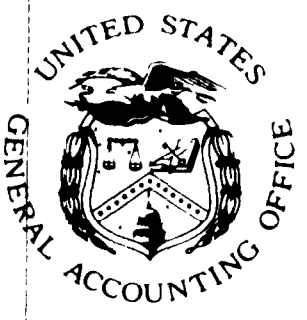
BY THE U.S GENERAL ACCOUNTING OFFICE

Report To The Attorney General

Opportunities For Immigration And Naturalization Service To Improve Cost Recovery and Debt Collection Practices

During fiscal year 1983, to recover costs for services it provides, the Immigration and Naturalization Service increased many of the fees it charges aliens applying for immigration benefits These revisions will increase fee collections by about $23 million annually, giving INS a total revenue from fees and other sources of approximately $58 million annually

GAO commends INS for actions it has already taken to fully recover costs In addition, GAO's work identified other opportunities for INS to increase collections by as much as $8 to $10 million annually in the near term with potential for more in the future



GAO/GGD-84-86
JULY 13, 1984

UNITED STATES GENERAL ACCOUNTING OFFICE
WASHINGTON, D.C. 20548

GENERAL GOVERNMENT
DIVISION

B-215238

The Honorable William French Smith
The Attorney General

Dear Mr. Attorney General:

We recently completed a review of selected revenue-producing activities of the Immigration and Naturalization Service (INS). Our objective was to determine whether INS is recovering the costs of services provided to identifiable recipients. In addition, we wanted to determine how effective INS has been at collecting debts owed the federal government. We also identified an opportunity for the Executive Office for Immigration Review (EOIR)[1] to increase fees in order to more fully recover costs for services provided. The information contained in this report was developed at INS headquarters and the Southern and Western Regional Offices, including field offices in San Diego and Los Angeles, California; Dallas, Texas; and Miami, Florida. A more detailed discussion of the objectives, methodology, and scope of our work is contained in appendix I.

During fiscal year 1983, INS increased many of the fees it charges aliens filing applications for immigration benefits. We estimate that these revisions will increase fee collections by about $23 million annually, for a total revenue from fees and other sources of approximately $58 million annually.

We commend INS for the actions it has already taken to fully recover costs. In addition, our work has identified other opportunities for INS to increase collections by as much as $8 to $10 million annually in the near term with potential for more in future years. Some of these opportunities have been addressed in prior GAO reports or internal audits by INS and the

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[1]The Executive Office for Immigration Review was created within the Department of Justice effective February 15, 1983. The EOIR supervises the Board of Immigration Appeals which manages, directs, and controls immigration judicial review programs.

and the EOIR to further increase fees to recover additional costs of approximately $1 million annually in the near term with potential for more in future years. To do this, INS and the EOIR need to (1) review fees annually and adjust them as required by Office of Management and Budget (OMB) Circular A-25 and (2) implement proposed fee increases. INS also needs to review a statutory maximum inspection fee for private aircraft and vessels which appears to be inadequate to recover costs and, if warranted, propose legislation to raise it.

BILLING AND COLLECTION PRACTICES CAN BE STRENGTHENED

The Federal Claims Collection Standards (4 C.F.R. 102.1) require federal agencies to "take aggressive action, on a timely basis with effective followup, to collect all claims of the United States . . . ." As of September 1983, INS had delinquent accounts receivable amounting to more than $118 million, $112 million of which was more than 1 year past due. Approximately $108 million of accounts receivable is comprised of fines imposed against individuals during the Cuban Boatlift and is considered by INS' Associate Commissioner for Examinations to be largely uncollectible. However, according to INS finance officials, most of the remaining accounts receivable are owed by either carriers for inspectional overtime and fines for immigration violations or by surety companies for breached immigration bonds.

Although INS recognizes the need to improve its billing and collection practices, and has taken or considered some corrective actions, our work shows that other opportunities exist for INS to make improvements. For example, INS was not ensuring that debts were identified, recorded, and billed promptly. Not doing so has resulted in an understatement of accounts receivable and a writing-off of debts which could have been collected if pursued in a timely manner. Also, INS does not know how much specific carriers or surety companies owe it nationally because its accounts receivable are tracked by bill number and not by debtor.

INS requires that carriers post a bond or a cash deposit with Customs to cover the payment of certain fines INS imposes, pending a final determination of liability. Without such a guarantee, Customs is required to withhold clearance of the aircraft or vessel involved. However, until recently, INS had not collected on such bonds. For example, INS' Southern Region recently collected more than $50,000 in fines and liquidated

RECOMMENDATIONS

We recommend that the Attorney General direct the Commissioner of INS to:

--revise INS policy to require reimbursement from airlines for (1) inspectional overtime at nondesignated international airports of entry and (2) excess preclearance costs outside the United States;

--(1) review fees annually and adjust them in accordance with OMB requirements, (2) review the adequacy of the $25 maximum charge for private aircraft and vessel inspections, and, if appropriate, propose legislation to increase it, and (3) work with the EOIR on implementing proposed fees for appeals;

--establish controls to ensure that debts owed the government are promptly identified, recorded, and billed;

--establish debt ceilings and a system to track debt levels and bond coverage nationwide, by company, to ensure that bond amounts are adequate to cover the total potential loss from company default;

--require that bonds from airlines cover liquidated damages as well as fines; and

--demand payment from surety companies for breached immigration bonds and delinquent debts owed by carriers and, through Treasury, pursue decertification of surety companies that fail to pay.

We also recommend that the Attorney General direct the EOIR to work with INS in implementing proposed fees for appeals.

AGENCY COMMENTS AND OUR EVALUATION

The Department of Justice provided written comments on our report which are included as appendix III. Justice generally agreed with the facts, conclusions, and recommendations presented and stated that the initiatives INS plans to take in response to our recommendations will contribute substantially to (1) a greater recovery of costs for services provided to identifiable recipients and (2) a more effective process for collecting debts owed the federal government. Justice provided additional information regarding issues discussed in our report and outlined its planned actions in response to our recommendations. Except as noted below, we have revised the report to reflect these comments.

The intent of our recommendation is to provide an additional collection tool when cancellation of the agreement would be difficult or ineffective. The Immigration and Nationality Act authorizes the Attorney General to enter into transit-without-visa contracts with transportation lines, including bonding agreements. In at least one instance, INS was fortunate to collect more than $50,000 in delinquent fines and liquidated damages owed by a bankrupt airline, even though the subject bond does not specifically cover liquidated damages. In this case, cancellation of the transit-without-visa agreement would not have been an effective collection tool. Since the Congress authorized bonds for liquidated damages, we believe it makes sense for INS to avoid potential difficulties by revising the bonds to clearly specify their applicability to liquidated damages as well as fines.

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As you know, 31 U.S.C. §720 requires the head of a federal agency to submit a written statement on actions taken on our recommendations to the Senate Committee on Governmental Affairs and the House Committee on Government Operations not later than 60 days after the date of the report and to the House and Senate Committees on Appropriations with the agency's first request for appropriations made more than 60 days after the date of the report. Copies of this report will be provided to those committees.

We appreciate the cooperation given our representatives during this review and welcome the opportunity to discuss these matters with you or your staff.

Sincerely yours,

W. J. Anderson

William J. Anderson
Director

OBJECTIVES, SCOPE, AND METHODOLOGY

The first objective of our review was to determine whether INS is taking full advantage of opportunities to recover the costs of services which provide special benefits to identifiable recipients. Our second objective was to determine whether INS' billing and collection practices assure timely and effective collection of debts owed the federal government.

The information contained in this report was developed at INS headquarters in Washington, D.C., and the Southern and Western INS Regional Offices, including four field offices located in Los Angeles and San Diego, California; Dallas, Texas; and Miami, Florida. These locations were selected because INS records showed them to have a high level of cost reimbursable activities and a large dollar value of accounts receivable. At these locations, we interviewed INS officials responsible for cost recovery and debt collection activities, including officials in Examinations, Financial Management, and the Office of the General Counsel. In addition, we interviewed Customs officials at these locations regarding similar activities within the Customs Service.

To accomplish the first objective, we reviewed the laws and legislative histories relating to recovery of costs for inspectional overtime, preclearance of air travelers outside the United States, and fees charged aliens applying for immigration benefits. We reviewed INS and Customs interpretations of these laws and relevant documents, including INS and DOJ studies, legal opinions, and internal audit reports.

To accomplish the second objective, we reviewed laws and regulations relating to billing and collection of debts owed the federal government. We reviewed INS' guidelines, practices, and records for debt collection, including the use of bonds as a collection tool. We interviewed fines officers at each of the INS district offices visited as well as the legal counsels and finance officials of the Southern and Western INS Regional Offices. We also interviewed INS headquarters officials responsible for billing and collection activities and reviewed INS' studies, proposals, and internal audit reports regarding collection activities. Our review was performed in accordance with generally accepted government auditing standards during the period June through October 1983.

Counsel concluded in 1981 that the policy was within the discretion of the Justice Department but that the policy could be revised to require reimbursement from airlines at landing rights airports. Despite a February 1981 recommendation by the President's Management Improvement Council that the issue be resolved, INS' policy remains unchanged.

INS' overtime records for fiscal year 1982 indicate that more than 50 percent--approximately $10 million--of its overtime costs were not reimbursed. On the other hand, only about 16 percent of Customs' overtime costs were not reimbursed. If INS were to change its reimbursement policy, as discussed above, we estimate it could recover a higher percentage of overtime costs and thereby increase revenue by approximately $7 million annually.

Excess preclearance costs should be reimbursed

INS and Customs perform inspections outside the United States to preclear air travelers at the request of airlines. Existing statutes authorize reimbursement for overtime and excess costs, such as housing and post-of-duty allowances, expended in providing preclearance services. Both agencies charge airlines for inspectional overtime; however, only Customs charges for excess costs. INS can increase its revenue by at least $650,000 annually by requiring reimbursement from airlines for excess preclearance costs.

In 1968, the Assistant Secretary of Treasury requested the Comptroller General to consider whether a charge for Customs' expenses in providing preclearance services would be authorized or required by 31 U.S.C. 483a (now 31 U.S.C. 9701). This "user fee" statute provides that agencies may prescribe regulations establishing charges for government services that benefit identifiable recipients. The Assistant Secretary explained that Custom's cost to perform inspections in Canada was considerably greater than its costs to perform inspections in the United States. The Comptroller General agreed in 48 Comp. Gen. 24 (1968) that a charge covering the excess cost of providing preclearance of air travelers in a foreign country would be authorized. See also 59 Comp. Gen. 389 (1980).

According to Customs regulations (19 C.F.R. 24.18), reimbursable excess costs for preclearance include expenses for items such as housing, post-of-duty allowances, and transportation of family members and household effects. In fiscal year 1982, airlines reimbursed Customs approximately $2.7 million in excess preclearance costs.

INS charges fees for processing various types of applications and petitions, such as an application for a re-entry permit or a petition for naturalization. There were about 40 INS fees in effect during fiscal year 1982, resulting in approximately $22 million in revenue. According to the Independent Offices Appropriations Act of 1952 (31 U.S.C. 9701 (a)), the Congress intends for services provided by federal agencies to be self-sustaining to the fullest extent possible. OMB Circular A-25 provides guidance for determining direct and indirect costs that agencies should consider in establishing fees. The Circular requires that "The cost of providing the service shall be reviewed every year and the fee adjusted as necessary."

On the basis of its 1982 review of costs and fees, INS amended the existing fee schedule and published a final rule on April 5, 1983 (48 Fed. Reg. 14572). Although we recommended in a 1969 report[1] that INS review user fees annually and include all direct and indirect costs in its calculations, INS finance officials told us that fees had not been previously reviewed or revised since May 1980, and INS had not considered all allowable indirect costs in establishing fee levels prior to the 1982 review.

In commenting on our report, Justice stated that before the 1982 fee revision, the views of INS finance officials regarding the inclusion of indirect costs in the setting of fee amounts differed from the views of GAO. At that time, the government's emphasis was on service to the public and reasonable fee charges for benefits received. These INS views also explain why fees were not reviewed each year. Justice stated that with the emphasis now being placed on the governmentwide collection of debts, INS finance officials have changed their criteria. Justice also pointed out that the time needed to review and revise fees, publish them in the Federal Register for public comment, and then publish them in final form precludes INS from strictly complying with OMB requirements for annual reviews and revisions. However, INS will review its methods and all regulations and requirements for carrying out fee changes to ensure that reviews and revisions of fees occur more frequently.

On the basis of proposed fee increases, INS estimated that revenue would increase from approximately $22 million in fiscal year 1982 to $50 million in fiscal year 1983. Since INS did not implement all of its proposed fees, the actual fee revenue should be about $5 million less annually than estimated by INS,

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[1]Need to Revise Fees for Services Provided by the Immigration and Naturalization Service and United States Marshals, (B-125051) Oct. 7, 1969.

Statutory inspection fee should be reviewed

INS' 1931 overtime statute (8 U.S.C. 1353a and b) authorized the Attorney General to establish rates and seek reimbursement for overtime paid to INS employees performing inspectional duties between 5:00 p.m. and 8:00 a.m., or on Sundays or holidays. In 1970, the Congress passed the Airport and Airway Development Act (Public Law 91-258), which established a $25 maximum on overtime charges for government inspection of each private aircraft and vessel. Although the OMB Circular A-25 requirement for annual review applies to both regulatory and statutory fees, INS has excluded the $25 maximum from fee reviews. Consequently, INS does not know the extent to which the $25 fee covers the cost of providing private inspection services.

A 1976 amendment to the Airport and Airway Development Act further restricted federal agencies from charging for inspection during regularly established hours of service on Sundays and holidays and from including administrative overhead costs in computing inspection charges. Therefore, INS bills private aircraft and vessel owners only for overtime paid to inspectors, subject to the $25 maximum. Regional finance branches prepare bills for overtime charges using information provided by inspecting officers on Form "G-202." The form includes information on hours worked, overtime earned, and types of aircraft or vessels inspected.

We reviewed 33 G-202s for inspections performed in the San Diego District to compare overtime paid with billed amounts. For one 3-month period, we found that INS paid $2,274 in overtime and billed only $665, or 29 percent. The remaining $1,609, or 71 percent, was absorbed by the government. We were unable to determine whether this reimbursement percentage is representative on a nationwide basis because, according to INS finance officials, INS does not separately record overtime costs and reimbursements for private inspections.

Customs performs similar inspections and provided data for fiscal year 1982 which indicated total overtime costs of $1,253,115 for private inspections. Of these costs, only $359,624, or approximately 29 percent, was reimbursed by private aircraft or vessel owners. Disregarding overtime exempt from reimbursement on Sundays and holidays by the Airport and Airway Development Act, the reimbursement rate was 44 percent. In view of this reimbursement rate, we believe the $25 maximum fee is no longer adequate to recover a reasonable proportion of program costs.

Debts should be recorded and billed promptly

The first steps in the collection process are establishing that a debt exists and sending a bill to the responsible party. We found that debts for inspectional overtime and fines were not always recorded and billed in a timely manner. Although this was reported in the 1982 INS audit of accounts receivable, we found that the problem persists. Consequently, receivables are, at times, understated and collection becomes more difficult when bills are rendered late. This has resulted in debts being written off which could have been collected if pursued in a timely and aggressive manner.

Administrative fines

When an immigration inspector at an airport discovers a violation of immigration law by an airline, he submits supporting documentation to the designated fines officer in the district office. The fines officer reviews the evidence and, if warranted, serves the liable party with a notice of intention to fine (Form I-79) and a bill (Form G-251). After a 30-day response period, the officer renders a final decision to mitigate, cancel, or impose the fine in full and notifies the party accordingly. At this point, INS regional finance offices are responsible for collecting fines levied, although some remittances are actually paid to Customs district offices, as required by the Immigration and Nationality Act.

In reviewing agency documents and interviewing fines officers, we noted significant delays in recording and billing fine debts. For example, a log book kept in the Los Angeles District to track fine cases indicated a 9-month period in 1982 in which no I-79s or G-251s were served for violations detected. The fines officer explained that no one had been permanently assigned to process fines during that period and that fines were generally given low priority in relation to other duties.

In the Miami District, we were told that several violations by airlines detected in 1981 were cancelled because considerable time had passed since the violations occurred and no processing action had been taken because of the increased workload during the Cuban Boatlift. District office employees were unable to locate applicable records or estimate the amount of cancelled debt. A similar situation was reported to us in the San Diego District Office. Here again, fine cases were cancelled because they had remained unprocessed for so long a time.

The 1982 INS audit report on accounts receivable also cited the lack of timeliness in fines processing. The report specifically stated:

In reviewing actual bills, we noted that established time frames for billing were not always met. For example, the Western Region issued four separate bills to an airline for overtime charges incurred during September 1980 and August 1981. In each case, the initial bill was not issued until at least 3 weeks after the inspection occurred and in three of four cases followup dunning notices were sent every 2 months rather than each month as required. Although the regional counsel sent several demands for payment in 1981, the airline declared bankruptcy with bills totaling $28,000 still outstanding.

Collection practices should be more aggressive

Once debts are established and billed to responsible parties, it is INS' responsibility to aggressively pursue collection. If payment is made on the basis of the initial bill, no additional collection effort is required. However, in view of INS' large delinquent accounts receivable balance, additional collection efforts are often necessary. In our opinion, several opportunities exist for INS to improve its collection of debts that become delinquent and thus reduce accounts receivable and increase funds available to the Treasury.

Federal policy and INS procedures generally require that three written demands for payment be sent at 30-day intervals for debts owed. If payment is not received, several means are available to effect collection, including: (1) requiring payment from surety companies that guaranteed payment through bonds, (2) suspending or revoking debtors' licenses, and (3) referring claims to the Department of Justice for legal action. We found that INS can better utilize available measures to more effectively carry out its debt collection responsibilities.

In commenting on our report, Justice stated that INS staff members from the Offices of the Comptroller, General Counsel, Information Systems, and Examinations are working together to improve compliance with existing instructions and controls to ensure that debts owed the government are promptly identified, recorded, and billed. Furthermore, the staff members plan to identify additional controls needed and develop automated system components that will facilitate recording, billing, and collecting amounts owed.

Bonds can be used more effectively

An immigration bond (Form I-310), or a cash deposit, is required to be posted by carriers with Customs to cover payment of certain fines imposed by INS, pending a final determination of liability. Without such a guarantee of payment, Customs is

securing payment for both administrative fines and liquidated damages for transit-without-visa violations, and INS stated that its primary enforcement tool is the transit-without-visa agreements it has with carriers. We believe the I-310 bond could better serve as an additional enforcement tool if revised to clearly specify its applicability to liquidated damages as well as fines.

In commenting on our report, Justice stated that INS was preparing a legislative proposal to require that the I-310 bonds be posted with the Commissioner of INS rather than Customs district directors. While we did not recommend this change, it may resolve some of the problems noted above and would enable INS to centrally track bond coverage in relation to accounts receivable, as we have recommended.

Decertification of surety companies, an under-utilized collection tool

Bonding companies wishing to do business with the United States are required by law to obtain a certificate of authority from the Secretary of the Treasury as an acceptable surety on federal bonds. When surety companies fail to pay debts owed, either on I-310 bonds for fines or on other bonds, such as those posted to ensure maintenance of status or departure of aliens, INS is to pursue "decertification" through the Treasury Department. Treasury officials told us that decertification is a highly effective means of getting sureties to pay debts owed the federal government but that federal agencies generally have made little use of the decertification process.

In INS' Western Region, for example, a surety company, owing more than $100,000 for bonds breached over approximately a 2-year period, declared bankruptcy. During this period, there was no attempt to revoke the certificate of authority for this surety company. INS has begun to use decertification in its collection efforts with a great deal of success. For example, INS obtained a $1.3 million settlement from a large surety company owing substantial amounts for immigration bonds written over a 4-year period. We commend INS for this collection effort. INS stated that the tangible benefit to the government was not only the $1.3 million collected but also the recognition by other bonding companies that INS was serious about collecting monies. INS pointed out that a great deal of effort goes into preparing for a decertification hearing. In the case discussed here, for example, INS filled 30 three-ring binders with data on the administrative record for each of the 156 bonds breached. Preparing the documentation required 3 weeks of intensive labor by two attorneys.

level. Similarly, demands on sureties and decertification proceedings should be national in scope, or at least coordinated by regions, to avoid unnecessary duplication of effort and to ensure that all amounts owed the federal government are collected to the maximum extent possible.

In commenting on our report, Justice stated that INS is taking steps to establish debt ceilings and a system to track debt levels and bond coverage nationwide. Billing data used in debt collection are being recorded in a computer system. The system will help INS identify the amount of the debt, determine trends regarding the debtor's paying habits and abilities, identify companies that may have financial problems, shorten collection time, identify the exact status of amounts billed, and provide settlement parameters, when appropriate.

APPENDIX III

While INS should recover preclearance costs, it is significant to note the conclusions of the 1982 Department of Justice evaluation of the overall effectiveness of INS' preclearance operations. The report stated that a significant net cost savings (as well as major operational gains) have accrued to INS as a result of the numerous systematic efficiencies available through preclearance. These advantages are evident when inspectional operations are modeled both with and without the preclearance option. Although INS has not recovered specific excess preclearance costs, the overall effect of its preclearance operations has been cost efficient over the years.

Regarding the recommendation to review and revise fees annually, INS' experience has been that the time needed to review and revise fees, publish them in the Federal Register for public comment, and then publish the fees in final form precludes strict compliance with the Office of Management and Budget requirement for annual reviews and revisions. However, INS will review its methods and all regulations and requirements for carrying out fee changes to ensure that reviews and revisions of fees occur more frequently.

GAO's recommendation to review the adequacy of the $25 maximum charge for private aircraft and vessel inspections, and propose legislation to increase it, if appropriate, appears to contradict the intent of Congress to limit charges. When Congress passed the Airport and Airway Development Act in 1970, they established a maximum fee of $25. With a 1976 amendment to the Airport and Airway Development Act, Congress placed additional limits on amounts charged by restricting Federal agencies from charging for inspections during certain periods. However, because of GAO's recommendation, INS will review its costs and determine whether the statutory amounts should be increased.

As the GAO report recommends, INS and the Executive Office for Immigration Review (EOIR) will work together to implement proposed fees for appeals. We believe the two appeal fees should be the same and INS' fee will be increased when EOIR's fee is increased. With respect to the penultimate paragraph on page 5 of Appendix II of the report, which discusses "BIA-related fees," the fee structure relating to appeals and motions within the purview of the EOIR is presently under review. The second sentence of the paragraph should be revised accordingly.

With respect to the collection of debts, INS staff members from the Offices of the Comptroller, General Counsel, Information Systems, and Examinations are working together to improve compliance with existing instructions and controls to ensure that debts owed the Government are promptly identified, recorded, and billed. Furthermore, the staff members plan to identify additional controls needed and develop automated system components that will facilitate recording, billing, and collecting amounts owed.

INS is taking steps to address the recommendation to establish debt ceilings and a system to track debt levels and bond coverage nationwide. Billing data used in debt collection are being recorded in a computer system. The system will help INS identify the amount of the debt, determine trends regarding the debtor's paying habits and abilities, project companies that may have financial problems, shorten collection time, identify the exact status of amounts billed, and provide settlement parameters, when appropriate.

APPENDIX III

The Southern Region was fortunate to collect liquidated damages under an I-310 bond. Liquidated damages were established under a contract executed pursuant to Section 238 of the Immigration and Nationality Act, which is not a section covering the I-310 bond. Another favorable factor in the collection process was that the headquarters of the bankrupt carrier was in the same city as the Regional Counsel who pursued the collection.

With respect to the posting of bonds, INS is preparing a statutory amendment to require that bonds be posted with the Commissioner of Immigration and Naturalization rather than the Customs District Director.

In paragraph 3 on page 4, GAO states INS has not taken sufficient advantage of the decertification procedure. We wish to point out that the Department of Treasury had experienced only one previous decertification effort before INS' General Counsel filed five decertification actions in 1982-83. Additionally, whether or not to decertify a company is a decision for Treasury. GAO may not realize what is involved in preparing the documentation necessary for a decertification hearing. In a decertification action in 1983, INS collected data that filled thirty 3-ring notebook binders, which contained the administrative record for each of the 156 bonds breached. Upon preparation of the documentation which was required to prove the breaches, the surety began payment negotiations. The preparation of the documentation required three weeks of intensive labor by two attorneys.

In Appendix II, page 5, GAO states that they recommended in a 1969 report that INS include indirect costs in fee calculations and review user fees annually. Before the 1982 revision of fees, the views of INS finance officials regarding the inclusion of indirect costs in the setting of fee amounts differed from the views of GAO because of the Government's emphasis on service to the public and the reasonableness of the fees charged for the benefits received. These INS views also explain why fees were not reviewed each year. With the emphasis now being given to the Governmentwide collection of debts, INS finance officials have changed their criteria. As for 1983, INS did not complete a review of fees because the fiscal year 1982 fees were not published in final form until 1983.

In the fourth paragraph on page 6 of Appendix II, GAO states that INS did not adopt its proposed increases for certain administrative appeals to avoid disparity with the fee for filing a similar appeal to the Board of Immigration Appeals. INS officials decided that the INS administrative decision motion fee should not exceed the fee for an appeal of a decision issued by an Immigration Judge. INS believed public response would be extremely negative and raising only the INS fees might force the issue into the courts.

The last sentence in the third full paragraph on page 8 of Appendix II could mislead readers. INS finance officials did not state that millions of dollars are owed INS in addition to the $118 million mentioned earlier in the paragraph, although the sentence could easily be interpreted that way.

Overall, we believe that the initiatives INS plans to take with respect to GAO's recommendations will contribute substantially to a greater recovery of

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Department of Justice (DOJ). While INS recognizes the need for strengthening and improving cost recovery activities and has implemented many changes, we believe it should move forward in other areas to build upon recent progress. These opportunities are highlighted below and discussed in more detail in appendix II.

FEDERAL POLICY FOR ESTABLISHING FEES AND COLLECTING DEBTS

Federal policy is clear regarding cost recovery and debt collection issues. The Congress has enacted numerous statutes authorizing and directing agencies to (1) recover the costs of services which benefit identifiable recipients and (2) aggressively collect debts owed the government.

Since 1952, the Congress, as presently stated in 31 U.S.C. 9701(a), has felt that each service provided by a federal agency should be self-sustaining to the fullest extent possible. A 1968 amendment to Section 344(a) of the Immigration and Nationality Act, Public Law 90-609, eliminated fixed statutory fees related to petitions for naturalization and authorized the Attorney General to set fees. More recently, the Debt Collection Act of 1982 provided expanded authority for agencies to collect debts owed the government, and the Federal Managers' Financial Integrity Act of 1982 required agency heads to ensure that internal controls are in place to guard against waste in federal programs and to ensure timely resolution of audit findings. The current administration has also emphasized the need for sound cash management and debt collection practices.

RECOVERY OF COSTS FOR INSPECTION SERVICES CAN BE IMPROVED

Although INS is authorized to recover certain costs of providing inspection services to airlines, it is not recovering such costs to the fullest extent possible. INS has traditionally not charged carriers for (1) most inspection overtime costs at airports not designated by the Secretary of the Treasury as "international airports of entry" and (2) all excess costs of inspections performed outside the United States (preclearance). If INS were to charge for these services, as do Customs and other federal inspection agencies, it could recover additional costs of approximately $7.6 million annually.

MANY FEES INCREASED TO RECOVER COSTS BUT MORE CAN BE DONE

INS increased fees charged aliens applying for immigration benefits in April 1983. We commend INS for this action which is expected to result in increased fee collections of approximately $23 million annually. Our work identified opportunities for INS

damages[2] owed by a bankrupt airline from the surety company which posted the bond. However, approximately $100,000 is still owed to three other INS regions by the same bankrupt airline. We believe that INS should coordinate its collections efforts nationally so that one claim can be pursued for all amounts owed INS by carriers and surety companies.

In the example mentioned above, INS' Southern Region was fortunate to collect from the surety company for both fines and liquidated damages since the bonds do not clearly specify their applicability to liquidated damages. We believe that INS should revise the bonds to clearly show that both fines and liquidated damages are covered.

Surety companies wishing to do business with federal agencies are required by law to obtain a certificate of authority from the Secretary of Treasury as an acceptable surety on federal bonds. When a surety company fails to pay debts owed, an agency can ask that the surety company's certificate of authority be revoked (decertification) by Treasury. INS has begun to use decertification in its collection efforts with great success. For example, INS recently collected $1.3 million from a surety company after initiating decertification proceedings through Treasury. We believe INS should continue to use decertification as a means to encourage payment of delinquent bills or to revoke the surety's authority to continue doing business with the federal government.

CONCLUSIONS

Although INS recognizes the need to more fully recover costs and improve collection activities, and has taken some corrective actions, we found that it has missed some opportunities. INS can more fully recover costs for certain services provided to the airlines and for certain fees related to applications for immigration benefits. Also, INS can more effectively and aggressively bill for and collect debts owed the federal government.

Both the Congress and the executive branch have clearly established that it is the federal government's policy to recover costs to the fullest extent possible and to improve debt collection. We believe that the Commissioner of INS should establish the appropriate internal controls and take the steps necessary to accomplish the federal government's goals in these areas.

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[2]Liquidated damages are assessed to cover anticipated losses caused by a breach of contract. INS enters into contracts with airlines to ensure departure of aliens transiting the United States without visas and assesses liquidated damages ($500 per alien) when aliens fail to depart.

Justice agreed with our recommendation to require reimbursement from carriers for inspection overtime at nondesignated airports and stated that INS is considering two options--either to amend its regulations or to delay this change while the Congress considers new overtime legislation. We encourage INS to choose the first option and revise its regulations. This can be accomplished under INS' existing authority and would enable INS to begin recovering inspection overtime costs sooner. In addition, the revised reimbursement policy would be in place should a new overtime statute be enacted.

Justice commented that INS will review the adequacy of the $25 maximum charge for private aircraft and vessel inspections in relation to its costs. However, Justice believes that proposing legislation to increase the maximum charge may contradict congressional intent to limit private inspection charges. On the contrary, congressional policy regarding fees generally states that each service provided by a federal agency be self-sustaining to the fullest extent possible. Further, OMB Circular A-25 requires that statutory fees be reviewed annually and that remedial legislative proposals be submitted when appropriate. This process provides the Congress needed cost data it can consider, along with other information, to decide whether a statutory fee should be increased, reduced, or eliminated in light of changed circumstances. As discussed in our report, the $25 maximum fee was established more than 13 years ago and related costs have increased substantially. If the Congress believes these charges should continue to be limited, it may still decide to raise the maximum charge to account for inflation and increased costs.

Justice stated that INS is unable to immediately implement our recommendation that it revise bonds obtained from carriers to cover liquidated damages as well as fines. Justice stated that this would be a significant departure from INS' practice of relying on the transit-without-visa agreement as its primary enforcement tool.[3] Consequently, INS is requesting the opinion of its General Counsel on the legal impact of the change. INS also believes that its authority to cancel an airline's transit-without-visa agreement is a more effective collection tool than recovery in a bond proceeding.

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[3]INS and a transportation line enter into a transit agreement on Form I-426 (Immediate and Continuous Transit Agreement Between a Transportation Line and the United States of America). The agreement is to ensure that aliens, en route to a specifically designated country, who enter the United States without a passport and visa are transported in immediate and continuous transit through the United States to that country.

COST OF INSPECTION SERVICES SHOULD BE RECOVERED

Although INS is authorized to recover certain costs of providing inspection services to airlines, it is only collecting about half of the potential reimbursement. INS has traditionally not charged carriers for (1) most inspectional overtime at nondesignated international airports of entry and (2) all excess costs of preclearance operations outside the United States. If INS were to charge for these services, as do Customs and other federal inspection agencies, it could increase reimbursement by approximately $7.6 million annually.

More inspectional overtime costs can be recovered

When INS incurs certain overtime costs outside normal operating hours, it has the authority to bill commercial carriers for those costs. However, INS has exempted carriers at most locations from paying if they are operating on regular schedules. This policy, which is more generous than those of other federal inspection agencies, such as the Customs Service and the Department of Agriculture, results in the government failing to recover millions of dollars in overtime costs which carriers should be required to pay.

INS' 1931 overtime statute, as amended, requires that owners, operators, or agents of aircraft and vessels reimburse the agency for the extra compensation paid to inspect passengers and crews arriving outside normal operating hours, which are generally 8:00 a.m. to 5:00 p.m. The statute provides an exemption for carriers arriving at "designated ports of entry," when operating on regular schedules, from paying for overtime services. INS, however, has interpreted the exemption more generously than the statute provides. Other federal inspection agencies charge air carriers for most inspectional overtime at "landing rights" airports, those that are not designated "international airports of entry" by the Secretary of the Treasury (19 C.F.R 6.13). INS has administratively exempted carriers from overtime responsibility at landing rights airports when they are operating on regular schedules, although the statute provides the exemption only at designated ports of entry. Because most major airports fall into the landing rights category, a substantial amount of potential overtime reimbursement is involved.

This issue, which was previously identified in an INS internal audit, was subsequently addressed in legal opinions by both INS' General Counsel and the Department of Justice's (DOJ) Office of Legal Counsel. While INS' General Counsel concluded in 1980 that the agency exceeded its authority in extending the exemption to landing rights airports, DOJ's Office of Legal

Although INS incurs excess costs similar to Customs, it has traditionally not sought reimbursement. We reviewed INS preclearance costs for fiscal year 1982 and identified four excess cost items similar to those Customs recovers from airlines. INS' obligations totaled approximately $650,000 and included allowances for cost-of-living, transportation, moving, and quarters expenses. We believe this figure represents the minimum amount which INS could have recovered in preclearance reimbursements for fiscal year 1982. INS' Assistant Commissioner for Inspections agreed that a charge for excess preclearance costs would be appropriate and that our estimate is probably a conservative one.

In commenting on our report, Justice stated that INS should capitalize on the precedent--from both the legal and operational standpoints--set by Customs. To initiate this action, the INS Associate Commissioner, Examinations, is requesting from the INS Comptroller a determination on the specific categories where differences in costs between U.S. and overseas duty stations are apparent and how INS may most effectively recover these costs. Applicable regulations will then be revised accordingly.

REVENUE FROM FEES INCREASED SUBSTANTIALLY, BUT FURTHER OPPORTUNITIES EXIST

In April 1983, INS increased fees charged aliens applying for immigration benefits. We commend INS for this action which is expected to result in an increased fee revenue of approximately $23 million annually. Our work disclosed opportunities for INS and the Executive Office for Immigration Review (EOIR) to further increase fee revenue by approximately $1 million annually in the near term with potential for more in future years. To do this, INS and the EOIR need to (1) ensure that fees are reviewed annually and adjusted in accordance with OMB requirements and (2) implement proposed fee increases and a new fee for appeals. INS also needs to review a statutory inspection fee and, if appropriate, propose legislation to raise it.

Internal controls are needed to ensure timely revision of fees

In 1982, INS performed a study of fees charged aliens for applications for various immigration benefits. A new fee schedule was published in the Federal Register in April 1983 which we estimate will double the annual fee revenue from approximately $22 million to more than $45 million annually. While INS should be commended for increasing fees, it could have generated much more revenue if fees were reviewed annually and revised in accordance with OMB requirements. In view of the substantial amounts of revenue involved, we believe INS and the EOIR should establish appropriate internal controls to ensure that fees are reviewed annually and revised when warranted in the future.

or a total of $45 million. INS finance officials attributed the projected increase in fee revenue to the effects of (1) including additional indirect costs and (2) inflation since fees were last revised, 3 years earlier.

Proposed fee increases should be implemented

INS published a proposed rule in the Federal Register on August 26, 1982 (47 Fed. Reg. 37556) which included a new fee for filing an appeal to the Board of Immigration Appeals (BIA) on immigration judges' decisions which require an alien to post a bond. INS also proposed fee increases for existing administrative appeal processes. Subsequent to the proposed rule, BIA was placed under the EOIR within the Department of Justice. Because of this organizational change, INS could not implement the new fee or the proposed fee increases for appeals when it adopted the new fee schedule.

When publishing the new fee schedule, INS stated that changes in the BIA fees, which include fees for applying for stay, suspension, or temporary withholding of deportation and for filing an appeal on immigration judge decisions, could be initiated by the EOIR. On the basis of projected fiscal year 1983 volumes provided by INS and the proposed fee increases, we estimate that a minimum of approximately $430,000 in additional recovery of EOIR costs is being lost annually because the fees have not been revised.

Also, to avoid disparity with the fee for filing a similar appeal to the BIA, INS did not adopt its proposed increases for certain administrative appeals. Justice stated that INS believed public response would be extremely negative and that if INS' fees for appeals were higher than BIA's, the issue could be challenged in the courts. Specifically, INS had proposed raising the fee for filing an appeal and the fee for filing a motion to reopen or reconsider an administrative decision from $50 to $110. The fee for filing an appeal to the BIA is $50 and no longer under INS jurisdiction. We estimate that INS is losing approximately $550,000 annually by failing to revise fees on the approximately 9,200 administrative appeals for which the fee increase was proposed.

In commenting on our report, Justice stated that EOIR fees relating to appeals and motions were under review and that INS' fees for appeals would be increased when EOIR's fees are increased.

OMB Circular A-25 directs agencies to submit legislative proposals to adjust charges for services which are limited or restricted by existing law. Although Customs officials indicated that a proposal to raise the inspection fee maximum to $50 was discussed in agency appropriation hearings, they were unable to provide us with supporting documentation. INS has not reviewed the adequacy of the fee for inspecting private aircraft and vessels since the maximum was established in 1970 and therefore has no basis for determining whether the fee should be adjusted.

The cost of inspecting private aircraft and vessels has increased significantly because of federal pay raises over the past 13 years. For example, the annual salary of a GS-9 inspector has more than doubled, from $9,881 in 1970 to $20,256 in 1983. The effect of inspector salary increases is ultimately reflected in higher amounts of overtime paid to inspectors. In view of these increased costs and the low recovery rate, we believe INS should review the adequacy of the fee and, if appropriate, propose legislation to increase the $25 limit.

BILLING AND COLLECTION PRACTICES CAN BE STRENGTHENED

The Federal Claims Collection Standards (4 C.F.R. 102.1) require federal agencies to "take aggressive action, on a timely basis with effective followup, to collect all claims of the United States . . . ." As of September 1983, INS had delinquent accounts receivable amounting to more than $118 million, $112 million of which was more than 1 year past due. Approximately $108 million of delinquent accounts receivable is comprised of fines imposed against individuals during the Cuban Boatlift and is considered by INS' Associate Commissioner for Examinations to be largely uncollectible. However, according to INS finance officials, most of the remaining accounts receivable are owed by carriers for inspectional overtime and fines for immigration violations and by surety companies for breached immigration bonds.

INS recognizes the need to improve its billing and collection practices. It appointed a debt management officer in fiscal year 1983 and has considered establishing a national office to improve accountability for fines and liquidated damages. Our work, as well as prior work by INS and DOJ internal auditors, shows that several opportunities exist for INS to further improve the billing and collection of debts owed the federal government through more aggressive action and better internal controls.

> "At district offices, Notices of Intention to Fine (Form I-79) for specified violations were not generally prepared and sent to companies or individuals for months and sometimes years after the violations occurred and the fines were recommended. As a result, bills (Form G-251), which establish accounts receivable and potential cash collections, were not prepared in a timely manner . . . . Officers responsible for processing and adjudicating fines said other duties of providing service to the public did not permit timely adjudication of fines."

In response, the Associate Commissioner for Examinations stated that a proposal to create a National Fines Office to handle administrative fines and liquidated damages was under consideration. The proposal text suggests that the Office would offer several improvements in fines processing such as faster I-79 service, timely final decisions, and better manpower utilization. The Associate Commissioner indicated that a decision on implementing the National Fines Office was expected early in fiscal year 1983; however, internal disagreement over staffing levels and functional responsibilities has delayed a decision.

Inspectional overtime

Guidelines for computing and billing inspectional overtime are outlined in INS' Administrative Manual, sections 2818 and 2977. Regional finance offices prepare bills to carriers using data provided by inspecting officers on Forms G-202. These forms are to be forwarded for each inspection on a daily basis to ensure prompt bill issuance. The 1982 INS audit report stated that delays in G-202 submission and subsequent billing resulted in understated accounts receivable and slow collection of money owed the government. Our work indicates that these problems continue and require the renewed attention of management.

In the Southern Region, a billing clerk in the Budget and Accounting Office told us that inspecting officers were not submitting G-202s on a timely basis. The clerk indicated that he routinely waits 2 to 3 weeks to ensure that all G-202s are received before billing for overtime at Miami International Airport. Charges for these inspections are prorated among airlines on the basis of total overtime paid. Therefore, G-202s must be received from all inspecting officers before an accurate and complete bill can be prepared. For inspections at other locations, bills are usually prepared within 1 working day after receiving the G-202s; however, the clerk noted that occasionally he has to contact officers regarding missing G-202s.

required to withhold clearance of the aircraft or vessel involved. However, until recently, INS had never collected on an I-310 bond. We see several opportunities for INS to more effectively use the I-310 and other bonds to improve its ability to collect debts owed the government.

Several factors have limited the effective use of the I-310 bond as a collection tool. The bond is to be posted at the port-of-entry where the airline conducts its principal operations. The Immigration and Nationality Act requires that the bond be approved by Customs and that payment of some INS fines be made to Customs as well. However, INS regional finance offices maintain accounting control over fines, and INS legal proceedings counsels are responsible for collecting delinquent debts.

Neither INS nor Customs keeps accurate, comprehensive records of I-310 bonds in relation to fines outstanding. Although copies of I-310 bonds are sometimes exchanged between INS and Customs offices, neither agency keeps a central file of bond amounts posted, and none of the officials we spoke with in either agency fully understood how a particular bond could be located or when a claim should be filed against a surety company. INS finance officials told us that the I-310 bond was set up many years ago when the primary mode of transportation was by vessel, and Customs' authority to withhold clearance to depart was a more effective enforcement tool.

INS' Southern Regional Counsel was recently successful in collecting more than $50,000 on an I-310 bond for fines and liquidated damages owed by a bankrupt airline. In discussing the effort, he commented that no written procedures existed for collecting on the bond. However, since the airline involved declared bankruptcy, going after the surety company which posted the I-310 bond was the only available means to secure payment. Even though other airlines have gone bankrupt or owe large sums to INS, we were told by the Southern Regional Counsel that no other attempts had been made to collect on I-310 bonds. In addition, the Southern Regional Counsel collected debts owed in INS' Southern Region only. Approximately $100,000 is still owed to the other three INS regions by the same bankrupt airline. We believe INS should coordinate its collection efforts nationally so that one claim and one decertification process can be pursued for all amounts owed INS by carriers or surety companies.

The Immigration and Nationality Act provides that a vessel or aircraft may be granted clearance to depart the United States prior to the determination of liability for payment of fines authorized under the act, only if funds are deposited or a bond with sufficient surety to secure payment is approved by the collector of Customs. The Southern Region was successful in

Treasury officials told us that requesting decertification is often an effective way to obtain payment because surety companies benefit greatly from being on Treasury's list of bonding companies certified to do business with the United States. They cited examples in which companies had paid debts owed federal agencies after being informed that an agency had requested decertification. A 1982 DOJ audit also endorsed the value of requesting decertification:

> "We believe the cost of collecting delinquent bills can be reduced by removing these companies from the Treasury approved list. Companies having delinquent bills should not be allowed to continue doing business with the federal government."

INS' Southern Regional Counsel used the decertification tool in obtaining payment on the I-310 bond previously discussed (see p. 12). We believe INS should continue to make better and more timely use of decertification as a means of encouraging prompt payment from sureties and preventing large dollar losses that can result from accepting bonds from companies that fail to meet their obligations in a timely manner.

In commenting on our report, Justice stated that INS' General Counsel is actively pursuing collection of breached bonds from insurance companies. In addition, during 1983, the General Counsel's staff developed the administrative record necessary to support a decertification action against a surety company. As a result of the record, the surety company began payment negotiations.

Debt ceilings and better information on debt are needed

To use bonds and the decertification process effectively as debt collection tools, INS management needs to know how much is owed INS by companies nationwide. Although the 1982 INS audit of accounts receivable pointed out the need to improve INS' automated accounting system, as of October 1983 the system could not provide information on how much a specific carrier or surety company owed INS, either regionally or nationally.

In view of INS' large accounts receivable balance and large dollar losses which have resulted from its continuing to provide services to and accept bonds from companies already owing large sums, we believe INS should establish maximum debt ceilings. If debt ceilings were secured by bonds and INS took action against companies that failed to meet their obligations, INS could significantly lessen the risk of large dollar losses. Since most major airlines do business in more than one INS region, debt levels and bond amounts should be tracked at the national

U.S. Department of Justice

Washington, D C 20530

April 17, 1984

Mr. William J. Anderson
Director
General Government Division
United States General Accounting Office
Washington, D.C. 20548

Dear Mr. Anderson:

This letter responds to your request to the Attorney General for the comments of the Department of Justice (Department) on your draft report entitled "Opportunities for the Immigration and Naturalization Service to Improve Recovery of Costs and Debt Collection Practices."

The General Accounting Office (GAO) report focuses primarily on the extent to which costs are recovered by the Immigration and Naturalization Service (INS) for services provided to identifiable recipients, and how effective INS has been in collecting debts owed the Federal Government. The Department has reviewed the report and the related appendices and has the following views and comments to offer with respect to the various issues raised and recommendations made.

Concerning the draft report's first recommendation, INS has recently studied the issue of exemptions for inspectional overtime at nondesignated airports, and two alternatives for recovering these costs are being considered. One is to simply amend INS regulations to eliminate carrier exemptions for overtime costs incurred in inspecting arrivals at nondesignated airports. The other alternative would delay changes while Congress considers a pending bill to amend the 1911 Act, covering U.S. Customs Service (Customs) inspection overtime, in concert with repeal of the 1931 Act. Either revision to INS regulations or passage of the overtime legislation will ultimately result in recovery of millions of dollars in overtime charges presently incurred by the United States.

The Department agrees fully with GAO's recommendation that INS should charge carriers for excess preclearance costs. This issue has been raised before and it is clear that INS should capitalize on the precedent--from both the legal and operational standpoints--set by Customs. To initiate this action, the INS Associate Commissioner, Examinations, is requesting from the INS Comptroller a determination on the specific categories where differences in costs between United States and overseas duty stations are apparent, and how INS may most effectively recover these costs. Applicable regulations will then be revised accordingly.

APPENDIX III

The General Counsel expects to have the debt collection information for all INS regions recorded in the computer system within six weeks.

INS is unable to immediately resolve the recommendation to revise bonds obtained from airlines to cover liquidated damages as well as fines. Liquidated damages are incurred by airlines for violating the transit without visa agreement. For the past thirty years, INS has relied on the use of the transit without visa agreement as its primary enforcement tool in ensuring carrier compliance with the law. Since the recommended change represents a significant departure from past INS practice, the Associate Commissioner, Examinations, will request an opinion from the General Counsel on its legal impact. However, the Associate Commissioner, Examinations, finds questionable the premise that the threat of instituting bond recovery procedures would force airline compliance to a greater degree than the potential cancellation of the transit without visa agreement. We believe the possible loss of the agreement places more of a financial incentive on the carrier to pay than would periodic recovery in a bond procedure.

Concerning the last recommendation covering payment from and decertification of surety companies, the INS General Counsel is actively pursuing collection of breached bonds from insurance companies, i.e., Allied, Heritage, Surety of California, International, and Allegheny. In addition, during 1983 the General Counsel's staff developed the administrative record necessary to support a decertification action against a surety company. As a result of the record, the surety company began payment negotiations. The tangible benefit to the Government was not only the $1.3 million collected but also the recognition by other bonding companies that INS was serious about collecting monies.

In addition to our views on the recommendations, we are providing the following comments on specific areas of the proposed report. In the third paragraph on page 3, GAO states that debt collection is controlled independently by each of INS' four regions.[1] Debt collection is not controlled independently by each region. The General Counsel has been designated as the debt collection officer for INS and determines and sets debt collection policy. The Legal Proceedings Counsel performs local debt collections, but reports directly to the General Counsel.

INS does have a record of the amount a specific carrier owes on breached bonds and each region can report and identify each billing referred to it. At this point, only one region has its debt collection information recorded in the computer system. However, within six weeks the Office of General Counsel plans to have the other regions' debt collection billings recorded in the computer system, which will permit complete tracking of all bills submitted to Regional Counsels for collection.

Concerning the fourth paragraph on page 3, the bonds posted for the airlines have been under Customs control. INS has not been able to obtain the bonds from Customs, thus limiting collection efforts. The I-310 bond, which is the bond filed with Customs, is filed solely for the purpose of covering fines and penalties under specific provisions of the Immigration and Nationality Act.

[1]This comment refers to a statement contained in the draft report sent to the Department for comment. This statement was eliminated from the final report.

APPENDIX III

costs for services provided to identifiable recipients and to a more effective debt collection process for collecting amounts owed the Federal Government.

We appreciate the opportunity to comment on the report. Should you have any questions regarding our comments, please feel free to contact me.

Sincerely,

William D. Van Stavoren
Deputy Assistant Attorney General
for Administration

GAO note: Page numbers have been changed to correspond to those in the final report.

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