gross negligence. Customs alleged that an importer made false statements and omitted costs such as development costs and royalty payments associated with video game cartridges. Customs issued a penalty notice to the alleged violator in the amount of \$90,376 (four times the lost revenue of \$22,594). The importer made an offer in compromise, proposing the payment of the lost revenue and a penalty of \$2,295 in monthly installments with interest at 8 percent per annum. After Customs' Regulatory Audit Division concluded that the importer might not be able to pay the full amount of CFP assessed, Customs accepted an offer in compromise of \$28,543, which included interest of \$3,654.

**Cancellation of a CFP Debt.** After an initiating officer (discoverer of the alleged violation) makes a CFP assessment and the claim is forwarded to an FP&F office, the FP&F officer or other deciding official can decide to cancel a CFP debt and close the claim without attempting to collect any amount. The majority of cases closed without collection (canceled) in accordance with law and Customs guidance are closed for one of the following reasons:

- The penalty case is remitted in full without payment. The FP&F officer determines that a violation occurred, but the presence of substantial mitigating factors causes the officer to remit the penalty in full. The discretion to remit in full is provided in Customs' mitigation guidelines and is based on a finding that a violation resulted from circumstances beyond the control of the violator or that the violator is without culpability.
- The automated record is canceled when there is an error in the input of a case into SEACATS that cannot be corrected by the case initiator. The canceled SEACATS record is usually replaced with a new case.
- The case is closed because there was no violation. The FP&F officer or other deciding official determines that the alleged violation did not

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occur or there was insufficient probable cause to support an alleged violation. According to a Customs official, such determinations occur because the receivables are recorded by the initiating officer who is responsible for sending notices to alleged violators before the cases are forwarded to the FP&F offices for review. After a notice is sent and a case is forwarded to an FP&F office, the deciding official determines whether the alleged violation occurred or can be sufficiently supported. In addition, the Customs official stated that when case initiators are determining whether a violation occurred, they often do not have the benefit of additional documentation and information presented with petitions for relief. Moreover, additional documentation is often only obtained through the course of discovery if a case goes to litigation.

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## Broker's Bankruptcy Is the Primary Reason for the Increase in Uncollected Customs CFP Debt

Customs' gross CFP receivables increased by about \$556 million from the beginning of fiscal year 1997 to the end of fiscal year 2000. According to Customs officials, claims resulting from the bankruptcy of a Customs broker,<sup>17</sup> who handled a significant amount of import business on the U.S.-Canadian border, were primarily responsible for the increase in CFP receivables during the 4-year period. Such claims represented about 87 percent of the increase. Customs identified 422 CFP claims against importers associated with this broker and, in most cases, recorded the initial CFP assessments as CFP receivables. At the time of the bankruptcy in June 1999, Customs had not received entry filing summaries, payments of estimated duties, or both from numerous importers who had previously relied on the broker to handle such activities on their behalf.

According to Customs officials, the bankruptcy of this broker was a unique situation for Customs, but it provides a clear illustration of the significant adjustments that can result from Customs' assessment and mitigation processes. During fiscal years 1999 and 2000, Customs assessed numerous importers a total of about \$566 million of CFP relating to the bankruptcy of the broker and recorded CFP receivables totaling about \$484 million for these 422 claims. Customs records indicated that the remaining \$82 million of assessed amounts was mitigated and thus these amounts were not recorded as CFP receivables. Postmitigated CFP amounts were nominal, consistent with Customs' guidance. As of September 30, 2000, almost all of these receivables remained uncollected, and about \$481 million had been

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<sup>17</sup>Brokers are agents for importers and exporters, and are responsible for preparing, filing, and storing Customs documentation (entry summaries and duties).

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recorded in a reserve account as amounts deemed uncollectible. The uncollected CFP receivables arising from the bankruptcy represented about 66 percent of Customs' total reported gross CFP receivables and about 72 percent of Customs' allowance for uncollectible CFP accounts as of that date. As of June 2001, Customs reported that 237 of the 422 CFP claims had been closed and that the outstanding related receivable balance was about \$268.3 million.

According to Customs officials, in examining the available entry records for each of the 422 alleged violations that resulted from the broker going out of business, Customs initially assessed each claim at the value of the affected merchandise or, in the case of restricted merchandise,<sup>18</sup> up to three times the value of the merchandise when the value of the merchandise was known. If the value of the relevant merchandise was not known, Customs assessed each claim at \$2.5 million, the amount of the bond posted by the broker.<sup>19</sup> According to a Customs official, Customs' assessment process and the Option 1 and mitigation processes generally resulted in Customs collecting considerably less than the CFP amounts initially assessed for the claims related to the bankruptcy of the broker.

As discussed earlier, Customs' guidance includes a range of mitigation amounts for each type of violation, as well as the authority to modify the assessed amount based on the particular facts and circumstances of any case. Customs based its mitigated CFP amounts for these claims on the CFP amounts suggested in its guidance for the late filing of an entry summary—\$100 to \$200—and gave consideration to the fact that the late paperwork resulting from the broker going out of business was out of the importers' control.

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<sup>18</sup>Restricted merchandise is merchandise with restrictions imposed by textile quota agreements, the Consumer Product Safety Commission, Foreign Assets Control, Environmental Protection Agency, Food and Drug Administration, etc.

<sup>19</sup>Customs policy requires that importers and brokers maintain bonds as insurance against losses to Customs from unpaid duties, taxes, fees, and other assessments, which include claims for liquidated damages.

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As of September 30, 2000, Customs' records showed collections of \$19,792 on 129 of the 422 CFP claims associated with the bankrupt broker. According to a Customs official, 5 of the 129 CFP claims totaling about \$6,500 involved carnet violations<sup>20</sup> in which the merchandise was not destroyed or exported. The assessments for these claims were collected in full.<sup>21</sup> The other 124 CFP claims, which totaled about \$67 million in assessed amounts, were mitigated, and the total remaining CFP receivable amount of about \$13,200 was collected. The \$19,792 collected on these 129 claims was relatively small because postmitigated CFP amounts were nominal, consistent with Customs' guidance. At the end of fiscal year 2000, 293 claims remained open, of which the entire CFP receivable amount, net of the \$2.5 million surety bond amount, was reserved in the allowance for uncollectible accounts.

As of June 30, 2001, Customs' records showed that 185 of the 422 CFP claims still remained open, meaning that from October 1, 2000, through June 30, 2001, Customs closed 108 CFP claims.

Forty-seven of the 108 CFP claims were closed without collections because of errors. Customs attributed these errors to the broker going out of business and the unique efforts required by Customs to identify and assess CFP for all of the entries resulting from this bankruptcy. These closed CFP claims, representing a total assessed value of about \$80.3 million, were canceled without any collections for the following reasons:

- Eighteen claims, valued at about \$7.8 million, were subsequently deemed invalid because no violation occurred. Customs subsequently found entry summaries that were not entered into its Automated Commercial System (ACS)<sup>22</sup> timely.
- Twenty-nine claims, valued at about \$72.5 million, were subsequently deemed invalid and not violations because they were duplicates of already existing claims.

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<sup>20</sup>A violation occurs at the expiration of a carnet if temporarily imported merchandise is not destroyed or exported.

<sup>21</sup>In accordance with Customs regulations and international convention, the liquidated damages on carnet merchandise not exported or destroyed are 110 percent of duties.

<sup>22</sup>ACS was developed to automate information on Customs' program operations and is used to account for revenue collected and accounts receivable information.

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Five of the 108 closed CFP claims, valued at \$12.5 million, were reissued under new case numbers for fiscal year 2001 because the type of violation was incorrectly identified when the CFP was initially assessed. For each of the 5 cases, Customs closed the initial CFP claim and established a new claim that reflected the correct type of violation.

The remaining 56 of the 108 CFP claims were closed for the following reasons after collections were made by Customs:

- Fifty of the 56 CFP debts were reclassified from violations for not filing entry summaries to violations for filing late entry summaries, once the importer subsequently filed the entry summary. In addition, according to a Customs official, the debts involved duty-free merchandise and each claim was subsequently reduced to a nominal amount in accordance with Customs' mitigation guidance. Each claim was closed after the violator paid a postmitigation amount of \$50, resulting in a total amount collected of \$2,500. Before mitigation, the total assessed amount on these 50 CFP debts was \$125 million.
- Six of the 56 CFP debts, initially assessed at a total of about \$128,000, reflected a receivable amount of \$700 of which a total of \$450 was collected.

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## Opportunities Exist for Strengthening Customs' CFP Debt Collection Policies and Procedures

Customs can strengthen its CFP debt collection and might improve its collection efforts by enhancing and better adhering to existing policies and procedures.

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## Enhancing CFP Debt Collection Policies and Procedures

We found several CFP policies and procedures that can be strengthened through enhancements. These enhancements represent good management practices and could enable Customs to collect more CFP amounts. The needed enhancements relate to (1) using promissory notes to collect CFP debt when the debtor has significant assets, (2) obtaining evidence that CFP claims related to carnets were received by the guaranteeing association, (3) determining the adequacy of surety bond coverage for CFP debts, and (4) obtaining evidence of CFP debtors' inability to pay CFP debt.

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Using Promissory Notes to Collect CFP Debts When the Debtor Has Significant Assets

A debtor may indicate to Customs that it is financially unable to pay a CFP debt in a lump sum. Customs' policy in cases where the debtor is unable to pay the full amount is to use a promissory note to collect the debt. However, the policy does not require that debtor assets secure the promissory note. Obtaining secured promissory notes in certain situations, such as when the debtor has significant assets, is a good business practice and increases the likelihood of collecting the amounts promised by the debtor because Customs would have a claim against the secured assets in the event of debtor default.

We reviewed three CFP claims (one high-dollar claim and two nonstatistically selected alleged fraud claims) in which unsecured promissory notes were used. In one of these alleged fraud claims, Customs accepted a \$140,000 unsecured promissory note from a debtor even though Customs' Regulatory Audit Division determined that sufficient assets were available to cover the debt when the note was executed. At the time of our review, the note was in default and the debtor had paid only about \$43,000 of the \$140,000 owed. If Customs had obtained a secured promissory note, it would have been in a better position to collect the remaining unpaid CFP amount.

Obtaining Evidence That CFP Claims Related to Carnets Were Received

Customs has 1 year from the expiration date of a carnet to issue a CFP claim. Approved associations issue carnets, which are valid for 1 year, and guarantee any Customs claims associated with the merchandise covered. Customs has designated the U.S. Council for International Business as the issuing and guaranteeing association in the United States for carnets. If the 1-year period covered by a carnet expires and the covered merchandise has not been exported or destroyed, a CFP claim arises. Establishing a CFP claim is time critical because, under Customs guidance, Customs may not make a CFP claim against the council more than 1 year after the expiration of a carnet.<sup>23</sup> For properly established claims, the council must pay the claim unless it furnishes Customs with proof within 6 months of the date of the claim period that the merchandise was returned, exported, or destroyed.

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<sup>23</sup>Customs Directive 3280-011A, February 3, 2000: *ATA (Admission Temporaire—Temporary Admission) Carnets – Proof of Exportation, Liquidated Damages, and Regularization Fees* (section II.F of Customs Regulations on Carnets [part 114, section 10.39]).

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During our review, we found that Customs does not always obtain documentary evidence that the council received CFP claims related to carnets within the 1-year period. As stated in *Standards for Internal Control in the Federal Government*, all transactions and other significant events need to be clearly documented, and documentation should be readily available.<sup>24</sup> For the eight CFP claims we reviewed involving carnets, we found that Customs did not maintain the necessary documentation. Customs had records indicating that the CFP claims were issued within the required 1-year period. However, Customs could not prove that the council received the CFP claims within the required 1-year period and did not have evidence that it contacted the council as a follow-up to the issuance of the CFP claim within the 1-year period. The contact helps ensure that CFP claims were received by the council or enable Customs to provide a copy of the claim before the 1-year period expires. An FP&F paralegal asserted that Customs made frequent telephone contacts with the council to verify receipt of notices of carnet expirations but did not document the contacts.

Subsequent to discussing the 8 carnet claims that were from one FP&F office, Customs stated that a total of approximately 300 carnet-related CFP claims issued by that office from 1996 through 2000, totaling about \$1.8 million, were still outstanding. Customs stated that the council alleged it did not receive violation notices for these claims within the 1-year period and therefore has declined to pay the claims. Customs also stated that since it could not prove that the council received the notices within the required 1-year time frame, collections would be minimal on these claims.

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<sup>24</sup>U.S. General Accounting Office, *Standards for Internal Control in the Federal Government*, [GAO/AIMD-00-21.3.1](#) (Washington, D.C.: Nov. 1999).

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Determining the Adequacy of  
Surety Bond Coverage for CFP  
Debts

Customs officials instituted a process in fiscal year 2000 requiring that notices of carnet violations be sent by registered mail so that Customs would have proof of the council's receipt of the notices. In February 2002, Customs stated that the outstanding CFP claims involving carnet violations were canceled without payment. Without documentation to prove that the council received these claims, Customs determined there was a reasonable likelihood that the port office did not issue them timely. Customs also stated that its Office of Regulations and Rulings has drafted claim issuance and mitigation guidelines for carnet violations. On April 19, 2002, Treasury Directive 02-20, setting forth claim issuance and mitigation guidelines for carnet violations, was published in the *Federal Register*.<sup>25</sup>

Customs did not have adequate surety bond amounts to cover all CFP entries we reviewed. Customs regulations require that importers maintain bonds as insurance against losses to Customs from unpaid duties, taxes, charges, and CFP amounts for liquidated damages claims and certain penalty claims associated with violations of the international carrier bonds. Single-entry bonds cover merchandise listed on a single-entry summary and are attached to entry summaries filed with Customs. Continuous bonds cover multiple entries for a specified period and are generally maintained on file at the port of entry.

Out of 83 statistically selected open CFP claims, we found six continuous entry bonds involving liquidated damages that were not adequate to protect Customs from losses resulting from unpaid duties, taxes, charges, and CFP amounts. Based on our analysis of the selected open CFP claims, we estimate that about 7.2 percent of the 615 open CFP claims managed by the four selected FP&F offices did not have sufficient amounts to cover duties and CFP.<sup>26</sup>

Specifically, we found that 2 of the statistically selected CFP claims involved insufficient continuous-entry bond amounts to cover in total about \$101,000 out of about \$201,000 of assessed antidumping fees and charges. At the time of our review, both of the claims had been referred to Customs' Office of Chief Counsel to determine potential for litigation. We

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<sup>25</sup>67 Fed. Reg. 19485.

<sup>26</sup>We are 95 percent confident that the actual proportions of CFP claims with insufficient surety bond amounts to cover unpaid duties, taxes, charges, and CFP at the four selected FP&F offices were from 2.7 percent to 15.1 percent for continuous-entry bonds.

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also found four instances in which the importer's continuous-entry bond was sufficient to cover the claim we reviewed but was not sufficient to cover other Customs' claims against that importer. For the four instances, the bond insufficiencies included about \$668,000 out of about \$768,000 of fees and duties and about \$686,000 out of about \$1.2 million of CFP. At the time of our review, the claims for one of the instances had been referred to Customs' Assistant Chief Counsel; one of the instances had been resolved in favor of the importer; one of the instances had been referred to the Department of Justice for litigation since the surety stated that the related continuous bond had already been exhausted on another claim; and one of the instances had been settled against the bond. In the instance that the claims were settled, Customs did not collect about \$200,000 of the CFP that was in excess of the bond coverage.

Customs implemented new procedures for use with the dedicated bond liability module of the ACS to address the recommendations that we previously reported.<sup>27</sup> However, Customs officials stated that additional changes to ACS were postponed so that the changes can be incorporated into the new tracking system, the Automated Commercial Environment (ACE), which will replace ACS. These officials said that Customs is proceeding with the requirements development task for ACE as part of the agency's automated systems modernization project. Upon completion of this task, Customs will know more about the wide range of business requirements that the new system must address, which will include surety bond tracking capability. Until the task is completed, however, Customs cannot determine when the development and implementation of the ACE system will be completed and lacks a reliable way to determine on a real-time basis whether coverage on continuous bonds is sufficient for a given entry. As a result, Customs' system capability problems will continue to undermine FP&F offices' ability to track the sufficiency of bonds and Customs officials' ability to administer Customs laws.

Customs officials stated that the bond information in the various systems that process entries and penalties is not real time, does not aggregate potential debts against bonds, and does not show reductions in the bond amounts to reflect actual amounts paid. Specifically, an FP&F official stated the following:

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<sup>27</sup>[GAO/AIMD-94-5](#).

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- Customs' bond sufficiency report compares the current bond amount with 10 percent of the importer's dutiable imports for the prior year. Since only prior-year detail is used, this historical comparison does not take into consideration the potential debt for entries such as temporary importation bonds<sup>28</sup> or for increased import activity in the current year.
  - Customs' ACS does not provide adequate information to determine whether the current single- or continuous-entry bond is sufficient to cover a current entry, without significant research of the system. The system does not show the potential duties, fees, and CFP of an entry against a bond amount or actual payouts against that bond.
  - Customs' SEACATS provides a notice if an individual entry's total duties, fees, and CFP exceed a bond amount, but it does not accumulate information on the duties, fees, and CFP from other entries at a particular port that have already been applied to the current bond. It is also unlikely that Customs staff at one port would be aware of other duties, fees, and CFP charged against the bond if an importer enters merchandise at other ports that are also covered by that bond, since SEACATS does not accumulate this information.
  - Customs' monthly bond liability report provides information that is necessary to alert importers of the need to increase their current bonds. However, Customs is still susceptible to surety bond amounts that are insufficient to cover duties and CFP on entries made prior to when an importer actually increases a bond amount.

#### Obtaining Evidence of CFP Debtors' Inability to Pay CFP Debt

During the period of our review, Customs regulations required debtors who claimed they were unable to pay CFP debts to present documentary evidence to support their claims.<sup>29</sup> Examples of documentary evidence that were to be provided by the debtor included copies of income tax returns, current financial statements, and independent audit reports. However, Customs was not required to obtain and review independent audit reports, which include audited financial statements, to determine whether a debtor was not able to pay CFP debt.

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<sup>28</sup>A temporary importation bond, such as a carnet, covers import of merchandise into the United States for a set period.

<sup>29</sup>Appendix B, (H)(1)(b) of Part 171 of Code of Federal Regulations Title 19.

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We reviewed six CFP claims (two high-dollar claims and four nonstatistically selected fraud claims) in which the debtor's representation of inability to pay was a factor in Customs' petition or offer-in-compromise process, consistent with Customs policy. For five of these CFP claims (two high-dollar claims and three fraud claims), each of which involved fraud or counterfeiting, Customs obtained tax returns and/or current financial statements from the debtors. Customs records indicated that through mitigation and the use of offers in compromise, the originally assessed CFP amounts totaling about \$28.7 million were reduced to a total CFP receivable amount of about \$1.5 million, of which only about \$108,000 had been collected through March 2002. We asked for, but Customs could not provide, documentation of the debtor's inability to pay the sixth CFP claim.

Customs was not required to obtain and review independent audit reports, such as audited financial statements, as part of the documentary evidence it used to determine these debtors' inability to pay. However, in June 2000, Customs regulations were revised, requiring that both income tax returns for the past 3 years and recent audited financial statements be provided by parties claiming they were unable to pay CFP debts.<sup>30</sup>

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## Better Adherence to Certain CFP Debt Collection Policies and Procedures

In addition to the enhancements to its collection capacity discussed above, Customs needs to adhere more closely to certain of its existing policies and procedures. We found instances in which Customs did not always follow its policies and procedures related to (1) requesting waivers of the statute of limitations for CFP debts, (2) issuing Notices of Penalty or Liquidated Damages Incurred and Demand for Payment (penalty and payment notices), (3) responding to violators that filed petitions for relief, and (4) issuing notices of redelivery.

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<sup>30</sup>19 C.F.R. Part 171, App. B (G)(6).

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## Requests for Waivers of the Statute of Limitations for CFP Debts

Customs does not always timely request waivers of the statute of limitations<sup>31</sup> for CFP debts to enable it to have sufficient time to continue collection actions. In order to obtain a waiver, which extends the statute of limitations by the amount of time agreed to in the waiver, Customs guidance requires the appropriate FP&F office to request a waiver of the statute of limitations from the violator when less than 2 years remain before the expiration of the statute of limitations.<sup>32</sup> In instances in which Customs determines that a waiver is necessary, its policy is to request that the violator agree to a 2-year waiver of the statute of limitations. If a waiver is not obtained, Customs is to refer the CFP debt to the Department of Justice no later than 6 months before the expiration date of the statute of limitations to allow Justice sufficient time to file the CFP claim with the Court of International Trade.<sup>33</sup>

We identified two claims (one high-dollar claim and one nonstatistically selected fraud claim) for which Customs requested waivers for some of the entries only shortly before the statute of limitations was to expire for those entries.<sup>34</sup> An alleged violator and two of the three sureties for a second alleged violator did not agree to the waivers, and the statute of limitations subsequently expired on various entries. In one case, Customs originally stated that it attempted to obtain waivers of the statute of limitations from three sureties after the dissolution of the importer and the completion of its investigation, which was 4 years later. Only one surety granted a waiver, and the statute of limitations expired without any collections from the other two sureties. In the other case, Customs stated that it had filed a complaint with the Court of International Trade to prevent the expiration of the statute of limitations. However, the complaint applied to only 53 of 104 entries, since the statute of limitations had expired on the other 51 entries prior to Customs' filing the complaint.

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<sup>31</sup>The statute of limitations expires 5 years after the date of the alleged violation, except for fraud cases, for which it expires 5 years after the date of discovery of the alleged fraud (19 U.S.C. § 1621).

<sup>32</sup>19 C.F.R. Part 171.64 and 19 C.F.R. Part 171, App. B (E)(1)(d).

<sup>33</sup>The Court of International Trade is the body within the federal judiciary that deals with cases involving international trade and customs duties.

<sup>34</sup>A single claim may contain numerous entries, and the statute of limitations expiration date for each entry depends on the date the alleged violation occurred. Therefore, one claim may be subject to multiple statute of limitations expiration dates. As a result, the statute of limitations for some entries within a claim may have expired, while for other entries it has not.

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These cases illustrate the risks of not timely attempting to avoid expiration of the statute of limitations. For these cases, Customs was unable to collect original duties that totaled about \$74,000 and CFP that totaled about \$136,000. In contrast, it was able to collect about \$97,000 of unpaid duties for entries on which the statute of limitations had not expired or for which waivers had been obtained.

In a third case that we identified during our walk-through, we found a CFP claim involving, among other factors, a failure to request a timely waiver of the statute of limitations. The statute of limitations for the entries filed in the first 3 of the 7 years under this CFP claim had expired. In this nonstatistically selected CFP fraud case, Customs assessed \$21 million of CFP against an importer for allegedly using false invoices to undervalue entries. While engaged in settlement talks with Customs, the importer made distributions totaling about \$6 million to its two principal stakeholders. Before the expiration of the statute of limitations for the remaining 4 years of entries, Customs was granted a waiver and subsequently accepted an offer in compromise to settle the CFP claim for \$700,000, consisting of \$688,025 to cover the amount of the duties owed to Customs and \$11,975 of the \$21 million assessed CFP. Other factors that contributed to Customs' acceptance of this offer in compromise were its determination that (1) the corporation was unable to pay the CFP debt after \$6 million was distributed to stockholders and (2) Customs might not be able to hold the principals personally liable for the debt.

In general, Customs paralegals cited both a lack of a tracking system and human error for the poor tracking of the statute of limitations' expiration dates. Even though a tracking system for statute of limitations expiration dates could improve Customs' ability to track expiration dates, our review found that monthly reports from SEACATS currently provide sufficient statute of limitations information to paralegals at each office for tracking expiration dates.

During our review of the eight high-dollar CFP claims that were written off during fiscal years 1998 through 2000, we found four cases in which the expiration of the statute of limitations and Customs' decision to terminate collection activity were the primary reasons for the write-off of these CFP debts. Customs wrote off about \$27 million for these four CFP cases, which represented about 39 percent of the CFP amounts written off during the 3-year period. Even though we identified lengthy collection efforts—investigations, petition processes, and information gathering and review prior to decisions on petitions by Customs' Office of Regulations and

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Rulings or Office of General Counsel, or decisions on whether to refer them to Justice—that took several years, Customs ultimately deemed the debts uncollectible and legally without merit. The reasons for these determinations were the violators either (1) filed for bankruptcy after being assessed by Customs or (2) went out of business after being assessed by Customs.

We also noted an instance where the approaching expiration of the statute of limitations was a contributing factor in Customs accepting a lower mitigation amount for the CFP claim. Specifically, in one case we reviewed, Customs accepted an offer in compromise for \$25,000 in April 2000, after the statute of limitations had expired for 252 of 257 entries relating to a CFP claim. These entries involved fraud violations where the importer allegedly undervalued the entries in an effort to avoid paying duties. Customs issued the penalty notice on April 6, 2000, at the value of the merchandise, which was about \$20.1 million. The investigation relating to this claim occurred from 1995 through 1998, but the proceedings did not commence until March 2000. The offer in compromise was accepted because Customs could not determine the actual unpaid duties since its files did not include the amount of lost revenue relating to all of the entries.

#### Issuance of Penalty and Payment Notices

Customs did not always issue penalty and payment notices to importers within 10 days of opening a case file in its tracking system, in accordance with Customs guidance. Customs guidance states that a penalty and payment notice be issued to importers within 10 days of when Customs opens a case in SEACATS. We found that Customs did not comply with this requirement for 16 (2 open and 14 closed CFP claims) of the 179 statistically selected CFP claims we reviewed. For example, a penalty and payment notice for 1 of these claims in the Los Angeles FP&F Office was 192 days late. Twelve of the cases were identified at the New Orleans FP&F Office, and 2 were identified at the Los Angeles FP&F Office.

Based on our evaluation of the open and closed CFP claims, we estimate that 2.4 percent of open and 14.5 percent of closed CFP claims managed by the four selected FP&F offices did not have penalty and payment notices issued within the 10-day period.<sup>35</sup> Customs paralegals responsible for

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<sup>35</sup>We are 95 percent confident that the actual proportions of CFP claims with untimely issuance of penalty and payment notices at the four selected FP&F offices were from 0.29 percent to 8.4 percent and from 8.2 percent to 23.3 percent for open and closed CFP claims, respectively.

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managing these CFP claims generally attributed the delays to limited staff resources. Such delays may have resulted in reduced collections of CFP at the four selected FP&F offices.

**Issuance of Responses to Violators That Filed Petitions for Relief**

Customs did not consistently respond timely to violators that filed petitions for relief. After receiving a notice from Customs, the alleged violator has 60 days to file a petition for relief and Customs has 90 days after receipt of the petition to respond. We found that 100 (40 open and 60 closed CFP claims) of the 179 statistically selected CFP debts involved petitions. For 25 of these 100 claims, Customs did not comply with the 90-day requirement. For example, 1 claim in the John F. Kennedy Airport FP&F Office was 364 days late. Twelve instances of noncompliance were identified at the New Orleans FP&F Office, and 11 instances at the Los Angeles FP&F Office.

Based on our evaluation of the 40 open and the 60 closed CFP claims that had petitions, we estimate that for 22.3 percent of open and 26.6 percent of closed CFP claims managed by the four selected FP&F offices, Customs did not respond to the petitions within the 90-day period.<sup>36</sup> Customs paralegals responsible for managing these CFP claims generally attributed the delays to limited staff resources. Such delays may have resulted in reduced CFP collections at the four selected FP&F offices.

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<sup>36</sup>We are 95 percent confident that the actual proportions of CFP claims with untimely responses to violators' petitions for relief at the Customs ports of the four selected FP&F offices were from 10.8 percent to 38.5 percent and from 16.1 percent to 39.7 percent for open and closed CFP claims, respectively.

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## Issuance of Notices of Redelivery

The timing of Customs' issuance of Notices of Redelivery, which are sent to importers when the Department of Health and Human Services' Food and Drug Administration (FDA) deems goods unsafe for importation, raised legal issues that affected settlement determinations. The Food, Drug, and Cosmetic Act<sup>37</sup> authorizes the Secretary of Health and Human Services to refuse admission of food, drugs, devices, and cosmetics for a number of reasons, including that the items were packed under unsanitary conditions or that the articles are adulterated or misbranded. When FDA makes a determination to refuse admission of goods, it issues a Notice of Refusal of Admission to the importer. While awaiting an admission decision from FDA, Customs may authorize delivery of the article to the owner or consignee upon the execution of a bond sufficient to pay liquidated damages in the event of default.<sup>38</sup>

Customs regulations establish conditions for importation and entry bonds.<sup>39</sup> One of the conditions is that the importer must timely redeliver released merchandise on demand to Customs after receiving a redelivery notice. Customs must issue the redelivery notice no later than 30 days after the date of release of the merchandise or 30 days after the end of the conditional release period, whichever is later.<sup>40</sup> Failure to redeliver could result in the importer's having to pay liquidated damages under the bond.

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<sup>37</sup>21 U.S.C. § 381(a). If FDA refuses admission of an article, the Secretary of the Treasury is required to cause the destruction of the article unless it is exported within 90 days of the date of the refusal or such additional time as permitted by regulations prescribed by the Secretary of the Treasury.

<sup>38</sup>21 U.S.C. § 381(b).

<sup>39</sup>19 C.F.R. § 113.62.

<sup>40</sup>19 C.F.R. § 113.62(d).

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Disputes over when Customs has to issue redelivery notices for articles subject to FDA approval have affected Customs' collection of assessments. For example, in *United States v. Likas International, Inc. and Washington International Insurance Company*,<sup>41</sup> a surety denied liability under a bond because Customs issued the redelivery notice more than 30 days after FDA issued a refusal notice. The government asserted that it had 120 days to issue the redelivery notice because the importer retained custody of the article for 90 days after the FDA refusal notice, which ended a conditional release period, and then Customs had an additional 30 days to issue a redelivery notice. During the *Likas* proceedings, another significant issue arose: Has Customs defined a conditional release period for the FDA context? The government essentially argued that the conditional release period automatically began when Customs delivered articles subject to FDA approval to the importer. The surety argued that Customs had never by regulation defined a conditional release period in the FDA context. The surety further argued that Customs' assertion of a conditional release period amounted to an indefinite period because the period would run from delivery of the goods until 90 days after FDA issued its notice, whenever that occurred.<sup>42</sup>

As a result of the issues raised in *Likas*, Customs and the Department of Justice in the summer of 1999 settled the *Likas* case with a number of sureties. As part of the *Likas* settlement, Customs agreed to implement a nationwide policy for issuing a redelivery notice following FDA's issuance of a refusal notice. The policy provides that Customs must issue a redelivery notice no later than 30 days after FDA issues a refusal notice. In return, the affected sureties agreed to settle all outstanding claims for liquidated damages in which the Customs redelivery notice was issued more than 30 days but less than 120 days after issuance of the FDA refusal notice and all cases where Customs' redelivery notice was issued more than 30 days after the release of the merchandise. The sureties agreed to pay 30 percent of the value of the merchandise or the amount of the bond, whichever was less.

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<sup>41</sup>Court No. 96-04-01065 (United States Court of International Trade).

<sup>42</sup>This was similar to one of the main issues in *United States v. So's USA Company, Inc., and Washington International Insurance Company*, No. 97-05-00922 (Aug. 26, 1999), 1999 WL 765408 (U.S. Court of International Trade). The court held that the goods were not conditionally released because Customs had not provided a definite conditional release period for the goods by regulation or other notice.

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We reviewed eight CFP claims with redelivery notices issued before fiscal year 1999 (one statistically selected and seven nonstatistically selected at Customs' Los Angeles and San Francisco ports, respectively) and found that the redelivery notices were issued after 30 days but within 120 days of the issuance of the refusal notices. The total assessed amount of these claims was about \$686,000, and the total amount collected was about \$138,000.

The discussion above indicates how a lack of certainty and clarity concerning a conditional release period may affect the enforcement of importation and entry bonds. Customs has advised us that it has prepared a Notice of Proposed Rulemaking to amend its regulations to provide a specific conditional release period in all cases involving products regulated under the Food, Drug, and Cosmetic Act. The Notice of Proposed Rulemaking is currently awaiting departmental approval prior to its publication in the *Federal Register*.

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## OMB's and Treasury's Roles in the Oversight and Monitoring of CFP Debt

OMB and Treasury's Financial Management Service are provided information useful in performing their debt oversight roles through Customs' reporting of CFP receivables and referral of CFP debt to the Financial Management Service for collection. Beginning with financial statements for fiscal year 1997, Customs has disclosed CFP receivable information in the notes to its audited financial statements, which are submitted annually to OMB. In addition, in accordance with the requirements of the Debt Collection Improvement Act of 1996, Customs annually reports receivable information, which includes CFP receivable information, to the Financial Management Service as part of the Report on Receivables Due from the Public.

In discussions, OMB officials emphasized that their oversight responsibility is broad and consists of monitoring and evaluating governmentwide credit management, debt collection activities, and federal agency performance. OMB also stated that it is the specific responsibility of agency chief financial officers and program managers to manage and be accountable for the debt collection of their agency's credit portfolios, including debt collection, in accordance with applicable federal debt statutes, regulations, and guidance. OMB further added that it is the role of each agency to specifically monitor and collect its civil penalty debt regardless of dollar magnitude and that it is the responsibility of each agency's office of inspector general to provide oversight through audit of the agency's debt collection activities.

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The Debt Collection Improvement Act of 1996 requires that federal agencies transfer eligible nontax debt or claims<sup>43</sup> delinquent more than 180 days to Treasury for collection action. Treasury officials stated that they rely on agencies to determine what debt should be referred to the Financial Management Service for collection and offset as required by the Debt Collection Improvement Act of 1996. A Customs representative stated that certain CFP debts are referred to the Treasury Offset Program for collection via the Tax Refund Offset Program.

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## Conclusions

The growth in Customs' uncollected CFP debt resulted primarily from assessments to importers that were caused by a broker going out of business. However, a substantial portion of Customs' recorded CFP receivables will continue to be deemed uncollectible and eventually reduced, since it represents amounts that are required to be assessed in accordance with Customs' guidance rather than the smaller portion that is typically pursued for collection from importers after mitigation or settlement of a claim. Even though Customs' assessment process will continue to result in significant adjustments, there are several areas where Customs' CFP debt collection policies and procedures can be strengthened and its collection efforts might improve through enhancements or increased adherence. These areas include Customs' ability to track the sufficiency of surety bond coverage, a concern we originally raised in 1993, which will not be addressed until Customs completes the implementation of the new ACE system.

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## Recommendations for Executive Action

We are making several recommendations to the Commissioner of the U.S. Customs Service to strengthen Customs' CFP debt collection policies and procedures, improve the collection of CFP debt, and decrease the amount of CFP receivables that are reduced or written off.

We recommend that the Commissioner of the U.S. Customs Service direct the Assistant Commissioner, Office of Finance, to develop and implement detailed CFP debt collection policies and procedures to obtain secured promissory notes from CFP debtors when evidence shows that they have significant assets to secure their CFP debts.

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<sup>43</sup>Claims include debts owed to the United States or debts being collected by the United States on behalf of others.

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We recommend that the Commissioner of the U.S. Customs Service direct the Assistant Commissioner, Office of Regulations and Rulings, to expeditiously establish conditional release periods for products regulated under the Food, Drug and Cosmetic Act.

We recommend that the Commissioner of the U.S. Customs Service direct the Assistant Commissioner, Office of Information and Technology, to help ensure that the development and implementation of Customs' new ACE system addresses bond sufficiency concerns cited in this report and in our 1993 report.

We recommend that the Commissioner of the U.S. Customs Service direct the Assistant Commissioner, Office of Field Operations, to reinforce and monitor the four selected Fines, Penalties, and Forfeitures offices' compliance with certain existing CFP debt collection policies and procedures, where applicable, to help ensure that

- statute of limitations waivers are requested when less than 2 years remain before the expiration date and waivers are obtained before the statute of limitations expires to allow adequate time for actions to be taken against violators by Customs, the Department of Justice, and the Court of International Trade;
- Notices of Penalty or Liquidated Damages Incurred and Demand for Payment are issued to importers within 10 days of Customs' opening a case in the CFP tracking system; and
- responses to petitions for relief are made to violators within 90 days of Customs' receipt of a petition from a violator.

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## Agency Comments and Our Evaluation

In commenting on a draft of our report, Customs and the Financial Management Service agreed with our recommendations. Customs described actions being taken to address each recommendation. We have removed our recommendation for Customs to finalize its claim issuance and mitigation guidelines for carnet violations since these were published in the *Federal Register* on April 19, 2002.

Customs also provided general comments, which are reprinted in appendix I and followed by our evaluative comments. Customs provided a number of technical comments that are incorporated in the report as appropriate. OMB stated that it had no comments.

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As agreed with your office, unless you announce its contents earlier, we plan no further distribution of this report until 30 days after its issuance date. At that time, we will send copies to the Chairman of your subcommittee and to the Chairman and Ranking Minority Member of the Senate Committee on Governmental Affairs. We will also provide copies to the Secretary of the Treasury, the Commissioner of the U.S. Customs Service, and the Director of the Office of Management and Budget. We will also make copies available to others upon request. In addition, the report will be available at no charge on the GAO Web site at <http://www.gao.gov>.

If you have any questions about this report, please contact me at (202) 512-3406. The GAO contact and staff acknowledgments are listed in appendix III.

Sincerely yours,

A handwritten signature in black ink that reads "Gary T. Engel". The signature is written in a cursive style with a large, prominent "G" and "E".

Gary T. Engel  
Director  
Financial Management and Assurance

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# Comments from the Department of the Treasury's U.S. Customs Service

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



## U.S. Customs Service

### Memorandum

DATE: May 15, 2002

FILE: AUD-1-OP MD

MEMORANDUM FOR GARY T. ENGEL  
GENERAL ACCOUNTING OFFICE

FROM: Director,  
Office of Planning

SUBJECT: Draft Audit Report on the United States Customs  
Service's Civil Fines and Penalties Debt

Thank you for providing us with a copy of your draft report entitled "Civil Fines and Penalties Debt: Review of U.S. Customs Service's Management and Collection Processes" and the opportunity to discuss the issues in this report.

While the actions Customs has taken and will take in response to the recommendations will further strengthen the management and collection process, we believe the draft report does not fully explain important facts regarding fines and penalties procedures. Attached are comments specific to the recommendations, as well as general and technical comments that relate to statements that need to be clarified prior to finalization of this report.

If you have any questions regarding these comments, please contact Ms. Michele Donahue at (202) 927-0957.

  
William F. Riley

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Attachments

**Responses to Audit Recommendations**  
**GAO Draft Report on Customs Civil Fines and Penalties Debt**

**Recommendation 1:** We recommend that the Commissioner of the U.S. Customs Service direct the Assistant Commissioner, Office of Field Operations, to develop and implement detailed CFP debt collection policies and procedures to

- Obtain secured promissory notes from CFP debtors when evidence shows they have sufficient assets to secure the CFP debt and
- Finalize the formal claim issuance and mitigation guidelines for carnet violations.

Response: Concur. Customs will revise the current promissory note directive relating to the evaluation of a debtors assets. If the debtor has significant assets, Customs will request that the debtor obtain a secured promissory note to secure the debt.

The mitigation guidelines for carnet violations were published in the Federal Register on Friday, April 19, 2002, under T.D. 02-20 with an immediate effective date.

**Recommendation 2:** We recommend that the Commissioner of the U.S. Customs Service direct the Assistant Commissioner, Office of Regulations and Rulings to proceed expeditiously with addressing the establishment of conditional release periods for products regulated under the Food, Drug and Cosmetic Act.

Response: Concur. The Notice of Proposed Rulemaking on the FDA conditional release period has been signed by the Commissioner and is at Treasury awaiting Department approval prior to publication in the Federal Register.

**Recommendation 3:** We recommend that the Commissioner of the U.S. Customs Service direct the Assistant Commissioner, Office of Information and Technology, to help ensure that the development and implementation of Customs new ACE system addresses bond sufficiency concerns cited in this report and in our 1993 report.

Response: Concur. Specific functional requirements for establishing bond requirements and sufficiency are addressed within the ACE systems requirements documents.

See comment 1.

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**Recommendation 4:** We recommend that the Commissioner of the U.S. Customs Service direct the Assistant Commissioner, Office of Field Operations, to reinforce and monitor the four selected Fines, Penalties, and Forfeitures Offices' compliance with certain existing CFP debt collection policies and procedures, where applicable, to help ensure that

- Statute of limitations waivers are requested no later than 2 years before the expiration date and waivers are obtained before the statute of limitations expires to allow adequate time for actions to be taken against violators by Customs, the Department of Justice, and the Court of International Trade
- Notices of Penalty or Liquidated Damages Incurred and Demand for Payment are issued within 10 days of Customs' opening a case in the CFP tracking system, and
- Responses to petitions for relief are made to violators within 90 days of Customs receipt of a petition from the violator.

Response: Concur. Customs views strict compliance with established procedures for protecting potential revenue as critical to achieving its mission as both a law enforcement and revenue agency. Customs performs scheduled and unscheduled field office oversight visits to measure field compliance. Customs has already taken positive steps to employ oversight tools including the Self-Inspection Program and the monthly Management Accountability Reports. Customs will continue to develop new tools to improve its oversight of field office operations.

It is Customs policy to request a waiver of the statute of limitations in any CFP case (Penalty or Liquidated Damages) that is within two years of the date by which the statute of limitations may be raised as a defense. Adherence to this policy is monitored monthly at the Headquarters level by way of the Management Accountability Reports, which were created to monitor field activity in several mission-critical areas.

The timeliness of enforcement actions is considered an extremely important management issue as Customs attempts to balance achieving the effective performance of its law enforcement mission with its desire to provide due process to persons who transact Customs business and become the subjects of enforcement actions.

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**Comments from the Department of the**  
**Treasury's U.S. Customs Service**

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It is Customs policy to issue Notices of Penalty or Liquidated Damages Incurred (Customs Form 5955A) in CFP cases within 10 days of the creation of the automated case record in the Seized Asset and Case Tracking System (SEACATS), unless the violation requires additional investigation or verification, or requires the issuance of a pre-penalty notice. Additionally, it is Customs policy to attempt to issue petition decision letters within 90 days of the receipt of a petition, when the facts of the case do not require the referral of the petition to another Customs office or outside technical expert for comment or investigation. Customs will ensure that its field office oversight plans include elements to measure compliance with policies for the timely initiation and disposition of CFP cases.

**General Comments**  
**GAO Draft Report on Customs Civil Fines and Penalties Debt**

Customs suggests this important information on liquidated damages be included in the **Background** section (page 11) of the report.

See comment 2.

Liquidated damages are limited to the amount of coverage of the bonds against which they are assessed. Liquidated damages are not revenue; rather, they are a mechanism to assure compliance with pertinent Customs law, regulation and instruction. Specifically, liquidated damages represent compensation to Customs for loss due to a failure to comply with Customs law, regulation or instruction. To be effective, liquidated damages must involve greater expense to the importer and surety than would noncompliance. Hence, liquidated damages claims often begin as large amounts and are lowered when compliance is achieved. In order to assure uniform, reasonable and equitable decisions concerning cancellation of claims for liquidated damages, Customs is required by statute to publish guidelines for the cancellation (i.e., mitigation) of liquidated damages. 19 U.S.C. 1623(c).

The above language is necessary because the report treats liquidated damages as if they have the same significance as revenue, when they do not.

Customs believes the draft report does not include important, pertinent facts regarding case specific comments related to the following sections contained within the finding titled: **Better Adherence to Certain CFP Debt Collection Policies and Procedures.**

Customs concurs with the general finding that the selected Customs field offices did not always comply with established policies and procedures for (1) requesting waivers of the statute of limitations for CFP debts, (2) issuing Notices of Penalty or Liquidated Damages Incurred and Demand for Payment, (3) responding to violators who filed petitions for relief, and (4) issuing notices of redelivery. However, Customs does not concur with all of the case specific findings contained in this section, and contends that the draft final report fails to give adequate consideration to previous comments and information provided to the auditors relative to specific cases referenced in the report.

Requests for Waivers of the Statute of Limitations for CFP debts

See comment 3.

This section of the draft audit report misstates Customs policy regarding when the responsible Customs official is required to request statute of limitations waivers. It is the policy of the Customs Service to request a statute of limitations waiver when there is less than two years remaining before the expiration of the statute of limitations; however, the report states, "Customs guidance requires the appropriate FP&F office to request a waiver of the statute of limitations from the violator no later than 2 years before the expiration date." Additionally, the draft

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See comment 4.

audit report fails to acknowledge the fact that Customs cannot compel a party to execute a statute of limitations waiver, and that the failure to obtain the waivers in the cited cases was due to the refusal of the parties from whom they were requested to execute the waivers. According to Customs previous responses relative to the cited cases, the Customs field offices requested or obtained statute of limitations waivers in each cited case; however, in some cases the parties either refused to execute the initial waivers or refused to grant extensions of the original waivers when requested by Customs.

See comment 4.

With regard to the eight high-dollar CFP claims that were written off during fiscal years 1998-2000, Customs notes the draft audit report fails to mention that three of the eight cases were penalties related to seizures of foreign-owned conveyances used to smuggle narcotics that were seized, forfeited and sold. The large penalties assessed in accordance with 19 U.S.C. 1584 were written off only after Customs pursued its normal administrative penalty process and Customs determined, after the cited parties failed to pay the assessed penalties, that it would be unable to enforce the penalties against two non-resident companies and one incarcerated individual whose sole source of income was the forfeited conveyance. Additionally, the draft audit report fails to mention that in two write off cases where the statute of limitations expired and Customs decided to terminate collection action, the principal violators filed for Chapter 7 bankruptcy prior to write off, and the bankruptcy filing substantially affected the write off decision. In one write off case, the claim was written off only after the Department of Justice communicated to Customs its inability to enforce a default judgment rendered in favor of Customs by the Court of International Trade.

See comment 5.

See comment 6.

Customs objects to the inclusion of the second of two case examples included to illustrate the following finding from page 33 of the draft audit report: "We also noted instances where the approaching expiration of the statute of limitations was a contributing factor in Customs' acceptance of lower mitigation amounts for CFP claims. For the case in question the draft audit report states, "About 2 months before the expiration of the statute of limitations for the remaining 4 years of entries, Customs accepted an offer in compromise..."

See comment 6.

Customs records indicate that the statement is incorrect because the offer in compromise was accepted immediately following the receipt and acceptance of a valid statute of limitations waiver. The statute of limitations was not in jeopardy when the offer was accepted and was not a factor that contributed to the acceptance of the offer in compromise. Customs notes that the above information was provided previously in response to preliminary findings relative to the subject case.

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Issuance of Penalty and Payment Notices

See comment 7.

Customs disagrees with the number of cases listed as representative of the following finding from page 35 of the draft audit report: "Customs did not always issue penalty and payment notices to importers within 10 days after it opened a case file in its tracking system." Additionally, Customs disagrees with the statement, "a penalty and payment notice for one of these claims in the Los Angeles FP&F office was 450 days late."

See comment 8.

See comment 7.

Customs records indicate that if adequate consideration were given to previous comments provided to the auditors relative to preliminary findings, the number of cases involving late issuance of penalty notices should be further reduced. According to Customs SEACATS records, two of the 17 cited cases resulted in the issuance of the penalty notices on the same day the case record was input in SEACATS. One of the cited open cases involved a penalty issued under the authority of 19 U.S.C. 1526(f), which provides for the assessment of penalties against persons involved in the importation of merchandise bearing counterfeit trademarks. The penalty issuance policy does not apply to 19 U.S.C. 1526(f) penalties because Customs procedures published under Treasury Decision 99-76 require the forfeiture of the infringing merchandise as a predicate to issuing a penalty notice.

See comment 8.

According to Customs records, none of the 3 identified Los Angeles cases involved a penalty notice that was 450 days late, and Customs believes the auditors inadvertently referred to a case exempt from the 10 day issuance requirements when stating a notice was 450 days late.

Issuance of Responses to Violators that Filed Petitions for Relief

See comment 9.

Customs does not totally concur with the finding that states, "Customs did not consistently respond to violators that filed petitions for relief." Although Customs concedes that in many of the cited cases it did not achieve its goal of responding to each petition within 90 days of the petition receipt, Customs believes the finding tends to mislead the reader into concluding that Customs sometimes fails to respond at all to petitions. Customs believes the implied non-responses were inadvertent and would prefer that the finding be re-stated to state, "Customs did not consistently respond to petitions within 90 days of receipt."

See comment 10.

Customs responds to all petitions for relief and it is Customs policy to respond to petitions within 90 days of their receipt, unless the petition must be referred to another office for comment or investigation prior to issuance of a decision. Customs notes that delays in petition response times in the New Orleans FP&F office in 1998 and 1999 are directly attributable to reduced staffing levels and increases in cases during those time periods.

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See comment 10.

According to Customs records, in 3 of the 29 cited cases the FP&F office referred the petitions to other Customs offices for comments/actions. The policy regarding responding to petitions within 90 days does not apply to cases where the petition must be referred to other offices for comments/actions. Regarding the Los Angeles case alleged to be 404 days late, Customs records reflect that the subject case involved an FDA refusal of admission. Petitions in FDA cases must be referred to FDA for a recommendation; therefore, the 90 day petition response period did not apply and the response should not be considered late. For one of the cited cases, Customs records indicate Customs responded to the petition in 72 days. None of the 4 cases referenced above belong in the cited universe of 29 cases.

See comment 11.

Customs disagrees with the statement, "Such delays increased the likelihood of the expiration of the statute of limitations and may have resulted in reduced CFP collections at the four selected FP&F offices." According to Customs calculations, the average petition response time for the 25 applicable cases was 165 days (less than 6 months) from the date of receipt of the petitions. The average petition response time clearly indicates that the statute of limitations was never in jeopardy for any of the cited cases as a direct result of delays in responding to petitions. Additionally, there is no evidence to support the conclusion that delays in petition response times "may have resulted in reduced CFP collections at the four selected FP&F offices" because petition decisions routinely result in standardized mitigations that would be unaffected by the insignificant average delays noted above. Since mitigation is available in almost all cases and the mitigated amounts follow standard mitigation guidelines, there is no basis upon which to conclude that modest delays in rendering petition decisions adversely affect the collected amounts. Customs contends the conclusion is erroneous and should be stricken from the draft report.

**Issuance of Notices of Redelivery**

See comment 12.

Customs concurs with the finding, "The timing of Customs' issuance of Notices of Redelivery (redelivery notices), which are sent to importers when the Department of Health and Human Services' Food and Drug Administration (FDA) deems goods unsafe for importation, raised legal issues that affected settlement determinations." However, Customs notes that the litigation referenced as the basis of the finding, *United States v. Likas International, Inc.* and *Washington International Insurance Company*, occurred after many of the audit sample cases were already initiated. Therefore, any changes in practice or policy necessitated by the litigation could not have been implemented prior to the initiation of some of the sample cases. The legal issues related to FDA refusals of admission have resulted in the preparation of a notice of proposed rulemaking by Customs, which proposes to establish a conditional release period for FDA importations in the

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Customs Regulations. The notice of proposed rulemaking has been forwarded to Treasury for approval prior to publication in the Federal Register.

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The following are GAO's comments on the U.S. Customs Service's letter dated May 15, 2002.

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## GAO Comments

1. See "Agency Comments and Our Evaluation" section.
2. We have inserted a footnote in the report to explain liquidated damages. However, our report does not focus on revenue, but rather on Customs' collection of CFP receivables in accordance with its policies and procedures.
3. We have revised the report to clarify Customs' policy regarding when to request a waiver.
4. We fully considered the previous comments provided. We revised the discussion of the two CFP claims to focus on the issue of timeliness for requesting waivers of the statute of limitations. We augmented our discussion in the report related to the two cases for which Customs did not timely request waivers of the statute of limitations and lost opportunities for further collections.
5. Our discussion regarding eight high-dollar CFP claims that were written off during fiscal years 1998 through 2000 focused on four cases in which the expiration of the statute of limitations and Customs' decision to terminate collection activity were the primary reasons for the write-off of the CFP debts. We did not discuss the three cases that involved penalties related to seizures of foreign-owned conveyances used to smuggle narcotics that were seized, forfeited, and sold. For the four cases discussed in this report, the expiration of the statute of limitations was one of Customs' cited reasons for deeming the debts uncollectible and legally without merit, which led to writing off the debts. Even though we cited Customs' reason for these determinations as the violators either subsequently filing for bankruptcy or going out of business, we also identified lengthy collection efforts where Customs' investigations, petition process, and information gathering and review prior to decisions on the petitions or referral took several years.
6. We agree that the expiration of the statute of limitations was not in jeopardy as it related to the entries for the last 4 of the 7 years for this case. However, our report focused on the expiration of the statute of limitations on the entries filed in the first 3 of the 7 years under the CFP claim. We also believe it was important to note that Customs only

collected \$11,975 of the \$21 million CFP assessment when it accepted the offer in compromise and that \$6 million was distributed to two principal stockholders during Customs' collection efforts on this CFP claim. We moved this case from the section that discusses instances where the approaching expiration of the statute of limitations was a contributing factor in Customs' acceptance of lower mitigation amounts for CFP claims to the section that discusses instances in which the statute of limitations expired.

7. We reviewed and considered the information that Customs provided to us regarding our preliminary findings. For the two cases for which Customs asserts the penalty notices were issued on the same day as the case records were input into SEACATS, we were not provided adequate documentation to support the assertion.
8. We have revised the report to reduce the number of exceptions from 17 to 16. Since penalty notices should not be issued for cases involving penalties related to the seizure of counterfeit trademark infringing merchandise, we removed this case from the reported exceptions. It should be noted that during our fieldwork and subsequent follow-up after our exit meeting, we had several discussions and were provided additional explanations and documentation on this issue. However, until Customs' written response to the draft report, Customs had not indicated that the Los Angeles case that was reported 456 days late should not have been included.
9. As our report states, we found that in 25 of 100 claims involving petitions, Customs did not comply with its requirement to respond within 90 days of receipt of the petition. We estimated that for 22.3 percent of open and 26.6 percent of closed CFP claims managed by the four selected FP&F offices, Customs did not respond to the petitions within the 90-day period. We do not believe such results demonstrate only inadvertent noncompliance with the 90-day requirement. However, we have revised the report to clarify that Customs did not consistently respond to petitions within 90 days of receipt.
10. While Customs' records indicated that it did not respond to petitions by importers until after 90 days for all 29 cases, Customs stated it had an informal process to extend the 90-day period for the number of days the petitions were outside of the FP&F office. In its response to a draft of this report, Customs informed us that the Commissioner formalized this process on January 21, 2002, in Customs' *Seized Asset*

*Management and Enforcement Procedures Handbook.* Customs subsequently provided us the four case numbers and documentation to support (1) the number of days the cases were out of the FP&F offices and (2) that Customs responded within the 90-day period, in accordance with its informal process that was finalized in January 2002. The four cases included the Los Angeles case that involved an FDA refusal of admission. As a result, we revised the report to reflect that Customs did not respond to petitions by importers until after 90 days for 25 cases.

11. We have modified the report to focus on the effect on the reduction in CFP collections that may have resulted from delays in responding to violators that filed petitions for relief. As industry statistics show, the likelihood of recovering amounts owed decreases dramatically as the age of the delinquency increases.
12. We clearly stated that Customs did not consistently issue redelivery notices to importers and that each of the selected cases reviewed occurred prior to when Customs established its new guidance in fiscal year 1999. We also pointed out that Customs is currently addressing the one outstanding legal issue that resulted from the lawsuits and settlement. In fact, our recommendation only addresses the need for Customs to expeditiously establish a conditional release period.

# Comments from the Department of the Treasury's Financial Management Service



COMMISSIONER

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

May 10, 2002

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

Dear Mr. Engel:

This letter is in response to your request for comments on the draft General Accounting Office (GAO) report, *Civil Fines and Penalties (CFP) Debt: Review of U.S. Customs Service's Management and Collection Processes* (GAO-02-655).

We have reviewed the draft and agree with the GAO recommendations to the Commissioner of the U.S. Customs Service to strengthen Customs' CFP debt collection policies and procedures and improve the collection of CFP debt, along with decreasing the amount of CFP receivables that are reduced or written off.

The Financial Management Service will continue to actively work within the scope of the Debt Collection Improvement Act of 1996 to assist the U.S. Customs Service in ensuring that all eligible debts are referred in a timely manner for offset and cross-servicing.

We appreciate the opportunity to provide comments on this report. If you or your staff have any questions, please contact Dean Balamaci on (202) 874-6660.

Sincerely,

A handwritten signature in black ink, appearing to read "Richard L. Gregg".

Richard L. Gregg

cc: Donald V. Hammond

# GAO Contact and Staff Acknowledgments

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## GAO Contact

Steven R. Haughton, (202) 512-5999

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## Acknowledgments

Mario Artesiano, Rathi Bose, Sharon Byrd, Richard Cambosos, Perry Datwyler, Mickie Gray, David Grindstaff, Marshall Hamlett, Fred Jimenez, Eric John, Laurie King, Victoria Lin, Jon Ling, John Lord, Mel Mench, Suzanne Murphy, and Maria Stortz made key contributions to this report.

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