



Highlights of [GAO-05-670](#), a report to congressional requesters

## Why GAO Did This Study

The Securities and Exchange Commission (SEC) and Commodity Futures Trading Commission (CFTC) impose penalties, disgorgements, and restitution on proven and alleged violators of the securities and futures laws, respectively. GAO has issued a number of previous reports on agency collection efforts and made numerous recommendations for improvement.

This report follows up on open issues from the previous reports and (1) discusses SEC's progress in improving its tracking of penalty and disgorgement collection data, (2) assesses the steps SEC has taken to improve collection program management, (3) evaluates SEC's implementation of the Fair Fund provision in the Sarbanes-Oxley Act of 2002, and (4) describes CFTC's actions to address previous GAO recommendations.

## What GAO Recommends

In this report, GAO makes six recommendations to SEC, three of which are designed to ensure that collection staff members have the necessary tools and support and are used effectively, and the other three are designed to ensure that SEC's collection program meets its goal of deterring securities law violations and returning funds to harmed investors. SEC agreed with these recommendations.

[www.gao.gov/cgi-bin/getrpt?GAO-05-670](http://www.gao.gov/cgi-bin/getrpt?GAO-05-670).

To view the full product, including the scope and methodology, click on the link above. For more information, contact Richard J. Hillman at (202) 512-8678 or [hillmanr@gao.gov](mailto:hillmanr@gao.gov).

# SEC AND CFTC PENALTIES

## Continued Progress Made in Collection Efforts, but Greater SEC Management Attention Is Needed

### What GAO Found

In response to GAO's previous recommendations, SEC has taken positive steps to improve its tracking of collection data, such as discontinuing its use of an unreliable tracking system, modifying its existing Case Activity Tracking System (CATS) to capture financial data, and establishing a policy for improved data entry. GAO's review of 45 cases tracked in CATS revealed that SEC complied with its policy for improved data entry, a step that contributes to improving the overall reliability of SEC's collection data. However, GAO identified additional actions that SEC can take to enhance CATS's usefulness for key users, such as attorneys, collection monitors, and case management specialists in the Division of Enforcement. SEC is currently addressing this issue through a multiyear effort to comprehensively upgrade CATS. Agency officials estimate that the upgrade, which will be completed in phases, will be fully complete in 2008.

SEC has also addressed some previous recommendations made to strengthen management of its collection program, such as increasing its collection staff and referring eligible delinquent cases to the Department of the Treasury's (Treasury) Financial Management Service (FMS) on a timely basis. However, SEC must take further steps to address other recommendations designed to enhance management's evaluation of program performance. During this review, GAO identified new issues that warrant SEC management attention. For example, although SEC has increased the number of staff devoted to collection efforts, the agency has neither developed a method to ensure that adequate and consistent supervision is provided to them, nor has it formally assessed whether its additional resources are being used effectively. SEC also has not developed a procedure by which to ensure that two key units, both responsible for tracking collection activity, are effectively communicating and coordinating with one another.

Since implementing Section 308(a) of the Sarbanes-Oxley Act of 2002, (commonly known as the Fair Fund provision), SEC has instructed its staff to aggressively use the provision and estimates designating over \$4.8 billion for return to harmed investors as a result of the provision's enactment. However, to date, only a small amount of the funds have been distributed. According to SEC, distribution is often a lengthy process that can be further complicated by external factors such as a pending criminal indictment on the violator. GAO also found that SEC lacked a reliable method by which to identify and collect data on Fair Fund cases. SEC took action to address this issue, but efforts were still in their early stages. SEC has yet to analyze the data it has collected in order to fully determine the provision's effectiveness in returning an increased fund amount to harmed investors.

CFTC implemented both recommendations from previous GAO reports related to controls over fingerprinting procedures and timely referral of eligible delinquent cases to Treasury's FMS.