



Highlights of [GAO-10-110](#), a report to congressional requesters

Why GAO Did This Study

Recent cases of corporate fraud and mismanagement heighten the Department of Justice's (DOJ) need to appropriately punish and deter corporate crime. Recently, DOJ has made more use of deferred prosecution and non-prosecution agreements (DPAs and NPAs), in which prosecutors may require company reform, among other things, in exchange for deferring prosecution. In June and November 2009, GAO testified on DOJ's use and oversight of DPAs and NPAs, and this report discusses additional findings, including (1) the extent to which DOJ has used DPAs and NPAs to address corporate misconduct and tracks use of these agreements, (2) the extent to which DOJ measures the effectiveness of DPAs and NPAs, and (3) the role of the court in the DPA and NPA process. GAO examined 152 DPAs and NPAs negotiated from 1993 through September 2009 and analyzed DOJ data on corporate prosecutions in fiscal years 2004 through 2009. GAO also interviewed DOJ officials, prosecutors from 13 DOJ offices, 20 company representatives, 11 monitors who oversee company compliance, and 12 federal judges. While not generalizable, these results provide insight into decisions about DPAs and NPAs.

What GAO Recommends

GAO recommends that DOJ develop performance measures to assess the effectiveness of DPAs and NPAs. DOJ agreed with our recommendation.

View [GAO-10-110](#) or [key components](#). For more information, contact Eileen Larence at (202) 512-8777 or larencee@gao.gov.

CORPORATE CRIME

DOJ Has Taken Steps to Better Track Its Use of Deferred and Non-Prosecution Agreements, but Should Evaluate Effectiveness

What GAO Found

Since fiscal year 2004, the number of DPAs and NPAs has generally been less than the number of corporate prosecutions, and in 2009, DOJ began tracking its use of these agreements. DOJ has made more frequent use of DPAs and NPAs in recent years, entering into four agreements in fiscal year 2003 compared to a high of 38 agreements in fiscal year 2007, although use declined in fiscal years 2008 and 2009 when DOJ entered into 24 and 23 agreements, respectively. The U.S. Attorneys Offices (USAO) and DOJ's Criminal Division entered into the vast majority of agreements. From fiscal years 2004 to 2009, for USAOs, the number of DPAs and NPAs was less than the number of corporate prosecutions, whereas for the Criminal Division, the number of DPAs and NPAs was comparable to the number of corporate prosecutions. Prior to 2009, DOJ did not have a mechanism to centrally track its use of DPAs and NPAs, which inhibited its ability to accurately report the number and terms of the agreements to the Congress and the public. However, in response to GAO's requests for information, DOJ has recently taken steps to better track its use of DPAs and NPAs, steps that will allow it to more accurately report on the number and terms of DPAs and NPAs to Congress and the public and identify best practices and ensure consistency across agreements.

DOJ lacks performance measures to assess how DPAs and NPAs contribute to its efforts to combat corporate crime. Two possible measures of DPA and NPA effectiveness could be (1) whether the company repeats the criminal behavior either during or after its agreement; or (2) whether the company successfully implements the terms of the agreement; implementation could be a proxy measure for whether the company reformed because DPAs and NPAs often require companies to make improvements in internal controls, compliance programs, or training to detect and prevent future wrongdoing. By developing performance measures to evaluate DPAs and NPAs, DOJ will be better positioned to gauge whether they are effective tools in deterring and combating corporate crime.

The Speedy Trial Act allows judges to approve the deferral of prosecution pursuant to a written agreement between the government and the defendant, for the purpose of allowing the defendant to demonstrate its good conduct; however, the law does not otherwise specify judicial involvement in the DPA process. GAO obtained responses from 12 U.S. district and magistrate judges who handled cases involving a DPA, and these judges reported they were generally not involved in the DPA process. Prosecutors, company representatives, monitors, and judges with whom GAO spoke more frequently cited disadvantages to greater judicial involvement—such as the lack of time and resources available to judges and concerns about the separation of powers and constitutionality of increased judicial involvement—than advantages to such involvement—such as the court's ability to act as an independent arbiter of disputes, increased transparency in the DPA process, and decreased perceptions of favoritism in selecting the monitor.