

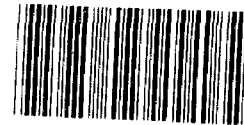
GAO

Briefing Report to the Honorable
Alan J. Dixon, U.S. Senate

September 1987

JUSTICE
DEPARTMENT

Problems in Collecting
Forfeited Corporate
Surety Bail Bonds



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United States
General Accounting Office
Washington, D.C. 20548

General Government Division

B-228798

September 22, 1987

The Honorable Alan J. Dixon
United States Senate

Dear Senator Dixon:

In response to your request of April 28, 1986, and subsequent discussions with your office, we examined the Department of Justice's collection of forfeited corporate surety bail bonds in four judicial districts. A corporate surety bail bond is a private insurance company's promise to pay a U.S. district court a certain dollar amount if a defendant purchases a bond from the company and fails to appear for court proceedings or trial. Specifically, our objectives were to determine (1) the number of defendants released on corporate surety bail bonds prior to trial; (2) the number of these defendants who failed to appear at a court proceeding; (3) the dollar amount of forfeited corporate surety bail bonds collected by the Department of Justice; and (4) the reasons why funds, if any, remain uncollected.

On May 6, 1987, we briefed your office on the results of our work. In summary, we found that in two of the four judicial districts included in our review there were defendants who had forfeited corporate surety bail bonds. One of the two districts, Arizona, collected 100 percent of the funds owed. However, as of February 27, 1987, the other district, southern Florida had only collected 9.7 percent of the funds owed. An assistant U.S. attorney in southern Florida generally attributed the problem to the heavy caseload in the district.

We analyzed bail bond data collected during our review of the Bail Reform Act of 1984 involving a sample of 1,386 of the 4,286 defendants whose criminal cases commenced during the first 6 months of 1984 and 1986 in four judicial districts--northern Indiana, Arizona, southern Florida, and eastern New York. Detailed results of our work, including a description of our objectives, scope, and methodology are included in the appendix.

BACKGROUND

In the federal criminal justice system, one of the first decisions judicial officers make after defendants come into federal custody is whether the defendants should be released or detained until their trials. Defendants can be released contingent upon compliance with nonfinancial and/or financial conditions. Nonfinancial conditions include restricting travel and placing defendants in the custody of a third

person. The primary financial condition, money bail, is used for defendants who the court believes pose a risk not to appear for court proceedings. In theory, the bail provides an incentive for defendants to appear in court. If defendants who are released under money bail fail to appear, they forfeit the bail.

Private insurance companies are one source of funds for defendants to use in meeting the bail amount set by the court. When defendants use an insurance company, they obtain a corporate surety bail bond through a network of bail bondsmen who work for the insurance company. The insurance company promises to pay the bail amount to the court if defendants fail to appear. Defendants pay the bondsmen a cash premium that generally amounts to 15 percent of the bond. According to the Treasury Department's Surety Bond Branch Manager, who certifies insurance companies to write federal bonds, six insurance companies primarily provide this service nationwide for federal criminal defendants.

When criminal defendants who have been released under a bail bond fail to appear at court proceedings, the district court orders the bond revoked and issues a warrant to arrest the defendant. The Debt Collection Unit in the U.S. attorney's office is responsible for collecting the forfeited bond amount from the insurance company. The forfeiture and collection process and procedures are spelled out in Rule 46 of the Federal Rules of Criminal Procedure and the United States Attorneys' Manual. Generally, under the process, the U.S. attorney's office files a motion with the court for a bond forfeiture judgment when a defendant fails to appear. The district court rules on the motion, and, if the court rules in favor of the government, a judgment of forfeiture is rendered.

Following a judgment, the Debt Collection Unit of the U.S. attorney's office issues a demand letter to the insurance company requesting payment within 30 days. If the insurance company does not pay within 30 days, the U.S. attorney's office should notify the court and the Criminal Division in Justice headquarters. Notification is made to the Criminal Division so it can work with the Department of the Treasury to secure full payment and removal of the company from the list of insurance companies authorized to do business with the government. Throughout the process, the district court can discharge the insurance company's liability if the company (usually the bail bondsman) returns the defendant to custody. Neither Treasury nor Justice maintains information on the total amount of federal corporate surety bail bonds that are forfeited and collected.

REVIEW RESULTS

Our analysis of the 1,386 sample cases showed that 91 defendants in the four districts were released on corporate surety bail bonds and that 21 of them failed to appear for a court proceeding. Of the 21 corporate surety defendants in our sample who failed to appear, 17 were from southern Florida and 4 were from Arizona. The courts in both districts ordered that the defendants' bonds be revoked. However, the district court for southern Florida rescinded its orders to revoke the bonds for six of the defendants because they either made an appearance 1 day after the order or were returned to custody by their bail bondsmen. This left 15 defendants (11 from southern Florida and 4 from Arizona) with bail bonds totaling \$442,000--\$62,500 for the Arizona defendants and \$379,500 for those in southern Florida--that should have been collected.

Our review of collection records showed that as of February 27, 1987, the Debt Collection Unit in the U.S. attorney's office in Arizona had collected all four of the bail bonds due, while the Debt Collection Unit in southern Florida had collected \$37,000 (9.7 percent). A total of \$342,500 was not collected in southern Florida for eight defendants. For seven of the eight defendants, the U.S. attorneys did not initiate actions to collect the funds. While we did not pursue the reason for lack of action on a case-by-case basis, an assistant U.S. attorney in southern Florida told us that their heavy caseload caused their inaction. For the last defendant, the judicial officer had not ruled on the U.S. attorney office's forfeiture motion.

CONCLUSION AND RECOMMENDATION

Because neither Justice nor Treasury maintain information on the number and amount of corporate surety bail bonds forfeited and collected, we could not readily determine if other U.S. attorneys' offices are experiencing collection problems similar to southern Florida. However, heavy caseloads in U.S. attorneys' offices--which was the reason given for collection actions not being taken in southern Florida--are not unique to that district. Therefore, we recommend that the Attorney General require the Executive Office for United States Attorneys to determine if other districts are experiencing problems in collecting forfeited surety bail bonds.

As you requested, we did not obtain official agency comments; however, we discussed the results of our work with officials of the U.S. attorneys' offices we visited and the Department of Justice. These officials told us that they agreed with our findings.

B-228798

As arranged with your office, we plan no further distribution of this briefing report until 30 days from the date of this letter unless you publicly announce its contents earlier. At that time, we will send copies to the Attorney General and interested parties and will make copies available to others upon request. If there are any questions regarding the contents of this briefing report, please call Arnold P. Jones, Senior Associate Director on (202) 275-8389.

Sincerely yours,

W. J. Anderson

William J. Anderson
Assistant Comptroller General

JUSTICE'S COLLECTION OF FUNDS FOR
FORFEITED CORPORATE SURETY BAIL
BONDS

OBJECTIVES, SCOPE, AND METHODOLOGY

By letter dated April 28, 1986, Senator Alan J. Dixon requested that we examine, in selected judicial districts, the Department of Justice's collection of forfeited corporate surety bail bonds. As agreed with the Senator's office, our objectives were to determine (1) the number of defendants released on corporate surety bail bonds prior to trial; (2) the number of these defendants who failed to appear at a court proceeding; (3) the dollar amount of forfeited corporate surety bail bonds collected by the Department of Justice; and (4) the reasons why funds, if any, remain uncollected.

As agreed with the requester's office, we analyzed bail bond data gathered for our review of the implementation of the Bail Reform Act of 1984. We performed our work in four judicial districts--northern Indiana, Arizona, southern Florida, and eastern New York. We selected Arizona, southern Florida, and eastern New York because our review of Administrative Office of the United States Courts' statistics indicated that the rates that defendants failed to appear were high compared to other districts. We selected northern Indiana so the caseloads of the districts in our study ranged from small to large in relation to other districts. We examined a sample of 1,386 defendants in felony cases initiated between January and June 1984 and January and June 1986.

We also reviewed district court records and collection records maintained by Justice's Debt Collection Units in the two districts (southern Florida and Arizona) where corporate surety bond defendants failed to appear for court proceedings. We also interviewed the assistant U.S. attorneys in charge of the Debt Collection Units and U.S. magistrates in these two districts concerning the use of corporate surety bail bonds and collection procedures. We also discussed bail bond collection with the Associate Director for Debt Collection within the Executive Office for United States Attorneys. Our work was performed between May 1986 and May 1987 in accordance with generally accepted government auditing standards.

CORPORATE SURETY RELEASES
AND FAILURES TO APPEAR

Out of our 1,386 sample cases, 91 defendants were released on corporate surety bail bonds. Our sample contained 21 corporate surety defendants who failed to appear: 4 in Arizona and 17 in southern Florida. No cases were identified in northern Indiana or eastern New York.¹

FORFEITED BAIL FUNDS COLLECTED

Our review of district court and U.S. attorney's office collection records showed that the 21 defendants' corporate surety bail bonds totaled \$780,000, and the courts ordered that all of the bonds be revoked. However, the U.S. district court for the southern district of Florida discharged \$338,000 of the insurance companies' liabilities for eight defendants. Four defendants, whose bonds totaled \$120,000, made an appearance 1 day after the order. The district court also discharged the insurance companies' liability for two defendants (\$50,000 in bonds) and part of the liability (\$168,000 of the \$175,000 in bonds) for two other defendants because the bail bondsmen returned the four defendants into custody. This left a total of \$442,000 for 15 defendants that was eligible for collection by the U.S. attorneys offices.

Of the \$442,000 owed by the insurance companies, we found that as of February 27, 1987, the government had collected \$99,500, or 22.5 percent. As shown in table I.1, the debt collection unit in Arizona collected all of the \$62,500 owed; the unit in southern Florida collected \$37,000 (9.7 percent) of the \$379,500 owed.

¹Except for northern Indiana where we reviewed the entire universe, the number of defendants released on corporate surety bonds who failed to appear are based on the results of statistical samples; thus there is a sampling error associated with each. We can estimate that had we reviewed all cases, the actual number of defendants who were released on corporate surety bail bonds would be between 305 and 469 and the number of defendants who failed to appear would be between 21 and 49. This results in an overall failure to appear rate between 4.5 and 16.1 percent for corporate surety defendants. We estimate that the number of defendants who failed to appear would be between 4 and 10 in Arizona, between 19 and 44 in southern Florida, and between 0 and 2 in eastern New York.

Table I.1:

Comparison of Bond Funds Owed
and Collected as of February 27, 1987

Sampled period	Arizona			Southern Florida		
	Number of defendants	Owed	Collected	Number of defendants	Owed	Collected
Jan. - June 1984	1	\$25,000	\$25,000	2	\$ 12,500	\$10,000
Jan. - June 1986	3	37,500	37,500	9	367,000	27,000
Total	4	\$62,500	\$62,500	11	\$379,500	\$37,000

Table I.2 shows the reasons why \$342,500, or 90.3 percent, of the total bond funds remained uncollected in southern Florida.

Table I.2:

Reasons Why Bail Bonds Remain
Uncollected in Southern Florida
as of February 27, 1987

Reasons	Number of defendants	Uncollected	
		Amount	Percent
U.S. attorney's office had not filed a motion for forfeiture judgment	5	\$137,500	40.1
U.S. attorney's office had not notified the Debt Collection Unit that a judgment was granted	1	50,000	14.6
U.S. attorney's office Debt Collection Unit had not demanded payment once judgment was granted	1	5,000	1.5
District Court Judge had not ruled on the forfeiture judgment	1	150,000	43.8
Total	8	\$342,500	100.0

As shown in table I.2, the U.S. attorney's office had not filed a forfeiture judgment motion for five defendants. At least 7 months had elapsed since the defendants had failed to appear. According to the United States Attorneys' Manual the motion should be filed expeditiously. While we did not pursue the reason for lack of action on a case-by-case basis, an assistant U.S. attorney for southern Florida advised us that the attorneys may have not filed their motions because of the heavy caseload (about 100 cases per criminal attorney). He added that most of the cases involve multiple defendants, so if one defendant "skips" the attorneys still must concentrate their efforts on prosecuting the remaining defendants.

In one case, a judgment of forfeiture was rendered on May 27, 1986, but the Criminal Division attorney did not inform the Debt Collection Unit that a judgment had been granted; therefore, it did not initiate collection action, according to the Unit's chief. In another case, the Debt Collection Unit did not demand payment when the judgment was granted. The Unit's chief said that due to a large caseload the Unit did not demand payment until March 3, 1987, or 10 months after the judgment was made.

In the case for which the judgment is pending, the insurance company requested a 90-day extension 3 days after the U.S. attorney's office filed its motion for forfeiture judgment on June 16, 1986. In November 1986, the case was referred to a magistrate, who recommended on December 11, 1986, that the judge render a judgment of forfeiture. As of February 12, 1987, the judge had not rendered his decision. The assistant U.S. attorney in charge of the Debt Collection Unit in southern Florida told us that insurance companies commonly request extensions to provide the company additional time to find a defendant.

We found that the Debt Collection Units in Arizona and southern Florida became involved in collecting the bail bonds at different times in the process. In Tucson, Arizona, where the Debt Collection Unit is located, the motion for a bond forfeiture judgment is filed by the Debt Collection Unit. The assistant U.S. attorney in charge of the Unit told us that the vast majority of failure to appear cases occur in Tucson; therefore, attorneys in the Criminal Division concentrate their efforts on prosecuting criminal cases and consider a motion for forfeiture judgment to be the responsibility of the Debt Collection Unit. In contrast, we were told that attorneys in the Criminal Division in Phoenix, where there are few failure to appear cases, file motions for forfeiture judgments.

In the southern district of Florida, the attorneys in the Criminal Division file the motion for forfeiture judgment. The Debt Collection Unit does not become involved until the district

court issues a judgment for forfeiture. The assistant U.S. attorney in charge of the Debt Collection Unit in southern Florida told us that in his opinion, the Criminal Division's attorneys should file the motion for forfeiture judgment because the attorney is present at the court proceeding and therefore, would know if the defendant failed to appear. He added that because of their heavy workload, some prosecutors in southern Florida do not file a motion or notify the Debt Collection Unit when a judgment has been rendered by the court.

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