

# Office of Inspector General



March 5, 2002  
Audit Report No. 02-006

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## DRR's Efforts to Facilitate Collections on Criminal Restitution Orders



## TABLE OF CONTENTS

<b>BACKGROUND</b>	<b>1</b>
<b>RESULTS OF AUDIT</b>	<b>4</b>
<b>DRR NEEDS TO UPDATE AND PERIODICALLY RECONCILE ITS RESTITUTION ORDER TRACKING SYSTEM</b>	<b>5</b>
<b>Table 1: Restitution Orders Omitted from DOLLARS</b>	<b>5</b>
<b>RECOMMENDATIONS</b>	<b>6</b>
<b>DRR NEEDS TO ASSESS THE LIKELIHOOD OF COLLECTIONS ON RESTITUTION ORDERS ASSIGNED TO WASHINGTON OFFICE</b>	<b>7</b>
<b>Recommendations</b>	<b>8</b>
<b>CORPORATION COMMENTS AND OIG EVALUATION</b>	<b>8</b>
<b>APPENDIX I: Objective, Scope, and Methodology</b>	<b>10</b>
<b>Table 2: Active Orders by Judicial District (DRR's Dallas Office)</b>	<b>12</b>
<b>APPENDIX II: Summary of Prior Coverage</b>	<b>14</b>
<b>APPENDIX III: Pertinent Laws, Regulations, and FDIC Policies and Procedures</b>	<b>15</b>
<b>APPENDIX IV: Funds Put to Better Use Calculation</b>	<b>17</b>
<b>APPENDIX V: Corporation Comments</b>	<b>18</b>

**DATE:** March 5, 2002

**MEMORANDUM TO:** Mitchell L. Glassman, Director  
Division of Resolutions and Receiverships

**FROM:** Russell A. Rau [Electronically produced version; original signed by  
Russell Rau]  
Assistant Inspector General for Audits

**SUBJECT:** Report Entitled *DRR's Efforts to Facilitate Collections on  
Criminal Restitution Orders* (Audit Report Number 02-006)

The Office of Inspector General (OIG) has completed an audit of the Division of Resolutions and Receiverships' (DRR) efforts to facilitate collections on restitutions<sup>1</sup> ordered for violations of federal and state laws associated with failed financial institutions. DRR assists the Department of Justice (DOJ) and state attorneys general in collection efforts. As of May 11, 2001, DRR was tracking 1,547 active criminal restitutions with an ordered amount of more than \$959 million.<sup>2</sup> Collections on restitution orders are returned to the Federal Deposit Insurance Corporation (FDIC) in its corporate or receivership capacity and totaled \$32.9 million during the period January 1, 1998 through October 15, 2001. The audit objective was to determine whether DRR properly managed, collected, and reported on criminal restitution orders.<sup>3</sup> Appendix I of this report discusses our objective, scope, and methodology in more detail.

## BACKGROUND

The FDIC assists the DOJ in prosecuting individuals charged with committing crimes against financial institutions and in collecting on restitution orders. The FDIC's role stems from Section 2539 of the Crime Control Act of 1990 (Public Law 101-647). Section 2539 (c) directed the Attorney General to establish a Senior Interagency Group to assist in identifying the most significant financial institution fraud cases and in allocating investigative and prosecutorial resources where they are most needed. Section 2539(c)(2) stipulated membership in the group to

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<sup>1</sup> Restitution is the monetary amount established by a court in a Judgment and Commitment Order that a party convicted of violating a law must pay to render a victim whole. Restitution orders generally have a 20-year life beyond the events delaying commencement of collection. Restitution is in addition to penalties authorized for violations of law.

<sup>2</sup> This figure is the total amount ordered by the courts for active restitution orders, as reflected in DRR's Division of Liquidation Locating and Reporting System (DRR was formerly called the "Division of Liquidation"). Additional amounts for interest may accrue on individual orders not satisfied as directed by the court.

<sup>3</sup> Federal criminal restitution orders were the primary emphasis of this audit as state orders amounted to only \$9.6 million (1 percent) of the active inventory totaling \$959 million. Nevertheless, two state restitution orders were sampled to test for compliance with DRR's *Investigations Procedures Manual*.

include senior officials from the DOJ,<sup>4</sup> the Department of the Treasury, the FDIC, the Federal Reserve Board, the Office of the Comptroller of the Currency, the Office of Thrift Supervision (OTS), the National Credit Union Administration, and the former Resolution Trust Corporation. Section 2539(c)(3) states that the duties of the Senior Interagency Group shall be to enhance interagency coordination and assist in accelerating the investigation and prosecution of financial institutions fraud.

On June 25, 1992, the Senior Interagency Group<sup>5</sup> issued a policy statement entitled *National Policy on Collection and Reporting Procedures for Restitution Payable to Financial Institution Regulatory Agencies*. The policy statement outlines the roles of DOJ and the regulatory agencies regarding collection on restitution orders. DOJ will:

- (1) Forward a copy of the Judgment and Commitment Order to that agency;
- (2) Enforce collection of the monies ordered by working with that agency to (a) identify the assets of the defendant; (b) reduce the restitution order to a civil judgment, when appropriate; and (c) initiate judicial or other proceedings; and
- (3) Notify that agency upon the completion of a prison term or an appeal, or for any other reason that may legally delay the enforceability of the restitution order.

The agency will (1) track receipt of payments of that restitution and (2) report receipts to the DOJ.

In the FDIC, DRR's Receivership Operations Branch offices in Dallas, Texas, and Washington, D.C., are responsible for implementing the policies stemming from the Senior Interagency Group.<sup>6</sup> The FDIC's role is articulated in DRR's *Investigations Procedures Manual* that incorporates the Senior Interagency procedures and requires DRR investigators to:

- (1) Identify assets that may be used to satisfy a restitution obligation;
- (2) Assist the DOJ with reducing the restitution order to a civil judgment, if applicable;
- (3) Assist the DOJ with initiating judicial or other proceedings to enforce the restitution order; and
- (4) Initiate and maintain close contact with the DOJ to expediently collect restitution orders.

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<sup>4</sup> Includes representatives of the Federal Bureau of Investigation, the Advisory Committee of United States Attorneys, and other relevant entities.

<sup>5</sup> When created, the Senior Interagency Group also included the Director, U.S. Secret Service; Commissioner, Internal Revenue Service; and the Chief Postal Inspector, U.S. Postal Service.

<sup>6</sup> Legal Division Financial Crimes Unit (FCU) attorneys and OIG investigators also assist DRR. OIG investigators become involved if there are allegations of additional violations of law such as potential false statements to the courts, U.S. probation offices, bankruptcy courts, trustees, or the FDIC; concealment of assets; and obstruction of justice.

Specifically, Chapter 14 of DRR's *Investigations Procedures Manual* deals with criminal restitution orders and requires a DRR investigator to:

- (1) establish and maintain a restitution file,
- (2) request and exchange financial information about the defendant with DOJ to aid collection efforts,
- (3) initiate searches to discover assets,
- (4) reconcile payment receipts and balances on the National Processing System<sup>7</sup> (NPS) with DOLLARS<sup>8</sup> on an as needed basis, and
- (5) reconcile payment receipt differences with DOJ or the Clerks of the U.S. Court<sup>9</sup> as differences are discovered.

Also, DRR staff take compromise and write-down actions for restitution orders. A compromise is an action wherein DRR assists DOJ in obtaining a negotiated settlement with the defendant through the courts and the resulting amount received is less than the restitution originally ordered. A write-down is an action that places the restitution order into an inactive status in the Corporation's records. A write-down does not excuse the defendant from his or her responsibility to pay the restitution. A restitution order becomes a candidate for a write-down when an event occurs that would preclude further pursuit of the order, either legally or practically. Reasons for writing down a restitution order include a determination that a defendant is deceased or has few or no assets to satisfy restitution. Once a restitution order is written down, DRR staff no longer actively pursue collection. DRR has written procedures for writing down restitution orders.

As of May 11, 2001, DRR's Receivership Operations Branch office in Dallas was responsible for pursuing collections on 1,150 active restitutions with an ordered amount of \$955.9 million. In addition, DRR's Receivership Operations Branch office in Washington was responsible for pursuing collections on 397 restitutions with an ordered amount of approximately \$3.6 million.

DRR's database for tracking activity on criminal restitution orders (DOLLARS) contains information on failed financial institutions closed from 1988 to the present and pre-1988 institutions in which at least one claim remained open when the data were initially input. A locator feature of DOLLARS has the ability to track the names of individuals and/or entities associated with failed financial institutions and identify whether they are or may be defendants in anticipated litigation or identify whether they were named in a criminal referral and/or criminal restitution. DOLLARS stores information on criminal restitution orders, including payments, probation officer names, and probation expiration dates.

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<sup>7</sup> Assets owned by the FDIC, mostly loans and real estate, are maintained on NPS. Cash payments and other reductions are applied to the assets through NPS. Compromise of the data on NPS could seriously affect the ability to execute the primary business functions supported by the application. NPS feeds into the FDIC's general ledger.

<sup>8</sup> The Division of Liquidation Locating and Reporting System is the FDIC's database for tracking activity on criminal restitution orders.

<sup>9</sup> The Clerks of the U.S. Court, part of the Judicial Branch, generally receive, record, and distribute restitution payments to victims. The Clerks also notify DOJ of payment receipts.

The FDIC's Strategic and Annual Performance Plans for 2000 and 2001 do not list any goals specifically related to collection efforts for criminal restitution orders. DRR Receivership Operations Branch officials stated that collections on restitution orders are dependent upon too many external factors to establish meaningful performance measures. Instead, DRR has focused its management efforts on addressing case workload, assignment priorities, and the standard performance plans for DRR investigators. On November 1, 2001, DRR's Receivership Operations Branch had 32 staff persons assigned to investigations, 30 in Dallas and 2 in Washington. The Dallas staff and 1 Washington staff work both criminal and civil investigative cases and 1 Washington staff works criminal investigative cases.

## RESULTS OF AUDIT

For our judgmental sample of 30 restitution orders,<sup>10</sup> DRR's Receivership Operations Branch staff in Dallas complied with DRR's policies and procedures and were therefore properly managing, collecting, and reporting on criminal restitution orders. Further, for restitution payments received for the sampled cases, DRR properly handled the transactions and recorded the information into DOLLARS. Moreover, reconciliations between DOLLARS and the NPS were properly done on a monthly basis. Also, DRR staff prepared compromise and write-down cases that were supported by DRR staff and approved by DRR management. We confirmed that the Division of Finance, in conjunction with DRR, properly issued Internal Revenue Service form 1099s (miscellaneous income) to offenders for forgiveness of debt for four compromised orders as required by FDIC's Circular 5400.1, entitled *Reporting Discharge of Indebtedness*, dated May 1, 2001.

While DRR's DOLLARS database of restitution orders was accurate and reliable for the sampled items, it did not include all criminal restitution orders where the FDIC<sup>11</sup> is the victim. The omissions can occur, for example, when the restitution is listed in the Clerk's records by financial institution name, not by agency. In 6 of 94 judicial districts, we found that 16 restitution orders totaling \$1.9 million were not being managed, collected, or reported on by DRR. Based upon past collection history, the OIG estimated that the FDIC could reasonably expect to collect \$123,450 from the 16 previously omitted restitution orders. We classify this amount as "funds put to better use." Appendix IV provides the details of this calculation.

Additionally, DRR's Receivership Operations Branch staff in Washington, D.C. is assigned collection efforts on 397 small dollar restitution orders. However, no individual determinations of the likelihood of collections have been performed. As a result, DRR may expend unnecessary resources attempting to collect on restitution orders that are no longer practical to pursue.

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<sup>10</sup> Overall, we judgmentally sampled 34 restitution orders. We sampled 30 restitution orders assigned to the Dallas office and 4 restitution orders assigned to the Washington office.

<sup>11</sup> Refers to the FDIC in its receivership, conservatorship, and corporate capacities and the Resolution Trust Corporation (RTC). As provided in the *RTC Completion Act of 1993*, the RTC went out of existence on December 31, 1995, and the FDIC took over its functions on January 1, 1996.

## DRR NEEDS TO UPDATE AND PERIODICALLY RECONCILE ITS RESTITUTION ORDER TRACKING SYSTEM

DRR's DOLLARS database does not contain all federal criminal restitution orders where FDIC is the victim. We compared the restitution orders tracked for the FDIC in 6 of the 94 U.S. judicial districts with DRR's DOLLARS database and determined that 16 restitution orders originally amounting to \$1,939,668 were not tracked in DOLLARS. DRR's *Investigations Procedures Manual* requires that restitution orders be actively pursued to assist DOJ with collection efforts. DRR did not reconcile DOLLARS with the official systems of the judicial districts because it does not have a procedure for periodic reconciliation. These omissions put the FDIC at risk of not collecting restitution due to the insurance funds. Adding the omitted restitution orders to DOLLARS and assigning the cases to staff to conduct collection efforts would help ensure that all restitution orders due to the FDIC are properly managed, collected, and reported. DRR has not attempted any dedicated effort to reconcile the restitution order inventory reflected in DOLLARS to the restitution order inventories in the official records maintained by the Clerks of the U.S. District Court in the 94 U.S. Judicial Districts. We contacted 6 judgmentally selected Clerk's offices, obtained records identifying open restitution orders wherein FDIC was the victim, and found 16 restitution orders with an original restitution amount<sup>12</sup> totaling \$1,939,668 that were omitted from DOLLARS (see Table 1).

**Table 1: Restitution Orders Omitted from DOLLARS**

District	Location	Order Date	Amount
South Texas	Houston, TX	04/14/94	\$124,970
South Texas	Houston, TX	05/04/93	100,000
South Texas	Houston, TX	11/04/98	228,221
North Texas	Dallas, TX	12/21/92	354,143
North Texas	Dallas, TX	07/22/87	38,592
North Texas	Dallas, TX	09/10/91	1,000
North Texas	Dallas, TX	02/07/96	14,541
North Texas	Dallas, TX	11/14/89	3,000
North Texas	Dallas, TX	01/20/86	25,584
North Texas	Dallas, TX	06/17/87	642,095
North Texas	Dallas, TX	11/07/86	25,000
North Texas	Dallas, TX	03/09/88	9,088
North Texas	Dallas, TX	12/02/88	6,000
South Florida	Miami, FL	01/12/01	215,162
South Florida	Miami, FL	11/03/99	150,000
West Texas	San Antonio, TX	07/14/88	2,272
<b>Total</b>			<b>\$1,939,668</b>

Source: *Records Maintained by the Clerks of the U.S. District Court*

DRR's *Investigations Procedures Manual* states that an investigator's primary mission is the recovery of funds. To accomplish this task, the FDIC assists DOJ in the collection of criminal restitutions. Once the court orders a restitution, copies of the judgment are distributed to the cognizant parties. DRR investigators in turn notify the FDIC parties involved, establish and maintain the restitution file, request and exchange information, send out demand letters to the

<sup>12</sup> The restitution amount outstanding is the amount on the original court order. The Clerk's offices had no record of any payments for these 16 restitution orders.

defendants and contact the appropriate probation offices, initiate asset searches to discover seizable assets, and record the information into DOLLARS and the NPS. The investigator is to reconcile payments and restitution balances reported in DOLLARS with NPS on an as needed basis and reconcile remaining balance differences with DOJ and the Clerks of the U.S. District Court as they are discovered.

DRR has designated a Criminal Coordinator within the Receivership Operations Branch office in Dallas to support the prosecution of individuals and to facilitate collection activities with DOJ. However, DRR procedures do not require the Criminal Coordinator nor the DRR investigators to reconcile the restitution orders listed in DOLLARS to the official records for restitution tracking maintained by the Clerks of the U.S. District Court in the 94 judicial districts. Such a reconciliation would identify FDIC restitution orders omitted from DOLLARS and could be accomplished efficiently for those federal judicial districts using an automated database system to track restitutions.

These omissions put the FDIC at risk of not recovering restitutions due to the insurance funds. Standard DOLLAR reports applicable to criminal restitutions include the *Investigations Unit Status Report* and the *Criminal Restitutions Report*. DRR management uses these reports to establish work priorities and assess performance. Reports generated from DOLLARS risk material misstatement as restitution order cases and remaining balances are understated.

Based upon past collection history, we estimate that the FDIC could reasonably expect to collect \$123,450 from the 16 previously omitted restitution orders. We classify this amount as “funds put to better use.” On November 14, 2001, we discussed with DRR officials our calculation. They responded that they required time to review and study the OIG calculation before rendering an opinion or decision on its merits. Appendix IV presents more detail on this calculation.

## **Recommendations**

We recommend that the Deputy Director, Receivership Operations Branch:

- (1) Add the 16 omitted restitution orders to DOLLARS and assign the orders to DRR Receivership Operations Branch staff to pursue standard collection efforts in accordance with DRR procedures (\$123,450 in funds put to better use).
- (2) Develop a process providing for a reconciliation of restitution orders listed in DOLLARS with the Clerks of the U.S. District Court where DRR determines it is reasonable to do so. At a minimum, the reconciliation should include those judicial districts where the Clerks track restitution orders using an automated system.
- (3) Once a process is developed based on recommendation (2), add a requirement to the DRR *Investigations Procedures Manual* providing for periodic reconciliation of DOLLARS to the official restitution order tracking systems maintained by the Clerks of the U.S. District Court.



## **DRR NEEDS TO ASSESS THE LIKELIHOOD OF COLLECTIONS ON RESTITUTION ORDERS ASSIGNED TO THE WASHINGTON OFFICE**

DRR's Receivership Operations Branch staff in Washington, D.C., is assigned collection efforts on 397 small dollar restitution orders though no individual determinations of the likelihood of collections have been performed. The 397 orders have an original ordered amount of approximately \$3.6 million that has been reduced over time by collections to a total remaining balance of approximately \$2.4 million. The *Investigations Procedures Manual* requires actions in support of collection efforts on individual restitution orders unless an event occurs that would preclude pursuit, either legally or practically. A write-down case was proposed for the 397 orders based on general characteristics of the restitution orders as a pool of assets versus individual restitution orders to be pursued on a case-by-case basis. DRR management denied the write-down proposal. The orders were transferred from Dallas to Washington and collection efforts have not occurred. If DRR does not assess cases on an individual basis, it may expend unnecessary resources on orders no longer practical to pursue. The issuance of demand letters would aid DRR in determining the likelihood of collection potential and, depending on results, would serve as a first step to determining on a case-by-case basis the merits of continuing collection efforts or initiating write-down procedures.

In reviewing restitution orders in Dallas, we noted that 397 active restitution orders had been transferred to Washington for collection efforts. We selected a sample of four Washington cases to review. A review of these files showed that no collection efforts had occurred for these restitution orders. A DRR Receivership Operations Branch staff member in Washington stated that collection efforts had not been initiated on any of the 397 restitution orders since their physical receipt in April 2001, or for a period of more than 6 months.

The *Investigations Procedures Manual* requires actions in support of collection efforts on individual restitution orders unless an event occurs which would preclude pursuit, either legally or practically. Also, as a part of assisting DOJ and the states with collection efforts, DRR makes business decisions whether or not to pursue restitution order collections. DRR must consider whether it may be more cost efficient to place restitution order cases into an inactive (write-down) status because restitution cases may yield little or no return.

In December 2000, DRR's Receivership Operations Branch office in Dallas prepared a case to write down 491 restitution orders. The case document stated that these restitution orders had individual balances of \$25,000 and under and no payment had been received in a year or more. DRR senior management denied the write-down proposal, citing in part that small dollar cases in general tend to have a higher potential recovery rate and directed that 397 of these cases be sent to Washington, D.C., for collection efforts.

Though these cases remain active and await individual assessment, no collection efforts occurred for the 397 restitution orders because DRR's Washington office did not have any experienced staff readily available to pursue collections on criminal restitution orders. In August 2001, DRR advertised an Expression of Interest (EOI) to fill one grade 12 Resolutions and Receivership Specialist position. The EOI stated that "the selected individual will perform collection related duties and responsibilities associated with FDIC, former RTC, and OTS Criminal Restitution

Orders.” DRR filled the position in October 2001 by an intra-divisional transfer of a permanent employee.

## **Recommendations**

We recommend that the Deputy Director, Receivership Operations Branch:

- (4) Issue demand letters for collection on the 397 restitution orders and
- (5) Factoring in the results of the demand letter issuance in Recommendation (4), assess the likelihood of collection on restitution orders assigned to the Washington office on an individual order basis and initiate a write-down procedure where appropriate.

## **CORPORATION COMMENTS AND OIG EVALUATION**

On February 12, 2002, the Director of DRR provided a written response to the draft report. The Director’s response, and subsequent communication, indicated concurrence with all five recommendations. We verified that recommendation 1 has been implemented and is effective and consider the recommendation closed for reporting purposes. Recommendations 2 through 5 are open and will remain undispositioned until all agreed-to corrective actions have been completed. The Director’s response, and subsequent communication, to the draft report provided the elements necessary for management decisions on the report’s recommendations. The Director’s response is presented in Appendix V to this report.

The Director’s response to recommendation 1 disagreed with our conclusion that \$123,450 in funds will be put to better use if corrective action is taken. The response stated that (1) solely because the 16 restitution orders were not on DRR’s tracking system does not support the conclusion that payments will not be received and, more importantly, any payments made on orders where FDIC is the successor to the failed institution (victim), even if such orders are not booked, ultimately will be remitted to the FDIC, and (2) the OIG’s estimate of funds put to better use is not reasonably accurate.

Regarding the concerns raised about potential payments for non-tracked orders, we acknowledge that offenders may make payments on restitution orders without active collection efforts by DOJ or DRR and that the FDIC has rights to restitution in succession for a failed institution. However, the FDIC has not received payments for any of the 16 orders that we identified though they range in age from 1 to 16 years old. Adding the omitted restitution orders to DOLLARS and assigning the cases to staff to conduct collection efforts would help ensure that restitution orders due to the FDIC are properly managed, collected and reported.

Regarding the reasonableness concern, we used historical information and a conservative approach in developing the estimate of funds put to better use. The use of nearly 4 years of historical data provides a trend that includes years where collections on restitution orders were both high and low. Our calculation of an annual estimated collection factor was conservative because it was derived from the \$1.43 billion total of tracked restitutions which included \$474 million in inactive restitutions. Also, we rounded down to the nearest whole year remaining in

the life of the orders versus using years and months. Further, our estimate of funds put to better use was based on the 16 non-tracked restitution orders identified from the 6 judicial districts in our sample. We did not develop a projection of additional potential non-tracked restitution orders for the remaining 88 non-sampled judicial districts, though there is a reasonable likelihood that other non-tracked restitution orders exist. The intent of the *Inspector General Act* requirement to identify funds put to better use is to provide a justification for the need to take corrective action by estimating the future monetary benefit of such action. (See 5 U.S.C. App. Section 5(f)(4)). The estimate of funds put to better use is intended for no other purposes.

Based on our audit work, the OIG will report funds put to better use of \$123,450 in its *Semiannual Report to the Congress*.

## OBJECTIVE, SCOPE, AND METHODOLOGY

Our audit objective was to determine whether DRR properly managed, collected, and reported on criminal restitution orders. Our audit scope included restitution orders tracked in DRR's DOLLARS database as of May 11, 2001. We also conducted tests to determine whether DRR's DOLLARS database contained all federal criminal restitutions where the FDIC was identified as the victim. We performed our work from April 2001 through November 2001 in accordance with generally accepted government auditing standards.

### Methodology

The FDIC's roles, responsibilities, and activities associated with managing, collecting, and reporting on court ordered restitutions are outlined in pertinent governing legislation and the FDIC's policies and procedures. To gain an understanding of these policies, procedures, and legislation, our audit methodology included reviewing the:

- Crime Control Act of 1990 (Public Law 101-647),
- Senior Interagency Group policy statement entitled National Policy on Collecting and Reporting Procedures for Restitution Payable to Financial Institution Regulatory Agencies;
- DRR *Investigations Procedures Manual*;
- FDIC Circular 5400.1 on *Reporting Discharge of Indebtedness (IRS Forms 1099)* (May 1, 2001);
- FDIC Legal Division Counsel memorandum on "FDIC Collection of Criminal Restitution Orders" (June 2000);
- Memorandum of Understanding between DRR and the OIG, subject: "*Coordination between OIG, DRR, and FCU Regarding Investigations Involving Resolution and Receivership Issues*" (December 6, 2000); and
- Former RTC's "Interagency Agreement on Criminal Restitutions" (July 1992).

Our methodology also included interviewing and/or contacting:

- Management and staff from DRR's Field Operations Branch office in Dallas, Texas, and DRR's Receivership Operations Branch in Washington, D.C.;
- Attorneys with the Legal Division's Financial Crimes Unit in Dallas, Texas;
- An official in the Division of Finance's Field Finance Center in Dallas, Texas; and
- Attorneys with the U.S. Attorneys Offices in Ft. Worth, San Antonio, and Houston, Texas.

To test whether DRR's Dallas office actively managed and pursued restitution orders, we selected a judgmental sample of 21 active restitution orders totaling \$29,342,762 from the DOLLARS database of 1,150 active Dallas orders that totaled \$955,868,131. Our judgmental sample considered the size of the restitution amount, collections or lack of collections, geographic dispersion, state or federal ordered, and a mixture of RTC and FDIC institutions. We reviewed the 21 case files and interviewed respective investigators about their collection efforts. We attended a Large Restitution Review Committee meeting and an Investigations Review Committee meeting wherein DRR managers and staff discussed how to resolve and overcome problems on priority restitution and civil cases.

To assess whether orders were being properly written down and compromised, we chose two additional samples from the inactive database totaling \$474,383,750. We chose five orders that were written down after January 1, 2000 and four orders that were compromised after January 1, 2000. These orders totaled \$11,824,980 and \$3,210,709, respectively, in outstanding balances in DOLLARS. The 5 write down orders were drawn from the DOLLARS database of 570 write-downs totaling \$447,393,219. Our sample of five write-downs represents approximately 10 percent of the \$121,392,236 dollar value of cases written down after January 1, 2000. The 4 restitution orders that were compromised were drawn from the DOLLARS database of 109 compromised orders totaling \$26,990,531. These four compromised orders represent approximately 35 percent of the \$9,076,557 dollar value of compromises since January 1, 2000. For both the five write-downs and the four compromises, we reviewed DOLLARS notations to assess management action as well as the approval cases and support documentation. For the four compromised cases we verified that the amount written down was reported to the Internal Revenue Service as income on a Form 1099 (miscellaneous income).

We selected a sample of 4 of 397 cases that had been transferred to Washington and determined that collection activity for these cases had not recently occurred and the cases were inactive. Through discussion with DRR's Supervisory Liquidation Specialist in the Washington office, we learned that collection activity had not occurred for any of the 397 since their transfer from Dallas. Therefore, we did not conduct any additional review of these 4 cases or any other Washington cases. Instead, we inquired of both Dallas and Washington DRR staff as to the reasons for this situation.

To determine whether DRR had any performance measures that we should consider in this audit, we reviewed DRR's 2000 and 2001 Strategic and Annual Performance Plans. We did not identify any specific goals relating to DRR investigations' collection efforts for criminal restitution orders. We then looked at the overall mission statement for DRR investigations. It emphasized the importance of maximizing collections. We interviewed DRR Receivership Operations Branch managers regarding case workload and assignment priorities and were told the performance plan for investigators is used for annual performance evaluation purposes. In reviewing our sampled items, we assessed collection efforts by reviewing activity and assessing its reasonableness relative to the circumstances.

To assess whether DRR was accurately reporting information concerning criminal restitutions, we compared the information in the hard copy files for our sampled items to that contained in DOLLARS. We also verified the existence of internal controls over the handling, recording, and reporting of payments. We conducted additional tests as described below in the section entitled Reliance on Computer Generated Data.

We also tested whether the DOLLARS database contained all federal criminal restitution orders where the FDIC was identified as victim. To conduct these tests, we obtained a DOLLARS listing of active FDIC restitution order cases and aligned the listing by the 94 U.S. Judicial Districts. We then judgmentally selected six Clerk's offices to contact, visiting three, for sampling. In choosing what judicial districts to sample, we considered geographic location and the number of active FDIC restitution orders. We also chose those judicial districts that we had determined through phone contacts use an automated database system for recording restitution

collections because this meant information was readily available and easily comparable with DOLLARS.

We then asked the Clerk’s office for the six selected Judicial Districts to query their automated system of record, called Criminal Financial System (CFS), for a listing wherein either the FDIC or RTC was cited as a victim. We later expanded this query for five of the six districts to also include a search for restitutions related to specific failed financial institutions that we had identified from the FDIC’s listing of bank failures between 1991 and 2001. Table 2, below, lists the active criminal restitution orders assigned to the DRR Dallas office by the top 29 judicial districts and aggregated state restitution orders (item number 19). We sampled those districts marked in bold Italics.

**Table 2: Active Orders by Judicial District (DRR’s Dallas Office)**

	<b>District</b>	<b>Order Amount</b>	<b>Number</b>
1	<b><i>Texas – N</i></b>	<b><i>\$179,431,890</i></b>	<b><i>83</i></b>
2	<b><i>Texas – W</i></b>	<b><i>112,574,333</i></b>	<b><i>76</i></b>
3	California – C	102,547,417	65
4	New York – S	70,527,925	12
5	<b><i>Texas – S</i></b>	<b><i>64,722,768</i></b>	<b><i>61</i></b>
6	Massachusetts	48,006,389	41
7	California – N	37,242,404	20
8	New Jersey	32,842,636	48
9	Florida – M	31,377,232	37
10	Connecticut	26,920,354	42
11	<b><i>Florida – S</i></b>	<b><i>26,336,055</i></b>	<b><i>47</i></b>
12	Kansas	24,458,839	9
13	Illinois – N	21,492,937	10
14	Pennsylvania – E	17,969,396	22
15	Texas – E	14,727,954	38
16	Washington – W	12,731,506	7
17	Vermont	10,087,805	7
18	Alabama – M	9,672,465	9
19	State Orders	9,614,742	152
20	Louisiana - E	7,171,429	12
21	Colorado	7,048,453	20
22	Rhode Island	6,506,576	16
23	Ohio - N	5,439,185	10
24	New York - E	5,387,685	12
25	Oklahoma - W	5,227,489	15
26	<b><i>Virginia - E</i></b>	<b><i>5,215,931</i></b>	<b><i>42</i></b>
27	Missouri - W	5,134,157	14
28	<b><i>California - S</i></b>	<b><i>4,788,165</i></b>	<b><i>16</i></b>
29	California - E	3,595,462	15
30	Oklahoma - N	3,383,963	10
	Other Districts	43,684,589	182
	<b>Totals</b>	<b>\$955,868,131</b>	<b>1,150</b>

Source: DOLLARS

Based on our queries, we matched information contained in DOLLARS to information contained in the official records by the Clerks of the U.S. District Court for the Northern, Southern, and Western Districts of Texas; the Southern District of Florida; the Southern District of California;

and the Eastern District of Virginia. We also interviewed representatives from the same six Clerks of the U.S. District Court offices.

### **Reliance on Computer-Generated Data**

To achieve the audit objective, we relied extensively upon computer-processed data contained in DRR's DOLLARS database. DRR reports on restitution cases using DOLLARS, a DRR database system used to record restitution case information and to track and account for collection payments. To determine the importance of DOLLARS as a database, we sought information from the Division of Information Resources Management (DIRM). DIRM classifies DOLLARS as a DRR server-based application that stores information on failed financial institutions. DIRM does not consider DOLLARS a major system. According to DIRM, compromise of the data could be inconvenient and embarrassing to the FDIC but would not seriously affect the FDIC's ability to function. However, the unavailability of this application could reduce productivity or otherwise prove costly to the FDIC.

In assessing DOLLARS, we reviewed DIRM's Information Security Section security reports such as sensitivity assessment questionnaires and individual security review reports for DOLLARS. We verified the system's user access listings and authority levels and DRR's reconciliation of DOLLARS to the FDIC's NPS, the link to the Corporation's general ledger accounts. We assessed the reliability of these data, including relevant general and application controls, and found them to be adequate. We also conducted tests of the data in conjunction with our samples of cases described above. As a result of the tests and assessments, we concluded that the computer-processed data were sufficiently reliable to be used in meeting the audit objectives. As discussed above, we also conducted tests to compare information in DOLLARS to records at six Clerks of the U.S. District Court Offices. Based on these tests, we determined that some restitution orders were not included in DOLLARS and that DOLLARS needed to be reconciled with the Clerks' records. This finding did not affect the reliability of DOLLARS information used for our sampled items.

**SUMMARY OF PRIOR COVERAGE**

This is the FDIC OIG's first audit of collection efforts for criminal restitution orders. We reviewed two U. S. General Accounting Office (GAO) reports that relate to criminal debt collection efforts by the federal government. Neither report addresses the FDIC specifically nor the roles played by non-DOJ Executive Branch agencies in support of investigative, prosecutorial, and restitution collection efforts. We reviewed one DRR Internal Review report that included DRR's performance as it related to compliance with policies and procedures for pursuing collection efforts on criminal restitution orders.

1. *Criminal Debt: Oversight and Actions Needed to Address Deficiencies in Collection Processes* (GAO-01-664, July 2001). Primarily addressed DOJ's and Administrative Office of the United States Court's performance in collecting, recording, and distributing criminal debt, including federal criminal restitution orders. GAO found a lack of adequate processes to collect debt at four districts it visited. Taking into account the factors that are not controllable, GAO states that the present management practices and procedures do not provide assurance that offenders are not afforded their ill-gotten gains and that innocent victims are compensated for their losses to the fullest extent possible.
2. *Fines and Restitution: Improvement Needed in How Offenders' Payment Schedules Are Determined* (GAO/GGD-98-89, June 29, 1998). Addresses the U.S. Probation Office. GAO found that probation officers that supervised offenders lack clear, specific policy guidance for determining how much offenders should pay each month towards their court-ordered restitutions. As such, in the districts tested, there were inconsistencies and apparent inequity in installment-payment cases.
3. DRR's Dallas Field Operations Branch, Internal Review group, performed a review from September 27, 2000 to October 20, 2000 addressing the following objectives:
  - ensure compliance with applicable FDIC/DRR policies and procedures, directives, and memorandums;
  - verify internal controls are adequate and effective;
  - verify files are complete; and
  - ensure that any prior audit findings have been addressed.

They reviewed 88 active criminal restitutions. The subsequent Internal Report, dated November 8, 2000 listed one finding. It stated that in 18 of 77 restitution cases sampled, investigators were not complying with the *Investigations Procedures Manual* requirement calling for contact to be made with "appropriate probation office" at least quarterly. DRR investigators were not making this contact. DRR Investigations' response stated that given the nature and means by which restitution is collected, the manual requirement is impractical, confusing, and not beneficial to the collection process. As such, the manual requirement should be changed. In fact, in February 2001, DRR did revise the *Investigations Procedures Manual* and eliminated the requirement to contact probation offices about inactive accounts on a quarterly basis. This change in the manual had no impact on the OIG's current audit.



**PERTINENT LAWS, REGULATIONS, AND FDIC POLICIES AND PROCEDURES**

1. Crime Control Act of 1990, Section 2539, Financial Institutions Fraud Task Forces (P. L. 101-647).

Section 2539(a) states “... The Attorney General shall establish such financial institutions fraud task forces as the Attorney General deems appropriate to ensure that adequate resources are made available to investigate and prosecute crimes in or against financial institutions and to recover the proceeds of unlawful activities from persons who have committed fraud or have engaged in other criminal activity in or against the financial services industry.”

Further, Section 2539(c)(1) states “...The Attorney General shall establish a senior interagency group to assist in identifying the most significant financial institution fraud cases and in allocating investigative and prosecutorial resources where they are most needed.”

Finally, Section 2539(c)(2) states “...The senior interagency group shall be chaired by the Special Counsel and shall include senior officials from ... (E) the Federal Deposit Insurance Corporation...”

2. Senior Interagency Group policy statement dated 6/25/92: “National Policy on Collecting and Reporting Procedures for Restitution Payable to Financial Institution Regulatory Agencies.”

Established an interagency group, including FDIC/RTC, and policy to assist in the collective effort to prosecute crimes against financial institutions and to collect the proceeds of those crimes through all available means. Specifically, Section II of the policy statement states “In cases in which the Court orders restitution payable to a bank regulatory agency in its corporate, conservatorship, or receivership capacity, as appropriate:

The Department of Justice will:

- A. Forward a copy of the judgment and commitment order to that agency through the Victim-Witness Unit of the appropriate USAO;
  - B. Enforce collection of the monies ordered by working with that agency to (1) identify the assets of the defendant; (2) reduce the restitution order to civil judgment, when appropriate; and (3) initiate judicial or other proceedings.”
3. DRR *Investigations Procedures Manual*, Chapter 14, 1998 and 2001 revisions.

Chapter 14 of the *Investigations Procedures Manual* describes the role of the Criminal Coordinator(s) and issues relating to the criminal referral and restitution process. The OIG focused on the information in the chapter relating to the Criminal Coordinator and the restitution process. Specifically, it requires an investigator to establish and maintain a restitution file, request and exchange financial information about the defendant with DOJ to aid collection

efforts, initiate searches to discover assets, reconcile payment receipts and balances on the National Processing System (NPS) with DOLLARS on an as-needed basis, and reconcile payment receipt differences with DOJ or the Clerks of the U.S. District Court as differences are discovered.

4. FDIC Directive 5400.1 dated 5/01/01: “Reporting for Discharge of Indebtedness (IRS Forms 1099).”

The purpose of the directive is “To issue revised policy and responsibilities for compliance with The Omnibus Budget Reconciliation Act of 1993 (OBRA 93) which added a new provision to the Internal Revenue Code (26 U.S.C. 6050P) requiring the Federal Deposit Insurance Corporation . . . to report to the Internal Revenue Service (IRS) all discharges of indebtedness of \$600.00 or more.”

**FUNDS PUT TO BETTER USE CALCULATION**

Recommendation (1) results in an estimated \$123,450 in funds that the FDIC can put to better use. We calculated our estimate by first developing an annual collection rate using historical information from January 1, 1998 through October 15, 2001 (step 1). We applied the rate to the individual order amounts to arrive at estimated collections per year. We next factored in the years remaining in the 20-year life of each restitution order to arrive at estimated collections before expiration (step 2).

**Step 1: Estimated Annual Collection Rate (Based on a 45.5 month Collection History)**

<u>Year</u>	<u>Collections</u>		<u>Order Amount*</u>
1998	\$13,289,904	Active Dallas	\$955,868,131
1999	4,451,482	Active Washington	3,552,890
2000	5,303,995	Inactive^ Dallas	<u>474,383,750</u>
2001	<u>9,895,127</u>	Total in DOLLARS	\$1,433,804,771
Total Collections	\$32,940,508		
Divided by years (45.5/12 months)	<u>3.79167</u>		
Equals Avg. Collections Per Year	\$8,687,598		
Divided by total in DOLLARS	<u>\$1,433,804,771</u>		
Equals Annual Collection Rate	.0060591		

\* Info. In DOLLARS as of May 11, 2001.

^ Includes compromises and write-downs.

**Step 2: Estimated Collections for Restitution Orders Not in DOLLARS**

<u>Number</u>	<u>Order Date</u>	<u>Order Amount</u>	<u>Annual Collection Rate</u>	<u>Estimated Collections per Year</u>	<u>Years Until Order Expires</u>	<u>Estimated Collections Before Expiration</u>
86-CR-000120	01/20/86	\$25,584	.0060591	\$155.02	4	\$620
86-CR-000184	11/07/86	25,000	.0060591	151.48	4	606
87-CR-000100	06/17/87	642,095	.0060591	3,890.52	5	19,453
87-CR-000140	07/22/87	38,592	.0060591	233.83	5	1,169
87-CR-000256	03/09/88	9,088	.0060591	55.07	6	330
88-CR-007701	07/14/88	2,272	.0060591	13.77	6	83
88-CR-000133	12/02/88	6,000	.0060591	36.35	6	218
89-CR-000024	11/14/89	3,000	.0060591	18.18	7	127
86-CR-000036	09/10/91	1,000	.0060591	6.06	9	55
91-CR-000082	12/21/92	354,143	.0060591	2,145.79	10	21,458
93-CR-000014	05/04/93	100,000	.0060591	605.91	11	6,665
93-CR-000011	04/14/94	124,970	.0060591	757.21	12	9,087
96-CR-000004	02/07/96	14,541	.0060591	88.11	14	1,233
97-CR-000169	11/04/98	228,221	.0060591	1,382.81	16	22,125
94-CR-000339	11/03/99	150,000	.0060591	908.87	17	15,451
00-CR-006257	01/12/01	<u>215,162</u>	.0060591	1,303.69	19	<u>24,770</u>
Total Not in DOLLARS		\$1,939,668		Total Estimated Collections		\$123,450

The FDIC, as victim, has a legal right to the full amount of restitution ordered by the court. However, full recovery of ordered restitution is dependent upon many factors, including an offender's ability to pay. Therefore, we determined an estimate of collectibility based on historical data. DRR is currently tracking and processing approximately 1,547 active restitution orders. We concluded that the cost to implement our recommendation would be minimal because the addition of 16 restitution orders represents less than a 1 percent increase in the number of total active cases as of May 11, 2001.



February 8, 2002

**TO:** Sharon M. Smith  
Deputy Assistant Inspector General for Audits

**FROM:** Mitchell L. Glassman [Electronically produced version; original signed by  
Mitchell L. Glassman]  
Director

**SUBJECT:** Draft Report Entitled "*DRR's Efforts to Facilitate Collections on Criminal  
Restitution Orders*" (Assignment Number 2001-206)

Pursuant to the above subject matter, this memorandum will serve to respond to the issues and recommendations outlined in the draft OIG Audit Report dated January 10, 2002.

## **FINDINGS**

One of the findings of the OIG states:

*DRR's DOLLARS database does not contain all federal criminal restitution orders where FDIC is the victim. We compared the restitution orders tracked for the FDIC in 6 of the 94 U.S. judicial districts with DRR's DOLLARS database and determined that 16 restitution orders originally amounting to \$1,939,668 were not tracked in DOLLARS.*

We concur with this finding. These restitution orders will be added to the \$955,868,131 already in the DOLLARS database.

The findings further conclude:

*Based upon past collection history, the OIG estimated that the FDIC could reasonably expect to collect \$123,450 from the 16 previously omitted restitution orders. We classify this amount as "funds put to better use."*

### **We do not concur with this finding.**

It is a matter of law and practical issue that restitution awards are conditions of sentencing to federal crimes and the burden of collection rests with the Department of Justice (DOJ). The interagency agreement (which governs certain actions between the regulators and the Justice Department) states that the DOJ "work(s) with that agency" to "identify assets of the defendants." It has been our practice to work with DOJ in accordance with the agreement.

Solely because these orders were not on our system does not support the conclusion that payments will not be received. More importantly, any payments made on orders where FDIC is the successor to the failed financial institution (victim), even if such orders are not booked, ultimately will be remitted to the FDIC. DRR has developed relationships with the judicial districts such that if they are uncertain of the appropriate recipient of payment (where the payee is a financial institution they cannot identify) they will forward the payment to FDIC to research and determine ownership. Often, the payments are not ours. In most cases, if payments are made to the DOJ on orders where the FDIC is the payee, such payments will be routed to FDIC.

During our review of OIG's finding, we contacted the Northern District of Texas, where eight of the sixteen orders are located, to gain some knowledge of their collectibility. All of the eight orders identified are no longer being worked by the DOJ. While found on the records of the District Clerks, four are not on the DOJ system of record and four others have been closed. Given that for seven of the eight DOJ has either closed the file, or never had one opened, it is highly unlikely that we will realize collection. However, we will request that DOJ provide the files; we will review them; and we will pursue normal collection procedures as we do on all orders.

Regarding the "*funds put to better use*" amount of \$123,450, we do not believe this estimate is reasonably accurate. To substantiate this amount, the OIG developed a formula which is not historically sound. There are a number of flaws in the formula. One of the ratios in the formula is developed by using cumulative collection figures over a four-year period. On an annual basis, there is a large variance in this collection ratio. Further, another ratio in the formula uses the number of years until the restitution expires, as a fixed multiplier, to determine income. This approach does not appear to be reasonable or supportable.

To summarize, since receiving the preliminary report, our investigation into these discovered restitutions leads us to conclude that collections will be nominal, at best. This is due to the age of the orders, and the fact that the Justice Department does not have these orders on their active records. However, as shown below, we agree to develop a reconciliation process to insure that we are identifying restitution orders more accurately whenever we can obtain automated data from the Clerk's offices. Any discovered restitution will be subjected to the same collection efforts that we use on all other orders.

## **OIG RECOMMENDATIONS**

The OIG report contains the following recommendations to remedy the aforementioned finding:

- (1) Add the 16 omitted restitution orders to DOLLARS and assign the orders to DRR Receivership Operations Branch staff to pursue standard collection efforts in accordance with DRR procedures.*

DRR Response:

The 16 omitted restitution orders have been boarded to the appropriate systems and have been assigned to Specialists for standard collection efforts.

Regarding the 16 omitted orders, because several of these orders are either not currently on DOJ systems, or have been put in "inactive" status, we would need to allow the responsible specialists sufficient time to gather needed information to make judgement as to disposition. Management would complete a progress review in four months (May 31, 2002) and then a follow up review in eight months (September 30, 2002).

*(2) Develop a process providing for a reconciliation of restitution orders listed in DOLLARS with the Clerks of the U.S. District Court where DRR determines it is reasonable to do so. At a minimum, the reconciliation should include those judicial districts where the Clerks track restitution orders using an automated system.*

DRR Response:

We concur with this recommendation and will have developed the recommended process by November 30, 2002.

*(3) Once a process is developed based on recommendation (2), add a requirement to the DRR Investigations Procedures Manual providing for periodic reconciliation of DOLLARS to the official restitution order tracking systems maintained by the Clerks of the U.S. District Court.*

DRR Response:

We concur with this recommendation. Revisions to the Investigations Procedure Manual to provide for periodic Reconciliations with the District Clerks, are expected to be completed by December, 31, 2002.

*(4) Issue demand letters for collection on the 397 restitution orders*

DRR Response:

This step has been ongoing since early December 2001. In order to accomplish, this a complete review of the file must be done and preliminary work, such as a credit report, must be ordered and reviewed before a decision about the status of the order may be considered. It is anticipated that the entire population will have its initial review completed by December 31, 2002.

*(5) Factoring in the results of the demand letter issuance in Recommendation (4), assess the likelihood of collection on restitution orders assigned to the Washington office on an individual order basis and initiate a write-down procedure where appropriate.*

Following the operating procedures in the Investigation Manual, each order is reviewed to determine the steps to be taken in an effort to determine the order's collectability. Additional steps are taken when the restitution order is larger. After each step, a basic assessment is completed and the decision to continue with the collection effort or to cease the effort is made. If, for example, the defendant is deceased and there is no probate, it is written down with no additional work required. These orders are being worked per our agreement with the Department of Justice as well as the United States Probation Department. The initial 397 restitution orders should have the preliminary reviews, as mentioned above, completed by December 31, 2002.

cc: Vijay G. Deshpande  
A.J. Felton  
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