United States Government Accountability Office

GAO

Report to the Honorable Byron L. Dorgan, U.S. Senate

January 2005

CRIMINAL DEBT

Court-Ordered Restitution Amounts Far Exceed Likely Collections for the Crime Victims in Selected Financial Fraud Cases

GAO-05-80

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GAO Highlights

Highlights of GAO-05-80, a report to the Honorable Byron L. Dorgan, U.S. Senate

Why GAO Did This Study

In the wake of a recent wave of corporate scandals, Senator Byron L. Dorgan noted that the American taxpayers have a right to expect that those who have committed corporate fraud and other criminal wrongdoing will be punished, and that the federal government will make every effort to recover assets held by the offenders. Recognizing that GAO previously reported on deficiencies in the Department of Justice's (Justice) criminal debt collection processes (GAO-01-664), Senator Dorgan asked GAO to review selected criminal white-collar financial fraud cases for which large restitution debts have been established but little has been collected. Specifically, GAO was asked to determine (1) the status of Justice's efforts to collect on the outstanding debt, (2) the prospects for future collections, and (3) whether specific problems have affected Justice's ability to collect the debt.

What GAO Recommends

GAO recommends that the Attorney General (1) include in the criminal debt strategic plan, which is called for by recent congressional action, legislative initiatives, operational initiatives, or both that are directed toward maximizing opportunities for collection; and (2) report annually in Justice's *Accountability Report* on the progress toward developing and implementing the strategic plan. Justice stated it is taking steps to develop a strategic plan to improve criminal debt collection.

www.gao.gov/cgi-bin/getrpt?GAO-05-80.

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

What GAO Found

The court-ordered restitution for the five selected white-collar financial fraud criminal debt cases GAO reviewed far exceeded amounts likely to be collected and paid to the victims. These offenders, who had either been high-ranking officials of companies or operated their own business, pled guilty to crimes for which the courts ordered restitution totaling about $568 million to victims. As of the completion of GAO's fieldwork, which was up to 8 years after the offenders' sentencing, court records showed that amounts collected for the victims in these cases totaled only about $40 million, or about 7 percent of the ordered restitution.

At some point prior to the judgments establishing the restitution debts, each of the five offenders either reported having wealth or significant financial resources to the courts or to Justice, or there were indicators of such. However, following the judgments, the offenders claimed that they were not financially able to pay full restitution to their victims. Justice's Financial Litigation Units (FLU) that were responsible for collection performed certain activities to collect the debts after the judgments, but the debts had not been significantly reduced as a result of the FLUs' identification and liquidation of additional assets of the offenders.

The FLUs' prospects are not good for collecting additional restitution amounts on these cases. A major problem hindering the FLUs' ability to collect restitution debt in the selected cases was the long time intervals between the criminal offense and the judgment. Court records show that 5 to 13 years passed between when the offenders began to engage in the criminal activity for which they were sentenced and the date of their judgments. For each of the selected cases, by the time the court rendered the judgment establishing the restitution debt, certain of the offenders' assets had been, among other things, transferred to family members or others, involved in forfeiture actions, subject to bankruptcy, or moved to a foreign account. In addition, one of the selected cases involved an offender who was jointly and severally liable for the debt with another offender who had been deported. Justice acknowledged that such dispositions or circumstances are not uncommon and create major debt collection challenges for the FLUs. Moreover, there were minimal, if any, apparent negative consequences to these offenders for not paying their restitution debts.

Recently, to further implementation of a related recommendation made in 2001 by GAO, the Congress directed the Attorney General to develop a strategic plan with certain other federal agencies to improve criminal debt collection. Given the significant upward trend in outstanding criminal debt and the difficulty experienced by Justice in collecting criminal restitution debt, it is important that Justice include in such a plan legislative initiatives, operational initiatives, or both to enhance the federal government's capacity to collect restitution for victims of financial crimes. Justice's comments on a draft of this report are consistent with this conclusion.

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United States Government Accountability Office
Washington, D.C. 20548

January 31, 2005

The Honorable Byron L. Dorgan
United States Senate

Dear Senator Dorgan:

In March 2004, we reported that the Department of Justice's (Justice) unaudited records indicated that the total amount of outstanding criminal debt had more than quadrupled over a 6-year period, growing from about $6 billion as of September 30, 1996, to almost $25 billion as of September 30, 2002.[1] This significant upward trend started with enactment of the Mandatory Victims Restitution Act of 1996 (MVRA).[2] One feature of that law substantially increased the restitution amounts the courts were required to order for certain offenses.[3] Our 2004 report included detailed information on the reported amount and growth of criminal debt for fiscal years 2000 through 2002, including specific amounts related to white-collar financial fraud.[4] As discussed in that report, Justice's unaudited records indicate that for each of these 3 fiscal years, about two-thirds or more of criminal debt was related to white-collar financial fraud. About 80 percent of the white-collar financial fraud debt as of September 30, 2002, was categorized as nonfederal restitution, which is criminal debt owed to other than the federal government and for which Justice has a significant responsibility to collect on behalf of crime victims.

[1]GAO, *Criminal Debt: Actions Still Needed to Address Deficiencies in Justice's Collection Processes*, GAO-04-338 (Washington, D.C.: Mar. 5, 2004). For this report, the latest reported data from Justice as of the completion of our fieldwork in mid-December 2003 were for fiscal year 2002. Justice was still in the process of compiling and summarizing criminal debt information for fiscal year 2003.

[2]Pub. L. No. 104-132, Title II, Subtitle A, 110 Stat. 1214, 1227.

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

[4]White-collar financial fraud is criminal activity involving various types of unlawful, nonviolent conduct committed by corporations, individuals, or both, including theft or fraud and other violations of trust, for example, securities fraud and financial institution fraud.

We noted in our earlier July 2001 report, and reaffirmed in our 2004 report,[5] that the collection of outstanding criminal debt is inherently difficult due to a number of factors, including the nature of the debt, in that it involves criminals who may be incarcerated, may have been deported, or may have minimal earning capacity; the MVRA requirement that the assessment of restitution be based on actual loss and not on an offender's ability to pay; and the significant amount of time that may pass between offenders' arrest and sentencing, thus affording opportunities for offenders to hide fraudulently obtained assets in offshore accounts, shell corporations, family members' names and accounts, or other ways. Our 2001 report also noted as contributing factors to the growth of reported uncollected criminal debt Justice's inadequate policies and procedures for collecting criminal debt, lack of adherence to established criminal debt collection procedures in certain judicial districts, and Justice's insufficient coordination with other entities involved in the collection of criminal debt.

In the wake of a recent wave of corporate scandals, you noted that the American taxpayers have a right to expect that those who have committed corporate fraud and other criminal or civil wrongdoing will be punished, and that the federal government will make every effort to recover assets and the ill-gotten gains held by such offenders. Recognizing that we previously reported on specific deficiencies in Justice's and other federal agencies' criminal debt collection processes and had made recommendations to improve collections, you asked us to study several specific criminal restitution debt cases to shed additional light on the difficulties involved in attempting to collect restitution for victims of crime. Specifically, for selected criminal white-collar financial fraud cases for which large restitution debts have been established but little has been collected, you asked that we determine (1) the status of Justice's efforts to collect on the outstanding debt, (2) the prospects for future collections, and (3) whether specific problems have affected Justice's ability to collect the debt.

Results in Brief

The restitution assessed the offenders by the courts for the five selected criminal debt cases we reviewed that involved white-collar financial fraud far exceeds amounts that have been and are likely to be collected and paid to victims of the crimes. Taken together, the five offenders were ordered by

[5]GAO, *Criminal Debt: Oversight and Actions Needed to Address Deficiencies in Collection Processes*, GAO-01-664 (Washington, D.C.: July 16, 2001). GAO-04-338.

the courts to pay restitution totaling about $568 million to their victims, many of whom were corporate shareholders or small investors. The courts also ordered four of the offenders to serve prison terms ranging from 1 to 5 years and placed one offender on several years of probation. The offenders, who had either been high-ranking officials of companies or operated their own business, pled guilty to various white-collar crimes. As of June 2004, which was several years after the offenders were sentenced, court records showed that amounts collected for the victims totaled only about $40 million, or about 7 percent of the ordered restitution.[6]

These limited collections resulted predominantly from asset forfeiture actions[7] or from payments made prior to the offenders' sentencing. For each of these selected cases, Justice's Financial Litigation Units (FLU), which are responsible for criminal debt collection, performed certain activities to attempt to collect the debts after the judgments. However, the FLUs were not able to identify and liquidate additional assets of the offenders to significantly reduce the debts.

Based on information available to us, the FLUs' prospects are not good for collecting additional restitution amounts on these cases. Each of the offenders, at some point prior to the judgments establishing the restitution debts, either reported having wealth or significant financial resources to the courts or to Justice, or there were indicators that this was the case. However, following the judgments, the offenders claimed that they were not financially able to pay full restitution to their victims. At the time of our debt file reviews, the limited payments the offenders had made or were

[6]This low rate of collection for the selected cases coincides with overall collection rates for criminal debt we have previously reported. In 2004, we reported that according to Justice's unaudited records, collections relative to outstanding criminal debt averaged about 4 percent for fiscal years 2000, 2001, and 2002 (GAO-04-338). In 2001, we reported that criminal debt collection averaged about 7 percent for fiscal years 1995 through 1999 (GAO-01-664).

[7]Asset forfeiture is used to seize property associated with criminal activity. The property seized may be illegal for someone to own or it may be the gains resulting from the criminal activity. It is a means of punishing and deterring criminal activity by depriving criminals of property, including items such as monetary instruments, real property, and tangible personal property, that was used or acquired through illegal activities. The federal government seizes such property associated with violations of various federal statutes and takes title to that property (forfeiture) through either an administrative or judicial process. Seized property either can be returned to the owner or forfeited to the government. After federal forfeiture, noncash property may be sold, put into official use, destroyed, or shared with state and local law enforcement agencies participating in the seizure.

then making will do little to significantly reduce the outstanding balance of the restitution debts as initially set by the courts.

For the selected cases, we also found that there were minimal, if any, apparent negative consequences to the offenders for not paying their restitution debts. Court and public records indicated that each of the offenders' lifestyles was, at a minimum, comfortable. Moreover, it is not a crime to willfully fail to pay restitution debt. A court may revoke or modify the terms and conditions of probation or supervised release for an offender's failure to pay restitution;[8] however, these are of little consequence once the offender has successfully completed the term of probation or supervised release, because at that point, the offender cannot be sent to prison for failure to pay a restitution debt.

A major problem hindering the FLUs' ability to collect restitution debt in the selected cases was the long time intervals between the criminal offense and the judgment, a situation that Justice acknowledged is typical. Court records show that 5 to 13 years passed between when the offenders selected in our review began to engage in the criminal activity for which they were sentenced and the date of their judgments. Justice stated that during such intervals, criminals engaged in fraudulent enterprises commonly dissipate their criminal gains quickly and in a manner that cannot be easily traced, such as expending gains on intangible and excess "lifestyle" expenses, including travel, entertainment, gambling, and gifts. In addition, other dispositions and circumstances involving the offenders' assets or the offenders occur that create major debt collection challenges for the FLUs. For example, we found that for the selected cases, by the time the court rendered the judgment establishing the restitution debt, certain of the offenders' assets had been, among other things, transferred through legal or potentially fraudulent means to family members or others, involved in forfeiture actions, subject to bankruptcy, or moved to a foreign account. In addition, one of our selected cases involved an offender who was jointly and severally liable for the debt with another offender who had been deported. Justice acknowledged that such dispositions or circumstances are not uncommon.

[8]Supervised release is a period during which an offender who has completed his or her full prison sentence mandated by federal sentencing guidelines is under supervision by federal probation officers.

Given the significant upward trend in outstanding criminal debt and the difficulty experienced by Justice in collecting criminal restitution debt, which we have previously reported and which is exemplified by the selected cases discussed in this report, it is important that Justice determine how to better maximize opportunities for making offenders' assets available to pay the offenders' victims. In our view, Justice can best accomplish this by addressing our 2001 recommendation that it work with other involved federal agencies to develop a strategic plan to improve criminal debt collection processes and establish an effective coordination mechanism among all such entities. As stated in our 2001 report, effective and efficient criminal debt collection hinges on the ability of the entities involved to work together in assessing and collecting criminal debt, and prompt action is essential for maximizing potential collections.[9]

Our current review of the five selected white-collar financial fraud debts, as supported by our previous work on criminal debt collection, strongly supports the need for Justice, as the agency primarily responsible for collecting criminal debt, to take the lead in promptly addressing and implementing our 2001 recommendation that Justice work with the Administrative Office of the United States Courts (AOUSC), the Office of Management and Budget (OMB), and the Department of the Treasury (Treasury) to develop a strategic plan that would improve interagency processes and coordination with regard to criminal debt collection activities, as well as address managing, accounting for, and reporting criminal debt. Until such a strategic plan is developed and effectively implemented, which could involve legislative as well as operational initiatives, the effectiveness of criminal restitution as a punitive tool may be diminished, and Justice will lack adequate assurance that offenders are not benefiting from ill-gotten gains and that innocent victims are being compensated for their losses to the fullest extent possible.

The conference report accompanying the Consolidated Appropriations Act, 2005, Public Law No. 108-447, which was signed into law on December 8, 2004, included language calling for the Attorney General to take the lead in such a coordinated effort. In tandem with this call for action, we recommend that Justice consider a broad range of legislative and operational initiatives for enhancing the federal government's capacity to collect restitution for victims of financial crimes for inclusion in the strategic plan.

[9]GAO-01-664.

As discussed in the "Agency Comments and Our Evaluation" section at the end of this report, Justice's comments on a draft of this report, which are reprinted in appendix I, are consistent with our conclusion that given such poor prospects for collection of restitution debt for our five selected cases, as well as the overall low collection rates for criminal debt we have previously reported, it is important that Justice determine how to better maximize opportunities to make offenders' assets available to pay crime victims. In its comments, Justice stated that consistent with our recommendation and the conference report that accompanied the Consolidated Appropriations Act of 2005, Justice is in the process of organizing an interagency joint task force to develop a strategic plan for improving criminal debt collection. Justice did not, however, specifically comment on our recommendations.

Background

Justice is responsible for collecting criminal debt and has delegated operating responsibility to its FLUs within all of Justice's U.S. Attorneys' Offices (USAO).[10] Justice's Executive Office for United States Attorneys (EOUSA) provides administrative and operational support, including support required for debt collection, to the USAOs. According to Justice, the FLUs typically become involved in the criminal debt collection process after the judgment, which occurs when an offender is convicted and a judge orders the offender to pay a fine or restitution. The U.S. Courts and their probation offices may also assist in collecting moneys owed. AOUSC provides national standards and promulgates administrative and management guidance, including standards and guidance required for debt collection, to the various U.S. judicial districts.

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

In July 2001, we reported on the growth of uncollected criminal debt through fiscal year 1999. We noted that although some of the key factors that contributed to the increasing amount of criminal debt were beyond Justice's control, certain of Justice's criminal debt collection processes were inadequate.[11] Accordingly, in the 2001 report, we made 14 recommendations to Justice to improve the effectiveness and efficiency of its criminal debt collection processes.[12]

In our March 2004 report, we discussed the extent to which Justice had acted on our previous recommendations to it to improve criminal debt collection. Our follow-up work on Justice's efforts to implement our 2001 recommendations showed that it had completed actions on 7 of the 14 recommendations, most of which were completed about 2 years after we made the recommendations, and had efforts under way to address 6 other recommendations. We noted that because many of these recommendations largely focused on establishing policies and procedures, it is important that they be effectively implemented once they are established, and it will likely take some time for collection results to be realized from full implementation. However, efforts to implement the recommendation that we considered the most critical had not progressed—namely for Justice to participate in a multiagency effort to develop a unified strategy for criminal debt collection. Specifically, we reported that Justice had not yet worked with other agencies, including AOUSC, OMB, and Treasury, to implement a key recommendation to work as a joint task force to develop a strategic plan that addresses managing, accounting for, and reporting criminal debt. We concluded that the long-standing problems in the collection of outstanding criminal debt—including fragmented processes and lack of coordination—continued because there is no united strategy among the major entities involved with the collection process.[13]

Scope and Methodology

Our case study review, on which the results described in this report are based, focused on a nonrepresentative selection of five criminal white-collar financial fraud debts that Justice reported outstanding as of

[11]GAO-01-664.

[12]In the 2001 report, we also made recommendations to address long-standing problems in the collection of outstanding criminal debt to the AOUSC, OMB, and Treasury.

[13]GAO-04-338.

September 30, 2002, each with a judgment prior to fiscal year 2001 that assessed the offender millions of dollars of restitution. We selected debts involving offenders who were not currently in prison and for which the offenders had paid a relatively small amount of the outstanding restitution amounts as of September 30, 2002. Also, our review only involved selected cases for which we could clearly identify the lead debtor in court and Justice records.

We obtained sufficient information to address our three reporting objectives; however, we were not provided all of the details pertaining to each of the five selected cases and thus cannot be assured that there was not additional relevant information. Because Justice still considers these cases to be open law enforcement cases for collection purposes, the information Justice provided for each case was limited primarily to what was included in its debt collection file minus personal identifiers, such as the names of the offenders, their addresses, and their Social Security numbers. Therefore, we are not providing a comprehensive account of any particular case.

For each selected debt, we reviewed Justice's debt collection file or files, minus all personal identifiers. We interviewed appropriate officials from Justice's EOUSA and the responsible FLUs concerning actions taken to collect the debt, obstacles to collection, and prospects for future collections. To supplement or attempt to further corroborate the information obtained from Justice for each case, we obtained and reviewed pertinent information about the selected debts and debtors from certain records made available by the courts and from public sources available through the Internet, such as property records. Also, for reporting purposes, rather than highlighting specific case studies in detail, our discussions focus on specific types of debt collection problems identified during this review, many of which we were aware of from our previous work. This was done to ensure sufficient privacy of those involved in our selected cases, and in consideration of Justice's concern that the release of information on open cases could hinder the department's efforts to collect the debts.

We conducted our review from November 2003 through June 2004 in accordance with U.S. generally accepted government auditing standards.

We received written comments signed by the Director, Executive Office for United States Attorneys, on a draft of this report. Justice's comments are

reprinted in appendix I, and technical comments received from both Justice and AOUSC have been addressed as appropriate in this report.

Restitution Amounts Far Exceed Likely Collections for the Crime Victims

The court-ordered restitution amounts assessed the offenders for the five selected criminal debt cases far exceed likely collections for the crime victims. The offenders' restitution amounts totaled about $568 million. However, according to court records, only about $40 million, or about 7 percent of the total, had been collected several years after the courts sentenced each of the offenders. The vast majority of these collections resulted from asset forfeiture actions and from payments that were made before the offenders were sent to prison or placed on probation. We found that the FLUs, which typically become involved in criminal debt collection after the debt is established at judgment, performed certain debt collection activities; however, they were not able to reduce the restitution debts significantly by identifying and liquidating additional assets of the offenders to pay the victims. Moreover, based on information available to us, the FLUs' prospects are not good for collecting additional restitution amounts from the offenders to compensate their victims to the extent initially ordered by the courts. Following the judgments, despite indications of prior wealth or possession of significant financial resources, the offenders claimed to have limited financial means to pay their restitution debts. Further, there were minimal, if any, apparent negative consequences to the offenders for not paying such debts.

A major debt collection problem for the FLUs for the selected cases was that up to 13 years had passed between the offenders' criminal activities and the related judgments. By the time the FLUs became involved in trying to collect the restitution debts, the offenders' assets had been, among other things, transferred to family members or others, forfeited to the government, or involved in bankruptcy. Justice acknowledged to us that the long intervals between criminal activity and the related judgments, and certain dispositions and circumstances involving the offenders' assets or the offenders that take place during such intervals, make collection difficult for many criminal restitution debt cases.

Most of the Court-Ordered Restitution Has Not Been Collected

As previously mentioned, the offenders' restitution amounts for the selected cases totaled about $568 million. Restitution amounts for individual cases ranged from over $7 million to more than $400 million. Court records show that each of the offenders, who pled guilty to engaging

in criminal activity, had been high-ranking officials of companies and lending institutions or operated their own business. The crimes in these cases consisted of fraudulently manipulating company sales figures and inventories to increase stock values or to obtain loans, engaging in schemes to convert business loan proceeds for personal use, selling securities to private investors under false pretenses, and illegally sharing in loan proceeds from a federally insured financial institution. The victims of the crimes involving the offenders of our selected cases included corporate shareholders, large lending institutions, and small investors—many of whom were elderly and had been harmed financially. In addition to the court-ordered restitution, prison terms ordered by the courts for four of these offenders ranged from 1 to 5 years followed by 3 to 5 years of supervised release. One offender received several years of probation rather than prison. As of June 2004, all of the offenders were out of prison or off probation, but three offenders were still on supervised release.

As noted earlier, only about $40 million, or about 7 percent of the total restitution for the selected cases had been paid as of June 2004, which was from about 4 to 8 years after the courts sentenced each of the offenders. Collections for the individual cases ranged from less than 1 percent to about 10 percent of the restitution amounts owed. About $24 million of these collections resulted from asset forfeiture actions, and over $11 million from payments that were made prior to the offenders' sentencing. After the judgments were rendered, the FLUs performed certain debt collection activities, such as filing liens on the offenders' real property; issuing restraining notices forbidding the transfer or disposition of assets; performing title searches; and requesting, obtaining, and reviewing financial information from the offenders.[14] Performing such activities did not enable the FLUs to further reduce the restitution debts significantly by identifying and liquidating additional assets of the offenders.

[14]Although the FLUs performed certain debt collection actions for each of the selected cases, we found that some of the FLUs' efforts, such as filing liens, were not always done promptly following the judgment. In addition, the asset discovery work performed by the FLUs consisted primarily of requesting, obtaining, and reviewing financial information provided by the offender. We noted in our 2001 report (GAO-01-664) certain problems stemming from a lack of independent verification of financial information provided by offenders. We also noted that prompt collection action, including the performance of asset discovery work, such as researching online property locator services, is critical to minimizing the dilution of assets that could be available for payment of a restitution debt. Accordingly, we offered recommendations to help Justice improve the timeliness and extent of its criminal debt collection efforts.

Prospects Are Not Good for Collecting Additional Restitution to Fully Compensate the Crime Victims

For the selected cases, based on information available to us, the FLUs are not likely to collect sufficient additional restitution amounts from the offenders to compensate their victims to the extent initially ordered by the courts. At some point prior to the judgments establishing the restitution debts, each of the offenders either reported having wealth or significant financial resources to the courts or to Justice, or there were indicators of such. Specifically, prior to sentencing, one or more of the offenders reported earning millions of dollars in annual gross income, having millions of dollars in net worth, or spending thousands of dollars per month on clothing and entertainment. In addition, court records indicate that certain of the offenders converted millions of dollars of fraudulently obtained assets for personal use, established businesses for their children, or held residential properties worth millions that were located in upscale communities. In spite of the reported wealth or financial resources or indications of such, following their judgments, each of the offenders reported to either the courts or Justice a modest income or net worth and claimed to have limited financial means to pay restitution debt. Further, at the time of our file reviews, three of the offenders were on supervised release and making monthly or yearly payments set by the courts that will do little to reduce the outstanding balance of their restitution debts, one offender had stopped making routine monthly payments after supervised release terminated, and one offender had negotiated a settlement with the crime victim, which was approved by Justice and the court, for far less than the initial court-ordered restitution.

There were minimal, if any, apparent negative consequences to the offenders for not paying restitution to their victims as initially ordered by the courts. First, information obtained from the courts and public documents indicated that the offenders were living in reasonable comfort. For example, one offender and his immediate family owned and, at the time of our review, resided in a property worth millions of dollars; another offender owns a home worth over $1 million; and two offenders took overseas trips while on supervised release. Second, after probation or supervised release has expired, the offenders cannot be sent to prison for failure to pay their restitution debts. According to Justice, although it does not apply to restitution, the willful failure to pay a fine is a crime of criminal default, which can result in the offender's receiving an additional fine of not more than twice the amount of the unpaid balance of the fine or $10,000, whichever is greater; being imprisoned not more than 1 year; or both. However, there is no such similar crime for willful failure to pay restitution. A court may revoke or modify the terms and conditions of probation or supervised release for an offender's failure to pay restitution. However,

these are of little consequence once the offender has successfully completed the term of probation or supervised release.

Long Intervals between the Offenders' Criminal Activities and Their Judgments Create Major Debt Collection Challenges for the FLUs

For the selected cases, according to records provided by the courts, at least 5 to 13 years passed between when the offenders began to engage in the criminal activities for which they were sentenced and the date of their judgments. We identified and the FLUs acknowledged that by the time the courts rendered the judgments establishing the restitution debts, certain of the offenders' assets were, among other things, transferred through legal or potentially fraudulent means to a family member or others, involved in forfeiture actions, subject to bankruptcy, or moved to a foreign account. In addition, one of our selected cases involved an offender who was jointly and severally liable for the debt with another offender who had been deported.

Justice stated that after criminal activity occurs, years may pass before the initial investigation of a crime, let alone the arrest, trial, and conviction of an offender. Justice also stated that the primary focus during the criminal investigation, prior to judgment, is on the discovery and prosecution of the offender's criminal acts rather than on the potential future debt recovery by the federal government. During the intervals between criminal activities and the related judgments, Justice acknowledged that dispositions and circumstances involving the offenders' assets or the offenders often occur that create major debt collection challenges for the FLUs. According to Justice, criminals with any degree of sophistication, especially those engaged in fraudulent criminal enterprises, commonly dissipate their criminal gains quickly and in an untraceable manner. Assets acquired illegally are often rapidly depleted on intangible and excess "lifestyle" expenses. Specifically, travel, entertainment, gambling, clothes, and gifts are high on the list of means to rapidly dispose of such assets. Moreover, money stolen from others is rarely invested into easily located or exchanged assets, such as readily identifiable bank accounts, stocks or bonds, or real property. Justice emphasized that the initial efforts by criminal law enforcement investigators, federal prosecutors, and the probation office promise the greatest opportunity for meaningful recovery of illegally obtained assets. Therefore, in our view, coordination among the FLUs and other entities involved in criminal debt collection is critical.

Transfer of Assets

According to Justice, there is no general statutory authority for Justice to obtain pretrial restraint of assets in order to satisfy a potential criminal judgment that may result in a restitution debt. However, once such a

judgment is imposed, Justice can proceed against a third party by filing a separate federal action to recover the assets or proceeds thereof. Justice emphasized that it must prove by a preponderance of the evidence that the offender fraudulently transferred assets, which often involves a lengthy and time-consuming process. Moreover, even when a valid claim is made against a third party for a fraudulent transfer, the third party may have a "good faith" defense if the transfer was accepted in exchange for a "reasonably equivalent value."

The challenges encountered in collecting restitution debt from offenders who may have transferred assets to others through legal or potentially fraudulent means were evident in our review of selected cases. According to Justice, at least one of the offenders in our selected cases has engaged in a shell game for the purpose of shielding their assets. In addition, Justice stated that at least one of the offenders has not provided full financial disclosure, and that the FLU is currently exploring whether the offender fraudulently conveyed assets to family members and others. Based on information in Justice and court records, certain of the offenders in the selected cases engaged in one or more of the following activities.

- Prior to the judgment, the offender and the offender's family established trusts, foundations, and corporations for their assets at about the same time they closed numerous bank and brokerage accounts.

- Over the course of several years, the offender converted for personal use hundreds of millions of dollars obtained through illegal white-collar business schemes.

- Several years prior to the judgment, the offender's minor child, who is now an adult, was given the offender's company. As of completion of our fieldwork, that company employed the offender.

- Prior to the judgment, the offender placed a multimillion-dollar residence in a trust.

- Prior to the judgment, the offender established a trust worth hundreds of thousands of dollars for the offender's child.

- The offender and the offender's family rent their expensively furnished residence, which they previously owned, from a relative.

Forfeited Assets

Justice stated that forfeited assets are the property of the federal government and do not always go to crime victims. Justice can restore forfeited assets to a victim upon the victim's filing of a petition, but only in those limited cases when it is the victim's actual property that is being restored. According to Justice, the FLUs' coordination with Justice's Asset Forfeiture Unit and others at the outset of the case is invaluable in securing assets for payment of the victims' restitution when such potential exists.

The importance such coordination has to securing forfeited assets for the crime victim was evident in one of our selected cases. Court records showed that about $175 million of the offender's assets that had been identified as related to the case had been forfeited; however, the FLU's records showed that only about $50 million of such assets had been forfeited. At the time of our file review, the FLU was not certain whether any forfeited assets had been, or could be, applied toward the offender's restitution debt. Subsequent to our visit to the FLU and our inquiries related to this matter, Justice stated that only about $24 million of the $50 million of forfeited assets in its records may be applied toward the offender's restitution debt as a result of a petition filed by the victim.

Bankruptcy

According to Justice, bankruptcy can impair the FLU's ability to collect criminal restitution debt. When a bankruptcy proceeding is initiated before the criminal judgment, the bankruptcy estate attaches to all of the offender's property and rights to property, which can significantly limit assets available for restitution. When a bankruptcy proceeding is initiated after the criminal judgment, the United States may file a proof of claim in the bankruptcy proceeding and may have secured status if its lien was perfected against any of the defendant's property. However, there may be other creditors seeking payment from the offender's estate, including often the Internal Revenue Service. These other creditors may be just as much victims of the offender as the victims named in the restitution order and may also have valid interests in payment from the estate. Moreover, bankruptcy's automatic stay may limit the FLUs' ability to otherwise enforce the debt.[15]

For one of the selected cases, the offender went into bankruptcy prior to the judgment. Shortly after the judgment, which was rendered over 5 years

[15]The automatic stay mandated by 11 U.S.C. § 362 (2000) prevents the federal government from pursuing collection action against debtors in bankruptcy for certain debts that arise prior to the commencement of the bankruptcy litigation.

ago, the FLU issued a restraining notice to the offender, forbidding the transfer or disposition of his assets, and filed a lien on certain property. However, according to the FLU, the ongoing bankruptcy has prevented it from taking additional collection action. Recently, Justice stated that it had been advised by the bankruptcy trustee that for this case, most of the offender's bankruptcy estate of several million dollars would be distributed to the victim.[16] Justice emphasized that generally for cases in which the offender goes into bankruptcy prior to the judgment, the criminal restitution debt will only be recognized as a general unsecured debt and, therefore, most often will not be satisfied.

Foreign Accounts and Deportation

Justice stated that money obtained illegally is often moved to offshore accounts or to debtor-haven countries. In the absence of a treaty with a foreign government or a provision of law to provide for the repatriation of money transferred to foreign accounts, acquiring such money for the liquidation of an offender's restitution debt is difficult at best. Justice also stated that certain offenders are deported; however, they continue to be liable for the unpaid portion of their restitution debts, as current law requires that the debts stay on the books for 20 years after the period of incarceration ends or after the judgment if no incarceration is ordered. Justice acknowledged that potential collection actions are limited for offenders who have been deported. For example, liens filed in counties where the offender previously held property have little, if any, effect when offenders have moved assets and are living abroad. In addition, FLU officials cannot subpoena financial information from offenders who have been deported or obtain depositions from such offenders regarding their assets.

Debt collection complications due to transfers of assets to foreign accounts and the deportation of offenders were evident in our selected cases. For one case, according to Justice, the FLU's efforts to identify and secure assets of the offender to liquidate the restitution debt have been hampered, in part, because the offender had established, among other things, a foreign bank account for the purpose of shielding his assets. For another case involving two offenders who were jointly and severally liable for the restitution debt, one offender had settled his liability for the debt, with the approval of Justice and the court, by paying the victim far less than the amount initially ordered by the court. With regard to this offender, Justice

[16]It is important to note that a large outstanding restitution balance will remain after the bankruptcy estate is distributed to the victim.

stated that his reported assets and net worth were such that the thought that additional collection efforts would have positive results was not considered by the FLU to be reasonable. The FLU was left with little recourse for additional collection action because the other offender in the case, who is still liable for the remainder of this debt, was deported after serving a prison term.

Recent Congressional Action

Our March 2004 report and ongoing discussions with your office have kept you apprised of progress in implementing the recommendations included in our 2001 report. As discussed more fully in the background section of this report, Justice has made progress in establishing certain policies and procedures to improve criminal debt collection. Unfortunately, the effort we considered key to more substantive progress, namely, development of a strategic plan by all of the involved entities, had not been started. However, very recently, the Congress directed the Attorney General to develop a strategic plan with certain other federal agencies to improve criminal debt collection. Specifically, the conference report that accompanied the Consolidated Appropriations Act, 2005, Public Law No. 108-447, signed into law on December 8, 2004, included language to further the implementation of our 2001 recommendation regarding the establishment of an interagency task force for the purpose of better managing, accounting for, reporting, and collecting criminal debt.

In the conference report, the conferees directed the Attorney General to establish a task force within 90 days of enactment of the act and to include specified federal agencies, such as Treasury, OMB, and AOUSC, to participate in the task force. Led by the Department of Justice, the task force will be responsible for developing a strategic plan for improving criminal debt collection. The strategic plan is to include specific approaches for better managing, accounting for, reporting, and collecting criminal debt. Specifically, the plan is to include steps that can be taken to better and more promptly identify all collectible criminal debt so that a meaningful allowance for uncollectible criminal debt can be reported and used for measuring debt collection performance. Also, the conferees directed the Attorney General to report to the Committees on Appropriations within 180 days of enactment of this act on the activities of the task force and the development of a strategic plan.[17]

[17]H.R. Report No. 108-792, reprinted in 150 Cong. Rec. H10426-H10427 (daily ed. Nov. 19, 2004).

Conclusion

Given such poor prospects for collection for the selected cases, as well as the overall low collection rates for criminal debt we have previously reported, it is important that Justice determine how to better maximize opportunities to make offenders' assets available to pay offenders' victims once judgments establish restitution debts. By taking advantage of all debt collection opportunities, Justice may be able to better achieve the intent of MVRA, which is to compensate crime victims to the extent of their financial loss. Justice can best accomplish this aim by implementing the recommendation we made in 2001 to work with AOUSC, OMB, and Treasury to develop a strategic plan as now also called for by the conference report accompanying the Consolidated Appropriations Act, 2005, to address managing, accounting for, and reporting criminal debt including the collectibility of such debt.

Further, our review of the five selected criminal white-collar financial fraud debts, in conjunction with the findings on our previous criminal debt collection work, strongly supports the need for Justice to take the leadership role in promptly addressing this recommendation. Effective coordination and cooperation is essential for maximizing collections, and as the federal agency primarily responsible for criminal debt collection, Justice's leadership in this effort is vital. The strategic plan should include a determination of how to best maximize opportunities to make offenders' assets available to pay the victims once judgments establish restitution debts. Until such a strategic plan is developed and effectively implemented, which could involve legislative as well as operational initiatives, the effectiveness of criminal restitution as a punitive tool may be diminished, and Justice will lack adequate assurance that offenders are not benefiting from ill-gotten gains and that innocent victims are being compensated for their losses to the fullest extent possible.

Recommendations for Executive Action

To help ensure that the strategic plan called for in the conference report effectively addresses all potential opportunities for collection, we recommend that the Attorney General include in the strategic plan legislative initiatives, operational initiatives, or both that are directed toward maximizing opportunities to make offenders' assets available to pay victims once restitution debts are established by judges.

To monitor progress in leading the development and implementation of the strategic plan, we also recommend that the Attorney General report annually in Justice's *Accountability Report* on progress toward developing

and implementing a strategic plan to improve criminal debt collection. This report should include a discussion of any difficulties or impediments that significantly hinder such progress.

Agency Comments and Our Evaluation

Overall, Justice's EOUSA's comments on a draft of this report, which are reprinted in appendix I, are consistent with our conclusion that given such poor prospects for collection for the selected cases, as well as the overall low collection rates for criminal debt we have previously reported, it is important that Justice determine how to better maximize opportunities to make offenders' assets available to pay offenders' victims once judgments establish restitution debts. EOUSA stated that consistent with our recommendation and the conference report that accompanied the Consolidated Appropriations Act of 2005, Justice is in the process of organizing an interagency joint task force to develop a strategic plan for improving criminal debt collection.

EOUSA did not specifically comment on our recommendations including the recommendation that the Attorney General include in the strategic plan legislative initiatives, operational initiatives, or both that are directed toward maximizing opportunities to make offenders' assets available to pay victims once restitution debts are established by judges. However, EOUSA did emphasize that current statutes do not provide adequate remedies for the collection of criminal debt and cited several examples including the lack of general statutory authority for the United States to obtain pretrial restraint of assets in order to satisfy a potential criminal judgment that may result in a restitution debt. Regarding operational initiatives, as stated in this report, because many of the recommendations we have previously made to Justice to improve criminal debt collection focused on establishing policies and procedures, it is important that the policies and procedures be effectively implemented once they are established. Moreover, any multiagency effort to develop a unified strategy for criminal debt collection will need to address operational issues.

Both EOUSA and AOUSC provided technical comments that have been addressed as appropriate in this report.

As agreed with your office, unless you announce its contents earlier, we plan no further distribution of this report until 30 days after its issuance date. At that time, we will send copies to the Chairmen and Ranking

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

If you have any questions about this report, please contact me at (202) 512-3406 or engelg@gao.gov or Kenneth R. Rupar, Assistant Director, at (214) 777-5714 or rupark@gao.gov. Staff acknowledgments are provided in appendix II.

Sincerely yours,

Gary T. Engel
Director
Financial Management and Assurance

Comments from the Department of Justice

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

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JAN 1 3 2005

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

Dear Mr. Engel:

This letter provides comments from the Executive Office for United States Attorneys (EOUSA) on the Government Accountability Office's (GAO) most recent report regarding criminal debt collection.[1] We appreciate the opportunity to provide comments for publication in the final report.

We agree with GAO's conclusion that court ordered restitution amounts far exceed likely collections.[2] According to estimates by the United States Attorneys' Offices (USAOs), approximately 75 per cent of the outstanding balance is currently not collectible. This figure is based, among other things, on a review of each defendant's financial circumstances including information contained in pre-sentence reports; financial statements; credit bureau reports; asset searches; skiptracing reports; tax returns; and/or information gathered as a result of subpoenas, interrogatories, or requests for production of documents.

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[1]The draft report entitled "Criminal Debt: Court-Ordered Restitution Amounts Far Exceed Likely Collections for the Victims in Selected Financial Fraud Cases" follows up on GAO's 2001 and 2004 reports (see GAO-01-664 and GAO-04-338, respectively) by reviewing five criminal white-collar financial fraud cases to determine (1) the status of Justice's efforts to collect on the outstanding debt; (2) the prospects for future collections; and (3) whether specific problems have affected Justice's ability to collect the debt.

[2]This conclusion was based on GAO's review of Justice's debt collection files; interviews with Justice officials; records made available by the courts, including probation; and, independent research of public sources available through the Internet, such as property records.

See comment 1.

As noted in the draft report, there are a number of barriers that exist in the collection of criminal debt. By far, the greatest impediment to collecting full restitution is the lack of relationship between the amount ordered and its corresponding collectibility. Nor is there necessarily a relationship between the amount ordered and the benefit received by the defendant from the criminal activity. The Mandatory Victims Restitution Act of 1996 (MVRA) mandates that restitution amounts be based solely on the full amount of the victims' losses, regardless of the defendant's ability to pay or the amount of actual gain to the defendant. This is especially evident in white-collar financial fraud cases. In the five cases selected by GAO for review, restitution was ordered totaling approximately $568 million, yet there is no evidence to suggest that the defendants currently have, or once had, wealth equal to this amount. In one case, although the defendant, at some point, had several million dollars, the judgment was in excess of $49 million. In another case, while the defendant had substantial assets, most of which were subject to forfeiture, those assets did not come close to satisfying the more than $400 million ordered in restitution.

The draft report also recognizes that current statutes do not provide adequate remedies for the collection of criminal debt. For example, there is no general statutory authority for the United States to obtain pre-trial restraint of assets in order to satisfy a potential criminal judgment that may result in a restitution debt. White-collar financial fraud activity may take years before being discovered, investigated, and successfully prosecuted. Unless statutes are enacted which allow for pre-judgment restraints on a defendant's assets, these assets will continue to be dissipated during a lengthy investigation and/or trial.

Another example is the lack of negative consequences for defendants who willfully fail to pay restitution. Title 18 U.S.C. § 3613A provides remedies for failure to pay, such as revocation of probation or a term of supervised release; modification of the terms or conditions of probation or a term of supervised release; holding the defendant in contempt of court; or entering a restraining order. In addition, 18 U.S.C. § 3614 provides, upon revocation of supervised release, for the re-sentencing of the defendant to any sentence which might have originally been imposed. There is also a separate crime of criminal default as set forth in 18 U.S.C. § 3615 for the willful failure to pay a fine. These remedies, however, do not provide any real consequence if the defendant is no longer on probation or supervised release or if there are no assets to be found in the defendant's name. Without statutory language that clearly sets forth consequences, defendants will continue to resist paying restitution.

A third example in which current statutes fail to provide adequate remedies involves foreign bank accounts. Money obtained illegally is often moved to offshore accounts or to debtor-haven countries. Currently, there is a lack of laws/treaties with foreign governments to provide for the repatriation of monies moved out of the country. Without such laws/treaties, acquiring the money in these accounts for the liquidation of a restitution order is nearly impossible.

Other difficulties encountered in the collection of criminal debt identified in the draft

report include the transfer of assets, bankruptcy, and forfeiture actions. In one case, the court specifically ordered that assets transferred to a family member could not be used to satisfy the defendant's restitution debt. In another case, the defendant filed bankruptcy prior to the criminal judgment, resulting in the U.S. only being recognized as a general unsecured creditor, and thus, unlikely to recover.

See comment 2.

While there are many impediments to the collection of the full amount of a restitution order, the USAOs continue to make their best efforts to collect criminal debts owed to the U.S. and third party victims. As a result of these efforts, over the past five years the USAOs collected over $4 billion on behalf of victims of crime (an additional $8 billion was recovered on civil debts owed to the U.S.). These impressive results occurred in spite of the ever growing caseload and relatively unchanged USAO Financial Litigation Unit staffing levels.[3]

As discussed in GAO's 2001 and 2004 reports, and confirmed through the review of selected cases in GAO's most recent draft report, the collection of criminal debts is difficult. The solution for improving the collection process is complex and, unfortunately, there are no quick fixes that can be put into place that will guarantee success. Nevertheless, the Department holds the collection of debts owed to the Federal Government and victims of crime as a high priority and is firmly committed to continuously improving the process. Consistent with GAO's recommendation and the conference report that accompanied the Consolidated Appropriations Act of 2005, the Department is in the process of organizing an interagency joint task force to develop a strategic plan for improving criminal debt collection. We are confident that we will meet the statutory deadlines.

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

Sincerely,

Mary Beth Buchanan
Director

[3]The MVRA mandated that the United States Attorneys collect on behalf of non-federal victims of crime. While Congress recognized the importance of ensuring that these non-federal victims of crime be compensated, no additional resources were given to the USAOs to carry out this mandate.

The following are GAO's comments on the Department of Justice's letter dated January 13, 2005.

GAO's Comments

1. As discussed in this report, only about $40 million, or about 7 percent, of the $568 million restitution for these five selected cases had been paid as of June 2004, and collections for these individual cases ranged from less than 1 percent to about 10 percent of the restitution amounts owed. Prospects are not good for collecting additional restitution to fully compensate the crime victims for the selected cases in our study. Regardless of whether these offenders currently have, or once had, wealth equal to the restitution amounts, the disparity between restitution owed to the crime victims for the financial losses they incurred as a result of criminal activity and amounts paid to the victims by the offenders makes it necessary for Justice to take advantage of all debt collection opportunities to better achieve the intent of MVRA, which is to compensate crime victims to the extent of their financial loss.

2. EOUSA stated that the USAOs had collected over $4 billion on behalf of victims of crime over the last 5 years. However, as stated in this report, the low collection rate (about 7 percent of the ordered restitution) for the selected cases coincides with overall collection rates for criminal debt as we have previously reported. In 2004, we reported that according to Justice's unaudited records, collections relative to outstanding criminal debt averaged about 4 percent for fiscal years 2000, 2001, and 2002 (GAO-04-338). In 2001, we reported that criminal debt collection averaged about 7 percent for fiscal years 1995 through 1999 (GAO-01-664).

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