



February 2018

FEDERAL CRIMINAL RESTITUTION

Most Debt Is
Outstanding and
Oversight of
Collections Could Be
Improved

GAO Highlights

Highlights of [GAO-18-203](#), a report to congressional committees

Why GAO Did This Study

One of the goals of federal criminal restitution is to restore victims of federal crimes to the position they occupied before the crime was committed by providing compensation. Various entities within the federal government are involved in the process of requesting, ordering, and collecting restitution for crime victims, including DOJ and the judiciary.

The Justice for All Reauthorization Act of 2016 includes a provision for GAO to review the federal criminal restitution process for fiscal years 2014 through 2016. This report addresses, among other things: (1) the extent to which information is available on restitution requested by DOJ and ordered by courts; (2) the amount of restitution debt DOJ collected and the amount that remains outstanding; and, (3) the extent to which DOJ has conducted oversight on the collection of restitution. GAO analyzed laws, policies and procedures as well as USSC data on restitution orders and DOJ data on restitution collected from fiscal years 2014 through 2016. GAO also selected a non-generalizable sample of six federal judicial districts based on restitution collections and spoke with USAO officials and federal probation officers.

What GAO Recommends

GAO is making three recommendations. GAO is making one to the judiciary to determine why data on restitution orders are incomplete. GAO is making two recommendations to DOJ, including one to implement performance measures and goals for the collection of restitution. The judiciary and DOJ concurred with the recommendations.

View [GAO-18-203](#). For more information, contact Gretta L. Goodwin at (202) 512-8777 or goodwing@gao.gov.

February 2018

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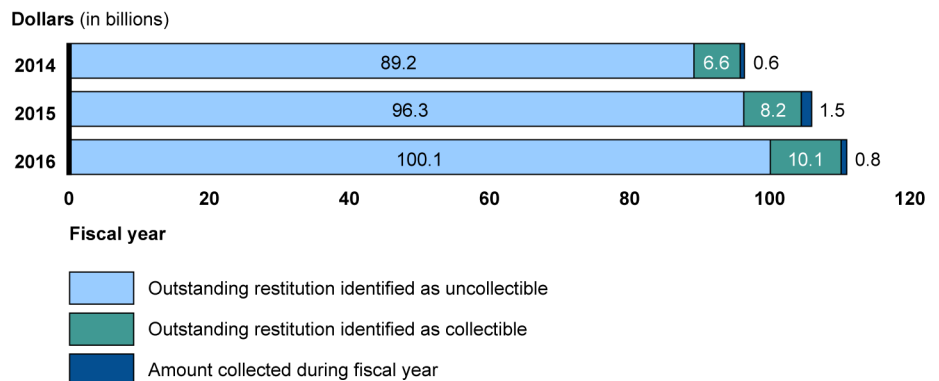
Most Debt Is Outstanding and Oversight of Collections Could Be Improved

What GAO Found

Officials from selected U.S. Attorney's Offices (USAO) stated that they document requests for restitution in case files and employ other internal controls, such as the use of templates and forms, throughout the prosecution process to ensure that prosecutors request restitution as appropriate. GAO's analysis of U.S. Sentencing Commission (USSC) data—an agency within the judiciary—showed that information on restitution orders was available for 95 percent of all offenders sentenced from fiscal years 2014 through 2016. Specifically, 214,578 federal offenders were sentenced during this time period and restitution was ordered for 33,158, or 15 percent, of those offenders. Collectively, courts ordered these offenders to pay \$33.9 billion in restitution. Most federal offenders sentenced during these years were sentenced for immigration or drug-related offenses. In interviews, USAO officials stated that these offenses do not typically have victims requiring restitution. GAO found that data on reasons why restitution was not ordered were incomplete for 5 percent of all offenders sentenced from fiscal years 2014 through 2016. Determining why data on restitution orders are incomplete may inform the judiciary of the cause of the incomplete data and any efforts needed to improve USSC data.

GAO's analysis of Department of Justice (DOJ) data showed that USAOs collected \$2.95 billion in restitution debt in fiscal years 2014 through 2016, see figure below. However, at the end of fiscal year 2016, \$110 billion in previously ordered restitution remained outstanding, and USAOs identified \$100 billion of that outstanding debt as uncollectible due to offenders' inability to pay.

Collected and Outstanding Criminal Restitution as of the End of Fiscal Years 2014 through 2016



Source: GAO analysis of Department of Justice data. | GAO-18-203

DOJ identified improving debt collection—including restitution—as a major management initiative in its 2014-2018 Strategic Plan. While DOJ is developing analytical tools to monitor the collection of restitution, it has not established performance measures or goals. Performance measures and goals would allow DOJ to gauge USAOs' success in collecting restitution and, by extension, the department's success in achieving a major management initiative.

Contents

<hr/>		
Letter		1
	Background	7
	Select USAOs Reported Documenting Requests for Restitution, but the Judiciary Did Not Always Document Reasons It Was Not Ordered	14
	DOJ Collected \$2.95 Billion in Restitution Debt from Fiscal Years 2014 through 2016, but Most Debt Remains Outstanding Due to Offenders' Inability to Pay	22
	Select USAO Officials View DOJ's Recommended Practices for Requesting, Ordering and Collecting Restitution as Generally Effective	27
	DOJ Could Improve Oversight of the Collection of Federal Restitution, Including the Use of Forfeited Assets to Pay Restitution Debt	31
	Conclusions	40
	Recommendations for Executive Action	41
	Agency Comments	42
<hr/>		
Appendix I	Number and Percentage of Federal Offenders Ordered to Pay Restitution, Fiscal Years 2014 through 2016	43
<hr/>		
Appendix II	Views on DOJ-Recommended Restitution Practices from Officials in Selected in U.S. Attorneys' Offices	45
<hr/>		
Appendix III	Comments from the Administrative Office of the U.S. Courts	49
<hr/>		
Appendix IV	GAO Contact and Staff Acknowledgments	50
<hr/>		
Tables		
	Table 1: Federal Offenders Sentenced and Ordered to Pay Restitution, Fiscal Years 2014 through 2016	16
	Table 2: Federal Offenders Sentenced and Ordered to Pay Restitution by Primary Offense of Conviction, Fiscal Years 2014 through 2016	18

Table 3: Percentage of Offenders Ordered to Pay Restitution by Districts with Select Characteristics, Fiscal Years 2014 through 2016	19
Table 4: Department of Justice (DOJ) Restitution Collected by Type of Restitution, Fiscal Years 2014 through 2016	24
Table 5: Victim Payments and Expenditures from the Assets Forfeiture Fund, Fiscal Years 2014 through 2016	36
Table 6: Offenders by Primary Offense of Conviction and Number and Percentage Ordered to Pay Restitution, Fiscal Years 2014 through 2016	43
Table 7: Effectiveness of Department of Justice (DOJ) Recommended Practices for Requesting Restitution According to Officials from Selected U.S. Attorneys' Offices (USAO)	46
Table 8: Effectiveness of Department of Justice (DOJ) Recommended Practices for Facilitating Court Orders of Restitution According to Officials from Selected U.S. Attorneys' Offices (USAO)	47
Table 9: Effectiveness of Department of Justice (DOJ) Recommended Practices for Collecting Restitution According to Officials from Selected U.S. Attorneys' Offices (USAO)	47

Figures

Figure 1: Overview of the Federal Restitution Process	11
Figure 2: Collected and Outstanding Federal Criminal Restitution at the End of Fiscal Years 2014 through 2016	25

Abbreviations

AOUSC	Administrative Office of the U.S. Courts
DOJ	Department of Justice
EOUSA	Executive Office for United States Attorneys
FLU	Financial Litigation Unit
GPRA	Government Performance and Results Act of 1993
GPRAMA	GPRA Modernization Act of 2010
MVRA	Mandatory Victims Restitution Act of 1996
PSR	Presentence Investigation Report
TOP	Treasury Offset Program
USAO	United States Attorney's Office
USSC	United States Sentencing Commission

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February 2, 2018

The Honorable Charles E Grassley
Chairman
The Honorable Dianne Feinstein
Ranking Member
Committee on the Judiciary
United States Senate

The Honorable Bob Goodlatte
Chairman
The Honorable Jerrold Nadler
Ranking Member
Committee on the Judiciary
House of Representatives

The impact of crime on victims often has significant emotional, psychological, physical, financial, and social consequences.¹ One of the goals of federal criminal restitution is to restore victims of federal crimes to the position they occupied before the crime was committed. Various entities within the federal government are involved in the process of requesting, ordering, and collecting restitution for crime victims, including the Department of Justice (DOJ) and the judiciary.² Prosecutors within DOJ have the burden of proving a victim's losses in court; victims are

¹Victims of federal crimes may include individuals, corporations, state and local governments, or federal agencies.

²Federal law dictates the crimes for which restitution is mandatory versus discretionary. For example, federal courts are required to order restitution following conviction for crimes such as stalking, arson, sexual exploitation of children, and fraud, as well as all other crimes of violence and property crimes. This is generally referred to as mandatory restitution. 18 U.S.C. § 3663A; see also 18 U.S.C. §§ 228(d), 1593, 2248, 2259, 2264, 2323(c), 2327; 21 U.S.C. § 853(q) (specific restitution statutes). In addition, federal courts are permitted, but not required, to order victim restitution related to other offenses in Title 18 of the U.S. Code—for example, conspiracies to commit tax evasion and violate civil rights—and various controlled substance offenses under Title 21, among others—referred to as discretionary restitution. 18 U.S.C. § 3663. Federal courts may also order restitution to the extent agreed to by the parties in a plea agreement, including to persons other than the victim. 18 U.S.C. §§ 3663(a)(1)(A), (a)(3), 3663A(a)(3). If no statutory authority for ordering restitution is applicable to a specific offense, the court may nevertheless order restitution to the victim, solely as a condition of probation or supervised release. 18 U.S.C. §§ 3563(b)(2), 3583(d). The Sentencing Guidelines direct courts to order restitution in all cases of an identifiable victim, except in enumerated circumstances. U.S. Sentencing Commission, Guidelines Manual § 5E1.1(a).

those who suffered a physical injury or financial loss as a direct and proximate result of the offense.³ When restitution is ordered by the court, it is to be in the full amount of each victim's losses without consideration of the economic circumstances of the defendant.⁴ Once restitution is ordered by the court, DOJ is responsible for collecting restitution payments and has delegated these activities to Financial Litigation Units (FLU) within each U.S. Attorney's Office (USAO).⁵ FLUs are also to coordinate with federal probation officers supervising offenders to ensure offenders pay restitution ordered.

The collection of federal criminal restitution has been a longstanding challenge. We reported in 2001 that the amount of uncollected criminal debt—of which restitution is a component—had more than doubled from September 30, 1995 to September 30, 1999.⁶ Specifically, we found that DOJ had not collected most of the outstanding criminal debt due to, among other factors, the nature of the debt, and a lack of coordination between relevant DOJ components. To address these findings, we made 24 recommendations, including 14 to DOJ, among other agencies. DOJ implemented 11 of our recommendations, including that DOJ develop

³Restitution is only compensable for actual, provable losses (i.e., tangible or "out-of-pocket" losses supported by the record). This includes, for example, reimbursement of medical expenses for bodily injuries resulting from the victimizing offense. Federal courts are not authorized to order restitution for losses such as pain and suffering and emotional distress to crime victims. See e.g., *United States v. Frazier*, 651 F.3d 899, 904-08 (8th Cir. 2011) (limiting restitution to the full amount of victim's actual, provable loss); Catharine M. Goodwin, *Federal Criminal Restitution* (Eagan, Minnesota: Thomson West, 2016), *Federal Criminal Restitution*, 256-257.

⁴18 U.S.C. § 3664(f)(1).

⁵U.S. Attorneys are the principal litigators for the federal government in criminal and civil proceedings. The 94 USAOs investigate criminal activities and handle the majority of criminal cases prosecuted by DOJ. They also initiate civil actions to protect the interests of the United States, represent and defend the interests of the government in lawsuits filed against the government, and collect debts owed the federal government that are administratively uncollectible. FLUs within the USAOs have been delegated the responsibility for collecting civil and criminal debts. According to the DOJ Inspector General, criminal debts account for the majority of the FLUs' caseloads. Criminal debt includes debt arising from restitution orders, special assessments, and fines resulting from a criminal conviction. The FLUs' collection efforts on debts may include filing liens, identifying debtor assets, garnishing debtor wages, and serving notice of late payments.

⁶GAO, *Criminal Debt: Oversight and Actions Needed to Address Deficiencies in Collection Processes*, [GAO-01-664](#) (Washington, D.C.: July 16, 2001). According to this report, approximately 66 percent of outstanding criminal debt was restitution owed to nonfederal victims, including individual victims and other entities such as banks, organizations and insurance companies.

performance measures for criminal debt collection and better coordinate internally and with federal courts. In 2005, we reported that although DOJ had taken some steps to address our recommendations, prospects for collecting restitution for victims were poor and court-ordered restitution far exceeded amounts likely to be repaid in selected cases we reviewed.⁷ We found that, among other reasons, this situation occurred because there were minimal negative consequences when offenders did not pay restitution as ordered by the courts.

More recently in 2015, the DOJ Inspector General recommended DOJ improve its prioritization of debt collection as well as collaboration among DOJ component offices to better use forfeited assets to pay restitution debt.⁸ DOJ took action to address the Inspector General's recommendations by reviewing the system it uses to prioritize debt collection actions, by incorporating discussion of asset recovery into its training program, and by initiating a comprehensive study to review existing protocols and structures to improve DOJ's ability to collect debts owed to crime victims.⁹

The Justice for All Reauthorization Act of 2016 contained a provision for us to review and assess the federal criminal restitution process for fiscal years 2014 through 2016.¹⁰ This report addresses the following four questions:

⁷GAO, *Criminal Debt: Court-Ordered Restitution Amounts Far Exceed Likely Collections for the Crime Victims in Selected Financial Fraud Cases*, [GAO-05-80](#) (Washington, D.C.: Jan. 31, 2005).

⁸U.S. Department of Justice, Office of Inspector General, *Review of the Debt Collection Program of the United States Attorneys' Offices*, June 2015.

⁹As of December 2017, DOJ had implemented four of the five DOJ Inspector General's recommendations and one remained open: that EOUSA help USAOs develop policies and procedures for encouraging communication and coordination within USAOs to improve the collection of criminal debt, including restitution.

¹⁰Pub. L. No. 114-324, § 18, 130 Stat. 1948, 1963 (codified at 18 U.S.C. § 3612(k)). The Justice for All Reauthorization Act of 2016 also contained a provision for us to conduct a review on the factors that should be considered when broadening restitution provisions, including four specific areas. § 2(d), 130 Stat. at 1948-49. We published the results of that review in October 2017. See GAO, *Federal Criminal Restitution: Factors to Consider for a Potential Expansion of Federal Courts' Authority to Order Restitution*, [GAO-18-115](#) (Washington, D.C.: Oct. 12, 2017).

1. To what extent is information available on restitution requested by DOJ and ordered by courts for eligible federal criminal cases for fiscal years 2014 through 2016?
2. How much restitution debt did DOJ collect for fiscal years 2014 through 2016 and how much restitution remains outstanding?
3. To what extent are DOJ's recommended practices for restitution considered effective?
4. To what extent has DOJ conducted oversight on the collection of restitution?

To answer all four questions, we analyzed relevant laws, including the Mandatory Victims Restitution Act of 1996 (MVRA) and the Justice for All Reauthorization Act of 2016.¹¹ We also reviewed agency documentation and spoke with officials from DOJ components and the judiciary. Within DOJ, these included officials from the Executive Office for U.S. Attorneys (EOUSA), the Criminal Division, the Money Laundering and Asset Recovery Section within the Criminal Division and the Justice Management Division. Within the judiciary, these included officials from the Administrative Office of the U.S. Courts (AOUSC), the Judicial Conference, the U.S. Sentencing Commission (USSC), and Probation and Pretrial Services within AOUSC.¹²

We further selected six federal judicial districts throughout the country and conducted semi-structured interviews with USAO officials and federal probation officers within those districts to obtain their views on the restitution process.¹³ Because the collection of restitution has been a longstanding challenge, we selected districts to study based on the extent of the USAO's collection of restitution within that district. Specifically, we selected USAOs for three districts that had relatively high levels of restitution collected and USAOs for three districts that had relatively low levels of restitution collected from fiscal years 2014 through 2015—the

¹¹The MVRA was enacted as subtitle A of title II of the Antiterrorism and Effective Death Penalty Act of 1996, Pub. L. No. 104-132, §§ 201-211, 110 Stat. 1214, 1227-1241. In addition to adding mandatory restitution for most federal offenses, the MVRA also required that courts order restitution in the full amount of each victim's losses without consideration of the economic circumstances of the defendant. 18 U.S.C. § 3664(f)(1)(A).

¹²The roles and responsibilities of these entities as they relate to federal criminal restitution are described in the background of this report.

¹³There are 94 federal judicial districts across the United States and its territories, and these districts are organized into 12 regional circuits.

last 2 years of data available when we began our review. In particular, we spoke with USAO and probation officials within the District of Connecticut, the Southern District of California, the District of New Jersey, the Southern District of Ohio, the District of South Dakota and the District of Wyoming. Additionally, we ensured that our selected districts reflected geographical diversity to capture a range of perspectives and experiences. Since we selected a non-probability sample of districts, the information we obtained cannot be generalized more broadly to all districts. However, the information provides important context and insights into how the restitution process works across the country. We also obtained perspectives from stakeholders from associations representing victims, federal prosecutors and defense counsel, as well as four individuals knowledgeable about the federal restitution process referred to us by EOUSA officials and other restitution experts.¹⁴

To address the first question on the extent information is available on restitution requested by DOJ and ordered by courts for eligible federal criminal cases for fiscal years 2014 through 2016, we reviewed DOJ guidance for requesting restitution and AOUSC and Judicial Conference guidance for ordering restitution. To determine the extent of information available on restitution requested by DOJ, we interviewed DOJ and EOUSA officials as well as USAO officials in the six districts mentioned above to determine how prosecutors are to document requests for restitution. To determine the extent of information available for restitution ordered by courts, we analyzed USSC data on restitution orders for fiscal years 2014 through 2016. We assessed the reliability of these data by reviewing system documentation and interviewing knowledgeable officials about system controls. We determined that these data were sufficiently reliable for the purposes of our reporting objectives. We also analyzed the extent to which these data contained required information about the reasons restitution was not ordered and then compared the results of our analysis against *Standards for Internal Control in the Federal Government*.¹⁵

To address the second question on the amount of restitution debt DOJ collected for fiscal years 2014 through 2016 and the amount outstanding,

¹⁴Specifically, we obtained perspectives from representatives from the National Crime Victim Law Institute, the National Association of Assistant U.S. Attorneys and the National Association of Criminal Defense Lawyers.

¹⁵GAO, *Standards for Internal Control in the Federal Government*, [GAO-14-704G](#) (Washington, D.C.: Sept. 10, 2014).

we analyzed data from DOJ's debt management system (the Consolidated Debt Collection System) from fiscal years 2014 through 2016. We assessed the reliability of these data by reviewing system documentation, interviewing knowledgeable officials about system controls, and conducting electronic testing. We determined that these data were sufficiently reliable for the purposes of our reporting objectives. We used these data to determine the amount of restitution collected by each USAO during fiscal years 2014 through 2016 as well as the amount of debt outstanding during this time. Further, during our interviews with DOJ and judiciary officials as well as USAO and probation officials in the six districts mentioned above, we obtained perspectives on potential factors contributing to outstanding debt.

To address the third question on the extent to which DOJ's recommended practices for restitution are considered effective, we reviewed agency documentation, including guidance manuals for USAO prosecutors and financial litigation unit staff. We interviewed EOUSA officials responsible for developing this guidance and USAO officials in the six districts to determine the extent to which they find this guidance helpful for requesting, facilitating orders for, and collecting restitution.

To address the fourth question on the extent to which DOJ has conducted oversight on the collection of restitution, we reviewed our prior work and reports by the DOJ Office of the Inspector General to identify prior recommendations made to DOJ and interviewed EOUSA officials to assess the extent to which these recommendations have been implemented.¹⁶ We also analyzed DOJ's 2014-2018 Strategic Plan and EOUSA's internal evaluation program to assess the extent to which DOJ's oversight mechanisms provide sufficient information on USAOs' performance in meeting initiatives outlined in DOJ's Strategic Plan and the Justice for All Reauthorization Act of 2016.¹⁷ We compared the results of our analysis to the Government Performance and Results Act of 1993 (GPRA), as updated by the GPRA Modernization Act of 2010 (GPRAMA).¹⁸ We further obtained agency documentation and interviewed DOJ officials on the extent to which DOJ's Asset Forfeiture Program supports the collection of restitution and compared this information to

¹⁶ [GAO-01-664](#), [GAO-05-80](#), [GAO-18-115](#).

¹⁷Pub. L. No. 114-324, § 18, 130 Stat. at 1962-63 (codified at 18 U.S.C. § 3612(j)).

¹⁸See generally Pub. L. No. 103-62, 107 Stat. 285 and Pub. L. No. 111-352, 124 Stat. 3866 (2011) (updating GPRA); 31 U.S.C. § 1115.

federal regulations, DOJ's 2014-2018 Strategic Plan, and *Standards for Internal Control in the Federal Government*.¹⁹

We conducted this performance audit from January 2017 through February 2018 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Background

Restitution Roles and Responsibilities

DOJ and its components, as well as the judiciary, play important roles in requesting and collecting restitution.

DOJ and select components: Prosecutors in DOJ's Criminal Division and the Criminal Divisions of the 94 USAOs are responsible for overseeing criminal matters, including identifying and notifying victims, determining their losses as part of a case investigation, prosecuting cases and negotiating the terms of plea agreements, of which restitution may be a part.²⁰ Within DOJ's Criminal Division, the Money Laundering and Asset Recovery Section manages DOJ's Asset Forfeiture Program.²¹ As

¹⁹[GAO-14-704G](#), 28 CFR § 9.9.

²⁰Guam and the Northern Mariana Islands are separate USAOs but share a single United States Attorney and FLU.

²¹DOJ's Asset Forfeiture Program encompasses the seizure and forfeiture of assets associated with criminal activity. The property seized may be illegal for someone to own or it may be the gains resulting from the criminal activity. It is a means of punishing and deterring criminal activity by depriving criminals of property, including money and monetary instruments (such as bonds), real property, and personal property that was used or acquired through illegal activities. The federal government seizes such property associated with violations of various federal statutes and takes title to that property (forfeiture) through either an administrative or judicial process. Seized property either can be returned to the owner or forfeited to the government. After federal forfeiture, noncash property may be sold, put into official use, provided to victims, destroyed, or shared with state and local law enforcement agencies participating in the seizure. Because restitution and forfeiture are mandatory and independent parts of a criminal sentence, forfeited assets may only be used to satisfy a restitution debt when the victims do not have recourse reasonably available to obtain compensation for their losses from other assets owned or controlled by the offender.

previously stated, FLUs within each USAO undertake activities to collect restitution from offenders in their district. Additionally, all USAOs have asset forfeiture staff responsible for forfeiting property seized by law enforcement agencies because the property was used in criminal activities or purchased with the proceeds of criminal activities.²²

According to EOUSA guidance, coordination between the FLU and Asset Forfeiture units is highly encouraged to use forfeited assets as a means to collect on unpaid restitution debts.

DOJ requires each USAO to have its own policies and procedures related to debt collection efforts but allows them discretion in developing these policies and procedures to ensure that they are appropriate for local conditions.²³ DOJ also requires USAOs to have policies and procedures to make early, effective, and coordinated asset investigations and recovery a routine part of every case involving victims but allows USAOs to specify these policies and procedures.

DOJ's EOUSA provides USAOs with management assistance, guidance, training, and administrative support. Among other activities, EOUSA provides management assistance to USAOs by administering internal evaluations for each USAO, which are intended to provide on-site management support for that office. Further, EOUSA provides guidance to enhance offices' efforts to request and collect restitution.

Judiciary: Within the judiciary, the 94 federal district courts order restitution, receipt restitution payments, and disburse restitution to victims. Within the federal district where the offender was convicted, a probation officer prepares the presentence investigation report (PSR) for the court, which includes information on the victim's losses and an offender's financial information. Probation officers may obtain this information from DOJ, which has the statutory responsibility for the enforcement and collection of criminal debt.²⁴ The court uses the PSR, among other things, to determine whether to order restitution. If an

²²DOJ officials stated that most USAOs have dedicated Asset Forfeiture Units but other USAOs may not have any staff dedicated solely to asset forfeiture work.

²³For example, USAOs are required to develop a FLU Plan—which outlines the debt collection protocol FLU staff are to use when collecting debts—but each office may specify those protocols to conform to the number of personnel within the FLU, the office's organizational structure, and circuit law applicable to that office.

²⁴18 U.S.C. § 3612(c).

offender is released to the community by the court and placed on supervision, probation officers are responsible for ensuring the offender abides by the terms of release, including paying any restitution owed to victims. The Clerk of each District Court is responsible for the receipt of restitution from offenders and for disbursing payments to victims.

The Judicial Conference is the national policy-making body for the federal courts. The Conference operates through a network of committees created to address and advise courts on a wide variety of subjects such as information technology, personnel, probation and pretrial services, space and facilities, security, judicial salaries and benefits, budget, defender services, court administration, and rules of practice and procedure.²⁵ The Judicial Conference has taken policy positions on restitution-related issues and has supported legislative proposals to improve the restitution process.²⁶

AOUSC is the agency within the judiciary that provides a broad range of legislative, legal, financial, technology, management, administrative, and program support services to federal courts. AOUSC is responsible for carrying out Judicial Conference policies and a primary responsibility of AOUSC is to provide staff support and counsel to the Judicial Conference and its committees.

USSC is an independent agency within the judiciary which, among other activities, establishes and promulgates detailed sentencing guidelines that judges are to consider in sentencing offenders convicted of federal crimes, including guidelines on when and how to order restitution.²⁷ Additionally, each district court is required to submit to USSC a report of each offender's sentence that includes, among other information, details on the offenses for which the offender was convicted; the sentence imposed on the offender; and if the judge departed from the sentencing

²⁵28 U.S.C. § 331.

²⁶For example, the Judicial Conference has supported legislative proposals treating most fines and orders of restitution in criminal offenses as civil debts, payable immediately and collectible by either DOJ or the victim.

²⁷28 U.S.C. §§ 991-998. USSC's seven voting members are appointed by the President and confirmed by the Senate, and serve staggered 6 year terms. The commission is made up of both non-judicial members and a limited number of judicial officers; no more than four members of the commission can be members of the same political party; and at least three must be federal judges.

guidelines, information on reasons why.²⁸ USSC maintains a database containing sentencing data on federal offenders convicted of felonies or serious misdemeanors, analyzes it and publishes these data on an annual basis. USSC is also statutorily required to annually report to Congress its analysis of sentencing-related documents, including an accounting of districts USSC believes have not submitted appropriate information to the commission, among other things.²⁹

Restitution Overview

During the course of a federal criminal investigation, federal prosecutors identify and notify victims, as well as determine their losses in conjunction with the federal agents investigating the case. If a defendant pleads guilty or is found guilty at trial, the prosecutor has the burden of proving the victims' losses in court. To facilitate this, a Victim-Witness coordinator within the USAO responsible for the case provides victims the opportunity to explain their losses in detail, usually through a Victim Impact Statement. This information is then to be provided to a federal probation officer who uses it to begin a PSR.

To develop the PSR, probation officers use information provided by the USAO and may contact victims and verify the loss amounts. Additionally, probation officers will investigate an offender's economic circumstances—such as if the offender has a job, any assets or any dependents. If a judge determines that restitution is to be ordered, the judge must order restitution for the full amount of a victim's losses for offenses without consideration of the economic circumstances of the defendant.³⁰ Judges may decline to order restitution in certain instances, for example, where restitution is discretionary, or in certain cases where the number of identifiable victims makes restitution impracticable or the complexity of calculating restitution would unduly prolong the sentencing process. If the court does not order restitution, or orders only partial restitution, the judge must provide the reason, and judges usually do so in a written Statement

²⁸18 U.S.C. § 3553(c); 28 U.S.C. § 994(w).

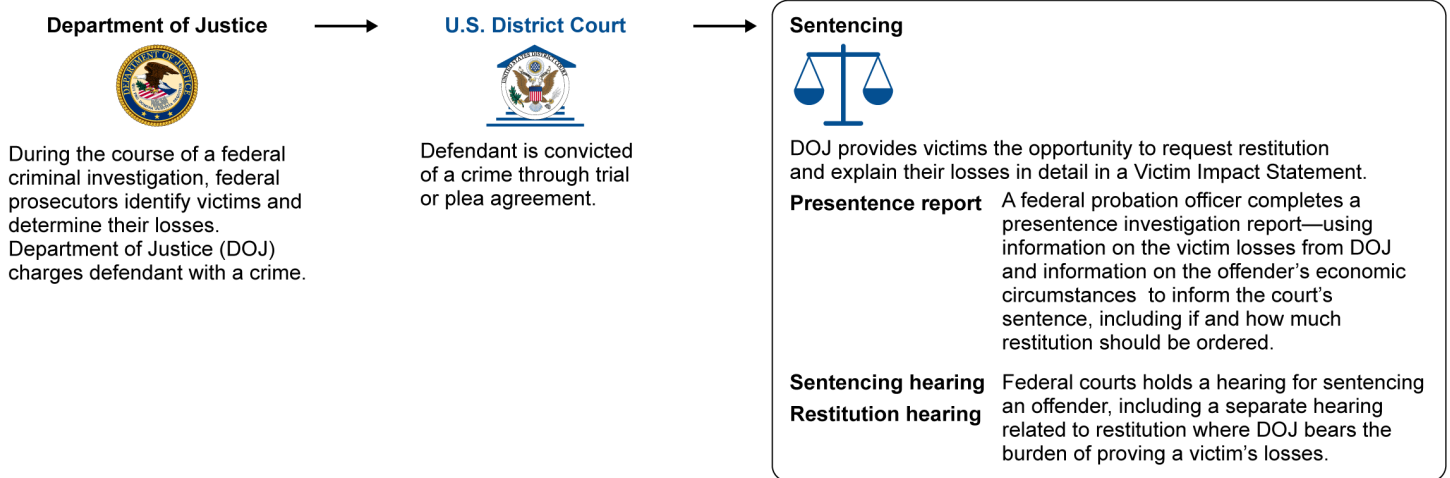
²⁹28 U.S.C. § 994(w)(3).

³⁰Courts may order restitution as a single, lump-sum payment, installment payments at specified intervals (a payment schedule), in-kind payments (an asset used in lieu of a cash payment), or any combination of these. If the court determines that a lump-sum payment cannot be made due to the offender's economic circumstances, the court must order installment payments.

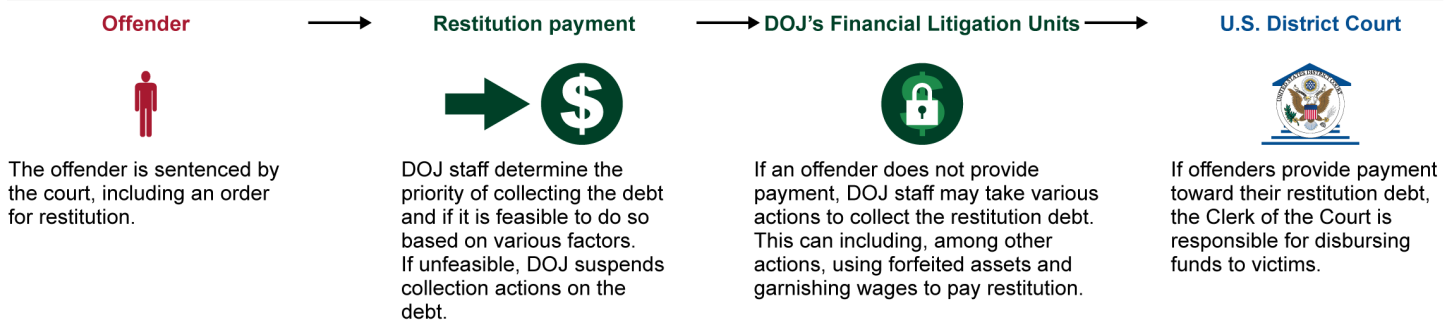
of Reasons document.³¹ Figure 1 provides an overview of the federal restitution process.

Figure 1: Overview of the Federal Restitution Process

Federal criminal proceedings



Post sentencing



Source: GAO analysis of federal judiciary and DOJ information. | GAO-18-203

³¹The Statement of Reasons is a form provided by the Judicial Conference to allow the court to fully document its findings on penalties and reasons for imposing criminal sentences in cases, including reasons for deviating from USSC’s sentencing guidelines if the court chooses to do so. 18 U.S.C. 3553(c) provides, “If the court does not order restitution, or orders only partial restitution, the court shall include in the statement the reason therefor. The court shall provide a transcription or other appropriate public record of the court’s statement of reasons, together with the order of judgment and commitment, to the Probation System and to the Sentencing Commission[], and, if the sentence includes a term of imprisonment, to the Bureau of Prisons.”

Upon imposition of a restitution debt by the court, FLU staff use two mechanisms to determine the collectability of the debt and what collection actions to take. First, FLU staff classify the debt into one of four categories to determine the extent to which the FLU will pursue enforcement actions to collect upon the debt.³² FLUs classify debts from a Priority Code 1 debt (indicating that FLUs will make collection of this debt the highest priority) to a Priority Code 4 debt (indicating that FLUs will make collection of this debt the lowest priority).³³ Second, FLUs may suspend collection action on criminal debts, regardless of their categorization, under certain circumstances if they determine the debts are uncollectible.³⁴ FLU staff may also determine that debts are permanently uncollectible and categorize them as Priority Code 4 debts.³⁵

If a debtor does not provide payment, FLU staff then use various enforcement actions to collect the restitution debt. These can include, among other actions, filing liens against an offender's property, coordinating with asset forfeiture staff to use forfeited assets to pay the restitution debt, and garnishing wages an offender may earn.

³²According to DOJ, this categorization is a form of triage to assist FLU staff in identifying those cases that should be enforced first.

³³DOJ policy requires each USAO to develop a written policy outlining the exact criteria for classifying debts into one of the four prioritization codes. Therefore, there is some variation across the 94 USAOs in what constitutes the priority debts in each office. DOJ officials stated that while USAOs may develop their own criteria, the vast majority of USAOs use the same criteria to classify debts. Additionally, DOJ does not permit FLUs to classify restitution debt owed to individuals or third parties lower than a Priority Code 3. DOJ also policy requires FLU staff to review suspended debts every one to five years according to the debt's initial priority categorization to determine if the categorization is still appropriate. For example, if FLU staff determine that a debtor can make a full or substantial payment on a suspended debt, FLUs are to promptly review the debt to determine whether it should be removed from suspense and whether to initiate collection enforcement actions.

³⁴These circumstances include a debtor being deported, a debtor who cannot be located, a restitution debt not immediately due under the judgment terms, the court issuing a stay of enforcement on the collection of the debt because the case is being appealed, or a debtor who has no, or only a nominal, ability to make payments.

³⁵Pursuant to 18 U.S.C. § 3613(b), an order of restitution is enforceable for 20 years plus any period of incarceration. A restitution debt operates as a lien against an offender's property for this period—meaning that if an offender were to sell his or her property, the government would be entitled to take a share of the sales proceeds to pay the restitution debt. During this period, the restitution debt generally cannot be discharged through bankruptcy. In cases where collection action has been suspended because an offender has no ability to pay, FLU staff review the status of the debt once shortly before, or on, the date the debt expires.

Victims can be compensated for losses with the proceeds of forfeited assets through DOJ's Asset Forfeiture Program and in accordance with law and regulation.³⁶ Federal regulations provide that the proceeds from forfeited assets are first used to cover program costs associated with forfeiture-related activities and next to pay valid owners, lien-holders, and federal financial regulatory agencies.³⁷ Forfeited assets can then be distributed to other victims of crime as compensation for their losses if their loss is a direct result of the commission of the offense underlying forfeiture or a related offense.³⁸ Any remaining funds from the forfeited asset may be placed into official use, distributed to foreign governments, state or local law enforcement agencies as part of the equitable sharing program to enhance cooperation with federal investigations.

When victims are eligible for compensation using forfeited assets, DOJ employs two processes: restoration and remission. The restoration process involves the USAO staff requesting funds on behalf of a victim when there is both an order of forfeiture and an order of restitution. Under the restoration process, USAO staff request DOJ's Money Laundering and Asset Recovery Section to use the forfeited asset to pay a restitution debt. If DOJ approves the request for restoration, the funds from the forfeited property are then transferred to the Clerk of the Court who disburses this money to the victim. The remission process requires a victim of a crime to directly petition DOJ to receive funds from the forfeited property. According to officials in DOJ's Criminal Division, the courts may not order restitution on behalf of victims who suffered a specific actual loss as a direct result of a crime for a variety of reasons, and therefore the remission process serves as a complement to the

³⁶Once an asset has been the subject of a final order of forfeiture, the asset is sold and the proceeds used for a variety of purposes in accordance with federal law and regulation. See 28 C.F.R. pt. 9. According to DOJ's Asset Forfeiture Policy Manual, one of these purposes may be to compensate victims through the use of forfeited assets.

³⁷28 C.F.R. § 9.9(a).

³⁸As discussed previously, many federal crimes may not have associated victims and thus funds from those forfeited assets would be ineligible to use for restitution payments. In addition, DOJ regulations limit the availability of funds from forfeited assets to victims who have incurred a financial loss as a direct result of the commission of the offense underlying forfeiture. 28 C.F.R. § 9.2. Further forfeited assets can only be used to satisfy restitution when the offender has no other means by which to pay a restitution debt and therefore some offenders may have assets forfeited and pay restitution separately. However, DOJ guidance states that the use of forfeited funds to pay restitution is desirable, since the offender may be left without assets to satisfy his or her restitution obligation following forfeiture.

restoration process to ensure victims are made whole. For example, these officials stated that, among other reasons, the courts may not order restitution if a defendant dies prior to sentencing or if the case is one in which a court is not required to, and does not, order restitution, but the victim has suffered eligible losses.³⁹

Select USAOs
Reported
Documenting
Requests for
Restitution, but the
Judiciary Did Not
Always Document
Reasons It Was Not
Ordered

EOUSA and Officials in Six
USAOs Told Us Their
Offices Document
Requests for Restitution in
Case Files

EOUSA and USAO officials in all six of the offices with whom we spoke told us that prosecutors document requests for restitution in their case files and that their offices employ other internal controls, such as the use of templates and forms, throughout the prosecution process to ensure that prosecutors request restitution as appropriate.⁴⁰ EOUSA officials told us that although the agency does not track this information, they believed all USAOs generally document requests for restitution in their offices¹

³⁹As previously discussed, courts are not required to order restitution in certain cases with victims where, for example (1) the number of identifiable victims makes restitution impracticable or (2) the complexity of calculating restitution would unduly prolong the sentencing process, among other reasons.

⁴⁰Criminal case files encompass all records maintained for the purpose of litigating or otherwise resolving the criminal case or matter handled by the 94 USAOs. The information maintained in these files includes memoranda, investigation reports, attorney work product, witness statements, and transcripts of court proceedings.

case files.⁴¹ Further, USAO officials in all six offices told us that prosecutors document requests for the court to order restitution in their case files by including this information in a written memorandum. To support prosecutors in documenting this information, all six offices we selected provide prosecutors with a prosecution memorandum template. Of the six templates we reviewed, four explicitly include a section for prosecutors to indicate whether victims have been identified and the extent of any victim losses.

In addition to these templates, four of six USAOs we selected had forms that prosecutors could use to identify whether cases have victims and their need for restitution when drafting criminal charging documents.⁴² Moreover, officials from two of the six USAOs told us their offices use this form as an internal control to ensure prosecutors have identified all victims and considered their need for restitution, if applicable. All six offices we selected also provided prosecutors templates for drafting plea agreements, and templates we reviewed from all six USAOs included language requesting the offender pay restitution, if applicable. However, prosecutors are not required to use plea agreement templates, nor are they required to request restitution as part of a plea agreement. USAO officials from one office stated that including this language in the plea agreement template served to remind prosecutors of their requirement to consider requesting restitution as stated in the U.S. Attorney's Manual.⁴³

Select USAO officials also described various forms of management oversight to ensure prosecutors request restitution as appropriate. Specifically, four USAOs we selected require supervisory review of the form that prosecutors fill out when drafting criminal charging documents, which includes information on victims. Additionally, officials in all six

⁴¹Aggregate information on the total number of all requests for restitution made across all USAOs for fiscal years 2014 through 2016 is not available because DOJ does not require or specifically recommend USAOs to track information on requests for restitution. As a result, we cannot report the number of cases in which DOJ could request restitution or the number of cases in which DOJ did request restitution, pursuant to the Justice for All Reauthorization Act of 2016.

⁴²A criminal charging document, or indictment, is a document that lists the offenses for which the government is charging an individual.

⁴³As required by section 209 of the MVRA, the U.S. Attorney's Manual states that prosecutors must give consideration to requesting that the defendant provide full restitution to all victims of all charges contained in the indictment or information, without regard to the count to which the defendant actually plead. Pub. L. No. 104-132, tit. II, subtit. A, § 209, 110 Stat. at 1240.

USAOs told us that they require supervisory review of plea agreements for every case. For example, officials from two USAOs told us their office requires the Criminal Chief, the supervisor of all criminal cases, to approve documents in the plea agreement, which may include requests for restitution.

USSC Has Information on Restitution Orders for 95 Percent of All Offenders Sentenced From Fiscal Years 2014 through 2016

Federal courts sent information on sentencing decisions to USSC and USSC had information on restitution decisions for 95 percent of all offenders from fiscal years 2014 through 2016. According to our analysis of USSC data, 214,578 federal offenders were sentenced from fiscal years 2014 through 2016 and restitution was ordered for 33,158 of those offenders, or 15 percent. Collectively, courts ordered these offenders to pay \$33.9 billion in restitution during this period.⁴⁴ Courts did not order restitution for the remaining 181,420 offenders, or 85 percent. Table 1 shows the number of federal offenders sentenced and ordered to pay restitution for fiscal years 2014 through 2016, as well as the total amount of restitution ordered by the courts.

Table 1: Federal Offenders Sentenced and Ordered to Pay Restitution, Fiscal Years 2014 through 2016

Fiscal year	Total offenders	Offenders ordered to pay restitution	Total amount of restitution ordered (in dollars)
2014	75,833	11,651	14,157,238,075
2015	71,003	11,132	10,709,898,260
2016	67,742	10,375	9,062,148,439
Total	214,578	33,158	33,929,284,774

Source: GAO analysis of United States Sentencing Commission (USSC) data. | GAO-18-203

Note: According to USSC officials, in cases of joint and several liability for a restitution order, the full amount of restitution is attributed to each offender, therefore the total amount of restitution reported for all offenders may be overinflated. However, USSC data do not contain information on the number of restitution orders that are joint and several and therefore, we cannot calculate the extent to which the amount of restitution is overinflated.

⁴⁴According to USSC officials, in cases of joint and several liability for a restitution order, the full amount of restitution is attributed to each offender; therefore the total amount of restitution reported for all offenders may be overinflated. However, USSC data do not contain information on the number of restitution orders that are joint and several and therefore, we cannot calculate the extent to which the amount of restitution is overinflated.

The majority of federal offenders were sentenced for immigration or drug-related offenses, and USAO officials in all six offices we selected told us that these types of offenses do not typically have victims with actual losses. For example, from fiscal years 2014 through 2016, USSC data showed that 131,088 offenders, 61 percent of offenders sentenced, were sentenced for immigration or drug-related offenses and courts ordered 999 (or less than 1 percent) of these offenders to pay restitution.⁴⁵

USSC data show that courts ordered restitution more often for offenders sentenced for other offenses, such as fraud. For example, courts sentenced 21,551 offenders for fraud offenses from fiscal years 2014 through 2016, and courts ordered restitution for 15,902 of these offenders, or 74 percent. Table 2 shows the number of offenders sentenced and the number ordered to pay restitution by offenses for which restitution was most often and least often ordered by courts from fiscal years 2014 through 2016.⁴⁶

⁴⁵We used the primary offense type as classified by USSC. According to USSC, to determine the primary offense type, agency officials review court documents to code the offense for which an offender was convicted into an easy-to-understand category. If an offender was convicted for more than one offense, USSC uses the count of conviction with the highest statutory maximum sentence an offender can receive.

⁴⁶Appendix I contains information on the number of offenders sentenced and ordered to pay restitution for all offenses.

Table 2: Federal Offenders Sentenced and Ordered to Pay Restitution by Primary Offense of Conviction, Fiscal Years 2014 through 2016

	Primary offense of conviction	Total offenders	Offenders ordered to pay restitution	Percentage of offenders ordered to pay restitution
Offenses for which restitution was most often ordered	Embezzlement	997	862	86
	Robbery	2,223	1,787	80
	Larceny	3,355	2,519	75
	Tax offenses	1,733	1,293	75
	Fraud	21,551	15,902	74
Offenses for which restitution was least often ordered	Prison offenses	1,408	26	2
	Trafficking or manufacturing drugs	60,593	814	1
	Simple possession of drugs ^a	6,504	28	0.4
	Immigration offenses	63,060	156	0.3
	Drugs communication facilities ^b	931	1	0.1

Source: GAO analysis of United States Sentencing Commission data. | GAO-18-203

^aSimple possession of drugs refers to an offense when someone has a small amount of an illegal substance for the purpose of consuming or using it, but without the intent to sell or give it to anyone else.

^bDrug communication facilities refers to an offense related to the illegal use of a telephone or other means of communication to facilitate a drug offense.

The percentage of federal offenders ordered to pay restitution varied across federal court districts; from 2 percent of offenders in one district to 42 percent in another district. USAO officials we interviewed stated that some of this variation may be due to the types of offenses prosecuted within different districts.⁴⁷ For example, officials from one USAO stated that their office, which had a high volume of immigration-related offenders, had few cases in which restitution was applicable. Our analysis of USSC data showed that from fiscal year 2014 through fiscal year 2016 and across all districts, districts with a higher than average rate of immigration-related offenders had lower than average rates of restitution ordered. Conversely, districts with above-average rates of offenders convicted of financial offenses such as fraud, embezzlement, money

⁴⁷Although the distribution of caseload varies among districts, each USAO deals with every category of cases and handles a mixture of simple and complex litigation. Each United States Attorney exercises wide discretion in the use of his or her resources to further the priorities of the local jurisdictions and needs of the community.

laundering, tax offenses, counterfeiting or bribery had higher than average rates of restitution ordered, as shown in table 3.⁴⁸

Table 3: Percentage of Offenders Ordered to Pay Restitution by Districts with Select Characteristics, Fiscal Years 2014 through 2016

	Percentage of offenders ordered to pay restitution	Percentage immigration offenders	Percentage financial offenders ^a
Average across all districts	15	29	13
Districts with above average immigration offenders	5	56	5
Districts with above average financial offenders ^a	25	9	21

Source: GAO analysis of United States Sentencing Commission (USSC) data. | GAO-18-203

Note: We determined offense type by using USSC’s classification of offenses. USSC reviews court documents to code the offense for which an offender was convicted into an easy-to-understand category, according to USSC officials. If an offender was convicted for more than one offense, USSC uses the count of conviction with the highest statutory maximum sentence an offender can receive.

^aWe included in financial offenses, fraud, embezzlement, money laundering, tax offenses, counterfeiting, and bribery.

Judges indicated on documents sent to USSC that restitution was not applicable and thus did not order it for most offenders sentenced from fiscal years 2014 through 2016—167,230 offenders—or 78 percent of all offenders sentenced during this time period. Our analysis of sentencing information for the remaining offenders found that courts ordered restitution at a higher rate as compared to all offenders. Specifically, after excluding offenders for whom restitution was not applicable and were not ordered to pay it, we found that courts ordered restitution for 70 percent of the remaining 47,348 offenders.

EOUSA and USAO officials told us that in cases where there are identifiable victims, restitution may not be ordered for other reasons. EOUSA officials told us that restitution may not be ordered for several reasons, such as when victims provide no proof of their losses or when

⁴⁸A statistical analysis we conducted using USSC data for offenders sentenced in fiscal year 1997 also showed variation in which offenders were ordered to pay restitution according to district and circuit, type of offense committed, and other factors. See GAO, *Federal Courts: Differences Exist in Ordering Fines and Restitution*. [GAO/GGD-99-70](#) (Washington, D.C.: May 6, 1999).

victims recover compensation through other means, such as through civil proceedings.⁴⁹ Further, officials from one USAO told us that victims must provide documentation of their losses for restitution and, if victims are not able to provide this documentation, courts may decline to order restitution.⁵⁰ Also, in certain cases, courts are not required to order restitution—such as when there is no identifiable victim or, on the other hand, when the number of identifiable victims is so large as to make restitution impractical, among other reasons. Additionally, the court might not order, or order only partial restitution for other reasons, such as when the value of property the defendant returned to the victim was deducted from the restitution award or because the victim received compensation from insurance.⁵¹

Data on Five Percent of Restitution Orders Were Incomplete

If a court does not order restitution, or orders partial restitution, it is required to provide the reason for its decision and to provide that reason to USSC, but our analysis showed USSC did not always have these data.⁵² Specifically, from fiscal years 2014 through 2016, we found that restitution was not ordered—and no reason was documented in USSC data for that decision—for 9,848 offenders (5 percent of the 214,578 offenders sentenced during this time period).⁵³ Information on offenders'

⁴⁹The amount paid to a victim under a restitution order must be reduced when a victim has recovered compensatory damages for the same loss in a federal or state civil proceeding. 18 U.S.C. § 3664(j)(2).

⁵⁰To prove losses, victims may provide a range of documentation, which could include their victim-impact statement, a spreadsheet indicating days of missed work as a result of the offense, or invoices for costs incurred due to the offense.

⁵¹18 U.S.C. §§ 3663(b)(1), 3663A(b)(1), 3664(j).

⁵²18 U.S.C. § 3553(c). This includes cases where the court orders only partial restitution. The reason for not ordering, or ordering partial restitution, is to be included in the court's statement of reasons for its imposition of the particular sentence. This provision was originally enacted as part of the Sentencing Reform Act of 1984, Pub. L. No. 98-473, § 212, 98 Stat. 1987, 1990. The Senate report accompanying the legislation provided: "The statement of reasons also informs the defendant and the public of the reasons for the sentence. It provides information to criminal justice researchers evaluating the effectiveness of various sentencing practices in achieving their stated purposes. Finally, it assists the Sentencing Commission in its continuous reexamination of its guidelines and policy statements." S. Rep. 98-225 (1983), 80. This section has been subsequently amended.

⁵³According to USSC, the commission reviews the written Statement of Reasons, as well as other documents it receives from the courts, such as the Judgment in a Criminal Case, the plea agreement, the PSR, and any court transcripts it receives to determine if judges provided a reason for not ordering restitution.

sentences, including restitution, assists USSC in its continuous reexamination of its guidelines and policy statements and ensures that various sentencing practices are achieving their stated purposes. Further, *Standards for Internal Control in the Federal Government* state that management should evaluate issues identified through monitoring activities or reported by personnel to determine whether any of the issues rise to the level of an internal control deficiency.⁵⁴

In response to our questions about the missing information on reasons why restitution was not ordered, AOUSC and USSC officials stated that they were unaware of the missing information or why it was missing. Judiciary officials stated that because various entities within the judiciary participate in the process of collecting and recording information on reasons restitution was not ordered, they did not know which entities could take action to improve USSC data. However, as previously discussed, if the court does not order restitution, or orders only partial restitution, the judge must provide the reason, and judges usually do so in a written Statement of Reasons form.⁵⁵ The Judicial Conference, along with USSC, has developed guidance to help judges fill out the Statement of Reasons form and AOUSC supports the Judicial Conference in carrying out its policies. Further, courts must provide USSC the written Statement of Reasons form for sentences imposed. USSC is also responsible for collecting, analyzing, and distributing information on federal sentences provided by each district court, including information related to orders for restitution.⁵⁶ However, judicial officials, including from the entities listed above, agreed that further studying the missing data may inform the judiciary of the cause of the missing data, as well as any efforts needed to improve USSC information.

⁵⁴[GAO-14-704G](#).

⁵⁵The Judicial Conference is responsible for developing the Judgement in a Criminal Case form, which includes the Statement of Reasons form. The form was designed in part to aid the Sentencing Commission in exercising its authority under 28 U.S.C. § 995(a)(8) regarding sentencing data collection requirements. While judges are not required to use the Statement of Reasons form to explain their sentencing decisions, according to USSC data, judges did so for 97 percent of all sentences from fiscal years 2014 through 2016.

⁵⁶USSC officials told us that courts may send transcripts of court proceedings if they do not fill out the Statement of Reasons form. USSC officials also told us that when they do receive court transcripts in lieu of, or in addition to, the Statement of Reasons form, they read the transcripts and record information on the sentencing decision, including information on the restitution order.

Courts are required to provide reasons for not ordering restitution and to provide this information to USSC so that the agency can analyze and report on sentencing data. Determining why USSC data are incomplete could help inform the judiciary whether the issue rises to the level of an internal control deficiency and whether additional action can be taken to improve the transparency of sentencing decisions. Doing so could help the judiciary ensure reasons for not ordering restitution are provided consistently in all cases and potentially improve data provided to USSC, in turn supporting its mission to promote transparency in sentencing decisions.

DOJ Collected \$2.95 Billion in Restitution Debt from Fiscal Years 2014 through 2016, but Most Debt Remains Outstanding Due to Offenders' Inability to Pay

DOJ Generally Collected More on Newer Debts, Though Not All Collected Restitution Is Disbursed

Our analysis of DOJ data showed that DOJ collected \$2.95 billion in restitution debt from fiscal years 2014 through 2016, half of which was collected on debts imposed during this period. The extent of collections across the 94 USAOs ranged from a high of \$848 million in one USAO to a low of \$1.2 million in another USAO.⁵⁷ The median amount collected for USAOs was \$10.7 million.

⁵⁷Of the \$848 million collected by one district, \$666 million was received in relation to a single tax evasion case.

DOJ was more successful at collecting restitution on newer debts—debts imposed from fiscal years 2014 through 2016.⁵⁸ Of the \$2.95 billion in restitution debt collected, about half was collected from new debts imposed by courts during this time period. Specifically, DOJ collected \$1.5 billion (4 percent), of the \$34 billion ordered from fiscal years 2014 through 2016.⁵⁹ The remaining half of the debt collected during this time frame was collected from debts imposed between fiscal year 1988 and fiscal year 2014.⁶⁰

New debts—imposed in fiscal years 2014 through 2016—were also more likely to be fully paid during this time period compared to all debts. Specifically, from fiscal years 2014 through 2016, DOJ collected the full amount of restitution on 4,003 of the 24,950 debts imposed during this time, 16 percent. However, across all debts, including debts imposed prior to fiscal year 2014, DOJ collected the full amount of restitution ordered on only 5 percent of debts. Across all restitution debts, DOJ collected at least some of the debt for one-third of debts and did not collect any restitution on the remaining two-thirds.

More than 60 percent of the restitution DOJ collected in fiscal years 2014 through 2016 was owed to non-federal victims (\$1.8 billion), including individuals, corporations and state and local governments. An additional 37 percent of restitution was collected on behalf of federal agencies that were victims of crimes. One percent of restitution collected was community restitution, which is restitution collected for drug offenses that otherwise have no victims and which is disbursed to state victim

⁵⁸According to DOJ, FLUs are best able to collect on restitution debts if they begin their efforts prior to a defendant's conviction (pre-judgment) because this is the best chance to recover assets. Pre-judgment efforts are likely to increase the recovery of assets because defendants (1) have greater incentive to voluntarily disclose financial information and agree to pay monetary penalties when doing so has the potential to favorably influence their sentence, and (2) have less time to hide or dissipate their assets. These factors may explain why DOJ is more likely to collect on newly imposed debts.

⁵⁹According to USSC officials, in cases of joint and several liability for a restitution order, the full amount of restitution is attributed to each offender; therefore the total amount of restitution ordered for all offenders may be overinflated.

⁶⁰All restitution debts are enforceable for 20 years, plus any period of incarceration. According to our analysis, there were a total of 130,811 enforceable restitution debts at the end of fiscal year 2016, of which 24,950 were imposed between fiscal year 2014 through 2016 and 105,861 were imposed prior to fiscal year 2014.

assistance agencies and state agencies dedicated to the reduction of substance abuse, as shown in table 4.⁶¹

Table 4: Department of Justice (DOJ) Restitution Collected by Type of Restitution, Fiscal Years 2014 through 2016

Type of restitution collected	Amount in dollars	Percent of total restitution
Non-federal ^a	1,840,984,559	62
Federal ^b	1,094,626,332	37
Community ^c	16,663,385	1
Total	2,952,274,275	100

Source: GAO analysis of DOJ data. | GAO-18-203

^aNon-federal victims include individuals, corporations and state and local governments.

^bFederal restitution refers to restitution collected on behalf of federal agencies, such as the Internal Revenue Service, that were victims of crimes.

^cCommunity restitution refers to restitution collected as a result of a federal drug offense that otherwise has no victims. Community restitution is disbursed to state victim assistance agencies and state agencies dedicated to the reduction of substance abuse.

AOUSC officials noted that some collected restitution is not disbursed to non-federal victims due to a lack of accurate contact information for these victims. Specifically, according to AOUSC, as of June 2017, courts had more than \$132 million in restitution due to 113,260 victims that could not be disbursed because of a lack of accurate contact information for these victims.⁶² DOJ is required to provide courts with victim contact information, and victims are to notify DOJ if their contact information changes. However, AOUSC and USAO officials told us that this notification by victims may not always occur. For example, officials in one USAO told us that due to the length of court proceedings, victims may move without notifying the court prior to the disbursement of restitution

⁶¹18 U.S.C. 3663(c). For specified offenses under the Controlled Substances Act where there is no identifiable victim, the order of restitution must be based on an amount of public harm caused by the offense, in accordance with the Sentencing Guidelines, but cannot be greater than the fine imposed. Sixty-five percent of the restitution must be paid to the state entity that delivers crime victim assistance and 35 percent must be paid to the state entity that is designated to receive federal substance abuse block grants.

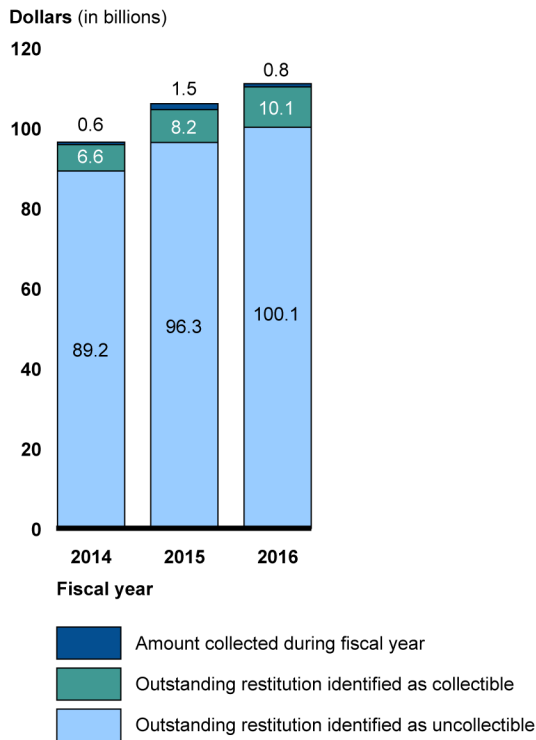
⁶²The \$132 million has accrued over several years and remains in accounts controlled by the judicial branch. AOUSC officials also stated that periodically, each of the 94 district courts transfers collected restitution that cannot be disbursed to victims to the Department of Treasury's unclaimed moneys account, which means that the amount of undischarged restitution owed to victims may be greater than \$132 million. See 31 U.S.C. § 1322.

and, as a result, the court is unable to disburse restitution to those victims.

Of \$110 Billion in Outstanding Debt, 91 Percent Is Uncollectible Because Offenders Have Little Ability to Pay

According to our analysis of DOJ data, at the end of fiscal year 2016, \$110 billion in restitution was outstanding and USAOs had identified \$100 billion of that debt as uncollectible, as shown in figure 2.⁶³ USAOs may identify debts as uncollectible and suspend collection actions on a debt for a variety of reasons, including that the offender has no, or only a nominal, ability to pay the debt.

Figure 2: Collected and Outstanding Federal Criminal Restitution at the End of Fiscal Years 2014 through 2016



Source: GAO analysis of Department of Justice data. | GAO-18-203

Probation officials, EOUSA officials, and officials from five of six USAOs we interviewed stated that most outstanding restitution debt is identified

⁶³Collection actions on debts remain suspended until FLU staff determine that collection actions may be taken or the enforceable period of the debt expires.

as uncollectible and collection action is suspended because many offenders have little ability to pay the debt—a conclusion supported by USSC data. For example, according to USSC data, 95 percent of offenders ordered to pay restitution from fiscal years 2014 through 2016 received a waiver from paying a court-ordered fine, indicating their inability to pay. While courts are allowed to take an offender’s economic circumstances into consideration when issuing fines, they generally may not do so when ordering restitution.⁶⁴ As a result, EOUSA and federal probation officials with whom we spoke stated that offenders ordered to pay restitution often do not have an ability to do so and therefore a large amount of restitution orders is uncollectible.

⁶⁴Specifically, the Mandatory Victims Restitution Act of 1996 (MVRA) requires that assessment of restitution be based on the victim’s actual loss rather than the offender’s ability to pay. According to our previous work, before the passage of the MVRA, the imposition of restitution by courts was typically based on an offender’s ability to pay, see [GAO-01-664](#).

**Select USAO Officials
View DOJ's
Recommended
Practices for
Requesting, Ordering
and Collecting
Restitution as
Generally Effective**

Through various guidance documents, DOJ has identified and recommended numerous practices for DOJ prosecutors and FLU staff to use throughout the restitution process to help ensure full and timely restitution for victims. USAO officials in all six offices with whom we spoke stated that, based on their experience, these practices were generally effective. Specifically, DOJ and EOUSA officials identified practices for prosecutors and FLU staff to use when requesting restitution, facilitating court orders for restitution, and collecting restitution and documented these practices in several guidance manuals.⁶⁵ Officials we interviewed from all six USAOs stated they were generally satisfied with the guidance from EOUSA and that they thought most of DOJ's recommended practices were effective when requesting restitution, facilitating court orders for restitution, and collecting restitution.⁶⁶

Requesting restitution.⁶⁷ Officials we interviewed from three USAOs identified coordination between prosecutors and case investigators prior to sentencing to identify victims and their losses as an important practice for requesting restitution. USAO officials from three of the six offices stated that gathering detailed information on an offender's financial resources, which include assets that could be forfeited and used to pay a restitution debt, was a very effective practice related to requesting restitution.

⁶⁵These guidance manuals include the Innovative Practices Manual for United States Attorneys' Offices Financial Litigation Units, the Prosecutor's Guide to Criminal Monetary Penalties, and the Attorney General Guidelines for Victim and Witness Assistance. The Innovative Practices Manual and Prosecutor's Guide to Criminal Monetary Penalties contain practices that comply with the United States Attorneys' Manual and United States Attorneys' Procedures, but are not required. Rather they are recommended because they have been proven successful by USAOs that carry out the practices, but may not be applicable or adaptable to all offices. The Attorney General Guidelines for Victim and Witness Assistance provides guidance for DOJ personnel, including prosecutors, case investigators, and victim witness assistants, among others, as they carry out their respective roles to pursue justice for criminal acts, including helping victims receive restitution in a timely manner for crimes committed against them. Additionally, the United States Attorneys' Manual and United States Attorneys' Procedures contain required policies and procedures that cover U.S. Attorneys' roles and responsibilities concerning the enforcement of federal criminal debt collection, including restitution.

⁶⁶For the full summary of USAO officials' perspectives on DOJ's recommended practices, see appendix II.

⁶⁷Prosecutors request restitution by identifying victims, ascertaining their losses and presenting this information to the court.

Facilitating court orders of restitution. Although the courts, and not prosecutors, are responsible for ordering restitution, DOJ guidance identifies several practices that prosecutors can use to facilitate orders of restitution that may increase the likelihood of full and timely restitution for victims. Officials from three of six USAOs stated that the most effective practice related to ordering restitution was ensuring courts ordered restitution as due and payable immediately. Specifically, when offenders cannot pay restitution in an immediate lump-sum payment, the courts must specify a payment schedule through which the offender will pay restitution based on the offender’s ability to pay.⁶⁸ In these cases, USAO officials stated that it is effective for prosecutors to ensure the restitution order specifies that restitution is due and payable immediately. According to an EOUSA official, this permits the agency to immediately pursue all collection remedies allowed by law whenever the debtor has or subsequently obtains the ability to pay.⁶⁹

Collecting restitution. Officials from all six USAOs stated that using the Treasury Offset Program (TOP), a program that allows for the reduction or withholding of a debtor’s federal benefits, such as a tax refund, was one of the most effective practices for collecting restitution.⁷⁰ Specifically, officials in one USAO told us that TOP requires minimal effort for FLU staff and can result in a high amount of collections. As an example, officials from two USAOs told us their respective offices each recovered more than \$500,000 dollars in restitution debt in fiscal year 2016 through

⁶⁸A lump sum payment is a single payment made at a particular time as opposed to a number of smaller payments over a period of time.

⁶⁹According to AOUSC, the criminal judgment form approved by the Judicial Conference was modified in 2003 to allow courts to enter restitution orders that combine the options of ordering the entire restitution debt due and payable immediately and subject to a payment plan (otherwise known as “combination orders”). According to an AOUSC official, courts that had interpreted a payment schedule as a limit on collection have recognized that a restitution order combining a due immediately or immediate payment requirement with a payment plan allows parallel civil collection efforts. However, an EOUSA official noted that payment schedules can continue to pose challenges to the collection of assets that could satisfy restitution obligations more quickly, citing for example, a recent Tenth Circuit case, *U.S. v. Martinez*, 812 F.3d 1200 (10th Cir. 2015). In 2001, we found that payment schedules set by judges could hinder collection efforts, see [GAO-01-664](#).

⁷⁰TOP allows federal agencies, including DOJ, to submit unpaid debts to the Department of Treasury for collection. The Department of Treasury can then reduce or withhold all or part of a debtor’s federal benefits, including for example a federal tax refund, to satisfy unpaid debt.

TOP. Officials from three of the six offices also identified using wage garnishment as an effective practice for collecting restitution.⁷¹

Across all parts of the restitution process, USAO officials we spoke with also consistently identified DOJ recommended practices related to internal and external communication and collaboration as effective for improving the restitution process. Specifically, the officials identified collaboration between various units in the USAO as an effective practice to ensuring restitution for victims. For example, USAO officials in two of the six offices highlighted coordination between Victim-Witness coordinators and prosecutors to help identify victims and quantify their losses as effective to assisting in the request for restitution. Additionally, USAO officials in all six offices stated that strong coordination between FLU personnel and criminal prosecutors to identify an offender's financial resources and available assets was an effective practice to help ensure FLU staff could collect restitution using those resources or assets.

USAO officials from five of six offices identified external communication between FLU and the federal probation office as an effective practice.⁷² Specifically, officials from these USAOs stated that FLUs coordinating with probation officers during the offender's supervision period to enforce restitution terms was an effective practice for collecting restitution. Additionally, according to EOUSA guidance, FLU staff can use outreach and training with other partners such as the probation office to facilitate information sharing on restitution collection issues and officials from five of six USAOs told us that FLUs conducting training and outreach is a very effective practice.

In addition, probation officials we interviewed in each of the six federal judicial districts we selected stated that ongoing communication between USAO staff and probation officers is effective to ensuring victims are identified and receive full and timely restitution. Probation officials from one court district emphasized the importance of a good working relationship with the USAO, stating that the probation office and USAO are better able to ensure victims and their losses are accurately identified

⁷¹Wage garnishment is a procedure through which a portion of an offender's income is deducted and applied to a debt, such as a restitution order.

⁷²EOUSA requires each USAO to have a Memorandum of Understanding that outlines how the USAO will coordinate with the federal probation office and Clerk of the Court within its district to enforce restitution terms and ensure collected restitution is disbursed to victims.

and defendants' ability to pay is adequately addressed when working collaboratively. A probation official from another office said that probation officers regularly coordinated with the USAO's FLU, and this coordination was particularly important on cases involving complex financial crimes, where the offender has a complicated financial portfolio. Further, probation officials from five of six probation offices also stated that attending training conducted by the FLU is a very effective practice.

EOUSA and selected USAO officials told us that while these practices may be useful in some circumstances, they may not be effective or applicable in all cases or in all districts. Specifically, practices DOJ recommends may be effective when offenders have the ability to pay restitution but are simply unwilling to do so; however, USAO officials in five of six offices stated that these practices cannot mitigate the fact that many offenders lack the ability to pay restitution because they lack assets and income. Additionally, while EOUSA guidance recommends that FLU staff contact co-defendants or victims for information on the whereabouts or assets of offenders who owe restitution, officials from three USAOs told us this was not effective. According to one official, although co-defendants are sometimes eager to share information, the information is usually unreliable. USAO officials also identified some recommended practices as not applicable to their district. For example, EOUSA recommends that FLU units request Asset Investigation assistance from EOUSA for complex cases involving large amounts of valuable assets.⁷³ However, USAO officials in a small, rural district with whom we spoke stated that the types of cases their office prosecutes tend not to be the type of financial cases that warranted use of this resource.

⁷³An asset investigation is a financial analysis of asset availability for complex debt collection cases. Asset investigators, typically EOUSA-contracted staff, conduct these analyses. Some USAOs employ their own asset investigators. According to EOUSA, asset investigators can provide an additional investigative resource to assist other USAOs in handling their more complex financial crimes cases.

DOJ Could Improve Oversight of the Collection of Federal Restitution, Including the Use of Forfeited Assets to Pay Restitution Debt

DOJ Does Not Have Measures or Goals to Assess Performance in the Collection of Restitution

DOJ has identified improving debt collection—including court-ordered restitution—as a major management initiative in its 2014-2018 Strategic Plan. However, it does not have any measures or goals in place to assess its performance in meeting this initiative or meet requirements that it evaluate its performance in seeking and recovering restitution as required by statute.⁷⁴ In 2001, we recommended that DOJ adequately measure its criminal debt collection performance against established goals to help improve collections and stem the growth in uncollected criminal debt. DOJ concurred with this recommendation, and as of fiscal year 2003, annually assessed each district based on established collection goals for that district.⁷⁵ However, as of September 2017, DOJ no longer evaluates each district based on established goals. EOUSA officials stated that DOJ no longer uses these performance goals and that the agency did not maintain records for when or why it stopped.

⁷⁴Specifically, the Justice for All Reauthorization Act of 2016 calls for the Attorney General to, as part of the regular evaluation process, evaluate each office of the United States attorney and each component of the Department of Justice on the performance of the office or the component, as the case may be, in seeking and recovering restitution for victims under each provision of title 18 and the Controlled Substances Act (21 U.S.C. 801 et seq.) that authorizes restitution. Further, the act requires that following the evaluations described above, each office of the United States Attorney and each component of the Department of Justice work to improve the practices of the office or component with respect to seeking and recovering restitution for victims under each provision of title 18 and the Controlled Substances Act (21 U.S.C. 801 et seq.) that authorizes restitution. Pub. L. No. 114-324, § 18, 130 Stat. 1948, 1962-63 (codified at 18 U.S.C. § 3612(j)).

⁷⁵[GAO-01-664](#). According to our previous work, a DOJ official stated that because of the differences in size of caseloads and types of cases worked, it did not make sense for EOUSA to establish nationwide goals. Instead, each district established, and was measured against, its own collection goals.

EOUSA officials stated that while the agency does not have any measures or goals to assess USAOs' performance in improving debt collection, including the collection of federal restitution, they are working with DOJ's Justice Management Division to develop a suite of analytical tools to monitor the collection of debt across all offices. According to DOJ, some of these analytical tools have been implemented and additional tools will be implemented by March 2018. EOUSA officials stated that these tools will help the agency determine which cases are most likely to result in significant collections and the types and timing of enforcement actions that generate maximum debt recovery results. EOUSA officials further stated the analytical tools will allow the agency to compare districts' efforts based on a variety of factors (e.g., caseload, staff size, and enforcement actions). These analytical tools may provide EOUSA with valuable insight into the present condition of the collection of restitution across USAOs, but they will not provide DOJ with a baseline performance standard that could be used to indicate if USAOs' efforts to collect restitution debts are having a measurable impact in meeting DOJ's objective of improving debt collection.

Additionally, EOUSA conducts evaluations of each USAO every 4 years, which include a review of FLU operations, but EOUSA officials stated that these reviews do not include oversight of the collection of restitution. Among other aspects of USAO operations, these internal evaluations review the extent to which each FLU is complying with statutory and DOJ requirements related to debt collection, has sufficient program resources, and adequately manages its caseload. However, DOJ and EOUSA officials told us that it did not plan to use these internal evaluations to meet the Justice for All Reauthorization Act of 2016 requirement to evaluate each USAO on its performance in seeking and recovering restitution for victims. Specifically, the officials stated that these internal evaluations are not an appropriate mechanism to meet the law's requirements because the internal evaluations do not specifically review the seeking and recovery of restitution for victims. According to DOJ officials responsible for the internal evaluation program, these evaluations are largely intended to provide onsite management assistance and analysis of how the USAO allocates its administrative and legal personnel resources rather than the office's efficacy in collecting restitution.

Consistent with requirements outlined in the Government Performance and Results Act Modernization Act of 2010 (GPRAMA), performance measurement is the ongoing monitoring and reporting of program accomplishments—particularly towards pre-established, objective and quantifiable goals—and agencies are to establish performance measures

to assess progress towards those goals.⁷⁶ While GPRAMA is applicable to the department or agency level, performance measures and goals are important management tools at all levels of an agency, including the program, project, or activity level. Agencies can use performance measurement to make various types of management decisions to improve programs and results, such as developing strategies and allocating resources, including identifying problems and taking corrective action when appropriate.⁷⁷ Further, the Justice for All Reauthorization Act of 2016 requires DOJ to evaluate each USAO in its performance in recovering restitution for victims.

DOJ and EOUSA officials told us that DOJ does not require USAOs to establish performance measures or goals to assess their progress in improving the collection of restitution. DOJ and EOUSA officials also told us that each USAO could develop performance goals but that they were unaware of the extent to which USAOs did so, and further, they do not track the extent to which USAOs met performance goals. Additionally, these officials stated that because each USAO faces different constraints in its ability to collect restitution, establishing a uniform and consistent performance measure and goal would be challenging. EOUSA officials noted that some USAOs may have more resources, such as more FLU staff or specialized asset investigators, available to pursue collections as compared to other offices and therefore offices with fewer resources could have difficulty meeting a performance goal. Further, EOUSA and USAO officials stated that the extent to which DOJ can collect on a debt is heavily influenced by factors outside of the agency's control, such as an offender's ability to pay.

USAOs could use information provided by performance measures and goals—such as an office's ability to meet a performance goal—to make managerial decisions to help address these constraints, such as by

⁷⁶GPRA, Pub. L. No. 103-62, 107 Stat. 285 (1993), was updated by the GPRA Modernization Act of 2010, Pub. L. No. 111-352, 124 Stat. 3866 (2011); 31 U.S.C. § 1115 (relating to agency performance plans and performance measurement).

⁷⁷GAO, *Asylum: Variation Exists in Outcomes of Applications Across Immigration Courts and Judges*, [GAO-17-72](#) (Washington, D.C.: Nov. 14, 2016)

increasing the allocation of staff resources.⁷⁸ Further, to avoid comparing USAOs to a nationally set performance goal that does not account for specific constraints faced by each office, DOJ could—as it did in fiscal year 2003—require each USAO to establish its own objective, quantitative collection goals based on historical, district-specific collection statistics. Finally, as previously discussed, each USAO already accounts for external factors that affect the collectability of a debt, such as an offender’s ability to pay, by suspending collection action on debts it identifies as uncollectible. Therefore, any performance measures and goals developed could be based solely on debts that the USAO already has determined to be collectible.

Stakeholders we interviewed—including officials from one USAO, probation officials in two districts, and officials with DOJ’s Office of Crime Victims—noted that receiving restitution is both emotionally and financially important to victims. Specifically, officials from one USAO and one probation office noted that while many victims may never receive the full amount of restitution ordered, receiving even a minimal amount of restitution is a symbolic victory and that it is important for victims to know the government is making efforts to collect restitution on their behalf. The legislative history of the MVRA echoes these sentiments, providing that even nominal restitution payments have benefits for the victim of crime, and that orders of restitution are largely worthless without enforcement.⁷⁹ Yet, according to our analysis, \$10 billion of restitution debt DOJ identified as collectible remained outstanding at the end of fiscal year 2016. Further, the extent to which USAOs collected restitution varied widely—from a high of one USAO district collecting nearly 350 percent of all collectible debt in fiscal years 2014 through 2016 to a low of one district collecting less than one percent of collectible debt in the same period.⁸⁰

⁷⁸For example, to help address FLU staffing and workload challenges, in some USAOs, FLU support staff positions have been supplemented with contractors funded from DOJ’s Three Percent Fund. The Three Percent Fund is an account composed of 3 percent of amounts DOJ collects “pursuant to civil debt collection litigation activities” and has been used by DOJ components to conduct activities related to civil and criminal debt collections. 21st Century Department of Justice Appropriations Authorization Act, Pub. L. No. 107-273, div. C, tit. I, § 11013(a), 116 Stat. 1758, 1823 (2002) (28 U.S.C. § 527 note).

⁷⁹S. Rep. No. 104-179 (1995), at 18, 23. The Joint Explanatory Statement accompanying the Antiterrorism and Effective Death Penalty Act, of which the MVRA was enacted as title II, subtitle A, provides that the Senate Judiciary Committee Report to accompany H.R. 665 should serve as the legislative history for the MVRA. H.R. Rep. No. 104-518 (1996), at 111-12.

⁸⁰USAOs can collect on suspended debt, which may result in the office collecting more than one hundred percent of debt it identified as collectible.

Without performance measures, including the establishment of goals, DOJ cannot assess if this variation is due to factors outside the control of USAOs or due to management deficiencies that require corrective action.

Developing performance measures and goals for each USAO related to the collection of restitution would allow DOJ to assess its progress in achieving its major management initiative in improving debt collection—including debts owed to victims as court-ordered restitution. Doing so would also better position DOJ to meet the requirements of the Justice for All Reauthorization Act of 2016 to evaluate offices in their performance in recovering restitution on behalf of victims and to use performance information to improve the practices of offices as needed.

DOJ Could Improve Its Information on Forfeited Assets Available for Victims

Although asset forfeiture and restitution are separate parts of a criminal sentence, DOJ guidance states that using forfeited assets to benefit victims is a way that DOJ can help ensure eligible victims of crime are compensated for their losses.⁸¹ Further, DOJ regulations and policy require that eligible victims receive compensation from forfeited assets before certain other uses, such as official use or equitable sharing.⁸² However, while DOJ tracks the amount of compensation provided to victims through forfeited assets, it does not have assurances that forfeited

⁸¹According to DOJ regulations, an eligible victim means a person who has incurred a pecuniary loss as a direct result of the commission of the offense underlying forfeiture. 28 C.F.R. § 9.2. When initially issuing these regulations DOJ explained that the purpose of compensating victims using forfeited assets is not to effect restitution to all victims of crime, but rather to ameliorate the hardship that may result from forfeiture to those who (i) have an ownership interest in the property, and (ii) others who, even though they do not have a cognizable interest in the property, have incurred a monetary loss as a result of the same underlying or related criminal offense and who are uninvolved in or unaware of the underlying criminal activity that resulted in the forfeiture. Revision of Regulations Governing the Remission or Mitigation of Civil and Criminal Forfeitures, 62 Fed. Reg. 314 (Jan. 3. 1997).

⁸²According to DOJ's Asset Forfeiture Manual, because forfeiture and restitution are separate parts of a criminal sentence and serve different purposes, DOJ does not allow forfeited assets to be used to satisfy a restitution order if other assets are available (or unless the offender has no other means by which to pay a restitution debt). Further, federal regulations provide that the proceeds from forfeited assets are first used to cover program costs associated with forfeiture-related activities and next to pay valid owners, lien-holders, and federal financial regulatory agencies. Forfeited assets are then to be distributed to other eligible victims as compensation for their losses resulting from the crime. Any remaining funds may be placed into official use or distributed to foreign governments or state and local law enforcement agencies as part of the equitable sharing program to enhance cooperation with federal investigations. See 28 C.F.R. § 9.9(a).

assets are being used to compensate victims to the greatest extent possible.

According to DOJ information, the agency made payments of about \$595 million to eligible victims other than owners of the property from the Assets Forfeiture Fund from fiscal years 2014 through 2016, or 15 percent of \$3.9 billion in paid expenditures during this period, as shown in table 5.⁸³

Table 5: Victim Payments and Expenditures from the Assets Forfeiture Fund, Fiscal Years 2014 through 2016

	2014		2015		2016		Total	
	Dollars (millions)	Percentage	Dollars (millions)	Percentage	Dollars (millions)	Percentage	Dollars (millions)	Percentage
Victim Compensation	294	21	137	10	164	14	595	15
Third-Party Payments ^a	59	4	30	2	48	4	138	4
Asset Forfeiture Program Costs ^b	465	34	538	40	520	44	1,523	39
Equitable Sharing and Joint Law Enforcement Operations ^c	567	41	630	47	446	38	1,642	42
Total Annual Expenditures	1,385	100	1,335	100	1,178	100	3,899	100

Source: Department of Justice (DOJ). | GAO-18-203

Note: The Comprehensive Crime Control Act of 1984, Pub. L. No. 98-473 (codified as amended at 28 U.S.C. § 524(c)), established the Assets Forfeiture Fund as a special fund to receive the proceeds of forfeitures pursuant to any law enforced or administered by DOJ.

^aThese third-parties costs include payments to valid owners and lien-holders. Owners that have an ownership interest in the forfeited property may also be victims.

^bThese costs include, for example, those associated with managing forfeited assets.

^cFederal law authorizes DOJ to share federally forfeited property with participating state and local law enforcement agencies as well as foreign governments to enhance cooperation with federal investigations.

⁸³The Comprehensive Crime Control Act of 1984, Pub. L. No. 98-473 (codified as amended at 28 U.S.C. § 524(c)), established the Assets Forfeiture Fund as a special fund to receive the proceeds of forfeitures pursuant to any law enforced or administered by DOJ. The net cost of operations refers to the annual gross amount spent from the fund, including actual payments made and accrued liabilities, less any revenue received.

As table 5 shows, DOJ can account for cases in which forfeited assets were used to compensate eligible victims who were not owners or lienholders. However, DOJ does not have information on the overall universe of victims who could have been eligible to receive compensation from forfeited assets. Further, it does not have insight into any reasons why funds from forfeited assets were not used for these victims. Specifically, DOJ officials stated that the department collects information on whether victims have been identified in cases associated with forfeited assets, and if restitution is anticipated in these cases, but it does not track the extent to which these victims were ultimately compensated using forfeited assets. Further, DOJ also does not collect information on reasons why victims were not compensated using funds from forfeited assets. While DOJ is required to use forfeited assets to compensate victims before using those assets for certain other purposes, the agency is unable to provide assurances that it is always doing so because it does not have information on the overall universe of victims or reasons why victims were not compensated using forfeited assets. As a result, DOJ does not have a basis to know whether the \$595 million provided to victims from fiscal years 2014 through 2016 is the maximum amount of compensation the agency could have provided to victims using forfeited assets.

Full use of forfeited assets for victim compensation has long been, and continues to be, a goal of DOJ. In 2005, an interagency task force—led by DOJ and including the Department of Treasury, Office of Management and Budget and AOUSC—developed a strategic plan to improve the collection of criminal debt. Among other goals included in its strategic plan, the task force stated a goal of examining how asset seizure and forfeiture procedures can be used to maximize recoveries for victims. More recently, DOJ reported in its 2014-2018 Strategic Plan that it would make every effort to recover full and fair restitution for victims using the federal forfeiture statutes to preserve and recover criminal proceeds. Specifically, DOJ stated that using federal forfeiture statutes to recover full and fair restitution for victims is one part of its strategy to protect the rights of the American people and enforce the rule of law. Finally, DOJ officials told us they considered providing compensation to victims as one goal of the Asset Forfeiture Program and EOUSA stated in guidance that asset forfeiture is the most widely available and effective tool to seize assets for restitution purposes. *Standards for Internal Control in the Federal Government* call on federal managers to design control activities

to achieve the agency's objectives.⁸⁴ These controls can include using quality information to make informed decisions, evaluate the entity's performance in achieving key objectives, and address risks.

DOJ officials told us that they do not track the extent to which victims were not compensated using forfeited assets because USAO staff are not required to request that these assets be used for victim compensation. DOJ officials explained that staff are required to indicate in the agency's forfeited asset database, the Consolidated Asset Tracking System, if victims exist in cases associated with forfeited assets and if restitution is anticipated in these cases. However, these officials stated that staff are not required to then compensate these victims using the forfeited assets or to indicate why these assets were not used for this purpose. DOJ officials told us that decisions to compensate victims using forfeited assets are best left to the judgment of the USAO staff familiar with the case, such as the prosecuting attorney or asset forfeiture staff.

DOJ officials pointed to informal communication and coordination among prosecutors, the FLU, and the Asset Forfeiture unit in each USAO as a means to provide compensation to victims as appropriate. However, communication and coordination among these groups has been a challenge for USAOs, as the DOJ Inspector General found in a June 2015 review of DOJ's debt collection program.⁸⁵ Similarly, during our current review, EOUSA and USAO officials we spoke with identified communication and coordination as an area for improvement. EOUSA officials told us that while they thought that FLU staff and Asset Forfeiture unit staff were collaborating more frequently to use forfeited assets to collect restitution debts since the issuance of the DOJ Inspector General's report, the extent of collaboration between these two units still varied across USAOs. Further, officials we talked to in two USAOs and one

⁸⁴[GAO-14-704G](#).

⁸⁵In 2015, the DOJ Inspector General reported that pre-judgment communication and coordination between the FLU and Asset Forfeiture unit occurred rarely or not at all in 40 percent of the 93 USAOs and EOUSA's internal evaluations of FLUs reached similar conclusions. For example, the DOJ Inspector General reported that in fiscal year 2013 EOUSA evaluators found insufficient coordination among the FLU, Criminal Division, and Asset Forfeiture unit during the pre-judgment phase of criminal cases in 4 of the 16 FLUs they evaluated that year. The DOJ Inspector General recommended that EOUSA work with USAOs to improve communication and coordination. As of June 2017, this recommendation remained open. U.S. Department of Justice, Office of the Inspector General, *Review of the Debt Collection Program of the United States Attorneys' Offices*, June 2015.

probation office noted that USAO staff could improve their use of forfeited assets for restitution payments. For example, officials in one probation office noted that it was their practice to identify forfeited assets that could be used for compensation in the PSR because they had observed that USAO staff were frequently not applying such assets to victim compensation.

While DOJ may allow USAO staff to use discretion when requesting restoration or alerting victims to assets available for compensation, increasing the agency's understanding of the extent to which assets could have been—but were not—used for victim compensation, and the reasons for those decisions, does not affect that discretion. There are legitimate reasons why victims might not be compensated using forfeited assets; for example, the assets may have other owners or lienholders that must be compensated prior to victims, or offenders may have other means by which to pay victims restitution. However, there are also instances where victims may have not received compensation through forfeited assets as a result of unintentional circumstances. For example, according to DOJ's Asset Forfeiture Manual, forfeiture actions can proceed faster than the parallel criminal case. Consequently, assets might be equitably shared, placed into official use, or remitted to victims who file petitions long before restitution is ordered, and therefore would not be available for other victims who wait for restitution to be ordered after an offender is sentenced. To avoid this outcome, DOJ recommends that USAOs coordinate to ensure the retention of property for victim compensation. However, although DOJ officials responsible for leading DOJ's asset forfeiture efforts highlighted the need for expedient coordination when USAO staff are considering using forfeited assets to compensate victims, they stated this may not always occur. As a result, otherwise eligible victims may not always be compensated through forfeited assets.

By gathering information about the extent to which assets were used for victim compensation—including when they were not used and reasons why not—DOJ could have a better understanding of potential instances where victims could be, but are not, receiving compensation through forfeited funds and could take steps to address them accordingly. Options for gathering such information could include doing a one-time retrospective study of forfeited assets with victims or anticipated restitution to determine the extent that assets were used for victim compensation, or creating a tracking mechanism through its forfeited assets database, or another system.

Gathering information on the extent to which forfeited assets were used for victim compensation, including when not used and reasons why not, could position DOJ to take action to increase the use of these assets for victim compensation if warranted. These actions could include providing funds for increased asset forfeiture staff in USAOs, providing additional training or changing policies or procedures for using forfeited assets to compensate victims. Fully and systematically understanding the extent to which issues, such as a lack of coordination within USAOs, result in victims not being compensated using forfeited assets would give DOJ a basis upon which to develop improvements to the Asset Forfeiture Program. Such information would also provide DOJ and staff at all USAOs with information to evaluate its performance in achieving one of the goals of the Asset Forfeiture Program and taking action to meet the agency goal of protecting the rights of the American people—including the right to full and fair restitution for victims.

Conclusions

Restitution serves the criminal justice goal of holding offenders accountable and, to the extent possible, restoring victims of federal crimes to their prior position had the crime not occurred. Many victims are unlikely to receive any meaningful portion of court-ordered restitution owed to them because of offenders' inability to pay these debts. However, the fact that restitution is difficult to collect does not negate the important responsibilities of the judiciary and DOJ to properly manage and oversee all aspects of the restitution process.

By law, courts are to state why they did not order restitution and provide that information to USSC. While this information was collected and recorded in USSC data for most offenders, we found that this information was missing for thousands of offenders. It is important for the judiciary to ensure that this information is consistently collected and recorded to assist USSC in its continuous re-examination of its guidelines and policy statements and ensure that various sentencing practices are achieving their stated purposes. The judiciary could support USSC in this endeavor by determining why this information is missing. Results from this study could help inform the judiciary whether this issue rises to the level of an internal control deficiency and whether additional action can be taken to improve the transparency of sentencing decisions.

While DOJ has delegated collection activities for restitution to USAOs, it could provide better oversight to ensure it is making reasonable efforts to collect restitution and meeting its responsibility to victims. USAOs have identified a significant portion of outstanding restitution debt as

uncollectible, but they have also identified \$10 billion of outstanding restitution debt that could be collected. Developing and implementing performance measures and goals for each USAO would allow DOJ to gauge USAOs' success in collecting this restitution and, by extension, the department's success in achieving its major management initiative to increase the collection of debt. Further, DOJ could use performance information to improve the practices of offices in seeking and recovering restitution, consistent with a requirement in the Justice for All Reauthorization Act of 2016.

Finally, DOJ could gain greater visibility into the use of forfeited assets to compensate victims by gathering information on cases in which victims have been identified and restitution is anticipated but forfeited assets are not used, and any reasons why. Doing so would better position DOJ to take action to increase the use of forfeited assets to compensate eligible victims if warranted and to provide assurance that it is maximizing the use of asset forfeiture in satisfying restitution debts, one of the agency's most effective mechanisms for satisfying restitution.

Recommendations for Executive Action

We are making three recommendations, including one to the judiciary and two to DOJ. Specifically:

Judiciary officials, including AOUSC, USSC, and the Judicial Conference, should determine why USSC data on the reasons restitution was not ordered are incomplete. Additionally, if warranted based on this information, judiciary officials should take action to ensure USSC data records include all required information for orders of restitution. (Recommendation 1)

To improve oversight of the collection of restitution we recommend that the Attorney General:

- Develop and implement performance measures and goals for each USAO related to the collection of restitution, and measure progress towards meeting those goals. (Recommendation 2)
- In cases where forfeited assets were not used to compensate victims, gather information on reasons why forfeited assets were not used for victims. If warranted based on this information, take action to increase the use of forfeited assets to compensate eligible victims. (Recommendation 3)

Agency Comments

We provided a draft of this report for review and comment to DOJ, the Judicial Conference of the United States, AOUSC, USSC, and the Federal Judicial Center. DOJ concurred with our recommendations and provided technical comments, which we incorporated as appropriate. AOUSC provided written comments, which are reproduced in appendix III. In its written comments, AOUSC noted that it would work with the USSC to address our recommendation.

We are sending copies of this report to the appropriate congressional committees and the Attorney General, the Judicial Conference of the United States, the Directors of AOUSC, the Staff Director of USSC, the Federal Judicial Center and other interested parties. In addition, the report is available at no charge on the GAO website at <http://www.gao.gov>.

If you and your staff have any questions about this report, please contact me at (202) 512-8777 or goodwing@gao.gov. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. GAO staff who made key contributions are listed in appendix IV.



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Director, Homeland Security and Justice

Appendix I: Number and Percentage of Federal Offenders Ordered to Pay Restitution, Fiscal Years 2014 through 2016

According to our analysis of data from the U.S. Sentencing Commission (USSC), 214,578 federal offenders were sentenced from fiscal years 2014 through 2016. Table 6 shows the number of offenders sentenced and the number and percentage of offenders ordered to pay restitution for each primary offense of conviction in fiscal years 2014 through 2016.¹

Table 6: Offenders by Primary Offense of Conviction and Number and Percentage Ordered to Pay Restitution, Fiscal Years 2014 through 2016

Offenders by primary offense of conviction	Total offenders	Offenders ordered to pay restitution	Percentage of offenders ordered to pay restitution
Embezzlement	997	862	86
Robbery	2,223	1,787	80
Larceny	3,355	2,519	75
Tax offenses	1,733	1,293	75
Fraud	21,551	15,902	74
Arson	159	116	73
Auto theft	193	121	63
Burglary	96	60	63
Forgery or counterfeiting	1,674	1,027	61
Manslaughter	158	79	50
Kidnapping or hostage taking	132	58	44
Bribery	655	236	36
Racketeering or extortion	2,784	851	31
Murder	253	77	30
Child pornography	5,765	1,553	27
Traffic violations and other offenses	6,615	1,721	26
Environmental, game, fish, or wildlife offenses	516	133	26
Money laundering	2,279	466	20
Assault	2,340	478	20
Antitrust violations	55	11	20
Civil rights offenses	149	27	18
Food and drug offenses	375	66	18
Sexual abuse	1,693	291	17

¹According to USSC, to determine the primary offense of conviction, USSC officials review court documents to code the offense for which an offender was convicted into an easy-to-understand category. If an offender was convicted for more than one offense, USSC uses the count of conviction with the highest statutory maximum sentence an offender can receive.

Appendix I: Number and Percentage of Federal Offenders Ordered to Pay Restitution, Fiscal Years 2014 through 2016

Offenders by primary offense of conviction	Total offenders	Offenders ordered to pay restitution	Percentage of offenders ordered to pay restitution
Administration of justice offenses	3,458	358	10
Firearms	22,298	2,015	9
Gambling or lottery offenses	268	16	6
National defense offenses	308	10	3
Prison offenses	1,408	26	2
Trafficking or manufacturing drugs	60,593	814	1
Simple possession of drugs ^a	6,504	28	0.4
Immigration offenses	63,060	156	0.3
Drugs communication facilities ^b	931	1	0.1
Total	214,578	33,158	15

Source: GAO analysis of United States Sentencing Commission (USSC) data. | GAO-18-203

Note: According to USSC, to determine the primary offense of conviction, USSC officials reviews court documents to code the offense for which an offender was convicted into an easy-to-understand category. If an offender was convicted for more than one offense, USSC uses the count of conviction with the highest statutory maximum sentence an offender can receive.

^aSimple possession of drugs refers to an offense when someone has a small amount of an illegal substance for the purpose of consuming or using it but without the intent to sell or give it to anyone else.

^bDrug communication facilities refers to an offense related to the illegal use of a telephone or other means of communication to facilitate a drug offense.

Appendix II: Views on DOJ-Recommended Restitution Practices from Officials in Selected in U.S. Attorneys' Offices

The Department of Justice (DOJ) has identified and recommended numerous practices for federal prosecutors and Financial Litigation Unit (FLU) staff to use throughout the restitution process through various guidance documents.¹ We conducted semi-structured interviews with officials from six U.S. Attorneys' Offices (USAO) to obtain their views on the restitution process and the extent to which they believed DOJ-recommended restitution practices related to the restitution process were effective.² In particular, we spoke with USAO officials from the District of Connecticut; the Southern District of California; the District of New Jersey; the Southern District of Ohio; the District of South Dakota; and the District of Wyoming.

Tables 7 through 9 show the results of our semi-structured interviews. In particular, table 7 shows practices related to requesting restitution and the extent to which USAO officials found these practices effective. Table 8 shows practices related to facilitating orders of restitution and the extent to which USAO officials found these practices effective. Table 9 shows practices related to collecting restitution and the extent to which USAO officials found these practices effective. Each table also indicates practices that officials we interviewed considered as most important or effective for helping ensure victims receive full and timely restitution.

¹These guidance manuals include the Innovative Practices Manual for United States Attorneys' Offices Financial Litigation Units (FLU), the Prosecutor's Guide to Criminal Monetary Penalties, and the Attorney General Guidelines for Victim and Witness Assistance. The Innovative Practices Manual and Prosecutor's Guide to Criminal Monetary Penalties contain practices that comply with the United States Attorney's Manual and United States Attorney Procedures but are not required. Rather, they are recommended because, according to DOJ officials, these practices have been proven successful by USAOs that carry out the practices, but may not be applicable or adaptable to all offices. The Attorney General Guidelines for Victim and Witness Assistance provides guidance for all Department of Justice personnel, including prosecutors, case investigators, and victim witness assistants, among others, as they carry out their respective roles to pursue justice for criminal acts, including helping victims receive restitution in a timely manner.

²In the interviews, we asked officials to rank the effectiveness of each practice. Officials could indicate that the practice was very effective, somewhat effective, not effective, other, or not applicable. For more information on how we selected these offices and developed and administered these semi-structured interviews, please refer to the Objectives, Scope and Methodology section of the report.

Appendix II: Views on DOJ-Recommended Restitution Practices from Officials in Selected in U.S. Attorneys' Offices

Table 7: Effectiveness of Department of Justice (DOJ) Recommended Practices for Requesting Restitution According to Officials from Selected U.S. Attorneys' Offices (USAO)

DOJ recommended practice for requesting restitution	Number of USAOs that indicated practice is effective
Prosecutors should consider requesting defendants to provide full restitution to all victims of all charges contained in the indictment or information, regardless of the count to which the defendant actually pled.	6 of 6
When an indictment contains both charges for which restitution is mandatory and charges for which restitution is not mandatory, prosecutors should require either a plea to a mandatory restitution charge or an acknowledgement by the defendant in the plea agreement that a mandatory restitution charge gave rise to the plea agreement, which will trigger the mandatory restitution provision.	6 of 6
Prosecutors should gather detailed information regarding all of the defendant's assets ✓	5 of 6
Prosecutors should prepare a sentencing memorandum addressing such issues as the calculation of restitution, the imposition of a fine, and the appropriate manner of payment, such as whether full or partial lump sum payment is possible.	5 of 6
Financial Litigation Unit staff should coordinate with the Criminal Chief and Probation Office to ensure they receive the presentence investigation report (PSR) in a timely manner.	5 of 6
Prosecutors should review the PSR to ensure it adequately addresses the identity of the victims, their losses and, in discretionary cases, the defendant's ability to pay.	6 of 6

Legend: ✓ = Practice considered most important by officials in at least two U.S. Attorneys' Offices

Source: GAO analysis of DOJ Guidance. | GAO-18-203

Note: We considered a practice to be effective if officials answered either very effective or somewhat effective.

Appendix II: Views on DOJ-Recommended Restitution Practices from Officials in Selected in U.S. Attorneys' Offices

Table 8: Effectiveness of Department of Justice (DOJ) Recommended Practices for Facilitating Court Orders of Restitution According to Officials from Selected U.S. Attorneys' Offices (USAO)

DOJ recommended practice for facilitating court orders of restitution	Number of USAOs that indicated practice is effective
Prosecutors should ask the court to make a record of its consideration of the facts regarding the defendant's present and future ability to pay wherever relevant (despite the defendant's burden to prove inability to pay), to protect the court's imposition of the monetary penalties and payment.	4 of 6
Prosecutors should ask the court to order a full or partial lump sum payment toward the restitution or fine by a specified date after sentencing.	6 of 6
Prosecutors should ask the court to impose any part of the restitution or fine not paid in lump sum at or soon after sentencing, due with "payment to begin immediately" on the official judgment form.√	6 of 6

Legend: √ = Practice considered most effective by officials in at least two U.S. Attorneys' Offices

Source: GAO analysis of DOJ guidance. | GAO-18-203

Note: We considered a practice to be effective if officials answered either very effective or somewhat effective.

Table 9: Effectiveness of Department of Justice (DOJ) Recommended Practices for Collecting Restitution According to Officials from Selected U.S. Attorneys' Offices (USAO)

DOJ recommended practice for collecting restitution	Number of USAOs that indicated practice is effective
Prosecutors and Financial Litigation Units (FLU) should coordinate efforts to prevent defendants from dissipating or hiding their assets to avoid paying restitution.	6 of 6
Prosecutors should coordinate procedures with the Money Laundering and Asset Recovery Section within DOJ to identify and use forfeited assets for remission or restoration.	5 of 6
FLUs should request Asset Investigation assistance from DOJ's Executive Office for United States Attorneys (EOUSA) for high dollar cases in which the FLU has exhausted all available resources.	0 of 6 ^a
FLUs should use a Memorandum of Understanding to facilitate communication and coordination with the Probation Office and the Clerk of the Court on roles and responsibilities.	6 of 6
FLUs should contact co-defendants or victims about the whereabouts or assets of other defendants who owe restitution.	3 of 6
FLUs should obtain debtor local bank and credit card information via subpoena; or request debtor's earning statement or subpoena debtor's employer to determine if checks are being deposited directly into a bank and name of bank.	6 of 6
FLUs should use other debt collection means, such as bankruptcy records, to obtain information on debtor's financial status.	6 of 6
FLUs should coordinate with the Probation Office during the supervision period to enforce restitution terms.	5 of 6
FLUs should conduct training and outreach with partners such as the Internal Revenue Service and the Probation Office to facilitate their cooperation.	5 of 6

Appendix II: Views on DOJ-Recommended Restitution Practices from Officials in Selected in U.S. Attorneys' Offices

DOJ recommended practice for collecting restitution	Number of USAOs that indicated practice is effective
FLUs should request bond money be applied to restitution immediately upon sentencing.	4 of 6
FLUs should use wage garnishments to enhance the collection of outstanding restitution. [√]	6 of 6
FLUs should use the Treasury Offset Program to enhance the collection of outstanding restitution. [√]	6 of 6

Legend: [√] = Practice considered most effective by officials in at least two U.S. Attorneys' Offices

Source: GAO analysis of DOJ guidance. | GAO-18-203

Note: We considered a practice to be effective if officials answered either very effective or somewhat effective.

³Officials in all six U.S. Attorneys' Offices told us they either had their own asset investigator or did not have high dollar cases warranting use of the EOUSA resource and therefore none of the offices we selected found this practice applicable.

Appendix III: Comments from the Administrative Office of the U.S. Courts



ADMINISTRATIVE OFFICE OF THE
UNITED STATES COURTS

JAMES C. DUFF
Director

WASHINGTON, D.C. 20544

January 16, 2018

Ms. Gretta L. Goodwin
Director
Homeland Security and Justice
U.S. Government Accountability Office
441 G. Street, N.W.
Washington DC 20548

Dear Ms. Goodwin:

The Judiciary has received and reviewed the draft report in this matter entitled, *FEDERAL CRIMINAL RESTITUTION: Most Debt Is Outstanding and Oversight of Collections Could Be Improved* (GAO-18-203). The Administrative Office of the U.S. Courts (AO) appreciates the opportunity to review and comment on this report.

We note that the report recognizes that mandatory restitution amounts are often uncollectible because the offender has no, or only a nominal, ability to pay the debt. The Judicial Conference has consistently opposed legislative proposals that require mandatory restitution because the imposition of restitution without consideration of the ability to pay makes most such orders unenforceable. The imposition of unenforceable sentences undermines the criminal justice system and is wasteful of government resources. As mentioned in the report, the Judicial Conference supports treating most fines and orders of restitution in criminal offenses as civil debts, payable immediately and collectable by either the Department of Justice or the victim.

The AO will review and consider Recommendation #1, which suggests that Judiciary officials, including the AO and the United States Sentencing Commission (Commission), look into why Commission data on the reasons restitution was not ordered are incomplete in some cases, and, if warranted, take action designed to improve the completeness of the Commission's data records. While sentencing remains a judge's function, we can assure GAO that the AO takes the Judiciary's data integrity seriously and will work with the Commission to identify the best methods for addressing this reporting issue.

Sincerely,

A handwritten signature in black ink that reads "James C. Duff".

James C. Duff
Director

cc: United States Sentencing Commission

A TRADITION OF SERVICE TO THE FEDERAL JUDICIARY

Appendix IV: GAO Contact and Staff Acknowledgments

GAO Contact

Gretta L. Goodwin, (202) 512-8777, goodwing@gao.gov

Staff Acknowledgements

In addition to the contact named above, Chris Ferencik (Assistant Director); Kathleen Donovan (Analyst-in-Charge); Enyinnaya David Aja; David Alexander; Lacinda Ayers; Carla Brown; Emily Hutz; Janet Temko-Blinder; and Adam Vogt, made key contributions to this report.

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