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BY THE U.S. GENERAL ACCOUNTING OFFICE

## Report To The Honorable Alfonse M. D'Amato United States Senate

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### After The Criminal Fine Enforcement Act Of 1984--Some Issues Still Need To Be Resolved

According to the Administrative Office of the U.S. Courts, 11,574 fines totaling \$56.7 million were imposed upon violators of federal criminal laws during fiscal year 1984. The amount of unpaid criminal fines totaled \$158 million as of September 30, 1984, according to the Justice Department.

GAO's review in seven judicial districts showed that the Justice Department and the federal district courts are not collecting criminal fines promptly or enforcing collection of fines from offenders who do not pay. The Criminal Fine Enforcement Act of 1984 (Public Law 98-596) after GAO's review was completed. The new law, if implemented properly, will address many of the problems GAO identified. However, there are other areas where the Justice Department and the Administrative Office will work together to enhance the effectiveness of the new law and improve collections.

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ACQUISITIONS

The Honorable Alfonse M. D'Amato  
United States Senate

Dear Senator D'Amato:

As requested by Senator Charles H. Percy, we examined the policies and procedures used by the Department of Justice and the Administrative Office of the U.S. Courts for tracking, monitoring, collecting, and enforcing criminal fines. The report identifies various actions that the Department of Justice, the Administrative Office of the U.S. Courts, and the Judicial Conference need to take to enhance the criminal fine process. As requested by Senator Percy's staff, we are sending the report to you because of your interest in the collection and enforcement of criminal fines.

As arranged with your office, except for the copy of the report sent today to Senator Charles Percy, unless you publicly announce the contents of the report earlier, we plan no further distribution of this report until 10 days from the date of the report. At that time we will send copies to interested parties and make copies available to others upon request.

Sincerely yours,

*W. J. Anderson*

William J. Anderson  
Director



D I G E S T

Fines are one of the penalties imposed upon violators of federal criminal laws. During fiscal year 1984, the federal courts imposed 11,574 fines totaling \$56.7 million. According to the Department of Justice, about \$158 million in criminal fines were unpaid as of September 30, 1984. Both the executive branch (Department of Justice and the 94 U.S. attorneys' offices) and the judicial branch (Administrative Office of the U.S. Courts, U.S. probation offices, and clerk of the court offices) play a role in collecting criminal fines.

GAO initiated this review because of the importance of criminal fines in the law enforcement process. Subsequently, former Senator Charles H. Percy endorsed the need for a review to determine how efficiently and effectively criminal fines were being collected. His office later requested that the report be issued to Senator Alfonse D'Amato.

The Criminal Fine Enforcement Act of 1984 (Public Law 98-596), which is intended to improve the collection of criminal fines, became law after GAO's review was completed. The new law, if implemented properly, will resolve many problems GAO identified in the criminal fine process. However, there are other areas where the Justice Department and Administrative Office will need to work together to enhance the effectiveness of the new law and improve the collection of criminal fines.

PROBLEMS IDENTIFIED BY GAO AND  
ADDRESSED BY PUBLIC LAW 98-596

GAO reviewed 860 randomly selected cases with fines imposed during 1979 and 1982 at five federal court districts. GAO found that many offenders did not pay their fines and that others who did pay did not pay on time. GAO found that the problems affecting collection of criminal fines resulted because the process did

not always work as intended and formal procedures governing the process did not exist.

Public Law 98-596 goes a long way in providing solutions to the problems identified by GAO. The new law specifically

--provides guidance to judges on imposing fines by identifying factors to be considered before imposition of a fine, requires that detailed payment terms be stated in judgment orders, and requires that immediate payment be made unless stated otherwise in the court order. (See pp. 4, 17, and 37.)

--centralizes responsibility for the accounting and payment processing functions by shifting from the courts to the Justice Department responsibility for receipt of payments from criminal fines imposed for offenses committed after December 31, 1984. (See pp. 13, 14, and 28.)

--requires clerks of the court to send Justice a certified copy of the judgment order for fines greater than \$500. (See p. 10.)

--provides incentives for defendants to pay more promptly by allowing the Department of Justice to assess interest and penalties on defendants who do not pay. (See pp. 4 and 5.)

--provides enhanced enforcement tools for collection of criminal fines. (See pp. 4, 12, 35, and 36.)

If the above provisions are implemented properly, they should result in fines being imposed that are based on the offender's financial ability, speed up the collection process, and facilitate enforcement actions.

#### COOPERATIVE EFFORTS NEEDED BY JUSTICE AND ADMINISTRATIVE OFFICE

The Department of Justice and the Administrative Office need to work together to fully implement the provisions of the new law and otherwise enhance its effectiveness in improving the criminal fine collection process. The specific areas needing their joint attention follow.

### Collecting and sharing defendant's financial information

Public Law 98-596 did not address the need for probation offices to improve their presentence determinations of offenders' financial status and the sharing of this information with U.S. attorney collection units. GAO estimates that probation officers did not obtain information to support a conclusion about the offender's financial ability for 55 and 43 percent of the felony and misdemeanor fines sampled in 1979 and 1982. The amount of financial information that probation officers gathered varied even within the same office. Better financial information would be useful to the courts and would assist the U.S. attorney and probation offices in enforcing fines. Public Law 98-596 requires the court to consider several factors in determining whether to impose a fine and the amount of the fine, including the defendant's income, earning capacity, and financial resources. (See pp. 17 to 19.)

No guidance is available on providing financial information obtained by the probation offices to U.S. attorneys' offices for collection purposes. When the courts do have financial information, they do not routinely provide it to the U.S. attorneys' offices. Thus, the attorneys' offices do not have the information needed to enforce fine payments and must spend time collecting information that may already have been obtained by the probation offices. (See pp. 19 to 20.)

### Use of installment payments

Public Law 98-596 requires fines to be paid immediately unless otherwise stated in the court order. GAO notes that it is not clear whether under Public Law 98-596 the U.S. attorney and probation offices will retain the discretion to grant or change installment payment schedules when either (1) installment payment schedules are not ordered by the court or (2) the offender is financially unable to comply with the installment payment schedule ordered by the court. In the event that they have retained such discretion, GAO proposed that the Justice Department and the Administrative Office establish policies

requiring the U.S. attorney and probation offices to document installment agreements and the offender's financial inability to make a lump-sum payment before allowing installment payments. In its comments on GAO's proposal, the Administrative Office asserted that neither the U.S. attorneys' offices nor the probation offices retain the discretion to grant or modify installment payment agreements. Justice, according to a Department official, has not taken a position on this issue. GAO has deleted its proposals but observes that under the new law a procedure will be needed to deal with changes in an offender's ability to adhere to installment payments established by the courts. (See pp. 36 to 38.)

Establishing a centralized criminal fine management system

In centralizing responsibility within the Department of Justice, Public Law 98-596 made the Department responsible for establishing a criminal fine collection process. The Department is in the process of establishing a centralized criminal fine management system. The system, as of August 1985, was not yet operational.

The Department has had primary responsibility for monitoring and accounting for fines. Indications exist that the Department is not identifying fines imposed and accurately accounting for collections. GAO found that the five U.S. attorneys' offices sampled did not have a record of fines imposed for about 40 percent of the fines sampled. In comparing records on payment status maintained by the clerk of the court's office and those maintained by the U.S. attorneys' offices, GAO estimated that the unpaid balances, which should agree, did not agree for about 60 percent of the cases sampled. (See pp. 23 to 25.)

GAO also found that at the district level, three offices--the U.S. attorney's office, the clerk of the court's office, and the probation office--were involved in collecting payments, accounting for fines, and monitoring the offender's payment status. The responsibility for accounting for fines and accepting payments for deposit in the Treasury was split between



the U.S. attorney's office and the clerk of the court's office. Both the U.S. attorney's office and the probation office were responsible for monitoring fines; however, information was not shared between the two offices. (See pp. 27 to 29.)

The Department of Justice and the Administrative Office will need to work together to establish an accurate, efficient, and uniform process for identifying the fines imposed, tracking the offenders' payment status, and accounting for collections.

#### Use of enforcement techniques

While Public Law 98-596 provides enhanced enforcement tools for the collection of criminal fines, the Department of Justice and the Administrative Office need to insure that these tools are used and that guidance is developed with time frames on when enforcement tools should be used. Criminal fines are not collected promptly and managed effectively for law enforcement purposes because (1) enforcement techniques are frequently not used to compel payment and (2) installment payment plans are not strictly controlled.

A wide range of enforcement techniques are available under existing law, Department of Justice procedures, and Administrative Office guidelines. However, U.S. attorney and probation offices rarely use these techniques. Consequently, many offenders who pay take their time paying, and most offenders who do not pay are not forced to pay.

Justice guidelines provide the U.S. attorney collection units with information on the enforcement techniques available but do not establish requirements as to when specific techniques should be used and how frequently. Similarly, Administrative Office guidelines to the probation offices do not specify when the probation officers should (1) notify the court of the offender's noncompliance, (2) involve the U.S. attorney's office in enforcement action, and (3) initiate a petition asking the court to extend or revoke the offender's probation. Under Public Law 98-596, probation

offices are required to report to the court any failure of an offender under their supervision to pay a fine; however, the law does not set a time frame for reporting. The Department of Justice and the Administrative Office are in the process of developing a memorandum of understanding on the handling of such fines. (See pp. 31 to 36.)

RECOMMENDATIONS TO THE  
ATTORNEY GENERAL AND THE  
DIRECTOR, ADMINISTRATIVE  
OFFICE OF THE U.S. COURTS

To further improve the criminal fine collection process under the new law, GAO recommends that the Attorney General and the Director of the Administrative Office work together to

- develop a standard court financial report form that can be shared with U.S. attorneys' offices;
- develop, in conjunction with the Judicial Conference, guidance on permitting probation offices to disseminate financial information to U.S. attorneys' offices;
- develop mechanisms for establishing a central system for reporting, tracking, and accounting for all court-imposed criminal fines; and
- establish a policy, with time frames, on when enforcement techniques should be used.

AGENCY COMMENTS

The Department of Justice generally concurred with GAO's conclusions and strongly supported the recommendations. The Department believed that GAO's recommendations will not only improve collections but also will promote the effectiveness of the criminal justice system. (See app. VI.)

The Administrative Office asserted that the report inadequately explains current fine enforcement procedures and responsibilities under Public Law 98-596 and generally disagreed with GAO's recommendations. GAO deleted certain proposals that may no longer be pertinent under the new law. (See p. 40 and app. V.) GAO believes the report's

discussion of fine enforcement procedures and its remaining recommendations are relevant under the new law.

The Administrative Office cited legal constraints in disagreeing with GAO's proposal concerning sharing of financial information on offenders obtained by probation offices with U.S. attorney collection units. Specifically, the Administrative Office asserted that only the courts, not the probation offices, can permit the sharing of financial information. GAO modified its proposal, recommending instead that the Director of the Administrative Office and the Attorney General work together with the Judicial Conference (the policymaking body of the federal court system) to develop guidance permitting the sharing of financial information.



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#### ABBREVIATIONS

CFR	Code of Federal Regulations
GAO	General Accounting Office
USC	United States Code
PROMIS	Prosecutor's Management Information System

## CHAPTER 1

### INTRODUCTION

The federal courts have three primary options in sentencing an offender convicted of a federal crime--a fine, imprisonment, or probation (imposed alone or in any combination). Fines are one of the penalties imposed upon violators of federal criminal laws. They are used to punish offenders and to deter others from criminal activity. About one third of the criminal sentences imposed by the federal courts from July 1, 1982, through June 30, 1983, involved a fine. According to the Administrative Office of the U.S. Courts, the federal district courts imposed 11,574 fines totaling \$56.7 million during fiscal year 1984. According to the Department of Justice, about \$158 million in criminal fines were unpaid as of September 30, 1984. Both the judicial branch, through the Administrative Office of the U.S. Courts (Administrative Office), the probation offices, and the district court clerks' offices, and the executive branch, through the Department of Justice and the U.S. attorneys' offices, play a role in the criminal fine collection process.

Criminal fines should be collected promptly, effectively, and efficiently to ensure that offenders are punished for violating the law and are made to respect the government's ability to enforce the law. We initiated this review because of the importance of criminal fines in the law enforcement process and the large dollar amount of unpaid fines. Subsequently, former Senator Charles H. Percy requested that we conduct the review. Senator Percy's staff later advised us to issue this report to Senator Alfonse D'Amato because of his interest in the collection of criminal fines.

### RESPONSIBILITIES OF THE DEPARTMENT OF JUSTICE AND THE JUDICIARY

The Department of Justice and the 94 U.S. attorneys' offices<sup>1</sup> are responsible for ensuring the collection of all criminal fines under Department of Justice Order 1034-83 and 28 Code of Federal Regulations 0.171. The Administrative Office, which helps administer the federal court system, is also involved because the probation offices in the 94 district courts also collect criminal fines. Further, the clerks' offices in the 94 district courts accept certain criminal fine payments for

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<sup>1</sup>Although there are currently 94 U.S. attorneys' offices, there are only 93 U.S. attorneys because 1 U.S. attorney administers the activities performed by 2 judicial districts--Guam and the Northern Mariana Islands.

deposit in the U.S. Treasury. Clerks' offices are not required by statute or regulation to collect court-ordered criminal fines.<sup>2</sup>

A court-imposed sentence is documented on a form termed the judgment probation and commitment order (judgment order). By law (18 U.S.C. 3651), the court can require the offender to pay a fine as a condition of being on probation. According to both Justice Department and Administrative Office guidance, the probation office is responsible for collecting these fines, known as "condition of probation fines." Under the Department's guidance, it is responsible for collecting all other court-ordered fines; however, it still should monitor and enforce, where necessary, the payment of condition of probation fines. For purposes of this report, we will refer to fines that are not conditions of probation as "fines imposed as sentences." In general, fines imposed as a sentence include (1) fines imposed alone, (2) fines with a prison term, and (3) fines with probation but not imposed as a condition of probation. According to Department guidance, which was based on its interpretation of 18 U.S.C. 3651, a condition of probation fines is cancelled and is uncollectable after probation expires, while fines imposed as sentences are cancelled only if the offender dies, pays in full, or is pardoned by the President. However, effective January 1, 1985, in accordance with Public Law 98-596, condition of probation fines can no longer be cancelled after probation and remain collectable after probation expires.

In imposing a fine with a prison term, the court can order the offender to be imprisoned until the fine is paid (committed fine) or place no condition on paying the fine (noncommitted fine). The new law limits judges' discretion to impose a committed fine by requiring them to prove, on the basis of the preponderance of information used in sentencing, that the offender has the present ability to pay the fine. By statute (18 U.S.C. 3569), an offender with a committed fine can be released from prison if he/she is financially unable to pay the fine. To be released, the offender must sign a statement termed a pauper's oath and petition a magistrate for release.

#### Administrative structure of the Department of Justice

The Attorney General, as head of the Department of Justice, has delegated the responsibility for fine collection to the Department's litigating divisions. Currently, there are six litigating divisions--Criminal, Civil, Antitrust, Tax, Land and

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<sup>2</sup>However, the offices do actively collect fines from violation notices issued by federal law enforcement officers. These notices are issued for traffic violations, such as illegal parking or speeding, and for minor criminal offenses, such as illegal hunting or damage to federal property.



Natural Resources, and Civil Rights. All of the divisions except for the Civil Division have criminal litigation responsibility. For the most part, the litigating divisions have delegated the responsibility for collecting criminal fines to the U.S. attorneys' offices. The Executive Office for U.S. Attorneys handles administrative matters for the U.S. attorneys' offices.

At the Department level, the primary role of the litigating divisions and the Executive Office for U.S. Attorneys in collection activities is to monitor these activities. The Criminal Division (which is responsible for most criminal fines) has a unit known as the Criminal Division Collection Unit. This unit, composed of one attorney and three collection officers, monitors the collection of criminal fines imposed by the federal courts and provides guidance to the U.S. attorneys' offices on collecting these fines.

The U.S. attorneys' offices have consolidated the collection of fines and other monies owed the federal government in each judicial district into units known as the U.S. attorney collection units. These units are staffed by one attorney and several collection clerks. Depending on the size of the district, the number of collection clerks ranges from 1 to 10. A unit is responsible for all collection activities--criminal and civil--within a judicial district's geographical boundaries.

#### Administrative structure of the judiciary

The Judicial Conference of the United States is the policy-making body concerned with the administration of the federal court system. Its membership consists of representatives from the Supreme Court, courts of appeals, district courts, and other federal courts. The Administrative Office of the U.S. Courts assists the Judicial Conference in managing the federal court system. The Administrative Office is divided into several divisions, including the Probation Division, which oversees the district probation offices.

Within the federal court system, most activities relating to criminal fines take place in the federal district courts. Federal district judges impose fines for all levels of

offenses.<sup>3</sup> Each court has a probation office, headed by a chief probation officer, who is assisted by probation officers and probation clerks. Depending on the size of the district, the number of probation officers ranges from 2 to 90. Each court also has a clerk's office, headed by a clerk of the court, who is assisted by deputy court clerks.

#### RECENTLY ENACTED LEGISLATION

After our audit work was completed, a bill intended to improve the collection of criminal fines--the Criminal Fine Collection Act of 1984 (H.R. 5846)--became law (Public Law 98-596). On October 19, 1983, Senator Charles Percy introduced the original bill--the Criminal Fine Collection Act of 1983 (S. 1976). On July 30, 1984, the House of Representatives passed a new bill--the Criminal Fine Collection Act of 1984 (H.R. 5846)--which incorporated many provisions of Senator Percy's bill. This bill was passed by the Senate on October 11, 1984, and signed by the President on October 30, 1984. The law applies to offenses committed after December 31, 1984.

Public Law 98-596 greatly increases the dollar amount of criminal fines that can be assessed. The law raises the maximum fine levels for misdemeanors punishable by imprisonment for more than 6 months from \$1,000 to \$100,000 for both individuals and corporations. In the case of misdemeanors resulting in death, the fine levels increased to \$250,000 for individuals and \$500,000 for corporations. The maximum fine levels for felonies was raised from \$10,000, in most cases, to \$250,000 for individuals and \$500,000 for corporations. This law also provides guidance to judges on imposing fines such as (1) factors which they should consider in imposing fines and (2) a requirement that they include detailed payment terms in judgment orders.

Specifically, the law establishes a new criminal offense for willful nonpayment of a criminal fine; strengthens the government's judgment lien on property owned by criminals owing fines; requires fine repayment status to be both a condition of probation and parole; and sets a 5-year limit, with exceptions, on any court-ordered installment schedules for paying fines. The law also allows U.S. attorneys to assess interest at the rate of 1.5 percent per month for fines which are past due and

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<sup>3</sup>Criminal acts are classified by 18 U.S.C. 1 into 3 categories: felony, misdemeanor, and petty. A felony is any offense punishable by death or imprisonment exceeding 1 year. Any other offense is a misdemeanor. Any misdemeanor for which the penalty does not exceed imprisonment for a period of 6 months or a fine of not more than \$5,000 for an individual and \$10,000 for a corporation, or both, is a petty offense. Magistrates also impose fines; however, they cannot impose fines for felony offenses.

a monetary penalty of 25 percent of any fine amount over 90 days past due.

#### OBJECTIVES, SCOPE, AND METHODOLOGY

The objectives of our review were to determine (1) how efficiently, effectively, and economically criminal fines are collected and enforced; (2) what, if any, corrective action is needed to improve collections; and (3) whether financial controls over collections of criminal fines are adequate. We began our work by analyzing federal data on criminal fines and interviewing officials from the Justice Department, the Administrative Office, the Office of Management and Budget, the National Center for State Courts, and the Kentucky state court system. We also performed a literature search and we found no detailed studies on the collection of criminal fines.<sup>4</sup> On the basis of our preliminary work, we decided that the best way to achieve our objectives was to collect and analyze a random sample of criminal fines in selected federal court districts and interview federal court and U.S. attorney officials. Our goal was to obtain a better understanding of the procedures and practices involved in the criminal fine collection process.

In determining which federal court districts to include in our review, we chose districts characterized by one or more of the following factors: (1) large amounts of fines imposed, (2) large amounts of fines unpaid, and (3) new collection systems that are being implemented. For our review we selected federal district courts and U.S. attorneys' offices in the following court districts: the central district of California, the southern district of New York, the eastern district of Pennsylvania, the southern district of Texas, the western district of Texas, and the districts of Maryland and New Jersey. We made a detailed review of 860 cases with fines that were randomly selected from five of the seven districts selected for review. In the district of Maryland and the central district of California, we obtained anecdotal information on the criminal fine collection process in lieu of conducting a detailed analysis of fines due to staffing constraints.

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<sup>4</sup>During our review, we found that the VERA Institute of New York was conducting a detailed study of the collection of criminal fines for the Justice Department's National Institute of Justice. However, this study focuses on state and not federal criminal fines. We also found that the Office of Management and Budget issued a publication Report on Strengthening Federal Credit Management in January 1981. Among other things, this report addressed the litigation of debts by the Justice Department; however, it focused on debts in general and did not examine criminal fines in-depth.

Our sample was selected from the universe of all fines imposed in the districts during two judicial statistical years--1979 and 1982.<sup>5</sup> These 2 years were selected to (1) determine how the passage of time affected the collection process and (2) provide descriptive data on collection activities. Our 1979 sample excluded petty fines because sufficient staff were not available to perform the time-consuming work required to identify and obtain data on these fines.

We used a data collection instrument to record information on the offenders' financial condition, sentence, payment status, availability of collection records, and collection activity. Because criminal fine collection activity is fragmented at the district court level, we collected data from three different offices in each court district--the U.S. attorney's office, the probation office, and the clerk's office. After we obtained and analyzed our sample data from both judicial statistical years combined, we estimated the total number of fines in the five court districts' universe to be 2,350 fines totaling about \$20.6 million. We projected the results of our sample to this universe. (For a more detailed discussion of our methodology, see app. I.) In general, the statistical data presented in this report represents our estimates of conditions in the five court districts we sampled and may not be representative of conditions nationally. However, our discussions with Justice Department officials, judges, and other judiciary branch officials indicate that the problems we identified in the collection process may exist in other court districts.

At each district court, we interviewed the chief judge, the clerk of the court, and the chief probation officer or the probation officer's deputy. We also interviewed judges, magistrates, probation officers, and deputy court clerks. At each U.S. attorney's office we interviewed the chiefs of the Civil Division, the Criminal Division, and the U.S. attorney collection personnel.

We also reviewed pertinent Justice Department manuals, Administrative Office manuals, policies, regulations, procedures, and practices applicable to the criminal fine collection process. Our audit work was conducted between November 1982 and January 1984 in accordance with generally accepted government auditing standards. We have updated our report to incorporate actions taken by the agencies and the changes made by Public Law 98-596, enacted on October 30, 1984.

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<sup>5</sup>Judicial statistical year 1982 covers the period between July 1, 1981, through June 30, 1982. This was the latest data available for our random sample when we began our review. However, our observations are based on review work performed through the latter part of 1984 and, where possible, we have updated this report with the most recent available data.

## CHAPTER 2

### THE CRIMINAL FINE COLLECTION PROCESS

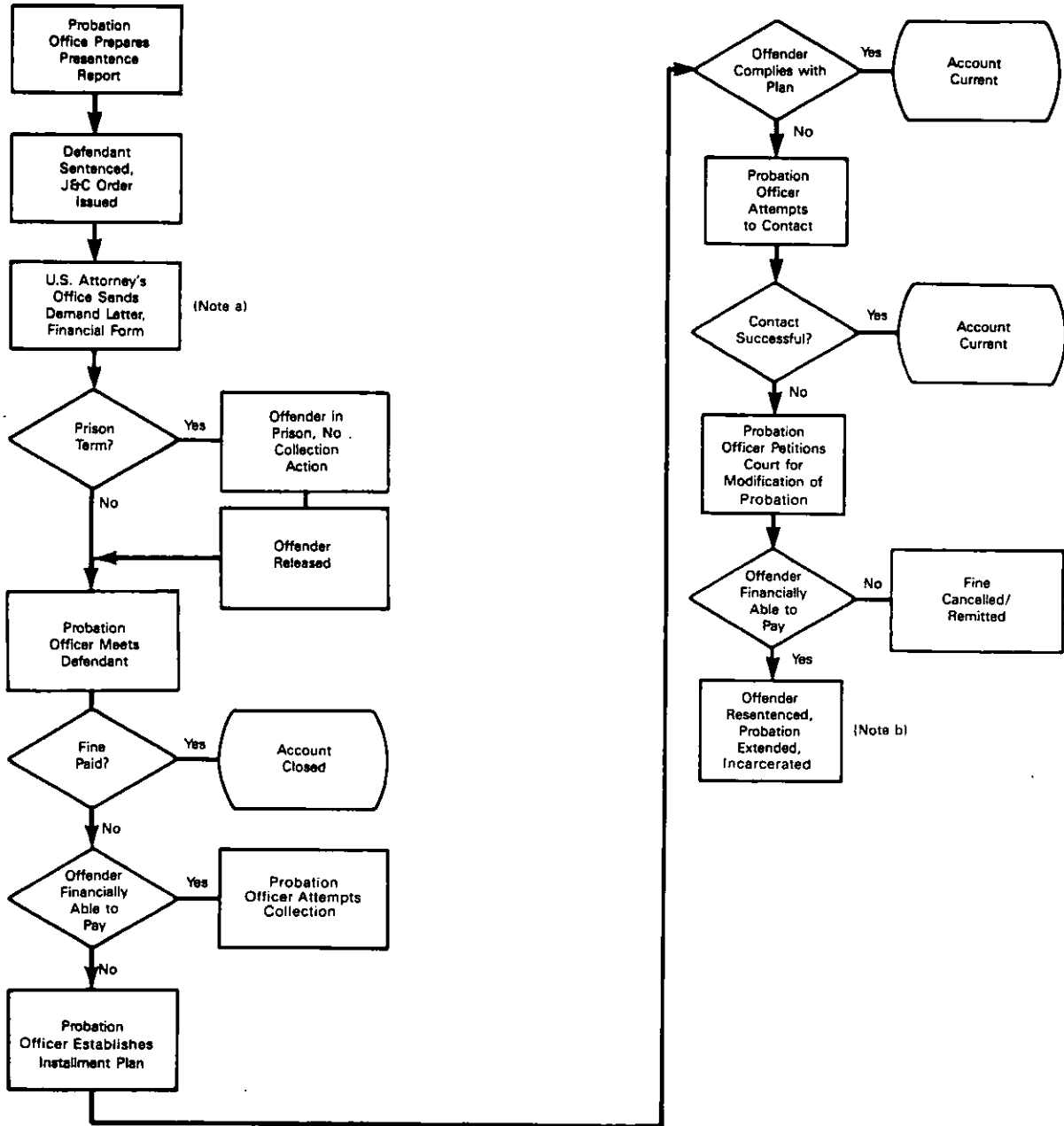
The criminal fine collection process described below is based on our analysis of laws, regulations, court rules, and administrative policies and procedures governing criminal fine collections. As discussed in detail in chapters 3 through 5, we found that the problems affecting the collection of criminal fines resulted because the process does not always work as it is supposed to and formal procedures governing aspects of the process do not exist.

Generally, the process discussed in this report is the process in place before the enactment of Public Law 98-596. Throughout the report, however, we have indicated where Public Law 98-596 has affected the process. While we do know what the law's provisions are regarding the collection of criminal fines, we do not know how the Department of Justice and the Administrative Office will implement these provisions. These two agencies, as of August 1985, were still working on a memorandum of agreement which will delineate the new process.

#### HOW THE CRIMINAL FINE COLLECTION PROCESS SHOULD WORK

The following flow charts describe the criminal fine collection process for (1) fines imposed as a condition of probation and (2) fines imposed as a sentence.

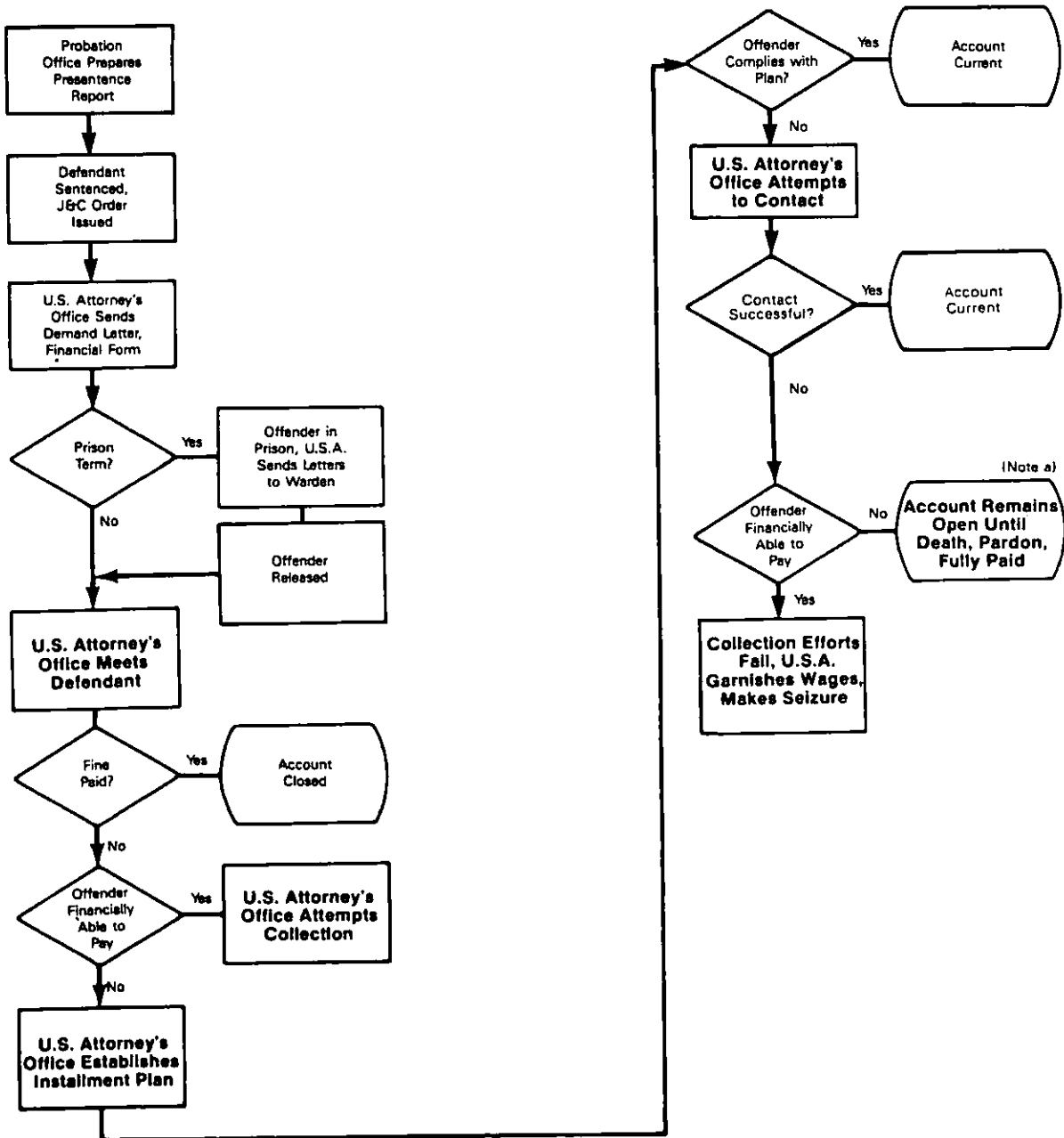
## COLLECTION AND ENFORCEMENT PROCESS FOR CONDITION OF PROBATION FINES



<sup>a</sup>According to the U.S. Attorneys' Manual, a demand letter should be sent for every criminal fine.

<sup>b</sup>Under the new law, outstanding fines imposed as conditions of probation will not terminate at the end of the probation term and will remain collectable after the probation term expires.

**COLLECTION AND ENFORCEMENT PROCESS  
FINES IMPOSED AS SENTENCES (NON-COMMITTED)**



\*Effective January 1, 1965, the new law provides that the obligation to pay a fine ceases 20 years after the judgment is entered, although the Attorney General and the Offender may agree to extend the 20-year period.

### Imposing the sentence

The criminal fine process begins after the offender is found guilty. At that time, the probation office begins gathering information on the offender's ability to pay a fine. Rule 32(c)(1) of the Federal Rules of Criminal Procedure requires the probation office to conduct a presentence investigation of each convicted federal offender and prepare a written report, known as a presentence investigation report (presentence report). The probation office need not prepare this report if (1) the court decides it already has enough information to impose a sentence or (2) the offender gives up his/her right to an investigation and report. The report is used to assist the court in deciding on the appropriate sentence for the offender and includes data on the offender's background, prior criminal record, employment history, and financial condition. According to the Administrative Office's guidelines, the probation office should include comprehensive financial data in the presentence report so that the court can evaluate the offender's ability to pay a fine.

Initially, the court sentences the offender orally at a hearing. The court can impose a fine as (1) a condition of probation (making the probation office the collecting agency) or (2) a sentence (making the Justice Department the collecting agency). Shortly thereafter, the court formally documents its sentence in a judgment order. The clerk's office notes the sentence in the court's docket (which is its record of the proceedings), places the judgment order in its case file, and notifies the Administrative Office of the sentence. Effective January 1, 1985, Public Law 98-596 requires the clerk of the court to send the Justice Department a certified copy of the judgment for fines exceeding \$500.

After the sentence is entered in the court's records, the offender can ask the district court that imposed the fine or the court of appeals to reduce or cancel the fine. The offender must file a petition appealing the fine within 10 days. The district court that imposed the fine has 120 days to reduce the fine. The district court can also order the government to suspend collection efforts until the appeal is decided.

### Monitoring the fine

The Justice Department is responsible for monitoring the collection of all criminal fines, including condition of probation fines. According to the U.S. Attorneys' Manual, the collection unit should set up a collection case file containing all court orders and documents relating to the collection of the fine. To help monitor the offender's compliance with the court order, the Department uses an automated information system--the U.S. Attorneys' Docket and Reporting System. This system is used for both information management and accounting purposes.



The Justice Department is currently replacing this system with the Prosecutor's Management Information System (PROMIS), but most U.S. attorneys' offices still operate under the Docket and Reporting System as of September 1985.

Under the Docket and Reporting System, the U.S. attorney collection unit is required to prepare a debtor card (the USA 117A) once it learns of the fine. The USA 117A, which serves as both an administrative record and an account receivable, is supposed to be prepared regardless of whether the fine is a sentence or a condition of probation. The original copy of the USA 117A should be retained in the U.S. attorney collection unit and a copy sent to the Executive Office for U.S. Attorneys. Each time a payment or collection attempt is made, the U.S. attorney collection unit should note this on the original USA 117A. The unit also notifies the Executive Office monthly, using the criminal collections activity card (the USA 165), of all collection activity changes, updates, and corrections. The USA 165 is used to track a criminal collection once it is opened in the Docket and Reporting System.

The Executive Office processes the data it receives from the U.S. attorneys' offices and incorporates the data into a master computer file. The Executive Office prepares from the master file a monthly "Outstanding Fines, Penalties, and Forfeitures List" containing information such as the U.S. attorney case number, the offender's name, the fine amount, the amount and date of the last payment, the unpaid balance, and the collection status. The list is sent to each Justice litigating division periodically and each U.S. attorney's office monthly for verification and monitoring purposes. The Justice Management Division uses the master file to prepare Justice's annual financial reports to the Department of Treasury on all criminal judgments including fines.

U.S. attorneys' offices with the PROMIS system have direct access to a minicomputer or word processor and no longer must send USA 117As and collection activity changes to the Executive Office for processing. Instead, according to Justice guidance, each office should set up an automated record of all fines and enter collection activity changes, updates, and corrections onto the automated record. According to an Executive Office official, the U.S. attorneys' offices equipped with PROMIS did not start sending data on criminal fines to the Executive Office until after July 1984.

#### Condition of probation fines

Once the probation office receives a copy of the judgment order from the clerk's office, it files the order in the offender's case file. The probation offices are required to maintain complete and accurate records of all monies received

from offenders on probation (18 U.S.C. 3655). The Administrative Office's guidelines require the probation office to maintain a complete record of payment (Probation Form 38) in each case file. This record should be set up for all probation fines. The probation office uses Probation Form 38 as both an administrative record of fines and as a means of monitoring the offender's compliance with the court order. According to Administrative Office guidance, the probation office should also maintain in the files a chronological record of contacts between the probation officer and the offender, including any collection attempts.

### Collecting the fine

The U.S. Attorneys' Manual requires the U.S. attorney's office to send every offender a letter demanding full payment of fines within 2 to 10 days after judgment. As discussed further in chapter 5, confusion exists as to whether the U.S. attorney's office should send this letter to offenders owing condition of probation fines. When an offender claims that he or she is financially unable to pay, the U.S. Attorneys' Manual advises the U.S. attorney collection unit to send the offender a financial statement to complete and return. If from the statement the offender appears unable to pay immediately, the U.S. attorney collection unit is permitted to authorize an installment payment plan. It is unclear whether the units have the authority under Public Law 98-596 to grant or change installment payment schedules when either (1) the court does not order installment payments or (2) the offender is financially unable to comply with the installment payment schedule ordered by the court. (See p. 37.)

If the offender does not respond to the demand letter or refuses to pay, the Federal Rules of Civil Procedure provide various enforcement techniques that can be used to compel payment. These include liens on real estate, seizure of property belonging to the offender, and sale of property. Public Law 98-596 strengthens the government's judgment lien by limiting the types of assets which are exempt from lien. According to the U.S. Attorneys' Manual, the U.S. attorney should immediately begin to enforce payment of fines imposed as sentences but should allow the probation office to make initial efforts to enforce condition of probation fines.

Under Justice Department policy, fines imposed as sentences cannot be cancelled once a judgment is final unless the offender dies, pays in full, or is pardoned by the President of the United States. However, Public Law 98-596 provides that the obligation to pay a fine ceases 20 years after the judgment is entered, although the offender and the Attorney General may agree to extend the 20-year period.

Offenders with fines can be summoned to court by the U.S. attorney's office. If the court determines that the offender's refusal to pay is willful, then the court can treat the refusal as disobedience or resistance to its lawful order and impose a sentence for contempt of court (18 U.S.C. 401(3)). Public Law 98-596 also establishes willful nonpayment as a criminal offense punishable by imprisonment and/or increased fine amounts.

#### Condition of probation fines

According to the Administrative Office's procedures, the probation office should meet with all offenders placed on probation shortly after sentencing to discuss the terms and conditions of probation. The probation office should discuss payment of the fine if the offender has a condition of probation fine. If the offender is financially unable to pay in full, the probation office is permitted to offer the offender an installment payment plan. As noted on the prior page, it is unclear whether the probation offices have retained this authority under Public Law 98-596. According to Administrative Office guidance, if the offender does not pay the fine but has the ability to pay, the probation office should notify the court. The court can modify the terms of the offender's probation by ordering imprisonment or residence at a community treatment center. The court can also modify the amount of fine owed or extend the payment period up to the 5-year maximum for a probation term if it believes the offender cannot pay the fine. Justice Department guidelines, which are based on its interpretation of 18 U.S.C. 3651, state that the U.S. attorney's office should cancel outstanding fines imposed as conditions of probation at the end of the probation term. Under the new law, however, outstanding fines imposed as conditions of probation are not terminated at the end of the probation term but remain collectable.

#### Clerks' offices received and deposited payments

Until the enactment of Public Law 98-596, both the U.S. attorney's office and the probation office were instructed by Justice Department and Administrative Office procedures to have all offenders make payments directly to the clerk's office. The clerk's office was instructed to issue a receipt for each payment, provide copies of the receipt to the U.S. attorney's office or the probation office, and maintain its own collection record identifying when each payment was received and forwarded to the U.S. Treasury. Each clerk's office also prepared a monthly financial report for the Administrative Office on the amount of fines it deposited in the U.S. Treasury. Public Law 98-596 shifted the responsibility for the receipt of criminal fines from the clerks' offices to the Department of Justice. However, under a preliminary agreement between the Department and the Administrative Office, the clerks' offices will continue

accepting payments for fines imposed for offenses committed  
before January 1, 1985.

### CHAPTER 3

#### BETTER PRESENTENCE DETERMINATIONS OF OFFENDERS'

#### FINANCIAL STATUS WOULD IMPROVE THE

#### COLLECTION PROCESS

Better financial information on the offender's financial status prior to sentencing could help (1) the court impose fines, (2) probation offices to collect condition of probation fines, and (3) the U.S. attorney collection units enforce fines. Probation offices are responsible for compiling information on the offender's financial status; however, they do not (1) gather sufficient information and (2) routinely disseminate what they do obtain to U.S. attorney collection units due to their belief that routine dissemination of this information is limited by the Federal Rules of Criminal Procedure (Rule 32(c)(3)). Consequently, U.S. attorney collection units must make a separate effort to obtain information the courts may already have on offenders who are fined.

#### OFFENDERS DO NOT PAY PROMPTLY

The number of cases and dollar amounts that were fully paid by year and case type for the five districts we sampled follows.

<u>Case type</u>	<u>Number of cases</u>	<u>Dollar amount</u>	<u>Cases fully paid</u>		<u>Dollars fully paid</u>	
			<u>Number</u>	<u>Percent</u>	<u>Amount</u>	<u>Percent</u>
		(000 omitted)			(000 omitted)	
1979 Felony- Misdemeanor	831	\$12,100	676	81	\$9,569	79
1982 Felony- Misdemeanor	978	8,400	472	48	2,839	34
1982 Petty	541	84	464	86	49	58

As the above table shows, many fines were paid. To measure the impact that time has on the collection process, we computed the percentage of cases which were fully paid in relation to the time that had elapsed from sentencing and our audit. The results of our analysis are shown in the following table.

<u>Time interval since sentencing<sup>a</sup></u>	<u>Felony-misdemeanor</u>		<u>Petty</u>
	<u>1979</u>	<u>1982</u>	<u>1982</u>
----- (percent) -----			
Fines paid in full			
0 days	4.6	5.1	37.2
1-60 "	31.2	18.2	15.9
61-120 "	4.7	5.0	3.5
121-180 "	2.6	3.1	.7
181-240 "	5.2	2.2	3.3
241-300 "	2.4	3.1	.2
301-365 "	5.2	3.1	.9
Over 365 "	22.5	2.0	0
Unknown	<u>2.9</u>	<u>5.9</u>	<u>24.0</u>
Total	<u>81.3</u>	<u>47.7</u>	<u>85.7</u>
Fines not paid in full			
	<u>18.7</u>	<u>52.3</u>	<u>14.3</u>
Total	<u>100.0</u>	<u>100.0</u>	<u>100.0</u>

<sup>a</sup>July 1, 1978, through June 30, 1979, and July 1, 1981, through June 30, 1982.

As indicated above, the percentage of cases reaching paid status increases as time passes. For example, of the felony and misdemeanor fines imposed in 1979, about 56 percent of the cases reached fully paid status within 1 year after sentencing.

Further, in both sample years fine payments were slow. Although under Justice guidance fines should be paid immediately, offenders with nonpetty fines from our 1979 and 1982 samples who paid off their fines took an average of 273 and 108 days, respectively, after sentencing to pay. For example, of the fines imposed in 1979, the majority were paid more than 60 days after sentencing. In comparing the felony-misdemeanor fines for 1979 and 1982, it appears that collection efforts were less effective in 1982. Even though at least 60 days had elapsed since sentencing for 1982 cases, a lower percentage reached fully paid status within 60 days after sentencing.

We used regression analysis to determine the impact of various factors on collections, including (1) the court district, (2) the type of sentence imposed with a fine, and (3) the amount of a fine. Our analysis could not show that any one court district did a better job of collections than the other four court districts we sampled. However, our analysis did show that the type of sentences imposed with a fine affects the likelihood that the fine will be paid in full. Of the various types

of sentences with fines, fines with probation alone are the most likely to be paid, while fines with a prison term either alone or in combination with probation are the least likely to be paid. A more detailed discussion on the characteristics of sentences with fines is contained in appendix IV.

BETTER PRESENTENCE DETERMINATIONS  
OF THE OFFENDERS' FINANCIAL  
STATUS ARE NEEDED

The Federal Rules of Criminal Procedure require the probation office, with some exceptions, to prepare and submit a presentence report to assist the court in its sentencing decision. Our random sample in the five court districts visited indicated that the probation offices do not prepare presentence reports for all offenders. According to guidelines established by the Administrative Office, the financial condition section of the presentence report should make readily apparent the offender's ability to pay a fine. However, in analyzing the reports that were prepared, we found that probation offices often do not obtain financial information on the offender's ability to pay a fine. The provisions of Public Law 98-596 make the need for comprehensive presentence determinations of offenders' financial status even more important. Public Law 98-596 requires the court to consider a number of factors in determining whether to impose a fine and the amount of the fine, including the defendant's income, earning capacity, and financial resources.

Presentence financial  
information is incomplete

We asked the probation offices in the five court districts visited from which our random sample was selected to provide us with presentence reports for the cases in our sample. The probation offices provided us with presentence reports for 58 percent of our sample. The Federal Rules of Criminal Procedure permit the court or the offender, with permission from the court, to waive the preparation of a presentence report. We were unable to determine how many reports were not prepared for this reason.

The Administrative Office's guidelines identify the following information as essential data in the financial condition section of the presentence report:

"Statement of financial assets. Average monthly income. Spending habits in relation to the level of income. If unemployed, source of support such as unemployment insurance, public assistance, veterans'/military benefits, Social Security benefits, private assistance, retirement funds, family help, or criminal activities. Statement of financial obligations including balance due and monthly payments (home mortgage, rent, utilities, medical, personal property,

home repairs, charge accounts, loans, fines, restitution, and child support)."<sup>1</sup>

The guidelines also recommend that a net worth statement and information on financial delinquencies be included when pertinent. In reviewing the presentence reports which were provided to us by the probation offices, we found that 95 percent had at least one financial data element on the offender. However, the probation offices did not obtain all of the financial data required by the Administrative Office's guidelines.

In many cases where a fine was imposed, the probation offices did not obtain sufficient information for us to determine whether the offender had the financial ability to pay the fine imposed. Of the felony and misdemeanor fines imposed in 1979 and 1982 we found that in 55 percent and in 43 percent of the cases, respectively, no information had been developed on ability to pay. No financial condition information was available for 84 percent of the cases for which petty fines were imposed in 1982.

The majority of chief probation officers we interviewed told us that their probation officers do not have the time or expertise needed to conduct financial investigations. The Administrative Office recognizes, however, that increases in complex criminal cases makes it essential for the probation offices to obtain additional and more detailed financial information in presentence reports. Accordingly, the Administrative Office plans to provide training to probation officers on the procedures for obtaining financial information and the collection of criminal fines.

#### A standard financial report is needed

The Administrative Office's Probation Division needs to provide a standard financial report to probation offices so that financial data can be compiled in a complete and uniform manner. The probation offices in three of the seven courts we visited had developed their own financial reports. Each report had different data requirements, and none of the reports included all the data required by the Administrative Office. For example, one probation office's form did not require the probation officer to obtain income and expense data. The remaining four probation offices we visited did not have a standard form and allowed the probation officers broad latitude in obtaining financial information.

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<sup>1</sup>The Presentence Investigation Report, Publication 105, January 5, 1978, p. 15.



In reviewing the presentence reports, we observed that the amount of financial information that probation officers gather on offenders with fines varies greatly even within the same probation office. For example, the information can range from a simple statement that "The defendant has no assets of any value" to a detailed net worth statement prepared by the offender's accountant. A standard financial report would minimize the variations in the financial information gathered by probation officers. It is even more imperative, under Public Law 98-596, that probation offices obtain adequate financial information because judges need adequate financial information to consider the offender's financial ability to pay before they impose a fine.

COURTS SHOULD ROUTINELY  
PROVIDE FINANCIAL INFORMATION  
ON OFFENDERS TO U.S. ATTORNEY  
COLLECTION UNITS

The courts do not routinely provide financial information contained in the presentence reports to the U.S. attorney collection units even though, in some instances, the financial information would be useful to the units in determining the offender's financial ability to pay. The Judicial Conference has not issued guidance on making information on an offender's financial condition available to U.S. attorney collection units even though these units are responsible for collections. Only one of the seven probation offices we reviewed, the probation office for the Central District of California, routinely provides financial data from the presentence report to the U.S. attorney collection unit. According to the chief probation officer and the chief judge, this has been a longstanding practice, and they have not encountered any problems. The remaining courts have different practices regarding the release of the presentence report and its financial information. These practices include prohibiting the dissemination of presentence reports to the U.S. attorney collection unit and permitting review of the reports under certain limited conditions.

The judges we interviewed expressed conflicting opinions on releasing financial data to the U.S. attorney collection units. Some judges told us that they would have no problems with routine release of presentence financial data to the collection units. Others, however, believed release of the financial data would cause the offenders to be less than candid with the probation officers and violate promises of confidentiality probation officers sometimes make to obtain information. In letters to GAO, both the Justice Department and the Administrative Office stated that Federal Rules of Criminal Procedure Rule 32(c)(3) affects the probation officers' ability to routinely disseminate financial information because the Rule gives the courts, not the probation offices, the authority to control distribution of the

presentence report after it has been reviewed by the prosecutor. The Justice Department believed that it would be consistent with Rule 32(c)(3) for the U.S. attorney collection units to be allowed to retain the presentence reports in appropriate cases.

On the basis of the court's experience in the central district of California, we believe that the Judicial Conference, through the Administrative Office, should provide guidance to the courts regarding the circumstances under which dissemination of financial information to the U.S. attorneys' offices should be routinely allowed. We believe this proposal is consistent with Rule 32(c)(3). Further, because U.S. attorney collection units are responsible for enforcing the collection of criminal fines, these units should have routine access to the financial information obtained by the probation offices that forms the basis for the court's determination on the amount of the fine and the individual's ability to pay it.

### CONCLUSIONS

Probation offices need to obtain better financial information on offenders prior to sentencing. Judges and magistrates need complete and accurate financial information on the offender's ability to pay a fine so that they can decide whether a fine is an appropriate sentence and the amount can realistically be paid. Public Law 98-596 requires the court to consider a number of factors in imposing a fine, including financial factors such as the defendant's income, earning capacity, and financial resources. Further, the U.S. attorneys' offices and probation offices need better financial information to challenge offenders' claims of inability to pay fines. Because U.S. attorneys' offices are responsible for collecting fines and for taking legal action against offenders who do not pay, these offices need routine access to the financial information obtained by the probation offices that forms the basis for the court's determination on the amount of the fine and the individual's ability to pay it.

### RECOMMENDATIONS

To eliminate duplication of the gathering of financial data and enhance the collection and enforcement of criminal fines, we recommend that the Director of the Administrative Office of the U.S. Courts and the Attorney General work together to

- develop a standard court financial report form that can be shared with U.S. attorneys' offices and
- develop, in conjunction with the Judicial Conference, guidance on permitting the probation offices to disseminate financial information to the U.S. attorneys' offices.

## AGENCY COMMENTS AND OUR EVALUATION

The Justice Department agreed with and strongly supported our recommendation concerning the need for the Judicial Conference to institute a standard financial report that can be disseminated to U.S. attorneys' offices. The Department agreed with our recommendation that the Judicial Conference issue guidance to the courts on sharing financial information. The Department stated that the newly enacted statute, 18 U.S.C. 3622, requires the court to consider the defendant's income, earning capacity, and financial resources before making a determination to impose a fine and establishing an amount. According to the Department, it would now appear even more necessary that the court share this standard financial information with the collection personnel of the various U.S. attorneys' offices so that its order may be enforced.

The Administrative Office, however, stated that the Probation Division had revised Publication 105, The Presentence Investigation Report, which outlines the factors that should be included in the financial section of the Presentence Investigation Report. The Administrative Office further stated that the Probation Division will continue to work with the Federal Judicial Center (the research and training arm of the courts) in developing training for probation officers in the areas of gathering and assessing data.

We believe the Administrative Office needs to develop a standard financial report for probation officers to use in gathering financial data. In comparing the revised version of Publication 105 with the previous version, we found its guidance on obtaining financial condition information has not changed. We found that probation officers did not gather financial data uniformly and consistently because some of the probation officers had no standard financial report forms, while others developed their own forms. We believe the adoption of a standard financial report will help the probation offices nationwide gather more definitive financial data consistently and uniformly.

The Administrative Office cited Federal Rule of Criminal Procedure 32(c)(3) as a factor affecting our recommendation that the Judicial Conference provide guidance to probation officers on disseminating financial information in presentence reports to the U.S. attorney collection units. According to the Administrative Office, Federal Rule of Criminal Procedure 32(c) permits the defendant and the attorney for the government to review the presentence report before sentencing. However, the Administrative Office contends that, after sentencing, the court, not the probation officer, has the discretion of determining further dissemination of the report or additional probation information.

The Administrative Office asserted that the probation officers have no control over the dissemination of the presentence investigation reports. We recognize that Rule 32(c)(3) gives the court the authority to control distribution of the presentence report after it has been reviewed by the prosecutors. To address the Administrative Office's concern, we have modified our proposal. Our revised recommendation is that the Director of the Administrative Office and the Attorney General work together in conjunction with the Judicial Conference to provide guidance to the courts on permitting probation offices to disseminate financial information to the U.S. attorneys' offices.

With regard to the dissemination of financial data to the U.S. attorneys' offices, the Administrative Office further stated that upon request of the collection unit of the Department of Justice, U.S. probation officers will assist by requesting that persons under their supervision who owe a fine complete and return a Department of Justice financial statement. We believe this is not a satisfactory solution to the problem we noted in the report. Where an offender is placed under the probation office's supervision, the probation offices would have to obtain yet another financial statement after sentencing. Where an offender has not been placed under the probation office's supervision, the U.S. attorney collection units would have to (1) ask the court to allow the probation office to release the financial data on which the court based its sentence or (2) obtain from the offender another financial statement after sentencing. As the U.S. attorney collection units are responsible for enforcing the collection of criminal fines, these units should have routine access to the financial information obtained by the probation offices that forms the basis for the court's determination on the amount of the fine and the individual's ability to pay it. We believe the Department of Justice and the Administrative Office need to work together to develop a standard financial report form that probation officers can share with U.S. attorney collection units.

## CHAPTER 4

### CRIMINAL FINE MANAGEMENT AND ACCOUNTING

#### SYSTEMS NEED IMPROVED CONTROLS

The Justice Department and the courts need a more accurate, efficient, and uniform process for identifying the fines imposed, tracking the offender's payment status, and accounting for collections. Because responsibility for collecting payments and enforcing the fine has been fragmented within and among three offices at the court district level, the federal government cannot ensure that offenders who do not pay are quickly identified and aggressively pursued. The Justice Department, working with the Administrative Office, is in the process of establishing a centralized system for reporting, tracking, and accounting for all court-imposed criminal fines.

#### THE JUSTICE DEPARTMENT NEEDS ADEQUATE FINE MANAGEMENT AND ACCOUNTING PROCEDURES

The Justice Department, with the enactment of Public Law 98-596, has retained primary responsibility for monitoring and accounting for all criminal fines. However, we found that U.S. attorney collection units in the five court districts sampled did not identify and accurately account for many fines imposed by the courts. This situation exists because (1) divisions within the U.S. attorney's office do not notify the U.S. attorney collection unit of all fines imposed by the court and (2) the Department has not defined clearly the scope of U.S. attorney collection units' tracking responsibility. Consequently, the Justice Department and the U.S. attorneys' offices are unable to adequately (1) monitor criminal fine collection activity, (2) identify offenders who are not complying with court orders and payment agreements, and (3) account for collections of fines with any accuracy.

#### U.S attorney collection units do not accurately identify, report, and account for fines

We obtained statistics on the number and amount of criminal fines imposed nationwide from both the Justice Department and the Administrative Office of the U.S. Courts. (See app. II and III.) In comparing Justice's statistics with the Administrative Office's statistics for the same time period, we found that the Justice Department did not identify many fines imposed by federal district courts. For example, the Justice Department reported 6,737 criminal fines totaling \$62.8 million for fiscal year 1982 while the Administrative Office reported 14,620 fines totaling \$90.3 million. An official in the Executive Office for

U.S. Attorneys told us that part of this discrepancy was due to the fact that the U.S. attorneys' offices where the new PROMIS system was being installed stopped reporting criminal fines to the Executive Office.

We attempted to locate a record for each fine in our sample in the U.S. attorney collection units. Our objective was to determine whether U.S. attorney collection units are identifying all criminal fines imposed by the courts and reporting these fines to the Justice Department.<sup>1</sup> Our analysis showed that the U.S. attorney collection units in the five court districts we visited did not have any record (i.e., a USA 117A, case file, or PROMIS file) for about 40 percent of the 2,350 cases in our universe. We found no records for about 20 percent of the felony and misdemeanor cases in both sample years (1979 and 1982) and no records for 90 percent of the petty cases in 1982.

An audit of the outstanding fines in the Southern District of Florida by the Criminal Division's Collection Unit surfaced problems similar to those we identified. In a report dated July 28, 1982, the Collection Unit observed

"It is obvious that the current system of notifying the collection unit of outstanding fine and appearance bond impositions is not functioning as well as one might wish, since we found 177 judgments, most of recent date, that were unreported. It should be noted however that this problem is not unique to the Southern District of Florida, but is in fact, a serious problem in all large United States Attorneys' Offices. Our Office has encountered this problem for over a decade and has yet to find a simple (i.e., mechanical) solution."

In addition, indications exist that the U.S. attorney collection units' records on the offender's payment status may not be accurate. For each unpaid fine in our sample, we compared the records on payment status maintained by the clerk's office with those maintained by the U.S. attorney's office. We found that the amount outstanding shown in the clerks' records did not agree with the U.S. attorneys' offices records in the majority of cases.

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<sup>1</sup>During our review, one of the five visited U.S. attorneys' offices--the U.S. Attorney's Office for the District of New Jersey--had installed the new automated system, PROMIS. The PROMIS system was implemented in that district in 1981.

U.S. Attorney's Amount Outstanding

<u>Case type</u>	<u>Greater than court's figure</u>	<u>Agrees with court's figure</u>	<u>Less than court's figure</u>
	----- (percent) -----		
1979 Felony-Misdemeanor	29	40	31
1982 Felony-Misdemeanor	44	42	14
1982 Petty	9	16	75

Procedures for notifying U.S.  
attorney collection units of  
fines are informal and ineffective

One reason why the U.S. attorney collection units do not identify and record many fines is because they do not consistently receive court judgment orders from other components within the U.S. attorneys' offices notifying them of the imposition. The U.S. attorney collection units rely on the court judgment order to notify them that a fine has been imposed. However, the U.S. attorneys' offices we reviewed do not have uniform and effective procedures for sending the judgment orders they receive from clerks' offices to U.S. attorney collection units.

Depending on the district, the court's order is first received by the criminal division or the mailroom within the U.S. attorney's office. However, the U.S. attorney collection units are organizationally separated from these receiving units. Four of the collection units we visited are part of the office's Civil Division, and the remaining three units are independent of both the office's Criminal and Civil Divisions. Therefore, the collection units rely on personnel outside the unit, either the criminal prosecutors, mailroom clerks, or docket clerks, to forward them a copy of the court judgment order.

In the districts that we reviewed, none of the collection units could rely on other U.S. attorney personnel to consistently send judgment orders to them.

--Three of the U.S. attorney collection units rely on payment lists or payment receipts sent by clerks' offices as a method of identifying criminal fines. The problem with this method is that offenders who do not make a payment are less likely to be identified.

--The collection unit with the PROMIS system depends on the U.S. attorney's criminal docket clerk to receive a copy of the judgment order and enter the fine into the system.

However, we found that the prosecutors had access to the orders and occasionally took them so that they would have a copy before the orders could be entered into the system. This U.S. attorney's office has established new procedures to improve the referral system; however, the procedures are too new to be evaluated for their effectiveness.

During our review, Justice's Criminal Division Collection Unit began using a notification form which all criminal prosecutors must complete and send to a U.S. attorney collection unit once a fine is imposed. This form includes basic information on the offender, such as the offender's address and telephone number. However, personnel from two U.S. attorney collection units we reviewed told us that the prosecuting attorneys still do not routinely forward these data forms to them.

U.S. attorney collection units' responsibility for tracking and accounting for fines needs to be better defined

Another reason why U.S. attorney collection units are not identifying and recording many fines is because Justice procedures are inconsistent regarding the collection units' responsibility for tracking and accounting for fines. For example, one section of the Docket and Reporting System Manual advises the collection units to track only fines that the collection units receive. Another section of the manual advises the units to track all court-imposed criminal fines. Yet, in the U.S. Attorneys' Manual, the Department advises the U.S. attorney collection units not to actively look for and record fines imposed by magistrates except for cases when an assistant U.S. attorney was involved.

Clarifying the U.S. attorney collection units' responsibility for cases that are not prosecuted by the U.S. attorney's office is important because fines from these cases can escape collection. According to a Justice official, about 10 percent of federal criminal cases are prosecuted by a unit other than the U.S. attorney's office. For example, the Criminal Division's Organized Crime and Racketeering Section Strike Forces and the Antitrust Division have attorneys at the district level who operate independently of the U.S. attorney and are not required to report fines to the U.S. attorney collection units. In addition, in two U.S. attorneys' offices we visited we found that special prosecutors, such as military attorneys and Immigration and Naturalization Service officers, prosecute cases on the U.S. attorney's behalf and do not usually report fines to the U.S. attorney collection unit.

The U.S. attorney collection units we reviewed had different views of their responsibility for fines imposed by



magistrates. Although fines imposed by magistrates generally are not large, we believe that clarifying the U.S. attorney collection unit's responsibility for these fines would help ensure consistent law enforcement and reporting. For example, we found that one collection unit tracked only magistrate-imposed fines over \$100; another unit tracked only fines referred to it by magistrates; and a third unit tracked fines from cases in which an assistant U.S. attorney was involved. Justice officials told us that to reduce the collection unit's duties, they advise collection personnel to track and collect only referrals from the magistrates. However, our interviews with the magistrates indicated that they generally are unaware that a referral must be made to the U.S. attorney's office for the collection unit to track their fines.

Although the U.S. Attorneys' Manual advises the collection units to monitor the collection of condition of probation fines, we found little involvement by the U.S. attorney collection units in these fines. If a fine is a condition of probation, the U.S. attorney collection unit usually only sets up an account receivable and reports collections. The Justice Department's listing of unpaid fines is not shared with the probation office or the court and therefore does not assist the office and the court in enforcing payment of the fine.

A CENTRAL SYSTEM SHOULD BE ESTABLISHED  
TO IDENTIFY, TRACK, AND ACCOUNT FOR  
CRIMINAL FINES

The Justice Department, with the Administrative Office, can overcome the problems caused by fragmentation of responsibilities and minimize duplication of effort by establishing a central system to track and account for all court imposed criminal fines. Such a system is particularly needed because in each court district, three offices--the U.S. attorney's office, the clerk's office, and the probation office--are involved in tracking and accounting for criminal fines. To ensure that fines are accounted for efficiently and complete information on collections is available, the Department of Justice needs to work with the Administrative Office to make sure that a centralized system for all fines imposed by judges and magistrates is established.

Probation offices do not  
have adequate systems  
for tracking their fines

The Administrative Office's procedures require probation offices to account for criminal fines imposed on probationers. The Probation Division and the seven probation offices we reviewed do not have adequate methods for tracking condition of probation fines. The Probation Division cannot oversee the collection of condition of probation fines nationwide because it

does not have its own means of gathering data on fines collected by the probation offices. At the court district level, we observed that the probation offices usually set up a payment record (Probation Form 38). Yet, probation offices have difficulty tracking the collection of condition of probation fines on an officewide basis because the Probation Forms 38 are generally maintained in individual case files.

The seven probation offices we reviewed do not have an efficient process for tracking the cases and accounting for collections. For example, in five of the seven districts we visited, probation officers responsible for supervising the offender must maintain individual fine payment records and track individual cases. In the remaining two districts, probation clerks maintain all fine payment records and notify the probation officers as to the status of fine collection. As with the U.S. attorneys' offices, the probation offices review either the numerous payment receipts the clerks generate for each payment or payment lists prepared daily or weekly by the clerks' offices. When an offender relocates, the number of people maintaining records and tracking the case increases. The original probation office and the probation office in the offender's new location both maintain records.

The majority of probation officials we interviewed did not know that U.S. attorneys' offices also are attempting to track and account for the fines; consequently, probation officials did not notify the U.S. attorneys' offices of changes in the collection statuses of offenders with condition of probation fines.

#### Case tracking and accounting should be centralized

The Justice Department and the Administrative Office need to develop mechanisms for establishing a central system for reporting, tracking, and accounting for all court-imposed criminal fines. Public Law 98-596 shifted primary responsibility for receiving criminal fine payments from the clerks' offices to the Justice Department. By preliminary agreement between the Department and the Administrative Office based on the new law, the clerks' offices are continuing to accept fine payments for offenses committed before January 1, 1985, involving a sentence imposed by a district judge. However, the Justice Department and the Administrative Office have not been able to agree on whether the clerks' offices should continue to receipt fines imposed by magistrates. In a memorandum to the Department, the Administrative Office stated it would not continue the practice of having the clerks' offices collect magistrate-imposed fines unless the Department can provide sufficient justification, by court location, for an exception.

This shift in practice underscores the need for a centralized accounting, tracking, and reporting system. Specifically,

the Justice Department, in order to carry out the lead role, must correct its longstanding problems with accounting, tracking, and reporting criminal fines. Currently, there is no central office in each federal court district which tracks the payment status and notifies judges, the U.S. attorney's office, and probation office of delinquencies. Consequently, these offices do not have timely information on the offenders' compliance with court orders. Further, effort is duplicated because the offices responsible for collections spend time unnecessarily on maintaining records instead of focusing on offenders who do not comply with payment terms. The Justice Department needs to work with the Administrative Office to establish a centralized system which ensures that (1) probation offices receive financial data on the fines they are collecting, (2) amounts collected by the clerks' offices and the Justice Department are consistently accounted for and reported, and (3) duplication of effort maintaining records is minimized.

We noted shortcomings in the financial procedures of the clerk's office, the probation office, and the U.S. attorney's office. Until the enactment of Public Law 98-596, Justice Department and Administrative Office guidance required payments to be sent directly to the clerks' offices. However, we found that procedures differed among districts for routing payment. In one district, a payment from an offender on probation could be sent to the probation office and/or transferred to the U.S. attorney's office before being routed to the clerk's office for deposit in the Treasury. We believe that routing a payment through various offices increases the likelihood of loss, fraud, and abuse. With the enactment of Public Law 98-596, the Department of Justice and the Administrative Office need to establish a standard operating procedure for routing payments which the courts receipt to the Department for deposit in the Treasury.

#### CONCLUSIONS

The Department of Justice and the judiciary do not have the necessary information to ensure that collection and enforcement activities are effectively managed and promptly carried out. Problems exist in identifying, tracking, and accounting for criminal fines due to the fragmentation of responsibility within and among the U.S. attorneys' offices, probation offices, and clerks' offices. To obtain more reliable data, tighten financial controls, and increase efficiency, the Justice Department and the Administrative Office, should work together to establish a centralized tracking, accounting, and reporting system for all court-imposed criminal fines.

#### RECOMMENDATION

We recommend that the Attorney General, working with the Director of the Administrative Office, develop mechanisms for

establishing a central system for reporting, tracking, and accounting for all court-imposed criminal fines. If this is agreed upon, existing procedures should be revised to assign responsibility for performing these functions.

AGENCY COMMENTS  
AND OUR EVALUATION

The Justice Department stated that it is in the process of implementing our proposal that a central system be established in each federal court district for the reporting, tracking, and accounting of all court-imposed fines. Under this system, the U.S. attorneys' offices will be responsible for (1) all fines imposed by the district courts for all offenses committed after December 31, 1984, and (2) a portion of the fines imposed by U.S. magistrates after March 31, 1985. The clerks' offices will be responsible for the receipt and accounting of fines imposed by the district courts for offenses committed before January 1, 1985, and accepting the balance of the magistrate fines. The Department conceded that the degree of centralization of this plan is not as complete as our proposal recommends; however, it believes it is a major step toward this goal.

In following up on the Department's comments, we found that the system described by the Department was not yet operational as of August 1985. However, the Department is in the process of working with the Administrative Office to establish a system for reporting, tracking, and accounting of all court-imposed fines.

## CHAPTER 5

### BETTER USE OF ENFORCEMENT TECHNIQUES AND IMPROVED

#### MANAGEMENT OF INSTALLMENT PAYMENTS WOULD

##### SPEED UP COLLECTIONS

To ensure that criminal fines are collected promptly and managed effectively for law enforcement purposes, enforcement techniques should be used more frequently to compel payment and installment payment plans should be strictly controlled. U.S. attorneys' offices usually have not demanded immediate payment in full and rarely used available enforcement tools. Probation offices have not demanded immediate payment either and have delayed petitions to the court to enforce collections. Although offenders often pay their fines in installments, U.S. attorneys' offices and probation offices have not consistently (1) put installment payment agreements into writing and (2) determined an offender's ability to make a lump-sum payment before permitting installments. Consequently, the number of unpaid fines has been growing because too many offenders are allowed to delay paying off their fines or never pay at all. Under Public Law 98-596 it is uncertain whether the U.S. attorney and probation offices will retain the authority to permit installment payments when installment payments are not ordered by the court.

##### U.S. ATTORNEY AND PROBATION OFFICES SHOULD MAKE BETTER USE OF AVAILABLE ENFORCEMENT TECHNIQUES

A wide range of enforcement techniques, such as demand letters, personal interviews, court-ordered appearances, and seizure of property are available under existing law, Justice Department procedures, and Administrative Office guidelines to compel payment of criminal fines. However, we found that due to a variety of reasons, U.S. attorneys' offices and probation offices rarely use these techniques. Consequently, offenders who pay take their time paying and offenders who do not pay are not forced to pay.

##### Payment should be requested promptly and systematically

The first step in enforcing a fine is the demand letter. Justice Department procedures require U.S. attorneys' offices to send demand letters for full payment within 2 to 10 days after judgment for every case. However, we found that the five U.S. attorneys' offices where we conducted our sample sent demand letters for only 17 percent of the fines where they had a record. Of these, the U.S. attorneys' offices took an average of 143 days to send the letters.

U.S. attorney collection units send demand letters infrequently because they are not notified by the criminal prosecuting attorneys of offenders' addresses. Our review of fines from the five court districts visited showed that where the U.S. attorney collection unit had a record, they did not have an address for 37 percent of the offenders. However, probation officials told us that addresses for offenders can be found in the probation office files. Our review indicated that the probation office had an address for almost every offender in our sample for whom a presentence report was prepared.

The Justice Department and the Administrative Office need to clarify the U.S. attorney collection unit's responsibility for issuing demand letters for condition of probation cases. We found that U.S. attorneys' offices usually do not send a first notice to offenders placed on probation because they consider the probation offices responsible for contacting them. However, the probation officers do not always contact an offender placed on probation regarding payment of a fine immediately after sentencing and are not required by Administrative Office procedures to send demand letters. Further, where the U.S. attorney's office sent a demand letter and a financial statement form to an offender placed on probation, problems sometimes developed because the collection unit demanded full payment while the probation officer permitted payment by installment. Also, the probation officer and the offender did not understand why the U.S. attorney's office was obtaining financial information which the probation office already had obtained. In commenting on the draft report, the Justice Department stated that the Criminal Division and the Probation Division would resolve this issue in an upcoming meeting. The Department believes the U.S. attorney should allow the probation office to make initial efforts to enforce the judgment and should actively employ enforcement techniques only after conferring with the probation office. The Department's plan to resolve this delineation of responsibility with the Probation Division should help end confusion among these offices regarding their responsibilities for issuing the initial demand letter.

Our examination of records in the five districts visited revealed that the probation offices and the U.S. attorneys' offices waited to demand payment from offenders with prison terms until their release from prison and did not determine the offenders' financial ability to pay. U.S. attorney collection personnel and probation personnel told us that they do not pursue these offenders because they believe these offenders do not have the resources to pay the fines because they are in prison and are unemployed. We believe this is why offenders with prison terms are the least likely to pay their fines. We do not believe that there is a good reason to delay enforcement action against offenders with prison terms on the assumption that they do not have the financial ability to pay. If the court based the fine on the defendant's assets prior to sentencing, delays

in demanding payment will allow the offender time to hide, dispose of, or transfer his or her assets.

We believe that a first notice for payment should be sent to every offender who does not pay immediately after sentencing as required by the U.S. Attorneys' Manual. This notice should include a demand for payment, the court-ordered payment or the administratively established payment date, and the penalty for nonpayment. Because the U.S. attorney collection units will increasingly be automated, the task of issuing these letters should be left with these units. Once the notice process is completed, the probation office should pursue collection of the fine when it is a condition of probation. Otherwise, the U.S. attorney's office should pursue collection.

The law (18 U.S.C. 3565) states that criminal fines are to be enforced in the same manner as civil judgments. Therefore, U.S. attorneys' offices can use the different enforcement techniques permitted under the Federal Rules of Civil Procedure to compel payment. For example, a U.S. attorney's office is permitted by the Federal Rules to obtain a court summons directing the offender to appear in court. In court, the offender can be ordered to answer questions under oath or in writing about his/her financial status or explain why he/she has not complied with the court's order by paying the fine. A U.S. attorney's office can file liens on offenders' property to establish the government's claims on their assets and to prevent the sale or transfer of property with good title. Public Law 98-596 strengthens the government's judgment lien by limiting the types of assets which are exempt from the lien. Rule 69a of the Federal Rules of Civil Procedure permits a U.S. attorney's office to obtain a court order, termed a writ of execution, allowing a U.S. marshal to seize an offender's property as complete or partial payment on a fine. The writs of execution can be applied against an offender's income or bank account in a process termed garnishment.

Justice Department guidelines advise U.S. attorney collection personnel to use the more stringent enforcement tools permitted by the Federal Rules of Civil Procedure if the offender does not respond to the demand letter. If the fine involves a condition of probation, Justice guidelines advise the U.S. attorney collection units to permit the probation offices to make collection attempts before taking enforcement action. Justice guidelines, however, provide the U.S. attorney collection units with information on the enforcement techniques available but do not establish requirements as to when specific techniques should be used and how frequently. Similarly, Administrative Office guidelines to the probation offices do not specify when the probation officers should (1) notify the court of the offender's noncompliance with either the order of the court or the probation office, (2) involve the U.S. attorney's office in

enforcement action, and (3) initiate a petition asking the court to extend or revoke the offender's probation.

Our review of debtor cards and case files for our sample selected from five court districts shows that U.S. attorneys' offices attempted to contact the offenders for 9 percent of the cases; probation offices attempted to contact the offenders for 24 percent; clerks' offices attempted to contact the offender for 8 percent; and both U.S. attorneys' offices and the probation offices attempted to contact the offender in 4 percent of the cases. U.S. attorneys' offices and probation offices use passive methods (such as demand letters, written requests for information, and letters to the offender's attorney or warden) and active methods (such as telephone calls and personal interviews) to collect fines. The U.S. attorneys' offices use passive methods more than the probation offices.

U.S. attorney collection units rarely used active collection methods, such as garnishment, seizure of property, court summonses, or contempt of court citations, to enforce payment. We obtained information about garnishment of income in 635 of the delinquent cases.<sup>1</sup> In none of these cases was garnishment used as an enforcement technique. In only 10 percent of the cases was it clear that no income was available to garnish. Income was available to garnish in 20 percent of the cases. In the majority of cases, 70 percent, no financial information was available. The most frequently used enforcement technique was court summonses. This technique, however, was used in only 14 percent of the cases we defined as delinquent and was used most frequently in petty offenses. Of the 70 summonses issued in 1982, none was issued for a felony or misdemeanor case. Warrants were issued against 4.5 percent of the offenders who were delinquent and 2 percent of the offenders who were arrested. Less than 1 percent of the offenders had property seized, were cited for contempt of court, or imprisoned for nonpayment.

If an offender does not pay a fine on time, he/she could be subject to imprisonment or an additional fine for contempt of court under 18 U.S.C. 401. However, we found that U.S. attorney collection units usually do not notify the courts of missed payments or request alternative sanctions, such as imprisonment for contempt of court, if the offender does not pay.

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<sup>1</sup>We established our own criteria for defining delinquency because neither the Department of Justice nor the Administrative Office has a standard definition. We considered the offender delinquent if the offender had not (1) paid the fine and the payment date had expired or (2) followed the payment terms set by the sentence, the probation office, or U.S. attorney's office.



An offender can be contacted by a probation officer about fine payments numerous times throughout the probation period. However, the number of contacts probation officers make varies among and within offices. For example, in one district, a probation officer made 38 contacts to collect a \$500 fine without ever notifying the court. In another district, a probation officer made 16 contacts to collect a \$500 fine before petitioning the court for revocation of probation. Probation officers usually do not contact the court regarding missed payments and modification of the probation term until near the end of the probation term. We obtained information about extension or revocation of probation in 478 of the delinquent cases. In 8 percent of these cases probation was extended or revoked. In most of the cases where probation was extended or revoked, probation officers asked the court to extend probation to the 5-year maximum period. If fines were still unpaid at that time, the probation officers usually petitioned the court to cancel the unpaid balance.

The Justice Department and the Administrative Office do not have enforcement policies for fines to reduce delays and ensure consistent and effective enforcement. U.S. attorney collection personnel and probation officers have broad discretion in determining what action to take and for how long. We believe that sentences involving a fine and probation are the most likely to be eventually paid because probation officers make attempts to personally contact probationers regarding payment. However, the Administrative Office should issue guidance to limit the number of requests that probation officers make for payment before notifying the court and submitting a petition for modification of probation. Under Public Law 98-596, probation officers are required to report to the court any failure of an offender under their supervision to pay an amount due as a fine; however, the law does not set a time frame for reporting.

Public Law 98-596 sets forth the Justice Department's authority to call in the entire unpaid balance of the fine if a scheduled payment is missed. This provision underscores the need for guidance from the Justice Department specifying when the U.S. attorneys' offices should demand payment of the entire unpaid amount after the offender has defaulted.

#### Factors hampering enforcement

Several factors contribute to the lack of enforcement action or delays in enforcement. Within the U.S. attorneys' offices, collections, especially criminal fine collections, receive low priority and suffer from staffing problems. The majority of U.S. attorney collection personnel we interviewed told us that they are too busy handling the civil collection caseload and accounting for criminal fines to spend much time enforcing the collection of criminal fines. The Justice Department has attempted to improve collections by updating the

U.S. Attorneys' Manual and providing training classes to collection personnel. Fine collection is also a low priority within probation offices, but not because of staffing problems. Most probation officers interviewed view "bill collection" as contradictory to their rehabilitative duty and seldom recommend revocation of probation because fines have not been paid. Administrative Office guidelines on probation supervision state that probation officers should not focus on payment of the fine to the neglect of other supervision problems.

Another factor affecting enforcement is that the use of available enforcement tools can prove to be time-consuming, especially in complex cases where offenders transfer or hide their assets. For example, in a major case involving medicare fraud and a \$300,000 fine, the U.S. Attorney's Office questioned the offender and his wife regarding their assets, asked the Federal Bureau of Investigation to conduct a financial investigation, participated in several proceedings to seize the offender's assets, employed foreign lawyers to stop the movement of money, and requested a court order directing the offender to transfer any assets no matter where located to the U.S. government. A \$300,000 account was established of which the government will receive \$50,000 initially and the balance over a 3-year period.

State laws and confusion about statutory authority can also hinder law enforcement. The type of property and amount of wages that can be seized and garnished is determined by state law. According to the Chief of the U.S. Attorney Collection Unit for the Western District of Texas, a Texan's home, personal property, and income are protected by the state's homestead statutes from seizure and garnishment. Although the Chief of the Criminal Division Collection Unit told us that the offender can be imprisoned under 18 U.S.C. 401 for contempt of court on the basis of willful refusal to pay the fine, the majority of U.S. attorney collection personnel told us that they could not carry out a threat of imprisonment. They were either unaware of the specific statute that authorizes this or knew of no cases where this has been done. Further, several told us they do not go back before the court for alternative sanctions because after the 120-day period allowed for petitioning the court to reduce its sentence, the district court may not reduce its original sentence. Public Law 98-596 now establishes willful nonpayment as a criminal offense punishable by imprisonment and/or increased fine amounts.

U.S. ATTORNEY AND PROBATION  
OFFICES NEED TO IMPROVE  
MANAGEMENT OF INSTALLMENT  
PAYMENTS

Both Justice Department and Administrative Office guidelines permit fines to be paid in installments. Under current

practice, the U.S. attorney and probation officers often allow fines to be paid on an installment basis when the court order does not specify payment terms. Our analysis of fines showed that 43 percent of the offenders who made payments paid in installments. We found that both the U.S. attorney's office and the probation office do not (1) adequately document installment payment plans and (2) establish the offender's ability to make an immediate lump-sum payment before approving installment payment plans. Under Public Law 98-596, the court order will provide for immediate payment of a fine unless the court specifies payment on a certain date or in installments.

Pending issuance of guidance from the Administrative Office and the Justice Department, it is not certain whether under Public Law 98-596 the U.S. attorney and probation offices will retain the discretion to grant or change an installment payment schedule when either (1) installment payments are not ordered by the court or (2) the offender is financially unable to comply with the installment payment schedule ordered by the court. Nevertheless, the U.S. attorneys' offices and the probation offices need to tighten their management of installment payment agreements if criminal fines are to be effective as sanctions and promptly paid.

Installment payment plans  
should be better documented

The Justice Department's guidance does not require that installment payment plans be put into writing. However, the Administrative Office's guidance does require probation officers to develop a written plan explaining the payment terms to the probationer. The U.S. attorneys' offices usually do not prepare written installment payment plans. U.S. attorney collection officials told us that they prefer not to prepare written installment agreements because they are time-consuming and may be counterproductive if accelerated payments become more appropriate at a later date. Similarly, probation offices generally do not have written installment plans, although this is required by Administrative Office guidance.

We believe that installment payment plans should be documented in writing as a matter of standard procedure. Only one probation office we visited, the central district of California, has a written procedure for documenting payment terms. The office has incorporated the written payment plan in Probation Form 7, which documents the discussion of the probation conditions with the offender. The form identifies the amount of each payment, the payment date, and the date payments should begin.

Without formal installment agreements, the U.S. attorneys' offices and the probation offices cannot monitor the offender's compliance with payment terms on a systematic basis. Also,

these offices have problems enforcing fines because they cannot document for the court that the offender understood and agreed to the payment terms.

Financial ability should be assessed before granting installments

To the extent that the Justice Department and the Administrative Office continue to allow installment payments under Public Law 98-596, they should provide guidance to the U.S. attorneys' offices and the probation offices requiring that the offender's inability to make a lump-sum payment be documented before installment payment agreements are permitted. While installment payments can be a useful collection technique, they lessen the efficacy of fines as a law enforcement sanction if (1) they are permitted for offenders who are able to make a lump-sum payment or (2) the payment period established is extremely long.

According to the Chairman of the Judicial Conference Committee on Probation, installment agreements for fines imposed as sentences should be granted rarely because these sentences are intended as punishment and consequently should be collected immediately, using enforcement techniques if necessary. The Chairman told us that installment agreements should not be granted for condition of probation fines unless the probationer is financially unable to pay in full. However, we found that the practices of the U.S. attorney and probation offices are not consistent with this view.

According to the U.S. Attorneys' Manual, fines should be paid immediately. The U.S. attorneys' offices are authorized to permit payment by installment if an offender is financially unable to pay in full and this status is supported by financial information. Both the U.S. attorneys' offices and the probation offices often permit installment payments and do not adequately evaluate the offender's ability to pay in full immediately. The majority of districts we reviewed permit offenders to pay throughout their probation terms if they do not or cannot pay in full immediately. Installment agreements established by the U.S. attorneys' offices can span many years. The U.S. attorneys' offices are required to obtain a financial statement from the offender if they have inadequate information on the offender's condition. Our random sample of fines showed that the U.S. attorneys' offices requested financial statements in only 15 percent of the cases where they had records of the fine. We believe the U.S. attorneys' offices and the probation offices should be less lenient in permitting and arranging installment payments.

Old cases are not reviewed

Most of the U.S. attorney collection personnel whom we interviewed told us that they do not have time to review old

cases. Our review indicated that although Justice Department guidance advises the U.S. attorneys' offices to review cases at least annually, the offices usually do not do this. The U.S. attorneys' offices keep uncollectable accounts open until the offender is presumed to be dead. Consequently, the number of accounts requiring collection attention continues to increase, and the amount of the government's accounts receivable is artificially inflated. According to the Justice Department, about \$85 million of the \$132 million outstanding as of May 31, 1983, was delinquent and uncollectable because no payment had been made in a year. Due to the lack of collection action, we believe the U.S. attorneys' offices do not know how many of their fines are actually uncollectable.

### CONCLUSIONS

The Justice Department and the courts are not promptly collecting fines and aggressively enforcing the offender's compliance with court orders. Most offenders delay payment or do not pay because they are not forced to pay. Although the Justice Department has lead responsibility for collecting fines imposed as sentences, it rarely (1) issues demand letters, (2) attempts to contact offenders, (3) files liens, (4) garnishes wages, or (5) seizes property. Available enforcement techniques have rarely been used because U.S. attorneys' offices generally place a low priority on collections and some states' laws limited the use of certain techniques, such as garnishment and seizure of property. The probation offices are more active in contacting offenders; however, the number of contacts probation officers make before contacting the court to enforce collection varies and can be extensive.

Many offenders have paid in installments because the U.S. attorneys' offices and the probation offices do not adequately determine offenders' inability to make a lump-sum payment prior to permitting installment payments. Because installment agreements and payment terms are not well documented, it is difficult for U.S. attorney and probation offices to assess the offender's compliance on an individual and systematic basis. Pending issuance of guidance from the Administrative Office and the Department of Justice, it is not certain whether under Public Law 98-596 the U.S. attorney and probation offices will retain the discretion to grant or change an installment payment schedule.

### RECOMMENDATION

We recommend that the Attorney General and the Director of the Administrative Office work together to establish a policy on when enforcement techniques should be used by the U.S. attorneys' offices and the probation offices. This policy should include time frames for accomplishing critical steps in the enforcement process.

AGENCY COMMENTS AND  
OUR EVALUATION

The Justice Department concurred with our recommendation that a policy be established outlining enforcement techniques in conjunction with a time frame. The Department was of the opinion that present policy clearly delineated that preparing demand letters, filing liens, obtaining financial information, and applying creditor's remedies should be accomplished as soon as possible after sentencing. However, to clarify any misunderstanding it agreed to revise the United States Attorneys' Manual. The Administrative Office, on the other hand, stated that the only authority a probation officer has to enforce the collection of a fine is to petition the court to revoke probation if the fine is a condition of probation. According to the Administrative Office, only the Executive Branch through the Justice Department has full enforcement authority.

We believe the Administrative Office has applied a narrow interpretation to our use of the term "enforcement." Our recommendation addresses the need for a policy on when enforcement techniques should be used. On page 31 of our report, we described enforcement techniques as including not only actions requiring court involvement, such as garnishment of wages and seizure of property, but administrative actions, such as demand letters, written requests for information, letters to the offender's attorney, telephone calls, and personal interviews. We recognize that the Justice Department participates in legal actions to enforce payment of criminal fines that require court involvement. However, probation officers can and do take such preliminary actions as sending letters and contacting the offender by telephone or in person to collect the fine because they are responsible in the first instance for ensuring that probationers pay the fine in accordance with the court's order. Further, according to Administrative Office guidance, the probation officer should notify the court regarding the probationer's failure to comply with the court's order and can petition the court, if the offender has not complied with the court's order, to extend or revoke the offender's probation. These are also techniques that probation officers use to enforce payment of the fine in accordance with the court's order. The Department of Justice is in the process of working with the Administrative Office to develop a memorandum of understanding on the handling of condition of probation fines.

In a draft of this report, we proposed that Justice and the Administrative Office establish policies requiring that U.S. attorney and probation offices document installment agreements and the offender's inability to make a lump sum payment before allowing installment payments. The Justice Department did not respond to our proposal that, to the extent still permitted, the U.S. attorneys' offices and probation offices be required to document installment agreements. The Administrative

Office, however, contends that, under the new law, neither the U.S. attorneys' offices nor the probation offices have the authority to accept installment agreement offers or payment terms. The Administrative Office stated that the new act resolved this matter in that payment of a fine is immediate unless, in the interest of justice, the court specifies payment on a date certain or by installments. The Administrative Office further stated that under new subsection (b)(1)(B) of 18 U.S.C. 3565, the judge is required to include in the judgment the name and address of the defendant, the docket number of the case, the amount of the fine, and (if other than immediate payment of the fine is ordered) the schedule of payments.

We recognize that Public Law 98-596 specifies that judgments are to provide for immediate payment unless the court specifically directs payment on a certain date or in installments. We have not taken a position on whether the U.S. attorney and probation offices may allow installment payments when the judgment does not specifically authorize them. The statute and legislative history do not specifically address this point and a Justice Department official told us that the Department has not yet decided how it will interpret this provision.

The Justice Department agreed with our proposal that policies be established requiring documentation of an offender's inability to pay in full before permitting installment payments. However, it pointed out that this recommendation is difficult to implement because the real problem is deciding whether to accept voluntary payment or expend already scarce resources to identify the offender's assets. The Department believes that if financial information can be obtained from the court, as we recommend in chapter 3, the institution of this procedure will be a major step in reducing the burdens of fine collection. The Justice Department further stated that the Criminal Division has also recommended obtaining financial information from the prosecutor and agency investigator through the creation of the Criminal Fine/Forfeiture Litigation Report. We believe that the creation of the Criminal Fine/Forfeiture Litigation Report may help the U.S. attorney collection units obtain financial information; however, the optimal solution would be if the Department could obtain financial information from the courts provided that the probation offices improve their financial reports.

The Administrative Office, in commenting on this proposal that U.S. attorneys' offices and probation offices document a defendant's inability to pay in lump sum before permitting an installment plan, stated that the probation officer is required to document this in the presentence report. Afterward, it is up to the court to decide whether an installment plan should be permitted. While we recognize that the Administrative Office's guidance advises probation officers to document the offender's inability to pay in the presentence report, we found that probation officers do not always document this information in the presentence report.

Because it is not clear if U.S. attorney and probation offices will retain discretion to grant or change installment payment scheduling, we deleted our proposals. However, we believe that under the new law a procedure will be needed to recognize changes in an offender's ability to adhere to installment plans established by the courts. In that event, the Department and Administrative Office will need to do a better job of documenting changes made to payment terms and assessing the offender's ability to pay.



### SAMPLING METHODOLOGY

This appendix describes how we selected audit locations, drew our sample, projected the data from our sample, and analyzed the results.

#### SELECTION OF LOCATIONS

To determine which of the 94 federal court districts to review, we ranked each district using data from (1) the Administrative Office of the U.S. Courts on the amount of fines imposed and (2) the Justice Department on the amount of fines unpaid as of September 30, 1982. Each of the seven districts we selected consistently ranked in the top third over a 5-year period in terms of amount imposed. Together these districts accounted for 19 percent of the \$90.3 million in fines imposed by the federal courts during fiscal year 1982. The federal court districts we selected had rankings ranging from 2 to 30 in terms of the amounts unpaid as of September 30, 1982. The Clerk's Office for the Central District of California and the U.S. Attorney's Office for the District of New Jersey both were implementing new automated systems which affected their criminal fine collection process.

#### SELECTION OF AUDIT CASES

Our sample was drawn from the Administrative Office of the U.S. Courts' computer file and records in the clerks' offices. The sample was selected from two sources because our preliminary fieldwork indicated that the Administrative Office of the U.S. Courts, as a general practice, does not include all court-ordered petty fines in its computer file. Further, we selected our sample from the judiciary's records because our preliminary field work indicated that the Justice Department did not include all criminal fines in its computer file.

We stratified the cases at each location for the five districts on the basis of the dollar amount of the fine initially imposed. This was done because our previous survey work indicated that a simple random sample of all cases would tend to include too many small dollar fines for our purposes. The categories used were (1) fines less than or equal to \$500; (2) fines between \$501 and \$1,000; and (3) fines larger than \$1,000.

#### PROJECTION OF SAMPLE RESULTS

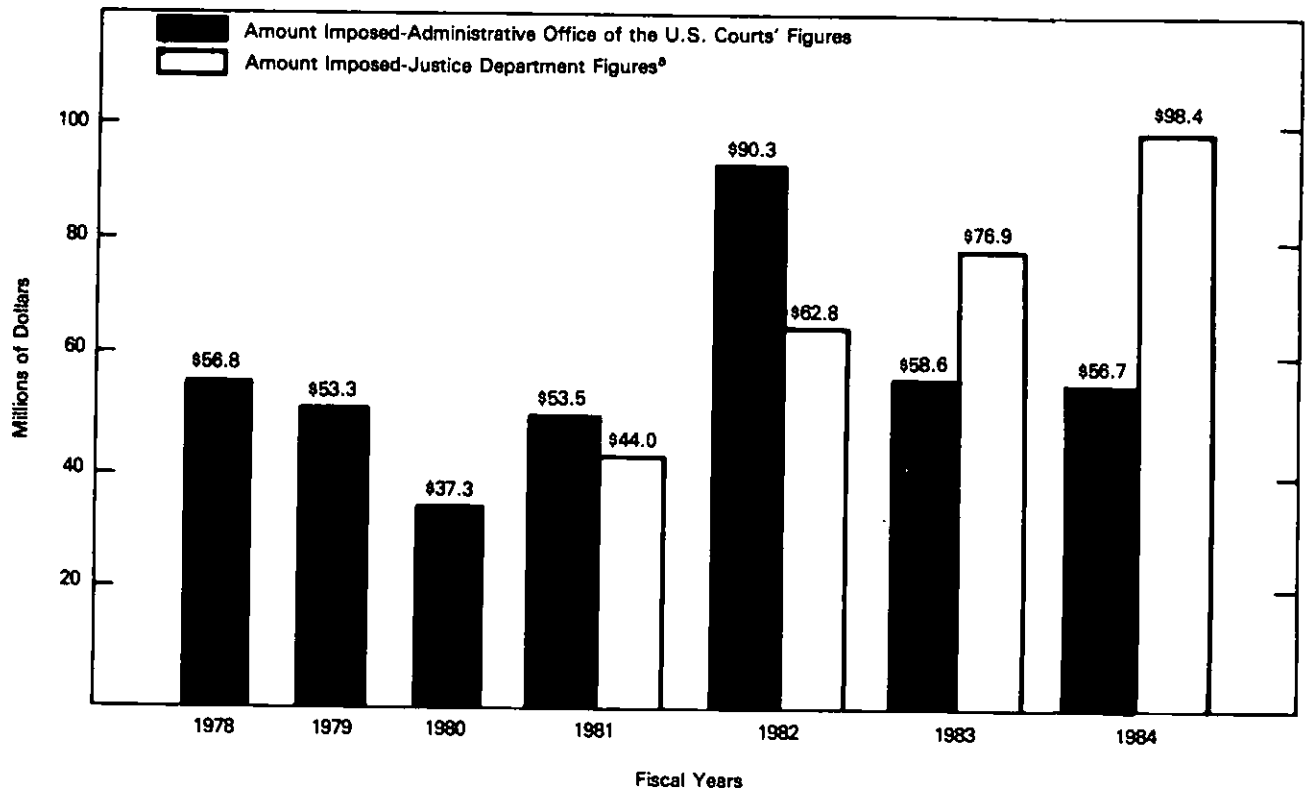
After computerizing the data base, we weighted the data in order to project sample results to all cases processed in each court district during the 2 judicial statistical years we reviewed. The following example illustrates our weighting methodology. One district had a total of five cases where a fine of \$500 or less was imposed. All five of these cases were included in our sample and were weighted as 1 in our analysis. Another district had 154 cases where a fine of over \$1,000 was imposed. We included only 30 of these cases in our sample and weighted

each 5.13. Therefore, cases from the first example would be projected to 5 cases whereas the 30 cases in the second district would be projected to 154 cases, its original proportional share in the universe.

#### METHODS OF ANALYSIS

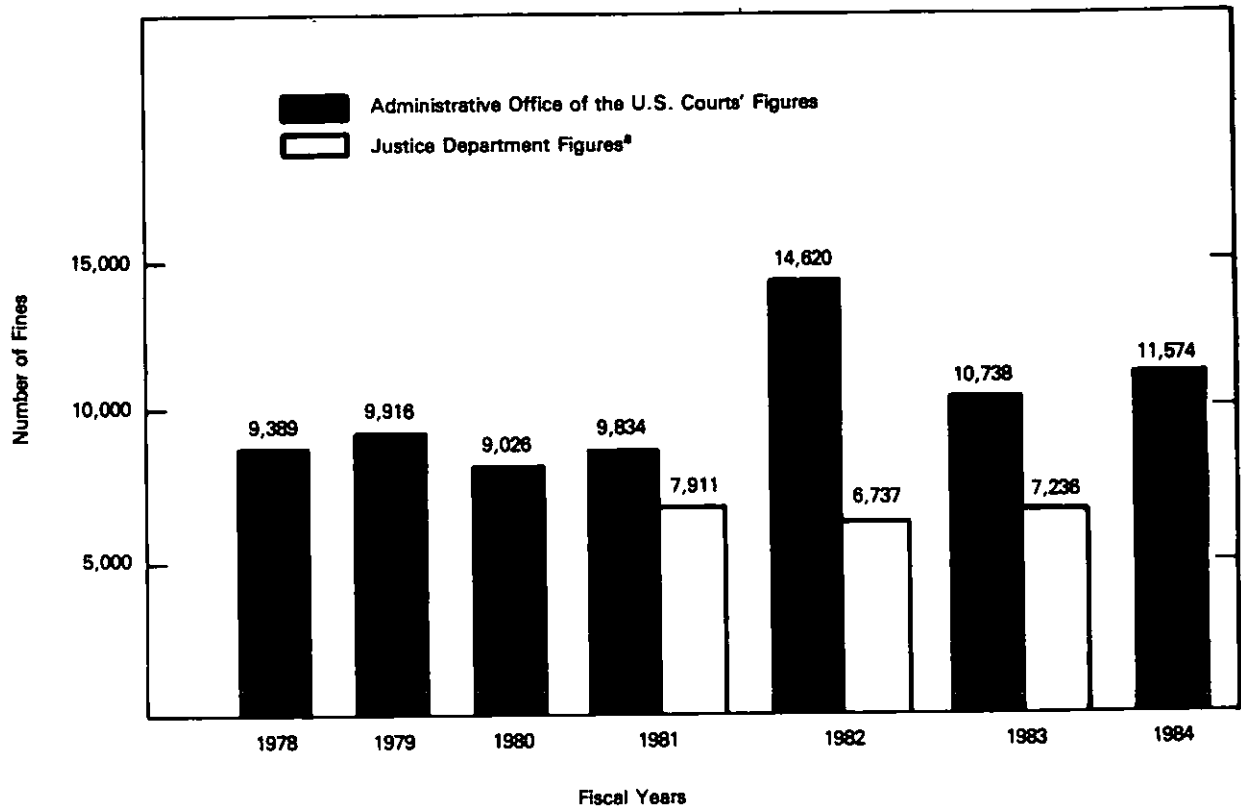
The complexity of the required sampling plan tended to restrict the analysis we could perform. Much of the data presented are weighted frequencies or means for the data we collected. We used regression analysis to determine the effect of certain variables on the amount of fine collected. These variables included the court district, the amount imposed, the year of imposition, the availability of financial information, and the type of fine imposed. In making these determinations, we used a 95 percent confidence level.

AMOUNT OF CRIMINAL FINES IMPOSED



<sup>a</sup>Justice Department figures for fines imposed during fiscal years 1978-1980 are not shown because, according to a Justice official, the figures are inaccurate.

**NUMBERS OF CRIMINAL FINES IMPOSED**



\*Justice Department figures for fines imposed during fiscal years 1978-1980 are not shown because, according to a Justice official, the figures are inaccurate. The fiscal year 1984 figure is not shown because it was not available.

JUSTICE DEPARTMENT'S FIGURES ON U.S. ATTORNEY  
CRIMINAL FINE COLLECTIONS AS OF 06/30/83  
FISCAL YEARS 1968-1983<sup>a</sup>

<u>Year</u>	<u>Beginning Balance</u>	<u>Imposed</u>	<u>Collected</u>	<u>Other<sup>b</sup></u>	<u>Ending Balance</u>
1983	\$120,323,443	\$78,871,595P	\$33,743,792P	\$18,349,699P	\$147,101,547P
1982	91,765,932	62,828,522	28,553,655	5,717,356	120,323,443
1981	79,823,972	42,114,094	27,554,503	2,617,631	91,765,932
1980	67,121,338	37,498,821	21,336,483	3,459,704	79,823,972
1979	61,835,477	32,461,879	24,909,919	2,266,099	67,121,338
1978	50,695,130	31,117,197	18,312,620	1,664,230	61,835,477
1977	38,225,709	42,991,301	18,665,388	11,856,492	50,695,130
1976	34,067,592	21,570,846	14,923,614	2,489,115	38,225,709
1975	28,245,260	20,830,527	12,739,098	2,269,097	34,067,592
1974	25,296,613	17,656,757	12,179,797	2,528,313	28,245,260
1973	20,980,322	19,693,603	14,034,547	1,342,765	25,296,613
1972	17,733,098	12,801,716	8,701,245	853,247	20,980,322
1971	15,937,978	11,683,897	8,590,932	1,297,845	17,733,098
1970	14,491,540	7,369,778	5,923,340	---	15,937,978
1969	13,108,133	6,924,010	5,540,603	---	14,491,540
1968	11,666,808	6,885,440	5,444,115	---	13,108,133
16 Year Totals:		\$453,299,983	\$261,153,651	\$56,711,593	
% Changes:	+931%	+1,045%	+520%	+1,314%	+1,022%

For fiscal year 1983, P = Projected based on statistics through June 30, 1983, (minus 9 PROMIS districts for all or portions of fiscal year 1983).

Receivables \$464,966,791  
 Other Termination (56,711,593)

Net Receivables \$408,255,198

Collected \$261,153,651  
 Net Effective Rate = 64%

<sup>a</sup>Presented as part of the statement of James I. K. Knapp, Deputy Assistant Attorney General, Criminal Division, before the House of Representatives, Committee on the Judiciary, Subcommittee on Criminal Justice, on August 3, 1983.

<sup>b</sup>Includes fines remitted by the court at end of term of probation and those discharged by pardon, death of the debtor and reversal of conviction on appeal.

CHARACTERISTICS OF SENTENCES WITH FINES

We examined the judgment orders for our sample of fines to determine (1) what types of sentences with criminal fines were imposed in the five court districts we sampled and (2) whether the type of sentence is a factor in collections. On the basis of our sample, it appears that fines imposed as a condition of probation make up half the fines imposed. However, fines imposed as a sentence make up the majority of the dollar amount imposed. We could not determine precisely how many fines are imposed as conditions of probation compared with the number of fines imposed as sentences because the court judgment orders were not specific in all cases. Therefore, we could only approximate how many fines in our sample, in terms of numbers and dollars imposed, are (1) conditions of probation fines and (2) sentences. The following table contains our estimates.

<u>Type of fine</u>	<u>Number imposed</u>	<u>Dollars imposed</u>
	----- (percent) -----	
Fines imposed as a condition of probation	45	16
Fines imposed as a sentence	<u>55</u>	<u>84</u>
Total	<u>100</u>	<u>100</u>

Our analysis of sentences with fines for both sample years (1979 and 1982) shows that the courts often impose fines in conjunction with a probation term. The following table shows for the different types of sentences with fines the percentage of fines imposed and dollars imposed.

<u>Types of sentences</u>	<u>Fines imposed</u>	<u>Dollars imposed</u>
	----- (percent) -----	
Fine only	25	53
Fine with probation	48	12
Fine with prison and probation	10	18
Fine with prison	6	8
Other	<u>11</u>	<u>9</u>
Total	<u>100</u>	<u>100</u>

Our examination of the sentences imposed also showed that about 54 percent of the fines imposed with a prison term are "committed fines" which require the offender to pay the fine or be imprisoned. This condition places more pressure on the offender to pay. In our analysis of committed fines, we found the following.

--Sixty-four percent were fully paid and 6 percent were partially paid.

--Fifty-six percent were fines where the court suspended the prison term and ordered the offender to pay the fine or go to prison. Fines with this condition have a high likelihood of being collected: 94 percent of the 1979 sample was fully paid and 87 percent of the 1982 sample was either fully paid or partially paid.

--Forty-four percent were fines where the court ordered the offender to stay in prison until the fine was paid. Fines with this condition are less likely to be collected: 56 percent of the 1979 sample and 40 percent of the 1982 sample was fully paid or partially paid.

Federal judges imposed 60 percent of the fines, while magistrates imposed 40 percent. In the cases for which we had information, about 74 percent of the offenders were originally charged with committing a felony. Once a sentence was imposed, about 9 percent of the offenders appealed their sentences either to the district court or the court of appeals. In half of the cases where we were able to make a determination, offenders who appealed were successful in having their fines reduced.

On the basis of our random sample, it appears that most of the fines imposed are consistent with the offender's financial ability to pay prior to sentencing. We analyzed the relationship between the defendant's financial status as reported in the presentence report and the amount of the fine imposed. As discussed below, we did not have presentence financial data for many offenders with fines. However, in those cases where financial data were available, we found that offenders had assets that were greater than their fines in 68 percent of the cases. We compared the amount of fines collected from two groups of offenders--those whose fines were in excess of their reported assets and those whose fines were not. Our analysis indicated that those whose fines were in excess of their assets were less likely to pay in full than those whose fines did not exceed their assets. For example, of the 1979 felony and misdemeanor cases, 66 percent of the group whose fines exceeded assets paid in full compared to 81 percent of the group whose assets exceeded fines. Of the 1982 cases, the figures were 33 percent for the group with assets less than fines imposed and 48 percent for the group with assets greater than fines imposed.



**ADMINISTRATIVE OFFICE OF THE  
UNITED STATES COURTS**

WASHINGTON, D.C. 20544

WILLIAM E. FOLEY  
DIRECTOR

February 11, 1985

JOSEPH F. SPANIOL, JR.  
DEPUTY DIRECTOR

Mr. William J. Anderson  
Director  
General Government Division  
United States General Accounting Office  
Washington, D.C. 20578

Dear Mr. Anderson:

This letter responds to your request for comments on your latest proposed report entitled, "Improvements Needed in the Collection of Criminal Fines". We appreciate the opportunity to review and comment on the report and its recommendations.

The General Accounting Office and this office have worked together on many occasions to provide accurate information and comments on areas related to the Judiciary. Most of the final reports of the General Accounting Office have been well researched and have provided helpful, well considered recommendations.

This report contains many issues which are no longer pertinent or which have been substantially modified by the passage of the Criminal Fine Enforcement Act of 1984, P.L. 98-596. Your original report was substantially completed before the passage of the new act. Such a substantial revision of the law relating to the collection of criminal fines would seem to require a major rewrite of the original report. That appears not to have been done. The redrafted report seems only to have added comments about the new act to various sections of the report. It fails to incorporate fully the provisions of the act into either the discussion of the problems or the recommendations for improvements in fine enforcement and collection procedures. This failure results in an inadequate explanation of current fine enforcement procedures and responsibilities.

For example, on p 27 your report states that:

"The Justice Department and the Administrative Office can overcome the problems caused by fragmentation of responsibilities and minimize duplication of effort by centralizing case tracking and accounting functions within one office at the judicial district court level..."

(GAO Note: Page references have been changed to correspond to the final report.)

Mr. William J. Anderson  
Page 2

The new law clarifies this issue and provides in an amendment to 18 U.S.C. 3565 that:

"(d)(1) Except as provided in paragraph (2) of this subsection, the defendant shall pay to the Attorney General any amount due as a fine or penalty.

(2) The Attorney General and the Director of the Administrative Office of the United States Courts may jointly provide by regulation that fines and penalties for specified categories of offenses shall be paid to the clerk of the court."

Thus, the new act contemplates that any case tracking and accounting system should be located within the Justice Department. (See GAO Note.)

The procedures outlined in the new law are, therefore, consistent with my earlier statements that in criminal, as well as civil cases, it is the responsibility of the Executive Branch — through the Department of Justice — to enforce and execute the judgments of the court, including the collection of criminal fines. The legislative history, as contained in the Committee Report states clearly:

Receipt of criminal fines by the court clerks is inconsistent with the function of the judicial branch to adjudicate rights between litigants. The prevailing party in a case is responsible for collecting on the judgment, and there appears to be no compelling reason to depart from that policy **except in limited circumstances.** (emphasis added) House Rep. No. 98-906, 99th Cong., 2d Sess. (1984).

Therefore, your first joint recommendation to the Judicial Conference and the Attorney General should reflect that, except as provided by agreement between the Administrative Office and the Justice Department concerning the physical receipt of fines in limited circumstances, the Justice Department should centralize case tracking...

In regard to your recommendation to the Judicial Conference that we develop a standard financial report form for probation officers to use, the Probation Division has recently revised Publication 105, The Presentence Investigation Report, which outlines the factors that should be included in the financial section of the presentence investigation report. The Probation Division will continue to work with the Federal Judicial Center in developing training for probation officers in the areas of gathering and assessing financial data.

The second recommendation to the Judicial Conference requests that we provide guidance to probation officers in routinely disseminating financial information in the presentence reports to the U.S. Attorneys. Rule 32(c) of the Federal Rules of Criminal Procedure provides that a reasonable time before sentencing the court must permit the defendant and the attorney for the government to review the presentence report. After sentencing, any further dissemination of the report or of additional probation information is at the discretion of the court, not the probation officer. See United States v. Charmer Industries, Inc., 711 F.2d 1164 (2nd Cir. 1983). Upon the request of the collection unit of the Department of Justice, U.S. probation officers will, however, assist by requesting that persons under their supervision who owe a fine complete and return a Department of Justice financial statement. This should provide the Department of Justice ample opportunity to obtain the information they require for their records.

(GAO Note: We believe that the Administrative Office has taken the statement quoted in our report out of context. On page 28, we noted that Public Law 98-596 shifted responsibility for receipting fine payments from the courts to the Justice Department. However, we have modified the paragraph on page 27 and revised the recommendation to eliminate any possible misunderstanding and provided updated information.)

Mr. William J. Anderson

Page 3

The third recommendation to the Judicial Conference asks that we provide guidance to judges and magistrates on the need to define clearly in court orders the type of fine being imposed. The Federal Judicial Center is in the process of updating the Bench Book to reflect the recent legal requirements of this act. In addition, the Magistrates Division has indicated that it will update the U.S. Magistrates Legal Manual to incorporate the requirements of the new law. We are also in the process of revising the A.O. 245, the Judgment and Probation/Commitment Order to reflect changes in the law. In addition, probation officers will be trained in these areas and the need for their presentence investigation reports to contain specific information on these matters. (See GAO Note.)

The report also recommends that the Judicial Conference and the Attorney General require, to the extent still permitted, that U.S. Attorneys' offices and probation offices document installment agreements and that we provide guidance to these offices on accepting installment agreement offers and payment terms. This matter has been resolved by the new act in that payment of a fine is immediate unless, in the interest of justice, the court specifies payment on a date certain or by installments. H.R. Rep. id at 7. While both offices might be required to document the installment agreements under the new law, neither will have the authority to accept installment agreement offers or payment terms. Under new subsection (b)(1)(B) of 18 U.S.C. 3665, the judge is required to include in the judgment the name and address of the defendant, the docket number of the case, the amount of the fine, and (if other than immediate payment of the fine is ordered) the schedule of payments [Emphasis added] H.R. Rep. id.

The third recommendation to the Judicial Conference and the Attorney General requests that we revise procedures, to the extent still permitted, to require that U.S. attorneys' offices and probation offices document a defendant's inability to pay immediately in lump sum before permitting an installment plan. The probation officer is already required to include this as a factor in the financial section of the presentence report. It is then up to the court whether to permit an installment plan under the new act.

The fourth and final recommendation to the Judicial Conference and the Attorney General requests that we establish a policy, with time frames, on when enforcement techniques should be used by the U.S. attorneys' offices and the probation offices. We must point out that the only authority a probation officer has to enforce the collection of a fine is to petition the court to revoke probation if the fine is a condition of probation. Only the Executive Branch through the Justice Department has full enforcement authority. The new act authorizes the enforcement of a judgment imposing a fine "in like manner as judgments in civil cases." The Department of Justice has also been provided with a "super" judgment lien to improve their ability to enforce a judgment imposing a criminal fine. Other enforcement procedures for the Justice Department and time frames are delineated in the new law's amendments to 18 U.S.C. 3565.

Another issue that concerns us is the statement (page 26) that the reason why the U.S. attorney collection units do not identify and record many fines is "because they do not consistently receive court judgment orders notifying them of the imposition." Subsection (e) of 18 U.S.C. 3565, as amended by P.L. 98-596, requires the clerk of the court to furnish the Justice Department with a certified copy of every judgment that imposes a criminal fine in excess of \$500 [emphasis added]. The clerks of the court in many districts do provide the Department of Justice with a copy of every Judgment and Commitment Order. In addition, we can request in a memorandum to all clerks of court

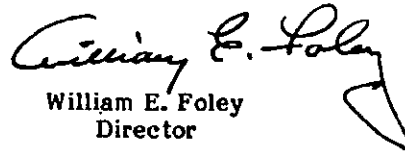
(GAO Note: We believe that these actions, if implemented, should address our proposal. Therefore, we have dropped our proposal that guidance be provided to judges and magistrates in light of the actions being taken by the Administrative Office.)

Mr. William J. Anderson  
Page 4

that they routinely provide the Department of Justice with a copy of every Judgment and Commitment Order. It then becomes the responsibility of the Department of Justice to insure that their collection units receive a copy of those judgments where the fines are imposed. (See GAO Note.)

We appreciate the opportunity to review and comment on the proposed report. Judge Gerald Bard Tjoflat, Chairman of the Judicial Conference Committee on the Administration of the Probation System, has reviewed these comments and concurs therein. Should you need any additional information, please feel free to contact us.

Sincerely,

  
William E. Foley  
Director

cc: Honorable Gerald Bard Tjoflat

(GAO Note: To eliminate any possible misunderstanding, we have revised the statement.)



## U.S. Department of Justice

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Washington, D.C. 20530

March 25, 1985

Mr. William J. Anderson  
Director  
General Government Division  
United States General Accounting Office  
Washington, D.C. 20548

Dear Mr. Anderson:

This letter responds to your request to the Attorney General for the comments of the Department of Justice (Department) on your draft report entitled "Improvements Needed in the Collection of Criminal Fines."

First, we would like to commend the General Accounting Office (GAO) staff for their ability to examine a complex topic and make recommendations that we believe will not only improve criminal fine collections, but will promote the effectiveness of the criminal justice system. To adequately respond to the draft report, we solicited comments from the several organizational components within the Department concerned with the management and collection of criminal fines. Although the Department agrees with the draft report's recommendations, we are taking this opportunity to express our views on several of the recommendations and offer comments relative to two statements made in the report.

Overall, the problems cited in the draft report relating to criminal fine management and enforcement are similar to those recognized by the Department. We believe the general theme of the report, which suggests that the Judicial Conference and the Department work jointly to develop practices and procedures to improve the criminal fine collection process, is a desirable approach and definitely worth pursuing. In fact, the recently enacted Criminal Fine Enforcement Act of 1984 mandates such an approach. The Department, on its own, made one such attempt in this direction in December 1983 when a "Memorandum of Understanding" was developed with the intent of promoting agreements on collection procedures at the district level between the United States attorneys' offices and the United States probation offices. (See Section 9-122.070 of the United States Attorneys' Manual). The Department's Criminal Division and the Probation Division of the Administrative Office of the United States Courts will, in the near future, collaborate to revise that "Memorandum of Understanding" in light of the new criminal fine enforcement legislation. The "Memorandum of Understanding"

(GAO Note: Page references have been changed to correspond to the final report.)

- 2 -

will be issued to United States attorneys and United States probation officers under the imprimatur of both offices. The Department wholeheartedly concurs with the recommendation that the Judicial Conference develop a standard financial report that can be disseminated to United States attorneys' offices. This information is essential for effective fine enforcement in that the newly enacted statute, 18 U.S.C. 3622, requires the court to consider the defendant's income, earning capacity, and financial resources before making a determination to impose a fine and establish an amount. It would now appear even more necessary that the court share this standard financial information with the collection personnel of the various United States attorneys' offices so that its order may be enforced. The Department agrees that provisions for sharing financial information could best be accomplished by guidance to the courts from the Judicial Conference.

The recommendation that a centralized system be established in each federal court district for the reporting, tracking and accounting for all court-imposed fines is in the process of being implemented. The Criminal Fine Enforcement Act of 1984 places the responsibility for establishing a collection process with the Attorney General. The Department should have its system operational by March 31, 1985. Under this system the United States attorneys' offices will be responsible for all fines imposed by the district courts for offenses committed after December 31, 1984, together with a portion of the fines imposed by United States Magistrates after March 31, 1985. The Clerks of court will retain responsibility for receipting and accounting for the fines imposed by district courts for offenses committed prior to January 1, 1985, and accepting the balance of the magistrate fines. While the degree of centralization presented by this plan is not as complete as that recommended by the report, it is a major step toward this goal.

The recommendation that policies be established requiring documentation of an offender's inability to pay in full before permitting installment payments is reasonable, but difficult to implement. We agree that documentation should be obtained before the United States attorney enters into a written agreement with the debtor, and that such agreement should be subject to periodic review. The problem, however, is not one of entering into an agreement with the debtor without ample documentation, but rather the choice the United States attorney's office must make of either accepting voluntary payment from the debtor or conducting discovery. If the debtor has a strong desire to oppose discovery and obtains counsel, discovery actions become in effect new civil cases. Similarly, a debtor serving a prison term has little incentive to cooperate in discovery actions. Finally, the already overburdened court system is ill-prepared to accept a large volume of discovery actions. While the new collection statute provides encouragement for fine payment, effective enforcement remains dependent on aggressive discovery.

- 3 -

The collection units of United States attorneys' offices have a large number of civil collection cases, and the criminal fine caseload is usually a small fraction of the total, perhaps 20 percent. The limited resources available for discovery in the United States attorneys' collection units must thus be allocated between criminal fines and the civil collection caseload. If financial information can be obtained from the court as the GAO report recommends, institution of this procedure will be a major step in reducing the burdens of fine collection. The Criminal Division has also recommended obtaining financial information from the prosecutor and agency investigator through the recently created Criminal Fine/Forfeiture Litigation Report. (Section 9-122.069 of the United States Attorneys' Manual.) All of these measures will contribute to the implementation of GAO's recommendations.

Lastly, we also concur with the recommendation that a policy be established outlining enforcement techniques in conjunction with a time frame. With respect to such a policy, we continue to believe the Department's present policy clearly delineates that preparing demand letters, filing liens, obtaining financial information, and applying creditor's remedies should be accomplished as soon as possible after sentencing. However, we will revise this material in the United States Attorneys' Manual to eliminate any misunderstandings that may exist.

The following comments are offered with respect to two statements made in the report:

1. Page 10, Last Partial Paragraph. The draft report states that "[Justice] has no standard procedure for routing the court's judgment orders from the clerk's office to the United States attorney collection unit." The Department objected to this statement in an earlier letter to GAO because the clerk's office falls under the jurisdiction of the Administrative Office of the United States Courts and the Department has no authority to promulgate policy within the judicial branch. Since the clerk's office initially generates opinions and judgments of the court, it is the responsibility of the clerk's office to establish a standard procedure for routing the court's judgment orders to the United States attorney's office. The Department cannot establish policy mandating the clerk's office to send the court's judgment orders to any of Justice's component organizations. (See GAO Note.)
2. Page 33, First Full Paragraph. In this paragraph GAO proposes that the task of issuing the first notice for payment to an offender in cases where a fine is a condition of probation should be that of the U.S. attorney. Currently, the delineation of responsibility in this area as set forth in USAM-9-121.222 (3/84) and USAM 9-120.510 (3/84) of the United States Attorneys' Manual provides that the U.S. attorney should allow the probation office to make initial efforts to

(GAO Note: To eliminate any misunderstanding, we have deleted the statement. See page 10.)

- 4 -

enforce the judgment and should actively employ enforcement techniques only after conferring with the probation office. In view of GAO's proposal, and the fact that the Criminal Division and the Probation Division are collaborating to develop a "Memorandum of Understanding" to promote agreements on collection procedures at the district level between U.S. attorneys and U.S. probation offices, the Department plans to place GAO's proposal on the agenda as a topic for discussion and resolution.

We appreciate the opportunity to provide comments on this report while in draft form. Should you have any questions regarding our comments, please feel free to contact me.

Sincerely,



W. Lawrence Wallace  
Acting Assistant Attorney  
General for Administration





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