

NLWJC - Kagan

DPC - Box 011 - Folder 001

Crime - DOJ Debt Collection

Debt collection

*EK -
unofficial
DOJ
debt
collection
estimates
Tom*

**UNOFFICIAL PROJECTED RECOVERIES
(In Millions)**

Federal Debt Collection Procedures Improvements Act

Restitution (Nonfederal Victims)	\$38
Restitution (Federal Victims)	32
Fines	83
Special Assessments	3
Civil	115
Total	\$271

Note: Restitution, fines and special assessments are not scorable because all recoveries are disbursed to crime victims or deposited in the Crime Victims Fund. The bill has never been officially scored by OMB.

M E M O R A N D U M

TO: BRUCE REED, ELENA KAGAN
FROM: THOMAS FREEDMAN, MARY L. SMITH
RE: DOJ DEBT COLLECTION
DATE: NOVEMBER 21, 1997

SUMMARY

There is approximately \$6 billion in uncollected federal criminal debt. A project that would have created a national database to oversee the collection has been terminated because it was behind schedule and plagued with problems. Only \$2 billion of the \$6 billion can reasonably be collected.

DOJ currently has two projects ongoing to address some of these issues. First, DOJ expects to award a contract in January 1998 to develop software to collect only federal civil debt. However, the software is being developed to include data fields for criminal debt, so that criminal debt collection can be implemented in the future. This software would be installed at the Executive Office of the U.S. Attorney, the U.S. Attorneys' Offices, Main Justice, and any DOJ field office. Second, DOJ has proposed legislation to address some of the problems the Government has in enforcing and collecting primarily federal criminal debt.

BACKGROUND

The National Fine Center was authorized by the Criminal Fine Improvements Act of 1987, Pl. 100-185, 101 Stat. 1279. The Criminal Fine Improvements Act of 1987 contemplated that the director of the Administrative Office of the U.S. Courts (AOUSC) would establish a single national center within the judicial branch for processing fines, restitution, and special assessments.

There is a great need for a collection service for criminal fines because many fines are not recovered. For instance, as of early 1992, DOJ estimated that the total amount of unpaid criminal debt exceeded \$1.6 billion. By late 1996, the amount of unpaid criminal debt had ballooned to nearly \$6 billion.

Once the criminal debts were collected, the National Fine Center, via the Treasury, was to make payments to either the victims (e.g. federal agencies, private corporations, banks, or individuals) or to the Crime Victims Fund. The Crime Victims Fund was established by the Victims of Crime Act, P.L. 98-473, 98 Stat. 2170. Virtually, all criminal fines, special assessments, and bail bond forfeitures are deposited into this fund, which is administered by the Office for Victims of Crime in the Department of Justice. Ninety percent of the Crime Victims

Fund is distributed to states for compensation programs such as rape crisis centers and child abuse centers that provide financial assistance to victims and survivors of victims of criminal violence.

The National Fine Center was closed on November 15, 1996. Debt collection will revert to the decentralized system employed by each federal judicial district in the country, which, in many districts, involve catalog cards or ledger books.

Part of the reason that the amount of uncollected debt is so high is that "vanity fines" stay on the books. Vanity fines are fines with no realistic expectation that they will be collected. In fact, Kathleen Hegerty at the Department of Justice estimates that two-thirds of the current \$6 billion in criminal debt is uncollectible, or, in other words, approximately only \$2 billion can reasonably be collected. In fact, one of the recommendations of a May 1995 GAO report was to establish procedures for determining the collectibility of criminal debt accounts.

Despite the uncollectibility of much of the accrued criminal debt, there is still potentially a surplus, given a few criminal defendants with large fines and penalties that do have the ability to pay such as ADM and Daiwa, the Korean bank .

II. THE PROPOSED DOJ LEGISLATION

DOJ has drafted a bill that would improve the ability of Government attorneys to collect the approximately \$6 billion of debt owed to the United States. This legislation would require no additional cost to implement. As an initial rough estimate, DOJ expects that this legislation will improve collection of approximately \$200 million of the outstanding debt.

The bill is already drafted but needs some final vetting by DOJ.

Title I of the draft bill amends the Federal Debt Collection Procedures Act of 1990 (the "Act"). Title II of the bill, in large part, amends Title 18 of the United States Code. The provisions in Title II are largely the same as the restitution provisions in a draft bill that DOJ proposes to transmit on victims' rights.

- **Surcharge.** The bill amends § 3011(a) of the Act to clarify that the United States is entitled to recover a surcharge anytime it is required to bring a legal action to collect a debt. The surcharge provision is intended to compensate the United States for the cost of litigation and is in lieu of attorney's fees.
- **Discovery.** The bill makes it clear that discovery is not limited to cases in which the United States has sought a prejudgment or postjudgment remedy.
- **Assists in determining a debtor's ability to pay a judgment through disclosure of grand jury financial information and better access to other financial information at the time of conviction and after judgment is entered.**

- **Disclosure of grand jury information regarding financial condition.** This section of the bill will modify a Supreme Court decision that did not permit a criminal government attorney (the attorney in the grand jury proceeding) to disclose financial information to the civil government attorney (the attorney responsible for enforcing the fine or restitution imposed by the court in a criminal case).
- **Investigative power.** The bill permits investigation prior to the institution of a civil action by authorizing a civil investigative demand. Such a procedure is available in other civil contexts, like antitrust and FTC investigations.
- **Provides nationwide standards for property that civil debtors can protect from seizure.**
 - **Uniform federal law exempting property.** This bill creates a uniform federal exemption law that applies to all federal debts collected under the Act. Previously, exemptions for certain property was determined by looking to state law.
- **Eliminates limitation on value of property that may be used to satisfy a debt.** Section 131 of the bill clarifies that any of the debtor's property may be seized and used for satisfaction of the judgment debt, subject to the applicable exemptions. The amendment eliminates a confusing limitation on the value of the property that may be seized and sold. The limitation currently conflicts with § 3203(h) which clearly contemplates that an execution sale will yield a surplus on occasion.
- **Installment payment order.** The bill increases the discretion of the court to fashion an appropriate remedy by permitting the court to issue an installment payment order notwithstanding that the debtor's wages are subject to an order of garnishment. A wage garnishment is limited to 25% of the disposable earnings paid by the debtor's employer. However, a debtor's salary may be only a small fraction of the debtor's total income. Furthermore, a debtor may manipulate actual salary by negotiating to receive less salary and more benefits such as living expenses.
- **Eliminates impediments to seizure of wages and bank accounts while preserving the debtor's extensive due process rights.**
 - **Waiting period for garnishment.** The bill amends § 3205(b)(1) of the Act so that the 30-day waiting period applies only to garnishment of the judgment debtor's earnings rather than other assets such as bank accounts. The amendment is necessary to prevent the fraudulent transfer of non-wage assets during a previously afforded 30-day window of opportunity.
- **Garnishment notice by mail.** The bill permits the service of a writ of garnishment by

first class mail or in any manner provided under § 3004. The amendment eliminates the delay often associated with other methods of service and reduces the burden on the United States marshals.

- **Authorizes injunctive relief to prevent the dissipation of the debtor's assets while a debt to the United States remains unpaid.**
 - **Restraining notice.** The bill adds a new enforcement procedure, the restraining notice. This provision would require a judgment debtor to preserve his nonexempt assets while the judgment remains unsatisfied. The restraining notice does not restrain the transfer or disposition of any property necessary for the support of the debtor or the debtor's dependents, or property necessary to operate the debtor's business. Service of the restraining notice freezes the debtor's property to prevent its transfer or dissipation.
- **Clarifies the court's authority to prevent the debtor from evading, hindering, or delaying debt collection efforts by the United States.**
 - **Court may aid in enforcement of judgments.** The bill makes clear that the United States may enlist the aid of the court in the enforcement of its judgments. For instance, if the debtor has placed property outside the jurisdiction of the United States by transferring funds to an offshore bank, this amendment will permit the court to issue an order directing the debtor to wire transfer the funds to the Federal Reserve Bank of New York. Similar turnover powers are authorized in the Bankruptcy Code.
 - **Enhancement of enforced collection of criminal debts.** Without this amendment, the United States cannot invoke any procedures under the Act until the defendant has been sentenced to pay a financial penalty. The new provision permits the court, after a verdict, plea agreement, or decision in favor of the United States, to order the examination of any party and to issue a restraining notice with the same effect as if the restraining notice had been issued after judgment. The ability to examine the defendant immediately after an adverse decision, coupled with a restraining notice, will assist in preventing fraudulent transfers.
- **Extends the time for undoing collusive transfers of property when made to avoid paying criminal fines and restitution. (Makes the property available to pay the debt.)**
 - **Statutes of limitation for fraudulent transfer actions.** Under current law, the United States is often time-barred in seeking to set aside a fraudulent transfer because the United States could not implement an action until a debt was actually

created at the time of sentencing. Even when the right to set aside the transfer is not time-barred, there are other enforcement difficulties like the jurisdiction of the enforcement transferring to the probation service during any period of probation. The bill amends the statute of limitations to mitigate these impediments to the enforcement of restitution and fines.

- **Eliminates impediments to the enforcement of criminal monetary penalties, and strengthens the rights of victims of crime.**
 - **Enforcement of criminal monetary penalties.** The bill improves the enforcement of criminal monetary penalties. The bill allows the Government to seek accelerated payment of criminal monetary penalties if the court ordered deferred payment or payment in installments, and it is later determined that the debtor has the ability to pay a greater amount.
- **Clarifies that the United States may enforce victim restitution rights under the Federal Debt Collection Procedures Act.**
 - **Restitution enforcement.** The bill conforms the restitution enforcement provisions in the Child Support Recovery Act of 1994 with those authorized for other types of restitution under the Mandatory Victim Restitution Act.
 - **Restitution not dischargeable in bankruptcy.** The bill clarifies that orders of restitution, like criminal fines, are not dischargeable in federal bankruptcy proceedings.
 - **Restitution as part of plea agreement.** The bill requires the court to order restitution as agreed to by the parties in the plea agreement. In the past, despite any agreement that the debtor has made in the plea, the court has not included this restitution as part of its order.
 - **Restitution with large number of victims.** The bill provides the court with a variety of options when the number of victims or the complexity of the victims' losses may prolong or overly complicate the sentencing process. The bill permits, among other options, the court to create a reserve fund for restitution to victims when the aggregate loss is known or agreed to by the parties in the plea agreement, but all victims cannot be identified at the time of sentencing. After all identified victims are made whole, any surplus funds remaining in the reserve fund will be deposited in the Crime Victims Fund.
 - **Joint and severable liability for restitution.** The bill adopts the principle of joint and severable liability with respect to restitution among co-defendants, making each debtor potentially liable for the full amount of each victim's loss. The

adoption of this basic principle of tort liability streamlines the enforcement process and promotes prompter recovery of the victim's full losses.

- **Disclosure of information to enforce restitution.** The bill permits the Government to assist victims in enforcing restitution orders by disclosing certain information about the debtor that might otherwise be protected from disclosure by the Privacy Act, 5 U.S.C. § 552(a).
- **Eliminates the need to sue student loan debtors twice before enforcing collection.**
- **Assists in stopping federal payments and privileges (such as small business loans, hunting licenses) to debtors with outstanding federal civil and criminal judgments.**
- **Sections Related to the Elimination of the National Fine Center.**
 - The bill provides that the payment of fines, restitution, special assessments, and bail bond forfeitures shall be made in accordance with procedures established by the Director of the Administrative Office of the United States Courts. This change is necessary because of the elimination of the National Fine Center.
 - The bill repeals what was widely regarded as a mandate for a National Fine Center. The new wording requires the Director of the Administrative Office of the United States Courts to maintain oversight of the management of criminal debt information.
 - The bill completes the termination of the National Fine Center by eliminating mandatory annual funding transfers to the judicial branch from the Crime Victims Fund for the operation of a National Fine Center, and by requiring the return of unspent funds from the National Fine Center. The amendment permits the Director of the Crime Victims Fund to use the funds returned to the Crime Victims Fund for the benefit of crime victims in the federal criminal justice system.

MEMORANDUM

TO: TOM FREEDMAN
FROM: MARY L. SMITH
RE: NATIONAL FINE CENTER AND DOJ DEBT COLLECTION
DATE: JULY 22, 1997

SUMMARY

There is approximately \$6 billion in uncollected federal criminal debt. A project that would have created a national database to oversee the collection has been terminated because it was behind schedule and plagued with problems. Only \$2 billion of the \$6 billion can reasonably be collected. We will continue pursuing this project as this problem was listed by the House Government Reform and Oversight Committee as among the "worst examples of government waste." DOJ has proposed legislation to address some of the problems the Government has in enforcing and collecting federal debt.

PRELIMINARY RECOMMENDATION

- Attempt to revamp the national database project so that it is feasible. (Apparently, DOJ is currently in the process of drafting a request for proposals (RFP)).
- Create an accounting standard for designating uncollectible debt in instances such as the inability of the debtor to pay.

BACKGROUND

The National Fine Center was authorized by the Criminal Fine Improvements Act of 1987, Pl. 100-185, 101 Stat. 1279. The Criminal Fine Improvements Act of 1987 contemplated that the director of the Administrative Office of the U.S. Courts (AOUSC) would establish a single national center within the judicial branch for processing fines, restitution, and special assessments.

There is a great need for a collection service for criminal fines because many fines are not recovered. For instance, as of early 1992, DOJ estimated that the total amount of unpaid criminal debt exceeded \$1.6 billion. By late 1996, the amount of unpaid criminal debt had ballooned to nearly \$6 billion.

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There is often sufficient information available at the time of sentencing to determine the offender's ability to pay. For example, in the 1993 bombing of the World Trade Center, each of the four defendants was assessed \$250,000 in fines in addition to jail time. Although the probability of collecting this \$1 million is low, DOJ records these debts as being fully collectible.

Despite the uncollectibility of much of the accrued criminal debt, there is still potentially a surplus, given a few criminal defendants with large fines and penalties that do have the ability to pay such as ADM and Daiwa, the Korean bank .

II. THE PROPOSED DOJ LEGISLATION

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The bill is already drafted but may need some final vetting by some areas of DOJ.

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Call WFR RAs

MEMORANDUM

TO: TOM FREEDMAN
FROM: MARY L. SMITH
RE: NATIONAL FINE CENTER AND DOJ DEBT COLLECTION
DATE: JUNE 4, 1997

SUMMARY

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PRELIMINARY RECOMMENDATION

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