

Why GAO Did This Study

Victims of federal crimes may be compensated for their losses through criminal proceedings when federal courts order restitution during a defendant's sentencing. Federal law dictates the crimes for which restitution is mandatory versus discretionary and what types of losses may be compensated. Federal prosecutors and Department of Justice officials are responsible for proving and litigating issues related to victims' losses for restitution orders, enforcing orders of restitution, and collecting criminal debt, including unpaid restitution.

The Justice for All Reauthorization Act of 2016, Pub. L. No. 114-324, contains a provision for GAO to conduct a review on the factors that should be considered when broadening restitution provisions. This report describes factors stakeholders believe should be considered for a potential expansion of federal courts' authority to award restitution.

To gather information on factors, GAO interviewed a non-generalizable group of stakeholders knowledgeable about the restitution process, including individuals and entities representing federal judges and court officials, federal prosecutors and Department of Justice officials, victims, and defendants and their counsel. GAO also reviewed relevant federal laws, legal cases, agency documentation, summary data on orders for restitution from fiscal years 1996 through 2016, and the amount of outstanding restitution debt owed in federal cases as of the end of fiscal year 2016.

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FEDERAL CRIMINAL RESTITUTION

Factors to Consider for a Potential Expansion of Federal Courts' Authority to Order Restitution

What GAO Found

Federal courts have authority to award restitution for authorized losses to eligible victims. Generally, victims are those directly and proximately harmed as a result of a defendant's offense of conviction and they may be awarded compensation for their actual or "out-of-pocket" losses. Provisions for the potential expansion of restitution contained in the Justice for All Reauthorization Act of 2016 that GAO reviewed could allow for courts to award restitution to additional victims and for a greater scope of losses. Stakeholders GAO interviewed identified various factors to consider related to these potential expansion provisions, for example:

- **Restitution for related conduct and no proximate cause requirement.** A factor stakeholders stated should be considered in potentially allowing restitution for conduct that is broader than the offense of conviction was that it could be a violation of a defendant's constitutional right to due process because restitution could be awarded for conduct for which the defendant's guilt was not established. In addition, they said it could lead to increased complexity to determine victim losses, which could create challenges for federal prosecutors and could result in less restitution being awarded. For a potential expansion of restitution to compensate harm that was not proximately caused by the defendant (i.e., harm that was not reasonably foreseeable as a result of the offense) stakeholders said factors that should be considered include that the current proximate harm requirement does not present challenges and that such an expansion could lead to additional sentencing-related hearings and litigation.
- **Restitution to restore victims to their position had the offense not been committed.** Stakeholders said this provision is already a goal of federal restitution, but that a potential expansion could allow judges more discretion to order restitution for victim losses not specified by statute, which could help restore the victim to his or her pre-offense condition.
- **Restitution for any injury, harm, or loss, including emotional distress.** A factor stakeholders identified in potentially expanding restitution to cover intangible losses, including emotional distress, included that it could increase the complexity of the restitution process because these are not easily quantified losses. Relatedly, stakeholders said that the suitability of criminal versus civil proceedings should be considered because the civil system, through which crime victims may seek compensation at their own expense, is set up to handle these issues and losses, whereas officials involved in criminal cases lack the specialized skills to determine these kinds of losses.

Stakeholders GAO interviewed identified additional factors related to the potential broadening of courts' authority to order restitution generally; for example, they told GAO that increased restitution debt and collectability challenges should be considered. According to the Department of Justice, the amount of outstanding restitution debt owed in federal cases as of the end of fiscal year 2016 was \$110.2 billion. Stakeholders stated that defendants often lack the financial resources to pay restitution and adding to the uncollected restitution debt through a potential expansion of authority could lead to further collection challenges.