

March 2004

CRIMINAL DEBT

Actions Still Needed to Address Deficiencies in Justice's Collection Processes



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Highlights of [GAO-04-338](#), a report to the Honorable Byron L. Dorgan, U.S. Senate

Why GAO Did This Study

In July 2001, GAO reported that outstanding criminal debt, as reported in Department of Justice (Justice) statistical reports, had increased from about \$6 billion as of September 30, 1995, to more than \$13 billion as of September 30, 1999. Although some of the key factors that contributed to this increase were beyond Justice's control, GAO concluded—after accounting for such factors—that Justice's criminal debt collection processes were inadequate.

Accordingly, in the 2001 report, GAO made 14 recommendations to Justice to improve the effectiveness and efficiency of its criminal debt collection processes.

To follow up on the 2001 report, GAO was asked to (1) provide information on the amount and growth of criminal debt for fiscal years 2000 through 2002, (2) examine the extent to which Justice has acted on GAO's previous recommendations, and (3) review Justice's collection efforts for selected criminal debt cases related to white-collar financial fraud. This report addresses the first two objectives; GAO will report separately on its ongoing work to address the third.

What GAO Recommends

While GAO is not making any new recommendations in this report, it reaffirms those made in 2001 for which actions have not been completed.

www.gao.gov/cgi-bin/getrpt?GAO-04-338.

To view the full product, including the scope and methodology, click on the link above. For more information, contact Gary T. Engel at (202) 512-3406 or engelg@gao.gov.

CRIMINAL DEBT

Actions Still Needed to Address Deficiencies in Justice's Collection Processes

What GAO Found

Justice reported an unaudited amount of total outstanding criminal debt of about \$25 billion as of September 30, 2002, almost double when compared to Justice's unaudited amount from 3 years earlier. This increase, which was not unexpected, continued a trend that began in fiscal year 1996. A primary factor contributing to the increase is a mandate that requires restitution to be assessed regardless of the ability of the offender to pay. As we reported in 2001, collections as a percentage of outstanding criminal debt averaged about 7 percent for fiscal years 1995 through 1999. As indicated in Justice's unaudited records, because collections decreased slightly while debt increased, collections as a percentage of outstanding debt declined to an average of about 4 percent for fiscal years 2000, 2001, and 2002. For each of these 3 fiscal years, according to Justice's unaudited records, about two-thirds or more of criminal debt was related to white-collar financial fraud.

Justice has made progress responding to GAO's 2001 recommendations related to criminal debt collection, but not to the degree that had been expected. A key recommendation in 2001 was for Justice, the Administrative Office of the U.S. Courts, the Office of Management and Budget, and the Department of the Treasury to work as a joint task force to develop a strategic plan that addresses managing, accounting for, and reporting criminal debt. As of mid-December 2003, Justice had not yet worked with these other agencies to develop this plan. We also made 13 interim recommendations to Justice to help improve the efficiency and effectiveness of criminal debt collection while the strategic plan was being developed. Since July 2001, Justice has completed action on 7 of these recommendations; actions to address 4 of the 7 were completed about 2 years after GAO made them. Actions to address the remaining 6 interim recommendations are in process.

According to Justice, GAO did not fully recognize its progress in improving the criminal debt collection process. GAO said that it had given Justice full credit for its efforts to implement the 2001 recommendations, as well as for some related efforts outside the scope of those recommendations. GAO noted, however, that Justice had not yet led efforts to resolve key jurisdictional issues and functional responsibilities. While acknowledging that Justice was laying the foundation for improved collections by establishing policies and procedures in response to certain of the interim recommendations, GAO noted that it is important that the new policies and procedures be effectively implemented and that it will likely take some time for collection results to be realized from full implementation.

Until Justice takes action to fully implement these recommendations, Justice's management processes and procedures will not provide adequate assurance that offenders are not afforded their ill-gotten gains and that innocent victims are compensated for their losses to the fullest extent possible.

Contents

Letter

Results in Brief	1
Background	2
Scope and Methodology	4
Criminal Debt Has Increased Markedly, but Collections Have Decreased Slightly	5
Prompt Action Has Not Been Taken to Address the Majority of Recommendations	6
Conclusion	10
Agency Comments and Our Evaluation	20
	21

Appendix

Appendix I: Comments from the Department of Justice's Executive Office for United States Attorneys	24
GAO's Comments	28

Table

Table 1: Status of Recommendations from the July 2001 Criminal Debt Report	15
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Figures

Figure 1: Criminal Debt Outstanding and Collected for Fiscal Years Ended September 30, 1995, through September 30, 2002	8
Figure 2: Justice's Total Criminal Debt and White-Collar Financial Fraud Debt Outstanding as of September 30, 2000, 2001, and 2002	9
Figure 3: White-Collar Financial Fraud Debt Outstanding and Collected for Fiscal Years Ended September 30, 2000 through 2002	10

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

March 5, 2004

The Honorable Byron L. Dorgan
United States Senate

Dear Senator Dorgan:

In July 2001, we reported that the Department of Justice (Justice) and certain other federal agencies needed to take a number of actions to improve the federal government's criminal debt collection efforts.¹ We reported that outstanding criminal debt, as reported in Justice's U.S. Attorneys' statistical reports,² had increased from about \$6 billion as of September 30, 1995, to over \$13 billion as of September 30, 1999. We noted that four key factors, some of which were beyond Justice's or probation offices' control, contributed to the significant growth in the amount of reported uncollected criminal debt: (1) the nature of the debt, in that it involves criminals who may be incarcerated or have been deported or who have minimal earning capacity; (2) the assessment of mandatory restitution regardless of ability to pay as required by the Mandatory Victims Restitution Act of 1996 (MVRA);³ (3) interpretation by Justice's Financial Litigation Units (FLU) of payment schedules set by judges which limit collection activities; and (4) state laws that may limit the type of property that can be seized and the amount of wages that can be garnished.

However, we also pointed out Justice could do more to improve the collection of criminal debt. We noted as contributing factors to the growth of reported uncollected criminal debt Justice's inadequate policies and procedures for collecting criminal debt, lack of adherence to established

¹U.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). The report covered the debt collection processes of the U.S. Courts, including the Administrative Office of the U.S. Courts and selected probation offices, as well as Justice. In addition, it covered the criminal debt oversight roles of the Office of Management and Budget and the Department of the Treasury.

²These statistical reports, which are published annually, are unaudited.

³Courts are required by 18 U.S.C. § 3663A (2000) to order restitution when sentencing offenders convicted of (1) a crime of violence as defined by 18 U.S.C. § 16 (2000); (2) an offense against property under title 18 of the U.S.C. including any offense committed by fraud or deceit; or (3) an offense related to tampering with consumer products, 18 U.S.C. § 1365 (2000), in which an identifiable victim has suffered a physical injury or pecuniary loss. See also 18 U.S.C. §§ 2248, 2259, 2264, and 2327 (2000).

criminal debt collection procedures at certain Justice districts, and Justice's insufficient coordination with other entities involved in the collection of criminal debt. After taking into account the factors that were not controllable, we concluded that Justice's management processes and procedures did not provide assurance that offenders were not afforded their ill-gotten gains and that innocent victims would be compensated for their losses to the fullest extent possible. We observed that until top management at Justice and the U.S. Courts placed a higher priority on ensuring that the entities involved in the criminal debt collection process more effectively and efficiently pursued collection efforts, the assessment of criminal fines and restitution as an effective punitive tool would be jeopardized, and valuable, limited resources would continue to be wasted on duplicative efforts. Accordingly, we made 14 recommendations to Justice and several to the Administrative Office of the U.S. Courts (AOUSC) to improve the effectiveness and efficiency of the federal government's criminal debt collection processes.

In your request letter and our subsequent discussions with your office, you asked us to (1) provide detailed information on the amount and growth of criminal debt for fiscal years 2000 through 2002, including specific amounts related to white-collar financial fraud; (2) examine the extent to which Justice has acted on our previous recommendations to it to improve criminal debt collection; and (3) review Justice's collection efforts for selected criminal debt cases related to white-collar financial fraud. This report addresses the first two objectives. We will report separately on the results of our ongoing work, which addresses the third objective.

Results in Brief

Justice reported an unaudited amount of total outstanding criminal debt of about \$25 billion as of September 30, 2002, almost double when compared to Justice's unaudited amount from 3 years earlier.⁴ This increase, which was not unexpected, continued a significant upward trend that started in fiscal year 1996, the year MVRA was enacted. According to Justice officials, nonfederal restitution stemming from MVRA's mandatory restitution requirements was the major component of criminal debt outstanding as of September 30, 2000, 2001, and 2002. Justice's unaudited records showed that nonfederal restitution accounted for about 70 percent of total reported

⁴The latest reported data from Justice as of the completion date of our fieldwork in mid-December 2003 were for fiscal year 2002. Justice was still in the process of compiling and summarizing criminal debt information for fiscal year 2003.

criminal debt as of September 30, 2002. As we reported in 2001, the rate of criminal debt collection averaged about 7 percent for fiscal years 1995 through 1999. Due to a significant increase in debt and a slight decrease in collections as indicated in Justice's unaudited records, this rate decreased to an average of about 4 percent for fiscal years 2000, 2001, and 2002. For each of these more recent 3 fiscal years, according to Justice's unaudited records, about two-thirds or more of criminal debt was related to white-collar financial fraud.

Justice has made progress in responding to our recommendations, but not to the degree we would have anticipated. As we reported in 2001, building and sustaining the capacity to address the long-standing problems in collecting outstanding criminal debt—including overcoming fragmented processes and lack of coordination—will require a united strategy among the entities involved. Therefore, we recommended that Justice, AOUSC, the Office of Management and Budget (OMB), and the Department of the Treasury (Treasury) work together in the form of a joint task force to develop a strategic plan that addresses managing, accounting for, and reporting criminal debt. As we recommended, this strategy should include (1) determining the collectibility of outstanding criminal debt amounts so that a meaningful allowance for uncollectible debt can be reported and used for measuring debt collection performance and (2) ensuring that relevant criminal debt information is reported and/or disclosed in applicable executive branch agencies' financial statements and subjecting such information to audit. We previously noted that proper accounting for, reporting, and managing of criminal debt would heighten management awareness and ultimately result in a more effective collection process. However, as of the completion of our follow-up fieldwork in mid-December 2003, Justice had not yet worked with these other agencies to develop the strategic plan, which was a key recommendation. We also made 13 interim recommendations to Justice to stem the growth of reported uncollected criminal debt while Justice and other agencies worked to develop the strategic plan. Since July 2001, Justice has completed action on 7 of the interim recommendations. Actions to address 4 of these 7 recommendations were completed about 2 years after we made them; actions to address the remaining 6 are still in process.

Justice's own criminal debt information, which shows that debt has increased markedly while collections have decreased slightly, strongly supports the need for prompt and decisive management action to ensure full implementation of our prior recommendations. Until such action is taken, including forming a joint task force with AOUSC, OMB, and Treasury

and developing the strategic plan, the effectiveness of criminal fines and restitution as a punitive tool may be diminished, and Justice's management processes and procedures will not provide adequate assurance that offenders are not afforded their ill-gotten gains and innocent victims are compensated for their losses to the fullest extent possible.

Justice stated that we had not fully reflected its efforts to improve the criminal debt collection process. As discussed in the "Agency Comments and Our Evaluation" section at the end of this report and in the more detailed analysis in appendix I following our reprinting of Justice's comments, we believe that the report accurately depicts Justice's efforts to respond to the recommendations made in our July 2001 report to improve criminal debt collection.

Background

Justice is responsible for collecting criminal debt and has delegated operating responsibility to its FLUs within all of Justice's U.S. Attorneys' Offices (USAO).⁵ Justice's Executive Office for United States Attorneys (EOUSA) provides administrative and operational support, including support required for debt collection, to the USAOs. The criminal debt collection process typically begins when an offender is convicted and a judge orders the offender to pay a fine or restitution. In addition to Justice, the U.S. Courts and their probation offices may assist in collecting monies owed. AOUSC provides national standards and promulgates administrative and management guidance, including standards and guidance required for debt collection, to the various U.S. judicial districts. The courts typically receive payments of fines and deposit them in the Crime Victims Fund.⁶ Both the courts and certain FLUs receive restitution payments, which are disbursed to the applicable victims or entities as directed by the courts.

⁵There are 94 districts throughout the country, but USAOs for 2 of them are combined, resulting in 93 USAOs.

⁶Criminal fine payments are required by 42 U.S.C. § 10601 (2000) to be deposited in the Crime Victims Fund except for payments for fines related to the Endangered Species Act, Lacey Act Amendments of 1981, Railroad Unemployment Insurance Act, Federal Water Pollution Control Act, Postal Service Fund, and county public schools.

In our 2001 report, we noted that collection of outstanding criminal debt was a long-standing problem, with many of the problems cited similar to problems that we reported on back in 1985.⁷ Aside from the question of whether those convicted had earnings or assets with which to pay fines or restitution, a number of other factors make collection difficult. These factors, listed below, remain applicable today:

- Criminals may not be willing to comply with the law. Forcing compliance is difficult because criminals are already convicted offenders who may be serving time in prison or may have been deported.
- Imprisoned offenders have limited earning capacity, making potential collections limited.
- A significant amount of time may pass between offenders' arrest and sentencing, thus affording opportunities for offenders to hide fraudulently obtained assets in offshore accounts, shell corporations, family members' names and accounts, or other ways.
- MVRA requires that assessment of restitution be based on actual loss and not on an offender's ability to pay. Therefore, depending on the nature of the crime, collection of the total restitution assessed may be unrealistic from the outset.
- According to 18 U.S.C. section 3613 (2000), most criminal debts must remain on the books for 20 years plus the period of the offender's incarceration and cannot be "written off" prior to the expiration of those periods unless the debtor is deceased or the court approves a petition of remission filed by USAO. Even if Justice determines that certain criminal debts, or a large percentage of them, are not collectible, these debts must remain on the books.

Scope and Methodology

To provide detailed information on the amount and growth of criminal debt, including specific amounts related to white-collar financial fraud, we obtained information from Justice on the amount of (1) outstanding criminal debt as of the end of fiscal years 2000, 2001, and 2002 and

⁷U.S. General Accounting Office, *After the Criminal Fine Enforcement Act of 1984—Some Issues Still Need to Be Resolved*, GAO/GGD-86-2 (Washington, D.C.: Oct. 10, 1985).

(2) related collections for each of these 3 fiscal years. This information has not been audited. However, we reviewed the trends in the amounts and growth of overall criminal debt for these fiscal years. Specifically, we analyzed trends in major components of the debt and reasons for the changes and compared them to similar trends that we had assessed and discussed in our 2001 report. We also discussed the trends with appropriate Justice officials and compared overall criminal debt information provided by those officials to information in existing published Justice reports, when available. We worked with Justice officials to identify the criminal debt categories in Justice's information systems that Justice considers to be white-collar financial fraud.

We obtained an understanding of the key automated information systems Justice uses to track criminal debt amounts and related collections through discussions with Justice officials and review of pertinent documents that describe the systems. We also discussed with Justice officials and obtained appropriate documentation supporting reliability testing performed by Justice on these systems.

To evaluate actions Justice has taken to implement our previous recommendations, we obtained and reviewed pertinent Justice documents, including correspondence to certain congressional committees related to our 2001 report, relevant memorandums, summaries of work performed, proposed actions, revised policy and procedures manuals, and other related materials and correspondence. We discussed the documents provided by Justice and the status of implementation of each of the recommendations with an appropriate Justice official.

We conducted our review from March 2003 through mid-December 2003 in accordance with U.S. generally accepted government auditing standards.

We requested written comments on a draft of this report from the Attorney General or his designated representative. Justice's letter is reprinted in appendix I.

Criminal Debt Has Increased Markedly, but Collections Have Decreased Slightly

Justice reported an unaudited amount of total outstanding criminal debt of about \$25 billion as of September 30, 2002, almost double when compared to Justice's unaudited amount from 3 years earlier. This marked increase over the 3-year period continued a significant upward trend that started in fiscal year 1996, the year MVRA was enacted. Given MVRA's requirement that restitution be assessed regardless of the criminal's ability to pay, the

significant increase in the balance of reported uncollected criminal debt was not unexpected. According to Justice's unaudited records, collections relative to outstanding criminal debt averaged about 7 percent for fiscal years 1995 through 1999 and decreased to an average of about 4 percent for fiscal years 2000, 2001, and 2002. For each of these latter 3 fiscal years, according to Justice's unaudited records, about two-thirds or more of the criminal debt was related to white-collar financial fraud.

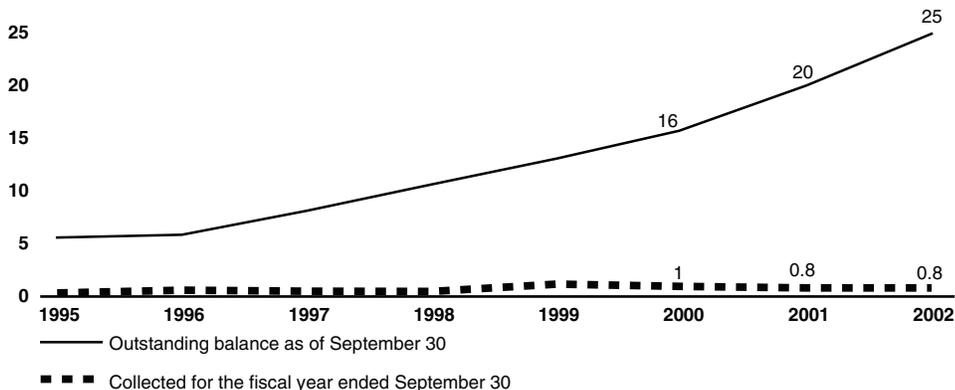
As shown in figure 1, Justice's reported criminal debt outstanding totaled approximately \$16 billion, \$20 billion, and \$25 billion as of September 30, 2000, 2001, and 2002, respectively. Criminal debt owed consists primarily of fines and federal and nonfederal restitution⁸ related to a wide range of criminal activities, including domestic and international terrorism, organized drug trafficking, firearms crimes, and white-collar financial fraud. According to Justice officials, nonfederal restitution stemming from MVRAs's mandatory restitution requirements was the major component of criminal debt outstanding as of September 30, 2000, 2001, and 2002. Justice's unaudited records showed that nonfederal restitution accounted for about 70 percent of total reported criminal debt as of September 30, 2002. This proportion is generally consistent with what we found for fiscal year 1999, which we reported in our 2001 report. At that time, about 66 percent of outstanding criminal debt as of September 30, 1999, was nonfederal restitution debt.

According to Justice's unaudited records, collections of outstanding debt did not increase, and in fact fell slightly, over this 3-year period. As shown in figure 1, collections for fiscal years 2000, 2001, and 2002, totaled about \$1 billion, \$800 million, and \$800 million, respectively, or an average of about 4 percent of outstanding debt for the 3 years. In our 2001 report, we reported that criminal debt collection averaged about 7 percent for fiscal years 1995 through 1999.

⁸Nonfederal restitution is criminal debt owed to victims of crime other than the federal government, for which Justice has collection responsibility.

Figure 1: Criminal Debt Outstanding and Collected for Fiscal Years Ended September 30, 1995, through September 30, 2002

30 Dollars in billions



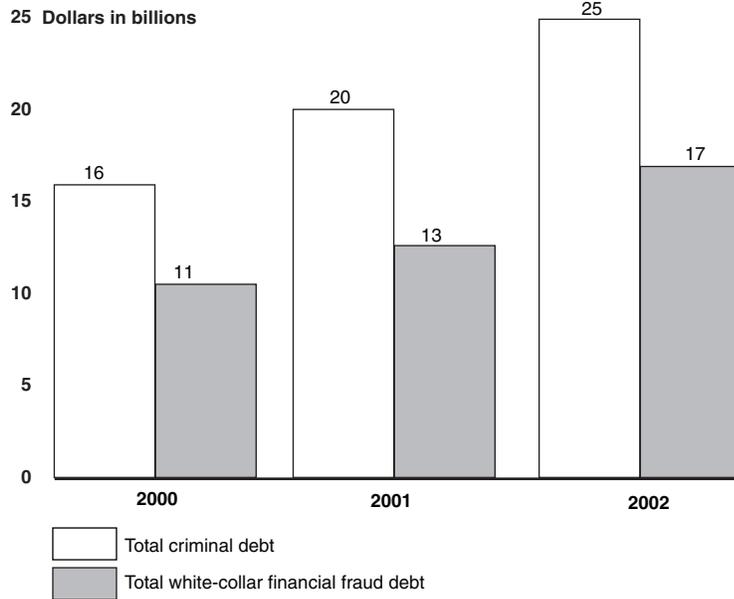
Source: EOUSA.

Note: EOUSA data used for this figure are unaudited.

As shown in figure 2, a major component of criminal debt was debt related to white-collar financial fraud, which, according to Justice’s unaudited records, totaled about \$11 billion, \$13 billion, and \$17 billion as of September 30, 2000, 2001, and 2002, respectively, or about two-thirds or more of overall outstanding criminal debt at the end of each of these years. White-collar financial fraud debts included fines and restitution related to fraud against business institutions, antitrust violations, bank fraud and embezzlement, bankruptcy fraud, computer fraud, consumer fraud, federal procurement fraud, federal program fraud, health care fraud, insurance fraud, and tax fraud. Also included were debts related to corporate financial fraud, which, as of the date of completion of our fieldwork, consisted of fines and restitution related to advance fee schemes,⁹ commodities fraud, securities fraud, and other investment fraud. According to Justice’s unaudited records, as was the case for criminal debt overall, the major component of white-collar financial fraud debt for each of the 3 fiscal years was nonfederal restitution, which accounted for about 80 percent of the white-collar financial fraud debt as of September 30, 2002.

⁹Advance fee schemes involve fraud against businesses or individuals involving the payment of a fee in advance for goods, services, or other things of value.

Figure 2: Justice's Total Criminal Debt and White-Collar Financial Fraud Debt Outstanding as of September 30, 2000, 2001, and 2002

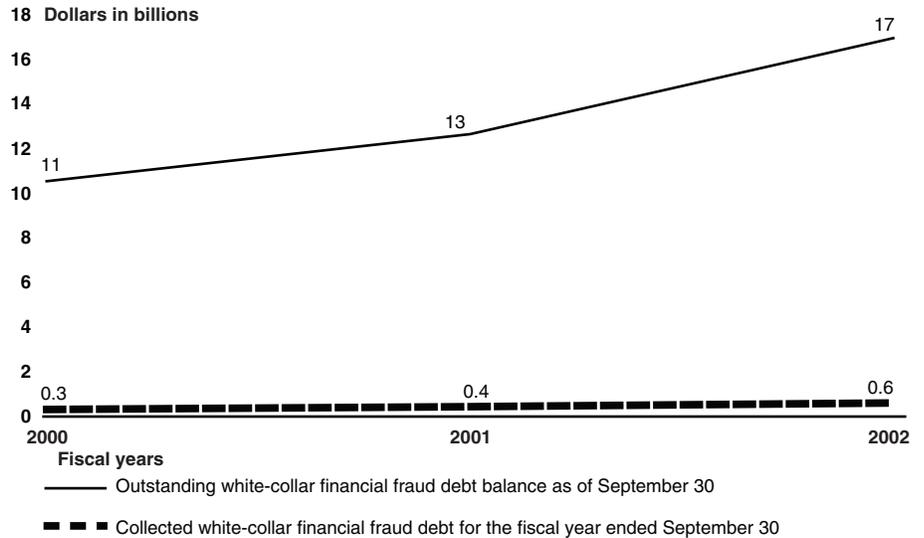


Source: EOUSA.

Note: EOUSA data used for this figure are unaudited.

As shown in figure 3, according to Justice's unaudited records, collections of debt related to white-collar financial fraud, while increasing, have remained low when compared to total white-collar financial fraud debt outstanding. Such collections totaled about \$300 million, \$400 million, and \$600 million for fiscal years 2000, 2001, and 2002, respectively.

Figure 3: White-Collar Financial Fraud Debt Outstanding and Collected for Fiscal Years Ended September 30, 2000 through 2002



Source: EOUSA.

Note: EOUSA data used for this figure are unaudited.

Prompt Action Has Not Been Taken to Address the Majority of Recommendations

Justice has not taken timely action to address all of the recommendations we made to it in July 2001, which were designed to improve the effectiveness and efficiency of Justice's criminal debt collection processes. Specifically, Justice has not taken action along with certain other agencies to develop a strategic plan for criminal debt collection, which was a key recommendation. In addition, since July 2001, Justice has completed action on only 7 of the 13 interim recommendations that were made to stem the growth of reported uncollected criminal debt while Justice and certain other agencies worked to develop the strategic plan. Actions to address 4 of these 7 recommendations were completed about 2 years after we made the recommendations, and actions to address the remaining 6 interim recommendations are still in process. One indication of Justice's level of resolve to expeditiously improve collection success is the timeliness of a required response to the Congress. Heads of federal agencies are required to submit a written statement within an established time frame to certain

congressional committees on actions taken in response to recommendations we make in a report.¹⁰ Justice did not submit its statement until 2 years after the date of our report, after we had made inquiries about the status of the statement and Justice's progress in implementing our recommendations.

Justice Has Not Developed a Strategic Plan with Certain Other Agencies

In our 2001 report, we emphasized that addressing the long-standing problems in the collection of outstanding criminal debt required a united strategy among the entities involved with the collection process. In addition to identifying a need to work closely with the U.S. Courts to coordinate criminal debt collection efforts, we stated that leveraging OMB's and Treasury's current central agency roles could result in effective oversight of the collection of criminal debt. For example, a primary function of OMB as a central agency is to evaluate the performance of executive branch programs and serve as a catalyst for improving interagency cooperation and coordination. In its central role, OMB is also responsible for reviewing debt collection policies and activities. We also noted that Treasury has a central agency role in implementing certain provisions of the Debt Collection Improvement Act of 1996, which would allow it to help Justice identify the types of delinquent criminal debt that would be eligible for reporting and referral to Treasury's offset program (TOP).¹¹

To promote a united approach to collecting outstanding criminal debt, we recommended that the Attorney General work with the Director of AOUSC, the Director of OMB, and the Secretary of the Treasury in the form of a joint task force to develop a strategic plan to improve criminal debt collection processes and establish an effective coordination mechanism

¹⁰When the Comptroller General issues a report that includes a recommendation to the head of an agency, 31 U.S.C. § 720(b) (2000), requires the head of an agency to submit a written statement on action taken on the recommendation. The statement is required to be submitted to the Committee on Governmental Affairs of the Senate and the Committee on Government Reform of the House of Representatives before the 61st day after the date of the report and to the Committees on Appropriations of both houses of the Congress in the agency's first request for appropriations submitted more than 60 days after the date of the report.

¹¹TOP is a governmentwide delinquent debt matching and payment offset system. TOP offsets federal payments such as tax refunds, vendor and miscellaneous payments, and federal retirement payments against federal nontax debts, states' child support debts, and certain states' tax debts.

among all entities involved in these processes. We stated that the strategy should address managing, accounting for, and reporting criminal debt. We also stated that the strategy should include (1) determining an approach for assessing the collectibility of outstanding amounts so that a meaningful allowance for uncollectible criminal debts can be reported and used for measuring debt collection performance and (2) having OMB work with Justice and certain other executive branch agencies to ensure that these entities report and/or disclose relevant criminal debt information in their financial statements and subject such information to audit.

It is important to reemphasize the need for assessing the collectibility of outstanding criminal debt amounts and establishing and reporting a meaningful allowance for uncollectible debts.¹² According to Justice, about 74 percent or more of reported criminal debt amounts in its records for fiscal years 2000, 2001, and 2002 were in suspense, meaning that no collection action was being taken on the debt because it had been determined that reasonable efforts to collect were unlikely to be effective. However, we emphasized in our 2001 report that Justice had not performed an analysis of its criminal debt to estimate how much of the outstanding amounts was uncollectible and had not established an allowance for uncollectible debt for amounts that were due to the federal government. We specifically noted that since the collectibility of outstanding criminal debt had not been assessed, the amount in suspense did not represent a reliable estimate of the amount that was expected to be uncollected. We also discussed the importance of subjecting criminal debt amounts to independent audit, which would include assessments of internal controls and compliance with applicable laws and regulations related to the criminal debt process. Further, we noted that proper accounting for, reporting, and managing of criminal debt would heighten management awareness and ultimately result in a more effective collection process.

¹²According to Statement of Federal Financial Accounting Standards (SFFAS) No. 1, *Accounting for Selected Assets and Liabilities*, and SFFAS No. 7, *Accounting for Revenue and Other Financing Sources and Concepts for Reconciling Budgetary and Financial Accounting*, a receivable should be recognized once amounts that are due to the federal government are assessed, net of an allowance for uncollectible amounts. Also, OMB Circular No. A-129 (revised, November 2000), *Policies for Federal Credit Programs and Non-Tax Receivables*, requires agencies to provide accounting and management information for effective stewardship, including resources entrusted to the government (e.g., for nonfederal and federal restitution).

As of the completion date of our fieldwork, Justice had not begun to develop, in conjunction with AOUSC, OMB, and Treasury, a written strategic plan for collection of outstanding criminal debt. In December 2001, Justice's EOUSA sent letters to AOUSC, OMB, and Treasury citing our 2001 report on criminal debt collection and our recommendation to form a joint task force to develop a strategic plan to improve criminal debt collection and establish effective coordination between each of the involved entities. According to a Justice official, the purpose of the letters was to solicit representatives from each of the agencies to assist in this effort. However, this initial attempt to form the joint task force was unsuccessful. The official stated that on account of our recent inquiries about this recommendation, EOUSA plans to make another attempt to contact appropriate officials at the other agencies. The Justice official also stated that both EOUSA and AOUSC have to address certain internal deficiencies, including systems problems, before they can effectively develop a strategic plan.¹³

As previously mentioned and discussed in more detail in our 2001 report, addressing the long-standing problems in the collection of outstanding criminal debt—including fragmented processes and lack of coordination—will require a united strategy among the entities involved with the collection process. The participation and cooperation of each of these entities, including AOUSC, OMB, and Treasury, are critical to the formation of the joint task force and development of a strategic plan, as recommended. Justice cannot require these agencies to participate in the joint task force and development of the strategic plan. However, Justice is a key federal agency responsible for the collection of criminal debt and, as such, is accountable for enlisting all affected agencies' support in a sustained effort to develop a strategic plan and cohesive approach for managing, accounting for, reporting, and improving the collection of such debt.

¹³EOUSA meets regularly with AOUSC, and the goal of these meetings is to improve criminal debt collection and establish effective coordination for the debt collection process.

It is important to note that Justice has begun to get criminal debts into TOP. According to a Justice official, during the first part of fiscal year 2003, Justice piloted the TOP process for criminal debts in four districts, resulting in inclusion of about \$700,000 of criminal debts in TOP by the end of fiscal year 2003. This official told us that with the progress of the pilot program, the debt referral program was expanded in August 2003 to all eligible FLUs.¹⁴ According to the official, as of December 5, 2003, 20 of the 43 districts eligible to submit criminal debts to TOP had either added criminal debts to TOP or were in the process of identifying criminal debts and sending out 60-day notices to debtors demanding payment, which is necessary before a debt can be sent to TOP.¹⁵ As of December 3, 2003, FLUs had submitted 549 criminal debts, with a total outstanding balance of approximately \$1.4 million, to TOP, and Justice anticipates many more debts will be included in TOP in the next few months. Given that TOP has resulted in over \$1 billion in nontax debt collections from payment offsets governmentwide during each of fiscal years 2000, 2001, and 2002, it will be important for Justice to continue to emphasize submitting debts to TOP as an integral part of its criminal debt collection efforts, as such action could increase potential collections.

Actions to Address Certain of Our Interim Recommendations Have Been Taken Recently or Are in Process

We recognized at the time of our 2001 report that the development of a strategic debt collection plan with other agencies that have a key role to play in criminal debt collection would take time. Therefore, to help improve collections and stem the growth in reported uncollected criminal debt while Justice worked with other agencies to establish the task force and develop the strategic plan for criminal debt collection, we made 13 recommendations for interim action to the Attorney General. As shown in table 1, Justice has completed action on 7 of these recommendations. Four of the 7 recommendations, however, were not completed until about 2 years after we made them. Actions to address the 6 remaining recommendations are still in process. Since the interim recommendations largely focused on policies and procedures, it will be important that they be effectively implemented once they are established.

¹⁴To be eligible for the program, the clerk's office in that district must meet certain criteria established by AOUSC, including that the clerk's office must (1) agree to participate in including criminal debts in TOP and (2) use a specific automated accounting system.

¹⁵This 60-day notice informs the debtor of the FLU's intent to submit the debt to Treasury for offset purposes.

Table 1: Status of Recommendations from the July 2001 Criminal Debt Report

Recommendations	Status	
	Date completed	In process
The Attorney General should		
1. Work together with the Director of AOUSC to (1) reduce duplication of data entry for collections and disbursements, (2) require FLUs and the courts to periodically reconcile payment data recorded in their separate tracking systems, and (3) revise district guidance so that FLUs can take a more proactive role in monitoring collection efforts of probation offices.		X
2. Establish policies and procedures that require Justice investigating case agents and prosecuting attorneys to share relevant financial information with FLUs within an established time frame after an offender is sentenced	May 2003	
3. Require FLUs to document correspondence with case agents and prosecuting attorneys in the FLU files, including whether and why efforts were not coordinated		X
4. Require FLUs to use collectibility analyses to prioritize criminal debt collection efforts on debt types deemed through historical experience to be more collectible	Sept. 2003	
5. Reinforce current policies and procedures for entering cases into criminal debt tracking systems; filing liens; issuing demand letters, delinquent notices, and default notices; performing asset discovery work; using other enforcement techniques; and using event codes, including suspense codes	Prior to FY 2003	
6. Revise current policies for issuing demand letters, specifying when a demand letter should be sent and within what time frames	May 2003	
7. Require FLUs to establish time frames for procedures related to criminal debt collection activities that do not currently have established time frames	May 2003	
8. Require FLUs to document in their files instances where asset discovery work was not performed and why it was not performed		X
9. Establish a policy for the FLUs to date stamp when judgments in a criminal case are received		X
10. Revise interest and penalty policies so that interest and penalties are consistently assessed and reported		X
11. Adequately measure criminal debt collection performance against established goals	Prior to FY 2003	
12. Revise the FLUs' databases to (1) capture needed information such as terms of fine and restitution order, status of offender (expected release date from prison or probation) and (2) allow FLUs to allocate outstanding amounts between amounts likely to be collected and those that are not likely to be collected		X
13. Perform an analysis to assess whether the FLUs' human capital resources and training are adequate to effectively perform their collection activities	Prior to FY 2003	

Source: EOUSA.

The status of each of our 13 interim recommendations is discussed below. Recommendations for which corrective actions have been completed are discussed first.

Policies and Procedures for
Sharing Relevant Financial
Information

In May 2003, Justice's EOUSA took action to address recommendation 2 by issuing the *Prosecutor's Guide to Criminal Monetary Penalties*. The guide contains information on the obligations and responsibilities of criminal prosecutors and others involved in the criminal debt collection process to increase the likelihood that victims of crime are compensated for their losses. EOUSA has provided the guide to all entities involved in the collection of criminal debt at Justice, including prosecuting attorneys, investigating case agents, and FLU staff. The guide is also available on Justice's intranet.

This guide requires prosecutors to ensure that the responsible FLU receives all available information on a defendant's financial resources by (1) forwarding a copy of the presentence report to the FLU; (2) providing the FLU with any information or pleading in the government's file on a defendant's financial resources not obtained through the grand jury investigation; (3) filing a motion asking the court to order disclosure to the FLU of any information gathered by the grand jury, and to make the disclosure as soon as it is ordered; and (4) ordering the transcript of any hearing in which a defendant's financial resources were discussed, such as a bond hearing, and forwarding the transcript to the FLU. According to a Justice official, case agents work directly with the prosecuting attorneys and share any information, including financial information, with the prosecutors before a judgment on a case is issued. The Justice official noted that once a judgment in a criminal case is issued, it generally is sent from the courts to the criminal prosecutor within 1 week, and once the prosecutor receives the judgment, the financial information is shared with the responsible FLU.

Use of Collectibility Analysis to
Prioritize Criminal Debt
Collection Efforts

In September 2003, EOUSA completed actions to address recommendation 4 by issuing a memorandum to all Financial Litigation Supervisors and FLUs requiring that each FLU establish policies and procedures to ensure that all FLU cases are effectively prioritized and enforced pursuant to a priority system. The memorandum contained guidance, including factors to consider in assigning priority codes (e.g., the debtor's assets and income, type of debtor, type of debt, type of victim, complexity of the case); default priority codes based on the amount of the debt; information on setting review dates; and implementation procedures, including a list of fields and codes to be used in Justice's new system for tracking debts, and milestone dates for completion of the review and prioritization of all existing cases. According to a Justice official, the guidance for establishing a priority system is fairly general to allow each district to set its own priorities based on the type of debt typically collected at that district. According to the

memorandum, effective October 1, 2003, all new judgments should be prioritized using the priority system; by December 31, 2003, FLUs should review all pre-existing judgments with an original debt balance of \$1 million or more; by March 31, 2004, FLUs should review all pre-existing judgments with an original debt balance of \$100,000 to \$999,999; and by December 31, 2004, to the extent resources permit, FLUs should review all remaining pre-existing judgments. Although priority-setting is currently a manual process, once Justice's new system has been updated, which according to the Justice official is scheduled for May 2004, the priority codes will be incorporated into the new automated priority process.

Reinforcement of Certain Current Debt Collection Policies and Procedures

In January 2002, EOUSA completed actions to address recommendation 5 by sending a memorandum to all U.S. Attorneys, all First Assistant U.S. Attorneys, and all Civil Chiefs, concerning our 2001 report. The memorandum generally noted the findings in the report and encouraged each district to review its policies and procedures for collecting and enforcing criminal debt in light of the report. The memorandum also offered the assistance of the districts' Financial Litigation Program Manager in implementing or improving criminal debt collection policies and procedures. EOUSA has also worked to reinforce current policies and procedures by developing and providing training materials to its staff involved in debt collection. Moreover, EOUSA's periodical *DebtBeat*, which is available to all USAOs, private counsel, and client agencies, regularly provides updates on debt collection issues, including any modifications to debt collection policies and procedures.

Revision of Policies for Issuing Demand Letters

EOUSA used the May 2003 prosecutor's guide to respond to recommendation 6. Specifically, the guide requires FLUs to issue a demand letter for payment of a debt for each case opened within 30 days of the judgment. To facilitate collection, the guide further specifies that the demand letter should inquire whether the defense attorney will continue to represent the defendant for collection purposes.

Establishment of Time Frames for Certain Criminal Debt Collection Activities

EOUSA also used the May 2003 guide to address recommendation 7. As stated in our 2001 report, FLUs lacked procedures for performing certain debt collection actions in a timely manner, including (1) entering cases into their tracking systems; (2) filing liens; (3) sending demand, delinquent, or default letters; and (4) performing asset discovery work. The prosecutor's guide provides a specific time frame for performing each of these actions. It requires that for each case opened for collection, the responsible FLU should, at a minimum, take the following steps within 30 days of the

judgment: open and record the case; initiate the filing of a lien where possible; issue a demand letter; and conduct an initial assessment of the prioritization and collectibility of the case, which would include performing asset discovery work. The guide also states that the responsible FLU should provide notice to the defendant of any fine or restitution payment that is found to be delinquent or in default within 10 working days after the delinquency or default occurs.

Measurement of Criminal Debt Collection Performance against Goals

To address recommendation 11, according to a Justice official, Justice annually assesses each district based on established collection goals for that district. The official stated that because of the differences in size of caseloads and types of cases worked, it does not make sense for EOUSA to establish nationwide goals. Instead, each district establishes and is measured against its own collection goals. To assess debt collection performance and compliance with applicable guidance and regulations at each district, EOUSA uses (1) a goals-setting package, which includes instructions for completing goals based on each district's workload and collections; (2) a state-of-the-district report, which provides 3 years of detailed district-specific collection statistics to allow each USAO to evaluate its own collection activities based on historical experience; and (3) a compliance checklist, which provides FLUs with an opportunity to review their current policies and procedures to ensure compliance with EOUSA requirements. According to the Justice official, EOUSA works with each district to prepare these tools annually, and each district uses them to determine needed actions to improve criminal debt collection.

Assessment of Human Capital Resources and Training

Justice has also assessed its FLUs' human capital resources and training to respond to recommendation 13. According to a Justice official, although EOUSA did not prepare a formal written assessment of FLUs' human capital resources, EOUSA has assessed FLU human capital resources and determined that FLUs are understaffed and need more staff or contractors to perform debt collection activities. However, to date, EOUSA has not been successful in requesting additional staff for debt collection. Nevertheless, the Justice official noted that EOUSA did receive funding, beginning in fiscal year 2002, through the Office for Victims of Crime to support asset investigations in criminal debt collection cases. The Office

for Victims of Crime provides 50 percent of the funding for asset investigators, with the remaining 50 percent to be funded through the Three Percent Fund.¹⁶ Therefore, half the asset investigators' time may be spent on postsentencing criminal fine and restitution debt collection cases. The asset investigators' services are available through the Financial Litigation Investigator Program. Prior to fiscal year 2002, these investigators were limited to working solely on civil debts because funding for their time was exclusively through the Three Percent Fund.

Corrective Actions in Process to Address Remaining Recommendations

Justice is in the process of taking corrective actions to address the remaining 6 recommendations. Specifically, actions taken to address parts 1 and 2 of recommendation 1 are still in process.¹⁷ In July 2003, EOUSA rolled out to all USAOs a new version of its collections case tracking system. The new system allows for the tracking of all debt components in a single record for each debtor, thus eliminating the need to open multiple records to track collections for a single debtor. Also, many of the required fields, such as collection types and agency program codes, have been coded to eliminate duplicative data entry by the user. However, additional upgrades, such as automatic payment posting to debtor accounts, are still under development and are scheduled to be completed during fiscal year 2004. According to a Justice official, complete implementation of this recommendation depends on AOUSC upgrading its automated criminal debt tracking systems. The Justice official stated that full reconciliation of payment information between FLUs and the courts will not be possible until AOUSC fully implements its new Civil/Criminal Accounting Module

¹⁶Pub. L. No. 107-273, Div. C., Title 1, § 11013(a), 116 Stat. 1758, 1823 (2002), authorizes Justice to deposit in its Working Capital Fund 3 percent of all amounts collected pursuant to its civil debt collection litigation activities. Such amounts remain available until expended and are to be used first, for paying the costs of processing and tracking civil and criminal debt-collection litigation, and, thereafter, for financial systems and for debt-collection-related personnel, administrative, and litigation expenses. Section 11013(a) of Pub. L. No. 107-273, expanded on the authority conferred on Justice by an earlier law (Pub. L. No. 103-121, Title 1, § 108, 107 Stat. 1153, 1164 (1993)) that limited Justice's use of such deposits to paying the costs of processing and tracking civil debt collection litigation.

¹⁷The May 2003 prosecutor's guide addresses part 3 of recommendation 1—that Justice revise its district guidance so FLUs can take a more proactive role in monitoring collection efforts of probation offices. According to the guide, FLUs' responsibilities for enforcement of restitution or a fine include coordination with probation offices while defendants are on supervision or probation to facilitate collection, mutual exchange of information, and providing advance notice to probation offices of collection methods. Further, the guide states that during a defendant's supervision, the prosecutor and/or the FLU should coordinate with each other and with probation offices to facilitate the maximum possible collection of the restitution or fine.

system, which, according to the official, is not expected to be completed until 2005.

Actions to address recommendations 3, 8, 9, and 10 are also in process at Justice. We emphasized in our 2001 report the importance of documenting key steps in the criminal debt collection process to help ensure that all opportunities for collection were being pursued. We also noted that because FLUs do not consistently assess interest and penalties, the reported amounts do not accurately represent how much total principal, interest, and penalties are due. We stressed that failure to assess interest and penalties reduces the amount that can be recovered and passed along to victims or the federal government and eliminates a tool designed to give debtors an incentive to make prompt payments. According to a Justice official, the Financial Litigation Working Group, which Justice established in February 2002 in part to address our recommendations, will continue to work toward fully implementing these open recommendations.

Finally, Justice is in the process of taking corrective actions to address recommendation 12. According to a Justice official, EOUSA's system programmers are currently developing automated tracking of debtor status from incarceration through probation. EOUSA plans to have such automated tracking available during fiscal year 2004. In addition, according to the official, EOUSA is working to determine how to allocate outstanding criminal debt amounts between amounts likely to be collected and amounts not likely to be collected, which is critical for effective use of debt collection resources.

Conclusion

The long-standing problems in the collection of outstanding criminal debt—including fragmented processes and lack of coordination—continue, as there is no united strategy among key entities involved with the collection process. According to Justice's unaudited records, during fiscal years 2000, 2001, and 2002, criminal debt increased significantly, but collections decreased slightly. Until Justice takes actions to fully implement our previous recommendations to it to improve criminal debt collection efforts, including forming a joint task force with AOUSC, OMB, and Treasury and developing a strategic plan to improve the criminal debt collection processes, the effectiveness of criminal fines and restitution as a punitive tool may be diminished, and Justice's management processes and procedures will not provide adequate assurance that offenders are not afforded their ill-gotten gains and that innocent victims are compensated for their losses to the fullest extent possible. Therefore, we reaffirm those

recommendations made to Justice from our 2001 report on which Justice has not completed action.

Agency Comments and Our Evaluation

In written comments on a draft of this report, which are reprinted in appendix I, Justice's EOUSA said that the draft report did not fully reflect EOUSA efforts to improve the criminal debt collection process by implementing the recommendations from our 2001 report and by taking additional actions that go beyond the specific recommendations made in that report. We disagree. As stated in this report, Justice has not taken timely action to address all of the July 2001 recommendations, which were designed to improve the effectiveness and efficiency of Justice's criminal debt collection processes. Most important, from the standpoint of resolving key jurisdictional issues and functional responsibilities, Justice has not taken action along with certain other agencies to develop a strategic plan for criminal debt collection.

Of the 13 interim recommendations made to stem the growth of reported uncollected criminal debt while Justice and the other agencies worked to develop the strategic plan, Justice completed action on only 7. Actions to address 4 of these 7 recommendations were completed about 2 years after we made them, and actions to address the remaining 6 interim recommendations are still in process.

In support of its view that it has taken extensive implementation action, EOUSA referred to a June 16, 2003, letter and stated that excerpts from this letter were included with its comments. We are not aware of a June 16, 2003, letter; however, all of the excerpts contained in EOUSA's comments are included verbatim in Justice's July 15, 2003, letter to the Congress regarding actions EOUSA had taken in response to recommendations we made in our 2001 report. Justice submitted this letter 2 years after the date of our 2001 report, and after we had made inquiries about the status of Justice's response to the Congress regarding Justice's implementation of our recommendations. In accordance with 31 U.S.C. 720, the head of a federal agency is required to submit a written statement of the actions taken on our recommendations to the Senate Committee on Governmental Affairs and to the House Committee on Government Reform not later than 60 calendar days from 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 calendar days after that date. Moreover, as stated in this report, to evaluate actions Justice has taken to implement our previous recommendations, we obtained and reviewed pertinent

Justice documents, including correspondence to certain congressional committees related to our 2001 report. As such, in drafting our report, we fully considered each of EOUSA's assertions that were contained in the previously mentioned excerpts from its letter. Our responses to specific parts of these excerpts appear in appendix I.

EOUSA also stated that our draft report failed to address its comments on our 2001 report that responsibility for accounting for and reporting criminal debt does not rest with Justice. In our 2001 report, we stated that Justice's comments related to accounting for and reporting of criminal debt, plus the lack of response from AOUSC regarding its position on this issue, illustrated the need for cooperation and coordination in the criminal debt collection area. Thus, we emphasized the need for the development of the previously mentioned strategic plan to improve the criminal debt collection processes and establishment of an effective mechanism to coordinate efforts among all entities involved in these processes. We noted that the strategic plan should address managing, accounting for, and reporting of criminal debt. It is important to note that, as stated in our 2001 report, both Treasury and OMB agreed that criminal debt should be reported on either Justice's or the U.S. Court's financial statements.

Finally, EOUSA stated that our 2001 report focused on asset investigation resources and that EOUSA has put particular emphasis in this area. EOUSA also stated that even though it has fully implemented more than half of our recommendations, with the remaining ones nearing completion, collections have decreased slightly since our 2001 report. As previously stated, actions to address 4 of the 7 fully implemented recommendations were completed about 2 years after our 2001 report, and actions to address the 6 remaining recommendations are still in process. Since these interim recommendations largely focused on policies and procedures, it is important that they be effectively implemented once they are established, and it will likely take some time for collection results to be realized from full implementation. Moreover, as stated in our report, the debt collection strategy to be developed by the task force should include determining the collectibility of outstanding criminal debt amounts so that a meaningful allowance for uncollectible debt can be reported and used for measuring debt collection performance. We also stated that proper accounting for, reporting of, and managing of criminal debt would heighten management awareness and ultimately result in a more effective collection process. Identifying debts with the best prospects for collection will allow more efficient targeting of limited collection resources in order to maximize collections.

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 of this report to the Chairmen and Ranking Minority Members of the Subcommittee on Financial Management, the Budget and International Security, Senate Committee on Governmental Affairs, and the Subcommittee on Government Efficiency and Financial Management, House Committee on Government Reform. We will also provide copies to the Attorney General, the Director of the Administrative Office of the U.S. Courts, the Director of the Office of Management and Budget, and the Secretary of the Treasury. Copies will then be made available to others upon request. The report will also be available at no charge on GAO's Web site, at <http://www.gao.gov>.

If you have any questions about this report, please contact me on (202) 512-3406 or Kenneth R. Rugar, Assistant Director, on (214) 777-5714. Other key contributors to this report are Linda K. Sanders and Michael D. Hansen.

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

Comments from the Department of Justice's Executive Office for United States Attorneys

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



U.S. Department of Justice

Executive Office for United States Attorneys
Office of the Director

RFK Main Justice Building, Room 2616
950 Pennsylvania Avenue, NW
Washington, DC 20530

(202) 514-2121

JAN 23 2004

Mr. Gary T. Engel
Director
Financial Management and Assurance
United States General Accounting Office
441 G Street, NW, Room 5970
Washington, DC 20548

Dear Mr. Engel:

As requested, this letter provides comments from the Executive Office for United States Attorneys (EOUSA) on the General Accounting Office's (GAO) draft report regarding criminal debt collection processes. The draft report follows up on GAO's 2001¹ report by providing information on the amount and growth of criminal debt for fiscal years 2000 through 2002 and examines the extent to which the Department of Justice (DOJ) has acted on GAO's previous recommendations in this area.² We appreciate the opportunity to provide comments.

The overall tone of the draft report fails to reflect the great efforts EOUSA has undertaken to improve the criminal debt collection process by implementing the 2001 report recommendations, as well as the additional actions EOUSA has taken that fall outside the specific recommendations made in the report.

In the 2001 report, GAO made thirteen recommendations it believed would help improve the efficiency and effectiveness of criminal debt collection. EOUSA has addressed all thirteen recommendations, fully implementing more than half of these recommendations, with the remaining changes nearing completion. As part of addressing the recommendations, EOUSA has written and published a book entitled, Prosecutor's Guide to Criminal Monetary Penalties. This

¹See GAO-01-664.

²The 2001 report contains thirteen specific recommendations to help improve the efficiency and effectiveness of criminal debt collection. Additionally, GAO recommended the Attorney General, Director of the Administrative Office of United States Courts (AOUSC), Director of the Office of Management and Budget (OMB), and Secretary of Treasury form a joint task force to develop a strategic plan that addresses the managing, accounting, and reporting of criminal debt.

See comment 1.

Appendix I
Comments from the Department of Justice's
Executive Office for United States Attorneys

- 2 -

manual not only discusses the debt collection process, but covers the entire process of ensuring victims of crime are compensated for their losses. This process includes charging defendants; negotiating plea agreements; and determining, imposing, and enforcing of criminal fines and restitution. The Prosecutor's Guide goes well beyond the narrow focus of GAO's recommendations and serves as a guide not only for the Financial Litigation Units (FLU), but also for criminal prosecutors, victim witness coordinators, probation officers, and clerks of courts.

See comment 2.

Two major factors impacting the implementation of several of the recommendations are the reprogramming of the collections tracking system used by the United States Attorneys' Offices and the roll-out of AOUSC's new Civil/Criminal Accounting Module (CCAM). As you know, computer programming changes require extensive testing to ensure data integrity. Despite such challenges, EOUSA has already made substantial changes to our system consistent with GAO's recommendations. Our collections tracking system is now centralized, many of the fields have been hardcoded, thereby reducing the amount of data entry required by the user, and additional changes, which address GAO's recommendations, are scheduled to be released this summer. It is our understanding that AOUSC is nearing completion on the alpha testing stage of CCAM and will begin beta testing thereafter. Upon successful completion, CCAM will be rolled-out to all courts. Until this occurs, EOUSA is unable to fully implement some of GAO's recommendations.

See comment 1.

The draft report fails to mention many of the efforts undertaken by EOUSA as outlined in our June 16, 2003 letter. For your convenience, I am including excerpts from that letter:

See comment 3.

EOUSA has established a Financial Litigation Working Group comprised of Assistant United States Attorneys and paralegals. This group is (1) reviewing and revising all of our criminal debt collection policies and procedures for inclusion in the United States Attorneys Manual and the newly created United States Attorneys Procedures Manual; (2) writing legislative proposals that will remove many barriers to enforcement of debts owed to the United States and victims of crime, such as clarifying that payment schedules set forth in court orders are minimum payments due and do not prohibit the enforcement of the total amount of the obligation imposed; and (3) developing new training materials for criminal prosecutors emphasizing the importance of providing the Financial Litigation Units (FLU) with financial information on the defendant.

See comment 4.

See comment 5.

In addition, EOUSA developed a State of the District Report and a Compliance Checklist which are provided to the USAOs on an annual basis. The State of the District Report summarizes the collection accomplishments of each USAO and provides the United States Attorneys with an invaluable management tool to measure the success of their offices' collection responsibilities. The Compliance Checklist provides the FLU with an opportunity to review their current policies and procedures to ensure compliance with EOUSA's requirements.

See comment 6.

See comment 7.

A further example of EOUSA's commitment in this area is the recent hiring of an

Appendix I
Comments from the Department of Justice's
Executive Office for United States Attorneys

- 3 -

See comment 7.

independent contractor to perform a requirements analysis for a new debt collection system. This new system, along with the system currently being developed by AOUSC, should greatly reduce the data entry responsibilities of the FLUs, thereby allowing the FLUs to concentrate their efforts on enforcement of the debts.

See comment 8.

Most recently, EOUSA has sought and received funding from the Office for Victims of Crime (OVC) to cover the costs associated with adding criminal debts to the Treasury Offset Program (TOP) (i.e., injured spouse claims). In cooperation with AOUSC, several USAOs have begun to submit criminal debts to the TOP. The remaining districts will begin to submit criminal debts once the local clerks of courts offices have the necessary computer systems in place.

See comment 9.

Much of the GAO report focused on the lack of asset investigations resources. As a result, EOUSA has put particular emphasis in this area. We have requested and received funding from OVC to assist the districts with asset investigations. This money allows districts to hire outside investigators to work on older, high dollar, complex cases which were considered uncollectible, and thus had not been addressed with available FLU resources.³ EOUSA has also entered into a nation-wide contract for credit bureau report services. Through this contract the FLUs now have convenient, easy to use web-based access to credit bureau reports that are an important tool in assessing a debtor's ability to pay. In addition, EOUSA, through our Office of Legal Education, developed a course dedicated solely to asset investigations in debt collection cases. Furthermore, we are currently in the process of finalizing a reference manual for the FLUs to use in conducting asset investigations.

See comment 11.

See comment 12.

See comment 13.

Finally, in response to the GAO's finding that additional resources are needed to increase the effectiveness of the federal government's criminal debt collection efforts, EOUSA has requested funding for attorney positions as well as contractors in our annual appropriations request. If provided, these personnel would be specifically dedicated to the collection of criminal debt.

See comment 1.

The draft report states that EOUSA has not implemented its general recommendation that the Attorney General, Director of AOUSC, Director of OMB, and Secretary of Treasury form a joint task force to develop a strategic plan that addresses the managing, accounting, and reporting of criminal debt. While the draft report acknowledges that EOUSA sent letters to the above agencies and meets regularly with personnel from AOUSC and Treasury to discuss ways to improve criminal debt collection and establish effective coordination for the debt collection process, it fails to address our comments to the 2001 report that the responsibility for accounting and reporting criminal debt does not rest with DOJ.

See comment 10.

³*In one fiscal year, over \$150 million in criminal debts had been referred to outside investigators. Interestingly, after thorough investigations, the outside investigators determined that over \$100 million of the debts were uncollectible as no asset could be found. Since write-off is not an option with criminal debts, these debts were placed into suspense.*

Appendix I
Comments from the Department of Justice's
Executive Office for United States Attorneys

- 4 -

See comment 1.

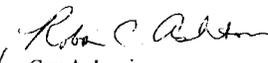
As stated in the draft report, the main purpose of this recommendation is to establish a formal reporting and accounting of criminal debt, that is, a report that can be subject to independent auditing. As we explained in our June 5, 2001, response, although DOJ is responsible for the enforcement of criminal debts, the responsibility, by statute⁴, for the receipting and disbursing of payments rests with the courts. In other words, the receivables are not DOJ's assets, because 18 U.S.C. § 3611 gives administration and possession of those receivables to AOUSC, not DOJ. Moreover, DOJ is not in control of source records or the timing or reporting of collections. Accordingly, this recommendation should be more appropriately directed to AOUSC.

See comment 1.

By its very nature, the collection of criminal debts is difficult. The outstanding criminal debt balance is now twice the amount GAO reported in its 2001 report. As discussed in the draft report, the primary reason for this dramatic increase, which was not unexpected, is the Mandatory Victims Restitution Act (MVRA). The MVRA mandates that restitution be imposed in most federal crimes for the full amount of the loss, regardless of the defendant's ability to pay. The solution for improving the collection process is complex and, unfortunately, there are no quick fixes that can be put into place that will guarantee success. For example, even though EOUSA has fully implemented more than half of GAO's recommendations with the remaining nearing completion, collections decreased slightly since the 2001 report. Nevertheless, as outlined above, EOUSA holds the collection of debts owed to the federal government and victims of crime as a high priority and is firmly committed to continuously improving the process.

Thank you for the opportunity to comment on the draft report. If you have any questions regarding the above, please contact Laurie Levin, Assistant Director, Financial Litigation Staff, Office of Legal Programs and Policy, at (202) 616-6444.

Sincerely,


for Guy A. Lewis
Director

⁴See 18 U.S.C. § 3611.

The following are GAO's comments on the Department of Justice's (Justice) Executive Office for United States Attorneys' (EOUSA) letter dated January 23, 2004.

GAO's Comments

1. See "Agency Comments and Our Evaluation" section.
2. Our 2001 report responded to a request that we review the federal government's collection of criminal debt, primarily fines and restitutions. As such, our review resulted in numerous recommendations to Justice and the Administrative Office of the U.S. Courts (AOUSC) aimed at addressing the fragmented processes and lack of coordination among those entities involved in debt collection and at helping to improve collections and stem the growth in reported uncollected criminal debt.

For this report, we were requested to examine the extent to which Justice has acted on the recommendations we made in our 2001 report to improve criminal debt collection. We acknowledge in our report Justice's use of the *Prosecutor's Guide to Criminal Monetary Penalties* to address recommendations 2, 6, and 7. Our follow-up work did not focus on certain areas covered by the guide, including charging defendants and negotiating plea agreements, because such issues were not part of the scope of our 2001 report or of this report.

3. We acknowledge in this report that the Financial Litigation Working Group was established in part to address the recommendations we made in our 2001 report and will continue to work toward fully implementing certain open recommendations.
4. Writing legislative proposals that will remove barriers to enforcement of criminal debts, such as clarifying that payment schedules set forth in court orders are minimum payments due and do not prohibit enforcement of the total amount of the obligation imposed, is consistent with our 2001 recommendation to AOUSC to revise the language in the Judgment in a Criminal Case forms to clarify that payment terms established by judges are minimum payments and should not prohibit or delay collection efforts. Although we did not recommend such action to Justice, its initiative to address this concern makes sense.

5. We acknowledge in our report that Justice provided the prosecutor's guide to all entities involved in criminal debt collection at Justice, and we credit the guide with addressing recommendation 2 by requiring prosecutors to ensure that responsible Financial Litigation Units (FLU) receive all available information on a defendant's financial resources.
6. We acknowledged and explained in our report EOUSA's State of the District Report and Compliance Checklist in relation to actions taken to address recommendation 11.
7. We are aware of EOUSA's hiring of an independent contractor to perform a requirements analysis for a new debt collection system. However, as of the completion date of our fieldwork, according to an EOUSA official, Justice was in the process of reviewing the contractor's work, and we could not obtain a copy of the contractor's report until the review was complete. Therefore, we are unable to comment on the results of the contractor's review. However, we acknowledge in our report EOUSA's new version of its collections case tracking system, including its recent and planned upgrades designed to reduce the data entry responsibilities of FLUs.
8. We provide in our report detailed information on Justice's efforts to add criminal debts to the Treasury Offset Program.
9. Our July 2001 report addressed many factors that have had an impact on the effectiveness of the criminal debt collection process. That report resulted in numerous recommendations to Justice and AOUSC to improve debt collection. Justice has taken action to enhance its asset investigations resources. In our discussion of Justice's efforts to address recommendation 13, we acknowledge EOUSA's receipt of funding, beginning in fiscal year 2002, through the Office for Victims of Crime to support asset investigations in criminal debt collection cases.
10. Assets identified by outside investigators, combined with fervent debt collection efforts, could result in potential collections on outstanding criminal debts. If investigators found assets for approximately \$50 million of the \$150 million of criminal debts referred to them, the potential collection rate for such assets might well exceed the average collection rates being experienced by Justice.
11. Although we are aware of EOUSA's contract for credit bureau report services, the issue of credit bureau report services did not directly

relate to any particular recommendation made in our 2001 report. Therefore, the contract was not addressed in this report. However, we agree that credit bureau report services, if properly applied, can enhance FLUs' ability to assess a debtor's ability to pay.

12. We acknowledge in our discussion of EOUSA's actions to address recommendation 5, that EOUSA has worked to reinforce policies and procedures by developing and providing training materials to its staff involved in debt collection.

13. In our 2001 report, we recommended that Justice perform an analysis to assess whether FLUs' human capital resources are adequate to effectively perform their collection activities. In our discussion of Justice's actions to address recommendation 13 in this report, we acknowledge that EOUSA has assessed FLU human capital resources and determined that FLUs need more staff or contractors to perform debt collection activities. We further state that, to date, EOUSA has not been successful in requesting additional staff for debt collection.

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E-mail: fraudnet@gao.gov

Automated answering system: (800) 424-5454 or (202) 512-7470

Public Affairs

Jeff Nelligan, Managing Director, NelliganJ@gao.gov (202) 512-4800
U.S. General Accounting Office, 441 G Street NW, Room 7149
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