

GAO

Report to the Chairman, Senate
Committee on the Judiciary, and the
Chairman, Subcommittee on Crime,
House Committee on the Judiciary

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FINES AND RESTITUTION

Improvement Needed in How Offenders' Payment Schedules Are Determined





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The Honorable Orrin Hatch
Chairman, Committee on the Judiciary
United States Senate

The Honorable Bill McCollum
Chairman, Subcommittee on Crime
Committee on the Judiciary
House of Representatives

This is the first of two reports responding to your joint request that we study orders of fines and restitution imposed on federal criminal offenders. The objectives of this report are to (1) identify guidance available to probation officers on how to determine payment schedules for offenders who received orders to pay fines to the government and restitution to their victims and (2) assess, in two judicial districts, how offenders' payment schedules were actually determined while under court supervision. The second report will include information on the types of offenders who are ordered to pay fines and restitution and those who are not ordered to pay.

Individuals convicted of a federal crime can be ordered by the court to pay a fine or restitution at sentencing. Criminal fines, which are punitive, are to be paid in most cases to the Department of Justice's (DOJ) Crime Victims Fund; restitution is to be paid in certain federal criminal cases where there is an identifiable victim. In 1996, according to U.S. Sentencing Commission data, over 42,000 federal offenders were sentenced; nearly 15,000 of them (36 percent) were ordered to pay fines, restitution, or both. Approximately 16 percent of all federal offenders were ordered to pay fines only; approximately another 17 percent were ordered to pay restitution only; and approximately another 3 percent of offenders were ordered to pay both. Overall, in 1996, the federal courts imposed approximately \$102 million in fines and \$1.5 billion in restitution.

Under the U.S. Sentencing Guidelines and relevant provisions of the law, offenders should pay their court-ordered fines and restitution as a lump-sum payment. If the court determines that a lump-sum payment cannot be made, installment payments are to be made. These are either established by the judge, generally based on information provided by the probation officer, or established by the probation officer under the judge's order. If these installment payment schedules are not properly established,

the punitive and restorative aspects of fines and restitution might not be fully realized.

Results in Brief

In the Central District of California and the Northern District of Texas, probation officers who supervised offenders lacked clear, specific policy guidance for determining how much offenders should pay each month towards their court-ordered fines and restitution. In the absence of such clear policy guidance, the officers in the two districts we reviewed developed their own methods for determining how much offenders could pay monthly. These methods were often based on subjective decisions not associated with financial criteria. We identified issues of inconsistency and apparent inequity in 62 percent of the Central District of California installment-payment cases and 42 percent of the Northern District of Texas installment-payment cases we reviewed. Some examples follow.

- Some offenders paid their fines or restitution orders immediately from available assets while other offenders kept, without explanation, either the proceeds from the sale of assets or the assets themselves, such as second homes, securities, bank accounts, and paintings, that might have been made available to pay their fines and restitution.
- Probation officers created their own arbitrary methods for developing installment payment schedules, including negotiated amounts, good-faith payments, and choosing round numbers. These arbitrary methods for setting installment payment schedules were not based on financial criteria, such as an analysis of an offender's income and expenses. As a result, some offenders with lower incomes were directed to make higher payments than offenders with higher incomes who owed more in fines or restitution.
- While offenders were required to report their necessary monthly expenses on a personal financial statement, there were no criteria on the types or amount of expenses that were to be considered necessary. Some offenders identified expenses such as a European cruise, servant salaries, entertainment expenses, and recreational boat payments as necessary, thus limiting their ability to pay fines to the government or restitution to victims. Others increased their personal monthly spending while claiming financial difficulties that limited their ability to pay fines or restitution.
- Personal financial statements were often 18 months old or older for offenders who were on installment payments, so probation officers were not in a good position to tell whether payment amounts should be changed. Guidance and training suggested, but did not require, that a

financial statement be obtained every 6 months from an offender who was on a payment schedule.

The Administrative Office of the U.S. Courts (AOUSC) has provided guidance to probation officers on how to determine payment schedules. However, the guidance, which is focused on what information to collect and how to collect it, does not specify how probation officers are to analyze financial information provided by offenders to determine how much, or if all, of the fine or restitution can be paid each month. The Federal Judicial Center (FJC) offered financial investigation training to probation officers that provided more specific guidance on determining repayment schedules than that contained in the AOUSC manuals and publications. Although AOUSC viewed the training as reflecting its policies, it did not make this clear to probation officers. Moreover, the FJC training is voluntary, and not all officers took it. The probation officers in the two districts we visited were either unfamiliar with the FJC training or saw the training as an optional tool and not a reflection of policy.

The inconsistent methods used by probation officers for determining an offender's monthly payment schedule resulted in apparently inequitable treatment of offenders and reduced or slowed payments to the Crime Victims Fund and to crime victims. Although our detailed reviews were limited to two judicial districts and cannot be generalized beyond those districts, the fact that probation officers in the other judicial districts are working with the same limited guidance and lack of financial standards as the districts we visited creates the risk that the types of inconsistencies and apparent inequities we found could occur nationwide. Therefore, we are recommending that the AOUSC establish as policy improved guidance to help probation officers who monitor offenders under court supervision make more consistent and equitable payment schedule determinations for offenders who owe criminal fines and victim restitution.

In commenting on a draft of this report, AOUSC cited several steps that it was taking, or planned to take, to address some of the findings in this report, including considering specific guidance on financial standards. It is unclear how these steps will be implemented or the extent to which they will resolve the matters discussed in this report.

Background

Criminal fines, which are designed to be punitive in nature, are to be imposed by the courts in all cases except where an offender has established that he is unable to pay and unlikely to become able to pay the

fine. According to the Sentencing Guidelines, if an offender establishes that the payment of the fine in a lump sum would have an unduly severe impact on the offender or any dependents of the offender, the court should establish an installment schedule for payment of the fine. The guidelines also provide that the length of the installment schedule generally should not exceed 12 months. Most fines are to be paid to DOJ's Crime Victims Fund, which is to provide grants for victim assistance programs and compensation to victims.

The courts are also to consider the need to provide restitution to an identifiable victim of an offense. According to the Mandatory Victims Restitution Act (MVRA) of 1996 (title II of P.L. 104-132), which was effective April 24, 1996, restitution must be ordered as part of a sentence for certain offenses in cases with an identifiable victim. Under the MVRA, restitution to the victim of the crime must be ordered regardless of the offender's economic circumstances.¹ If an offender cannot pay restitution immediately, the court is to determine the length of time over which scheduled payments would be made, and the law requires that it be the shortest time in which full payment could reasonably be made. Generally, a probation officer provides information that the judge may use to set a payment schedule based on a determination of the offender's ability to pay.

Probation officers are responsible for monitoring offenders' compliance with court orders—including orders to pay fines or restitution—while the offenders are under a period of court supervision. Probation officers are to report any violations to the courts. An offender can receive either probation or, to follow imprisonment, a period of supervised release. Probation or supervised release can be imposed by a judge for up to 5 years; although for some cases, the limit is 3 years.

In the two districts in our sample, presentence probation officers develop the presentence report, which includes a financial investigation of the offender and the total amount of the fine or restitution required by law or by sentencing guidelines. Other uses of the presentence report include information on the sentencing options under the guidelines and criminal history.

¹In determining the method of payment for the restitution amount, the court is to determine the financial circumstances of the defendant. Prior to the MVRA, judges were to consider the financial conditions and earning abilities of the defendant, among other factors, in determining whether or not to order restitution.

In the two districts in our sample, supervision probation officers' responsibilities begin after the offender is sentenced. The supervision probation officer monitors the offender's compliance with court orders while the offender is under court supervision. These responsibilities include establishing a payment schedule if one has not been established by the judge or, when the payment plan has been established by the judge, monitoring and recommending changes to the payment schedule to the judge. Court supervision includes probation after sentencing or supervised release after imprisonment.

The judge may establish the method of payment the offender is to follow at the time of sentencing, or, in some jurisdictions, the judge may delegate that responsibility to the probation officer. A decision of the U.S. Court of Appeals for the Fifth Circuit, which includes the Northern District of Texas, requires the judge to establish the payment plan. However, judges frequently stipulate that the monthly payment plan should be "not less than" a certain amount. According to a senior probation official in the district, this allows the supervision probation officer to increase the payment if the offender's economic circumstances change. The method of payment can also be affected by the result of a civil court action or be delegated to an agency owed restitution, such as the Small Business Administration.

Roles of Different Agencies Regarding Fines and Restitution

The Judicial Conference of the United States² is the courts' principal policymaking body. The Conference's statutory responsibilities include making recommendations to the various courts to promote uniformity of management procedures.

AOUSC is the administrative body for the federal court system and performs many support functions for the courts. Among its responsibilities, AOUSC provides national standards and policies as well as administrative and management guidance to probation offices. A primary focus has been the development of policies and procedures to help probation officers carry out their responsibilities of probation officers more efficiently and effectively. AOUSC also monitors and reviews program performance and resource use.³

²The Judicial Conference consists of 26 judges plus the Chief Justice of the United States, who presides over the conference.

³Activities of the Administrative Office of the United States Courts, Annual Report of the Director, Leonidas Ralph Mecham, 1997.

FJC is the judicial branch agency that, among other things, conducts orientation and provides continuing education and training programs for federal judges, probation officers, and other court employees. FJC's programs and projects involve coordination and consultation with AOUSC.

Each of the 94 district courts is granted by statute and practice considerable discretion in managing its own affairs. This includes the authority to appoint, supervise, and train its employees, and to establish local practices and rules of operation.

The U.S. Sentencing Commission also has responsibility for establishing sentencing policies and practices. The Commission does this through its Sentencing Guidelines which, with respect to fines, for example, state that the length of the installment schedule generally should not exceed 12 months.

DOJ also has a role in obtaining fines or restitution from offenders. Financial Litigation Units within the U.S. Attorney's Offices can place liens on offenders' assets and pursue other collection efforts. In the two districts in our study, the Financial Litigation Units did not become involved while the offender was under court supervision, except at the request of the probation officer. The Financial Litigation Unit is also responsible for pursuing any remaining fines or restitution owed by the offender once the offender leaves court supervision.

Objectives, Scope, and Methodology

Our objectives were to (1) identify guidance available to probation officers on how to determine payment schedules for offenders who received orders to pay fines or restitution and (2) assess, in two judicial districts, how offenders' payment schedules were actually determined while under court supervision. We did not review the basis for the presentence report, the original court decision that imposed a fine or restitution order, or the total amount of fine or restitution ordered by the court. Our evaluation focused on how payment schedules were determined for offenders who owed fines or restitution and the guidance available to the supervision probation officers in the two districts studied.

To determine what guidance existed on how offenders should pay their obligations, we held discussions with officials from AOUSC, FJC, the U.S. Sentencing Commission, and the Executive Office of the U.S. Attorney within DOJ. Within the two districts we reviewed, we held discussions with the Chief Probation Officer, probation officers, judges, and representatives

of the U.S. Attorney's Financial Litigation Unit. From the officials interviewed, we requested any available documentation relating to how payment schedules should be determined for offenders owing fines or restitution. We reviewed the documentation provided by these officials to determine what guidance existed, including any financial standards for establishing the method of payment.

To examine how fine and restitution payment schedules were determined, we selected statistical samples of offender case files in two judicial districts: 242 cases in the Central District of California, which included Los Angeles, and 253 cases in the Northern District of Texas, which included Dallas. We selected these districts for review because they (1) are large districts in terms of number of cases and (2) had probation offices geographically dispersed within the districts. Our samples were drawn from an automated list of offenders on probation or supervised release who (1) were ordered to pay fines or restitution, (2) were sentenced after January 1, 1990, and (3) would not be off probation or supervised release prior to June 30, 1997. We stratified our sample in each district by those who received orders to pay fines only, those who received orders to pay restitution only, and those who received orders to pay both fines and restitution. Because our file review was limited to these two districts, our results cannot be generalized to how offenders are required to pay their fines or restitution in other districts. A demographic profile of the offenders in the two districts we reviewed is included in appendix II.

We considered a case to contain issues of inconsistency and apparent inequity in how payment schedules were determined when the following conditions were met:

- First, documents supplied by the offenders indicated that income or assets might exist to pay toward fines or restitution on a more complete or timely basis.
- Second, the offenders (1) would not pay off their fines or restitution prior to the end of their court supervision or (2) would pay off their fines or restitution prior to the end of their court supervision but appeared to have resources to pay more quickly.
- Third, we identified one or more of the following issues during our case review: (1) there was no evidence that consideration was given to additional assets that might have been available to pay toward the fine or restitution; (2) arbitrary methods were used to establish the installment payment schedules that were not linked to income, expenses, or other financial criteria; (3) the types or amount of expenses that were reported

as necessary by the offender appeared high in relation to location and family circumstances; and (4) financial information was not current and had not been updated for 18 months or more.

To gain a better understanding of these cases, we discussed the case with a probation officer or supervisor, if available, to resolve any issues we identified.

For this review, we did not consider cases in which the offenders (1) paid their fines or restitution orders as a lump sum, (2) had their cases closed by the judge or transferred to another district, or (3) were returned to court for a violation of a condition of probation.

A panel of our team members met, and each member reviewed and discussed all cases to ensure consistency in how the issues were identified. Cases with identified issues of inconsistency and apparent inequity were given an additional review by another panel with a different configuration of team members. Both teams had to agree before we counted the case as inconsistent or apparently inequitable.

Greater detail on our scope and methodology is included in appendix I. We did our work from March 1997 through October 1997 in accordance with generally accepted government auditing standards. We obtained written comments from AOUSC, FJC, DOJ, and the U.S. Sentencing Commission. These comments are summarized at the end of this letter and are contained in appendixes III, IV, V, and VI.

Guidance Lacked Specifics on How Payment Schedules Should Be Determined

AOUSC provided general guidance for probation officers on how offenders should be required to pay their court-ordered fines and restitution, but the guidance lacked specific financial standards to guide the probation officer in determining payment schedules. In both district courts we visited, the AOUSC guidance was supplemented with local guidance; but the local guidance was also very general, lacking specific financial standards. For example, the AOUSC guidance required probation officers to establish “realistic” payment schedules but provided no standards on what was considered realistic. FJC offered a financial investigation training course that included suggested standards on how payment schedules should be determined, but only a few probation officers we interviewed were familiar with it, and those who were saw it as an optional tool, not a reflection of AOUSC policy.

Guidance Provided by AOUSC

AOUSC guidance to probation officers on determining an offender's ability to pay fines and restitution advised establishing a payment plan if the judge did not provide one at sentencing. However, the guidance, which is focused on what information to collect and how to collect it, does not specify how probation officers are to analyze financial information provided by offenders to determine how much, or if all, of the fine or restitution can be paid each month.

In its August 1993 guidance to probation officers (Monograph 109, Supervision of Federal Offenders), AOUSC identified the need to establish payment plans when offenders are not financially able to make lump-sum payments and to verify an offender's ongoing financial status through such methods as reviewing financial information on monthly supervision reports. AOUSC later stressed⁴ the importance of (1) monitoring an offender's compliance with financial obligations imposed by the courts, (2) establishing realistic payment schedules, (3) taking appropriate steps to ensure timely payment, and (4) involving the U.S. Attorney's Financial Litigation Unit when offenders fail to meet financial obligations.⁵

In its Probation Manual, AOUSC provides some general guidance to probation officers on completing the financial investigation for the presentence report. However, this guidance is directed toward providing information that will assist the judge in determining the total amount of the fine or restitution to be ordered. In the districts we visited, these responsibilities were handled by presentence probation officers.

The supervision probation officers who monitor offenders on probation or supervised release after sentencing received only general guidance on how an offender should be required to pay fines and restitution that were not paid at the time of sentencing. For example, while the guidance included instructions on forms to complete and data to collect, it offered no specifics on how to interpret the information collected, such as what constituted a realistic payment schedule, when to consider assets available, or the specific types of expenses that could be considered necessary. As a result, as shown in the following sections, individual probation officers were left to create their own arbitrary standards, thus producing inequitable results.

⁴Update to Probation Officers on the Imposition and Collection of Fines and Restitution, September 1995.

⁵Upon request by the probation officer, the U.S. Attorney's Financial Litigation Unit can do financial background checks on offenders and pursue garnishing an offender's wages or placing liens on an offender's assets.

Training Provided by FJC

FJC provided in-district training programs on financial investigations designed to, among other things, develop and enhance probation officers' skills in determining an offender's ability to pay fines and restitution. The training suggested tools to use in making determinations of how an offender should be required to make payments on fines and restitution ordered by the court. AOUSC officials informed us that the training reflects their policies, and FJC officials agreed that the more specific guidance in the training is based on AOUSC's general policies.

FJC records show that between fiscal years 1995 and 1997, it provided this training to 4,427 court personnel in 76 of 94 court districts, including court personnel in the Central District of California and the Northern District of Texas. According to the Chief of FJC's Probation and Pretrial Programs, while the exact number of probation officers who took the training is uncertain, the training was given predominately to probation officers. FJC officials, however, stated that the training provided was not mandatory, and, under the division of responsibilities in the judicial branch, neither FJC nor AOUSC can require that the training be taken. According to AOUSC officials, the chief judge has the authority to require probation officers to take the training. Thus, AOUSC policies, if reflected in the training, were distributed in a manner that does not ensure that officers were aware of it or subscribed to it.

FJC informed us that they provided financial investigation training as part of their orientation programs for new probation and pretrial services officers. FJC's training and guidance offered a detailed approach to collecting and analyzing financial information to determine an offender's ability to pay. This financial investigation training included a formula that could be used to compute a monthly installment payment schedule, a definition of necessary expenses, general guidance on the amount of specific expenses to allow as necessary, and steps to take in analyzing an offender's personal financial statement. As part of the training program, FJC provided the Financial Investigation Desk Reference for U.S. Probation and Pretrial Officers to assist probation officers in determining an offender's ability to pay. The desk reference included information such as (1) the type and frequency of financial information that should be obtained from offenders in determining their ability to pay, (2) a general definition of necessary monthly expenses, (3) a formula to use in setting installment payments, and (4) guidance on how to verify assets or income reported by offenders. However, the cover page of the Financial Investigation Desk Reference states:

“This Federal Judicial Center publication was undertaken in furtherance of the Center’s statutory mission to develop and conduct education programs for judicial branch employees. The views expressed are those of the authors and not necessarily those of the Federal Judicial Center.”

In determining ability to pay, the training recommended that probation officers first look at cash or other assets that can be made available for immediate payment by the offender. The training suggested that if probation officers suspected that offenders’ lifestyles or spending habits exceeded their reported income, the officers could search for unreported assets or income by requesting credit checks or checks for unreported real estate. The training also recommended verification of income through pay stubs or tax information.

The FJC training advised that, in considering what assets are available to pay fines and restitution, probation officers could assume that most securities could be readily converted to cash and that real estate could be sold. The training suggested that it would be more desirable for offenders to borrow against an asset rather than liquidate it, since the liquidation of an asset can be a lengthy process.

The training recommended that if the offenders do not have the ability to pay the fines or restitution immediately, probation officers should set an installment payment schedule by deducting necessary monthly expenses from monthly income to arrive at cash flow. The monthly cash flow, less an unspecified amount for emergencies and unforeseen expenditures, should be available to make payments on restitution or fines.

The training advised that probation officers should use caution when assessing the types and amounts of necessary expenses. It defined necessary expenses as those necessary for the offender’s continued employment and for the basic health and welfare of the offender’s dependents.

The FJC financial investigation training portion of new officer orientation also advised, but did not require, using the Consumer Expenditure Tables published by the Bureau of Labor Statistics as a reasonable estimate of current expenses. These tables provide average annual household expenses by income level. The training suggested using a percentage of expenses in relation to income as a reasonable way to estimate expenses. For example, about 5 to 7 percent of gross income would be allowed for utilities by families with incomes between \$30,000 and \$39,999, while

another 23 to 30 percent of gross income would be allowed for housing. The training cautioned, however, that the tables should be used only as a general guide and that the information, which is dated, has limited usefulness.

Starting in 1995, FJC reported that they also invited officers to attend regional seminars, which included financial investigation techniques. According to the FJC, participants were selected in part because of their willingness and ability to carry the results of the training to their home districts. FJC figures show that the training reached officers in 76 districts, and 61 of those 76 districts reported to FJC that they implemented financial investigation projects after these seminars. In 1997 FJC reported on 10 of those 61 projects designed to address one or more aspects of fines and restitution.⁶ For example, FJC reported that

- The Northern District of California improved its databases, resulting in an increase in the number of offenders with payment plans from 21 percent to 39 percent over a 4-month period.
- The Eastern District of Virginia developed a project that explored new techniques of more accurately assessing an offender's ability to pay a fine or restitution.
- The Middle District of Florida formed a financial investigation committee to assist officers and to develop additional avenues for locating hidden or criminal assets.

The FJC report provided examples of ongoing programs and projects in the Eastern District of Pennsylvania, the Eastern District of New York, the Eastern District of Wisconsin, the Western District of Oklahoma, the Northern District of Indiana, the Southern District of Illinois, and the Southern District of West Virginia. We did not evaluate FJC's projects. Nor did we attempt to determine the extent to which these projects disseminated the training to probation officers in the districts or the extent to which probation officers implemented this guidance.

Although AOUSC officials believed the training reflected their policies, the training was not transmitted to all probation officers as policy, as were other documents such as Monograph 109. Instead, training was voluntary and was not taken by all probation officers. Officials in the districts we visited did not consider the FJC training as policy to be followed when establishing payment schedules. Officials in the Northern District of Texas had recently revised their local guidance on an offender's ability to pay

⁶We did not verify the results reported from these programs and projects.

finances and restitution but acknowledged that the references did not include FJC's Financial Investigation Desk Reference. In the Central District of California, we interviewed 11 supervisors, only 1 of whom mentioned a "handbook from the [Federal] judicial center" when commenting on the guidance available from the AOUSC. This supervisor also stated that he saw memorandums from the AOUSC, but the memorandums were general, not specific. Two of the supervisors cited AOUSC's Monograph 109: Supervision of Federal Offenders. One of these supervisors cited Monograph 109 and "little else," adding that Monograph 109 is "general, not specific." One cited "general guidelines" and a "training program 5 or 6 years ago that included a video," but no ongoing training. Other responses from supervisors concerning AOUSC guidance included "can't think of any," "hasn't seen anything," and "interpretation of statute only."

Local Guidance Provided by the Districts

In addition to the guidance provided by AOUSC, both districts we reviewed provided local guidance to probation officers on determining an offender's ability to pay fines and restitution. The Central District of California provided both (1) a supervision handbook, which included general instructions on the need to establish installment payment schedules and (2) a training module on financial investigation, which included the need for completion by the offender of a personal financial statement and incorporated some of the FJC training on financial investigation. However, as with the guidance provided by the AOUSC, the local guidance lacked specifics, leaving it up to the individual probation officer to decide how installment payment schedules should be established.

In August 1997, the Northern District of Texas provided local guidelines that advised probation officers, when determining payment schedules, to "pay attention to" indicators such as luxury items, excessive travel, and "unnecessary expenditures." The latter included loan payments to family members, loans to family members, private school tuition, unemployed spouses able to work, and funds paid out for home and lawn maintenance. However, the guidance does not specify how these items should be considered in setting a payment schedule. Also, as previously cited, the local guidance did not refer to the FJC training.

Inconsistencies in How Payment Schedules Were Established Created Apparent Inequities

To determine how payment schedules were established for offenders who owed court-ordered fines or restitution, we reviewed 242 cases in the Central District of California and 253 cases in the Northern District of Texas. Of these cases, 24 of the California cases and 16 of the Texas cases had been either closed by the judge, returned to court, or transferred to another district. Because the complete file was not available to us in these cases, we did not identify issues in these cases for this review. Further, the offender paid the fine or restitution as a lump sum in 36 of the California cases and 33 of the Texas cases. Again, for this review, we identified no issues in these cases because the fine or restitution was paid in full at or near the time of sentencing. Table 1 shows the percentages of sample cases where the fines and restitution were paid as a lump sum or by installments.

Table 1: How Offenders in Sample Cases Were to Pay Their Fines and Restitution

Type of court-ordered payment	Central District of California				Northern District of Texas			
	Lump-sum payment		Installment payment		Lump-sum payment		Installment payment	
	Cases	Percent	Cases	Percent	Cases	Percent	Cases	Percent
Fine	22	25%	67	75%	21	23%	71	77%
Restitution	5	5	88	95	4	4	89	96
Fine and restitution	9	25	27	75	8	15	44	85
Total cases	36	17	182	83	33	14	204	86

Note: These percentages exclude cases that were closed, transferred, or returned to court.

Source: GAO analysis of offender case files.

In the remaining cases where offenders were expected to make installment payments, we identified issues of inconsistency and apparent inequity among either victims or offenders in 112 of the 182 cases (62 percent) in the Central District of California and 85 of the 204 cases (42 percent) in the Northern District of Texas. We also identified issues in those cases in which financial documents, submitted by the offender, suggested that assets or income might have been available to pay fines or restitution on a more complete or timely basis. Issues identified by us during our review included

- lack of consideration given to additional assets that might have been available to pay toward the fine or restitution;
- use of arbitrary methods to establish the installment payment schedules that were not linked to income, expenses, or other financial criteria;

- reported “necessary” expenses that appeared high in relation to location and family circumstances; and
- financial information that was not current and had not been updated for 18 months or more.

Table 2 summarizes the percent of installment-payment cases in our sample where we identified these types of issues.

Table 2: Sample Cases With Issues About How Payment Schedules Were Established

Type of court-ordered payment	Central District of California			Northern District of Texas		
	Cases with payment schedules	Number with issues	Percent with issues	Cases with payment schedules	Number with issues	Percent with issues
Fine	67	49	73%	71	30	42%
Restitution	88	49	56	89	34	38
Fine and restitution	27	14	52	44	21	48
Total cases	182	112	62	204	85	42

Source: GAO analysis of offender case files.

Our case file reviews and discussions indicated that individual probation officers, in the absence of guidance that included financial standards, developed their own arbitrary methods for determining offenders’ payment schedules for court-ordered fines and restitution. As described in the following sections, related issues include what types of assets should be made available for lump-sum payments and how installment payment schedules were established when offenders did not make lump-sum payments.

Guidance Lacked Specifics on What Types of Assets Should Be Made Available for Payments

Offenders are to report their assets, such as bank accounts, securities, and real estate on the personal financial statement.⁷ However, there are no standards on what kinds of assets could be considered available for payment. For example, there is no guidance on what a probation officer should do if assets are jointly held with another family member or held in a retirement account.

⁷According to FJC’s Financial Investigation Desk Reference for U.S. Probation and Pretrial Services Officers, the Financial Investigation Task Force was organized by AOUSC in response to our report, *After the Criminal Fine Enforcement Act of 1984—Some Issues Still Need to Be Resolved* (GAO/GGD-86-2; Oct. 10, 1985). The report recommended the development of a standard report to assist probation officers in compiling financial information in a complete and uniform manner. The task force created the personal financial statement in 1987 and a standard process to assist officers in conducting financial investigations. FJC also developed a training program.

We identified issues of inconsistency and apparent inequity in cases where offenders reported assets that might have been available for payments but there was no indication in the file that probation officers considered these assets as a means for payments. We interviewed probation officers responsible for the cases in question, and they could not always explain why the assets were not considered available to apply toward the fines or restitution owed. Table 3 shows the percent of cases in which we identified these types of issues.

Table 3: Installment Payment Cases Where Additional Assets Might Have Been Available but Were Not Considered for Payments

Type of court-ordered payment	Central District of California			Northern District of Texas		
	Cases with payment schedules	Cases with issues	Percent with issues	Cases with payment schedules	Cases with issues	Percent with issues
Fine	67	21	31%	71	3	4%
Restitution	88	10	11	89	6	7
Fine and restitution	27	9	33	44	15	34
Total cases	182	40	22	204	24	12

Source: GAO analysis of offender case files.

The following examples illustrate cases where assets might have been available but were not considered for payments toward fines or restitution owed by offenders.

- An offender was convicted of a fraud scheme and sentenced to 12 months in prison and 36 months of supervised release. He was also ordered to pay a fine of \$15,000 and restitution of \$153,000. The offender reported a monthly income of \$3,000 and was required to make monthly installment payments of \$100. The offender reported a second home valued at \$850,000 on one personal financial statement; on his next statement, that it had been sold. The probation officer supervising the case said he did not know what the offender did with the proceeds from the sale. After our case review, AOUSC followed up on the case and provided further details that showed the offender actually sold the second home for \$680,000 around the time of sentencing and did not apply the \$52,000 proceeds in equity from the sale toward his restitution. However, we did not find guidance that would have advised the probation officer to notify the judge or the U.S. Attorney to advise them when an offender is disposing of assets that may be used toward payments.

- An offender was convicted of racketeering and was sentenced to 72 months in prison and 36 months of supervised release. He was also ordered to pay a fine of \$32,000 and restitution of \$8,000. The offender reported a monthly income of \$2,800 and expenses of \$1,700 and was required to make monthly installment payments of \$200. While under supervision, the offender sold \$20,000 worth of securities but did not report what he did with the proceeds. The probation officer supervising the case did not know what the offender did with the proceeds from the sale, and we did not find guidance advising when an officer should ask that securities be used toward payments or if the officer should notify the judge when the offender disposes of assets that could be applied toward payments.
- An offender was convicted of posing as a stockbroker for a national brokerage house, and selling counterfeit securities in well-known legitimate companies by phone. He was sentenced to 36 months in prison and 36 months of supervised release. He was ordered to pay over \$100,000 in restitution. The offender was required to make monthly payments of \$400 to his victims. The offender, who was single, reported a monthly income of \$4,600 and necessary monthly expenses of \$3,200, which included leases on two vehicles of \$875. The offender verbally claimed ownership of a painting valued at \$185,000, but later claimed that the painting was jointly owned with his mother. The offender also claimed his mother would be paying his restitution since he was 4 months in arrears on his payments to his victims. A letter in the case file from one of his victims inquired why restitution was being received so slowly. He also claimed life insurance with a cash surrender value of \$25,000. We did not find guidance on the documentation that the probation officer should have obtained concerning ownership of jointly held property, how jointly held property should be considered when restitution is owed to victims, or how to handle promises of future payments by relatives or others when the offender stops making payments.
- An offender convicted of bank robbery was sentenced to 46 months in prison and 36 months of supervised release. He was also ordered to pay \$1,450 in restitution. The offender reported a monthly income of \$1,638 and expenses of \$1,190. The offender was received for supervision in October 1995, and the probation officer set the initial payment at \$50 per month. In January 1996, the offender requested and received approval from the probation officer to travel to another city outside the district to receive a legal settlement of \$6,500, promising to use the proceeds toward the restitution, and submitted supporting documentation for the trip to the probation officer. However, the offender applied none of the settlement toward the restitution, and, at the time of our review in July 1997, had

made only one \$25 payment in February 1997 toward the restitution. Also, at the time of our review, no personal financial statement had been obtained from this offender, who had been under court supervision for almost 2 years. We found no guidance advising the probation officer about how to handle a case where an offender stops making payments based on promises of large, future payments and then fails to pay. After we discussed this case with district officials, the offender's supervised release was revoked for several reasons according to AOUSC, including nonpayment of restitution.

- An offender convicted of wire fraud was sentenced to 36 months of probation. The offender was fined \$3,000 and ordered to pay restitution of \$1,995. The offender reported an average monthly income of \$8,200 and necessary monthly expenses of \$8,100. The probation officer set the payment at \$90 per month. The offender reported over \$65,000 in a personal savings account. The probation officer stated that as long as the offender made the \$90 monthly payment, he left him alone; and there was no guidance that even large, cash amounts in bank accounts should be applied toward fines or restitution.

In other cases, probation officers did not consider immediate payment as necessary, even if the offender reported enough cash to make an immediate payment toward fines or restitution. For example:

- One offender, a doctor, was convicted of participating in a fraudulent auto accident insurance scheme by certifying nonexistent injuries as real. The offender was sentenced to 60 months of probation and 3,000 hours of community service. The offender was also fined \$10,000. The probation officer set the installment payment at \$200 per month. The offender reported real estate worth over \$1,000,000 with over \$900,000 in equity and over \$500,000 in cash assets, including \$20,000 in a personal bank account. Despite a claim of changed circumstances, the offender's necessary monthly expenses included a pool maintenance man and a gardener for the offender's home in Beverly Hills. The probation officer supervising the case told us that it was not necessary for the offender to pay off the fine any sooner than by the end of the offender's 60-month probationary period, which, according to AOUSC, was eventually paid. There was no guidance that would clarify whether this offender should have made an immediate payment instead of paying it off over 5 years. There is no specific guidance on what assets, even \$500,000 in cash assets, should be used to pay a fine or restitution.
- In another case, an offender convicted of bribery was sentenced to 36 months of probation and ordered to pay a \$1,500 fine. The offender

reported having over \$25,000 in the bank. The probation officer on this case also told us that immediate payment was not expected of offenders and set a payment schedule of \$50 per month, and there was no guidance on whether large cash sums in the bank should be used to pay off fines.

Guidance Lacked Specifics on How to Determine Installment Payment Schedules

If an offender is unable to make an immediate lump-sum payment, installment payment schedules may be used.⁸ As shown earlier, most offenders in our sample paid their fines or restitution by installments. For these cases, installment payment schedules were most often set by probation officers in the Central District of California and by judges, generally using information provided by probation officers, in the Northern District of Texas, as shown in table 4.

Table 4: Person Who Set the Installment Payment Schedule for the Sample Cases

Type of court-ordered payment	Central District of California						Northern District of Texas			
	Probation officers		Judges		Other ^a		Probation officers ^b		Judges	
	Cases	Percent	Cases	Percent	Cases	Percent	Cases	Percent	Cases	Percent
Fine	45	67%	12	18%	10	15%	32	45%	39	55%
Restitution	75	85	6	7	7	8	38	43	51	57
Fine and restitution	20	74	2	7	5	19	17	39	27	61
Total cases	140	77	20	11	22	12	87	43	117	57

^aIncludes cases where payment schedules were set by other federal agencies that were owed restitution, such as the Resolution Trust Corporation, where we could not determine who set the payment schedule, or where an installment payment schedule should have been set but was not.

^bAs we noted earlier in this report, the law in Texas currently does not allow judges to delegate the setting of installment payment schedules to probation officers. The cases in our sample where probation officers set the schedules included cases that were transferred from other districts and cases that predated the 1994 U.S. Court of Appeals decision that precluded judicial delegation of this function.

Source: GAO analysis of offender case files.

When installment payment schedules were set by judges, probation officers were responsible for monitoring installment payments made while the offender was on probation or under supervised release. The probation officer was also responsible for suggesting increases or decreases in the

⁸For fines, the U.S. Sentencing Guidelines state that the length of the installment payment schedule generally should not exceed 12 months. The sentencing guidelines further provide that the defendant should be required to pay a substantial installment at the time of sentencing. For fines and restitution, the law [18 U.S.C. 3572 (d)(2)] requires that if the order permits other than immediate payment, the length of time over which scheduled payments will be made shall be set by the court, but shall be the shortest time in which full payment can be reasonably made.

payment amount based on changes in the offender's ability to pay. In the Northern District of Texas, the four judges we interviewed told us that when they set the installment payment amount, they depended "very heavily," "exclusively," "99 percent of the time," and "almost exclusively," respectively, on the recommendations from the probation officer. In addition, the installment payment amount could be identified by the judge as "not less than" a given amount, and the probation officer could recommend a higher payment.

We identified cases in which arbitrary methods not linked to income, expenses, or other financial criteria were used to establish the installment payment schedules. Table 5 shows the percent of sample cases where we identified issues about the methods used by probation officers to establish or recommend the installment payment schedules.

Table 5: Cases Where Arbitrary Methods Were Used to Establish the Installment Payment Schedule

Type of court-ordered payment	Cases with payment schedules	Cases with issues	Percent with issues	Cases with payment schedules	Cases with issues	Percent with issues
Fine	67	29	43%	71	12	17%
Restitution	88	31	35	89	12	13
Fine and restitution	27	10	37	44	5	11
Total cases	182	70	38	204	29	14

Source: GAO analysis of offender case files.

As shown in the following examples, the probation officers we interviewed used arbitrary methods for developing installment payment schedules, including negotiating amounts, accepting good-faith payments, and choosing round numbers that were not linked with income, expenses, or other financial criteria.

- An offender was convicted of illegally selling explosives and was sentenced to 33 months in prison and 36 months of supervised release. He was also fined \$3,000. The offender reported an average monthly income of over \$2,000. The probation officer said she determined an installment payment schedule by suggesting payment amounts until the offender heard an amount he thought he could live with. She said the offender finally agreed to pay \$25 a month, although he thought this amount was unreasonable.

- An offender was convicted of attempting to manufacture methamphetamine and was sentenced to 60 months in prison and 48 months of supervised release. He was also fined \$6,000. The offender reported a monthly income of \$2,200 as a production supervisor. The probation officer selected a monthly payment amount of \$100 because he said it was a nice round number.
- An offender was convicted of leasing one of his ranches for the manufacture of methamphetamine and sentenced to 18 months in prison and 36 months of supervised release. He was also fined \$3,000. The offender reported a monthly income of \$4,600. The probation officer said that the offender's previous probation officer had set a monthly payment of \$50, and the current probation officer said he did not know how it was set, except that the payment appeared to be a good-faith payment.
- An offender was convicted in a fraud scheme and sentenced to 24 months in prison and 36 months of supervised release. He was ordered to pay \$2.8 million in restitution. The offender reported a monthly income of over \$4,000. The probation officer said that she arrived at a monthly payment of \$50 through "almost a negotiation process, what they're comfortable with, almost like bartering."
- An offender was convicted of conspiracy to commit bank fraud and was sentenced to 36 months in prison and 60 months of supervised release. He was also ordered to pay \$1 million in restitution. The offender reported a monthly income of \$1,700. The probation officer accepted \$50 as an installment amount because, he said, he didn't know how to handle this case.

Arbitrary Methods Affected Lower-Income Offenders

Because installment payment schedules were set using arbitrary methods, some offenders with lower incomes were expected to make higher payments than offenders with higher incomes who owed more in fines or restitution. For example, based on financial criteria such as income and expenses, the following offenders appeared to be paying a much higher percentage of income toward fines and restitution than other offenders presented as examples in this report with higher incomes who owed more in fines or restitution.

- An offender was convicted of cashing counterfeit checks and sentenced to 1 month in prison and 60 months of supervised release. She was also ordered to pay about \$8,000 in restitution. The offender, who had four children, reported a monthly income of \$737 from welfare. The probation officer set the monthly installment payment at \$50.

- An offender was convicted of filing false claims for state disability insurance and sentenced to 24 months of probation. He was ordered to pay \$900 in restitution. The offender had a wife and four children and reported a monthly income of \$800. The probation officer set the monthly payment at \$50.
- An offender, a single mother with one dependent child, was convicted of filing a false home-loan application and was sentenced to 1 day in prison and 36 months of supervised release. She was ordered to pay \$32,000 in restitution when she defaulted on the loan. She reported a monthly income of \$2,400. The probation officer set the payment schedule at \$1,000 per month.

Guidance Lacked Specifics on the Type or Amount of Expenses Considered Necessary

Offenders are to report their necessary monthly expenses on a personal financial statement that identifies the types of expenses that could be listed as necessary, including home rent or mortgage, utilities, groceries and supplies, insurance, minimum installment payments, transportation, medical, clothing, and other. The personal financial statement also requires the offender to deduct necessary monthly expenses from reported income to arrive at cash flow. However, AOUSC has not developed standards to help probation officers decide what type or amount of expenses should be considered necessary.

As discussed earlier, FJC training defined necessary expenses as those necessary for the offender's continued employment and for the basic health and welfare of the offender's dependents. AOUSC includes this definition in its Probation Manual in sections concerning the presentence report used to assist the judge in determining the total amount of fine or restitution to order in the case. However, there is no specific guidance on actual types or amounts of expenses that might be considered as necessary. As a result, probation officers in cases where we identified issues often just accepted the types or amounts of expenses listed as necessary by the offender.

FJC training also advised, but did not require, using data published in the Bureau of Labor Statistics' Consumer Expenditure Tables as a general guide to reasonable expenses and recommended using cash flow reported by the offender—income less necessary expenses—as the basis for setting an installment payment schedule. While we did not evaluate whether these tables are the best available for this purpose, their application to these cases illustrates the impact of using financial standards in determining an offender's ability to pay a fine or restitution.

We identified issues of inconsistency and apparent inequity in those cases where the types or amount of expenses reported as necessary appeared high in relation to location or family circumstances. Table 6 shows the percent of cases in which we identified these types of issues.

Table 6: Installment Payment Cases With Expenses That Appeared High in Relation to Income or Family Circumstances

Type of court-ordered payment	Central District of California			Northern District of Texas		
	Cases with payment schedules	Cases with issues	Percent with issues	Cases with payment schedules	Cases with issues	Percent with issues
Fine	67	18	27%	71	4	6%
Restitution	88	17	19	89	7	8
Fine and restitution	27	6	22	44	8	18
Total cases	182	41	23	204	19	9

Source: GAO analysis of offender case files.

The following are examples of cases in which we identified issues about the type or amount of expenses.

- An offender was convicted of fraud and sentenced to 12 months in prison and 36 months of supervised release. He was also ordered to pay over \$160,000 in restitution. The offender reported an average monthly income of about \$12,000 and over \$14,000 in necessary monthly expenses for himself, his spouse, and one dependent child. The necessary monthly expenses included mortgage payment expenses of about \$6,000, entertainment expenses of \$350, clothing expenses of \$400, and \$5,000 of unspecified miscellaneous expenses. Consumer Expenditure Tables identified total monthly expenses of \$4,700 for a household at this income level, including \$101 in miscellaneous expenses. The offender was required to make monthly restitution payments of \$300. At that rate, it would take the offender over 40 years to pay his restitution. AOUSC reported that there was a lien against the offender's home. However, the offender's financial statements showed the mortgage on the home was more than the home was worth. We did not, however, find any specific guidance from AOUSC on the amount of miscellaneous expenses that should be considered necessary for a family of three, the total amount of expenses that could be reasonably considered necessary, nor how to set the installment payment schedule.
- An offender was convicted of illegally ordering machine gun parts and sentenced to 74 months of probation. He was also fined \$3,000. The

offender reported a monthly income of \$3,000 and expenses of \$2,310, including a \$440 payment on a recreational boat. There was no guidance from AOUSC on whether payments on recreational vehicles can be deducted from an offender's income as necessary expenses. The offender's payment was set at \$150 a month.

- An offender was convicted of environmental crimes related to illegal dumping and was sentenced to 60 months of probation. He was also fined \$50,000. He reported a monthly income of \$5,000 for himself and \$10,000 for his spouse, who managed his business. The offender reported over \$12,000 in necessary monthly expenses, including over \$5,000 in monthly mortgage expenses and \$1,500 for groceries and supplies. The Consumer Expenditure Tables identified monthly household expenses of \$4,700 for a household at this income level, including \$1,411 for housing and \$657 for groceries and supplies. The offender also reported taking a \$6,000 European cruise with his wife, which he verbally claimed was nonrefundable and had been purchased prior to sentencing, although the file showed that, based on prior statements by the offender, it had been purchased after sentencing. AOUSC followed up on this case and reported that the offender eventually paid the fine prior to taking the cruise, although neither the probation officer nor the probation officer's supervisor was aware that the offender had made any payments as of 10 months after sentencing and the case file showed no payments had been made. However, there was no guidance from AOUSC on what documentation should be obtained from an offender regarding recreational travel, such as cruise ship documents showing the purchase date and the extent to which the cruise was refundable, when there is no evidence that the fine or restitution has been paid, nor what would be necessary monthly expenses for this offender and his wife, nor how to consider spousal income when the spouse is employed by the offender.
- An offender was convicted for possession and sale of stolen goods and sentenced to 10 months in prison and 24 months of supervised release. He was also fined \$5,000. The offender reported monthly income averaging \$2,500 and expenses of \$2,335. His monthly payment was set at \$210. He made two payments and stopped because of a self-declared inability to pay because of all his expenses. After he stopped making payments, the offender, a salesman, moved from an \$800 monthly rental home to a \$1,400 monthly rental home that the probation officer described as a "huge home with horse property." AOUSC followed up on this case and noted that the offender moved to an area with a "substantially higher standard of living." The offender, a salesman of technical equipment with a territory, did not, however, change jobs. The Consumer Expenditure Tables identified housing expenses of \$631 at this income level. However, we did not find

any guidance about whether a voluntary move to an area with a higher standard of living precluded an offender from making payments on fines or restitution owed or what necessary housing expenses should be.

- An offender was convicted of misapplication of bank funds and sentenced to 30 months in prison and 36 months of supervised release. He was also ordered to pay \$35,000 in restitution. He reported a monthly income of about \$7,600 and expenses of about \$7,500. His reported monthly expenses included \$800 for car payments and \$960 for private school tuition. The Consumer Expenditure Tables identified expenses of \$347 for car payments and \$78 for education expenses at this income level. The offender reported high medical expenses due to a disabled child as necessary but did not offset those expenses with the medical insurance payments that the file showed he received. The probation officer originally set the monthly installment payment at \$100, then increased it to \$200 at the time of our review. However, we did not find AOUSC guidance on how to treat necessary expenses in determining installment payment schedules when those expenses are being reimbursed by a third party.
- An offender was convicted of making false statements on a loan application and sentenced to 6 months in prison and 48 months of supervised release. The offender was ordered to pay about \$33,000 in restitution. The offender reported a monthly income of over \$7,500 and expenses of about \$7,000. The Consumer Expenditure Tables identified \$4,700 of monthly household expenses at this income level. Included in the expenses was a monthly payment of \$750 to the offender's sister. The probation officer acknowledged that payments to the offender's sister could be scaled back. However, there was no guidance from the AOUSC on how to treat payments to relatives that are identified by offenders as necessary expenses and used to reduce the amount of the income available for monthly installment payments on restitution owed. The probation officer set the monthly payment at \$100.

Offenders' Case Files Had Outdated or Missing Financial Statements

In its guidance to probation officers, AOUSC advised that, in most instances, offenders should be required to submit updated financial statements every 6 months. However, AOUSC does not provide guidance on when financial statements should be updated. According to the FJC training, for cases where offenders could not pay their fines or restitution in a lump sum, probation officers were advised to review the status of net assets, net income, and necessary expenses on a regular basis, at least once every 6 months. Local guidance issued by the Northern District of Texas suggests initiating a financial investigation if a significant increase or decrease in

the offender's earning ability is noticed. As a general rule in this district, any case having a financial obligation should be investigated annually.

Offenders are also required by the local district offices to submit monthly supervision reports. In the Central District of California, the monthly supervision reports include monthly income and any purchases over \$500. In the Northern District of Texas, the monthly supervision reports also include total amount of expenses. However, the monthly supervision reports do not include the detailed financial information included on the personal financial statement.

Despite the guidance and training, we found that financial statements were not maintained on a current basis for many offenders in our sample who paid their fines and restitution in installments. Although the 6-month period was suggested for most offenders, to be conservative we only classified financial statements as too old to be useful if one had not been obtained for at least 18 months or more. We also found cases that had been active for 18 months or more without having a financial statement completed. Table 7 shows the percent of cases where (1) the financial statements were 18 months old or older or (2) no financial statement was in the file and the case was active for 18 months or more. Because the financial information was outdated for these cases, probation officers were not in a position to determine whether the installment payment schedule needed adjustment.

Table 7: Installment Payment Cases With Outdated or Missing Financial Statements

Type of court-ordered payment	Central District of California			Northern District of Texas		
	Cases with payment schedules	Cases with issues	Percent with issues	Cases with payment schedules	Cases with issues	Percent with issues
Fine	67	18	27%	71	18	25%
Restitution	88	14	16	89	27	30
Fine and restitution	27	6	22	44	11	25
Total cases	182	38	21	204	56	27

Source: GAO analysis of offender case files.

Following are some examples of cases where we found the financial statement in the file to be at least 18 months old or missing.

- An offender convicted of computer hacking to get into private telephone systems was sentenced to 6 months in prison and 24 months of supervised release. He was also ordered to pay \$38,000 in restitution. The probation officer set the installment payment at \$200 a month, and this amount was not changed. The offender's most current financial statement was 60-months old. Other information in his file showed his income had almost doubled; there was no information on changes in expenses, assets, or cash flow. However, there was no guidance from AOUSC on whether this is the type of circumstance in which an updated personal financial statement should generally be obtained.
- An offender was convicted of obtaining over 20 fraudulent lines of credit and sentenced to 5 months in prison and 36 months of supervised release. She was also ordered to pay \$75,000 in restitution. The probation officer set the installment payment at \$150 per month. Her latest financial statement was 36 months old at the time of our review and showed monthly income of over \$4,000 and monthly expenses of \$3,385. The offender requested a reduction in payments, claiming financial hardship and a reduced income. While her financial circumstances had changed, she did not report the income of her husband, a college professor, which was reported in documents used for the presentence report. However, there was no guidance from AOUSC on whether this was a circumstance in which a current financial statement should generally be obtained or on how to treat spousal income.
- An offender was convicted of mail fraud and sentenced to 2 months in prison and 36 months of supervised release. He was also ordered to pay \$11,000 in restitution. The judge set the monthly installment payment at \$250, and the amount was not changed. Approximately 2 months before the payment was set, the offender reported a monthly income of \$1,600 and monthly expenses of \$1,350. The probation officer had not requested a current financial statement in the last 24 months. During this period, the files showed that the offender's income had increased to over \$3,000 per month, and there was no record of his expenses. However, there was no guidance from AOUSC on whether this is the type of circumstance in which a current personal financial statement should generally be obtained.

Conclusions

Probation officers did not have specific guidance and financial standards clearly established by AOUSC as policy on how payment schedules should be determined for offenders who owed fines or restitution. In the absence of such guidance and standards, probation officers often created their own arbitrary methods for determining whether and to what extent offenders had the ability to pay their court-ordered fines and restitution. In many

cases, probation officers also lacked the current financial information necessary to monitor changes in offenders' ability to pay. Inconsistencies on the part of probation officers in setting payment amounts resulted in apparently inequitable treatment of some offenders and victims and reduced and slowed payments to the Crime Victims Fund and to crime victims. Although our detailed reviews were limited to two judicial districts, the fact that probation officers in the other judicial districts have the same limited guidance and lack financial standards creates the risk that similar inconsistencies and apparent inequities could occur nationwide.

FJC reported that other districts had initiatives under way to try to improve training and guidance on fines and restitution. We did not evaluate these initiatives, but even if they help improve decisionmaking in those districts, they are local initiatives designed to address local needs—not a coordinated national effort to ensure consistency and equity within and among all judicial districts.

AOUSC officials believe that the FJC training materials that were more specific reflected their policies and that probation officers should have considered them as such. However, these training materials included a qualifier stating that they reflected the views of the authors, not FJC. Also, the material and training were offered on a voluntary basis and not all probation officers participated. Thus, we believe it is reasonable for probation officers who took the training to be uncertain about whether it constituted AOUSC policy, which is usually transmitted under signature to all chief probation officers as policy, and for other probation officers not even to have seen the material.

We have not done sufficient work to conclude that a specific set of standards is preferable, nor do we suggest anything that would limit the judge's final discretion in reviewing a probation officer's recommendation on how an offender should be required to pay. However, our review showed that if specific financial standards had been used to determine an offender's ability to pay fines and restitution ordered by the courts and financial information had been regularly updated, it would have helped reduce the inconsistencies and apparent inequities we found in the sample cases in these two court districts.

Recommendations

We recommend that the AOUSC

- establish, as policy, specific guidance on how probation officers should determine how offenders should pay their fines and restitution, including criteria establishing what types of assets should be considered for immediate lump-sum payments or substantial payments; how installment schedules should be established; and the type and amount or range of expenses that should ordinarily be considered necessary when determining the amount of payments under installment schedules;
- establish as policy that personal financial statements should be obtained on a regular, timely basis, such as every 6 months or when circumstances change, from offenders on installment payment schedules; and
- implement procedures to ensure that probation officers are aware of and recognize the guidelines as AOUSC policy.

Agency Comments and Our Evaluation

AOUSC, FJC, DOJ, and the U.S. Sentencing Commission provided written comments on a draft of this report (see apps. III, IV, V, and VI.) AOUSC provided seven overall comments on the report, which are discussed in detail in appendix III. Four enclosures were provided to expand on these comments. Due to their length, we have not reproduced the enclosures in this report but rather we summarize them and comment on them in the text of the report and in appendix III. We have summarized the seven overall comments as follows.

AOUSC's first two comments reflect its view that it has provided the probation officers with sufficient guidance to make payment schedule decisions, and any problems noted in this report result from the failure of individual probation officers to follow that guidance. AOUSC provided documentation with its comments to support its view that specific guidance was available. We reviewed the documents and found that, in reaching conclusions about the lack of specific guidance available to probation officers, we had already considered the most relevant documents and believe that none of the guidance addresses the issues raised in this report.

The most relevant documentation was Publication 107: The Presentence Investigation Report; Monograph 109: Supervision of Federal Offenders; and the "Update to Probation Officers on the Imposition of Fines and Restitution dated September 1, 1995." As we reported, these documents only generally addressed fines and restitution and did not specifically address how probation officers should establish payment schedules for offenders under supervision who owed fines or restitution. For example, the guidance lacked specifics about issues that we noted in our case

examples. The other documentation furnished—a mixture of statutes, general guidance, and articles from various publications—would not have resolved the issues raised in this report because none of them were official policy statements on how offenders should pay their fines and restitution.

AOUSC also commented that the FJC training reflects AOUSC's policies on how to determine payment schedules, and probation officers in the field should have been aware of this. However, as discussed in the report, the training was voluntary and not all probation officers took it. We question whether a voluntary training program is the most appropriate way to communicate agency policy to all staff affected by the policy.

Third, AOUSC commented that we should eliminate the impression that it has statutory authority to mandate compliance with our recommendations. However, it is AOUSC's responsibility to articulate policies, guidance, and standards. In its annual report for 1997, AOUSC stated that it provides national standards and policies as well as administrative and management guidance to probation officers. AOUSC can establish policies even if those policies cannot be mandated without the support of the district judges.

Fourth, AOUSC commented that our report should clearly indicate that the review was a study of conditions in two courts and that there were different practices between the two courts. We emphasize this point throughout the report.

Fifth, AOUSC commented that most of our sample cases predated MVRA, and our report does not consider important differences in the laws in effect then and now. MVRA mandates that restitution be ordered in all cases where a victim can be identified, and that restitution should be ordered without regard to the offender's economic circumstances. We have added additional language concerning the law to the report. However, MVRA does not have a major impact on the subject of this report because probation officers are still to take ability to pay into account when determining payment schedules.

Sixth, AOUSC commented that we should take greater note of the role of DOJ in the execution of fines and restitution sentences. We agree that DOJ's role is important and have added some additional language on this subject. However, the focus of this report was on the responsibilities of probation officers while offenders were under court supervision. For example, in some cases, AOUSC reported to us that a lien had been filed on an offender's

property by the Financial Litigation Unit of the U.S. Attorney's Office. In each of these cases, however, there was no evidence in the file that a lien had been filed at the time of our study, nor was the probation officer aware of the lien when we discussed our analysis of the case. Primary authority for the lien may rest with the U.S. Attorney's Office. However, we believe that it may also be appropriate for a probation officer who is determining an installment payment schedule to know if the offender's assets, which come to the officer's attention, have liens against them or not, and if not, make the U.S. Attorney's Office aware of the assets. While AOUSC provided guidance on how to contact the U.S. Attorney's Office, AOUSC did not provide guidance informing the probation officer of when it should be done in these cases.

Seventh, AOUSC commented that performance can be improved and that it is considering steps to improve program implementation and officer performance. These steps are included in full in appendix III. Some of these steps include (1) strengthening AOUSC's program review and financial audit functions in this area, (2) informing judges and probation officers of the importance of these issues, (3) redistributing the Financial Investigation Desk Reference, (4) reviewing and consolidating all financial investigation guidance, and (5) considering specific guidance regarding particular financial standards. While these proposed steps appear promising, it is unclear how effectively they will be implemented or the extent to which they will resolve the matters discussed in this report.

Comments from the FJC, DOJ, and the U.S. Sentencing Commission suggested that we provide additional information on areas outside the scope of our evaluation, including (1) the roles of the Bureau of Prisons and DOJ in debt collection; (2) the original decision by the judge to order a fine or restitution, including the extent to which the court is ordering restitution under MVRA; and (3) information relating to the presentence investigation. This information would not have added substantively to our discussion of how payment schedules were established for offenders who owed fines or restitution.

These agencies also raised questions about whether our report focused on the presentence report, which includes a financial investigation of the offender's ability to pay a fine or restitution. To better identify the focus of our report, we changed the title of this report. The presentence report is prepared to help the judge determine the total amount of the fine or restitution to order. As stated in this report, our scope focused on how payment schedules were established for amounts already ordered. If the

judge established the payment plan in the original court order, we did not raise an issue with how the judge established that plan. We only raised an issue in those circumstances if (1) the offender's financial circumstances changed while under probation or supervised release and the probation officer did not notify the judge of the change; (2) the judge ordered a payment of not less than a given amount and the probation officer took no action when an offender's financial circumstances changed while on probation or supervised release; or (3) the probation officer did not obtain current financial information for an offender on probation or supervised release.

We have incorporated in the final report technical comments and suggestions from the four agencies, as appropriate.

As agreed with your offices, unless you publicly announce its contents earlier, we plan no further distribution of this report until 30 days from the date this letter. At that time, we will send copies of this report to the Ranking Minority Members of your committees, the Chairman and Ranking Minority Member of the Subcommittee on Administrative Oversight and the Courts, Senate Committee on the Judiciary; the Chairman and the Ranking Minority Member of the House Committee on the Judiciary; the Director, AOUSC; the Director, FJC; the Commissioner, U.S. Sentencing Commission; and other interested parties. Copies will be made available to others upon request.

Major contributors to this report are listed in appendix VII. If you have any questions about this report, please call me on (202) 512-8777.



Richard M. Stana
Associate Director
Administration of Justice Issues

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Contents

Abbreviations

AOUSC	Administrative Office of the U.S. Courts
DOJ	Department of Justice
FJC	Federal Judicial Center
IRS	Internal Revenue Service
MVRA	Mandatory Victims Restitution Act
PACTS	Probation and Pretrial Services Automated Case-Tracking System

Scope and Methodology

To assess how payment schedules were determined for offenders who owed fines or restitution, we collected data from files of stratified, random samples of cases involving offenders who (1) were on probation or supervised release active status, (2) had been sentenced on or after January 1, 1990, and (3) were not scheduled to be released from probation or supervision until after June 30, 1997. Using information from their Probation and Pretrial Services Automated Case-Tracking System (PACTS) database, Administrative Office of the U.S. Courts (AOUSC) provided us with lists of all offenders in the Central District of California and the Northern District of Texas who, as of January 1997, met the time-period criteria. After eliminating duplicate entries for the same offenders and offenders who were not on active probation or supervised release status, we identified 1,257 offenders in the Central District of California and 850 offenders in the Northern District of Texas.

We stratified the offenders on active status in each district into three categories: (1) those required to pay a fine, (2) those required to pay restitution, and (3) those required to pay both a fine and restitution. We selected the case files of 242 offenders in the Central District of California and 253 offenders in the Northern District of Texas. From each district, we randomly selected 100 offenders who had received orders to pay a fine only and 100 offenders who had received orders to pay restitution only. We randomly selected approximately half (42) of the 85 offenders in the Central District of California and all 53 offenders in the Northern District of Texas who had received both a fine and restitution. We collected usable data from 218 (90 percent) of the 242 cases from the Central District of California and 237 (94 percent) of the 253 cases in the Northern District of Texas.

We identified issues of inconsistency and apparent inequity in how offenders were required to pay fines or restitution in those cases on installment payment schedules that met the following conditions.

- First, documents supplied by the offenders indicated that income or assets might exist to pay toward fines or restitution on a more complete or timely basis. These documents included the personal financial statement and the monthly supervision report.
- Second, the offenders (1) would not pay off their fines or restitution prior to the end of their court supervision or (2) would pay off their fines or restitution prior to the end of their court supervision but appeared to have resources to pay them more quickly.

- Third, we identified one or more of the following issues during our case review: (1) lack of consideration given to additional assets that might have been available to pay toward the fine or restitution; (2) use of arbitrary methods to establish the installment payment schedules that were not linked to income, expenses, or other financial criteria; (3) reported “necessary” expenses that appeared high in relation to location and family circumstances; and (4) financial information that was not current and had not been updated for 18 months or more.

To gain a better understanding of these cases, we discussed the case with a probation officer or supervisor, if available, to resolve any issues we identified.

A panel of our team members met, and each member reviewed and discussed all cases to ensure consistency in how the issues were identified. Cases with identified issues of inconsistency and apparent inequity were given an additional review by another panel with a different configuration of team members. Both teams had to agree before we counted the case as inconsistent or apparently inequitable.

Demographic Characteristics of Offenders in Sample Districts and Average and Median Amounts of Restitution and Fines

Table II.1: Selected Characteristics of Offenders in the Central District of California

	Case file review samples			Populations of offenders ^a		
	Restitution only	Fine only	Restitution and fine	Restitution only	Fine only	Restitution and fine
	Percent	Percent	Percent	Percent	Percent	Percent
Gender						
Male	77.0	84.0	92.9	75.8	83.0	90.6
Female	23.0	16.0	7.1	24.2	16.8	9.4
Unknown	0.0	0.0	0.0	0.0	0.2	0.0
Total offenders	100	100	42	719	453	85
Race						
White	64.0	74.0	81.0	59.3	70.2	70.6
Black	18.0	15.0	11.9	24.6	15.0	15.3
Asian	17.0	11.0	7.1	15.6	14.3	14.1
Other	1.0	0.0	0.0	0.3	0.2	0.0
Unknown	0.0	0.0	0.0	0.3	0.2	0.0
Total offenders	100	100	42	719	453	85
Hispanic						
Yes	14.0	19.0	9.5	11.5	18.3	8.2
No	86.0	81.0	90.5	88.3	81.7	91.8
Unknown	0.0	0.0	0.0	0.1	0.0	0.0
Total offenders	100	100	42	719	453	85
Primary offense of conviction ^b						
White collar	80.0	46.9	68.4	72.7	46.4	68.4
Violent	1.1	0.0	0.0	8.0	0.7	1.3
Property	6.7	0.0	2.6	3.8	1.1	2.5
Drug	0.0	22.9	0.0	0.1	23.5	0.0
Immigration law	0.0	4.2	0.0	0.3	5.3	0.0
Other	12.2	26.0	28.9	15.1	23.0	27.9
Total offenders	90	96	38	662	435	79

^aOffenders who (1) were on supervised release or probation active status, (2) had been sentenced on or after January 1, 1990, and (3) were not scheduled to be released from supervision until after June 30, 1997.

^bData on the primary offense of conviction were not provided for all offenders.

Source: GAO analysis of AOUSC PACTS data.

Appendix II
Demographic Characteristics of Offenders
in Sample Districts and Average and Median
Amounts of Restitution and Fines

Table II.2: Average and Median Amounts of Restitution and Fines for Offenders in the Central District of California

	Case file review samples			Populations of offenders ^a		
	Restitution only	Fine only	Restitution and fine	Restitution only	Fine only	Restitution and fine
	Amount	Amount	Amount	Amount	Amount	Amount
Average restitution	\$315,067	N/A	\$82,733	\$153,621	N/A	\$209,464
Median restitution	\$20,087	N/A	\$16,500	\$15,000	N/A	\$13,000
Average fine	N/A	\$14,226	\$16,320	N/A	\$14,363	\$14,134
Median fine	N/A	\$3,500	\$4,500	N/A	\$3,000	\$4,000
Total offenders	100	100	42	719	453	85

Note: N/A represents that data are "not applicable."

^aOffenders who (1) were on supervised release or probation active status, (2) had been sentenced on or after January 1, 1990, and (3) were not scheduled to be released from supervision until after June 30, 1997.

Source: GAO analysis of AOUSC PACTS data.

Appendix II
Demographic Characteristics of Offenders
in Sample Districts and Average and Median
Amounts of Restitution and Fines

Table II.3: Selected Characteristics of the Offenders in the Northern District of Texas

	Case file review samples			Populations of offenders ^a		
	Restitution only	Fine only	Restitution and fine	Restitution only	Fine only	Restitution and fine
	Percent	Percent	Percent	Percent	Percent	Percent
Gender						
Male	58.0	92.0	88.7	66.9	88.5	88.7
Female	41.0	8.0	11.3	32.7	11.5	11.3
Unknown	1.0	0.0	0.0	0.4	0.0	0.0
Total offenders	100	100	53	553	244	53
Race						
White	62.0	78.0	73.6	64.9	79.5	73.6
Black	34.0	19.0	20.8	30.9	18.4	20.8
Asian	3.0	1.0	3.8	2.9	0.8	3.8
Other	0.0	0.0	1.9	0.4	0.0	1.9
Unknown	1.0	2.0	0.0	0.9	1.2	0.0
Total offenders	100	100	53	553	244	53
Hispanic						
Yes	5.0	16.0	1.9	5.2	14.7	1.9
No	93.0	83.0	98.1	93.5	84.0	98.1
Unknown	2.0	1.0	0.0	1.3	1.2	0.0
Total offenders	100	100	53	553	244	53
Primary offense of conviction ^b						
White collar	72.1	37.4	65.2	69.9	34.3	65.2
Violent	5.8	2.2	4.3	4.9	2.2	4.3
Property	8.1	1.1	13.0	14.7	2.6	13.0
Drug	0.0	35.2	4.3	0.6	31.3	4.3
Immigration law	1.2	8.8	0.0	0.2	7.0	0.0
Other	12.8	15.4	13.0	9.6	22.6	13.0
Total offenders	86	91	46	488	230	46

^aOffenders who (1) were on supervised release or probation active status, (2) had been sentenced on or after January 1, 1990, and (3) were not scheduled to be released from supervision until after June 30, 1997.

^bData on the primary offense of conviction were not provided for all offenders.

Source: GAO analysis of AOUSC PACTS data.

Appendix II
Demographic Characteristics of Offenders
in Sample Districts and Average and Median
Amounts of Restitution and Fines

Table II.4: Average and Median Amounts of Restitution and Fines for Offenders in the Northern District of Texas

	Case file review samples			Populations of offenders ^a		
	Restitution only	Fine only	Restitution and fine	Restitution only	Fine only	Restitution and fine
	Amount	Amount	Amount	Amount	Amount	Amount
Average restitution	\$170,021	N/A	\$229,400	\$112,499	N/A	\$229,488
Median restitution	\$10,000	N/A	\$10,000	\$10,000	N/A	\$10,000
Average fine	N/A	\$5,680	\$6,650	N/A	\$7,676	\$6,650
Median fine	N/A	\$3,000	\$3,000	N/A	\$3,000	\$3,000
Total offenders	100	100	53	553	244	53

Note: N/A represents that data are “not applicable.”

^aOffenders who (1) were on supervised release or probation active status, (2) had been sentenced on or after January 1, 1990, and (3) were not scheduled to be released from supervision until after June 30, 1997.

Source: GAO analysis of AOUSC PACTS data.

Comments From the Administrative Office of the U.S. Courts

Note: GAO comments supplementing those in the report text appear at the end of this appendix.



LEONIDAS RALPH MECHAM
Director

ADMINISTRATIVE OFFICE OF THE UNITED STATES COURTS

CLARENCE A. LEE, JR.
Associate Director

WASHINGTON, D.C. 20544

April 20, 1998

Mr. Richard Stana
Associate Director
Administration of Justice Issues
General Accounting Office
441 G Street, NW, Room 2A34
Washington, DC 20548

Dear Mr. Stana:

Thank you for the opportunity to comment on the draft General Accounting Office (GAO) report entitled, *Fines and Restitution, Financial Standards Needed for Ability-to-Pay Determinations*. The judiciary takes seriously its part in the collection of court imposed fines and restitution payments, and we welcome useful analysis and recommendations that will improve our performance. We appreciate that your review has raised some issues.

As we outlined during our meeting with you on April 7, our telephone conference calls on April 9 and April 14, and our written submissions on April 10, we have a number of concerns with certain aspects of the report. We also believe, however, that the report can be modified to be of great value.

Our general observations concerning the report are detailed in Enclosure 1 and summarized below:

- The current "theme" of the draft, as suggested in the title and text, sends the wrong message, i.e., that probation offices do not have substantial guidance available to them.

We believe that the theme should be modified to inform readers that substantial guidance and training are already available and should be used. As GAO has noted in the draft

A TRADITION OF SERVICE TO THE FEDERAL JUDICIARY

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regarding existing training in this area, and as expressed to us in recent conversations about our guidance, if courts followed these available resources, this alone would go a long way toward meeting the objectives that the GAO and the judicial branch seek to achieve. Such a modification would make the GAO report a valuable tool to help us inform the courts.

- **Extensive guidance does in fact exist, which resolves one of GAO's principle concerns.**

It was not until our April 7 meeting that the Administrative Office (AO) realized that the study team did not review--indeed, did not have--much of the available guidance materials. As indicated in the extensive materials provided, as you requested on April 7, (see Enclosure 2 listing 20 documents on this subject), the AO *already* has developed and provided to the courts the very type of guidance materials that GAO found to be lacking. It is this very guidance which the Federal Judicial Center (FJC) uses as its foundation for developing training.

As pointed out by FJC Director Zobel, the FJC, using Judicial Conference and AO policies, works in partnership with the AO and field probation officers to develop the training programs and attendant materials which the draft cites with appropriate praise and recognition.

The problems described in the draft are primarily performance issues. Although some individual probation officers may not be using or even be aware of the significant guidance that is available to them, as the study's examples and officer responses seem to suggest, the report should be revised to correct the erroneous premise that guidance does not exist.

- **The judiciary's governance structure should be taken into account to eliminate the impression that the AO has statutory authority to mandate compliance with the recommendations, as currently stated in the draft.**

We believe that the report should describe the unique organizational structure of the judicial branch of government and make clear that it functions differently from the hierarchical executive branch agencies, including policy development, training, and program implementation.

See comment 1.

Mr. Richard Stana
Page Three

By placing the roles of each component of the judiciary's governance structure into proper context, the report will enable its readers to better understand what can be done, and by whom, to improve officer performance. For example, the Judicial Conference and the AO develop policy guidance; the FJC has authority to train; and the individual judges have sole authority to set specific payment schedules and to require compliance by probation officers with the courts' directives.

Although there is no statutory authority for the AO, Judicial Conference, or FJC to require probation officers to attend or follow the training advice, there are steps we can take which we believe will substantially remedy this problem.

- **The report should clearly and prominently indicate that the review was a study of conditions in two courts and that there were markedly different practices between the two courts.**

The report should recognize that the majority of the probation officers interviewed and whose cases were examined during the review in the Central District of California had not received FJC training, and many were relatively inexperienced. Moreover, the probation office in the Central District of California has one of the highest turnover rates in the country, further underscoring why the report should not attempt (either directly or indirectly) to project its findings nationally.

Thus, the title of the report is too broad in implying national ramifications, and the statement in the report that the two districts were selected because they are representative courts needs to be modified. The comment of the Department of Justice (DOJ) that these courts are not necessarily representative is correct.

- **The report needs to make clear that most of the cases reviewed pre-dated the requirements of the Mandatory Victims Restitution Act.**

The report should explain that the study concentrated on cases in which sentencing took place *prior* to the enactment of the Mandatory Victims Restitution Act (MVRA). The report does not consider the important differences in the laws in effect then and now, as explained in our letter to GAO dated January 26, 1998, and in the DOJ's recent response to the draft.

- **The report should take greater note of the role of the Department of Justice in the execution of fines and restitution sentences.**

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Page Four

The DOJ, through its United States attorney's offices' Financial Litigation Units (FLU), works closely with probation officers and is the primary entity responsible for collecting payment. As was discussed during one of our recent telephone conversations, in some districts the FLUs handle criminal debt collection in its entirety, a practice of which GAO is aware but did not examine for efficacy since it was outside the scope of the study.

We suggest that the report should recognize and take greater note of the DOJ role in the execution of fine and restitution sentences and avoid the appearance to readers, who are not fully familiar with this area, that the courts have sole responsibility in this area. Enclosure 3 provides specificity in this regard.

- **There are steps we are considering to improve program implementation and officer performance that we would like to have included in the report.**

We agree that performance can be improved, and we are developing plans to do so. Accordingly, the report should note that in response to your study, we are actively identifying steps that we can and will take to address these issues. These steps, as conceived so far, are outlined as follows:

- Strengthen the AO's program review and financial audit functions in this area.
- Review a larger, more representative sample of districts to see how these tasks are being performed, assist the districts in addressing identified problems, and revise the guidance and training as needed.
- Inform chief judges and chief probation officers nationwide about the importance of these issues and work with the courts to:
 - 1) assess how well ability-to-pay determinations are being made at the local level, and
 - 2) take steps to ensure that probation officers and their supervisors have adequate training to execute this important function properly.

In this connection, the FJC stands ready to redistribute its *Desk Reference*, frequently cited in your draft as both a training guide for in-court

See comment 2.

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Page Five

implementation of judicial branch policies and an off-the-shelf resource for different types of investigation. It can also be updated as necessary and perhaps made available electronically, like other FJC publications. Officers may also wish to arrange local training through the Internal Revenue Service (IRS) or other law enforcement agencies, if appropriate.

- Review and consolidate all financial investigation guidance so that it can be referenced readily by probation officers, and ensure it is widely distributed and also made available electronically to all officers on the judiciary's intranet.
- Consider specific guidance, if provided by the GAO, regarding particular financial standards. You have mentioned in conversations, for example, that GAO may be suggesting standards such as those used by the IRS.

We offer two important points in this regard: First, we agree with the caution raised by the DOJ that "debt collection is not an exact science, and is not readily adaptable to specific standards or guidance for repayment to be applied nationally," and second, that any recommendations you wish us to consider in this area need to be very clear and specific, such as whether you are suggesting that we promulgate particular IRS or other agency standards.

Enclosure 4 provides specific comments and suggestions for modifying the draft report. We appreciate the open dialogue with you and hope that our resulting efforts will improve performance in this area.

Thank you for the opportunity to comment on the draft. Of course, we are available to provide any further assistance or clarification that you may need.

Sincerely,



Clarence A. Lee, Jr.
Associate Director

Enclosures

GAO Comments

1. In enclosure 2, List of Specific AO Guidance to Probation Officers on Financial Investigations, AOUSC provided additional documents which, while generally concerning the subject of fines or restitution, would not have resolved the issues raised in this report. These were, for offenders under supervision who owed fines or restitution, (1) what assets should be available for payment toward the fines or restitution, (2) how the installment payment schedule should be set, (3) what type or amount of expenses should be considered necessary, and (4) how frequently financial information should be obtained from offenders who are making installment payments. Although the documents mention fines or restitution or some element of payment practice, they do not constitute statements of policy concerning how fines or restitution should be paid.

2. AOUSC provided enclosure 3, Evolution of Criminal Debt Collection Issues and AO Training Efforts, to provide historical background on the roles of the various agencies, including the Department of Justice (DOJ), in the evolution of criminal debt collection issues and related training efforts. Although the roles of other agencies are important to the overall process, the focus of this report was on the responsibilities of probation officers while offenders were under court supervision. In both districts in this study, the Financial Litigation Units of the U.S. Attorney's Offices, unless already involved at sentencing, did not become involved while the case was under court supervision except at the request of the probation officer. We also believe that the probation officer who receives information about an offender's financial condition while the offender is under supervision should take appropriate action even if other agencies involved may have previously overlooked the information.

3. AOUSC commented they would consider specific guidance, if provided by us, regarding particular financial standards. For example, AOUSC mentions that we may be suggesting standards such as those used by Internal Revenue Service (IRS). We did not develop our own standards for this report nor do we believe it would be appropriate for us to do so. We provided the agency information on the IRS standards as an example of how an agency responded to a previous recommendation we made. The recommendation was based on a similar, but not identical, situation to the one we identify in this report.

In a 1994 report,¹ we reported on how IRS made ability-to-pay determinations for offenders who owed delinquent taxes. We found that,

¹Tax Administration: IRS Can Do More to Collect Taxes Labelled "Currently Not Collectible" (GAO/GGD-94-2; Oct. 8, 1993).

in about 16 percent of the cases, IRS was allowing what appeared to be expenses that exceeded necessary and reasonable living expenses. We recommended that the Commissioner of Internal Revenue “establish specific guidelines for determining taxpayer’s ability to pay delinquent taxes, including criteria for determining dollar ranges for reasonable and necessary expenses.”

IRS developed specific guidance for employees to use in analyzing financial information. It provided dollar guidelines of necessary expenses by family size and thus helped identify an amount the taxpayer can reasonably be expected to pay. Housing and transportation expenses are specific by geographic area. The data are derived from the Census Bureau, the Federal Reserve Board of Governors, and the Bureau of Labor Statistics.² The IRS standards are available through the Internet on the World-Wide Web and are revised annually. We believe it may be useful for AOUSC to review the IRS financial standards and the mechanism IRS used to promulgate them to determine if there are aspects that could be useful to them.

4. AOUSC provided two enclosures that offered specific observations about the examples in our report. We reviewed these observations and modified the examples as appropriate to reflect additional information relevant to our review and consistent with our standards for evidence. In some cases, AOUSC provided additional information about the ultimate resolution of the case (e.g., that probation was revoked or the fine or restitution eventually paid) that occurred after the period of the review. However, following a detailed review of each case, we concluded that these later events did not affect our observations about how payment determinations were initially made. Accordingly, we did not include these details in the report.

²The Consumer Expenditure Tables from the Bureau of Labor Statistics used by IRS in developing its standards were also presented in FJC training to illustrate the type of data probation officers might seek in their financial investigations.

Comments From the Federal Judicial Center

Note: GAO comments supplementing those in the report text appear at the end of this appendix.

THE FEDERAL JUDICIAL CENTER
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 ONE COLUMBUS CIRCLE, N.E.
 WASHINGTON, DC 20002-8003

RYA W. ZOBEL
 DIRECTOR

TEL: 202-273-4160
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April 2, 1998

Richard Stana
 Associate Director
 Administration of Justice Issues
 General Accounting Office
 Washington, D.C. 20548

RE: FINES AND RESTITUTION: Financial Standards . . .

Dear Mr. Stana:

Thank you for your letter of March 23, 1998, transmitting a copy of the above referenced draft report. Although the draft report contains no recommendations for the Federal Judicial Center and you indicate that we are not required to submit written comments, I wish to make several observations in the interest of clarifying aspects of the draft.

1. **Impossibility of generalizing**—The draft properly notes at p. 11 that its results cannot be generalized beyond the two districts analyzed, but that point merits reference elsewhere in the report, lest it be overlooked.
2. **Source of FJC Training**—Lest there be any confusion about the basis for the FJC training that you describe, you should be aware and I believe your report at page 17 should reflect the fact that the FJC training you cite is based on Judicial Conference and Administrative Office policies and program guidance with respect to fines and restitution. The training provides extensive additional guidance for the practical implementation of those policies, based on techniques and methods used by field officers and refined for training presentation through standard FJC curriculum development processes. The planning committee that FJC used to develop the major training described in this report, its *Financial Investigation Desk Reference* (1994), included 11 field officers and two representatives of the AO. Those representatives were active participants in helping to develop the training.
3. **Types of FJC Training**—The report is somewhat confusing in its description of the FJC training, permitting the inference that the only training provided is that discussed at pp. 17 ff. You may wish to preface the material now on p. 17 with a new first paragraph such as the following: "FJC provides financial investigation training as part of its orientation programs for new probation and pretrial services officers. Starting in the 1980s, in cooperation with the AO's Financial Investigation Task Force, FJC provided training programs to officers in all districts. In 1992, FJC determined to provide additional training on financial investigation through in-district training and regional seminars." This creates an easy transition to what is now the first, and would become the second, paragraph on p. 17.

Then, on p. 20, consider prefacing the full paragraph on the page with: "Starting in 1995, FJC also invited officers to attend regional seminars, which included financial investigation tracks. Participants were selected in part based on their willingness and ability to carry the results of the training to their home districts for a multiplier effect. This training reached officers in 76 districts." In fact (and you may wish to include this in your report) 61 of those 76 districts reported to us that they implemented financial investigation projects after these seminars. The 1997 FJC report that you cite highlighted

Richard Stana, April 2, 1998

P. 2

the programs implemented by 10 of those 61 districts but should not be read to imply that these 10 were the only districts that implemented programs.

4. Confusion over FJC Training re Consumer Expenditure Tables—The draft report misunderstands our training about how officers should determine offenders' necessary expenses and, on the basis of that misunderstanding, unfairly characterizes officers' necessary expense determinations. Essentially, the report incorrectly states that FJC training establishes the Bureau of Labor Statistics Consumer Expenditure Tables (CET) as the standard that officers should follow. The report states on page 19 that the "The FJC training also advised using the Consumer Expenditure Tables ... as a reasonable estimate of current expenses;" it refers in note 4, p. 20 to "the Consumer Expenditure Tables recommended by the FJC training;" and it states at p. 36 that the "FJC training also advised using data published in the [CET]".

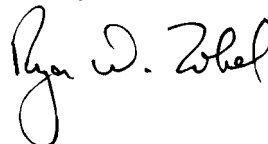
In fact, we reference the CET only in our new officer orientation and there only in passing, viz., in appendix materials we provide for the financial investigation segment of our new officer orientation. We alert new officers to these tables to illustrate a type of data they should seek, not to recommend that they use the precise tables included in the materials. We caution officers against relying on the CET published in the orientation materials, noting: "prices have risen significantly... dollar figures are no longer current...very general guide only." (The CET, moreover, does not provide regional estimates of necessary expenses.) More important, we reference the CET not at all in our *Desk Reference*, the main FJC financial investigation training. The *Desk Reference* provides, esp. in Chapters I and IV (for individuals and organizations), much more extensive and nuanced advice and suggestions than the CET for determining offenders' expenses and submitting them to the court as part of the presentence report, which, of course can be and often is contested by the parties before the judge.

However, using aggregate data in Table 6 (p. 37) and examples on pp. 38-41, the draft report compares officers' actual recommendations with recommendations that GAO derives from the CET. I suggest that the report not criticize officers for presenting recommendations that do not square with the CET, or at the least, not imply that officers who fail to use the CET are not following FJC training. It may be—but I am not so asserting—that officers' necessary expenses determinations are faulty when compared to the more complex guidance provided in the *Desk Reference*, but in any event, I suggest you use that guidance, not the CET, as your standard.

Thank you for the opportunity to provide these comments. Our staff has enjoyed working with the GAO team on this important project and hope these additional comments will be helpful to you in the preparation of your final report.

If you have further questions, I suggest you contact Mr. Leathery, at least initially, although I would be pleased to speak with you at any time.

Sincerely,



Rya W. Zobel

cc: Mr. Mecham

See comment 1.

GAO Comments

1. FJC believes our report misunderstands FJC's training about how necessary expenses are determined, including use of the Consumer Expenditure Tables. Our report states on page 23 that we did not evaluate whether the tables are the best available for this purpose and applied them, when we did, only to illustrate the example of financial standards. The information in table 6 where we identified issues related to necessary expenses was not a comparison of the amounts allowed under the Consumer Expenditure Tables. Rather, the information evaluated those cases where an offender's reported necessary expenses appeared high in relation to location and family circumstances. The primary advice in the Financial Investigation Desk Reference for individuals (organizations were not within our scope) follows:

"Necessary expenses are those necessary for the offender's continued employment and for the basic health and welfare of the offender's dependents. Expenses should be reasonable for the offender's income, size of family, and the geographical area where the offender lives."

The Financial Investigation Desk Reference does not define "necessary" or "reasonable," nor does it provide ranges for allowable expenses or examples to help guide decisionmaking. It does contain a description of how the amount of expenses should be verified, but does not suggest how an officer would determine that the expenses are excessive or unnecessary.

We also discussed the expenses with the probation officers, when available, when we identified issues. As presented in our examples, the types of expenses we questioned as necessary included multiple car payments by single individuals, excessive housing costs for the area and family size, undefined monthly miscellaneous expenses in the thousands of dollars, high recreational expenses, and payments to relatives. However, we have no basis to specify what the actual, necessary expenses should be.

Comments From the Department of Justice

Note: GAO comments supplementing those in the report text appear at the end of this appendix.



U. S. Department of Justice

Washington, DC 20530

April 6, 1998

Richard Stana
Associate Director
Administration of Justice Issue Area
General Government Division
U.S. General Accounting Office
441 G Street, N.W.
Washington, D.C. 20548

Dear Mr. Stana

The Department of Justice appreciates the opportunity to review and provide comments on the draft GAO Report "Fines and Restitution, Financial Standards Needed for Ability-to-Pay Determinations." Its United States Attorneys' offices work closely with Probation Offices and United States Clerks of Court to collect criminal fines and restitution, and are committed to ensuring that the entire enforcement process works well. Its Office of Justice Programs through the Office for Victims of Crime (OVC) oversees the Crime Victims Fund and thus is interested in the imposition and administration of fines and restitution payments. Both of these components submitted comments concerning the report generally, the applicable law for imposing fines and restitution payments, and the recommendation to provide specific guidance to the probation officers for determining ability to pay. I have enclosed those comments for your consideration. In addition, the Office of Justice Programs has included a draft copy of its OVC Bulletin, "Restitution Reform: *The Coordinated Interagency Approach*," for your edification.

I hope you will find the comments beneficial to completing your project and the OVC Bulletin of general interest. If you should have any questions concerning the Department's comments you may contact me on (202) 514-0469.

Sincerely,

A handwritten signature in cursive script, appearing to read "Vickie L. Sloan".

Vickie L. Sloan
Director, Audit Liaison Office
Justice Management Division

Enclosures

DEPARTMENT OF JUSTICE COMMENTS

General Comments. The Department found the report beneficial overall but noted additional information that could be useful if developed. It may be useful to provide a ballpark estimate of the amount of fines and restitution not collected based upon the General Accounting Office's (GAO) findings. Such data could be used in training efforts, to inform judges decision making about lump sum payments, and court administration regarding resources needed to increase investigative efforts for asset identification. It could also inform policy making by providing another kind of victim impact data for insurance companies, state compensation programs, and appropriators making budgetary decisions. Second, we note that the report focuses on the efforts to collect fines and restitution, however it also may be beneficial to determine the extent to which the court is ordering restitution in accordance with the Mandatory Victim Restitution Act (MVRA). Finally, we note that the two districts used for the report, the Central District of California and the Northern District of Texas, have larger caseloads which may skew the data. We recognize that the GAO is not making nationwide projections other than to suggest that because all districts have the same lack of guidance the problems in these districts probably occur in other districts, but it may help to be clear that the findings are not being extrapolated nationwide.

Applicable Law. The Department notes that the report seems to focus on the law currently in effect, without adequately considering the laws in effect at the time most of the restitution and fines reviewed by the GAO were imposed. The Mandatory Victim Restitution Act of 1996 (MVRA) became effective for defendants convicted on or after April 24, 1996. A defendant sentenced prior to April 24, 1996, remains subject to the prior law. Since the team reviewed cases of defendants sentenced after January 1, 1990, up through and including October 1997, at least six and one half years of sentencing (out of a maximum of seven and one half years of data) would have been handled under the prior law. We believe this may account for the low percentage of Federal offenders ordered to pay fines (16 percent) restitution (17 percent) or both (3 percent). Important differences between the two statutes are noted in the following examples.

- ▶ Pages 7-8. The report states, "According to the Mandatory Victims Restitution Act of 1996 (P.L. 104-132), restitution must be ordered as part of a sentence for certain offenses in cases with an identifiable victim, . . . Restitution must be ordered regardless of the offender's economic circumstances." Although these statements are true under the MVRA, judges had considerable discretion under pre-MVRA law as to whether or not to award restitution in a case. Judges were required to consider the financial condition and earning abilities of the defendant and his or her dependents before deciding whether or not to award restitution.
- ▶ Page 8. The report states "Restitution is to be paid directly to the victim of the crime." Under the MVRA, restitution payments are not made directly to the victim, but instead a defendant is required to make restitution payments as specified by the Director of the Administrative Office of United States Courts. 18 U.S.C. § 3611. Currently, that direction provides that payment of restitution should be made through the Clerk of Court to be disbursed to the victim of the crime. Prior to the enactment of the MVRA, restitution payments could be made through the

Probation Office, the Clerk of Court, the United States Attorney's office, or directly to the victim.

In contrast to these differences, the report seems to make a distinction between pre-MVRA and MVRA at page 2 by stating that "Under the U.S. Sentencing Guidelines and the Mandatory Victims Restitution Act of 1996 (P.L. 104-132), offenders should pay their court-ordered fines and restitution as a lump-sum payment." This was also the case under the prior law. Both the MVRA and pre-MVRA law imply that immediate payment is preferred, by specifically providing that payment of fines and restitution is to be made immediately unless the court specifies a different payment option. Both the MVRA and the pre-MVRA law allow the judge to specify the period over which payments can be made, and factors which the Court should consider in setting up the payment schedule are specifically stated.

We are also concerned that as described in the report the law may be oversimplified or misstated.

- ▶ Page 8. The report states, "If an offender could not pay restitution immediately, the court is to determine the length of time over which scheduled payments would be made, which the law defines as the shortest time in which full payment could reasonably be made." Pre-MVRA law provided that if the court ordered a defendant to pay restitution, it was to be paid immediately unless the court specified a different payment option. 18 U.S.C. §3663(f)(3). If the court ordered payments to be made over a specified period or pursuant to an installment plan, the period could not end later than (1) the end of the period of probation, if probation was ordered, (2) five years after the end of a term of imprisonment if no probation was ordered, and (3) five years after the date of sentencing in any other case. 18 U.S.C. § 3663 (f)(2). Fines were treated nearly the same under the prior law, where although the statute appeared to indicate a preference for fines to be due and payable immediately, the Court had the authority, if the interests of justice required, to set a different payment plan. If the judge chose this option, the statute provided that, unless the court ordered otherwise, payments were to be made in equal monthly installments over a period not to exceed five years after the defendant was released from prison. 18 U.S.C. § 3572.
- ▶ Page 8. The report continues, "Generally, a probation officer is to recommend to the judge a payment schedule based on a determination of the offender's ability to pay." We are not aware of any statutory authority for a probation officer to recommend a payment schedule to a judge, although this comment leads to another point which we believe the report may wish to note. In the past, some courts delegated to probation officers the ability to set installment payments or to determine the time over which restitution should be paid. A recent trend in the case law shows that a majority of circuit courts have now held that such delegation is improper. See, United States v. Ahmad, 2 F.3d 245.(7th Cir. 1993); United States v. Porter, 41 F.3d 68 (2nd Cir. 1994); United States v. Albro, 32 F.3d. 173 (5th Cir. 1994). Therefore, in many district courts, although the sentencing judge may rely on the advice of the probation officer in setting up an installment payment plan or in determining the period over which the restitution is to be paid, the judge has the

See comment 1.

ultimate discretion regarding how the payments are to be made.

See comment 2.

Finally we want to ensure that the inconsistencies the GAO noted in their case review are due to probation officer action rather than court imposed limitations. The report includes a number of examples of what the GAO team called "inconsistencies" but the report does not always provide complete information about the sentence imposed. For example, the first illustration cited on page 27 states that a defendant who was ordered to pay a fine of \$15,000 and restitution of \$153,000 was also required to make monthly installment payments of \$100. The report does not state whether this was a court-ordered installment payment or if the payment schedule was established by the probation officer. This distinction is important since once the Court imposes an installment payment plan on a defendant, the discretion of any party to enforce collection of the fine or restitution is limited to the terms of the court's order unless and until the defendant defaults on the payment plan. (Default can be declared if the defendant is more than 120 days late on a payment.) Therefore, if the Court imposed the installment payment order of \$100 per month, as long as the defendant was current in the payment of the obligation, he could not have been forced to sell any property to repay the fine or restitution. The same would be true for the remaining examples cited in this section of the report.

See comment 3.

Guidelines. With respect to the GAO recommendation regarding guidelines, we would suggest further clarification of the "specific" guidelines the GAO contemplates for Probation Officers to use in determining ability to pay. Debt collection is not an exact science, and is not readily adaptable to specific standards or guidelines for repayment to be applied nationally. Thus, the GAO is considering the guidelines to be a percentage of cash flow or fines and restitution owing, we believe that "specific" guidelines would be too rigid. However, it could be useful for Probation Officers to have checklists for the identification of possible assets to investigate, defining necessary expenses in making ability to pay determinations, or other tools for establishing reasonable payment schedules. In light of many of the new government performance statutes it may also be useful to include the development of determination of ability to pay as a workplan performance measure.

GAO Comments

1. DOJ stated it was not aware of any statutory authority for a probation officer to recommend a payment schedule to a judge. According to the law, the manner of payment is to be established by the court. However, in some jurisdictions, the judge, after ordering the total amount of the fine or restitution, may delegate the responsibility for the payment schedule to the probation officer, as an officer of the court.

Our report was not limited to a description of statutory authority, but also examined actual practice. FJC's Financial Investigation Desk Reference cites that "Probation officers make recommendations to the court to assist the court in ordering fines, restitution, and payment schedules at sentencing." Based on our discussions with judges, even when they set the payment, they are dependent on information provided by the probation officer. Also, we found that judgment and commitment orders can include language regarding an installment payment schedule that is not a fixed amount, but instead is expressed as "not less than" a given amount. In the Northern District of Texas, a senior official who spoke to us on this matter stated that this allows the probation officer to increase the payment.

2. DOJ raised a concern about what GAO presents as inconsistencies and cited one of the examples in the report. The example concerned a defendant who was ordered to pay a fine of \$15,000 and restitution of \$153,000 and required to make monthly installment payments of \$100. DOJ noted that the report does not state whether the payment schedule was established by the court or the probation officer. DOJ stated that in this example, and other examples in the report, if the court imposed the installment schedules, and the defendant was current in payment of that obligation, the offender could not have been forced to sell any property to repay the fine or restitution. If the judge established the payment plan in the original court order, we did not raise an issue with how the judge established that plan. We only raised an issue in those circumstances if (1) the offender's financial circumstances changed substantially while under probation or supervised release and the probation officer did not notify the judge of the change; (2) the judge ordered a payment of not less than a given amount and the probation officer took no action when an offender's financial circumstances changed substantially while on probation or supervised release; or (3) the probation officer did not obtain current financial information on the offender while on probation or supervised release.

In the example cited, the probation officer set the payment. Our principal point in this example was that there were unresolved questions suggesting

possible ability to pay that it would be reasonable for a probation officer to inquire further about.

In other cases, we believe that even if the payment has been ordered by the judge, it may be appropriate for the probation officer to notify the judge or the U.S. Attorney's Office of changes in the offender's economic circumstances that occur while under the probation officer's supervision.

3. DOJ notes that "Debt collection is not an exact science, and is not readily available to specific standards or guidelines for repayment to be applied nationally." We agree that debt collection is not an exact science, but comprehensive guidance would help advise probation officers on how to evaluate the facts and circumstances of a case and arrive at an appropriate payment schedule. Within guidance, there can be room for deviation, and the expectation that deviation will occur where appropriate and for reasons given. We believe guidelines that facilitate the objective of consistent and equitable payment schedules are feasible without the need for inflexible rules. As described in appendix III, IRS has promulgated guidelines in a similar, but not identical, situation.

Comments From the United States Sentencing Commission

Note: GAO comments supplementing those in the report text appear at the end of this appendix.

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April 3, 1998

Richard Stana
Associate Director
Administrative of Justice Issues
United States General Accounting Office
Washington, DC 20548

Re: Fines and Restitution Report

Dear Mr. Stana:

On behalf of the Chairman, thank you for providing a draft copy of the report, Fines and Restitution: Financial Standards Needed for Ability-to-Pay Determinations. Because of the brief time for response, we were unable to solicit the comments of the Commission members; however, I will provide general observations submitted by the Chair and key staff members of the agency.

As a basic point, the report appropriately views the United States Sentencing Commission as a minor participant in setting policy or training probation officers in this area. The two other entities within the judiciary (*i.e.*, the Administrative Office of the United States Courts and the Federal Judicial Center) are more appropriate and better equipped to handle such an undertaking. With that said, the perceived problems found by the report implicate equity and fairness issues that are of great concern to the Commission. The apparent lack of standard procedures appears to result in disparity in fine-setting and payment schedules. To that end, we endorse the report's goals that advance the Commission's objective of achieving fair and uniform punishment.

It is noted in the concluding section of the report that FJC training materials were available, but that they were not required reading or used to a great extent. The report goes on to state "... that if the FJC training or similar financial standards had been used to determine an offender's ability to pay fines and restitution ordered by the courts, it would have helped reduce the inconsistencies and apparent inequities" Based on this statement, I assume that you know which probation officers in the two districts received training materials from the FJC. If this is true, then it would be helpful to verify and assess whether those that were trained are more

**Appendix VI
Comments From the United States
Sentencing Commission**

Richard Stana
Re: Fines and Restitution Report

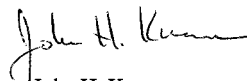
Page 2

See comment 1.

consistent in determining the ability to pay and in suggesting a more reasonable collection schedule. If officers who have been trained are doing a significantly better job than those not receiving FJC training, then increased training, rather than the creation of new policy, appears to be the primary solution. If the training makes no appreciable difference, then it suggests that stronger incentives need to be put into place to structure and review the ability to pay assessments and collection determinations.

Once your report is finalized, the staff will review the guidelines and our training programs to see whether the Commissioners could provide more encouragement to the courts to develop fair and equitable standards in assessing fines and establishing restitution. If we can be of further assistance, please contact me.

Sincerely,


John H. Kramer
Staff Director

cc: Hon. Richard P. Conaboy, Chairman
Richard Griswold, GAO

GAO Comment

1. The U.S. Sentencing Commission commented that it would be useful for us to compare the consistency of officers who took the FJC training and those who did not. However, FJC could not identify for us the probation officers who had taken the training. We then attempted, as part of a structured interview, to question probation officers in the two districts about whether or not they had received FJC's financial investigation training. Some officers insisted they had taken FJC's financial investigation training, but further inquiry revealed that they had confused it with a seminar provided by IRS. In the Central District of California, only one probation officer who was not a supervisor correctly identified for us FJC's Financial Investigation Desk Reference, which is one of the key course materials. Thus, we were not able to gather sufficient, reliable data to provide a comparison.

Major Contributors to This Report

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