



Office of the Inspector General  
U.S. Department of Justice



# Review of the Debt Collection Program of the United States Attorneys' Offices

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## EXECUTIVE SUMMARY

### INTRODUCTION

Collecting debts arising from criminal and civil cases is an important and enormous responsibility for the Department of Justice (Department). The Department's 94 U.S. Attorneys' Offices (USAO) located throughout the country are primarily responsible for the enforcement and collection of debts owed to the United States and the victims of federal crimes. The USAOs have largely assigned this task to their Financial Litigation Units (FLU), though the USAOs' Criminal Divisions and Asset Forfeiture units also play a role in coordinating with the FLUs to ensure that they can collect debts for victims and the federal government. The Executive Office for U.S. Attorneys (EOUSA) assists the USAOs with their debt collection mission by providing management oversight and administrative support, by adopting policies and procedures to direct the FLUs' work, and by acting as a liaison between the headquarters of the Department and the USAOs.

At the end of fiscal year (FY) 2014, the principal balance and interest owed on outstanding federal criminal and civil debts totaled \$114.6 billion, with criminal debts accounting for about 89 percent of this total.<sup>1</sup> Since the passage of the *Mandatory Victims Restitution Act of 1996* (MVRA), which required the USAOs to enforce and collect restitution owed to private individuals and entities in addition to the United States, the total balance of outstanding restitution has increased exponentially. This increase has significantly contributed to the FLUs' caseloads.

The Office of the Inspector General (OIG) conducted this review to examine the efforts of the USAOs and EOUSA to collect debts. The OIG also assessed the extent to which management processes and organizational structures in place at USAOs and EOUSA facilitated or hindered the Department's debt collection mission.

### RESULTS IN BRIEF

While the Department has indicated that the collection of debts owed to the United States and crime victims is a priority, the OIG found that, in many cases, USAOs have not put in place the policies and procedures or resources needed to make this a reality. Rather, we found that many USAOs have failed to prioritize debt collection activity and that this has resulted in insufficient staffing of both AUSA and support positions, as well as ineffective collaboration between the FLU and other units in the USAOs thus hindering the ability of the USAOs to fulfill their mission to collect debts. We also found that EOUSA cannot rely on the

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<sup>1</sup> According to EOUSA, a substantial portion of this debt is uncollectable.

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Department's debt collection case tracking system to accurately assess the performance of the FLUs and the debt collection program as a whole.

**Most USAOs are hampered in fulfilling their mission to collect debts because of insufficient allocation of staffing resources to the FLUs.** Despite a significant increase in the debt collection caseload, FLU staffing has decreased as USAOs have allocated resources to meet other priorities. In just under two decades following the passage of the MVRA, the outstanding criminal debt balance increased 23-fold, from \$4.4 billion at the end of FY 1994 to \$101.5 billion at the end of FY 2014. Nevertheless, we found that most USAOs have less than a full-time AUSA position devoted to FLU work, and even the time of those AUSAs is often pulled away by other activities that they or their offices view as higher priorities. This reduces the AUSAs' ability to work on debt collection matters and adversely impacts the FLU's efforts to enforce collections. We also found that at the time of our review a third of the FLUs were operating with only one or two support staff members. These FLUs are unable to fully enforce collections because support staff members' time is consumed with a number of time-sensitive administrative tasks they must complete for processing each new case in their ever-increasing caseloads. EOUSA has attempted to address these caseload challenges by providing the FLUs with contractor positions and instituting a case priority code system. However, reliance on contractors can impede effective planning because these positions are temporary and subject to frequent turnover. In addition, although EOUSA has revised the priority code system to allow for flexibility in how the FLUs implement it, we believe that EOUSA should continue to reevaluate the priority code system and the FLUs' implementation of it as a case management tool in light of current caseload demands and FLU staffing challenges.

**Ineffective collaboration among units in many USAOs hinders the FLU's ability to recover assets for victims.** EOUSA recommends that the FLU, Criminal Division, and Asset Forfeiture units within the USAOs communicate and coordinate during the pre-judgment phase of the criminal case prior to sentencing, as this is the most opportune time to identify and recover assets for crime victims. However, we found that in many USAOs these units were not consistently communicating and coordinating effectively. We identified three factors that contributed to this ineffective collaboration: a lack of awareness and appreciation of the FLU's mission within the USAOs, inadequate time some FLU AUSAs devote to debt collection, and a lack of policies and procedures in the USAOs directing how their units should collaborate with the FLU pre-judgment. In the absence of effective communication and coordination among these units during the pre-judgment phase of the criminal case, USAOs are missing opportunities to identify and recover assets for victims and to perform their debt collection mission effectively and efficiently.

**The USAOs and EOUSA cannot rely on the Department's debt collection case tracking system to accurately assess FLU performance and determine how to allocate resources to increase collections.** We identified

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several problems with the Department's debt collection case tracking system, the Consolidated Debt Collection System (CDCS), which limits its usefulness as a case management and reporting tool for the USAOs and EOUSA. Specifically, the CDCS contains inaccurate data because it lacks sufficient data entry controls and FLU staff members do not always follow correct data entry procedures. EOUSA officials and FLU staff members also told us that the CDCS can produce reports with incorrect and unreliable information. Moreover, the CDCS does not capture all the information needed or enable all the analysis required to sufficiently evaluate debt collection performance across the USAOs. As a result, the USAOs and EOUSA cannot rely on CDCS data to inform management decisions and the allocation of staffing resources for the USAOs' debt collection program.

**Some USAOs have adopted practices that prioritize debt collection work and enhance their ability to collect debts.** We found that some USAOs have adopted practices that reflect the importance of debt collection and enhance its efforts in this area. We believe these practices can be replicated in other USAOs. Among these practices are USAO efforts to facilitate pre-judgment collaboration between the FLU and other USAO units, as well as efforts to improve coordination between the Asset Forfeiture unit and FLU by merging the two units so that they are under one supervisor. Additionally, some USAOs have employed Asset Investigators to assist their FLUs enforce collections and perform pre-judgment work and other USAOs have implemented a division of labor between FLU support staff who perform administrative tasks and enforcement actions.

## **RECOMMENDATIONS**

In this report, we make five recommendations to EOUSA to improve the ability of the USAOs to fulfill their mission to collect debts. These recommendations include determining and establishing guidelines for how the USAOs should staff and structure their FLUs, reevaluating the priority code system the FLUs use to manage caseloads, considering measures to emphasize the importance of the FLUs to the USAOs' missions, developing uniform policies and procedures for how other units within the USAOs should communicate and coordinate with the FLU pre-judgment, and developing tools to enable the CDCS to be used to appropriately analyze the USAOs' debt collection program.

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## BACKGROUND

### Introduction

An important mission of the U.S. Attorneys is the collection of debts owed to the United States and federal crime victims. The Department of Justice (Department) has indicated that it places a high priority on improvement of government-wide debt collection efforts, and its policies indicate that it is the role of U.S. Attorneys to litigate vigorously and enforce the collection of debts due the United States and crime victims.<sup>1</sup> The Department has also indicated that prompt and effective debt collection is necessary if debtors are to respect the Department's ability and authority to collect these debts and to uphold the public's confidence in the institutions of government and the criminal justice system. In fiscal year (FY) 2014, the U.S. Attorneys' Offices (USAO) collected \$4.2 billion in criminal debts and \$19.4 billion in civil debts. Although the USAOs are responsible for enforcing the collection of both criminal and civil debts, criminal debts account for the majority of the USAOs' caseloads. At the end of FY 2014, the principal balance and interest owed on outstanding criminal and civil debts totaled \$114.6 billion, and about 89 percent of this total was as a result of criminal debts. The Department's stated prioritization of debt collection on behalf of crime victims is reflected in its Strategic Plan for Fiscal Years 2014-2018, which includes an objective that the Department will "prevent and intervene in crimes against vulnerable populations and uphold the rights of, and improve services to, America's crime victims." Returning assets to crime victims is also a stated priority in the Department's Asset Forfeiture Program.<sup>2</sup>

In this review, the Office of the Inspector General (OIG) evaluated the efforts of the USAOs and the Executive Office for U.S. Attorneys (EOUSA) to collect criminal and civil debts. Our review assessed the extent to which EOUSA and USAO management, organizational structures, and processes supported the Department's priority to collect criminal and civil debts. We reviewed laws, regulations, policies, and procedures related to criminal and civil debt collection by the USAOs and EOUSA. We conducted interviews with Financial Litigation Unit (FLU) staff in the 94 USAOs, staff in other USAO units that play a role in ensuring that the FLU can collect debts for victims, and USAO management.<sup>3</sup> We interviewed EOUSA officials responsible for managing and supporting the Department's debt collection program,

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<sup>1</sup> U.S. Attorneys' Manual (USAM) 3-9.100.

<sup>2</sup> U.S. Department of Justice, *Returning Forfeited Assets to Victims of Crime: A Guide for Prosecutors, Agents and Support Staff* (January 2011), p. 3.

<sup>3</sup> There are 94 USAOs throughout the country, but one U.S. Attorney has responsibility for both Guam and the Northern Mariana Islands. One FLU serves both of these USAOs, resulting in 93 FLUs.

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and other Department staff responsible for managing the debt collection case tracking system. We reviewed randomly selected case files and conducted site visits at five USAOs. We also collected and analyzed FLU staffing information from each USAO and analyzed criminal and civil debt collection caseload data, from FY 2009 through FY 2014.<sup>4</sup>

## Legislative and Policy Framework for Debt Collection

The following laws and policies form the framework for financial litigation and debt collection:

- The *Federal Debt Collection Procedures Act of 1990* provides the civil procedures the United States must use to recover a judgment on a debt or to obtain a remedy in a claim for a debt before judgment. The Act amended 28 U.S.C. and the corresponding regulation in 28 C.F.R. § 0.171 lay out the requirement for U.S. Attorneys to collect criminal monetary penalties, civil judgments, and other funds owed to the Department, and for EOUSA to set policy and procedures to accomplish this.
- The *Mandatory Victims Restitution Act of 1996* (MVRA) made restitution mandatory for most criminal offenses for the full amount of the victim's losses, regardless of a defendant's ability to pay, and requires that restitution debt is enforceable for 20 years plus any period of incarceration.<sup>5</sup>
- The *Crime Victims' Rights Act of 2004* (CVRA) gives crime victims the right to full and timely restitution and charges the Department with making its best efforts to ensure that this occurs.<sup>6</sup>
- The *Attorney General Guidelines for Victim and Witness Assistance* provide more detailed guidance on what Department personnel should do to ensure that victims receive full and timely restitution, in accordance with the CVRA. The guidelines state that "all who investigate and prosecute criminal cases play an important role in determining whether restitution is full and timely." This responsibility encompasses more than just the FLU. For example, the guidelines specify actions that investigators and Criminal AUSAs should take at each stage of a case — from investigation to charging, plea

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<sup>4</sup> We selected sites based on a variety of factors to obtain a representative sample that reflects the diversity of the USAOs, including geographic location, size, structure, and number of staff in the FLU and number and amount of outstanding debts. Although our scope and methodology included an assessment of the USAOs' and EOUSA's efforts to collect criminal and civil debts, our findings pertain mostly to criminal debts.

<sup>5</sup> 18 U.S.C. § 3663A.

<sup>6</sup> 18 U.S.C. § 3771.

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negotiations, and sentencing — to ensure that victims obtain full and timely restitution.<sup>7</sup>

- Additional policies and procedures that direct how the USAOs handle debt collection are outlined in the U.S. Attorneys’ Manual (USAM) and U.S. Attorneys’ Procedures (USAP).

## **USAOs and EOUSA Roles in Debt Collection**

The U.S. Attorneys are the principal litigators for the U.S. government and oversee the operations of the 94 USAOs throughout the United States and its territories. EOUSA acts as a liaison between the Department and the U.S. Attorneys and also provides USAOs with management oversight and administrative support.

To support the USAOs’ debt collection efforts, EOUSA requires USAOs to develop some guidance for their debt collection procedures. For example, EOUSA requires each USAO to develop a FLU Plan that details how the FLU will accomplish the collection and enforcement of criminal and civil debts within the judicial district. In addition, EOUSA requires each USAO to develop a memorandum of understanding (MOU) between the USAO, the Probation Office, and the Clerk of the Court that governs how these parties will coordinate their efforts for the collection and processing of criminal debts. EOUSA has also provided guidance to the USAOs that highlight best practices for financial litigation and debt collection.

We describe the USAOs’ and EOUSA’s specific roles below.

### *USAOs*

Each USAO has a FLU that is primarily responsible for collecting criminal and civil debts. In addition, there are two other units within the USAO that have significant roles in criminal debt collection, the Criminal Division and the Asset Forfeiture unit.<sup>8</sup>

### Financial Litigation Unit

To accomplish its mission of collecting criminal and civil debts, each USAO is required to designate at least one AUSA, either full-time or part-time, as well as “other necessary employees” to be responsible for debt collection efforts.<sup>9</sup> Other than the requirement to designate at least one full-time or part-time AUSA,

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<sup>7</sup> *Attorney General Guidelines for Victim and Witness Assistance* (2011 Edition, revised May 2012).

<sup>8</sup> To accomplish its debt collection work, the FLU also interacts with other USAO personnel, such as USAO personnel handling affirmative civil enforcement cases, victim witness issues, and federal involvement in bankruptcies and mortgage foreclosures.

<sup>9</sup> 28 C.F.R. § 0.171(b).

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U.S. Attorneys have discretion to determine the number of FLU staff, the type of positions assigned to the FLU, and within what division of the USAO to locate the FLU. In most USAOs, the FLU is part of the Civil Division. However, in some USAOs the FLU is part of the Criminal Division or has been combined with the Asset Forfeiture unit.

The FLU generally consists of the following attorney and non-attorney positions, which the USAOs sometimes refer to as professional and support staff, respectively:

- FLU AUSAs are responsible for financial litigation, reviewing the work of the support staff in the FLU, developing the legal strategy to pursue collections, and signing all pleadings submitted to the court.
- Paralegals or Legal Assistants, often called Debt Collection or Financial Litigation Agents, are responsible for processing criminal and civil debt cases. This includes opening the debt cases; conducting financial investigations; assessing the collectability of cases; and conducting basic enforcement actions, such as filing liens, to collect debts.<sup>10</sup> They also provide a range of legal support services to the FLU AUSA and prepare legal documents to enforce the collection of debts, such as filing garnishments, issuing subpoenas, conducting debtor exams, and referring debtors to the Treasury Offset Program for collection.<sup>11</sup> Paralegal and Legal Assistant positions can be staffed by either full-time equivalents (FTE) or contractors.
- Asset Investigators conduct advanced financial analysis and investigate the availability of assets for complex debt cases. They can also work with the USAO's Criminal Division AUSAs (Criminal AUSAs) to investigate the defendant's assets during the pre-judgment phase of the criminal case prior to sentencing. These positions are generally filled by contractors who are retired law enforcement investigators.

The FLU AUSAs and support staff may be assigned to perform FLU work full-time or part-time.<sup>12</sup> In some USAOs, FLU FTE support staff positions are supplemented with contractors funded from the Department's Three Percent Fund.<sup>13</sup>

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<sup>10</sup> FLU staff review debt cases to determine whether a case is "collectable" by assessing the present and future prospects of the debtors' ability to pay.

<sup>11</sup> The Treasury Offset Program allows federal agencies to submit debts owed by delinquent debtors to the Department of the Treasury, which can then offset all or part of a disbursement owed to the debtor, such as tax refunds, against any money owed by the debtor. The FLUs can use the program to collect both criminal and civil debts. 31 U.S.C. § 3701.

<sup>12</sup> A position assigned to the FLU "full-time" devotes 100 percent of its time to financial litigation, while a position assigned to the FLU "part-time" devotes less than 100 percent of its time. For example, a Paralegal assigned to the FLU part-time may also perform non-debt collection related work to assist the USAO's Civil Division.

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## USAOs' Criminal Divisions and Asset Forfeiture Units

The Criminal Division and the Asset Forfeiture unit in the USAO also have an important role in helping the FLU fulfill its debt collection responsibilities. According to standards EOUSA has established to evaluate the USAOs, the USAOs should ensure there is effective communication and coordination among the FLU, the Criminal Division, and the Asset Forfeiture unit for debt collection. Further EOUSA guidance provides suggestions for how this coordination should occur.<sup>14</sup> For example, the guidance states that the Criminal AUSAs should obtain and share information about the defendant's resources with the FLU as soon as possible and recommend language in plea agreements and restitution orders that encourage defendants to pay the judgments entered against them as promptly as they reasonably can. The guidance also states that AUSAs in the Asset Forfeiture unit, which can be part of the USAO's Criminal or Civil Division, should use forfeiture tools where appropriate to restrain and preserve the defendant's assets and can return these forfeited assets to compensate crime victims through the restoration or remission process.<sup>15</sup>

### *EOUSA*

The Director of EOUSA sets policy and procedures to accomplish the collection of debts arising from the prosecution of criminal cases by the Department and the U.S. Attorneys.<sup>16</sup> The Director of EOUSA is also responsible for evaluating the performance of the USAOs, including the FLUs, through its Evaluation and Review Staff (EARS) program.<sup>17</sup> EARS teams use management standards EOUSA

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<sup>13</sup> Section 1103 of Public Law 107-274 provided authorization of the Three Percent Fund whereby the Attorney General may credit, as an offsetting collection, to the Department's Working Capital Fund up to 3 percent of all amounts collected pursuant to civil debt collection litigation activities of the Department. The Department uses the Three Percent Fund to enhance the resources available to its components, including the USAOs, engaged in criminal and civil debt collection litigation activities. 28 U.S.C. § 527.

<sup>14</sup> For example, see EOUSA, *Prosecutor's Guide to Criminal Monetary Penalties: Determination, Imposition and Enforcement of Restitution, Fines & Other Monetary Penalties* (2003) and *Innovative Practices Manual for United States Attorneys' Offices Financial Litigation Unit* (2007).

<sup>15</sup> Restoration is the process used to apply forfeited funds to the restitution debt owed to the victim of a criminal offense. U.S. Attorneys submit requests to the Department's Asset Forfeiture and Money Laundering Section for approval by the Attorney General. Remission also involves applying forfeited funds to restitution, but it is used to return forfeited assets to an owner or lienholder of a property or to a victim of a crime if eligibility requirements are met. Department of Justice Asset Forfeiture Program, *Returning Forfeited Assets to Crime Victims: An Overview of Remission and Restoration* (2009).

<sup>16</sup> 28 U.S.C. § 0.171(c).

<sup>17</sup> EOUSA uses the EARS program to assess how well USAOs are following Department policies and the Attorney General's priorities. EARS reviews are conducted in each of the 94 USAOs on a cyclical basis by teams of AUSAs and USAO support staff from around the country.

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has established (EOUSA management standards) to evaluate the USAOs' debt collection program.

EOUSA's Asset Recovery Staff, within the Office of Legal and Victim Programs, provides assistance and direction to U.S. Attorneys in their financial litigation work. The Asset Recovery Staff supports the USAOs by providing guidance and training on financial litigation, assisting the USAOs in developing and promulgating financial litigation policy, and liaising within the Department and with outside agencies. In FY 2014, the Asset Recovery Staff working in financial litigation included an Assistant Director, three Attorney Advisors, two Management Analysts, a Data Analyst, and a Secretary located at EOUSA headquarters, and 12 Program Managers located in certain FLUs around the country.<sup>18</sup> Program Managers spend half of their time working for the FLU in the USAOs where they are located and the other half working for EOUSA's Asset Recovery Staff where they provide direct assistance and guidance to other FLUs on various topics related to financial litigation and the Consolidated Debt Collection System (CDCS).<sup>19</sup> The Asset Recovery Staff also reviews funding requests from the USAOs for contractor support personnel financed by the Department's Three Percent Fund and awards these contractor positions to the USAOs to assist them with their debt collection efforts.

### **The Debt Collection Process**

The Paralegals and Legal Assistants in the FLU are required to perform a number of steps to process newly received criminal and civil debt cases. The FLU can work a criminal debt case either pre- or post-judgment; however, legal remedies for enforcing the collection of debts are primarily available post-judgment. Therefore, most of the debt collection work usually occurs post-judgment. After the judgment in a criminal case is entered, the FLU receives a copy of the judgment and the defendant's pre-sentence investigation report and opens the case in the CDCS.<sup>20</sup> The FLU can receive a civil debt case in one of two ways: (1) a federal agency sends a referral package to the Nationwide Central Intake Facility, which opens the case in CDCS and mails the case file to the FLU, or (2) the FLU receives a judgment or settlement agreement from the Civil Division within the USAO, which

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<sup>18</sup> In addition to the USAOs' debt collection program, EOUSA's Asset Recovery Staff includes staff that supports the asset forfeiture and bankruptcy program areas.

<sup>19</sup> The CDCS is a centralized debt tracking system for debts being collected by the Department of Justice. The Justice Management Division (JMD) manages and operates the CDCS. The 94 USAOs and some of the Department's litigating divisions use the CDCS.

<sup>20</sup> The Probation Office within the U.S. District Court prepares the pre-sentence investigation report. The pre-sentence investigation report, prepared for the Court under Federal Rules of Criminal Procedure 32(b) and (d), "should contain information about the history and characteristics of the defendant, including any prior criminal record, financial condition, and any circumstances affecting the defendant's behavior that may be helpful in imposing sentence or in the correctional treatment of the defendant." See USAM 9-27.720(B).

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the FLU then opens in the CDCS.<sup>21</sup> Private law firms are retained to supplement the efforts of some USAOs by collecting outstanding civil debts with smaller dollar amounts.<sup>22</sup>

FLUs typically assign new cases to a support staff member, who then enters the case information into the CDCS. The CDCS automatically assigns each case a default “priority code” based on the amount of the debt. The USAP, which provides guidance related to the operations of the USAOs, requires the FLU to reassess the priority code CDCS initially assigns to a case.<sup>23</sup> For example, the FLU may find that a case with a larger debt amount is uncollectable and assign it a lower priority code than what the CDCS assigned, while it may find that a case with a smaller debt amount is collectable and assign it a higher priority code.<sup>24</sup> The USAP requires the FLU to devote more attention to higher priority code cases and suggests that they be reviewed more frequently.

In both criminal and civil debt cases, FLU staff review all available financial information about the debtor and may conduct further inquiries using commercial databases or online resources to determine what enforcement actions to pursue. The FLU can suspend enforcement of a criminal debt by classifying all or a portion of it as “uncollectable” if it deems it unlikely that the debtor will be able to pay the debt.<sup>25</sup> However, the FLU must continue to review the criminal debt periodically and assess collectability until the debt expires.<sup>26</sup> In contrast, if the FLU determines that a civil debt is uncollectable based on reviews conducted over a 2-year period, it

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<sup>21</sup> Federal agencies with claims of \$1 million or less refer some types of claims to the Department for litigation and enforcement through the Nationwide Central Intake Facility in JMD, which forwards the claim to the appropriate USAO for litigation and collection.

<sup>22</sup> The Private Counsel Program allows the Department to contract with private law firms to litigate and collect civil debts. As of October 2014, the Private Counsel Program was operating in 19 judicial districts. 31 U.S.C. § 3718 (b).

<sup>23</sup> USAP 3-12.400.001.

<sup>24</sup> Factors the AUSA and the FLU may consider in adjusting a case’s priority code include: the debt’s collectability (including debtor assets and income); the type of debtor (such as an individual or corporate entity); the type of victim (in the case of restitution); the complexity of the case; the responsibilities of other agencies; whether a case review is overdue; and whether the debt is immediately due.

<sup>25</sup> According to USAP 3-12.400.001, criminal debts may be placed in suspense if they are deemed “uncollectable,” without regard to the amount due. The FLU can classify criminal debt as uncollectable based upon certain criteria, such as the debtor cannot be located, has been deported, or has only nominal ability to pay the debt.

<sup>26</sup> The FLU may also identify a criminal debt case as permanently uncollectable if no substantial change in the defendant’s ability to pay is likely to occur during the defendant’s term of imprisonment or supervision. When a debt has been identified as permanently uncollectable, the FLU does not need to review the case again until shortly before the debt expires. USAP 3-12.400.001.

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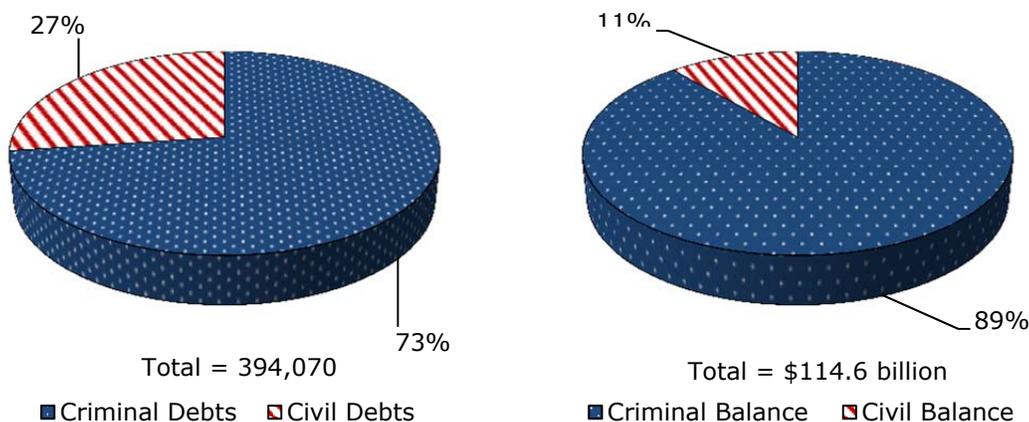
may suspend enforcement of the debt, return the debt to the federal agency for surveillance, or close the case as uncollectable.<sup>27</sup>

Appendix II outlines the differences in processing criminal and civil debt cases, as well as the timelines for completing key procedures in the debt collection process.

### Types of Debt

FLUs are responsible for enforcing the collection of both criminal and civil debts, but criminal debts account for the majority of the total debt collection caseload. As shown in *Figure 1*, at the end of FY 2014, criminal debts accounted for 73 percent of the total number of debt cases (287,183 of the total 394,070) and 89 percent of the total outstanding debt balance (\$101.5 billion of the total \$114.6 billion).

**Figure 1**  
**Number of Debt Cases and Outstanding Debt Balance at the End of FY 2014**



Note: The total debt balance includes principal, interest, and costs.

Source: United States Attorneys' Annual Statistical Report, FY 2014.

There are three basic types of criminal debts: special assessments, fines, and restitution.

- A special assessment is essentially a standard fee that is automatically imposed on a defendant for each count of conviction. Special assessments expire and are no longer a part of the total debt balance

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<sup>27</sup> USAM 3-10.700.

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after 5 years from the date of judgment if not repaid.<sup>28</sup> A judge may remit an assessment if the government can show that reasonable efforts to collect the assessment are not likely to be effective.<sup>29</sup>

- A fine is imposed as a component of a criminal sentence, and a judge may reduce, forego, or remit a fine if the fine would impair a defendant's ability to pay restitution or if the defendant is unable to pay the fine. The liability to pay a fine generally lasts 20 years plus any period of incarceration or until the death of the defendant.<sup>30</sup>
- Restitution is compensation paid to a victim (that can include the United States) for harm or damage caused by a defendant's conduct. The liability to pay restitution generally lasts 20 years plus any period of incarceration or until the death of the defendant.<sup>31</sup> Restitution is mandatory for most federal crimes. Even when restitution is not mandatory, the sentencing court may require restitution in accordance with a plea agreement or pursuant to the court's discretion. In discretionary cases, the court may also require payment of restitution as a condition of probation or supervised release.

The Clerk of the Court is responsible for receipting criminal debt payments, which include all debt types for criminal cases. Although the Clerk of the Court receives all criminal debt payments, only restitution is disbursed directly to the victim. Special assessments and fines are paid into the Crime Victims Fund, which is a major funding source for victim services throughout the country.<sup>32</sup> Of the \$101.5 billion outstanding balance in criminal debts at the end of FY 2014, approximately \$78.4 billion was restitution owed to crime victims other than the United States (77.2 percent), and \$23.2 billion was special assessments, fines, and restitution owed to the United States (22.8 percent). According to EOUSA's Model FLU Plan, the FLUs should pursue restitution due to private individuals and entities "more aggressively" than the collection of fines and restitution owed to federal agencies.<sup>33</sup>

Civil debts result from USAO debt collection litigation on behalf of federal agencies for the collection of defaulted loans (such as student loans), overpayments, and administratively assessed penalties. The Departments of Agriculture, Education, and Health and Human Services and the Small Business

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<sup>28</sup> 18 U.S.C. § 3013(c).

<sup>29</sup> 18 U.S.C. § 3573.

<sup>30</sup> 18 U.S.C. § 3613(b)-(c).

<sup>31</sup> 18 U.S.C. § 3613.

<sup>32</sup> *The Victims of Crime Act of 1984* established the Crime Victims Fund. 42 U.S.C. § 10601.

<sup>33</sup> EOUSA, *Model FLU Plan* (FY 2012), p. 47.

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Administration are some of these federal agencies. FLUs also enforce the collection of civil debts that arise from civil judgments pursued by their USAOs.

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## RESULTS OF THE REVIEW

The Department has indicated that it places a high priority on improving debt collection efforts and ensuring that crime victims receive full and timely restitution. However, we found that, in many cases, USAOs have not devoted the resources or put in place the policies and procedures necessary to make this a reality. For instance, during the course of our review, several FLU staff told us that within the USAOs there is a lack of awareness of and appreciation for the FLU's work and the importance of debt collection, with some referring to the FLU as the "stepchild" of the USAO. We found that this failure to appropriately prioritize the work of the FLU often has resulted in insufficient staffing of both AUSA and support positions, as well as ineffective collaboration between the FLU and other USAO units, all of which hinders the ability of the USAOs to fulfill their mission to collect debts. We also identified weaknesses with the Department's debt collection case tracking system that limit its usefulness as a management tool for the USAOs' debt collection program. There are some USAOs that have employed practices that prioritize debt collection work and enhance their ability to collect debts, and we make recommendations at the conclusion of this report to assist the USAOs and EOUSA in accomplishing this important mission.

### **Most USAOs are hampered in fulfilling their mission to collect debts because of insufficient allocation of staffing resources to the FLUs.**

Most USAOs have been hampered in their ability to fulfill their mission to collect debts because FLU staffing has decreased despite a significant increase in the debt collection caseload. During our review, we found that a third of the FLUs had only one or two support staff members and many USAOs devote insufficient AUSA time to debt collection work, which reduces the USAO's ability to enforce collections. While there is no standard FLU size, FLUs with only one or two support staff often must complete administrative, case-related tasks at the expense of performing more in-depth enforcement actions because there are not enough staff to perform both tasks. EOUSA has attempted to supplement FLU support staffing with contractors, but reliance on temporary positions that are subject to frequent turnover impedes effective planning. EOUSA has also developed a priority code system to assist the FLUs in prioritizing their enforcement actions.

*FLU staffing has not increased relative to the debt collection caseload.*

Despite an increasing number of debt collection cases and a growing debt balance, the staffing for the FLUs has decreased, as the USAOs have allocated their resources to meet other priorities. Most significantly, the criminal debt balance, particularly the balance of non-federal restitution, or restitution that is owed to private individuals and entities, has substantially increased over the past decades

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and continues to grow.<sup>34</sup> FLU staff members told us that the majority of their enforcement workload is devoted to the collection of restitution.

The number of criminal debts and the criminal debt balance has grown considerably since passage of the MVRA.

The MVRA is a major contributing factor to the increase in the criminal debt caseload.<sup>35</sup> The number of criminal debts pending at the end of each fiscal year grew 150 percent between the end of FY 1994, 2 years before passage of the MVRA, and the end of FY 2014 (from 114,983 to 287,183). In all but 3 years between FY 1994 and FY 2014, more criminal debts have been opened than closed.<sup>36</sup> Furthermore, the outstanding criminal debt balance increased 23-fold during this period, from \$4.4 billion at the end of FY 1994 to \$101.5 billion at the end of FY 2014.

The growth in non-federal restitution has been particularly pronounced. Since the passage of the MVRA, the non-federal restitution balance has increased almost seven times faster than the criminal debt balance owed to the United States.<sup>37</sup> Outstanding non-federal restitution increased 50-fold between FY 1994 and FY 2014, from approximately \$1.6 billion to \$78.4 billion, while the criminal debt balance owed to the United States increased eightfold during the same period, from approximately \$2.9 billion to \$23.2 billion. *Figure 2* below shows the growth of the outstanding criminal debt balance, for both non-federal restitution and criminal debts owed to the United States, from the end of FY 1994 to the end of FY 2014.

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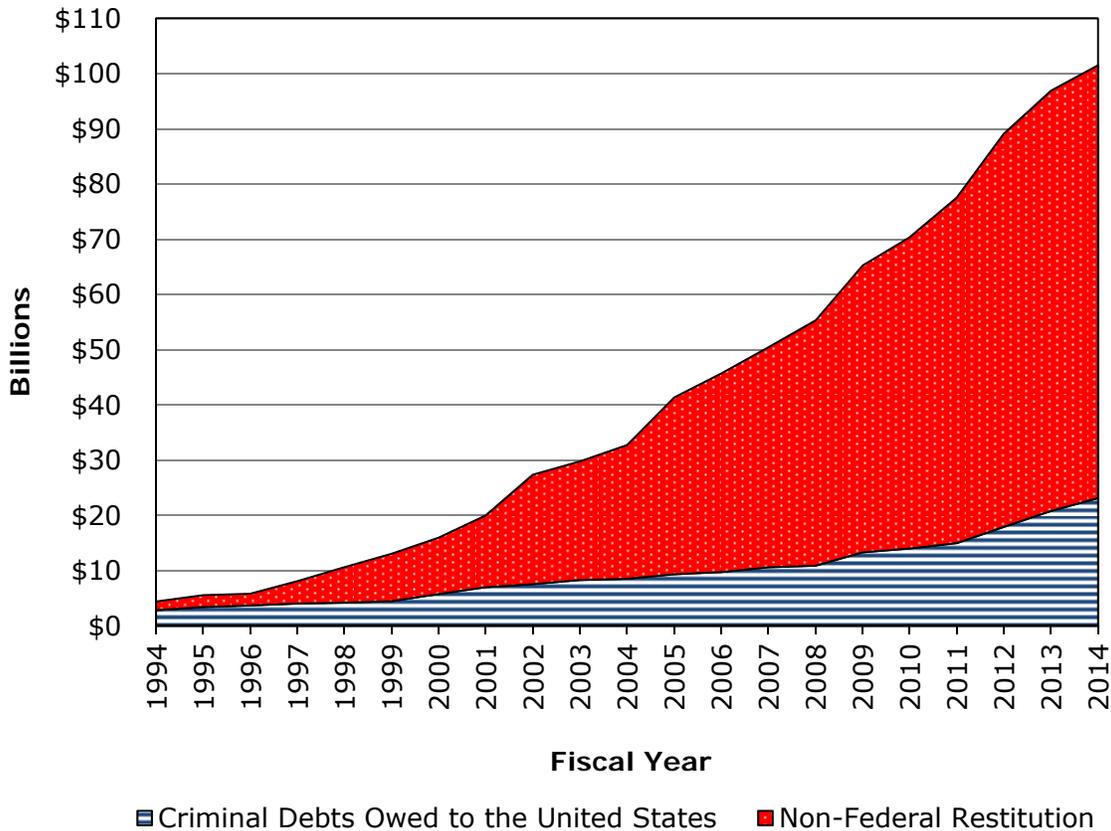
<sup>34</sup> In a 2001 report, the Government Accountability Office (GAO) considered the expanding criminal debt balance and identified three key factors that have contributed independently to the growth of FLU activities: (1) the nature of the debt involving criminals who have minimal earning capacity or may be incarcerated or deported; (2) the assessment of mandatory restitution regardless of a criminal's ability to pay, as required by the MVRA; and (3) state laws limiting the type of property that could be seized and the amount of wages that could be garnished. GAO, *Criminal Debt: Oversight and Actions Needed to Address Deficiencies in Collection Processes*, GAO-01-664 (July 2001), pp. 12–13.

<sup>35</sup> The MVRA made restitution mandatory for most criminal offenses for the full amount of the victim's losses, regardless of the defendant's ability to pay or economic circumstances. Under the MVRA, the USAOs are responsible for enforcing and collecting restitution owed to the United States and other victims of federal crime and restitution debt is enforceable for 20 years plus any period of incarceration.

<sup>36</sup> Those fiscal years are 1994, 2007, and 2014. Data is from the United States Attorneys' Annual Statistical Reports, FY 1994 to FY 2014.

<sup>37</sup> Criminal debts owed to the United States include special assessments, fines, and restitution owed to federal agencies.

**Figure 2**  
**Outstanding Criminal Debt Balance at the End of**  
**Each Fiscal Year, FY 1994 to FY 2014**



Source: United States Attorneys' Annual Statistical Reports, FY 1994 to FY 2014.

Further, the USAOs have classified a large and increasing portion of the FLUs' debt collection caseloads, particularly restitution, as uncollectable. EOUSA did not start classifying a portion of the debt balance as uncollectable in the United States Attorneys' Annual Statistical Report until FY 2009. At the end of FY 2009, the USAOs had classified \$53 billion of the \$65.3 billion of the overall criminal debt balance as uncollectable, or about 81 percent of the total. At the end of FY 2014, the USAOs had classified \$93.9 billion of the \$101.5 billion of the criminal debt balance as uncollectable, or about 92 percent of the total.<sup>38</sup> However, even debt cases classified as uncollectable may require attention by the FLUs. As described earlier in this report, the FLUs must continue reviewing the collectability of many of these restitution cases in an attempt to enforce collections even though their efforts are unlikely to result in payment. At the end of FY 2014, the USAOs classified

<sup>38</sup> According to EOUSA, when collectability is factored into the analysis, the collectable debt balance decreased from \$12.3 billion in FY 2009 to \$7.6 billion in FY 2014.

about 93 percent of the non-federal restitution balance (\$72.6 billion of \$78.4 billion) as uncollectable. According to Asset Recovery Staff officials, the growth in uncollectable criminal debt is largely attributable to the MVRA requirement that restitution be imposed for the full amount of the victim’s losses, without regard to a defendant’s ability to pay.

The USAOs have decreased their allocation of FTEs to the FLUs.

Despite significant increases in the criminal debt caseload, FLU staffing levels in the USAOs have decreased as the offices have allocated resources to meet different priorities. We found in particular that the number of FTEs (for both attorneys and support staff) allocated to the debt collection program reported by the USAOs, known as the FTE “burn rate,” decreased by 13.8 percent from FY 2009 to FY 2014 (353.8 FTEs to 305.1 FTEs) for FLU work. In comparison, the FTE burn rate for all other USAO programs decreased by 9.7 percent during the same period. Yet, our analysis of staffing and caseload data indicates that the FLUs’ workload continues to grow. *Table 1* shows the average number of criminal debt cases and the average criminal outstanding debt balance per FLU FTE nationwide in FY 2009 and FY 2014.

**Table 1**

**Average Number of Criminal Debt Cases and Average Outstanding Criminal Debt Balance per FLU FTE Nationwide, FY 2009 and FY 2014**

Fiscal Year	Number of Criminal Debt Cases	Outstanding Criminal Debt Balance	FTEs	Average Number of Cases Per FTE	Average Outstanding Balance Per FTE
2009	274,678	\$65.3 billion	353.8	776	\$184.5 million
2014	287,183	\$101.5 billion	305.1	941	\$332.7 million

Note: In addition to criminal debts, the FLUs are also responsible for collecting civil debts. The number of civil debt cases decreased from 118,528 in FY 2009 to 106,887 in FY 2014, while the outstanding civil debt balance increased from \$4.8 billion in FY 2009 to \$13 billion in FY 2014.

Source: OIG analysis of EOUSA data.

Staff at several FLUs we interviewed told us that the USAOs have not increased staffing to the FLUs and expressed concerns about staffing levels that they perceived to be inadequate in light of increased workload demands. For example, one FLU Paralegal commented that during the 27 years she has worked in the FLU the number of personnel assigned to the USAO’s other units has grown in response to the increased workload, but the number of personnel in the FLU has remained at three. Another FLU Paralegal reported that her FLU used to have two Paralegals and when one retired in 2006 the USAO used that FTE that was formerly designated to the FLU to hire an Auditor who does not do any debt collection work or assist the FLU. Staff in larger FLUs also complained about a lack of staffing, with one Legal Assistant reporting that each support staff member in her FLU had a caseload of about 4,000. Although caseload is not the only indicator of workload,

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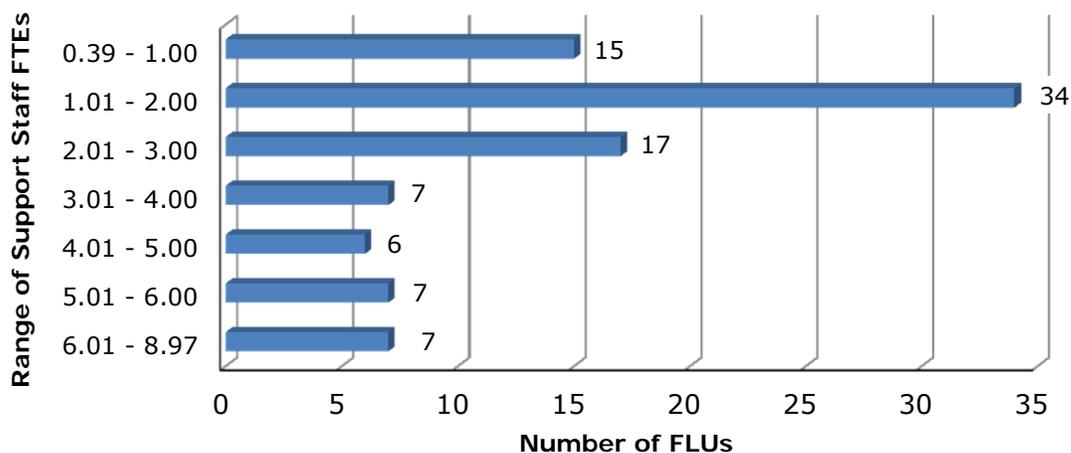
as the work required for each case depends on characteristics such as the type of debt, amount of debt, and type of debtor, this FLU staff member indicated that a caseload of 4,000 was not feasible for one person to handle. While EOUSA has not determined an appropriate caseload per FLU FTE, we noted that debt collection caseloads varied widely among the FLUs. For example, the number of pending criminal and civil debt cases at the end of FY 2014 per FTE (for both attorneys and support staff) in the 93 FLUs ranged from 279 to 3,152, while the number of the cases ranged from 293 to 4,634 per support staff FTE.

During our site visits to USAOs and interviews with staff from all 93 FLUs, we also learned that 30 of the FLUs (approximately 32 percent) had vacant support positions and these vacancies resulted in 14 of these 30 FLUs having only 1 or 2 staff persons. In a number of cases, FLU staff told us that these vacancies were the result of recent retirements and departures, with 13 of the FLUs reporting that they had staff who retired or otherwise left the FLU at the end of calendar year 2013 or the beginning of calendar year 2014. However, only 4 of those 13 indicated in their discussions with us that they believed the position would be filled in calendar year 2014.

Of particular concern, our analysis of staffing information showed that several USAOs have allocated only one or two support staff members to their FLUs. During our interviews with FLU staff, we found that as of June 2014, 12 of the 93 FLUs (12.9 percent) had only one support staff member, and 20 (21.5 percent) had two support staff members. In addition, our analysis of EOUSA staffing data showed that 49 USAOs (53 percent) had allocated 2 or fewer support staff FTEs and 15 (17 percent) had allocated less than 1 support staff FTE to debt collection work in FY 2014. *Figure 3* shows the range in the number of support staff FTEs the USAOs allocated to the program area of debt collection in the 93 FLUs in FY 2014.

**Figure 3**

**Support Staff FTEs Allocated to Debt Collection in FY 2014**



Note: Support staff FTE data does not include contractors.

Source: OIG analysis of EOUSA staffing data.

We also found that EOUSA’s classification of USAO size does not always correlate with the number of support staff members or support staff FTEs in the FLU.<sup>39</sup> For example, although 28 of the 32 FLUs that we identified during our interviews as having only 1 or 2 support staff members were in USAOs that EOUSA classified as small or medium, 4 were in USAOs classified as large. Additionally, 3 of the USAOs that EOUSA has classified as large reported that they allocated fewer than 2 support staff FTEs to debt collection work in FY 2014, and 1 extra-large USAO reported that it allocated only 2 support staff FTEs.

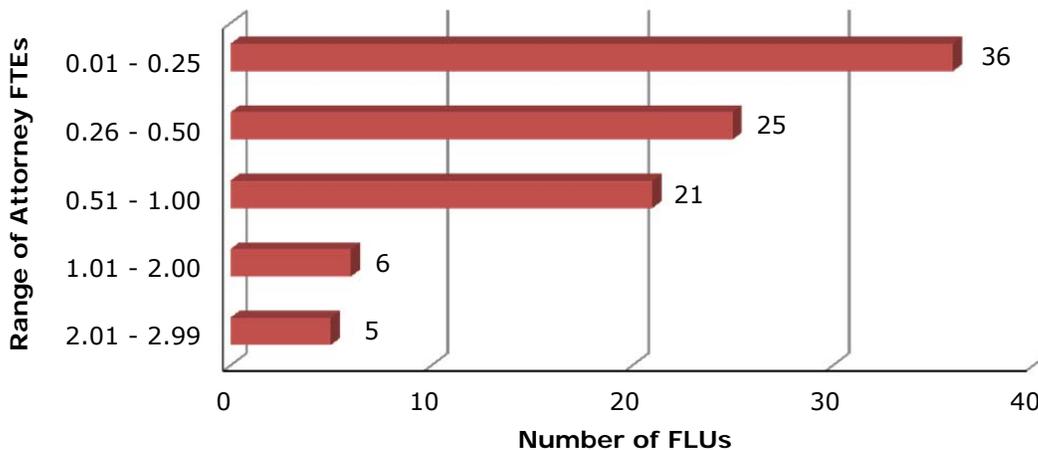
Many USAOs devote insufficient AUSA time to debt collection work.

We found that most USAOs have less than one full-time AUSA position devoted to debt collection work. Moreover, even the time of those AUSAs is often pulled away by other activities that they or their USAOs view as higher priorities. During our field work, in 84 of the 93 FLUs, staff, including some FLU AUSAs, told us that their FLU AUSAs were assigned additional duties unrelated to debt collection. In addition, about 67 percent of all FLUs reported to the OIG that their FLU AUSAs devote approximately 50 percent or less of their time to FLU work. Our analysis of staffing information we received from EOUSA corroborated this. Specifically, our analysis showed that the number of attorney FTEs allocated to the program area of debt collection reported by all USAOs averaged 51.2 FTEs

<sup>39</sup> EOUSA’s classification of USAO size is determined by the total number of allocated attorney FTEs.

nationwide from FY 2009 to FY 2014.<sup>40</sup> As shown in *Figure 4* below, 82 USAOs (88 percent) had allocated 1 or fewer attorney FTEs and 36 USAOs (39 percent) had allocated 0.25 or fewer attorney FTEs to debt collection work in FY 2014.

**Figure 4**  
**Attorney FTEs Allocated to Debt Collection in FY 2014**



Source: OIG analysis of EOUSA staffing data.

As with our finding above with regard to USAO size and the number of support staff FTEs that the USAOs have allocated to debt collection, EOUSA’s classification of USAO size does not always correlate with the number of attorney FTEs that the USAOs allocate to FLU work. For example, 24 of the 26 USAOs that EOUSA has classified as large and 9 of the 18 USAOs classified as extra-large allocated less than 1 attorney FTE to debt collection in FY 2014. During the same period, 17 large USAOs and 2 extra-large USAOs allocated less than 0.5 attorney FTEs to debt collection.<sup>41</sup>

*Insufficient staffing can limit the amount of time available for enforcement actions.*

Our review found that the USAOs’ ability to enforce collections is hindered because many USAOs devote a limited amount of AUSA time to debt collection

<sup>40</sup> If each of the 93 FLUs had one FLU AUSA position that devoted 100 percent of its time to debt collection work, the national FTE burn rate would equal 93. In fact, the average FTE burn rate reported by the USAOs was approximately 55 percent of an AUSA’s time per USAO, indicating that on average, the FLU AUSA position in each USAO spends about half of its time on debt collection.

<sup>41</sup> Later in the report, we discuss how a lack of AUSA time devoted to debt collection work can negatively affect the FLU’s ability to collaborate with other USAO units. We also mention a recent EOUSA effort to supplement FLU AUSA staffing levels at the USAOs with resources from the Three Percent Fund.

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work. EOUSA management standards state that USAOs should appoint AUSAs who devote “sufficient time to FLU work” and note specifically that a FLU AUSA’s “other assignments should leave him/her adequate time to devote to FLU work.”<sup>42</sup> However, as detailed above, we found that AUSAs are often assigned part-time to the FLU and perform other duties aside from debt collection, which can result in inadequate focus on and a lower priority for debt collection.

While there might not be enough debt collection work for a full-time FLU AUSA in every USAO, FLU staff told us that the FLU’s effectiveness can be impaired when the FLU AUSA does not give sufficient time and attention to debt collection. Similarly, according to EOUSA, EARS evaluators found that FLU AUSAs did not devote sufficient time to FLU work in 6 of the 16 FLUs they evaluated in FY 2013. In three of the FLUs, the evaluators noted that the lack of sufficient time the FLU AUSA devoted to debt collection negatively affected the FLU’s ability to provide effective counsel and advice to FLU support staff and Criminal AUSAs regarding debt collection. In two of these three FLUs, the evaluators noted that the lack of AUSA time devoted to debt collection limited the FLU’s ability to aggressively enforce the collection of debts.

Many of the FLU support staff we spoke with told us they were concerned that they could not conduct in-depth financial investigations and were not proactively working their debt cases because of insufficient staffing resources. FLU personnel also indicated that because of staffing limitations they typically perform only the minimum mandatory enforcement actions, such as filing liens. One typical comment we heard during our interviews was that the FLU staff have to “pick and choose their battles” since they have so few people and so much work. In addition, a Program Manager told us that the FLU is the easiest place from which to take staff because its cases are not subject to the same mandatory deadlines as other USAO units, such as the Criminal Division which must meet the “speedy trial” deadline for its cases. The Program Manager said that this reallocation further minimizes the time the FLU can spend on enforcement actions.

FLU support staff also told us that the support personnel assigned to the FLUs do not always perform FLU work exclusively, which can further diminish the amount of time available for enforcement. For example, a few FLU Paralegals told us that USAO management had also tasked them with duties not related to debt collection, such as serving as a Paralegal in the Civil or Criminal Division or filling in for a receptionist.

Staffing levels that are insufficient for enforcing debt collection have been a historical problem for the FLUs. The GAO reviewed the criminal debt collection process in July 2001 and reported that FLU staffing had only slightly increased between 1995 and 1999 in the four FLUs the GAO visited, despite a significant

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<sup>42</sup> EOUSA Management Standard 5-30.120.

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increase in the criminal debt balance and number of criminal debt cases per staff member.<sup>43</sup> The GAO further stated that none of the four FLUs had full-time resources dedicated to or specializing in performing searches to identify hidden assets, which the GAO stated is a critical aspect to enforcing collections.

*Data entry and administrative tasks disproportionately affect the ability of smaller FLUs to enforce collections.*

While interviewees from all sizes of FLUs expressed concerns about large caseloads and insufficient staffing levels, we found that these staffing and workload issues disproportionately affect FLUs with only one or two support personnel because they cannot effectively distribute the workload among their staff members. Based on our review, we concluded that, even in USAOs classified by EOUSA as small, one or two FLU support positions is generally not enough staff to perform the required case-related administrative duties and the comprehensive enforcement actions necessary to collect debts effectively.

EOUSA recommends as a best practice for effective management of the FLU a division of labor between staff who perform administrative tasks and staff who focus on enforcement actions. However, smaller FLUs with only one or two support staff members cannot achieve this specialization of labor and thus the required administrative tasks detract from the amount of time available to conduct comprehensive enforcement actions. Furthermore, EOUSA guidance and the USAM establish time standards for processing newly received cases. For example, the FLU is required to enter case information into the Department's debt collection case tracking system, the CDCS, within 30 days of the judgment date in a criminal case. FLU staff members reenter data that may already exist in the Legal Information Office Network System (LIONS), the USAOs' legal case management system.<sup>44</sup> This manual and redundant process can consume FLU staff time and increase data entry error. In addition, within 30 days of judgment in a criminal case, the FLU must send a letter to the debtor's attorney to determine whether the attorney will continue to represent the debtor, send a demand letter to the debtor requesting payment of the debt, and initiate the filing of liens wherever possible. During one of our site visits, we observed that a larger FLU had dedicated staff exclusively to entering case information into the CDCS, preparing demand letters, and filing liens, which allowed the other FLU support staff to focus on enforcement actions.

We also found that a lack of uniformity in how the USAOs and the Clerks of the Court individually track debt balances owed "jointly and severally" by multiple

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<sup>43</sup> GAO, *Oversight and Actions Needed to Address Deficiencies in Collection Processes*, pp. 52–53.

<sup>44</sup> The CDCS and the LIONS are not linked and cannot exchange data. According to the Asset Recovery Staff Management Analyst who works with JMD on the CDCS, if the two systems were linked FLU staff could save time processing each case.

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defendants in criminal cases (also known as joint and several debts) causes discrepancies that require administrative work by the FLU to reconcile. The USAOs and the Clerks of the Court have different policies for crediting payments to defendants in joint and several criminal cases. The Clerks of the Court credit payments made by any joint and several defendant to all co-defendants that share the debt. In contrast, the USAOs do not credit payments made by a defendant to co-defendants until their balance equals that of the total outstanding debt balance. EOUSA has instructed the USAOs to credit payments in this manner to help ensure that the victim is made whole by having joint and several defendants held responsible for the portion of the debt that they have been ordered to pay.<sup>45</sup> However, we found that the differences in these policies create conflicting debt balances that require manual reconciliation by both the USAOs and the Clerks of the Court and add to the administrative burdens on the FLU support staff.<sup>46</sup> Several FLU staff told us that reconciling debt balances for joint and several criminal cases was a time-consuming and complicated process, with some referring to joint and several reconciliations as a “nightmare.”

FLU staff also has to allocate time to reconcile payment balances for non-joint and several criminal cases. The Clerks of the Court electronically send payment information to the USAOs, which the FLU then uploads into the CDCS. However, if there is an error in the batch of cases uploaded, the FLU staff must manually find and correct the error and reload the entire batch, which increases the time spent on this task.

EOUSA has recognized that the FLUs are devoting a substantial amount of time toward reconciling criminal debt balance discrepancies at the expense of enforcement actions. In June 2014, subsequent to our field work in this review, the Asset Recovery Staff Management Analyst liaison to the Administrative Office of the United States Courts (AOUSC), the administrative component of the Clerks of the Court, told us that EOUSA is working with AOUSC to address this issue. The Asset Recovery Staff Management Analyst also said that EOUSA will eventually be able to reconcile payment balances at headquarters, thereby reducing the amount of time the FLUs have to devote to this task.

*EOUSA has taken some steps to address FLU staffing and workload challenges.*

EOUSA has taken some actions to attempt to address the FLUs’ staffing and workload challenges by awarding the USAOs contractor support staff positions from

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<sup>45</sup> See Appendix IV for more information on the differences between how the USAOs and the Clerks of the Court credit payments to defendants in joint and several criminal cases.

<sup>46</sup> In the event the USAO and the Clerk of the Court cannot reach a resolution with regard to a discrepancy in a debt balance, EOUSA has instructed the USAOs to accept the Clerk’s balance because the Clerk of the Court is the official record keeper of the criminal debt balance. 18 U.S.C. § 3611.

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the Department's Three Percent Fund. However, we found that reliance on contractor positions that are temporary and subject to frequent turnover impedes FLU planning. EOUSA has also instituted a case priority code system to assist the FLUs in prioritizing their enforcement actions on the more collectable cases. We were told that EOUSA has revised this system to permit additional flexibility, but we believe continued reevaluation is necessary to ensure that it serves as an effective tool for managing the FLUs' caseloads.

EOUSA has provided some FLUs with contractor Paralegal and Legal Assistant positions.

EOUSA has attempted to augment FLU staffing by awarding contractor Paralegal and Legal Assistant positions through the Three Percent Fund, but these positions have not fully addressed the needs of the FLUs. EOUSA first requested additional staffing to assist the USAOs with debt collection in 1995, and the Department has approved funding from the Three Percent Fund for contractors since then. In FY 2014, EOUSA's Asset Recovery Staff awarded 41 contractor Paralegal and Legal Assistant positions.<sup>47</sup> These contractor positions are funded for a 1-year term, and according to Asset Recovery Staff officials, 20 of these positions have remained in the same USAOs to which they were originally awarded in 1998. Some USAOs that have submitted applications for these positions have not been awarded them, and staff from these USAOs told us that they did not know why their applications were unsuccessful.<sup>48</sup>

Our analysis of available EOUSA data on the requests and awards for contractor Paralegal and Legal Assistant positions shows that many USAOs that have applied for these positions have not been awarded them. For example, the number of USAOs that requested these positions grew from 46 in FY 2012 to 74 in FY 2014.<sup>49</sup> However, due to the amount received for special contract positions in the annual EOUSA allocation from the Three Percent Fund, EOUSA awarded these positions to 25 USAOs in FY 2012 and 36 USAOs in FY 2014 (some USAOs have been awarded more than 1 position).

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<sup>47</sup> According to EOUSA's Asset Recovery Staff, EOUSA considered several criteria to evaluate the requests for the contractor support positions, including the USAOs' total number of enforcement actions, dollar amount of Priority 1 cases (described below), collections per FLU FTE, outstanding collectable debt, percentage of collectable amount collected, and each USAO's plan for using the contractors.

<sup>48</sup> As discussed above, the Department uses the Three Percent Fund to enhance its debt collection activities and as a source of funding for additional FLU staffing. The OIG notes that some USAOs also allocated additional contractor positions (full-time or part-time) from their office's budget to their FLUs to address staffing issues.

<sup>49</sup> Although the OIG requested information on the requests and awards for these contractor positions dating back to FY 2009, EOUSA's Asset Recovery Staff said it did not retain the requests for funding that were submitted from FY 2009 to FY 2011.

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Additionally, some FLU staff told us it was hard to plan because the contractor positions are funded only for a year at a time. While short-term funding for contractor positions from the Three Percent Fund may be a standard practice in light of possible variations in future funding, it can result in high staff turnover and make planning difficult because (1) FLUs cannot count on having these positions for more than a year at a time, and (2) even if the positions are renewed from year to year, FLUs cannot depend on having the positions filled by the same person. FLU staff told us that FLU work and debt collection is complex and requires a long time to learn the process, procedures, and effective management of debt collection cases. For example, a Paralegal told us that her FLU had two FTE positions vacant for 10 years and the USAO had filled these positions with contractors. She said she considered the use of contractors in these positions as a “stop-gap” measure because there has been high turnover among the individuals who staff these positions. Because of the contractor turnover, she said the FLU staff had to spend a significant amount of time training each new contractor. A Supervisory Paralegal from a different FLU said “you really need a three-year learning curve [for the FLU].” Another Paralegal who works as the only support staff member in her FLU told us that even if her USAO was able to hire someone immediately, she would not have enough time to train the new staff member on how to handle the cases before she retired in 2 ½ years.

Subsequent to our field work, Asset Recovery Staff officials informed the OIG that EOUSA had requested and received approval for five additional FLU contractor support positions from the Three Percent Fund. These contractors are located at EOUSA and assist eight FLUs with data entry and opening cases that require minimal or no enforcement actions, such as special assessment-only cases. Asset Recovery Staff officials said the pilot program became operational in December 2014 and EOUSA will review the program in May 2015 to determine if the pilot is successful and if expansion is warranted. If the pilot is successful and EOUSA has sufficient resources to maintain the level of contract personnel necessary to manage the workload, EOUSA anticipates expanding the program to all FLUs, with additional FLUs phased in over time.

EOUSA has provided some FLUs with a contractor Asset Investigator position.

Beginning in FY 2008, EOUSA has sought resources from the Three Percent Fund to award contractor Asset Investigator positions to assist the FLUs, particularly in their efforts to increase collections by conducting more in-depth asset investigations. In its requests for Three Percent Fund resources, EOUSA stated that the use of contractor Asset Investigators is crucial for the USAOs to comply with the Attorney General Guidelines on debt collection, to maximize collection enforcement efforts nationwide, and to protect the rights of victims. The contractor Asset Investigator positions are funded for a 1-year term, and according to Asset Recovery Staff officials, the funding for these positions has been renewed annually.

While EOUSA officials and FLU staff told us that this initiative has assisted the FLUs’ efforts to enforce collections, the program has not been extended to all FLUs

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that have requested this assistance. EOUSA requested and received funding for 14 contractor Asset Investigator positions in FY 2008 and FY 2009 and 24 positions each year from FYs 2010 to 2014 (no USAO has been awarded more than 1 position).<sup>50</sup> Our analysis of available EOUSA data on the requests and awards for the contractor Asset Investigator position shows that many USAOs that have applied for the position have not been awarded it.<sup>51</sup> Moreover, only one of the USAOs that received this position is classified by EOUSA as a small-size USAO.<sup>52</sup> Subsequent to our field work, Asset Recovery Staff officials told us that EOUSA requested and received approval for one additional contractor Asset Investigator position in FY 2015. This position is located at EOUSA and is available “on-demand” to provide financial investigative services to USAOs that do not have an Asset Investigator, which are primarily small- and medium-size USAOs.<sup>53</sup>

We encourage EOUSA to continue exploring ways to assist the FLUs with their debt collection efforts by using resources from the Three Percent Fund. The use of centralized contractors to assist the FLUs with data entry has the potential to free up staff resources and increase the amount of time the FLUs can devote to enforcement activity, and the use of contractor Asset Investigators can assist the FLUs in their efforts to review a debtor’s financial status more thoroughly and identify hidden assets.<sup>54</sup> However, the use of contractor positions from the Three Percent Fund is not a long-term solution to the FLU’s staffing needs, as these positions can create planning challenges because they are temporary and subject to significant turnover. We believe that the ability of the USAOs to fulfill their mission

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<sup>50</sup> Those USAOs that have been allocated an Asset Investigator position are required to send EOUSA a quarterly report on the work performed by the Asset Investigator. Once allocated, the positions are renewed unless EOUSA determines that the position is no longer adding value to a USAO’s debt collection process or funding is no longer available. Asset Recovery Staff officials told us that to date, EOUSA has not pulled a contractor Asset Investigator position from a USAO.

<sup>51</sup> In FY 2008, EOUSA received applications from 47 USAOs but awarded the position to only 14 USAOs. In FY 2010, EOUSA received applications from 50 USAOs but awarded the position to only 24 USAOs. According to the Asset Recovery Staff, the 24 contractor Asset Investigator positions have been in the same USAOs since 2010.

<sup>52</sup> Of the remaining 23 USAOs, 11 are extra-large, 8 are large, and 4 are medium.

<sup>53</sup> Asset Recovery Staff officials noted that EOUSA had previously submitted requests for additional FLU Asset Investigator positions from the Three Percent Fund but those requests had not been approved. They expressed the view that it was difficult to get approval for these positions because the Asset Investigators work almost exclusively on criminal debt cases. While the Three Percent Fund can be used to support both criminal and civil debt collection, only civil debt collections can be deposited into the Fund, making it difficult to obtain funding for additional positions that would primarily focus on criminal debt cases. The Collection Resources Allocation Board (CRAB) reviews requests and makes decisions on the use of Three Percent Fund resources. The CRAB consists of the following members: the Deputy Assistant Attorney General, Controller; the Director, Debt Collection Management Staff; and the Chief Financial Officer, United States Marshals Service.

<sup>54</sup> In response to a working draft of this report, the Asset Recovery Staff noted that EOUSA requested and received 10 additional contractor Asset Investigator positions in FY 2015. An Asset Recovery Staff official told us that although the allocation process has not been completed, EOUSA will allocate these positions to USAOs that do not currently have a contractor Asset Investigator.

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to collect debts will continue to be hampered until EOUSA establishes guidelines that are implemented for how the USAOs should staff and structure their FLUs, including the amount of time FLU AUSAs should devote to debt collection and the number and utilization of support staff FTEs the USAOs should allocate to their FLUs.

EOUSA has established a case priority code system.

EOUSA developed a priority code system in 2003 to assist the FLUs in prioritizing their enforcement actions on the more collectable criminal debt cases. The USAP describes the priority code system as “a form of triage to assist the FLUs in identifying those cases that should be enforced first” and requires each USAO to develop a written policy that outlines the method for approving the movement of cases among the priority codes.<sup>55</sup> The priority code system involves two stages of prioritization. First, the CDCS automatically assigns each case a default priority code based on the amount of the debt, as follows:<sup>56</sup>

- Priority Code 1 – [REDACTED]
- Priority Code 2 – [REDACTED]
- Priority Code 3 – [REDACTED]
- Priority Code 4 – [REDACTED].<sup>57</sup>

Second, according to the USAP, the FLU should review and prioritize all default Priority Code 1, 2, and 3 cases within 90 days of judgment. FLU staff reviews these debt cases based on factors such as the amount of the debt owed and the debtor’s ability to pay, or collectability, to determine if the default priority code needs to be raised or lowered. Thus, for example, a case with a smaller debt amount where the debtor’s ability to pay appears strong, and therefore payment is likely to occur, may be assigned a higher priority code than a case with a larger debt amount where the debtor has no ability to pay. After the FLU conducts the collectability review, the FLU sets the priority code and enters the date for the next case review. The USAP suggests the following next-case-review dates based on the priority code assigned to cases:

- Priority Code 1 – 1 year,
- Priority Code 2 – 3 years,

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<sup>55</sup> USAP 3-12.400.001, Financial Litigation Priority Code System, Suspension of Collection, and Enforcement Codes.

<sup>56</sup> The specific debt amounts in dollars that determine what priority code level the debt case falls within were redacted from this report due to EOUSA’s concern that the information was law enforcement sensitive.

<sup>57</sup> Any case involving restitution that is owed to a private individual or entity, regardless of the amount due, can never be lower than a Priority Code 3 case. Priority Code 4 cases include all special assessment-only cases.

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- Priority Code 3 – 4 years, and
  - Priority Code 4 – 5 years.<sup>58</sup>

The vast majority of FLU staff told us that they generally conducted their case reviews within these suggested next-case-review dates and that their USAOs had developed written policies outlining the approvals required for changing a case's priority code in accordance with the USAP. For example, several FLU staff said that moving a case from a Priority Code 1 to a lower priority code requires the FLU AUSA's review and approval.

Although Asset Recovery Staff officials told us that EOUSA has revised the case priority code system to give the FLUs flexibility in how they use it based on each USAO's workload, resources, and case priorities, we believe that EOUSA should continue to reevaluate the priority code system and the FLUs' implementation of it to ensure that it serves as a useful tool in helping them to help manage their caseloads.<sup>59</sup> Furthermore, as discussed above, FLU staffing levels have decreased despite a significantly increased debt collection caseload, thereby creating additional workload pressures on the FLUs and further emphasizing the importance of quickly identifying those cases that have enforcement potential for which more labor-intensive reviews are warranted. We believe that a reexamination of the priority code system that takes into account current debt collection caseload trends and FLU staffing challenges, particularly for FLUs with only one or two support staff members, would be of assistance to the USAOs in effectively prioritizing and enforcing the debt cases.

**In many USAOs, ineffective collaboration among USAO units hinders the FLU's ability to recover assets for victims.**

EOUSA recommends that each USAO's FLU, Criminal Division, and Asset Forfeiture unit focuses on criminal debts in the pre-judgment phase of the criminal case prior to sentencing because this is the most opportune time to locate and secure assets and collect debts. While some USAOs have adopted practices that facilitate pre-judgment collaboration among these units, we found that many USAOs are missing opportunities to recover assets for victims because these units are not consistently communicating and coordinating in an effective manner, especially pre-judgment. We identified several factors that contribute to the ineffective pre-judgment communication and coordination. First, AUSAs lack

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<sup>58</sup> The next review date may also be, in appropriate cases, the expected termination of a defendant's term of imprisonment or supervision, if no substantial change in the defendant's ability to pay is likely to occur during that term.

<sup>59</sup> In response to a working draft of this report, the Asset Recovery Staff noted that EOUSA has reviewed the priority code system on several occasions over the years and last updated it in August 2013. The Asset Recovery Staff also noted that they designed the priority code system to give the USAOs flexibility to tailor the system to each office's workload, priorities, and available resources. However, the USAP for the priority code system does not reflect this flexibility.

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awareness of and appreciation for the FLU’s mission and the importance of its role within the USAO; likely as a result of this and as detailed above, some FLU AUSAs do not devote enough time to debt collection work; and EOUSA does not require the USAOs to establish policies and procedures directing how these units should coordinate pre-judgment for debt collection.

*EOUSA recommends pre-judgment work to enhance debt collection.*

EOUSA officials and FLU staff told us that focusing on pre-judgment restitution, including working with the Criminal Division and Asset Forfeiture unit during the investigation and prosecution of the case, prior to sentencing, is a best practice that can increase collections and contribute to more effective debt collection. EOUSA’s Model FLU Plan states that the FLU, Criminal Division, and Asset Forfeiture unit should focus on restitution debts 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. In addition, the Criminal Division and Asset Forfeiture unit can save time and resources and prevent duplication of investigative efforts by sharing with the FLU any financial investigative information gathered on the defendant while working the case pre-judgment.

**The Department Has Sought To Improve Restitution for Crime Victims**

The Department has supported a legislative proposal designed to improve the ability of crime victims to obtain meaningful and timely restitution. For example, in 2006 and 2008 the Department supported a proposal that included provisions that provided AUSAs with tools to restrain defendants’ assets for restitution prior to judgment. The proposal also sought to amend the MVRA by clarifying that the FLU may enforce restitution judgments immediately upon their imposition, and that a payment schedule set by a court at sentencing is only a minimum obligation of the offender and does not limit the ability of the FLU to enforce restitution using other available civil and administrative enforcement methods. The bill was referred to congressional committees but did not become law.

However, USAOs have historically started the enforcement and collection of restitution post-judgment because the USAO cannot use the enforcement tools provided by the *Federal Debt Collection Procedures Act* until a judgment has been entered in the criminal case. Moreover, there are no statutory provisions that require defendants to preserve their assets for restitution when they are charged with an offense for which restitution is likely to be ordered. Even if those assets are the proceeds of the offense charged and are traceable to the victims of the offense charged, AUSAs may be unable to restrain them for the purpose of fulfilling a subsequent restitution order.<sup>60</sup> According to EOUSA officials, the lack of procedures

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<sup>60</sup> As noted above, AUSAs in the Asset Forfeiture unit can use criminal forfeiture procedures where appropriate to seize and restrain assets, and can return these forfeited assets to compensate  
(Cont’d.)

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available to ensure that assets are preserved for restitution directly to victims is a major impediment to debt collection.<sup>61</sup> To overcome this impediment, EOUSA has stated that the USAOs must begin asset recovery efforts early in the case, which requires coordination within the USAO, in order that assets can be restrained under criminal forfeiture procedures, where appropriate, or located and secured through agreement with the defendant prior to judgment.

In addition, EOUSA management standards direct USAOs to establish effective communication and coordination for debt collection among USAO employees handling criminal enforcement, asset forfeiture, and financial litigation matters. The management standards state that new cases should be coordinated among these employees so that they are able to timely fulfill their responsibilities for handling these cases, and policies and procedures should be in place to ensure that forfeited assets are used to compensate victims.

According to EOUSA, maximizing the recovery of assets for restitution depends on the FLU, the Criminal Division, and the Asset Forfeiture unit working together because each unit has complementary tools, authorities, and expertise. When coordinated, the efforts of these units can increase the likelihood that assets will be preserved to compensate crime victims. Other EOUSA guidance provides suggestions on how these units can collaborate. Three examples are outlined below:

- The FLU can conduct a financial analysis of the defendant's assets, review the pre-sentence investigation report, and suggest plea agreement and judgment language to the Criminal AUSA that encourages defendants to pay the judgments entered against them as promptly as they reasonably can, sometimes in advance of or at the time the judgment is entered.
- The Criminal Division can coordinate with the investigating agency to identify the defendant's assets early in the investigation and prior to sentencing and share this information with the FLU.
- The Asset Forfeiture unit can share with the FLU its investigative findings on the defendant's financial resources, seize assets for forfeiture, and pursue mechanisms to use assets seized for forfeiture to compensate victims.

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crime victims through the restoration or remission process. However, forfeiture procedures cannot be used in every case for which restitution may be imposed, and forfeited assets legally belong to the United States, rather than to victims themselves.

<sup>61</sup> See Appendix III for examples of other impediments that FLU staff told us can limit the USAOs' ability to gather information about a debtor and effectively pursue enforcement of a debt.

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*Many USAOs do not have effective communication and coordination among their units for debt collection during the pre-judgment phase of the criminal case prior to sentencing.*

We found that in many USAOs the communication and coordination among the FLU, Criminal Division, and Asset Forfeiture unit was either ineffective or was not supporting the effective and efficient collection of debts. EOUSA management standards direct USAO units to coordinate; but according to our analysis of testimonial evidence from professional and support staff in the 93 FLUs, we found that:

- In 22 USAOs (about 24 percent), there was no pre-judgment communication and coordination between the FLU and the Criminal Division.
- In 21 USAOs (about 23 percent), pre-judgment communication and coordination between the FLU and the Criminal Division occurred rarely.
- In 12 USAOs (about 13 percent), there was no pre-judgment communication and coordination between the FLU and the Asset Forfeiture unit.
- In 25 USAOs (about 27 percent of the total), pre-judgment communication and coordination between the FLU and the Asset Forfeiture unit occurred rarely.<sup>62</sup>

EOUSA told us that its EARS reviews of the FLUs reached similar conclusions. In FY 2013, EARS evaluators found insufficient coordination among the FLU, Criminal Division, and Asset Forfeiture unit during the pre-judgment phase of the criminal case in 4 of the 16 FLUs they evaluated. During our interviews with FLU professional and support staff, including Asset Recovery Staff officials, we also heard that although post-judgment collaboration among these USAO units has improved in recent years, more progress was needed to achieve effective pre-judgment collaboration.

FLU staff shared with us instances in which a lack of communication and coordination among these USAO units resulted in missed opportunities to recover assets. In just one example, a FLU Paralegal told us that in the one pre-judgment case she had worked with a Criminal AUSA, the AUSA consulted with her prior to

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<sup>62</sup> We interviewed at least one member of the FLU from each USAO to discuss how the FLU, Criminal Division, and Asset Forfeiture unit within the USAO communicate and coordinate pre-judgment for debt collection. While some interviewees told us that these units did not communicate and coordinate at all during the pre-judgment phase of the criminal case, others said that these units did coordinate but they could not quantify how often this occurred. In those USAOs where pre-judgment communication and coordination occurred rarely, the interviewees generally indicated that these units interacted with each other no more than a few times a year.

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sentencing but did not share all information about the defendant. When the FLU Paralegal later reviewed case documents, she found out that the defendant was a federal employee. She immediately asked the AUSA if the defendant had a federal retirement account and if the USAO had seized it. Unfortunately, the AUSA had not considered the retirement account and the defendant was able to liquidate it prior to sentencing. This was a missed opportunity for securing restitution for victims.

In other USAOs, FLU staff told us that the Asset Forfeiture unit would fail to notify the FLU about petitions it had submitted to Asset Forfeiture and Money Laundering Section (AFMLS) requesting restoration. A few FLU staff members also told us about instances where they discovered that restoration had occurred only after reviewing payment histories from the Clerk of the Court. In these cases the Asset Forfeiture unit failed to notify the FLU about these payments, which prevented the FLU from correctly coding these payments in the CDCS. An Asset Recovery Staff Management Analyst with responsibility for the CDCS told us that this type of missing information makes CDCS data unreliable for determining how many criminal debt payments resulted from restoration.<sup>63</sup>

Some USAOs have tried to improve communication and coordination by combining the FLU, Criminal Division, and Asset Forfeiture unit, but we identified examples where the merger of these units did not improve coordination because the mergers were done without sufficient planning or direction. For example, in one USAO we visited, FLU AUSAs and FLU staff told us they believed USAO management combined the FLU and Asset Forfeiture unit because it had been done successfully in another USAO and management assumed that it would lead to an increase in collections. Staff members in this FLU told us that the merger did not lead to an improvement in the working relationship or information shared among these units. They said the merger did not improve coordination because the Asset Forfeiture unit continued to exclude the FLU from pre-judgment case meetings and the AUSAs in the Criminal Division failed to share information about upcoming indictments and financial information they had obtained on the defendants. They also said that USAO management had initially cross-trained the support staff in the FLU and Asset Forfeiture unit to perform each other's duties but this approach proved to be inefficient because the two units perform very different work.

In addition, although the merger in this office took place in 2011, we learned that USAO management did not formulate goals or objectives to guide the combined unit's work until 2014. Furthermore, FLU AUSAs and support staff told us

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<sup>63</sup> Data we obtained from the AFMLS on the number of restoration and remission petitions granted and denied and the number of cases where the AFMLS granted or denied restoration for restitution generally showed that the AFMLS approves the vast majority of restoration and remission requests it receives. However, the AFMLS does not have data that shows how often the USAOs seek to use forfeited assets to compensate victims when this option is available. Data from the U.S. Attorneys' Annual Statistical Reports does indicate that asset forfeiture is an increasingly important source of funds for restitution and that the amount of forfeiture applied to victim compensation has increased from \$18.9 million in FY 2003 to \$308.4 million in FY 2014.

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that USAO management had only recently granted the FLU access to indictment information and had just started to facilitate meetings between FLU support staff and Criminal AUSAs who prosecute fraud cases to discuss cases likely to involve significant amounts of restitution. Additionally, USAO management had not yet approved FLU staff proposals to add restitution-related provisions to the USAO's standard plea agreement language that would assist the FLU in enforcing the collection of restitution judgments.

In another USAO, a FLU staff member told us that despite having been combined with the Criminal Division and Asset Forfeiture units in 2012, the FLU was still unable to get pre-judgment case information from the Criminal AUSAs. She noted that the Asset Forfeiture AUSAs still had to "fight" to get information from the Criminal AUSAs, and therefore expressed the view that there was "no way" the FLU would be able to regularly obtain information from the Criminal AUSAs either.

In many USAOs, there is a lack of awareness of and appreciation for the FLU's mission and the importance of debt collection.

During the course of our review, several FLU staff told us that there is a lack of knowledge within their USAO about the FLU, its purpose, and how the FLU fits into the Department's goal to "make the victim whole." We also were told that this lack of appreciation for the importance of the FLU's work impedes effective collaboration, including pre-judgment, with other parts of the USAO. For example, FLU staff and FLU AUSAs told us they perceived that AUSAs from other USAO units are focused primarily on securing convictions, believing that the financial aspects of the case and restitution issues are secondary concerns that are best addressed post-judgment. FLU staff also told us that the Criminal Division and Asset Forfeiture unit do not understand what the FLU does and therefore may fail to share information gathered on the defendant's assets pre-judgment and are reluctant to involve the FLU in pre-judgment work. This was particularly highlighted for us in two of the five USAOs we visited, where the Asset Forfeiture Chiefs both questioned the need for supporting the FLU, stating that the FLU "does not add any value" to the Asset Forfeiture unit's work and that "there has not been a need" for the Asset Forfeiture unit to collaborate with the FLU.

Although the USAP requires the USAOs to conduct training on criminal debt collection issues for Criminal AUSAs on an as-needed basis, FLU staff told us that Criminal AUSAs do not always attend this training, even when attendance is mandatory. In addition, according to several FLU staff members we interviewed, the FLUs' outreach to the Criminal Division is not always well received or welcomed. For example, several FLU staff told us that the Criminal AUSAs are not used to working with the FLU and do not understand the potential advantage of involving the FLU during the pre-judgment phase of the criminal case. Other FLU staff said that while some Criminal AUSAs are receptive to working with the FLU, others interpret the FLU's efforts at outreach as meddlesome. Many FLU staff also said it was their impression that other USAO divisions have negative perceptions of the

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FLU, some referring to the FLU as the “stepchild” of the USAO, which they said can limit the effectiveness of the FLU’s outreach and coordination.

EOUSA provides the USAOs with sample plea agreement language to assist the FLUs with their debt collection efforts, and the USAOs’ MOUs include language to guide Criminal AUSAs in plea negotiations with respect to the collection of restitution. In addition, FLU AUSAs in the USAOs we visited told us they are available to review and draft these provisions to assist Criminal AUSAs.<sup>64</sup> Nevertheless, according to many FLU staff, Criminal AUSAs have resisted adding restitution-related provisions to plea agreements out of concern they could jeopardize the defendant’s willingness to plead guilty or otherwise cooperate with the prosecution. These FLU staff said this was a reflection of the Criminal AUSAs’ lack of appreciation for how addressing restitution during the pre-judgment phase of the criminal case could help secure restitution for crime victims.

For example, a FLU Paralegal told us that the Criminal AUSAs in her USAO have resisted working with the FLU during plea negotiations or requiring the defendant to provide a financial statement because Criminal AUSAs are concerned that doing so could result in a trial and the risk that the prosecution could lose the case. She also said that Criminal AUSAs have told her that the FLU should be able to obtain all the financial information it needs from the pre-sentence investigation report. She expressed the view that support from USAO management is needed to make pre-judgment debt collection work a priority because the Criminal Division is reluctant to hear this message from the FLU. She noted that EARS evaluators found in 2010 and 2014 that the FLU in her USAO was not doing enough pre-judgment work with the Criminal Division, and she said that EARS evaluators will probably make a similar finding in their next evaluation.

Lack of AUSA time devoted to debt collection can negatively affect the FLU’s ability to collaborate with other USAO units.

Our review found that FLUs’ ability to effectively promote the importance of debt collection and partnerships among USAO units may also be hindered because many FLU AUSAs devote a limited amount of their time to financial litigation and debt collection. According to EOUSA guidance, the FLU AUSA plays a critical role in facilitating the coordination between the FLU and other USAO units necessary for effective debt collection. However, as discussed above, our analysis of staffing information we received from the FLUs and EOUSA showed that most USAOs have fewer than one full-time AUSA position devoted to debt collection work and even the time of those AUSAs is often pulled away by other activities that they or their

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<sup>64</sup> Examples of provisions that would assist the FLU in collecting restitution include requiring the defendant to submit a financial disclosure form to the FLU, authorizing the FLU to run a credit check on the defendant pre-judgment, and agreeing that any payment schedule the court may impose is merely a minimum schedule of payments and not the only method, nor a limitation on the methods available to the FLU to enforce collection.

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offices view as higher priorities. For example, a FLU AUSA from one of our site visits told us she was assigned a large civil litigation caseload that prevented her from devoting the necessary time to her debt collection responsibilities. In another example, a FLU Paralegal told us that over the past few years the FLU AUSA in her USAO had been pulled away more and more from debt collection work to handle tort cases, which had lessened the communication and coordination between the FLU and the Criminal Division. She said that when the FLU AUSA has enough time to devote to debt collection, collaboration with the Criminal Division is more successful.

Additionally, FLU staff told us that frequent staff turnover of FLU AUSAs impedes effective FLU operations because it takes time for a new AUSA to understand the complexities of financial litigation and build relationships within the FLU and other USAO units. One FLU Supervisory Paralegal described the FLU environment in her USAO as “unstable” because of frequent turnover among the FLU AUSAs and contractor support staff positions in recent years. By the time the FLU support staff established a rapport with a particular AUSA, that AUSA would be replaced. Other FLU staff expressed the view that the FLU’s efforts to establish working relationships with Criminal AUSAs would be more successful with greater FLU AUSA involvement in debt collection work.

In an effort to supplement FLU AUSA staffing levels at the USAOs, and subsequent to our field work in this review, Asset Recovery Staff officials told us that in FY 2014 EOUSA requested and received approval for 20 FLU AUSA 2-year term positions from the Three Percent Fund. Previously, the Three Percent Fund had never been used to provide AUSA positions to support the FLUs. USAOs will apply for these positions and report monthly to the Asset Recovery Staff on the AUSA’s debt collection activities and impact on the debt balances. These positions are intended to supplement, rather than replace, existing FLU staff resources within a USAO.

We believe that the use of Three Percent Fund resources to supplement FLU AUSA positions at the USAOs has the potential to enhance debt collection activities. However, unless EOUSA takes additional concrete steps to emphasize the importance of the FLU’s mission and ensure that FLU AUSAs devote a sufficient amount of time to FLU work, the FLUs will be limited in their ability to communicate and coordinate with other USAO units to realize effective debt collection practices.

EOUSA does not require the USAOs to establish policies and procedures directing how USAO units should coordinate pre-judgment for debt collection.

While EOUSA guidance directs the USAOs to ensure that their units communicate and coordinate during the pre-judgment phase of a criminal case, it does not mandate that the USAOs establish specific policies and procedures that the USAOs should follow to accomplish this goal. For example, the EOUSA management standards state that although it is not required, it is considered preferred practice for the FLU to review available financial information prior to plea

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agreements and sentencing, to propose plea agreement terms, to suggest judgment language, to assist with legal issues pertaining to the imposition of restitution, and to coordinate with asset forfeiture AUSAs to deter dissipation of assets. EOUSA guidance specifically places the onus on the FLU to initiate this communication and coordination. Specifically the USAM states that the FLU “should take steps to foster effective communication, guidelines and procedures among Criminal, Asset Forfeiture, and Financial Litigation AUSAs to identify and proactively work those cases in which there is a substantial likelihood of collection, thereby maximizing recoveries on behalf of victims of crime.”<sup>65</sup>

Both the USAM and the Model FLU Plan essentially set up collaboration as a one-way street establishing that it is the responsibility of the FLU to reach out to the Criminal Division and Asset Forfeiture unit, and not the other way around.<sup>66</sup> During our interviews, FLU staff told us that although the FLU has a responsibility to advocate for itself and communicate its mission within the USAO, the FLU alone lacks both the authority to change policies and procedures within the USAO and the clout to significantly influence the USAO culture. For example, in two USAOs we visited, the FLU Paralegals told us that, absent a strong commitment from USAO management, the influence of the FLU to change debt collection procedures and practices was limited. They expressed the view that it was not realistic to expect the FLU to change the mindset or habits of the Criminal AUSAs and how AUSAs work with the FLU during the pre-judgment phase of the criminal case without management support. FLU AUSAs and USAO management officials acknowledged that Criminal AUSAs can have negative perceptions of the FLU or lack understanding of what the FLU does.

Asset Recovery Staff officials told us that the USAOs are responsible for ensuring that the units within their offices communicate and coordinate to assist the FLU with debt collection. These officials said that USAOs are given the flexibility to develop and implement policies and procedures that direct this collaboration, depending on what they determine would work best in their USAO. They also said that EOUSA does not mandate how the USAOs implement their policies and procedures to enhance communication and coordination, and that nationwide standards would have to be coordinated with the Attorney General’s Advisory Committee. Further, these officials told us that EOUSA does not want to prescribe specific policies and procedures for the USAOs because each USAO knows what would work best in their office. However, they also stated that if the EARS review determines that communication and coordination between USAO units and the FLU,

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<sup>65</sup> USAM 3-12.350.

<sup>66</sup> In response to a working draft of this report, the Asset Recovery Staff noted that EOUSA management standards distribute the responsibility for encouraging effective communication among the various USAO units and hold senior management responsible for ensuring that this occurs. EOUSA Management Standard 1-3.500 states, “the USAO ensures effective communication among USAO employees handling criminal enforcement, affirmative civil enforcement, health care and other fraud investigations, asset forfeiture, victim-witness issues, and financial litigation unit (FLU) matters.”

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as required by EOUSA management standards, is absent or not working effectively, the EARS staff will make a finding stating as much and make recommendations to the USAO for improvement.<sup>67</sup>

Another issue that relates to the efficacy of the FLU plans and MOUs is that the extent to which these documents are binding on all USAO personnel in how they should work with the FLU is unclear, and USAO staffs are not necessarily made aware of them. For example, EOUSA's Model FLU Plan includes language that emphasizes the importance of pre-judgment criminal debt collection work. The Plan states that the "FLU and/or Criminal Division focuses on restitution debts before sentencing, since this is the best chance to recover assets (when the defendant may still hold ill-gotten gains and when he/she is in doubt over the length of the sentence)." The Plan also states that to ensure that victims receive timely restitution, the FLU AUSA works with the Criminal AUSA as necessary on pre-judgment restitution cases.<sup>68</sup> The FLU Plan is signed and endorsed by the U.S. Attorney or another member of the USAO management team. However, Asset Recovery Staff officials said that although everyone in the USAO can access the FLU Plan, the Plan really is designed to function as a "how to" resource to assist the FLU in its daily financial litigation work. Therefore, we do not believe that this document is intended to or regularly used to direct how other USAO personnel should interact with the FLU to support debt collection.

In addition, approximately half of the MOUs we reviewed contained some language suggesting that the Criminal Division was responsible for working with the FLU pre-judgment, such as consulting with the FLU to explore the restraint of assets, enforced collection strategies, and payment options. However, we found that only one MOU included language that directed the Asset Forfeiture unit to assist the FLU with debt collection.<sup>69</sup> The MOU is designed primarily to formalize the manner in which the USAO, Probation Office, and Clerk of the Court will communicate and resolve problems and is signed by the U.S. Attorney, Clerk of the Court, and Chief Probation Officer. Asset Recovery Staff officials told us that Criminal Division Chiefs would be involved in drafting language in the MOU that directs Criminal AUSAs and support staff to take certain actions to assist the FLU; but it would be incumbent upon the Chiefs to disseminate this information. Based

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<sup>67</sup> Such findings are included in a draft evaluation report sent to the USAO for comment and review. The USAO submits a response to the draft report, and the EARS staff thereafter conducts a follow-up visit to verify what corrective actions have been taken. The EARS staff then produces a final report that the Director of EOUSA provides to the U.S. Attorney and the Deputy Attorney General.

<sup>68</sup> EOUSA, *Model FLU Plan* (FY 2012), pp. 27-28.

<sup>69</sup> The language in this MOU states, "the Asset Forfeiture AUSA will work closely with the FLU to utilize the procedural provisions of the forfeiture statutes to preserve and recover forfeitable property and, in appropriate cases, seek authorization to apply such property toward satisfaction of victim restitution." In this USAO, the FLU AUSA works on both debt collection and asset forfeiture cases.

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on our review, we found no evidence to suggest that the MOUs provided substantial information or guidance to AUSAs outside the FLU.

In FY 2008, EOUSA's Asset Recovery Staff developed a draft "Asset Recovery and Victim Restitution Management Plan" that suggested USAOs include the support of debt collection in appropriate employee performance work plans, including those of USAO management. The Plan stated that "by including specific responsibilities in the performance work plans, USAOs send a clear message that recovery of assets for restitution is a priority and that employees are expected to work together to accomplish this mission."<sup>70</sup> However, only 17 of the 93 FLU plans we reviewed (about 18 percent) had language that said the AUSA performance work plans in those USAOs included a work element related to the support of debt collection. And even where these elements exist, they may not be sufficient: one Supervisory FLU Paralegal told us that, while the performance work plan for AUSAs in the USAO where she works contains a work element directing AUSAs to communicate with the FLU, this language was not specific enough. She expressed the view that it would take a more strongly worded work element in the performance work plan to incentivize Criminal AUSAs to communicate and coordinate more with FLUs.

Unless EOUSA requires the USAOs to establish policies and procedures directing how other units within the USAO should communicate and coordinate pre-judgment with the FLU, including requiring a specific performance element related to such coordination in all AUSA and USAO management performance work plans, we believe that the USAOs will fail to capitalize on opportunities to recover assets for victims and realize efficiencies in the debt collection process.

**EOUSA and the USAOs cannot rely on the Department's debt collection case tracking system to accurately assess FLU performance and determine how to allocate resources to increase collections.**

EOUSA uses the Consolidated Debt Collection System (CDCS) to manage and oversee the USAOs' debt collection program, to review FLU performance, to assist decision-making for allocating FLU contractor positions from the Three Percent Fund, and to compile debt collection data included in the U.S. Attorneys' Annual Statistical Report. FLUs use the CDCS to track criminal and civil debts, capture FLU activity on debt cases, and as a case management tool. However, we found that EOUSA is significantly limited in managing and evaluating the USAOs' debt collection program because the CDCS contains inaccurate data and produces unreliable reports and that this also impacts the usefulness of the data in the management of the FLUs.

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<sup>70</sup> Asset Recovery Staff officials told us that although the plan was neither finalized nor circulated to the USAOs for comment, EOUSA did receive positive feedback from the USAOs on the plan's concept that increased collaboration was needed among USAO units to improve the recovery of assets for restitution.

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EOUSA and the USAOs use the CDCS to inform many management decisions and conclusions related to debt collection; but due to weaknesses in the CDCS and data entry inconsistencies and errors, these decisions and conclusions may be based on inaccurate data. We also found that the CDCS does not capture all the information EOUSA needs to sufficiently assess FLU performance and EOUSA has a limited ability to modify the CDCS to address system shortcomings because it does not manage the system. Consequently, EOUSA cannot use the CDCS to accurately determine how to allocate its resources or identify which enforcement actions maximize collections. EOUSA continues to work with the Debt Collection Management Staff to improve its ability to evaluate the overall debt collection program with CDCS data, but this project was still in its early stages during our field work.

*The CDCS contains inaccurate data and produces unreliable reports.*

We found that the CDCS lacks sufficient system data controls to ensure accurate and consistent data entry in some fields. For instance, the “date” fields in the CDCS have system controls that require the user to enter dates in a consistent format, while other fields do not. We reviewed a CDCS dataset of 508,074 debt cases from all USAOs that were opened or closed from FY 2009 through FY 2013. We observed that many fields had missing data or inconsistent data entries and only some fields had standard entries. For example, we found 35,879 cases in the CDCS dataset (7 percent of the total) where the court-imposed debt amount was under \$100, some for 1 dollar or 10 cents. These cases included both criminal and civil cases and were not special assessment-only cases.<sup>71</sup> Because the USAM states that the USAOs are responsible for the enforcement of judgments, fines, penalties, and forfeitures exceeding \$100, these debt amounts were too low to be accurate.<sup>72</sup> We asked officials in the Debt Collection Management Staff, the unit within the Justice Management Division (JMD) responsible for managing the CDCS, about these cases, and they speculated that these amounts may be the result of data entry error. Although we examined only select data fields within the CDCS dataset, this finding may indicate that similar errors exist in other CDCS data fields and calls into question the accuracy of CDCS-reported debt amounts.

While this may seem a technical distinction, fields without sufficient data controls can complicate the analysis of a large number of cases and impede comparisons of data across debt cases when attempting to evaluate a USAO’s debt collection performance.<sup>73</sup> Inconsistent data requires normalization, which takes

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<sup>71</sup> As discussed above, a special assessment is a monetary assessment automatically imposed by a judge in a criminal case that is \$100 for an individual and \$400 for an entity convicted of a felony, less for misdemeanors. 18 U.S.C. § 3013.

<sup>72</sup> USAM 3-12.200.

<sup>73</sup> For example, the CDCS contains an “Events” field that captures the history of the FLU’s work to collect a debt; EOUSA can find information in this field to help evaluate FLU performance.

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additional time and can itself introduce error.<sup>74</sup> The CDCS also contains codes from the former debt collection system that have since expired and can produce data entry discrepancies when comparing older and newer debt cases, further exacerbating this issue.<sup>75</sup>

Inadequate data control procedures not only contribute to inconsistent and inaccurate data in CDCS, they also complicate efforts to evaluate FLU performance. For example, EOUSA states in the CDCS Codes Manual that certain data fields may be populated with USAO-specific (“local”) codes.<sup>76</sup> However, Asset Recovery Staff officials recognized that using the local codes to track enforcement impeded EOUSA’s ability to assess FLU performance. As a result, EOUSA mandated that the USAOs use standard codes for entering information into a field used to track enforcement actions.<sup>77</sup> We believe that the continued use of local codes for other data fields could also impair EOUSA’s ability to assess FLU performance.

In addition, FLU staff told us that they do not always comply with the data entry procedures that do exist. First, according to the USAP, FLUs are required to record all enforcement actions into the CDCS because EOUSA relies on this data to evaluate and assess the FLUs’ work on debt collection cases. However, a few FLU staff members stated that they do not record all of their enforcement actions in CDCS due to time restraints and large caseloads. In addition, we heard from a FLU Paralegal that enforcement actions can be over-reported in CDCS due to inconsistent data entry practices. For example, when a FLU staff member requests a credit report on a debtor, the FLU is supposed to input a code used to track credit reports. But the FLU staff member could also input a separate code used to track a financial investigation. This practice can result in inaccurate performance data, as multiple codes are used for a single enforcement action. According to EOUSA, in FY 2013 EARS evaluators found that a lack of FLU staff training in one USAO had resulted in the over-reporting of enforcement activity in the CDCS, and in two other USAOs the evaluators found that there was insufficient management to ensure the integrity and accuracy of data recorded in the CDCS.

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However, this field does not have a limitation on the amount of text users can enter, which makes it difficult to aggregate and analyze the data.

<sup>74</sup> Normalization is the process of standardizing and organizing values to allow for easier comparisons and analysis. We found no evidence that EOUSA’s Asset Recovery Staff is normalizing data regularly.

<sup>75</sup> Prior to the CDCS, EOUSA and the USAOs used the Tracking Assistance for the Legal Office Network (TALON) to track criminal debt collection activity. In FY 2008, the Department adopted the CDCS as the replacement for TALON.

<sup>76</sup> Some fields in the CDCS contain codes instead of full text to minimize the amount of data in the field. For example, the CDCS has a field to capture the agency to which the debt is owed and users enter a code, not the name of the agency, to identify the agency.

<sup>77</sup> USAP 3-12.400.001.

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Second, FLUs do not always follow correct data entry procedures for joint and several criminal cases. We heard from FLU Paralegals in two USAOs that other FLU staff members had incorrectly opened joint and several debts in CDCS, one by mistake and the other deliberately. EOUSA policy requires the FLU to open joint and several criminal cases under the same CDCS number. However, these USAOs opened individual cases in the CDCS for each defendant rather than linking them under the same CDCS number, which inaccurately increased USAO debt balances and case counts. To correct this error, these FLUs had to perform additional work to determine the appropriate amount each defendant owes and how to credit the payments received across the individual cases.<sup>78</sup> In the first USAO, the FLU Paralegal said that the FLU staff had been mistakenly entering joint and several debts in CDCS for several years and had not yet had time to correct these errors. In the second USAO, a FLU Paralegal preferred to open joint and several criminal cases by victim, even though she had been instructed on how to properly enter these cases. Another FLU Paralegal later spent 2 weeks closing all these cases and reopening them correctly.

In addition to problems with data entry, Asset Recovery Staff officials and FLU staff said that the CDCS can produce reports with incorrect and unreliable information because of the inaccurate underlying data within the CDCS and errors in how the system extracts information for report production. For example, a FLU staff member told us that if a user runs the Monthly Payment Report multiple times, the report will produce different totals every time it is run even though the data in the CDCS would not have changed.<sup>79</sup> Moreover, an Asset Recovery Staff Management Analyst with responsibility for the CDCS told us that two commonly used workload reports, the Quarterly Reports and the Counts Report, either malfunction or contain errors.<sup>80</sup> As a result, FLU staff, USAO management, and EOUSA are using reports that have unreliable and inaccurate information to evaluate FLU performance and make management decisions.

*The CDCS does not capture all the information or enable all the analysis needed to evaluate the debt collection program.*

EOUSA cannot rely on the CDCS to evaluate the debt collection program because the system does not capture all the information needed or enable all the analysis required to sufficiently assess debt collection performance across all the USAOs. For one thing, the CDCS does not have specific enough information for

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<sup>78</sup> Refer to Appendix IV for information on how the USAOs and Clerks of the Court credit payments to defendants in joint and several criminal cases.

<sup>79</sup> Subsequent to our field work, this FLU staff member told us that CDCS improvements had resolved the issues she experienced with her USAO's Monthly Payment Report. However, we do not know if all the report generation problems reported to us have been corrected.

<sup>80</sup> The Quarterly Reports may be provided to USAO management and provide a summary of FLU activities over a selected timeframe. The Counts Report provides an aggregate sum of CDCS data, such as the total number of debts or the sum count of all debtors.

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EOUSA to identify the different characteristics of a debt or case that can most likely affect collections.<sup>81</sup> For example, although CDCS contains a data field that identifies the type of debtor (such as an individual or corporate entity), it lacks other data fields to capture financial information about the debtor that could indicate the debtor's ability to pay. Further, although FLU staff told us they can enter notes into CDCS about any debt collection work that may have been performed during the pre-judgment phase of the criminal case prior to sentencing, Asset Recovery Staff officials told us they have not analyzed this information to determine its effect on collections because in many USAOs the extent of pre-judgment collaboration between the FLU and other USAO units is still in its early stages. However, we saw no evidence to suggest that EOUSA or the USAOs would be able to easily analyze this information to measure collections as a result of pre-judgment practices, such as efforts by the USAO to locate and secure the defendant's assets and shape the language in the plea agreement and restitution order.

Additionally, EOUSA cannot use the CDCS by itself to accurately assess the debt collection program because key data about the specifics of cases cannot be easily analyzed in aggregate form. When we examined a sample of debt collection paper case files, electronic case files in the CDCS, and CDCS events reports, we were able to ascertain much more information about the debt, debtor, and the actions the FLU took to collect the debt than from analyzing data from our CDCS dataset alone. For example, we observed that FLU staff members may enter detailed information about the results of financial information searches into a narrative data field in CDCS that does not have text limitations. While EOUSA can use this information to assess FLU performance on individual cases, it is not feasible to aggregate and analyze this information on a broader scale using the current system.

*EOUSA's ability to modify the CDCS is limited.*

EOUSA is limited in its ability to implement enhancements to the CDCS that would improve the system to better meet the needs of EOUSA and the FLUs because it does not manage and operate the CDCS. Each year during the annual budget submission process, JMD, which oversees the CDCS contract, solicits requests from all CDCS user groups, including EOUSA, for CDCS enhancements and changes to improve report functionality and system performance.<sup>82</sup> JMD decides

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<sup>81</sup> Asset Recovery Staff officials also told us that calculating a "collection rate" for a FLU is misleading because it does not take into account these different characteristics that are unique to each case and can affect the FLU's ability to collect. While EOUSA does not calculate a collection rate per FLU, it does calculate how much the FLU collects against the debt balance classified as collectable, as opposed to the total outstanding debt balance. Although EOUSA can use this calculation to assess individual FLUs, it does not perform this analysis to assess the performance of the debt collection program as a whole.

<sup>82</sup> The JMD Debt Collection Management Staff Director told us that there were no new enhancements requested or implemented in FY 2015 because it is the last year of the contract and

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which modifications to make each year, and the CDCS contract allocates approximately 10 percent of the overall CDCS budget for these enhancements. The JMD Debt Collection Management Staff Director told us that all litigating components have the ability to request enhancements and JMD prioritizes which enhancements to make based on feasibility, consistency with the operational needs of all CDCS user groups, as well as the estimated cost associated with development.<sup>83</sup> Even though the Debt Collection Management Director reported that FLU staff account for 80 percent of all CDCS users, he told us that budget limitations and competing requests limit the number of EOUSA requests JMD can approve each year. The Asset Recovery Staff Management Analyst who oversees the CDCS told us that he has worked with JMD and the CDCS contractor to fix some problems in the system, but unfortunately the budget limitations did not allow for all the improvements EOUSA or the USAOs thought were needed.<sup>84</sup>

*EOUSA has recently begun efforts to work with JMD to enhance the CDCS.*

Subsequent to our field work, the Asset Recovery Staff Assistant Director told us that EOUSA is working with the JMD Debt Collection Management Staff to develop an automated tool to evaluate the overall debt collection program with CDCS data. The Debt Collection Management Staff Director reported that JMD began a data analytics program in 2012 with the intent to capture the history of debt collection over time and has since expanded the program to include capability in predicting debt collection performance and facilitating decision making.<sup>85</sup> However, these efforts are not complete and CDCS still contains inaccurate data and does not distinguish or capture all the information needed to sufficiently assess

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JMD did not want changes or work on the system to affect CDCS performance during the possible transition to another contractor.

<sup>83</sup> CDCS user groups include the 94 USAOs, EOUSA, the Anti-Trust Division, Civil Division, Civil Rights Division, Criminal Division, Environmental and Natural Resources Division, and Tax Division.

<sup>84</sup> In response to a working draft of this report, JMD's Debt Collection Management Staff noted that it has worked closely with the Asset Recovery Staff Management Analyst involved in this effort over the last 5 fiscal years. Including plans being executed in FY 2015, EOUSA has received 10 major system enhancements and 68 minor enhancements that it has requested for CDCS, for a total investment of \$5.1 million. In comparison, all other litigating divisions received a total of 5 major enhancements for a total investment of \$1.1 million during the same period.

<sup>85</sup> In FY 2014, the Debt Collection Management Staff implemented two "dashboards" in CDCS as part of this program. The first dashboard provides users with the capability to track debt collection performance on a set of debts over time. The second dashboard allows users to compare debt collection performance between two Department litigating entities, including the USAOs. For example, the dashboard allows a single USAO to be compared to all USAOs or a group of USAOs. In August 2014, the JMD Debt Collection Management Staff held a workshop for all CDCS users, including EOUSA, and provided hands-on dashboard training and discussed how future dashboards could be developed to meet each component's information needs. In response to a working draft of this report, Debt Collection Management Staff noted that it delivered another CDCS dashboard in April 2015 that analyzes FLU performance and that steps are underway to add enhancements and data to further improve this capability.

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FLU performance. Until EOUSA and JMD address these specific issues, EOUSA will be unable to use the CDCS to effectively assess the performance of the FLUs and the debt collection program as a whole.

**Some USAOs have adopted practices that prioritize debt collection work and enhance their ability to collect debts.**

We found that some USAOs have adopted practices that reflect the importance of debt collection and enhance the FLU's efforts. Effective staffing practices include the use of Asset Investigators to assist the FLU with enforcing collections and performing pre-judgment work and the implementation of a division of labor between FLU staff who perform administrative tasks and those who perform enforcement actions. Other positive steps include USAO efforts to promote pre-judgment collaboration between the FLU and other USAO units and to coordinate the activities of the Asset Forfeiture unit and the FLU by merging the two units. We believe that these practices that can be replicated in other USAOs.<sup>86</sup>

*Some USAOs have adopted effective staffing practices.*

According to EOUSA, several USAOs have identified the use of Asset Investigators for debt collection as a best practice. We noted that a few of the USAOs that EOUSA has classified as large or extra-large have allocated an Asset Investigator FTE from their office's budget to assist their FLUs. FLU staff told us that having access to a dedicated Asset Investigator position helped them to enforce collections. For example, in one USAO we visited, the FLU's support staff told us that their contractor Asset Investigator helped them to "think outside the box" when investigating the defendant's financial resources and suggested different angles to pursue when researching the defendant's financial information. Other FLU staff we interviewed commented on how their contractor Asset Investigator was able to discover assets that otherwise might not have been found because the other FLU staff members did not have either the skills or the time to search for and analyze the defendant's financial information.

We found that some USAOs have dedicated the contractor Asset Investigator position or contractor Paralegal position they have received from the Three Percent Fund to performing pre-judgment debt collection work. For example, in one USAO we visited, FLU staff told us that their contractor Asset Investigator had transformed the FLU from a reactive to a proactive unit. The contractor Asset Investigator reviews indictments that the Criminal Division sends to the FLU and proactively contacts the Criminal AUSAs to help investigate the defendant's assets. This can assist the prosecutor to shape the language in the plea agreement and

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<sup>86</sup> The OIG was unable to determine whether these practices have increased collections because the USAOs and EOUSA do not track this information in the CDCS. As discussed earlier in the report, we found weaknesses with the CDCS and EOUSA's ability to use CDCS data to assess the performance of the USAOs' debt collection program.

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restitution order. This information can also help the Asset Forfeiture unit to identify and seize assets for forfeiture that can later be used to compensate victims post-judgment. The FLU staff further noted that their contractor Asset Investigator helped to build a better relationship between the FLU and the Criminal Division, and assisted the FLU with the analysis of complex financial information such as tax returns. In another USAO, the FLU's Paralegal told us that her office had recently dedicated the contractor Paralegal position that it had received from the Three Percent Fund to working with Criminal AUSAs on pre-judgment matters. She noted how the Paralegal had assisted the Criminal Division in conducting asset investigations, which had helped to develop the FLU's relationship with the Criminal AUSAs in the USAO.

In addition, we noted that some of the larger FLUs were able to implement a division of labor between staff who performed administrative tasks and staff who focused on enforcement actions, which is another best practice that EOUSA recommends for effective management of the FLU. For example, during one of our site visits, we observed that the USAO had dedicated FLU staff exclusively to opening new cases, entering case information into the CDCS, preparing demand letters, and filing liens. This allowed the other FLU support staff to focus their efforts on and allocate their time to enforcement actions such as reviewing credit reports, issuing subpoenas, conducting debtor exams, and filing garnishments.

*Some USAOs have implemented effective pre-judgment debt collection practices.*

During our review, we found that in about half of the USAOs, FLU professional and support staff told us that pre-judgment communication and coordination among the FLU, the Criminal Division, and the Asset Forfeiture unit occurred routinely or at least several times a year. A few of these USAOs have adopted practices that can strengthen pre-judgment collaboration among these units. For example, in one USAO we visited:

- The FLU staff regularly attends monthly Criminal Division meetings. The FLU staff uses these meetings to emphasize to the Criminal Division the importance of involving the FLU early in the case. The FLU staff also uses the meetings to recognize those Criminal AUSAs who have done a good job keeping the FLU involved in their cases.
- The FLU supervisor also attends weekly meetings with the managers of the Criminal and Civil Divisions, where they discuss significant cases and financial litigation case developments.
- The FLU and the Asset Forfeiture unit report to the same supervisor and are physically located together on the same floor, which the FLU staff told us facilitated communication and relationship building.

In another USAO we visited, the FLU AUSA told us that the Deputy Chiefs of the Criminal Division direct the Criminal AUSAs to call her when they are working a case that involves a large amount of restitution, which can then prompt a

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discussion between the FLU AUSA, Criminal AUSA, and Asset Forfeiture unit on strategies to preserve the defendant's assets for restitution. In addition, the Asset Forfeiture Chief told us that the USAO has a policy that forfeiture should be pursued in every case, and she expressed the view that whenever a case involves restitution and assets have been forfeited, restoring those assets to compensate crime victims should always be a priority. Further, when the Asset Forfeiture unit submits a request for restoration to AFMLS, it will include the FLU in its email correspondence so that the FLU is made aware of the status of the restoration request and whether the forfeited proceeds will be applied toward satisfying the restitution debt.

Other USAOs have integrated language into their sample plea agreements to assist the FLU with enforcing judgments. For example:

- In one USAO we visited, FLU staff told us that the Criminal Division had recently changed the language in the standard plea agreement. The previous language required the defendant to provide a financial report to the Criminal AUSA, but FLU staff told us that most defendants did not provide the requested information and the Criminal AUSAs did not insist upon it. The new language requires the defendant to provide the financial statement directly to the FLU, certify under penalty of perjury that the information provided is accurate and complete, and cooperate with the FLU should any additional information be requested.
- In some USAOs, FLU staff we interviewed told us that their USAOs have a blanket policy where all defendants are automatically included in the Treasury Offset Program. These USAOs have added language into their plea agreements that does not permit debtors to be removed from the program.
- In other USAOs, the FLU has developed a standing order that allows the Clerk of the Court to accept payments from the defendant pre-judgment and to hold on to the funds and apply them toward the restitution debt after the judgment is entered. FLU staff told us that the Clerk of the Court generally will not accept payments from the defendant until a judgment has been entered.

FLU staff shared some examples where the FLU was able to collect large payments from the defendant as a result of effective coordination among USAO units during the pre-judgment phase of the criminal case. For example, in one case the defendant paid \$1.2 million in restitution through a plea agreement prior to sentencing. In return for paying the restitution in full and early, the Criminal AUSA agreed to recommend a reduction in the sentencing guidelines. In another case, the FLU was successful in convincing the Criminal AUSA to have the defendant sign a plea agreement in which the defendant agreed to liquidate her stock accounts and apply the funds toward the criminal fine.

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A common factor in the USAOs where we noted that the communication and coordination among the FLU, Criminal Division, and Asset Forfeiture unit appeared to be effective was a commitment from senior USAO management, or in some cases the FLU AUSA, to raise awareness of the FLU's mission and proactively build relationships with staff from other units. For example, in one USAO we visited, the FLU and Asset Forfeiture units are combined and report to the same Chief, who routinely attends meetings with the Criminal Division and USAO management and uses those meetings to remind Criminal AUSAs of the importance of involving the FLU early in the criminal cases. FLU staff told us that it took several years of sustained management leadership to change the negative perception of the FLU within the USAO so that other units would be more willing to partner with it. In another USAO, the FLU's Supervisory Paralegal told us that their FLU AUSA had been especially active in educating Criminal AUSAs on restitution and victims' rights issues, efforts that she said led directly to the improved information sharing and interaction among the FLU, Criminal Division, and Asset Forfeiture unit.

*Some USAOs have successfully integrated their Asset Forfeiture unit and FLU.*

In 16 USAOs, we identified the successful implementation of the EOUSA best practice that calls for merging the FLU and the Asset Forfeiture unit. In 11 of these USAOs, FLU staff told us that the reorganization had contributed to improved communication and coordination between the two units and had led to an increase in use of restoration to compensate victims. For example, in one USAO we visited, FLU staff told us that the two units worked well together as a team because they reported to the same supervisor, who communicated that restitution and victim issues were a priority. The supervisor of the combined unit told us that the merger worked well due to several factors. First, the units are co-located, which facilitates communication and increases opportunities for relationship building. Second, staff members from the two units do not try to do each other's work, but instead share their respective expertise in pursuit of a common goal. Third, the two units meet weekly to coordinate their efforts, discuss important cases, and keep each other informed on their activities.

In another USAO, the FLU's Supervisory Paralegal told us that information sharing between the FLU and the Asset Forfeiture unit had improved after USAO management had merged the two units. She noted that prior to the merger the Asset Forfeiture unit would share with the FLU investigative information on the defendant's resources only on a sporadic basis. However, as a result of the merger, the Asset Forfeiture unit is now more consistent in sharing financial information it finds on the defendant, such as bank accounts of which the FLU may not have been aware. She recounted an example in which the Asset Forfeiture unit discovered assets in the defendant's retirement accounts and certificates of deposit. Although the Asset Forfeiture unit could not seize the assets, it supported negotiations with the defendant, who agreed to terms that allowed the FLU to garnish in excess of \$300,000 from the defendant's accounts. The FLU's Supervisory Paralegal also told us that the Asset Forfeiture unit now notifies the

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FLU whenever it seizes assets for forfeiture and submits a request for restoration to the Department's AFMLS.

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## CONCLUSION AND RECOMMENDATIONS

The Department has a fundamental responsibility for collecting debts owed to victims of crime and the federal government, and it has indicated that it places a priority on this important activity. The U.S. Attorneys are responsible for leading the Department's efforts in this area, and they have largely delegated this responsibility to their Financial Litigation Units (FLU). However, our review identified several systemic issues affecting the work of most FLUs and indicating that U.S. Attorneys' Offices (USAO) are not prioritizing this work consistent with the Department's stated intentions. These issues hamper the USAOs' ability to collect the debts owed to crime victims and the federal government.

We found that despite a large increase in the number of criminal debts and amount of criminal debt owed during the past 2 decades, the amount of staffing resources that the USAOs have allocated to their FLUs has decreased. Both the criminal debt caseload and the outstanding criminal debt balance have grown substantially since the passage of the *Mandatory Victims Restitution Act of 1996* (MVRA). Notably, the pending criminal debt balance increased 23-fold, from \$4.4 billion at the end of FY 1994 to \$101.5 billion at the end of FY 2014.

Managing a caseload with a debt balance of this size would be challenging with a robust commitment from the USAOs, yet we found that the lack of prioritization generally afforded this work in practice has created even greater difficulties. Our analysis of staffing data showed that 82 USAOs (88 percent) allocated 1 or fewer attorney full-time equivalents (FTE) and 49 USAOs (53 percent) allocated 2 or fewer support staff FTEs to debt collection work in FY 2014. We concluded that, even in small USAOs, one or two support staff members is generally not enough staff to perform both the required administrative duties to process the cases and the enforcement actions necessary to collect debts, so that the latter inevitably suffers. The Executive Office for U.S. Attorneys (EOUSA) has sought staffing resources from the Department's Three Percent Fund to enhance the FLUs' collection enforcement efforts and has implemented a case prioritization system to assist the FLUs in managing the debt collection caseload. However, the use of contractor positions from the Three Percent Fund presents its own problems and is not a long-term solution to the FLUs' staffing needs. In addition, although Asset Recovery Staff officials told us that EOUSA has revised the case priority code system to allow for flexibility in how the FLUs implement it, we believe that EOUSA should continue to reevaluate the system and the FLUs' implementation of it to ensure that it acts as an effective case management tool in light of current caseload demands and FLU staffing challenges.

Effective debt collection requires a coordinated approach among the FLU, Criminal Division, and Asset Forfeiture unit within each USAO. The FLU especially depends on a close working relationship with the Criminal Division and Asset Forfeiture unit to realize opportunities to identify and recover assets and collect money from defendants prior to judgment. Despite the emphasis EOUSA has

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placed on the importance of pre-judgment debt collection work, we found that in many USAOs the FLU, Criminal Division, and Asset Forfeiture unit are not consistently communicating and coordinating effectively during the pre-judgment phase of the criminal case.

The FLU has a responsibility to promote productive working relationships with other USAO units, but we identified barriers that limit how effective the FLU can be without USAO management support. For instance, a lack of appreciation for the importance of the FLU's mission and inadequate time devoted to debt collection by FLU AUSAs were common themes we heard during our interviews with FLU staff. These reflect a lack of prioritization of the work of the FLUs that is inconsistent with the Department's mission and its stated intentions. Moreover, EOUSA does not require the USAOs to establish policies and procedures directing how USAO units should coordinate pre-judgment to ensure the availability of assets for crime victims. As a result, there are no uniform policies and procedures for how these units should coordinate pre-judgment for debt collection. In the absence of more formal guidelines that specify how USAO units should coordinate their efforts during the pre-judgment phase of the criminal case, we believe that the USAOs will fail to capitalize on opportunities to recover assets for crime victims and realize efficiencies in the debt collection process.

Further, we found that EOUSA and the USAOs cannot reliably or effectively use data from the CDCS to analyze the performance of FLUs or conduct an overall assessment of the USAOs' debt collection program. We found that EOUSA cannot rely on the CDCS because it contains inaccurate data that results from insufficient data entry controls and inadequate data entry procedures. Additionally, the CDCS does not capture all the information or enable all of the analyses EOUSA needs to sufficiently assess FLU performance. EOUSA is working with JMD to develop the capability to better analyze CDCS data, which is an important step. We believe that EOUSA needs a tool to analyze debt collection data and determine how to allocate resources as the debt caseload continues to increase and the debt collection mission competes with other Department priorities. EOUSA also needs to develop policies and procedures to address the CDCS's underlying data issues. With an analytical tool and improved performance data, the USAOs and EOUSA will be able to use the CDCS to make informed decisions on how to staff and structure the FLUs, determine the most effective enforcement actions in different types of cases, and improve the USAOs' debt collection program.

While, on the whole, we found that the USAOs have not followed through on the Department's stated commitment to prioritize debt collection work, we did find some USAOs who had taken steps to appropriately enhance their efforts in this area. We believe that these measures are practices that can be a template for USAOs to improve their debt collection work.

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## Recommendations

To improve the ability of the USAOs to fulfill their mission to collect debts, we recommend that EOUSA:

1. Determine and establish guidelines for how the USAOs should staff and structure their FLUs, including the amount of time FLU AUSAs should devote to debt collection and the number and utilization of support staff FTEs the USAOs should allocate to their FLUs.
2. Consider reevaluating the priority code system and its implementation to ensure FLUs can effectively use the system to manage caseloads.
3. Consider measures to emphasize the importance of the FLUs to the USAOs' missions and their coordination with other units, including requiring the USAOs to include a performance element in all AUSA and USAO supervisor work plans requiring pre-judgment communication and coordination with the FLU.
4. Assist the USAOs in developing uniform policies and procedures for how other units within the USAO should communicate and coordinate with the FLU pre-judgment and evaluate the USAOs' progress in implementing these policies and procedures.
5. Continue to work with JMD Debt Collection Management Staff to improve the CDCS data control procedures and user data entry and develop tools to enable the CDCS to be used to appropriately analyze the USAOs' debt collection program.

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## **APPENDIX I: SCOPE AND METHODOLOGY OF THE OIG REVIEW**

### **Scope**

The Office of the Inspector General (OIG) examined the efforts of the U.S. Attorneys' Offices (USAO) and the Executive Office for U.S. Attorneys (EOUSA) to collect criminal and civil debts. The OIG also assessed the extent to which the management processes and organizational structures in place at the USAOs and EOUSA facilitated or hindered the Department's mission to collect criminal and civil debts.

### **Methodology**

Our review included interviews, data analysis, case file reviews, and site visits. We also reviewed laws, regulations, and policies and procedures related to criminal and civil debt collection by the USAOs and EOUSA.

#### *Interviews*

We interviewed officials and staff members from divisions at EOUSA with responsibility for debt collection management, support, or related activities. We interviewed USAO management and all Financial Litigation Unit (FLU) professional and support staff members at 5 USAOs where we conducted site visits. We also interviewed by telephone at least one FLU support staff member in each of the remaining 88 USAOs.

#### *Data Analyses*

We requested and analyzed data on criminal and civil debts entered in the Consolidated Debt Collection System (CDCS) from FY 2009 through FY 2013. The dataset was comprised of 508,074 cases and included a subset of the data fields available in the CDCS. To examine debt caseload trends, we reviewed and analyzed data from the United States Attorneys' Annual Statistical Reports from FY 1994 through FY 2014. We also obtained and analyzed FLU staffing information from each USAO, data from EOUSA on the number of full-time equivalents allocated to debt collection work reported by the USAOs, and information from EOUSA on contractor positions from the Three Percent Fund used to support the USAOs' debt collection activities.

#### *Site Visits and Case File Reviews*

To determine how the debt collection process works in the USAOs, how the FLUs are structured, and to obtain additional information and views about the efficacy of the collection process, we conducted five site visits. We interviewed staff in the FLU, the Criminal Division, and the Asset Forfeiture unit of the following USAOs: District of Columbia, Southern District of Georgia, District of New Mexico,

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Southern District of New York, and District of Oregon. We selected sites based on a variety of factors to obtain a representative sample that reflects the diversity of the USAOs, including geographic location; size, structure, and number of staff in the FLU; and number and amount of outstanding debts.

We also performed a case file review of a random sample of cases from each USAO we visited to better understand the debt collection process and examined how FLUs implemented enforcement actions and entered case data into the CDCS.

## APPENDIX II: PROCEDURES FOR PROCESSING CRIMINAL AND CIVIL DEBTS

*Table 2* below summarizes the key procedures the Financial Litigation Unit (FLU) needs to follow when processing criminal and civil debts.

**Table 2**  
**Procedures for Processing Criminal and Civil Debts**

Criminal Debts	Civil Debts
<p>Within 30 days of judgment, the FLU completes the following steps:</p> <ul style="list-style-type: none"> <li>• Open and record the case in the Consolidated Debt Collection System (CDCS).</li> <li>• Inquire whether a defense attorney will continue to represent the defendant for collection purposes.</li> <li>• Issue a demand letter to the defendant requiring payment of the debt.</li> <li>• Initiate the filing of a lien wherever possible.</li> <li>• Conduct an initial assessment of the prioritization and collectability of the case.</li> </ul> <p>Conducting an initial assessment of the prioritization and collectability of the case can include the following steps:</p> <ul style="list-style-type: none"> <li>• Review the pre-sentence investigation report for asset information.</li> <li>• Request a financial statement from the defendant.</li> <li>• Where the defendant is in prison, consult with the defendant's Federal Bureau of Prisons Case Manager.</li> <li>• Inquire whether any victims have information about the defendant's assets.</li> </ul>	<p>Upon receiving a referral package, the FLU completes the following steps:</p> <ul style="list-style-type: none"> <li>• Review the referral package to verify the information is complete and accurate.</li> <li>• Open and record the case in the CDCS.</li> <li>• Work to secure a civil judgment against the defendant by filing a complaint with the court. Cases with routine, fully documented referral packages should be filed within 30 days of receipt. More complex referrals that may require additional preparation time should be filed within 45 days.</li> </ul> <p>Upon entry of judgment, the FLU completes the following steps:</p> <ul style="list-style-type: none"> <li>• Issue a notice of entry of judgment to the agency that referred the debt.</li> <li>• Issue a notice of entry of judgment along with a demand letter to the defendant requiring payment of the debt.</li> <li>• Request a financial statement from the defendant.</li> <li>• Request additional asset information from the federal agency that referred the debt.</li> </ul>

Criminal Debts	Civil Debts
<ul style="list-style-type: none"> <li>• Request asset information from the Criminal AUSA and Case Agent.</li> <li>• Research on-line property locator services.</li> <li>• Research other on-line services or databases.</li> <li>• Obtain a credit report on the defendant whenever assets are suspected.</li> <li>• Document the case file whenever any collection step is taken.</li> </ul> <p>The FLU must conduct a case review for all default Priority 1, 2, or 3 cases within 90 days of judgment. After this collectability review is completed, the FLU sets the appropriate priority code, enters the next case review date for follow-up, and determines whether the criminal debt should be placed in suspense.</p> <p>If the defendant fails to respond to the demand letter or to cure a default on the terms of an established payment plan, the FLU enforces collection of the debt.</p>	<p>If the defendant fails to respond to the demand letter or to cure a default on the terms of an established payment plan, the FLU enforces collection of the debt.</p> <p>If the FLU determines that a civil debt is uncollectable, it may suspend enforcement of the debt, return the debt to the federal agency for surveillance, or close the case as uncollectable.</p>

Source: OIG analysis of USAO and EOUSA information.

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## APPENDIX III: EXAMPLES OF IMPEDIMENTS TO DEBT COLLECTION OUTSIDE OF USAO CONTROL

During our review, Financial Litigation Unit (FLU) staff said that several factors can limit the U.S. Attorneys' Offices' (USAO) ability to gather information about a debtor and effectively pursue enforcement of a debt. Some frequently mentioned examples of these impediments are as follows:

- *Courts' Decisions* – USAOs can and often do suggest language, but judges may decide to word the judgment in ways that make it difficult for the FLU to collect; for example, the judgment may not include language requiring the defendant to provide financial information to the USAO or it may direct that a specific amount be paid according to a Court-established payment plan. If the debtor's income increases at a future date, the FLU then has to go to court to increase the payment plan amount. Also, judges may decide to increase the fine above the standard amount without regard to the defendant's ability to pay. The FLU has to collect on that debt, and it is on the USAO's books until the debt is collected or expires.
- *Employment Information* – Gaining access to employment information is important because the FLU cannot pursue wage garnishment unless it knows where the defendant is employed. Some states have laws that prohibit outside access to state-run employment databases, while other states allow the USAOs access to the defendant's employment information. FLU staff also said it was especially challenging to find information on defendants who are self-employed. These defendants may transfer their assets to someone else or work "under the table," which makes wage garnishment difficult to pursue.
- *Indian Reservations* – USAOs with Indian country within their jurisdictions noted that it is difficult to file liens for debtors who reside on an Indian reservation. The reservation may not have a courthouse where the FLU can file the lien.
- *Homestead Exemptions* – Some states, such as Florida, have unlimited homestead exemptions, prohibiting the seizure of a primary residence regardless of the amount of equity in the home.

## APPENDIX IV: DIFFERENCES IN CREDITING PAYMENTS TO DEFENDANTS IN JOINT AND SEVERAL CRIMINAL CASES

The U.S. Attorneys' Offices (USAO) and the Clerks of the Court have different policies for crediting payments to defendants in joint and several criminal cases. Joint and several debts represent criminal monetary penalties enforced upon two or more defendants for a particular offense, and defendants may be responsible for varying proportions of the monetary imposition. *Table 3* provides an example of the differences between how the USAOs and the Clerks of the Court credit these payments to defendants.

**Table 3**

### How USAOs and Clerks of the Court Credit Payments to Defendants in Joint and Several Criminal Cases

U.S. Attorneys' Offices Consolidated Debt Collection System (CDCS)	U.S. District Courts Civil/Criminal Accounting Module
<ul style="list-style-type: none"> <li>• Tracked by defendant.</li> <li>• Payment history by defendant.</li> <li>• A defendant's balance is not credited from a co-defendant's payment until his balance equals the total outstanding debt balance.</li> <li>• Accrues interest over \$2,500.</li> </ul> <p><u>Example</u></p> <ul style="list-style-type: none"> <li>• Total debt owed to the victim is \$15,000.</li> <li>• Sentencing order provides that Defendant A is to pay \$15,000, Defendant B is to pay \$10,000, and Defendant C is to pay \$10,000.</li> </ul> <p><i>Before Payment</i></p> <p>Defendant A balance = \$15,000            Defendant B balance = \$10,000            Defendant C balance = \$10,000</p> <p style="padding-left: 40px;">Defendant C makes a \$5,000 payment.</p> <p><i>After Payment</i></p> <p>Defendant A balance = \$10,000  <b>Defendant B balance = \$10,000</b>            Defendant C balance = \$5,000</p>	<ul style="list-style-type: none"> <li>• Tracked by debt.</li> <li>• Payment history by debt.</li> <li>• Payments made by a defendant are credited to all co-defendants and prorated to each victim per the judgment.</li> <li>• Does not accrue interest.</li> </ul> <p><u>Example</u></p> <ul style="list-style-type: none"> <li>• Total debt owed to the victim is \$15,000.</li> <li>• Sentencing order provides that Defendant A is to pay \$15,000, Defendant B is to pay \$10,000, and Defendant C is to pay \$10,000.</li> </ul> <p><i>Before Payment</i></p> <p>Defendant A Balance = \$15,000            Defendant B Balance = \$10,000            Defendant C Balance = \$10,000</p> <p style="padding-left: 40px;">Defendant C Makes a \$5,000 payment.</p> <p><i>After Payment</i></p> <p>Defendant A Balance = \$10,000  <b>Defendant B Balance = \$5,000</b>            Defendant C Balance = \$5,000</p>

Source: OIG analysis of USAO and EOUSA information.

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## APPENDIX V: EOUSA RESPONSE TO DRAFT REPORT



U.S. Department of Justice

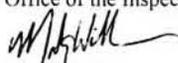
Executive Office for United States Attorneys

Office of the Director

Room 2261, RFK Main Justice Building (202) 252-1000  
950 Pennsylvania Avenue, NW  
Washington, DC 20530

**MAY 28 2015**

MEMORANDUM FOR: Nina S. Pelletier  
Assistant Inspector General for Evaluation and Inspections  
Office of the Inspector General

FROM:   
Monty Wilkinson  
Director

SUBJECT: EOUSA's Response to the Draft Report on the Review of the  
United States Attorneys' Offices Debt Collection Program

Thank you for the opportunity to review the Office of the Inspector General's (OIG) draft report entitled "Review of the United States Attorneys' Offices Debt Collection Program" (the Report). The Executive Office for United States Attorneys (EOUSA) appreciates the OIG's recognition of the importance and enormity of the United States Attorneys' offices' (USAOs) responsibility to collect criminal and civil debts in federal cases. We also appreciate that the Report acknowledges the steps that EOUSA has taken to address staffing and workload challenges in the USAOs' Financial Litigation Units (FLUs). The challenges confronting EOUSA and the USAOs have been exacerbated by an extended period of budget austerity and Department-wide hiring limitations. However, EOUSA is committed to developing and implementing new and innovative debt collection policies, practices, and resources that will take full advantage of technological advances and leverage existing resources to fulfill our debt collection mission.

We generally agree with the conclusions that OIG has reached. As stated below, we agree that EOUSA should work with the USAOs to ensure that sufficient resources are allocated to the debt collection function. That being said, we believe it is important to consider collectability of the outstanding debt as an important factor in determining appropriate staffing levels. As noted in the Report, when collectability is factored into the analysis, the collectable criminal debt balance actually decreases from \$12.3 billion in FY 2009, to \$7.6 billion in FY 2014. The collectable balance per FTE decreases from \$34.8 million in FY 2009, to \$24.9 million in FY 2014. These are important distinctions that USAOs must weigh when balancing competing resource demands and determining appropriate staffing levels in the FLUs.

EOUSA concurs with the thoughtful recommendations in the Report. In fact, we are already making substantial progress toward successfully implementing many of the recommendations, and we will vigorously explore ways to meet the others. The following are our specific responses to the five recommendations.

**Recommendation No. 1:**

Determine and establish guidelines for how the USAOs should staff and structure their FLUs, including the amount of time AUSAs should devote to debt collection and the number and utilization of support staff FTEs the USAOs should allocate to their FLUs.

**Response:**

We agree that USAOs would benefit from an examination of the range of staffing and organizational structures that would be appropriate for any given USAO's size and debt portfolio. In fact, EOUSA has requested and received funding from the Three Percent Fund (TPF) this fiscal year to conduct a comprehensive study of debt collection practices in the USAOs. Among other things, this study will scrutinize USAO collection activities; examine USAO organizational structures and communication protocols; analyze FLU staffing levels; and assess FLU debt collection functions that could be centralized. The study will also review USAO policies and procedures to identify effective debt collection prioritization practices and workload management strategies that could enhance USAO debt collection. The results of the study will inform the full range of options available to assist the USAOs in maintaining efficient and effective FLUs.

As the report notes, since the passage of the Mandatory Victims Restitution Act of 1996 (MVRA), the outstanding restitution balance and FLU caseload has increased exponentially. Although Congress emphasized the importance of assisting crime victims by mandating in the MVRA that the USAOs enforce and collect restitution on behalf of nonfederal victims of crime, Congress did not provide any additional resources to the Department for this purpose. Remarkably, in spite of the ever-growing caseload and reduced staffing levels in the FLUs, we have seen an overall increase in the amount of criminal debt collected during the five years covered by the Report. Nevertheless, additional staffing resources would help to increase the effectiveness of the USAOs' debt collection program, and EOUSA remains committed to identifying and requesting new resources. Over the years, EOUSA has submitted proposals to Congress for additional FTE dedicated to our debt collection efforts, but we have not yet been successful in obtaining enhanced congressional appropriations.

EOUSA does submit an annual funding request to the Department's TPF to support debt collective activities, and we have been very successful in this regard. This fiscal year, for instance, EOUSA requested and received from the TPF funding for twenty dedicated FLU AUSAs to work full-time on debt collection. In addition, EOUSA obtained resources for ten new contract asset investigators this fiscal year. As a result, over one-third of the USAOs will have a dedicated FLU asset investigator. Moreover, as the Report notes, EOUSA now has an asset investigator on staff who is available "on demand" to provide financial investigative services to USAOs that do not have an investigator or do not have a sufficient investigative workload to justify a full-time investigator.

As highlighted in the Report, EOUSA also requested and received funding from the TPF to establish a centralized data entry center to reduce the amount of data entry work performed by

the FLUs in opening cases and posting payments, freeing time to take additional action to collect debts. The center, known as the FLU SOS, has been in operation since December 2014, and early indications are that it will be a resounding success. In the first six months of operations, the FLU SOS has opened more than 5,000 debts for eight USAOs and has reconciled and posted 4,500 payments. While currently only in its pilot phase, we anticipate that, resources permitting, this service will eventually be available to all 93 FLUs.

The TPF has provided great support to the USAOs' debt collection mission, and as the Report encourages, EOUSA will continue to request funds as appropriate to support and enhance that effort. We believe that innovative approaches that leverage available resources, like the investigator on demand and the FLU SOS, will only serve to enhance and improve the USAOs' debt collection efforts. Further, we believe the comprehensive study will help identify a range of considerations in developing guidelines to achieve optimal FLU staffing and structure.

**Recommendation No. 2:**

Consider reevaluating the priority code system and its implementation to ensure FLUs can effectively use the system to manage caseloads.

**Response:**

The priority code system was designed to be a dynamic system to assist the FLUs in addressing their ever-increasing caseloads with their available resources. Priority codes ensure that the most important cases receive prompt and careful attention. While a default priority code is automatically assigned in the Consolidated Debt Collection System (CDCS) based on the amount of the debt, this is only one factor that a USAO considers in managing the case. Other factors include the debt's collectability, considering the debtor's assets and income; the type of debtor; the type of debt; the type of victim, if the debt is restitution; the complexity of the case; the responsibilities of other agencies; and whether the debt is currently due.

The priority code system requires the FLU to perform enforcement and collectability analyses throughout the life of the debt. The system also provides the FLU with the flexibility to set the next review date at a time that makes sense given the debtor's circumstances. For example, the next review date can be the end of a defendant's term of imprisonment or supervision, if no substantial change in the defendant's ability to pay is likely to occur during that term. Alternatively, when a debt has been identified as permanently uncollectible or requires no further action, the next review date may be set for shortly before the expiration of the defendant's liability.

Although EOUSA has reviewed the priority code policy on a number of occasions since its inception in 2003, with the last review occurring in August 2013, EOUSA will convene a new working group to obtain input from USAO FLUs on possible revisions to the priority code system. In addition, EOUSA is currently working with the Department's Justice Management Division, Debt Collection Management (DCM) Staff to leverage business intelligence software to build analytical tools that will allow EOUSA and the USAOs to make better workload

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management and strategic enforcement decisions using data from CDCS. These tools should facilitate better use of the priority code system to manage individual FLU caseloads.

**Recommendation No. 3:**

Consider measures to emphasize the importance of the FLUs to the USAOs' missions and their coordination with other units, including requiring the USAOs to include a performance element in all AUSA and USAO supervisor work plans requiring pre-judgment communication and coordination with the FLU.

**Response:**

EOUSA holds the collection of debts owed to the federal government and victims of crime as a high priority and is firmly committed to continuously improving the process. EOUSA also recognizes the importance of coordination among units within the USAOs, including the Criminal Division, Asset Forfeiture personnel, and the FLUs, in seeking restitution, conducting asset investigations, and collecting criminal monetary penalties. In fact, in fiscal year 2015, EOUSA management standards for the debt collection in the USAOs were revised, and a standard was added to encourage effective communications among the various USAO sections. Given this management standard, EOUSA concurs with this recommendation and will encourage USAOs to include performance standards in fiscal year 2016 work plans regarding effective communication and coordination across USAO divisions. In addition, EOUSA will issue a policy statement emphasizing the important work performed by the FLUs and reinforcing the utility of strong pre-judgment coordination and communication among the units within the USAOs.

**Recommendation No. 4:**

Assist the USAOs in developing uniform policies and procedures for how other units within the USAO should communicate and coordinate with the FLU pre-judgment and evaluate the USAOs' progress in implementing these policies and procedures.

**Response:**

While the FLUs in each USAO are specifically charged with enforcing and collecting criminal debts, this is a responsibility shared by other units within the USAOs. Criminal prosecutors, victim witness coordinators, asset forfeiture units, and the FLUs must all strive to ensure that victims of crime receive compensation for their losses. To achieve this goal, it is important for all of these components to communicate, cooperate, and coordinate with each other. It is a preferred practice to engage the FLU early in a case (1) to review available financial information prior to plea and/or sentencing; (2) to discuss proposed plea agreement terms and/or suggest judgment language; (3) to assist with legal issues pertaining to the imposition of restitution; and (4) to coordinate with asset forfeiture AUSAs to prevent the dissipation of assets.

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EOUSA agrees that the USAOs should develop policies and procedures to address how best to implement this practice given the unique characteristics and circumstances applicable to each office. EOUSA has and will continue to provide assistance to USAOs in this endeavor. This includes incorporating asset recovery coordination elements into training courses attended by criminal prosecutors and sharing model USAO communication protocols and organizational structures designed to achieve effective pre-judgment coordination among units. Moreover, the comprehensive collection practices study discussed in the response to Recommendation No. 1 will examine existing USAO protocols and structures to help inform EOUSA and the USAOs on recommended approaches to maximize pre-judgment coordination for a more efficient and effective debt collection program.

**Recommendation 5:**

Continue to work with JMD Debt Collection Management Staff to improve the CDCS data control procedures and user data entry and develop tools to enable the CDCS to be used to appropriately analyze the USAO debt collection program.

**Response:**

As we have in the past, EOUSA will continue to work with the DCM Staff to improve the functionality, usability, and reliability of CDCS. As previously mentioned, EOUSA is currently working with the DCM Staff to develop an automated tool using business intelligence software which will assist EOUSA and the USAOs in analyzing the USAOs' debt collection program using data derived from CDCS. The tool will also help us to 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. In addition to this tool, EOUSA is independently developing a set of FLU data metrics that will enable EOUSA to make more informed resource allocation recommendations and decisions. This information can then be used to focus efforts and resources on those debts and enforcement actions that are most likely to result in successful collections.

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Thank you for the rigorous examination you undertook of our important and enormous responsibility to collect debts arising from federal cases. We appreciate the recognition in the Report of innovative tools we have recently developed and implemented to improve USAO debt collection effectiveness. The recommendations you have provided will help to strengthen our processes and procedures and to enhance the ability of our dedicated professionals to recover debts owed to victims of federal crimes and to the United States.

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## APPENDIX VI: OIG ANALYSIS OF EOUSA RESPONSE

The Office of the Inspector General (OIG) provided a draft of this report to the Executive Office for U.S. Attorneys (EOUSA). EOUSA's response is included in Appendix V. The OIG analysis of EOUSA's response and actions necessary to close the recommendations are discussed below. Please provide the requested documentation by October 30, 2015.

**Recommendation 1:** Determine and establish guidelines for how the U.S. Attorneys' Offices (USAO) should staff and structure their Financial Litigation Units (FLU), including the amount of time FLU Assistant U.S. Attorneys (AUSA) should devote to debt collection and the number and utilization of support staff full-time equivalents the USAOs should allocate to their FLUs.

**Status:** Resolved.

**EOUSA Response:** EOUSA concurred with this recommendation and stated that it had requested and received funding from the Three Percent Fund in fiscal year (FY) 2015 to conduct a comprehensive study of debt collection practices in the USAOs. The EOUSA stated that this study will scrutinize USAO debt collection activities, examine USAO organizational structures and communication protocols, analyze FLU staffing levels, and assess FLU debt collection functions that could be centralized. Further, EOUSA stated that this study will review USAO policies and procedures to identify effective debt collection prioritization practices and workload management strategies that could enhance the USAOs' debt collection program.

**OIG Analysis:** EOUSA's actions are responsive to our recommendation. Please provide a projected timeline for the study's completion and documentation on the status of this effort.

**Recommendation 2:** Consider reevaluating the priority code system and its implementation to ensure FLUs can effectively use the system to manage caseloads.

**Status:** Resolved.

**EOUSA Response:** EOUSA concurred with this recommendation and stated that it will convene a new working group to obtain input from the FLUs on possible revisions to the priority code system. EOUSA also stated that it is currently working with the Justice Management Division's (JMD) Debt Collection Management Staff to develop analytical tools that will allow EOUSA and the USAOs to make better workload management and strategic enforcement decisions using data from CDCS.

**OIG Analysis:** EOUSA's actions are responsive to our recommendation. Please provide a progress report on the status of the FLU working group and

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documentation that describes the new analytical tools designed to improve workload management and strategic enforcement decisions.

**Recommendation 3:** Consider measures to emphasize the importance of the FLUs to the USAOs' missions and their coordination with other units, including requiring the USAOs to include a performance element in all AUSA and USAO supervisor work plans requiring pre-judgment communication and coordination with the FLU.

**Status:** Resolved.

**EOUSA Response:** EOUSA concurred with this recommendation and stated that it will encourage the USAOs to include performance standards in FY 2016 work plans regarding effective communication and coordination across USAO divisions. In addition, EOUSA stated that it will issue a policy statement emphasizing the important work performed by the FLUs and reinforcing the utility of strong pre-judgment coordination and communication among USAO units.

**OIG Analysis:** EOUSA's actions are responsive to our recommendation. Please provide a copy of the policy statement emphasizing the importance of the FLU and the utility of pre-judgment coordination and communication between the FLU and other USAO units. Please also provide documentation describing all EOUSA efforts to encourage the USAOs to include a performance element in all FY 2016 AUSA and USAO supervisor work plans specifically requiring pre-judgment communication and coordination with the FLU.

**Recommendation 4:** Assist the USAOs in developing uniform policies and procedures for how other units within the USAO should communicate and coordinate with the FLU pre-judgment and evaluate the USAOs' progress in implementing these policies and procedures.

**Status:** Resolved.

**EOUSA Response:** EOUSA concurred with this recommendation and stated that it will continue to provide assistance to the USAOs in developing these policies and procedures. This includes incorporating asset recovery coordination elements into training courses attended by criminal prosecutors and sharing model USAO communication protocols and organizational structures designed to achieve effective pre-judgment coordination among units. Moreover, EOUSA stated that the comprehensive study of debt collection practices in the USAOs financed by the Three Percent Fund will examine existing USAO protocols and structures to help inform EOUSA and the USAOs on recommended approaches to maximize pre-judgment coordination for a more efficient and effective debt collection program.

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**OIG Analysis:** EOUSA's actions are responsive to our recommendation. Please provide training materials that have new asset recovery coordination elements and a progress report on the proposed study.

**Recommendation 5:** Continue to work with JMD Debt Collection Management Staff to improve the CDCS data control procedures and user data entry and develop tools to enable the CDCS to be used to appropriately analyze the USAO debt collection program.

**Status:** Resolved.

**EOUSA Response:** EOUSA concurred with our recommendation and stated that it is continuing to work with the JMD Debt Collection Management Staff to develop an automated tool using business intelligence software that will assist EOUSA and the USAOs in analyzing the USAOs' debt collection program using data from the CDCS. EOUSA also stated that this tool should help to 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. Further, EOUSA stated that it is independently developing a set of FLU data metrics that will enable EOUSA to make more informed resource allocation recommendations and decisions. This information can then be used to focus efforts and resources on those debts and enforcement actions that are most likely to result in successful collections.

**OIG Analysis:** EOUSA's actions are responsive to our recommendation. Please provide documentation on the status efforts to develop the automated tool and FLU data metrics.

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## APPENDIX VII: JMD RESPONSE TO DRAFT REPORT



U.S. Department of Justice  
Justice Management Division

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Washington, D.C. 20530

MAY 21 2015

TO: Nina Pelletier  
Assistant Inspector General for Evaluation and Inspections

FROM: *for* Jolene Lauria Sullens *Chris J*  
Deputy Assistant Attorney General/Controller

SUBJECT: Justice Management Division's Response to the Inspector  
General's Review of United States Attorneys' Offices Debt  
Collection Program

We have reviewed the revised draft audit report entitled Review of United States Attorneys' Offices Debt Collection Program that was prepared by the Office of the Inspector General, Evaluation and Inspections Division. We appreciate the opportunity to review the draft report and provide additional insight into some of the findings that relate to the Justice Management Division (JMD) and specifically JMD's administration, through the Debt Collection Management Staff (DCM), of the Department of Justice's (DOJ's) Consolidated Debt Collection System (CDCS). JMD's responses to claims made regarding CDCS are detailed below. For ease of review, the claims are restated in bold and followed by our response or clarification.

**The OIG repeatedly states that the United States Attorneys' Offices (USAOs) and the Executive Office for United States Attorneys (EOUSA) cannot rely on the Department's debt collection case tracking system to accurately assess FLU performance and determine how to allocate resources to increase collections, manage EOUSA's debt collection program, and assist decision making in debt collection. (pg. ii, Executive Summary; pgs. 34, 35, 38, 47)**

The CDCS is not, and was not designed to be, a case tracking system or a performance management system for EOUSA and the Financial Litigation Units (FLUs) in the various USAOs. Also, the CDCS is not a business management tool designed to analyze resources and allocate those resources. Moreover, JMD did not provide the OIG with documentation or other information that would support a conclusion that JMD and the CDCS were expected, much less obligated, to provide EOUSA and the FLUs with case

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tracking capabilities or to assess FLU performance, or to determine in conjunction with EOUSA and the FLUs or independently, how to allocate resources to increase collections.

The CDCS is a debt collection Information Technology system that was designed to assist FLUs and other applicable personnel in establishing debts, corresponding with debtors through the generation and mailing of documents, record account balances and the accrual of interest, record payments received from debtors, and to perform other financial and administrative tasks associated with the collection of debts.

DCM initiated work on an analytics capability in 2013 to better use information stored in CDCS to assist EOUSA with improving debt collection. Since that time, several reporting dashboards have been created that allow, for example, comparison of debt collection performance between two entities (*i.e.*, districts) or between one entity and a composite (*i.e.*, all large districts). More recently, a new dashboard has been created for EOUSA to measure debt collection effectiveness. DCM is experimenting with estimating debt collectability and working to add new variables that will improve accuracy and reliability of this information.

**The OIG also suggests that JMD is derelict because the CDCS does not exchange data with EOUSA and the USAOs. (pg. 19, fn. 46)**

In fact, based on an enhancement request from EOUSA for FY 2012, DCM included \$475k in the CDCS enhancement budget to provide the ability for users to interface EOUSA's case management system, (Legal Information Office Network System (LIONS)), and to upload into CDCS up to twenty data elements for each judgment debt. Interface requirements were defined between the two systems before work was suspended by EOUSA to focus on other priorities. The project had significant labor saving potential and could be reinstated as a future enhancement with agreement on mutual prioritization.

**The OIG, in the report, suggests that data within the CDCS is inaccurate and produces unreliable reports. (pgs. 29, 36)**

In limited cases, additional data controls may be necessary; however, DCM is proactive in ensuring the data integrity and accuracy of the data maintained in the CDCS. Accurate debt amounts are available in the CDCS database. Data and reports in the CDCS are user-driven. Consequently, inaccuracies in reporting are likely the result of data entry errors. Due to the complexity of fines and assessments, coupled with the rules for joint and several debts, different types and rates of interest, and the rules associated with effective dates of payments and adjustments, users generally rely on standard CDCS reports to provide debt amount information. Selecting a field on a CDCS screen modifiable by CDCS users and noting the data is sometimes not accurate is insufficient evidence to draw any conclusions about debt accuracy in CDCS.

When CDCS was initially implemented in 2007, DOJ obtained the ability to centrally manage and control the posting of all cash collected by DOJ's various litigating divisions

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and USAOs. Cash payments posted to CDCS are reconciled several times during the day within the system and at the end of each day they are again reconciled against the Treasury account balances. Subsequent reconciliations occur at each month end, quarterly and at the end of each fiscal year.

DCM's NCIF Financial Processing staff is responsible for processing all cash transactions in CDCS. The posting of cash payments by anyone other than NCIF staff (e.g., individual litigating office staff) is prohibited through access control in CDCS. In addition, error messages, required fields, and automated and manual validation are in place to ensure the accuracy of financial transactions entered into CDCS.

In addition, enhancements requested by the litigating divisions and DCM have been implemented in the system, to improve data entry and to protect against user-error. DCM must rely on its user community to communicate to us which fields are mandatory.

**The OIG also notes in the report that the CDCS contains codes from the former debt collection system that have since expired which can produce data entry discrepancies when comparing older and newer debt cases, further exacerbating the issue of inaccuracy and unreliable reports. (pg. 37)**

DCM agrees that in many instances the inactive codes were migrated from the legacy system and affect both open and closed debts. However, when CDCS was implemented at the end of 2007, the decision was made, by both DCM and the litigating divisions, to migrate data from the systems to be decommissioned in an "as is" state whenever possible. To make these codes consistent across all components, DOJ would need to collaborate across all components and determine the feasibility of updating closed debts with only codes that are currently active as well as how to handle codes that are retired. It should be noted that migrated data is not used in CDCS debt calculations and DCM advises external reviewers to use extreme caution when using this data for comparison and drawing conclusions.

**The OIG raises the issue that certain data control procedures, and the effect on data in the CDCS, make it difficult to evaluate FLU performance. Specifically, the OIG notes the use of USAO-specific ("local") codes by the FLUs and the issues those codes cause when EOUSA attempts to monitor performance. (pg. 37)**

DCM would note that the use of local codes was an EOUSA requirement that was built into the CDCS at their request. EOUSA and the USAOs wanted this ability to enable individual districts to manage their caseloads efficiently. DCM was aware of the potential issues that the use of these codes could present, but built this into the system at the users' request.

**The OIG reported that EOUSA and USAO staff outlined issues with reports generated with the CDCS, specifically concerning data accuracy or the reports malfunctioning, and that these reports are used by EOUSA and the USAOs, despite these errors. (pg. 38)**

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CDCS has in place a process for reporting and tracking system problems, including problems with reports. When system issues are identified as the problem, a System Investigation Request (SIR) is opened to track the issue to resolution. An escalation process is also available to address high severity issues. In footnote 72, the draft report indicates that the CDCS issues a FLU staff member had experienced with a Monthly Payment report were subsequently resolved. That report correction occurred through the SIR process outlined above.

In addition, a new process was adopted in 2014 to certify the accuracy of statistical reporting on a quarterly basis. Under the new process, at the end of each quarter a set of reports are run and cross-compared for accuracy. Discrepancies are researched and resolved and the reports are certified to be accurate. This process ensures accurate reporting for each quarter and reduces the time required to certify annual debt collection statistics by 4 to 6 weeks.

**The OIG's report specifically noted that EOUSA's ability to modify CDCS is limited, because EOUSA does not manage or operate the CDCS, and that budget limitations did not allow for all the improvements EOUSA or the USAOs thought were needed. (pps. 39-40)**

The ability to modify and implement enhancements is managed by DCM based on feasibility and budget requirements. As mentioned to the OIG staff by DCM's Director, all litigating components have the ability to request enhancements that are prioritized based on the needs of all of DOJ and the availability of funds and resources.

As the OIG noted in footnote 85 of page 49, over the last 5 fiscal years and including plans being executed in FY 2015, EOUSA has received 10 major system enhancements for a total investment of \$3.6 million. All other litigating divisions received a total of 5 major enhancements over the same time period for a total investment of \$1.1 million. In addition, EOUSA has received 68 minor enhancements in the last three years for an additional investment of \$1.5 million. Including the minor enhancements, EOUSA has received over 5 times the investment in component- specified CDCS enhancements than all the litigating divisions combined.

Enhancing the CDCS application is a collaborative effort requiring active user participation throughout the process. Gathering requirements and finalizing design involves a series of meetings and document reviews that are typically spread over an 8 to 10 week period for each major enhancement. Users are again involved later in the project during the User Acceptance phase where rigorous testing of the changes occurs to insure the coded design fully meets the initial requirements. This is another 3 to 4 week effort of daily user involvement. This is a significant time commitment for EOUSA, DCM, and other CDCS user groups and is one of the factors limiting the pace at which enhancements that can be delivered.

**The OIG recommends that EOUSA continue to work with DCM to improve the CDCS data control procedures and user data entry and develop tools to enable the**

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**CDCS to be used to appropriately analyze the USAO debt collection program. (pg. 48)**

DCM is currently in the process of launching a CDCS screen modernization program using new off the shelf technology that will allow end to end process analysis. This new technology will take advantage of agile development methods to identify and incorporate all of the information needed for effectively collecting debts. It will also take advantage of on-line storage, e-mail, fillable PDF forms and built-in interface capabilities to capture and store information with minimal data entry. This modernization project is currently in the pilot stage at DCM and will be expanded to the USAO users in FY 2016. In conjunction with the on-going data analytics capabilities that DCM is delivering to EOUSA, these modernization efforts will produce greater insight into the debts overseen by the Department, and increase our ability to maximize collections in the most cost-effective manner.

If you have any questions or concerns, please contact me at (202) 514-1843.

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## APPENDIX VIII: OIG ANALYSIS OF JMD RESPONSE

The Office of the Inspector General (OIG) provided a draft of this report to the Justice Management Division's (JMD) Debt Collection Management Staff. While JMD was not the subject of this review and none of the report's recommendations were addressed to it, one of our recommendations pertains to the Consolidated Debt Collection System (CDCS), which is a system that JMD maintains, and our recommendation refers to JMD. JMD provided a formal response to the OIG about our findings and the recommendation related to the CDCS. JMD's response is included in Appendix VII. The OIG analysis of JMD's response is provided below.

In its response, JMD stated that the CDCS is not, and was not designed to be, a case tracking system or a business tool to analyze resources and allocate those resources for the Executive Office for U.S. Attorneys (EOUSA) and the Financial Litigation Units (FLU) in the U.S. Attorneys' Offices (USAO). Although CDCS may not have been designed to be a case tracking system or a performance management tool for the USAOs' debt collection program, we found through documents we reviewed and interviews we conducted that EOUSA and the FLUs are, in practice, using the CDCS for these purposes. For example, EOUSA's Model FLU Plan states that FLU personnel should use the CDCS to monitor their caseloads, as well as CDCS-generated reports to manage the caseload and ensure prompt follow-up on pending cases.<sup>87</sup> EOUSA's Evaluation and Review Staff teams also rely on CDCS information to evaluate FLU performance, and EOUSA uses the CDCS to assist decision-making for allocating FLU contractor positions from the Three Percent Fund. Further, we believe that the Department has instructed the FLUs to use the CDCS as a case tracking system for the USAOs' debt collection program. We note that the U.S. Attorneys' Manual refers to the CDCS as a "Department-wide debt collection tracking system." The manual states that all FLUs should have and make full use of this system, which will serve to ensure that all required financial litigation activity is recorded and any necessary follow-up is performed in an efficient and timely manner.<sup>88</sup>

JMD also stated that the OIG suggested that JMD was derelict because the CDCS does not exchange data with the Legal Information Office Network System (LIONS), the USAOs' legal case management system. We make no such assertion in the report. However, in footnote 44 on page 19 of the report, we observe that because the CDCS and LIONS are not linked and cannot exchange data, FLU staff members are required to enter case information into the CDCS that may already exist in the LIONS, which is a redundant process that can consume FLU staff time and increase data entry error.

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<sup>87</sup> EOUSA, *Model FLU Plan* (FY 2012), p. 10-11.

<sup>88</sup> U.S. Attorneys' Manual 3-9.210.

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Additionally, JMD questioned our conclusion that data within the CDCS is inaccurate and that the CDCS produces unreliable reports. Although our analysis of CDCS data included only a subset of the total data fields available in the system, we believe that the missing data and inconsistent data entries we found within our dataset likely indicate that similar errors exist in other CDCS data fields and calls into question the accuracy of CDCS-reported debt amounts. We also found that a lack of uniformity in how the USAOs and the Clerks of the Court individually track debt balances in joint and several criminal cases cause data discrepancies in CDCS that require administrative work by the FLU to reconcile. Moreover, during our interviews, Asset Recovery Staff officials and FLU staff told us that the CDCS can produce reports with incorrect and unreliable information because of the inaccurate underlying data within the CDCS and errors in how the system extracts information for report production. In its response, JMD stated that these CDCS data and report inaccuracies are likely the result of data entry errors. As we noted in the report, we also found that inadequate data control procedures contribute to inaccurate and inconsistent data in the CDCS, and FLU staff told us that they do not always comply with the data entry procedures that do exist.

Our report recommended that EOUSA continue to work with the JMD Debt Collection Management Staff to improve the CDCS data control procedures and user data entry and develop tools to enable the CDCS to be used to appropriately analyze the USAOs' debt collection program. In its response, JMD stated that it is currently in the process of launching a CDCS screen modernization program using new off-the-shelf technology that will allow end-to-end process analysis and identify and incorporate all of the information needed for effectively collecting debts. This project is currently in its pilot stage at the JMD Debt Collection Management Staff and is expected to be expanded to the FLUs in FY 2016. JMD stated that this new program, in conjunction with other ongoing data analytic capabilities that the JMD Debt Collection Management Staff is delivering to EOUSA as described in the report, will provide greater insight into the debts overseen by the Department and increase its ability to maximize collections in the most cost-effective manner.

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