

GAO

Testimony

For Release
on Delivery
Expected at
10:00 a.m. EDT
Friday
April 15, 1988

**Justice Department: Impediments Faced in
Litigating and Collecting Debts Owed the
Government**

Statement of
Arnold P. Jones, Senior Associate Director
General Government Division

Before the
Subcommittee on Courts and
Administrative Practice
Committee on the Judiciary
United States Senate



135553

041857

**IMPEDIMENTS TO THE JUSTICE DEPARTMENT'S EFFORTS TO LITIGATE AND
COLLECT DEBTS OWED THE FEDERAL GOVERNMENT**

**SUMMARY STATEMENT
ARNOLD P. JONES
SENIOR ASSOCIATE DIRECTOR
U.S. GENERAL ACCOUNTING OFFICE**

In 1986 and 1988 reports, GAO found that the Department of Justice faced several impediments in litigating and collecting debts owed the federal government, such as delinquent loans, benefit overpayments, fines, and penalties. These impediments included the following:

- Agency referral packages sometimes lacked the information Justice needed to litigate and collect the claims.
- U.S. attorneys offices lacked sufficient staff or enough trained staff to aggressively follow up and enforce collections.
- Case backlogs were large, recordkeeping on case status and disposition was poor, and management oversight was lacking.
- Some state laws impeded the collection of debts and federal bankruptcy laws delayed or prevented the recovery of money owed the government.

Congress enacted laws in 1986 and Justice has taken other actions to improve debt litigation and collection. Legislation (S. 1961) has been proposed to reduce state law obstacles which should help the government recover funds owed. The bill also proposes to amend federal bankruptcy laws to give the government a better chance of recovering funds from federal debtors who file for bankruptcy. In addition, the proposal contains a provision regarding debt collection funding incentives that should be useful in helping reduce delinquent debts owed the federal government.

Mr. Chairman and Members of the Subcommittee:

We are pleased to be here today to discuss the proposed Federal Debt Collection Procedures Act of 1988 (S. 1961), a bill that should facilitate the federal government's ability to litigate and collect delinquent debts owed the federal government. Over the years we have issued numerous reports identifying problems with the federal government's debt collection efforts. Included in our work were two recent reviews of Justice's debt litigation and collection efforts. Our testimony focuses on the problems we identified during these reviews and how the bill proposes to correct them. We also have some comments about another feature of the bill which is similar to a suggestion we previously made.

BACKGROUND

As the government's principal litigator, Justice is responsible for litigating and collecting delinquent loans, benefit overpayments, and civil monetary penalties referred by other federal agencies and for collecting criminal and civil fines handed down by the U.S. Courts. The 94 U.S. attorneys offices and several Justice headquarter's divisions litigate and collect various debts including fines and penalties for violations of environmental, banking, tax, antitrust, and drug trafficking laws. However, the U.S. attorneys offices litigate the majority of delinquent debts referred by other federal agencies and collect most of the delinquent debts, fines, and penalties for Justice.

Each U.S. attorney's office has a debt collection unit that is headed by an assistant U.S. attorney and may be staffed with a paralegal specialist and several collection clerks. Generally, these units prepare all the necessary paperwork to process small dollar debt cases, such as delinquent student loan payments and veterans overpayments. Other attorneys within the U.S. attorneys offices generally handle more complex high-dollar debt cases dealing in, among other things, foreclosures and bankruptcies that require particular expertise and may involve extensive legal proceedings to identify and recover assets needed to collect the debt.

The Office of Management and Budget (OMB) reported that as of September 30, 1987, federal agencies had nontax delinquent debts of about \$32 billion. As of that date, OMB also reported that agencies had referred about 92,000 debt cases valued at about \$8.5 billion to Justice for litigation and collection.

Generally, S. 1961 would help reduce state and federal law obstacles to federal debt collection by (1) establishing uniform judicial enforcement remedies and uniform property exemptions to ensure that federal debtors can be treated equitably in federal court actions, and (2) giving the federal government priority for unsecured claims in bankruptcy cases. In addition, the bill would establish a debt collection fund where 5 percent of the monies collected by Justice would be used for Justice's collection-related costs and expenses.

RECENT GAO WORK CONCERNING
JUSTICE'S DEBT COLLECTION EFFORTS

On October 15, 1986, we issued a report to Representative John R. Kasich entitled Justice Department: Impediments Faced in Litigating and Collecting Debts Owed the Government (GAO/GGD-87-7BR). On January 7, 1988, we issued a report to Senator Alfonse D'Amato entitled Justice Department: Litigation and Collection of Civil Fines and Penalties (GAO/GGD-88-23FS). For these reports, we visited a total of seven U.S. attorney offices and visited various Justice headquarter's offices that are responsible for the litigation, collection, accounting, and oversight of debts. We interviewed officials at these offices and reviewed judgmental samples of cases to determine the problems Justice was experiencing in litigation and collection. For our 1986 report, we also reviewed internal evaluations conducted by U.S. attorney office officials during fiscal year 1985. These studies evaluated the operations and management of the debt collection units of 35 U.S. attorney offices.

In both reviews, we found that Justice faced a number of impediments in litigating and collecting debts owed the government and that various actions had been taken or were being considered that could improve the debt collection process.

REVIEW RESULTS

Both of our reviews showed that although Justice had made progress to improve its debt litigation and collection performance, its ability to collect a large part of the debts was affected by the nature of the debts and the ability of the debtors to pay their obligations. For example, many cases involved bankruptcy matters where collections may not have been possible. We also found that Justice was experiencing other problems which affected the timely litigation and collection of debts. The problems included the following:

- Agency referral packages sometimes lacked the information Justice needed to litigate and collect the claims.
- U.S. attorneys offices lacked sufficient staff or enough trained staff to aggressively follow up and enforce collections.
- Case backlogs were large, recordkeeping on case status and disposition was poor, and management oversight was lacking.

We also found that some state laws impeded the recovery of money owed the government. Following are some state law impediments that our work identified that S. 1961 would help correct.

In the northern district of Texas the debt collection unit was able to recover only 2.8 percent of the \$5.5 million in debts referred to it by the Department of Education and the Veterans Administration. U.S. attorney office officials said that a major reason for this low recovery rate was Texas state laws that limit their ability to enforce collections. For example, officials said that in Texas debtor wages cannot be garnished; a single debtor's property valued at \$15,000 or less is exempt from attachment; and homestead laws generally prevent the forced sale of residential property.

The proposed legislation would enhance debt collection by providing standard procedures for wage and property garnishments for federal debtors and substitute for state law provisions in federal court actions. According to Justice officials, wage garnishments would be in accordance with the provisions outlined in the Federal Consumer Credit Protection Act of 1968 (15 U.S.C. 1672 & 1673). Under these provisions, Justice could garnish up to 25 percent of a debtor's weekly disposable earnings. S. 1961 would also deal with the property exemption problem by allowing a "homestead" exemption of \$7,500 for real or personal property. With a lower exemption, the government could reach more assets for collection in Texas.

We also found that some state laws cause the U.S. attorneys additional work in collecting debts. For example, in Illinois the assistant U.S. attorney in charge of debt collection told us

that to obtain an Illinois wage garnishment, a wage deduction summons must be personally served on the employer, and the garnishment must be renewed and served every 8 weeks. A similar process in Ohio made it difficult for the debt collection unit to enforce collections. At this unit, 742 out of 1,725 cases (43 percent) had court judgments that had not been enforced by the unit.

The proposed legislation would help streamline debt collection operations by allowing for service of a garnishment order by first-class mail. The bill would also allow the original garnishment to remain in effect until the debt has been paid or other actions taken. As a result, the amount of follow-up and paperwork needed to continually enforce the judgment could be reduced.

In New York, the attorney in charge of a debt collection unit said that because New York state statutes have detailed requirements for identifying real property and recording liens, it takes several weeks before the government's interest can be protected by recording a lien in the court for the county where the property is located. According to a Justice official, in the interim, the property may be sold or transferred which could prevent the government from reaching it. The proposed legislation allows a lien to be recorded upon a debtor's real property by the U.S. attorney simply filing a copy of a federal

court judgment in one office within the state where the property is located.

Justice's internal evaluations of 35 U.S. attorney offices disclosed that state statutes hampered 13 debt collection units (37 percent) by either precluding them from enforcing collections on court judgments or creating additional work for the units to recover the debts.

We also found that the federal bankruptcy laws have delayed the recovery of money owed the government and in other cases involving bankruptcy matters, collections may not be possible unless the government has a secured interest in the property. The proposed legislation re-establishes a priority in bankruptcy cases for certain types of unsecured claims of the United States and should increase the likelihood of recovering funds from debtors who file for bankruptcy.

ACTIONS TAKEN AND UNDERWAY
TO IMPROVE DEBT COLLECTIONS

Justice has taken several actions to improve its debt collection program. These actions include, among other things, adding staff to debt collection units and developing training programs on debt collection techniques for U.S. attorney office and referring agency personnel. Justice's fiscal year 1989 budget request includes an additional 80 positions and about \$2.9

million for U.S. attorneys to address the serious backlog of civil debts and criminal fines. It also includes \$10 million to establish a debt collection fund to be used for training debt collection staff and enhancing other debt collection efforts.

In 1986, Congress enacted legislation to help improve debt enforcement and collection. The Program Fraud Civil Remedies Act (Public Law 99-509 dated Oct. 21, 1986), among other things, authorizes agencies to administratively handle small fraud cases (\$150,000 or less) before an agency hearing examiner. One reason Congress passed this law was because U.S. attorneys offices were not acting on many of these cases due to cost/benefit considerations and limited resources.

In 1986, Congress passed the Debt Collection Amendments (Public Law 99-578 dated Oct. 28, 1986), which authorized the Attorney General to use private lawyers on a test basis to collect debts. As of April 6, 1988, Justice was in the process of contracting with law firms to run the program in five districts--eastern New York, southern Florida, southern Texas, eastern Michigan, and central California. These districts were selected because of their large backlogs of debt cases and insufficient resources to devote to collection litigation. The law requires us to review various aspects of this program once it is underway.

DEBT COLLECTION FUND

We also support the concept behind the bill's proposal (section 225) to establish a fund to pay for the training of Justice staff in debt collection and related functions. The fund would be financed from 5 percent of the proceeds of Justice's debt collections. GAO has previously suggested that similar funding incentives be used to help improve the federal government's debt collection efforts.¹

This concludes my prepared statement. I would be pleased to answer questions.

¹Debt Collection: Billions Are Owed While Collection and Accounting Problems Are Unresolved (GAO/AFMD-86-39, May 23, 1986).