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## Strategic Goal Four: Protect the Rights and Interests of the American People by Legal Representation, Enforcement of Federal Laws, and Defense of U.S. Interests

### Strategic Objective & Annual Goal 4.1: Civil Rights

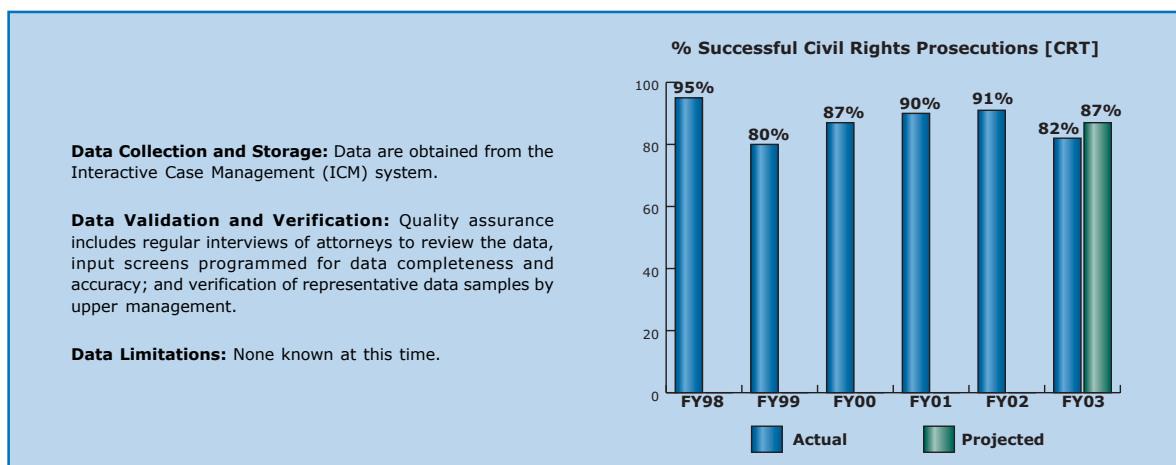
Uphold the civil rights of all Americans, reduce racial discrimination, and promote reconciliation through vigorous enforcement of civil right laws

#### 4.1A Prosecute Criminal Civil Rights Violations

The Department's Civil Rights Division (CRT) works with the FBI and the U.S. Attorneys to prosecute cases of national significance involving the deprivations of Constitutional liberties that cannot be, or are not, sufficiently addressed by state or local authorities. These include acts of bias-motivated violence; misconduct by local and federal law enforcement officials; violations of the peonage and involuntary servitude statutes that protect migrant workers and others held in bondage; criminal provisions which prohibit conduct intended to injure, intimidate, or interfere with persons seeking to obtain or to provide reproductive health services; as well as a law that proscribes interference with persons in the exercise of their religious beliefs and the destruction of religious property. The federal criminal civil rights statutes provide for prosecution of conspiracies to interfere with federally protected rights, deprivation of rights under color of the law, and the use of threat or force to injure or intimidate persons in their enjoyment of specific rights.

**Performance Measure:** % Successful Civil Rights Prosecutions [CRT]

- **FY 2003 Target:** 87%
- **FY 2003 Actual:** 82%
- **Discussion:** CRT fell slightly below the target due to increasing complexity of official misconduct cases. These cases are the most complex and difficult to prosecute and traditionally result in a lower average success rate. Despite the difficulties encountered in prosecuting these types of cases, we were able to maintain a conviction rate of nearly 70%; however, this rate did reduce the overall average conviction rate to 82% for FY 2003.



## 4.1B Prosecute Pattern or Practice Civil Rights Violations

Civil “pattern or practice” litigation is divided into five main areas: Housing and Civil Enforcement, Employment Litigation, Disability Rights, Special Litigation, and Office of Special Counsel (OSC). Housing and Civil Enforcement focuses on discriminatory activities by lending and insurance institutions; illegal discrimination in all types of housing transactions, including the sale and rental of housing and the failure to design and build multifamily living to be accessible; discriminatory land use by municipalities; discrimination in places of public accommodations; and discrimination against religious institutions by local zoning authorities.

Employment Litigation focuses on employment discrimination on the grounds of race, color, sex, religion, and national origin. This includes pattern or practice cases against agencies such as: state, county, and local law enforcement organizations; fire departments; state departments of correction; public school districts; and state departments of transportation. These are complex cases that seek to eliminate employment practices that have the effect of denying employment opportunities or otherwise discriminating against one or more protected classes of individuals. Obtaining relief reforming discriminatory practice and policies is a primary objective. Employment Litigation also obtains jobs, back pay, and other forms of relief for victims.

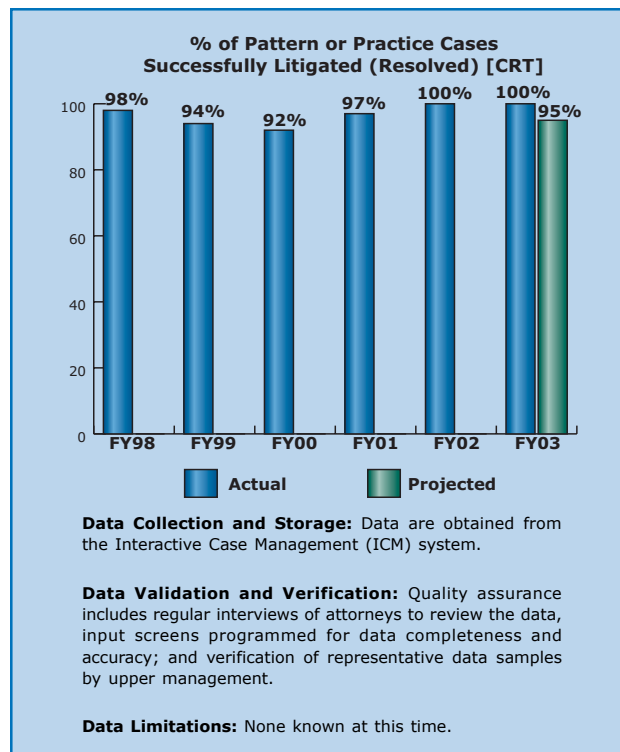
Disability Rights enforces the Americans with Disabilities Act (ADA) on behalf of people with disabilities. Enforcement responsibilities cover a broad spectrum of potential actions to encourage individuals and entities to comply with ADA requirements, including new construction, removal of physical barriers, provision of auxiliary aids, access to employment, and the elimination of discriminatory policies. These enforcements, combined with mediation and technical assistance programs, provide cost-effective and dynamic approaches for carrying out the ADA’s mandates in conformance with the current administration’s New Freedom Initiatives.

Special Litigation focuses on pattern or practice of misconduct or discrimination by law enforcement officers including the denial of constitutional and statutory rights and discrimination based on race, color, national origin, gender, or religion. National media attention and outreach led to an increased volume of complaints in this area. An additional area of concern focuses on the deprivation of constitutional and federal statutory rights of persons in publicly operated residential facilities that are subjected to patterns of egregious and flagrant conditions of confinement. These facilities include: institutions for the mentally ill and developmentally disabled, nursing homes, juvenile detention facilities, local jails, and prisons; however, DOJ does not have authority to pursue an individual claim.

OSC for Immigration-Related Unfair Employment Practices enforces the anti-discrimination provision of the Immigration and Nationality Act on behalf of all U.S. legal workers, including U.S. citizens, lawful permanent residents, asylees and refugees. These cases focus upon employment discrimination cases based upon citizenship or immigration status, and national origin, and include both individual and pattern or practice litigation that seeks to ensure that all legal workers, whether U.S. citizens or legal immigrants, are treated fairly during the hiring and employment verification process. The OSC obtains cease and desist orders; relief for victims; including back pay and jobs; and civil penalties.

**Performance Measure:** % of Pattern or Practice Cases Successfully Litigated (Resolved) [CRT]

- **FY 2003 Target:** 95%
- **FY 2003 Actual:** 100%
- **Discussion:** Pattern or practice cases provide the opportunity to address egregious and systemic violations of civil rights laws. In order to bring these cases to court, DOJ coordinates its efforts internally among the Civil rights Division, FBI, BOP, USMS, U.S. Attorneys, and externally with federal partners, including the Department of Labor, the Equal Employment Opportunity Commission, the Departments of Housing and Urban Development, and Health and Human Services.



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## Strategic Objective & Annual Goal 4.2: Environment

Promote the stewardship of America's environment and natural resources through the enforcement and defense of environmental laws and programs.

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### 4.2A Enforce and Defend Environmental and Natural Resource Laws

The Department of Justice enforces environmental laws to protect the health and environment of the United States and its citizens, defends environmental challenges to government programs and activities, and represents the United States in all matters concerning the protection, use, and development of the Nation's natural resources and public lands, wildlife protection, Indian rights and claims, and the acquisition of federal property.

**Performance Measure:** % of Civil Environmental Cases Successfully Resolved [ENRD, EOUSA]

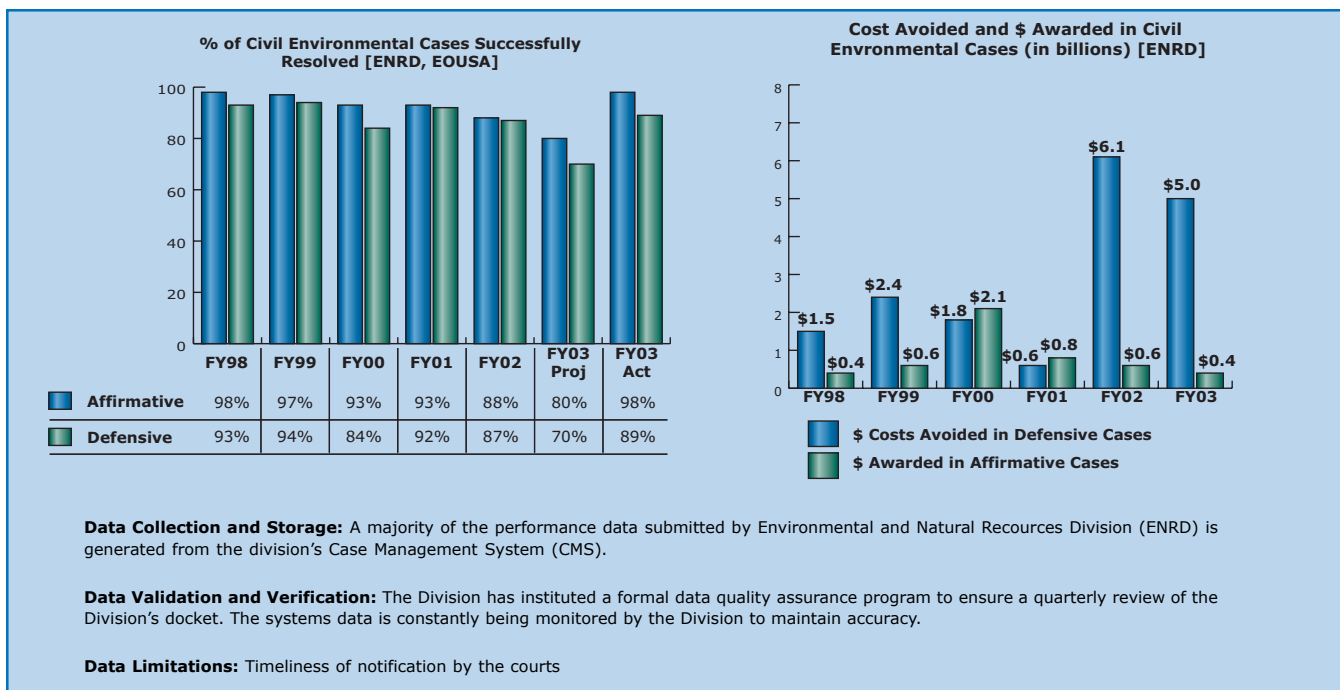
- **FY 2003 Target:** 80% Affirmative; 70% Defensive
- **FY 2003 Actual:** 98% Affirmative; 89% Defensive
- **Discussion:** We have exceeded our original FY 2003 goal of 80% Affirmative and 70% Defensive by 18% and 19% respectively. The Department enjoyed numerous successes in affirmative and defensive cases during FY 2003. In defensive litigation the Department successfully defended federal regulatory programs and projects as well as federal

agencies against claims of noncompliance with federal, state and local pollution control statutes. The Department also defended challenges to federal programs intended to maintain the Nation's infrastructure, including challenges to proposed upgrades of several airports around the Nation as well as the operations of four major dams on the lower Snake River in Washington State. Our affirmative enforcement efforts resulted in the cleanup of hazardous waste sites throughout the country, commitments to undertake a comprehensive pipeline integrity program covering more than 5,500 miles of the Nation's pipeline infrastructure, commitments to install state-of-the-art pollution control equipment at numerous petroleum refineries, and construction of improvements to municipal sewage treatment systems, thereby reducing pollution from antiquated sewer systems and enhancing the Nation's water quality and safety.

**Performance Measure:** Costs Avoided and \$ Awarded in Civil Environmental Cases (in billions) [ENRD]

- **FY 2003 Target:** In accordance with Departmental policy, targeted levels of performance are not projected for this indicator.
- **FY 2003 Actual:** \$5.0 billion Avoided; \$0.4 billion Awarded
- **Discussion:** The Department successfully represented a wide range of government agencies in suits that challenged environmental and public land policies and environmental programs and in cases seeking money from the government. We were also successful in defending the United States in

the Court of Federal Claims and the Federal Circuit Court of Appeals, saving the government from claims for civil monetary liability in the hundreds of millions of dollars. The Department aggressively enforced and defended the environmental statutes of the United States. One case included a cost avoidance victory of \$4.0 billion where the plaintiff was seeking damages claiming that the federal government was not using proper clean-up procedures to restore drinking water to appropriate standards. In another case, \$2.7 million in natural resource damages was awarded to the United States in an Oil Pollution Act case involving an oil spill of 140,000 gallons from a ruptured pipeline into a tributary of the Patuxent River in Maryland.



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## Strategic Objective & Annual Goal 4.3: Antitrust

Promote economic competition through enforcement of and guidance on antitrust laws and principles.

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### 4.3A Maintain and Promote Competition

The Department's Antitrust Division (ATR) maintains and promotes competitive markets largely by enforcing federal civil and criminal antitrust laws. The statutory authority for the ATR's mission includes Sections 1 and 2 of the Sherman Act; Section 7 of the Clayton Act, as amended by the Hart-Scott-Rodino Antitrust Improvements Act of 1976; and a variety of other competition laws and regulations. These laws affect virtually all industries and apply to every phase of business, including manufacturing, transportation, distribution, and marketing. They prohibit a variety of practices that restrain trade, such as mergers likely to reduce the competitive vigor of particular markets, predatory acts designed to maintain or achieve monopoly power, and per se illegal bid rigging. Successful enforcement of these laws decreases and deters anticompetitive behavior, saves U.S. consumers billions of dollars, allows them to receive goods and services of the highest quality at the lowest price, and enables U.S. businesses to compete on a level playing field nationally and internationally.

**Performance Measure:** Success Rates for Civil Antitrust Cases [ATR]

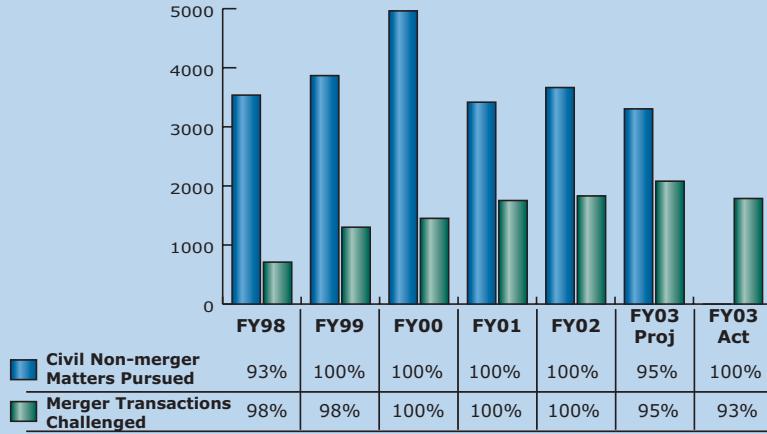
- **FY 2003 Target:**  
Civil Non-Merger Matters Challenged: 95%  
Merger Transactions Challenged: 95%
- **FY 2003 Actual:**  
Civil Non-Merger Matters Challenged: 100%  
Merger Transactions Challenged: 93%
- **Discussion:** The success rate for civil non-merger matters includes investigations in which business practices were changed after the investigation was initiated, a case was filed with consent decree, or a case was filed and litigated successfully. ATR's FY 2003 success rate of 100% in civil non-merger matters challenged exceeded its target of 95%.

The success rate for merger transactions challenged includes mergers that are abandoned, fixed before a complaint is filed, filed as cases with consent decrees, filed as cases but settled prior to litigation, or filed and litigated successfully. Although the merger workload has declined, many of the matters involve complex anticompetitive behavior and large, multinational corporations and require significant resources to review.

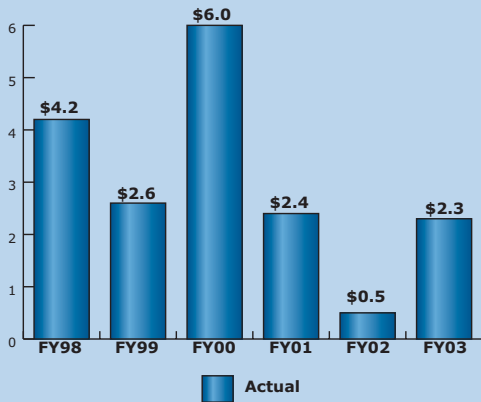
**Performance Measure:** Savings to U.S. Consumers (as the result of ATR's Civil enforcement efforts) (in billions) [ATR]

- **FY 2003 Target:** In accordance with Departmental policy, targeted levels of performance are not projected for this indicator.
- **FY 2003 Actual:** \$2.3 billion
- **Discussion:** Success in these areas saves U.S. consumers billions of dollars and ensures there are a sufficient number of competitors to maintain competition, which spurs research and development, innovation, the development of new and better products and service, and the best prices and quality for consumers.

**Success Rates for Civil Antitrust Cases [ATR]**



**Savings to U.S. Consumers (in billions) [ATR]**



**Data Collection and Storage:** Data are collected and stored in ATR management information systems, primarily in the Matter Tracking System and its companion user interfaces.

**Data Validation and Verification:** User training and software guides encourage accurate data entry. Instantaneous online data validations include inter-element cross-checks, numeric range checks, single element list-of-values checks and mandatory data element checks. In addition, batch data analysis and ad hoc reviews are conducted periodically. Finally, programmatic review of data helps assure quality.

**Data Limitations:** In calculating consumer savings across our enforcement areas, key input measures, if not actually estimated in the investigation or case, were estimated based on anecdotal information and observations. These values are both conservative and consistently estimated over time.

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## Strategic Objective & Annual Goal 4.4: Tax Laws

Promote the fair, correct, and uniform enforcement of the federal tax laws and the collection of tax debts to protect the public fisc from unjustified claims

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### 4.4A Enforce Tax Laws Fairly and Uniformly

The Department's Tax Division (TAX) plays an important role in maintaining the largest source of funding for federal government activities, the federal tax system. TAX promotes tax compliance and protects the public fisc by enforcing the tax laws in the federal appellate courts, the federal district and bankruptcy courts, the Court of Federal Claims, and the state courts. Vigorous, efficient, and fair enforcement promotes voluntary compliance with the tax laws and ensures a continued flow of revenue to the Government to fund its operations. TAX defends the interests of the United States in tax litigation brought against the government and also initiates meritorious litigation referred to it by the IRS and other federal agencies. It provides expert litigation and substantive tax advice to USAs and advises the Department of Treasury and Congress on tax-related legislative matters.

**Performance Measure:** Civil Cases Successfully Litigated in Court [TAX]

- **FY 2003 Target:**
  - Trial Courts (complete & partial successes): 90%
  - Appellate Courts – Taxpayer Appeals: 85%
  - Appellate Courts – Gov't & Cross Appeals: 60%
- **FY 2003 Actual:**
  - Trial Courts (complete & partial successes): 95%
  - Appellate Courts – Taxpayer Appeals: 93%
  - Appellate Courts – Gov't & Cross Appeals: 67%
- **Discussion:** All performance targets were exceeded. The Tax Division resolved claims favorably through 2,147 decisions at the trial court level, 334 decisions in Taxpayer Appeals, and 17 decisions at the appellate level in Government and Cross Appeals.

**Performance Measure:** Tax Dollars Collected and Retained by Court Action and Settlements [TAX]

- **FY 2003 Target:** In accordance with Departmental policy, targeted levels of performance are not projected for this indicator.
- **FY 2003 Actual:**
  - \$72 million collected
  - \$794.2 million retained
- **Discussion:** Three major cases represented approximately 67% of the \$794.2 million retained by tax attorneys in FY 2003. TAX was able to prevent substantial losses to the federal treasury, thereby increasing funds available for other government programs or to reduce the debt. Of the \$72 million collected in FY 2003, almost \$39 million resulted from ten resource-intensive tax cases ranging from personal income to corporate tax.



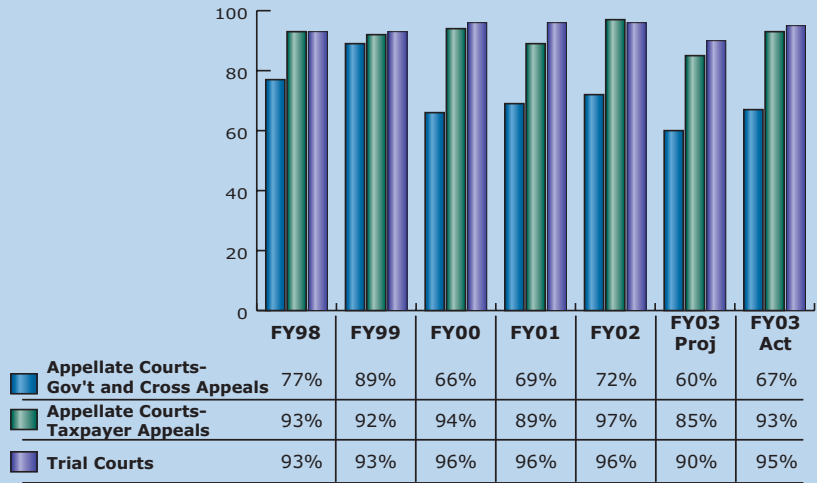
**Data Definition:** A decision is the resolution of a claim through judgement or other court order. Each decision is classified as a Government win, partial win, or taxpayer win; for this report, success occurs if the Government wins in total or in part. Appellate cases are classified as Taxpayer Appeals, Government Appeals, or Cross Appeals. Cross-appeals are when both of the parties in a case file an appeal because the original decision was not a clear win for either side. The number of Government or Cross Appeals is generally less than 10% of the number of Taxpayer Appeals.

**Data Collection and Storage:** TAX utilizes a case management system known as TaxDoc. The Division recently revised the complement of indicators that are tracked.

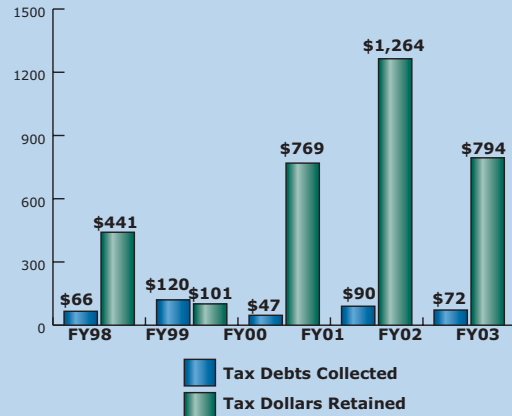
**Data Validation and Verification:** There are new procedures to collect and record pertinent data. Section Chiefs make projections and set goals. On a quarterly basis, the Performance Management Committee reviews all the statistics.

**Data Limitations:** The Division lacks historical data on some activities that are now tracked in the new case management system. The new information system may cause variations in the way some statistics are presented.

**% of Civil Cases Successfully Litigated in Court [TAX]**



**Tax Dollars Collected in Retained by Court Action and Settlement (in millions) [TAX]**



## Strategic Objective & Annual Goal 4.5: Civil Laws

Effectively represent the interests of the United States in all civil matters for which the Department of Justice has jurisdiction

### 4.5A Protect the Public Fisc

The Department's Civil Division (CIV) defends the public Treasury in lawsuits alleging unwarranted monetary claims. Plaintiffs advancing contract claims, allegations of government misconduct, claims of patent infringement and the like, expose the government to potentially staggering losses. DOJ consistently mounts strong defenses against unfounded or exaggerated claims to ensure that only those claims with merit under the law are paid. Favorable resolutions in defensive cases prevent the Treasury from incurring massive losses and preserve funds to support the counterterrorism fight, military objectives, economic stimulus efforts, or other top initiatives. DOJ serves an equally vital role when the laws, programs and policies of the United States are attacked in court.

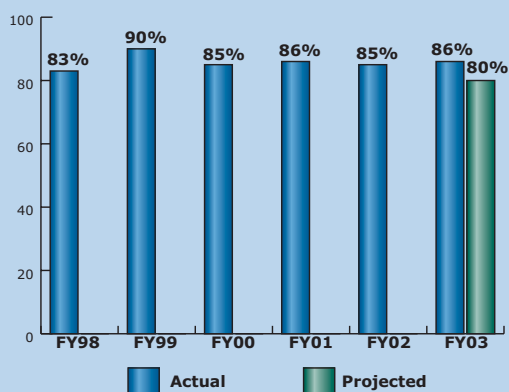
**Performance Measure:** Percent of Defensive Civil Monetary Cases Resolved Where 85% or More of the Claim is Defeated [CIV]

- **FY 2003 Target:** 80%
- **FY 2003 Actual:** 89%
- **Discussion:** The Civil Division exceeded its goal, saving \$11.6 billion in overstated claims for monetary relief. Successful defense of provisions in entitlement programs saves the public fisc additional sums valued in the billions.

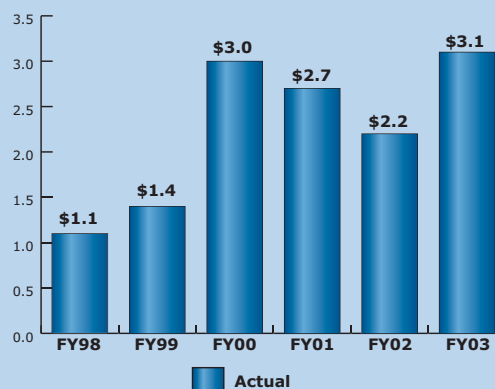
**Performance Measure:** \$ Collected From Affirmative Civil Cases [JMD]

- **FY 2003 Target:** In accordance with Departmental policy, targeted levels of performance are not projected for this indicator.
- **FY 2003 Actual:** \$ 3.1 billion
- **Discussion:** See above.

% of Favorable Resolutions in Civil Cases [CIV, EOUSA]



\$ Collected From Affirmative Civil Cases (in billions) [JMD]



**Data Collection and Storage:** The primary source of data collection for measurement within the Civil Division is the automated case management system (CASES).

**Data Validation and Verification:** Contractor staff regularly review case listings and interview attorneys concerning the status of each case. Exception reports are generated and reviewed. Attorney managers review numerous monthly reports for data completeness and accuracy. The contractor verifies representative samples of data. Another independent contractor verifies aspects of the work of the case management contractor.

**Data Limitations:** Incomplete data can cause the system to under-report case closures and attorney time. Missing data are most often retrieved as a result of the contractor interviews and the review of monthly reports. To minimize the extent of missing data, CIV makes adherence to administrative reporting requirements, including CASES, a performance element in all attorney work plans.

## 4.5B Continue Vigorous Civil Enforcement

By securing favorable resolutions in civil cases, the Civil Division ensures the intent of Congress, in its defense of groundbreaking legislation, such as the USA PATRIOT Act. Civil case examples include, but are not limited to, litigation concerning the freezing of terrorist assets, cases challenging the constitutionality of federal statutes, and tort cases brought against third parties where sensitive security information is sought from the United States.

DOJ attorneys must also respond to a variety of immigration-related suits, including a heightened level of counterterrorism litigation and constitutional challenges to new immigration laws or reformed procedures. Landmark cases concern the detainees at Guantanamo Bay and New York, the media's access to immigration hearings, and constitutional challenges to the USA PATRIOT Act. The majority of immigration cases involve individual or class actions opposing actions by the Bureau of Immigration and Customs Enforcement and immigration judges.

DOJ serves a vital role when the laws, programs and policies of the United States are attacked in court. These actions run the full gamut, such as challenges to Presidential determinations under the War Powers Act, to suits disputing the administration of the Medicare program.

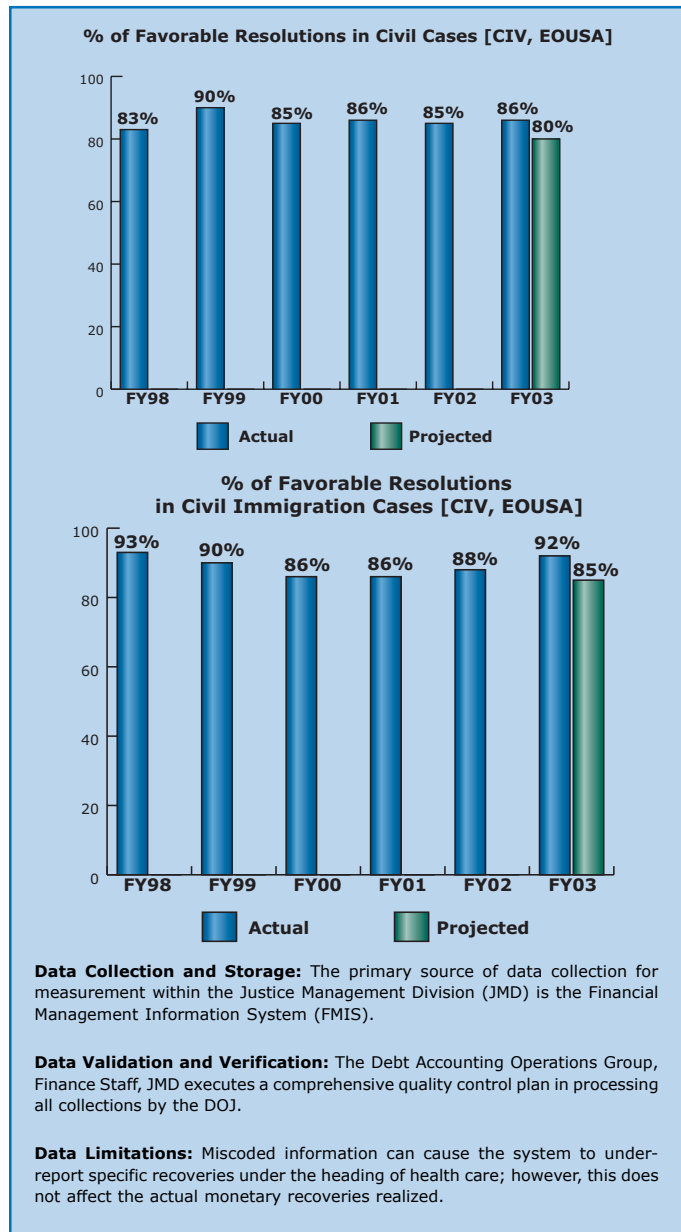
To safeguard Medicare and other federally funded health programs, combating health care fraud remains a key focus. Recoveries in health care fraud actions have already topped \$7.1 billion and are expected to increase, since the current docket includes a number of matters with the potential of significant recoveries.

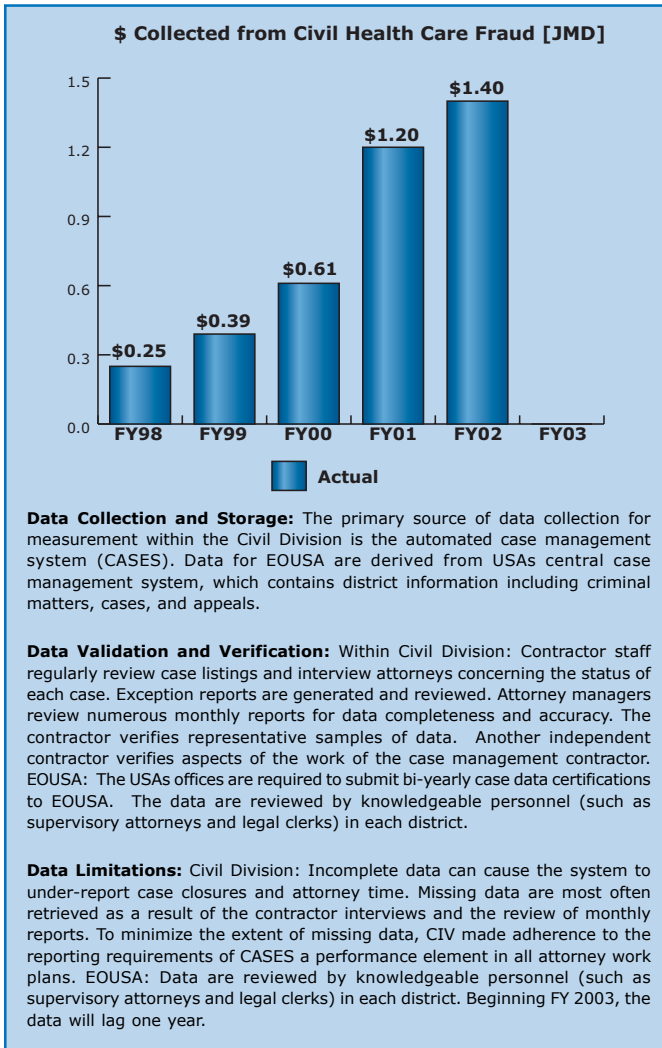
**Performance Measure:** % of Favorable Resolutions in Civil Cases [CIV, EOUSA]

- **FY 2003 Target:** 80%
- **FY 2003 Actual:** 86%
- **Discussion:** The performance target was surpassed with the favorable resolution of more than 52,000 cases. These included challenges to the September 11th Victim Compensation Program, the designation of foreign terrorist organizations and the freezing of terrorist assets, as well as cases enforcing consumer protection laws.

**Performance Measure:** % of Favorable Resolutions in Civil Immigration Cases [CIV, EOUSA]

- **FY 2003 Target:** 85%
- **FY 2003 Actual:** 92%
- **Discussion:** The performance target was surpassed, ensuring that immigration enforcement actions are upheld in trial and appellate courts. For example, in *Haddad v. Ashcroft*, the Civil Division secured the removal of an official of the Global Relief Foundation, a charitable organization with possible links to Hamas. The court agreed with the Civil Division’s argument and dismissed his petition for review of his removal order.





**Performance Measure:** \$ Collected from Civil Health Care Fraud [JMD]

- **FY 2003 Target:** In accordance with Departmental policy, targeted levels of performance are not projected for this indicator.
- **FY 2003 Actual:** N/A.
- **Discussion:** Data will be available in February 2004.

## 4.5C Increase the Number of Cases Using Alternative Dispute Resolution (ADR)

Executive Order Executive Order 12988 directs:

[L]itigation counsel shall make reasonable attempts to resolve a dispute expeditiously and properly before proceeding to trial. . . Where the benefits of Alternative Dispute Resolution (ADR) may be derived, and after consultation with the agency referring the matter, litigation counsel should suggest the use of an appropriate ADR technique to the parties. . . . To facilitate broader and effective use of informal and formal ADR methods, litigation counsel should be trained in ADR techniques.

It is our job to implement the President's directive consistently with our mission to defend the interest of the United States in civil litigation proceedings. ADR includes mediation, negotiation, and other litigation streamlining techniques in appropriate civil cases.

ADR is used in a wide variety of Department cases, such as aviation and admiralty defenses, medical malpractice, class action discrimination, health care and consumer fraud enforcement, workplace discrimination litigation, water rights disputes and Native American land disputes.

**Performance Measure:** Percentage of Cases Resolved using ADR [CIV, CRT, ENRD, TAX, EOUSA]

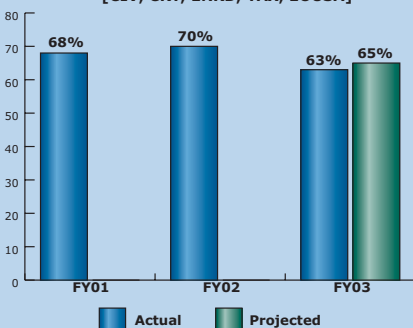
- **FY 2003 Target:** 65%
- **FY 2003 Actual:** 63%
- **Discussion:** The component data tracking cannot capture information that definitively explains the nominal drop in target resolution rate. The resolution rate depends on factors

that are inherently unpredictable and uncontrollable (e.g., number and types of affirmative and defensive litigation cases begun in the components), number and types of cases ordered into ADR by the courts, appropriateness of individual cases for ADR, likelihood that individual cases may / may not be settled, ability and willingness of DOJ clients and opposing counsel to settle a case, etc. The Department's Office of Dispute Resolution (ODR) future target is based on success in meeting a past target, but that is necessarily an imprecise and uncontrollable goal.

Moreover, even if the resolution rate decreases, DOJ nonetheless continues to realize significant benefits through use of ADR. For example, during FY 03, the United States was sued for a total of over \$39,400,000 but the cases were settled through ADR for less than \$3,800,000, yielding a savings to the government of \$35,600,000. Additionally, DOJ's use of ADR for a successful settlement saved staff time of 1,200 hours, litigation costs of \$1,000,000, and litigation time of 15 months.

ODR will continue aiming for resolution rates that are as high as possible, but recognizes that even if they fluctuate slightly, use of ADR will continue to bring high levels of savings and benefits to the Department and the United States Government.

**% Cases Resolved Using ADR**  
[CIV, CRT, ENRD, TAX, EOUSA]



**Data Collection and Storage:** The primary source of data collection for tabulating the Department's use of ADR is component reporting. Each litigating component is responsible for tracking attorney usage of ADR and forwarding this information to the Office of Dispute Resolution. The primary source of case outcomes is attorney evaluations.

**Data Validation and Verification:** CIV, CRT, and ENRD track ADR information in case management/docket tracking systems; TAX and EOUSA gather data through the use of manual records. The Office of Dispute Resolution gathers outcome information through the use of manual records.

**Data Limitations:** The individual components are responsible for ensuring compliance with their local procedures for maintaining the integrity of their data collection systems.