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Report to Congressional Committees

April 2005

HEALTH CARE FRAUD AND ABUSE CONTROL PROGRAM

Results of Review of Annual Reports for Fiscal Years 2002 and 2003

GAO-05-134

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GAO Accountability·Integrity·Reliability

Highlights

Highlights of GAO-05-134, a report to congressional committees

Why GAO Did This Study

Because of the susceptibility of health care programs to fraud and abuse, Congress enacted the Health Care Fraud and Abuse Control (HCFAC) program as part of the Health Insurance Portability and Accountability Act of 1996 (HIPAA) Pub. L. No. 104-191. HIPAA requires that the Departments of Health and Human Services (HHS) and Justice (DOJ) issue a joint annual report to Congress on amounts deposited to the Federal Hospital Insurance Trust Fund and amounts appropriated from the trust fund for the HCFAC program. It also requires GAO to submit reports biennially. This, our final report required by law, provides the results of our review of amounts reported as (1) deposits to the trust fund, (2) appropriations from the trust fund and justification for expenditure of such amounts by HHS and DOJ, and (3) savings resulting from expenditures from the trust fund. We also report on the repeated late issuance of the annual HCFAC report as well as the status of our prior recommendations.

What GAO Recommends

We made three recommendations to improve HHS's and DOJ's procedures for recording HCFAC expenditures and issuing the annual HCFAC report. In response, HHS and DOJ stated that they are taking action to improve these activities but did not agree on notifying Congress of delays in issuing the HCFAC report by the mandated deadline.

www.gao.gov/cgi-bin/getrpt?GAO-05-134.

To view the full product, including the scope and methodology, click on the link above. For more information, contact Linda Calbom at (202) 512-8341 or calboml@gao.gov.

What GAO Found

Our review of the HCFAC program for fiscal years 2002 and 2003 determined the following:

- Amounts reported as trust fund deposits --$766 million (fiscal year 2002) and $243 million (fiscal year 2003)--were appropriate. The sources of these deposits were primarily penalties and multiple damages and criminal fines collected from health care fraud cases.

- Amounts reported as appropriations from the trust fund for HCFAC activities—$209 million (fiscal year 2002) and $240 million (fiscal year 2003) --were consistent with HIPAA. The HHS/OIG received funds within the minimum and maximum amounts allowed by HIPAA to carry out Medicare and Medicaid antifraud activities. The expenditures charged against HCFAC funds by HHS and DOJ for fiscal years 2002 and 2003 were reasonable but the HHS/OIG did not record time charges in its workload systems for all staff that worked on HCFAC activities. Also, DOJ did not record all fiscal year 2003 expenditures in its accounting system so they could be readily identified as HCFAC related. Failure to properly record staff hours and expenditure data could hinder DOJ and HHS in monitoring the uses of HCFAC funds.

- Some reported cost savings--$19.9 billion (fiscal year 2002) and $20.8 billion (fiscal year 2003) can be considered savings to the trust fund, resulting from trust fund expenditures for the HCFAC program, but most can not. For example, $1.5 billion of the cost savings for fiscal year 2002 and $3.9 billion for fiscal year 2003 are the result of HHS/OIG recommendations and other initiatives since the HCFAC program was created. However, the remaining cost savings continued to be largely the result of actions that predate the HCFAC program and cannot be associated with expenditures from the trust fund for HCFAC.

- HIPAA requires that HHS and DOJ issue to Congress a joint HCFAC report on January 1 of each year. However, DOJ and HHS have issued the last three reports late and the length of the delay has increased each year. HHS and DOJ cited onerous internal review processes as the reason for late issuance.

Joint HCFAC Report Issue Dates for Fiscal Years 2001, 2002, and 2003

Report fiscal year	Mandated date of report	Actual date of report	Number of months late
2001	January 1, 2002	April 2002	4
2002	January 1, 2003	September 2003	9
2003	January 1, 2004	January 2005	12

Source: GAO based on the joint HCFAC reports for fiscal years 2001, 2002, and 2003.

Contents

Figures

Abbreviations

HCFAC	Health Care Fraud and Abuse Control program
HIPAA	Health Insurance Portability and Accountability Act
HHS	Department of Health and Human Services
DOJ	Department of Justice
OIG	Office of the Inspector General
CMS	Centers for Medicare and Medicaid Services
OAS	Office of Audit Services
OEI	Office of Evaluations and Inspections
OI	Office of Investigations
OMP	Office of Management and Policy
USAO	United States Attorneys Office
FTE	full-time equivalents
CBO	Congressional Budget Office

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Accountability * Integrity * Reliability

United States Government Accountability Office
Washington, DC 20548

April 29, 2005

Congressional Committees

Congress enacted the Health Care Fraud and Abuse Control (HCFAC) program as part of the Health Insurance Portability and Accountability Act of 1996 (HIPAA), Public Law 104-191, to help combat fraud and abuse in health care programs, including the Medicare and Medicaid programs. Since 1990, we have designated Medicare a high-risk program, vulnerable to exploitation in part because of its sheer size—estimated fiscal year 2004 outlays were $297 billion with net improper payments of $20 billion, covering more than 41 million elderly and disabled enrollees. In addition, in 2003 we designated Medicaid a high-risk program, in part because of concerns about the quality of fiscal oversight needed to prevent inappropriate program spending—fiscal year 2003 costs were about $274 billion.

HCFAC, which is administered by the Department of Health and Human Services (HHS) and the Department of Justice (DOJ), established a national framework to coordinate federal, state, and local law enforcement efforts to detect, prevent, and prosecute health care fraud and abuse in the public and private sectors.

HIPAA requires that HHS and DOJ issue a joint annual report to Congress no later than January 1 of each year on (1) amounts deposited to the Federal Hospital Insurance Trust Fund[1] pursuant to HIPAA for the previous fiscal year and the source of such amounts and (2) amounts appropriated from the trust fund for each year and the justification for the expenditure of such amounts. HHS and DOJ have issued seven joint reports, which covered HCFAC-related activities for fiscal years 1997 through 2003.

HIPAA, as amended by the Balanced Budget Act of 1997,[2] also mandates that we issue a report, no later than January 1, 2004, that identifies the

[1] The Hospital Insurance Trust Fund funds the Medicare Part A program, which helps pay for hospital, home health, skilled nursing facility, and hospice care for the aged and disabled.

[2] Pub. L. No. 105-33, 111 Stat. 251 (August 5, 1997).

information reported by HHS and DOJ in their fiscal years 2002 and 2003 joint HCFAC report. The law also requires that our report include any savings resulting from expenditures from the trust fund and any other aspects of the operation of the trust fund that we consider appropriate.

HHS and DOJ were required to issue the joint HCFAC report for fiscal year 2002 in January 2003 but did not issue the report until September 2003. Further, the deadline for issuing the fiscal year 2003 joint HCFAC report was January 2004 but the report was not issued until a year later in January 2005. Because complete information needed to perform our review was not available, we could not meet our reporting deadline of January 1, 2004.[3]

To fulfill our reporting requirements, we assessed the reliability of information reported by HHS and DOJ for fiscal years 2002 and 2003 as (1) deposits to the trust fund[4] and the sources of such amounts, (2) appropriations from the trust fund for HCFAC and justification for the expenditure of such amounts, and (3) savings resulting from expenditures from the trust fund. We also provide information on issues related to the repeated late issuance of the HHS and DOJ joint HCFAC report as well as a summary of the status of recommendations made in our prior reports (See app. II).

To assess the reliability of information reported by HHS and DOJ in the joint HCFAC reports for fiscal years 2002 and 2003, we (1) obtained documentation supporting the various types of deposits and tested selected deposit transactions on a statistical basis to determine whether the proper amounts were deposited to the trust fund; (2) reviewed and analyzed documentation supporting the certification of appropriations from the trust fund to HHS and DOJ; (3) reviewed the justification for expenditures included in the HHS and DOJ reports; (4) analyzed DOJ and

[3] As we have previously stated in our reports on HCFAC program activities for fiscal years 1998, 1999, 2000, and 2001, even if the HHS and DOJ joint report for fiscal year 2003 was issued on time (January 2004), this would not have provided sufficient time for us to perform our review and to meet our legislated reporting date of January 2004.

[4] As reported in the past, the HHS and DOJ joint reports include other amounts collected in connection with health care fraud activities, including recovered OIG audit disallowances and restitution and compensatory damages. Such amounts for fiscal year 2002 totaled $701 million and $480 million for fiscal year 2003. Because HIPAA does not require these amounts to be deposited to the trust fund, we did not verify the reported amounts. According to HHS and DOJ, they are returned to the trust fund to the extent that they represent repayments to Medicare.

HHS methodologies for charging expenditures against HCFAC appropriations; (5) tested selected expenditure transactions to determine whether the expenditures were in support of the HCFAC program; (6) reviewed the supporting documentation related to selected cost savings amounts; and (7) interviewed HHS, HHS Office of Inspector General (OIG), and DOJ personnel.

We conducted our work from August 2003 through January 2005 in accordance with U.S. generally accepted government auditing standards. A detailed discussion of our scope and methodology is contained in appendix I. We requested comments on a draft of this report from the Secretary of HHS and the Attorney General or their designees. We received written comments from the Acting Inspector General of HHS and the Assistant Attorney General for Administration at DOJ. We have reprinted their responses in appendixes III and IV, respectively.

Results in Brief

The HHS and DOJ joint HCFAC reports for fiscal years 2002 and 2003 stated that about $766 million in fiscal year 2002 and $243 million in fiscal year 2003 were deposited into the trust fund pursuant to HIPAA. The sources of the deposits were primarily penalties and multiple damages and criminal fines resulting from health care fraud audits, evaluations, investigations, and litigation. The considerable difference in the deposits reported for fiscal year 2002 and 2003 was primarily due to large amounts collected from two cases settled in prior years. Our work determined that the reported amounts of HCFAC deposits for fiscal years 2002 and 2003 were appropriate. However, we did identify a relatively minor mathematical error in an adjustment made by DOJ to the amount of criminal fine deposits reported for fiscal year 2002 in the HCFAC joint report. This error was not corrected until fiscal year 2004 and therefore not reflected in the 2003 HCFAC joint report.

We determined that amounts appropriated from the trust fund for HCFAC activities—$209.2 million in fiscal year 2002 and $240.6 million in fiscal year 2003—were consistent with HIPAA and that the amount of HCFAC funds specified in the joint reports was made available to HHS and DOJ. We also determined that the expenditure of such amounts was reasonable, although some expenditure data were not properly captured in agency information systems. For example, staff hours for all staff working on HCFAC activities were not tracked in HHS/OIG workload tracking systems. Incomplete data on staff hours could hinder the OIG's ability to monitor and ensure that staff perform HCFAC-related work as planned. Also, in recording some fiscal year 2003 HCFAC expenditures in its

accounting system, DOJ did not adhere to its accounting policy, which requires DOJ components to record all HCFAC expenditures under accounting codes designated for HCFAC. This lack of specificity in recording HCFAC expenditures could hinder DOJ's ability to monitor uses of the funds.

For the first time, there were some reported savings to the trust fund, resulting from trust fund expenditures for the HCFAC program. The joint HCFAC reports cited cost savings[5] of nearly $19.9 billion for fiscal year 2002 and $20.8 billion for fiscal year 2003, as a result of HHS/OIG recommendations and other initiatives. Of these amounts, about $1.5 billion in cost savings for fiscal year 2002 and $3.9 billion for fiscal year 2003 resulted from actions taken since the HCFAC program was created. However, the remaining cost savings relate to actions that predate the HCFAC program and cannot be associated with expenditures from the trust fund for HCFAC activities. Further, since audit, evaluation, investigation, and litigation activities typically span several years, savings from such activities in fiscal years 2002 and 2003 may not be realized until future years.

Finally, we experienced significant delays in completing our review of fiscal years 2002 and 2003 HCFAC activities due to the late issuance of the HHS and DOJ joint reports that HIPAA requires the agencies to issue by January 1st of each year. For example, the joint report for fiscal year 2002 was due January 1, 2003, but was not issued until 9 months later in September 2003. Likewise, the report for fiscal year 2003, due January 1, 2004, was issued 12 months late in January 2005. DOJ and HHS officials reported that onerous internal review processes have impacted the timeliness of report issuance. Taking steps to streamline these processes is needed to ensure that Congress has timely information to use as it makes decisions on the HCFAC program funding.

To address the issues that we identified in HHS's procedures for recording staff hours and DOJ's processes for recording HCFAC expenditures, we are making recommendations to HHS and DOJ to develop additional procedures for these activities. We are also making a recommendation to help ensure that the HCFAC reports are issued in a more timely manner. In

[5] Cost savings are estimated savings resulting from health care funds not being expended in future years due to legislative or regulatory changes. Cost savings differ from collections that are deposited to the trust fund.

commenting on a draft of this report, HHS and DOJ generally agreed with our recommendations and stated that they are already taking action to improve procedures for recording staff hours and HCFAC expenditures as well as procedures for approving the HCFAC report. However, HHS and DOJ did not agree with our recommendation that they report to Congress delays in issuing the HCFAC report by the mandated deadline. In their comments, HHS and DOJ noted that additional reporting, which requires clearance through both departments would be counterproductive to clearing the annual HCFAC report and of little value to Congress. We disagree. Congress should be informed if reports that it may use in making future program funding and oversight decisions are not expected to be issued by the mandated report deadline. In addition, the mechanism for reporting such delays could be as simple as an electronic mail message to all the committees of jurisdiction and therefore would not cause any undue burden. HHS and DOJ also provided us with technical comments, which we have incorporated as appropriate.

Background

HIPAA established the HCFAC program to consolidate and strengthen ongoing efforts to combat fraud and abuse in health care programs and expand resources for fighting health care fraud. The Attorney General and the Secretary of HHS through the HHS Office of Inspector General (HHS/OIG) administer HCFAC. The HCFAC program goals are to

- coordinate federal, state, and local law enforcement efforts to control fraud and abuse associated with health plans;
- conduct investigations, audits, and other studies of delivery and payment for health care for the United States;
- facilitate the enforcement of the civil, criminal, and administrative statutes applicable to health care;
- provide guidance to the health care industry, including the issuance of advisory opinions, safe harbor notices, and special fraud alerts; and
- establish a national database of adverse actions against health care providers.

HIPAA requires the following types of collections to be deposited in the trust fund:

- criminal fines recovered in cases involving a federal health care offense;

- civil monetary penalties and assessments imposed in health care fraud cases;
- amounts resulting from the forfeiture of property by reason of a federal health care offense;
- penalties and damages obtained and otherwise creditable to miscellaneous receipts of the general fund of the Treasury obtained under sections 3729 through 3733 of Title 31, United States Code (commonly known as the False Claims Act), in cases involving claims related to the provision of health care items and services (other than funds awarded to a relator,[6] for restitution, or otherwise authorized by law); and
- unconditional gifts and bequests.

Funds for the HCFAC program are appropriated from the trust fund to an expenditure account, referred to as the Health Care Fraud and Abuse Control Account (control account) maintained within the trust fund. The Attorney General and the Secretary of HHS jointly certify that the funds transferred to the control account are necessary to finance health care fraud and abuse control activities. Only a portion of the funds collected and deposited to the trust fund are appropriated to the control account annually for the HCFAC program.

The maximum amounts that may be appropriated for HCFAC each year are specified by HIPAA. The maximum amount for fiscal year 1997, the first year of HCFAC, was $104 million and HIPAA limited the amounts for each of the fiscal years 1998 through 2003 to an amount equal to the limit for the preceding fiscal year increased by 15 percent. For each fiscal year after 2003, the amount made available was capped at the 2003 limit (See table 1).

[6] A relator is a private citizen who files a *qui tam* suit on behalf of the federal government under the provisions of the False Claims Act.

Table 1: Amounts Appropriated For HCFAC, Fiscal Years 1997 through 2003

Dollars in millions	
Year	**Amount**
1997	$104.0
1998	$119.6
1999	$137.5
2000	$158.2
2001	$181.9
2002	$209.2
2003	$240.6

Sources: The annual joint HHS and DOJ HCFAC reports for fiscal years 1997 through 2003.

In addition to the annual limits on the total amount made available for HCFAC, HIPAA includes annual minimum and maximum amounts that are earmarked specifically for HHS/OIG activities for the Medicare and Medicaid programs. For example, of the $240.6 million available in fiscal year 2003, a minimum of $150 million and a maximum of $160 million were earmarked for the HHS/OIG to ensure continued efforts by the HHS/OIG to detect and prevent fraud and abuse in the Medicare and Medicaid programs.

HHS's Centers for Medicare and Medicaid Services (CMS) performs the accounting for the HCFAC control account. Prior to fiscal year 2003, CMS set up allotments in its accounting system for each of the HHS and DOJ entities receiving HCFAC funds. The HHS and DOJ entities accounted for their HCFAC obligations and expenditures in their respective accounting systems and reported them to CMS. CMS then recorded the obligations and expenditures against the appropriate allotments in its accounting system. However, for fiscal year 2003, HHS changed the method of providing funds to DOJ from a direct allotment to a reimbursable agreement. This change requires DOJ components to prepare and submit billing packages to CMS to obtain reimbursement from DOJ's allotment of the HCFAC funds.

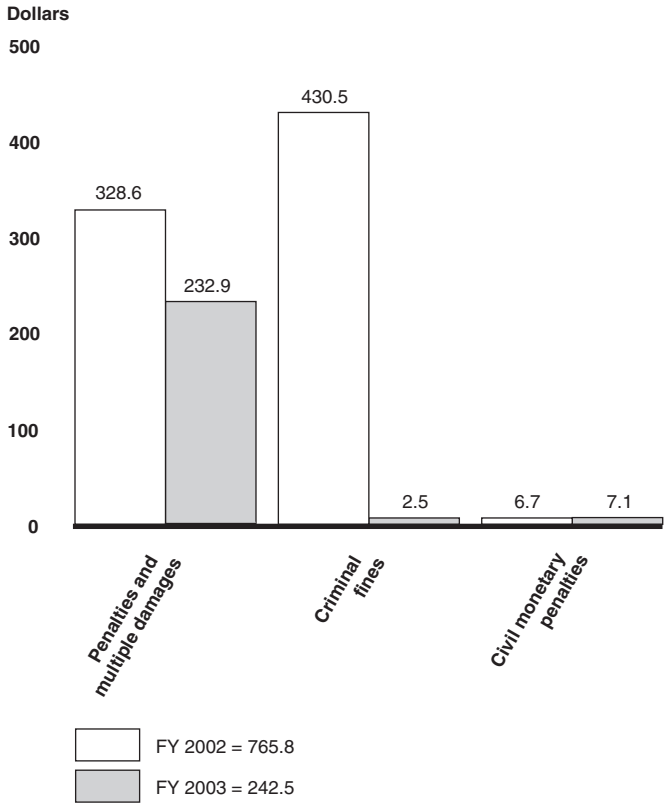
Amounts Reported As Deposits to the Trust Fund Were Appropriate

HHS and DOJ reported total deposits to the trust fund of about $766 million in fiscal year 2002 and $243 million in fiscal year 2003. On the basis of our review of a statistical sample of deposit transactions for fiscal years 2002 and 2003, we determined that the amounts HHS and DOJ reported as deposits to the trust fund were appropriate.[7] As shown in figure 1, these deposits primarily consisted of penalties and multiple damages and criminal fines collected as a result of health care fraud cases.[8] The considerable difference in the amount of criminal fines reported for fiscal year 2002 and 2003 is primarily due to large criminal fine collections from two major cases settled in prior years. In addition, the difference in the amount of penalties and multiple damages reported for fiscal years 2002 and 2003 was primarily due to collections of amounts from a major case settled in a prior year.

[7] See appendix I for statistical sample details.

[8] HIPAA also requires that gifts and bequests and amounts resulting from the forfeiture of property in federal health care cases be deposited to the trust fund. Gifts and bequests totaled $6,820 for fiscal year 2002 but no amounts were reported for fiscal year 2003. Also, no amounts were reported for forfeitures for either year.

Figure 1: Reported Fiscal Years 2002 and 2003 Deposits to the Trust Fund Pursuant to HIPAA (Dollars in millions)



Source: GAO, based on amounts reported in the *Department of Health and Human Services and The Department of Justice Health Care Fraud and Abuse Control Program Annual Report for Fiscal Year 2002* (Washington, D.C.: September 2003) *and Department of Health and Human Services and The Department of Justice Health Care Fraud and Abuse Control Program Annual Report for Fiscal Year 2003 (*Washington, D.C.: January 2005).

Related to our review of criminal fine deposits, DOJ provided us with supporting documents related to a $13.0 million adjustment that was calculated and reported to the Department of the Treasury in September 2002 to correct the amount of criminal fine deposits previously reported in error. When we reviewed the supporting documents for the adjustment, we identified a mathematical error of approximately $130,000 in DOJ's determination of the adjustment. While the amount of error has a minimal impact on the trust fund balance, we found that DOJ lacked supervisory review procedures for deposits, which may have contributed to the error going unnoticed. Lack of supervisory review could result in undetected material errors to the trust fund in the future.

The Comptroller General's *Standards for Internal Control in the Federal Government*[9] state that management review is an important control activity in helping to ensure that all transactions are completely and accurately recorded. DOJ officials acknowledged the importance of this control activity and in response they developed new procedures to ensure proper review of all adjustments and deposit amounts before reports are sent to Treasury. In addition, in September 2004, DOJ made the necessary correction to the amount of criminal fine deposits reported to the trust fund. However, because the correction of the error was not made until after the end of fiscal year 2003, the HCFAC joint report for fiscal year 2003 did not include the correction.

Amounts Appropriated from the Trust Fund Were Consistent with HIPAA and Reported Expenditures Were Reasonable

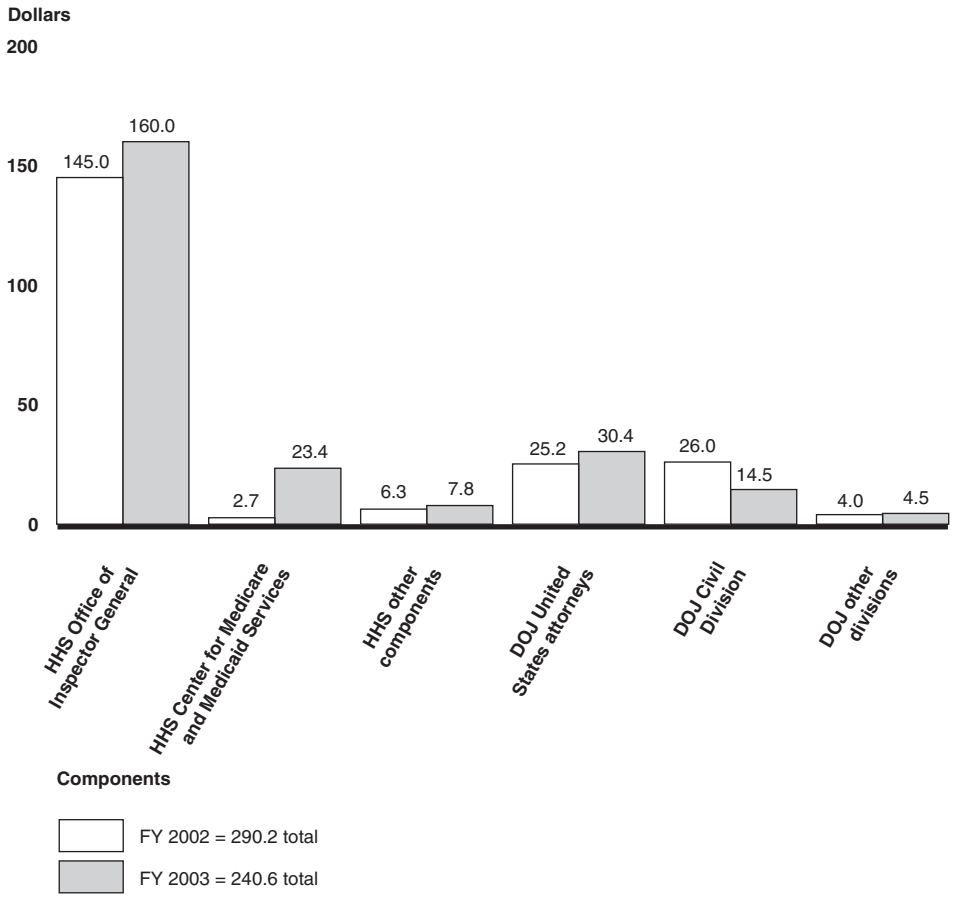
In fiscal years 2002 and 2003, $209 million and $240 million, respectively, were appropriated from the trust fund for performing HCFAC program activities. On the basis of our review of supporting documents, we determined that these amounts were consistent with HIPAA and that the amount of HCFAC funds specified in the joint reports was made available to HHS and DOJ. We also determined that HHS's and DOJ's expenditure of amounts appropriated from the trust fund was reasonable. However, we did note that some data on expenditures were not included in HHS and DOJ information systems. For example, some staff hours needed to monitor payroll expenses were not tracked in HHS/OIG workload tracking systems. Also, DOJ did not record some expenditure data in its accounting system as HCFAC expenses and therefore could not provide an electronic file of all nonpayroll expenses from which we could select a statistical sample of these fiscal year 2003 expenses. We tested nonpayroll expenses, selected on a nonstatistical basis, from hard copy documents and determined that they were adequately supported and related to HCFAC. However, having all data on HCFAC expenses in its accounting system could help managers in monitoring how HCFAC funds are spent.

[9]GAO, *Standards for Internal Control in the Federal Government* GAO/AIMD-00-21.3.1(Washington, D.C.: November 1999).

Reported Amounts Appropriated from the Trust Fund for HCFAC and General Uses of the Funds Were Consistent with HIPAA

HIPAA specifies the maximum amounts that may be appropriated from the trust fund each year for HCFAC, as well as a minimum and maximum amount of the appropriations that must go to the HHS/OIG for Medicare and Medicaid antifraud activities. For fiscal years 2002 and 2003, HHS and DOJ each received the maximum amount from the trust fund allowed under HIPAA. In addition, HHS and DOJ entered into memorandums of agreement to agree on how much of the HCFAC appropriation each HHS and DOJ unit would receive. The amount allocated to each unit was included in the HHS and DOJ joint reports and is depicted in figure 2.

Figure 2: Reported Fiscal Years 2002 and 2003 Allocations (Dollars in millions)



Source: GAO, based on amounts included in the fiscal years 2002 and 2003 memorandum of agreement between HHS and DOJ, and the Office of Management and Budget form SF-132s, Apportionment and Reapportionment Schedule, for the Health Care Fraud and Abuse Control Account for fiscal year 2002 and fiscal year 2003.

In accordance with HIPAA, HHS/OIG was allocated amounts within the minimum and maximum funding allowed by statute—$145 million and $160 million, for fiscal years 2002 and 2003 respectively. In the HHS and DOJ joint report, the HHS/OIG, other HHS units, and DOJ provided information related to how the HCFAC funds were used. The HHS/OIG reported that its fiscal years 2002 and 2003 HCFAC funds were used in carrying out efforts to both detect health care fraud and abuse and prevent it. These efforts included several fraud prevention activities that reduced program losses as well as participation in prosecutions and settlements of cases involving Medicare and Medicaid fraud, and investigations, audits, and evaluations that helped reveal vulnerabilities or incentives for fraudulent practices.

Other HHS components also reported on how they had expended their HCFAC funds including CMS. CMS received $2.7 million in fiscal year 2002 and $23.4 million in fiscal year 2003. The increase in funding for fiscal year 2003 was in support of several projects including the Medicaid Payment Accuracy Measurement Project, Medicare/Medicaid Data Analysis Project, and Medicaid Financial Management initiatives, including Medicaid Audits.

DOJ reported that its funding was used to support its role in civil and criminal prosecution of health care professionals, providers, and others as well as its role in recovering funds that federal health care programs have paid as a result of fraud, waste, and abuse.

HCFAC Expenditures Were Reasonable but Some Expenditure Data Were Not Captured in HHS and DOJ Information Systems

We determined that expenditures charged by HHS and DOJ for HCFAC activities were reasonable. In evaluating HHS HCFAC expenditures, we focused on expenditures of the HHS/OIG. The HHS/OIG's payroll and nonpayroll expenses represented about 96 percent of all HHS expenditures charged against HCFAC funds for fiscal years 2002 and 2003. We reviewed the methodology that the HHS/OIG used to charge expenditures against its HCFAC funding and determined that it was reasonable. The OIG charges a percentage of its total payroll and nonpayroll expenses to the HCFAC program. The percentage that is charged each year is based on the relative proportion of its annual HCFAC funding to its total funding. These amounts are then monitored throughout the year. As table 2 shows, HCFAC funding for fiscal years 2002 and 2003 was 80 and 81 percent, respectively, of the OIG's total funding.

Table 2: HHS/OIG Funding Sources–Unaudited

Appropriation	Amount	Percentage
Fiscal year 2002 general	$ 35,308,000	20
Fiscal year 2002 HCFAC	$145,000,000	80
Fiscal year 2002 total	**$180,308,000**	**100**
Fiscal year 2003 general	$ 36,807,550	19
Fiscal year 2003 HCFAC	$160,000,000	81
Fiscal year 2003 total	**$196,807,550**	**100**

Source: *HHS, Office of Inspector General, Justification of Estimates for Appropriations Committees for Fiscal Year 2004 and HHS, Office of Inspector General, Justification of Estimates for Appropriations Committees for Fiscal Year 2005.*

HHS/OIG management takes several steps to help assure that HCFAC funds are expended on HCFAC-related activities. For one, management meets with its component offices at the beginning of the year to determine how much of each component's resources will be devoted to HCFAC-related activities. Some component offices make plans to devote resources to HCFAC in excess of the 80-81 percent funding level, while other components plan to devote less. OIG management evaluates each component's plans in relation to each component's full-time equivalents (FTE)[10] to ensure that OIG resources overall are spent on HCFAC activities in accordance with the funding level. In addition, throughout the year, three of the components, Office of Audit Services (OAS), Office of Evaluations and Inspections (OEI), and Office of Investigations (OI) track the staff time spent on various projects in their workload tracking system. The information in each component's system is summarized and monitored quarterly to ensure that staff time is being spent on HCFAC in accordance with the funding.

The OIG's Office of Management and Policy (OMP) requests summary reports from the component offices that include the staff time spent on HCFAC activities and uses the information in determining if the OIG overall is performing HCFAC work as planned. The lead OMP staff person said that when material variances are identified in the amount of staff time

[10] FTE employment is the measure of the total number of regular (nonovertime) hours worked by an employee divided by the number of compensable hours applicable to each fiscal year. A typical FTE work year is equal to 2,080 hours. Office of Management and Budget, *The Budget for Fiscal Year 2003*, *Historical Table* (Washington, D.C.: U.S. Government Printing Office, 2002)

devoted to HCFAC, the components are instructed to adjust the type of work performed. We reviewed the monitoring reports that the OMP staff prepares and these reports showed that the amount of time devoted to HCFAC activities for the OIG as a whole was in line with the planned amount.

We also performed several tests on the information maintained in components' workload systems as they are relied on in monitoring HCFAC payroll expenditures. For example, we analyzed the data in the components' workload tracking systems to determine if the projects identified as HCFAC were appropriately classified as HCFAC-related in each component. We analyzed titles and supporting documents for all of the projects in the workload tracking systems of OAS and OEI—two components that account for about 55 percent of the OIG staff. We determined that the projects were appropriately classified as HCFAC or non-HCFAC.

We also compared hours in the OAS, OEI, and OI workload tracking systems to hours in the payroll system to determine if the components' systems included hours for all staff. We found that the hours recorded in OAS's system agreed with hours in the payroll system. However, hours in OI's and OEI's systems did not agree with the payroll system. The OI system included approximately 52 percent fewer hours for fiscal year 2002 and 44 percent fewer hours for 2003 than were in the payroll system. OI managers were aware of the variance and explained that until they recently implemented a new system, their workload system did not include staff hours for administrative and supervisory staff. In determining the amount of staff hours spent on HCFAC-related assignments, OI concluded that administrative and supervisory time was spent in the same relative percentages as the staff who recorded their time in the workload system.

In June 2003, OI upgraded its workload tracking system to record hours for all staff. In addition, OI implemented new procedures to help ensure that all hours were recorded in its workload system. The procedures include weekly automatic, system-generated electronic mail messages that are sent to supervisors informing them of employees that did not record their time and a reconciliation of hours in the HHS payroll system to hours in the workload system that is performed during periodic inspections at regional offices.

The OEI workload tracking system included about 12 percent fewer hours than the payroll system for fiscal years 2002 and 2003. OEI officials said

that they did not have procedures in place to identify missing hours. However, they believed that most of the people not entering data into the workload system were probably managers and administrative personnel whose hours would probably reflect the same allocation of hours between HCFAC and non-HCFAC work as those staff recording hours. In addition, the OMP staff person who monitored staff hours applied the HCFAC and non-HCFAC hours recorded in the workload system against the total FTEs for OEI to determine that the OIG as a whole performed HCFAC work as planned. Therefore, while this issue did not appear to impact the propriety of HCFAC payroll expenditures during our review period, incomplete staff hours in the component workload tracking systems could hinder OIG managers in monitoring the amount of HCFAC work performed in the future. Therefore, it is critical that all OIG components have procedures in place to ensure that workload data are complete.

In assessing the reliability of DOJ fiscal year 2002 expenditures, we tested a statistical sample of the largest category of fiscal year 2002 nonpayroll expenses, which accounted for 69 percent of nonpayroll and 34 percent of DOJ's total fiscal year 2002 HCFAC expenditures. We determined that nonpayroll expenses were adequately supported and related to HCFAC on the basis of our review of supporting documentation. [11] In addition, we reviewed the payroll expenses charged by DOJ's United States Attorneys Office (USAO) against HCFAC funds that represented 76 percent of DOJ's fiscal year 2002 HCFAC payroll expenditures and 38 percent of DOJ's total fiscal year 2002 HCFAC expenditures.

We determined that the USAO methodology for charging salaries to HCFAC was reasonable. USAO charged the full annual salaries of 160 individuals against HCFAC program funds in fiscal year 2002 as a surrogate for the 160 FTEs that were funded by the program. USAO managers said that this was administratively easier than trying to charge a portion of the salary of all the staff that perform health care fraud and abuse work. To assess the reasonableness of this approach, we reviewed the hours recorded in the USAO workload system for fiscal year 2002. According to data in the system, USAO staff devoted about 587,168 staff hours (282.3 FTEs) to health care fraud-related activities during fiscal year 2002, which was about 76 percent more than the 160 FTEs (332,800 hours) funded by the program. In addition, to ensure that the salaries charged to HCFAC were reasonable, we compared the average annual salaries for the

[11] See appendix I for statistical sample details.

160 staff (i.e., attorneys, paralegals, and administrative staff) charged to the HCFAC account to the average annual salary for the same positions USAO-wide. We found that the salaries were generally comparable.

Our review of DOJ's fiscal year 2003 HCFAC expenditures also included a review of USAO salaries charged against HCFAC funds as these amounts represented 75 percent of DOJ's fiscal year 2003 HCFAC payroll expenditures and 49 percent of all fiscal year 2003 HCFAC expenses. USAO charged the salaries of 162 individuals against HCFAC funding in fiscal year 2003. Our review procedures were similar to our work on 2002 payroll expenditures, and we again found the payroll expenditure amounts to be reasonable.

We also tested a nonstatistical selection of nonpayroll expenses for fiscal year 2003 from hard copy documentation included in DOJ billing packages.[12] We determined that these expenses were adequately supported and related to HCFAC. We did not select a statistical sample of fiscal year 2003 nonpayroll HCFAC expenses because DOJ could not provide an electronic file of detailed transactions from its accounting system for all nonpayroll HCFAC expenditures. Only one of the four DOJ components properly recorded expenditures under the specific HCFAC account class in the accounting system. DOJ accounting policy, issued March 2003, required that each DOJ component record expenses charged against HCFAC funds under a specific HCFAC account class so that they can be readily identified as related to HCFAC.

Managers for the components that did not follow this accounting policy told us that they recorded their fiscal year 2003 HCFAC expenses at a summary level under an account class for general expenses and not under the HCFAC account class as required because they instead prepared the hard copy billing packages for reimbursement, which were supposed to provide details on HCFAC expenditures. However, we found that the billing packages contained varying levels of detail. Without the full detail recorded in the accounting system it is difficult to monitor HCFAC expenditures. In addition, the lack of such expenditure detail could impede DOJ officials' ability to prepare meaningful budgets to support future HCFAC funding requests.

[12] Billing packages contain documentation to support HCFAC expenditures that DOJ must submit to CMS for reimbursement of HCFAC expenditures under the reimbursable agreement for fiscal year 2003.

Some Reported Cost Savings Are Related to Trust Fund Expenditures for HCFAC, but Most Are Not

For the first time, some of the reported cost savings can be considered savings to the trust fund, resulting from trust fund expenditures for the HCFAC program. The joint reports cited cost savings[13] of nearly $19.9 billion for fiscal year 2002 and $20.8 billion for fiscal year 2003, as a result of HHS/OIG recommendations and other initiatives. Of these amounts, about $1.5 billion in cost savings for fiscal year 2002 and $3.9 billion for fiscal year 2003 resulted from actions taken since the HCFAC program was created. However, the remaining cost savings ($18.4 billion for fiscal year 2002 and $16.9 billion for fiscal year 2003) continued to be related to actions that predate the HCFAC program and cannot be associated with expenditures from the trust fund for HCFAC activities. Further, since audit, evaluation, investigation, and litigation activities typically span several years, savings from such activities in fiscal years 2002 and 2003 may not be realized until future years.

As has been the case in the past, most of the audits and evaluations related to the reported cost savings (i.e., 47 of the 50 audits cited by the OIG) were done by the OIG before the HCFAC program was created. However, the HHS/OIG cited cost savings related to three reports that were issued in fiscal year 2000.

One of the three reports, which consolidated the results of seven HHS/OIG audits on Medicaid enhanced payments, found that payments to some providers were not based on the cost of providing services. The report included recommendations that resulted in changes in program regulations and administrative actions. For example, in January 2001, CMS issued a final rule to change Medicaid payment policies, placing limitations on enhanced payments under Medicaid upper-payment limit requirements for hospital services, nursing facility services, intermediate care facility services for the mentally retarded, and clinic services.

In addition, CMS issued a final rule in January 2002 placing additional limitations on enhanced payments for hospitals. CMS projected that the regulatory changes would result in cost savings of $79.3 billion over 10 years beginning with about $1.4 billion in fiscal year 2002 and about $3.8 billion in fiscal year 2003. The two other reports issued in fiscal year 2000 that resulted in costs savings of about $100 million for both fiscal

[13] Cost savings are estimated savings resulting from health care funds not being expended in future years due to legislative or regulatory changes. Cost savings differ from collections that are deposited to the trust fund.

years 2002 and 2003 were related to recovering overpayments to nursing homes and Medicaid drug rebates. Because the three reports were issued since the HCFAC program was created and the savings occurred in fiscal years 2002 and 2003, the savings can be linked to expenditures from the trust fund.

We reviewed the support for the total cost savings amounts reported by the HHS/OIG for fiscal years 2002 and 2003. We initially found an overstatement of $840 million in the amounts included in the draft report for fiscal year 2003. The overstatement occurred because the HHS/OIG did not record an adjustment for the revised cost savings amounts issued by the Congressional Budget Office (CBO). The annual cost savings amounts reported by the HHS/OIG are based on estimates issued by CBO of savings that are expected from implementation of health-care-related legislation. CBO revised its estimate of fiscal year 2003 cost savings that would be realized from implementation of the Medicare, Medicaid, and SCHIP Balanced Budget Refinement Act of 1999, but HHS officials did not recognize and factor in the effect of the adjustment in the fiscal year 2003 draft HCFAC report. HHS officials explained that the responsibility for preparing the cost savings amounts had recently been reassigned to another staff person who had not looked for CBO adjustments. The cost savings amounts were corrected and restated in the final report.

Repeated Delays in Issuing the HHS and DOJ Joint HCFAC Reports Impact Relevance of Data

HIPAA requires that HHS and DOJ issue a joint report on the HCFAC program for each fiscal year by January 1 of the following calendar year. For fiscal years 1997 through 2000, the joint HCFAC report was issued on or close to January 1 of the subsequent year. However, beginning with the report for fiscal year 2001 the report has been issued late and the length of the delay has increased each year. See table 3 for the timing of reports for fiscal years 2001, 2002, and 2003.

Table 3: Joint HCFAC Report Issue Dates for Fiscal Years 2001, 2002, and 2003

Report fiscal year	Mandated date of report	Actual date of report	Number of months late
Fiscal Year 2001	January 1, 2002	April 2002	4
Fiscal Year 2002	January 1, 2003	September 2003	9
Fiscal Year 2003	January 1, 2004	January 2005	12

Source: GAO based on the annual joint HHS and DOJ HCFAC reports for fiscal years 2001, 2002, and 2003.

The fiscal year 2003 report was more than a year late when it was released. HHS and DOJ officials told us that the joint reports have been issued late because of lengthy review processes within each agency. They have attempted to expedite the process but with little apparent success. Delays in issuing the HCFAC reports significantly erode the usefulness of these reports to Congress and others in making decisions about HCFAC program funding and oversight.

Conclusions

While the information on HCFAC trust fund activity provided in the HHS and DOJ fiscal years 2002 and 2003 joint reports was reasonable, better tracking of time charges by HHS/OIG and nonpayroll expenditures by DOJ would improve their ability to monitor the use of HCFAC funds. In addition, the usefulness of the fiscal year 2002 and fiscal year 2003 joint annual reports was severely impaired due to their untimely issuance. Until HHS and DOJ streamline their internal review processes, the annual joint reports will continue to be delinquent and therefore of limited use to congressional decision makers and other interested parties.

Recommendations for Executive Action

To improve HHS's accountability over HCFAC program expenditures, we recommend that the HHS Inspector General require all HHS/OIG components to develop procedures for ensuring that all key staff hours spent on HCFAC activities are recorded in OIG workload tracking systems.

To improve DOJ's accountability for HCFAC program expenditures, we recommend that the Attorney General develop monitoring procedures to ensure that DOJ components record key HCFAC program expenditure data under the appropriate HCFAC account class in DOJ's accounting system.

To help ensure that the joint HHS and DOJ HCFAC reports are issued in a more timely manner, we recommend that the Secretary of HHS and the Attorney General

- develop a more expedited review process and
- notify congressional committees with oversight responsibility for the HCFAC program of delays in issuing the joint report within 1 month after missing the January 1 deadline and provide updates until the report is issued.

Agency Comments and Our Evaluation

A draft of this report was provided to HHS and DOJ for their review and comment. Written comments from HHS and DOJ are reprinted in appendixes III and IV. HHS and DOJ also provided technical comments that we incorporated as appropriate.

In written comments, HHS concurred with our recommendation that the HHS Inspector General require all of its components to develop procedures for ensuring that all key staff hours spent on HCFAC activities are recorded in its workload tracking systems and noted that it is already moving to implement such procedures. Similarly, in its written comments, DOJ concurred with our recommendation for ensuring that DOJ components record key HCFAC program expenditure data under the appropriate HCFAC account class in DOJ's accounting system and noted that its Justice Management Division will meet with the components to assist them in using the accounting classes designated for HCFAC funds.

Regarding our recommendation for ensuring that HCFAC reports are issued in a more timely manner, HHS and DOJ agreed to develop a more expedited review process for the HCFAC reports. DOJ commented that it has already instituted several new procedures that it believes will shorten the time needed for future reports and HHS stated that it will work with DOJ in developing changes to the review process. HHS and DOJ, however, did not agree that they should report to Congress delays in issuing the HCFAC report by the mandated deadline. In their comments, HHS and DOJ noted that additional reporting, which requires clearance through both departments, would be counterproductive to clearing the annual HCFAC report. HHS added that such notification would not provide Congress with any substantial information and DOJ added that reporting on delays would be of little value to congressional oversight committees. Instead, DOJ officials stated that they propose to expedite the review and approval process, to the extent that source data are available and circumstances are within the department's control.

We disagree with HHS's and DOJ's position that Congress would not gain any value in knowing that the HCFAC report is going to be issued after the date that Congress mandated in law. Congress should be informed if reports that it may use in making future program funding and oversight decisions are not expected to be issued by the mandated report deadline. In addition, it appears that HHS and DOJ interpreted our recommendation for reporting delays in issuing the HCFAC report to mean sending Congress a report that would require a formal clearance process through both agencies. This was not our intent. HHS and DOJ officials can and should develop a mechanism for notifying Congress of delays that would

not place an undue burden on their staff or interfere with issuing and clearing the HCFAC report itself. Such a mechanism could be as simple as sending an electronic mail message to all the committees of jurisdiction.

DOJ also commented on the status of two remaining open recommendations from our prior report. We will continue to work with DOJ to obtain documentation to support the actions that DOJ said it is implementing.

We are sending copies of this report to the Secretary of HHS, the Attorney General, and other interested parties. Copies will be made available to others on request. In addition, the report will be available at no charge on the GAO Web site at http://www.gao.gov. If you or your staffs have any questions, please contact me at (202) 512-8341 or by e-mail at calboml@gao.gov. Additional GAO contacts and acknowledgments are provided in appendix IV.

Linda M. Calbom
Director, Financial Management and Assurance

List of Committees

The Honorable Charles E. Grassley
Chairman
The Honorable Max Baucus
Ranking Minority Member
Committee on Finance
United States Senate

The Honorable Michael B. Enzi
Chairman
The Honorable Edward M. Kennedy
Ranking Minority Member
Committee on Health, Education, Labor, and Pensions
United States Senate

The Honorable Arlen Specter
Chairman
The Honorable Patrick J. Leahy
Ranking Minority Member
Committee on the Judiciary
United States Senate

The Honorable Joe Barton
Chairman
The Honorable John D. Dingell
Ranking Minority Member
Committee on Energy and Commerce
House of Representatives

The Honorable F. James Sensenbrenner Jr.
Chairman
The Honorable John Conyers Jr.
Ranking Minority Member
Committee on the Judiciary
House of Representatives

The Honorable William M. Thomas
Chairman
The Honorable Charles B. Rangel
Ranking Minority Member
Committee on Ways and Means
House of Representatives

Appendix I: Scope and Methodology

To assess the reliability and reasonableness of information reported by HHS and DOJ in the joint HCFAC reports for fiscal years 2002 and 2003 as deposits to the trust fund and the sources of such amounts, we did the following.

- We reviewed the joint HHS and DOJ HCFAC reports for fiscal years 2002 and 2003 to identify amounts deposited to the trust fund.
- We interviewed HHS and DOJ officials to update our understanding of procedures related to deposits.
- We obtained data from HHS and DOJ reports and electronic databases for the various deposits as of September 30, 2002, and September 30, 2003,[1] and selected deposit transactions on a statistical basis to determine whether the proper amounts were deposited to the trust fund. We assessed the reliability of the data by (1) performing electronic testing of required data elements, (2) reviewing existing information about the data and the system that produced them, and (3) interviewing agency officials knowledgeable about the data. We determined that the data were sufficiently reliable for the purposes of this report. The transactions that we selected on a statistical basis included the following:[2]
- We selected a dollar unit sample of penalties and multiple damages totaling $276.8 million from a population totaling $322.6 million for fiscal year 2002, and a dollar unit sample totaling $181.2 million from a population totaling $229.8 million for fiscal year 2003.
- We selected a dollar unit sample of criminal fines totaling $435.5 million from a population totaling $443.5 million for fiscal year 2002 and a dollar unit sample totaling $1.9 million from a population totaling $2.5 million for fiscal year 2003.
- We selected a dollar unit sample of civil monetary penalties totaling $1.7 million from a population totaling $6.9 million for fiscal year 2002 and

[1] HHS penalties and multiple damages and civil monetary penalties were obtained from electronic databases. DOJ penalties and multiple damages were obtained from the U.S. Department of Justice FMIS Debt Management Module Detail Listing to Support Transfer of Funds from the U.S. Department of Justice Via IPAC. DOJ criminal fines for fiscal years 2002 and 2003 were obtained from the *Criminal Fines* Report.

[2] Samples for the penalties and multiple damages and civil monetary penalties were selected at a 63 percent confidence level and Criminal Fines at a 95 percent confidence level.

a dollar unit sample totaling $1.7 million from a population totaling $7.1 million for fiscal year 2003.

- We obtained supporting documentation for each sample transaction from various sources depending on the type of deposit. We traced amounts reported on the supporting documentation to reports and other records to confirm that proper amounts were reported as deposits.

To assess the reliability of information reported by HHS and DOJ in the joint HCFAC reports for fiscal years 2002 and 2003 as appropriations from the trust fund for HCFAC, we

- obtained and reviewed the HIPAA legislation, which includes the maximum and minimum amounts that can be appropriated from the trust fund for HCFAC;

- obtained and reviewed the HCFAC funding requests for the HHS and DOJ components to determine whether activities included in the requests were consistent with the stated purposes of the HIPAA legislation;

- obtained the funding decision memorandum detailing how the funds would be distributed between HHS and DOJ, and obtained related documentation for fiscal years 2002 and 2003 to verify the HCFAC funds certified by HHS and DOJ officials; and

- compared amounts reported in the joint HCFAC reports to the approved funding decision memorandum and compared amounts from the decision memorandum to the OMB documentation (Apportionment Schedule SF-132) to verify that the amounts were made available.

To assess the reliability of information reported by HHS and DOJ in the joint HCFAC reports for fiscal years 2002 and 2003 as the justification for the expenditure of HCFAC funds, we did the following.

- We reviewed the justifications provided in the reports and discussed them with HHS and DOJ officials.

- We obtained and analyzed data from the HHS/OIG components' workload tracking systems on the number of hours recorded as worked on HCFAC projects. We reviewed these data for obvious errors and completeness and compared these data for the four selected components with hardcopy documents we obtained from these components, and to the HHS payroll system data. When we found discrepancies we brought them to the attention of the specific component and worked with them to obtain

explanations for the discrepancies before conducting our analyses. On the basis of this, we determined that the data were sufficiently reliable for the purposes of this report.

- We evaluated the methodology used by the HHS/OIG to charge payroll expenses against HCFAC funds for fiscal years 2002 and 2003—these expenses represented 76 percent and 78.6 percent respectively of total HCFAC expenses. For our evaluation, we (1) obtained the total number of staff hours recorded in the workload tracking systems for each of the OIG components and compared the hours in these systems to hours in the HHS payroll system; (2) obtained a list of HHS/OIG projects and related staff hours included in the workload tracking systems for two OIG components, OAS and OEI (staff in OAS and OEI accounted for 55 percent of all OIG employees), and reviewed the project subjects to assess whether projects identified as HCFAC were appropriately classified; and (3) for the project subjects that were unclear, we obtained and reviewed documentation describing the work performed for the jobs to assess whether the job was appropriately classified as HCFAC or non-HCFAC.

- We analyzed HHS/OIG nonpayroll expenditures charged against HCFAC funds for fiscal years 2002 and 2003—these represented 20 and 17.4 percent respectively. We obtained reports from HHS on the amount of HCFAC and non-HCFAC expenditures by expenditure category (travel, rent, supplies, etc.) for each fiscal year; we then calculated the percentage charged to HCFAC and non-HCFAC funds for each category and compared them to the percentages used by the OIG to allocate expenses against HCFAC funding—80 percent for HCFAC in fiscal year 2002 and 81 percent in fiscal year 2003.

- We obtained DOJ expenditure and allotment reports for all five components that charge activity to the HCFAC program and calculated the total amount of payroll and nonpayroll expenditures.

- We evaluated the methodology used by the U.S. Attorney Offices (USAO) to charge payroll expenses against the HCFAC fund. These expenses accounted for 38 percent and 49 percent respectively of total DOJ expenses charged against fiscal years 2002 and 2003 HCFAC funds and 76 percent and 75 percent respectively of DOJ's total fiscal years 2002 and 2003 HCFAC payroll expenses. USAO payroll expenses were equal to the annual salaries for 160 FTEs for fiscal year 2002 and 162 FTEs for fiscal year 2003. We reviewed the hours recorded in USAO's workload system to ensure that the office devoted staff time to HCFAC-related activities equal to or greater than the annual hours of the 160 FTEs for both fiscal years. We compared the average annual salary for USAO staff positions

(attorney, paralegal, administrative) charged to the HCFAC account to the average annual salary for the same staff positions USAO-wide to ensure that the salary amounts charged against HCFAC were reasonable. We interviewed an agency official knowledgeable about the data obtained from USAO's workload system to identify any data problems and determined that the data were sufficiently reliable for the purposes of this report.

- We tested a statistical sample of the largest category of nonpayroll expenses, the Civil component advisory services, which accounted for 34 percent of total DOJ expenses charged against fiscal year 2002 HCFAC funds and 69 percent of the total nonpayroll expenses. We selected a dollar unit sample of 19 transactions totaling $13.1 million from a population totaling $16.5 million and compared the transaction data to supporting documentation such as invoices and advisory services contracts to make sure they agreed.[3]

- We tested nonpayroll expenses charged against fiscal year 2003 HCFAC funds selected on a nonstatistical basis. We did not select a statistical sample of nonpayroll expenses because DOJ's accounting system did not identify the complete population of expenditure transactions charged against HCFAC funds. We modified our methodology and (1) obtained copies of all billing packages submitted by DOJ to HHS for reimbursement, (2) selected a nonstatistical sample equal to 50 percent ($6.7 million of a total $13.4 million) of the total summary amounts listed on each billing package, and (3) traced and compared the data to supporting documentation, such as invoices and advisory services contracts.

To assess the reliability of information reported by HHS and DOJ in the joint HCFAC reports for fiscal years 2002 and 2003 as cost savings, we

- obtained the schedule of HHS/OIG Cost Savings 1998-2011 and compared the data for fiscal years 2002 and 2003 to the HCFAC joint reports;

- obtained the fiscal years 2002 and 2003 HHS/OIG semiannual reports and traced and compared the amounts identified as cost savings to the amounts reported in the fiscal years 2002 and 2003 HCFAC joint reports;

- selected cost saving transactions on a nonstatistical basis, traced and compared the data to supporting documentation; and

[3] At a 63 percent confidence level.

- reviewed the dates of reports that the OIG cited as having findings and recommendations that resulted in the reported cost savings.

In assessing the status of recommendations made in our prior report, we

- reviewed the recommendations included in our prior report and the comments provided by DOJ on our prior report to identify corrective actions that had been implemented or were to be implemented in the future;
- provided a list of the prior-year recommendations and their status per DOJ comments to DOJ management and requested supporting documentation for the corrective actions taken; and
- reviewed the supporting documentation to verify that the corrective actions were implemented and that the corrective actions completely addressed the recommendations.

We conducted our work from August 2003 through January 2005 in accordance with U.S. generally accepted government auditing standards. We provided a draft of this report to HHS and DOJ for their comments. Written comments from the Acting Inspector General of HHS and the Assistant Attorney General for Administration at DOJ are included in appendixes III and IV, respectively. We also received technical comments from HHS and DOJ that were incorporated as appropriate.

Appendix II: Status of Prior-Year Recommendations

Prior-year recommendation	Status	Explanation
To improve DOJ's accountability for the HCFAC program collections, we recommend that the Attorney General:		
• fully implement plans to make all necessary correcting adjustments for collections transferred to the trust fund in error and	Closed, implemented	DOJ determined the amount of the overstatement and submitted an adjustment to the Bureau of Public Debt (BPD) in September 2002. However, in our review of the supporting documentation we identified a mathematical error in DOJ's calculations. DOJ agreed with the revised amount and submitted the adjustment to BPD in September 2004.
• ensure that subsequent collection reports submitted to the Department of the Treasury are accurate.	Closed, implemented	DOJ developed and implemented new procedures for reviewing collections reports for accuracy and approving them prior to submission to BPD.
To improve DOJ's accountability for HCFAC program expenditures, we recommend that the Attorney General:		
• make correcting adjustments for expenditures improperly charged to the HCFAC appropriation and	Open	According to DOJ officials, the misposted non-HCFAC charge, along with the HCFAC charge that was posted to another account, have been corrected in the Financial Management Information System. GAO requested, but had not received at the end of fieldwork, documentation that supports the correction of the charges.
• reinforce financial management policies and procedures to minimize errors in recording HCFAC transactions.	Open	According to DOJ officials, the department is continuing its ongoing financial management training efforts to reinforce the importance of accurate financial management processing and the minimization of data entry and errors. Also, the issue is also emphasized in monthly Financial Managers Council meetings and "clean audit" training. GAO requested, but had not received at the end of fieldwork, documentation to verify whether DOJ staff responsible for HCFAC accounting functions have completed the designated training.

Continued

Prior-year recommendation	Status	Explanation
To facilitate providing Congress and other decision makers with relevant information on program performance and results, we recommend that the Attorney General and the Secretary of HHS assess the feasibility of tracking cost savings and expenditures attributable to HCFAC activities by the various federal programs affected.	Closed, no longer applicable	This recommendation is closed because of recent changes to HIPAA legislation. HIPAA had required GAO to report on cost savings and expenditures attributable to HCFAC activities by the various federal programs affected but did not require HHS and DOJ to track cost savings and expenditures in this manner. In December 2003, Congress passed Public Law 108-173, which amended the HIPAA legislation. The amendment removed the language requiring GAO to identify any expenditures from the Trust Fund with respect to activities not involving the Medicare program.

Source: U.S. General Accounting Office, *Medicare: Health Care Fraud and Abuse Control Program for Fiscal Years 2000 and 2001,* GAO-02-731 (Washington, D.C.: June 30, 2002) and information provided by HHS and DOJ.

Appendix III: Comments from the Department of Health and Human Services

DEPARTMENT OF HEALTH & HUMAN SERVICES Office of Inspector General

Washington, D.C. 20201

APR 5 2005

Ms. Linda M. Calbom
Director, Financial Management and Assurance
U.S. Government Accountability Office
Washington, DC 20548

Dear Ms. Calbom:

Enclosed are the Department's comments on the U.S. Government Accountability Office's (GAO's) draft report entitled, "HEALTH CARE FRAUD AND ABUSE CONTROL PROGRAM—Results of Review of Annual Reports for Fiscal Year 2002 and 2003" (GAO-05-134). The comments represent the tentative position of the Department and are subject to reevaluation when the final version of this report is received.

The Department provided several technical comments directly to your staff.

The Department appreciates the opportunity to comment on this draft report before its publication.

Sincerely,

Daniel R. Levinson
Acting Inspector General

Enclosure

The Office of Inspector General (OIG) is transmitting the Department's response to this draft report in our capacity as the Department's designated focal point and coordinator for U.S. Government Accountability Office reports. OIG has not conducted an independent assessment of these comments and therefore expresses no opinion on them.

COMMENTS BY THE U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES ON THE U.S. GOVERNMENT ACCOUNTABILITY OFFICE'S DRAFT REPORT ENTITLED "HEALTH CARE FRAUD AND ABUSE CONTROL (HCFAC) PROGRAM—GAO RESULTS OF REVIEW OF ANNUAL REPORTS FOR FISCAL YEAR 2002 AND 2003" (GAO-05-134)

GAO Recommendation 1:

To improve the Department of Health and Human Services' (HHS) accountability over HCFAC program expenditures, we recommend that the HHS Inspector General require all HHS/Office of Inspector General (OIG) components to develop procedures for ensuring that all key staff hours spent on HCFAC activities are recorded in its workload tracking systems.

HHS Response 1:

HHS concurs with the above recommendation, and has already moved to implement it. As noted in the GAO Report, in June 2003, the Office of Investigations upgraded its workload tracking system to record hours for all staff, and implemented new procedures to help ensure that all hours were recorded in their workload system. The Office of Evaluation and Inspections more recently updated its Management Information & Timesheet system to include an automatic electronic mail message alerting staff whenever they are deficient in filling out a timesheet. The notifications continue on a daily basis until the staff person updates the required timesheet.

GAO Recommendation 2:

To help ensure that the joint HHS and Department of Justice (DOJ) HCFAC reports are issued more timely, we recommend that the Secretary of HHS and the Attorney General: (1) develop a more expedited review process, and (2) report delays in issuing the joint report to congressional committees with oversight responsibility for the HCFAC program within one month after missing the January 1 deadline and updates with issuance.

HHS Response 2:

HHS concurs with the GAO recommendation to streamline and expedite the Annual report. HHS and DOJ will continue working together to improve and expedite the approval process within their respective agencies. In addition, both Departments will meet in the near future to consider changes to the review process that will expedite clearance.

HHS does not agree with GAO's recommendation to report delays. Additional reporting, which requires clearance through both Departments, would be counterproductive to clearing the Annual report. HHS does not believe this notification would provide Congress with any substantial information.

Appendix IV: Comments from the Department of Justice

U.S. Department of Justice

Washington, D.C. 2053 (202) 514-5343

APR 4

Linda M. Calbom
Director
Financial Management and Assurance
United States Government Accountability Office
441 G Street NW
Washington, D.C. 20548

Dear Ms. Calbom:

The Department of Justice (DOJ) has received the Government Accountability Office (GAO) draft audit report entitled Health Care Fraud and Abuse Control Program Results of Review of Annual Reports for Fiscal Year 2002 and 2003 (GAO-05-134), and submits the following comments in response to the findings and recommendations.

HCFAC Program Expenditures/DOJ

DOJ concurs with this recommendation. Specific instructions were sent to the components in FY 2003 detailing the creation and use of new provider and disbursement account classes for HCFAC funds. The Department of Justice, Justice Management Division (JMD), will meet with the components to assist them in obligating and disbursing funds using accounting classes created for HCFAC.

Annual Report Submission

DOJ concurs with the first part of this recommendation. DOJ will work with the components to expedite the report development and compilation process. The Department has already reviewed the previous process of compiling the report and has instituted the following new procedures: developed and distributed a time line containing action items, responsible party, and due dates; held bi-weekly meetings to discuss the report's progress and made adjustments to the time line as necessary; had more frequent communication with HHS and the HHS/OIG concerning their report input; and, improved the information gathering and validation process for financial data in the report. DOJ believes that these changes will shorten the time needed for compilation, development and clearance of the FY 2004 HCFAC report and future reports.

DOJ does not concur with the second part of this recommendation that monthly letters reporting any delays in missing the January 1st deadline be sent to Congress. DOJ believes that adding another reporting requirement, that requires clearance through both agencies, would be counterproductive to completion and clearance of the report itself, and would be of little value to Congressional oversight committees. Rather, DOJ, as stated above, proposes to expedite the review and approval process, to the extent that source data is available and circumstances are within the Department's control.

Open Prior Recommendations:

In the previous Health Care Fraud and Abuse Control Program Report (GAO-02-731), the GAO recommended that the Attorney General:

1) Make correcting adjustments for expenditures improperly charged to the HCFAC appropriation; and

2) Reinforce financial management policies and procedures to minimize errors in recording HCFAC transactions.

In response to the first open recommendation from GAO-02-731, (make correcting adjustments for expenditures improperly charged to the HCFAC appropriation), the DOJ concurs. The Department will ensure the correcting adjustments have been made to the HCFAC appropriation.

In response to the second open recommendation from GAO-02-731, (reinforce financial management policies and procedures to minimize errors in recording HCFAC transactions), the DOJ believes this recommendation can be closed. Component staff continue to receive training on how to properly obligate and liquidate funds as part of the Department's 'Clean Audit' activities. According to each component, their policies and procedures for accounting for HCFAC funds have met the audit standards set by the Department's external auditors.

If you have any questions, please contact Richard P. Theis, Acting Assistant Director, Audit Liaison Group, Management and Planning Staff. If you would like to discuss or receive a briefing, please contact me at (202)-514-3101.

Sincerely,

Paul R. Corts
Assistant Attorney General
for Administration

Appendix V: GAO Contact and Acknowledgments

GAO Contact

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