



AUDIT OF NCUA'S RESTITUTION ORDERS
PROCESS AT THE ASSET MANAGEMENT
AND ASSISTANCE CENTER

Report #OIG-16-01

February 9, 2016



A handwritten signature in black ink, appearing to read "James W. Hagen".

James W. Hagen
Inspector General



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EXECUTIVE SUMMARY

The Office of Inspector General (OIG) conducted this self-initiated audit to determine whether NCUA's Asset Management and Assistance Center (AMAC) had effective policies, procedures, and resources in place to recover money owed from restitution orders, and assess the internal control environment over AMAC's restitution order process. To accomplish our objectives, we interviewed AMAC management and staff. We also obtained and reviewed AMAC guidance, policies, procedures, and other available information regarding restitution orders.

We determined that AMAC adequately documents restitution orders and receipt of restitution payment. However, we also determined there are areas where AMAC management could improve the restitution orders process by following up and assisting the Department of Justice (DOJ) to potentially improve collections and confirm accuracy when accounting for restitution orders owed to liquidation estates. Specifically, we determined AMAC management:

1. Does not assist the DOJ through systematic follow-up regarding the status of offenders and receipt of payments. Specifically, AMAC does not:
 - a. Take advantage of an available federal resource for assistance with the collection of restitution orders, or
 - b. Conduct periodic reconciliations with the DOJ on the number of restitutions ordered and the amount of restitution owed to liquidation estates.
2. Does not have write down policies and procedures for expired and uncollectible restitution orders, and
3. Had no policies and or procedures over the restitution process at the onset of our review.

In addition, we determined the internal control environment over AMAC's restitution orders process needs improvement. At the onset of our review, we determined that AMAC did not have policies and procedures over the restitution order process; therefore, we had to rely on interviews with management and walk-throughs of the process to assess internal controls over the restitution order process.

In addition to AMAC needing to revise policies and procedures over the restitution orders process, we identified three areas in which AMAC needs to make improvements: follow-up efforts and reconciliations, write-down actions, and policies and procedures. We are making eight recommendations, which will help AMAC continue to improve its restitution orders process.

We appreciate the cooperation and courtesies AMAC management and staff provided to us during this review.



BACKGROUND

Restitution is the monetary amount established by a court in a Judgment and Commitment Order that a party convicted of violating a law must pay, in addition to penalties, to render a victim whole. The DOJ is responsible for collecting criminal debt and has delegated operating responsibility to its Financial Litigation Unit (FLU) within DOJ's U.S. Attorneys' Offices (USAO).¹

Crime Control Act of 1990

Section 2539 of the Crime Control Act of 1990, directed the Attorney General to establish a Senior Interagency Group (SIG) to assist in identifying the most significant financial institution fraud cases and in allocating investigative and prosecutorial resources where they are most needed. As specified in the revision to Section 2539(c)(2), the SIG includes senior officials from the DOJ, the Department of Treasury, The Federal Deposit Insurance Corporation (FDIC), the Office of the Comptroller of the Currency, The Federal Reserve Board, and the NCUA. Section 2539(c)(3) states the duties of the SIG shall be to enhance interagency coordination and assist in accelerating the investigations and prosecution of financial institutions' fraud.

Senior Interagency Group

On June 25, 1992, the SIG issued a policy statement entitled *National Policy on Collection and Reporting Procedures for Restitution Payable to Financial Institution Regulatory Agencies*. The policy statement outlines the roles and responsibilities of the DOJ and the aforementioned regulatory agencies regarding the collection and reporting procedures for restitution orders. The policy states, in part:

During the initial contact phase of major financial institution fraud cases, DOJ will contact the responsible regulatory agency upon the opening of a financial institution fraud matter to establish a line of communication for the ongoing exchange of information as the matter progresses. In cases where a criminal referral has been made by the regulatory agency, the agency will follow up and establish a line of communication for the ongoing exchange of information as the matter progresses with the appropriate investigative agency and the USAO or trial attorney.

The policy also states in part that in major cases each agency will contact the Assistant United States Attorney (AUSA) or trial attorney handling the matter at the following times:

1. When information becomes available related to the amount of loss to the institution, in accordance with procedures mutually agreed upon by the regulatory agency and the AUSA or trial attorney;

¹ AMAC does not have the right to collect on restitution orders; rather, AMAC must rely on the U.S. Attorney General for collection activities and transmitting to the Asset Management Estate as the victim.



2. When information becomes available related to assets in the defendant's possession or available to the defendant, in accordance with procedures mutually agreed upon by the regulatory agency and the AUSA or trial attorney;
3. Reasonable notice prior to filing or settlement of civil monetary penalty actions that raise issues under *United States v. Halper*, 490 U.S. 435 (1989);
4. When assistance is needed to obtain grand jury information under 18 U.S.C. §3322; and
5. When information is to be provided to, or when it is requested by, the United States Probation Office or the Court.

The policy also states that responsibilities during the restitution collection phase, DOJ will:

1. Forward a copy of the Judgment and Commitment Order to that agency;
2. Enforce collection of the monies ordered by working with that agency to a) identify the assets of the defendant, b) reduce the restitution order to a civil judgment, when appropriate, and c) initiate judicial or other proceedings; and
3. Notify that agency upon the completion of a prison term or an appeal, or for any other reason that may legally delay the enforceability of the restitution order.

The regulatory agency will:

1. Track receipt of payments of that restitution; and
2. Report such restitution receipts to the DOJ.

For reporting on collections, the policy states in part that responsibilities for the uniform reporting of collections by the regulatory agencies through the Department of Justice to Congress are as follows:

1. Regulatory agencies that are the named recipients of criminal restitution orders will coordinate with and will provide regularly to the DOJ's Priority Programs Team (PPT) within the Executive Office for United States Attorneys, information they possess regarding the collection and reporting of restitution payment information.
2. Regulatory agencies also will provide regularly to the PPT information they possess on recoveries obtained through enforcement and liquidation activities, including civil litigation and administrative proceedings.



Mandatory Victims Restitution Act of 1996

In addition to the 1992 SIG policy statement, the Mandatory Victims Restitution Act of 1996² (MVRA) provides guidelines and procedures for the issuance and enforcement of orders of restitution. The MVRA requires an order of restitution that fully compensates the victim for the loss of, or damage to, the victim's property.

Criminal Debt Collection

The criminal debt collection process typically begins when a judge orders a convicted offender to pay a fine or restitution. In addition to DOJ, the U.S. Courts and their probation offices may assist in collecting monies owed. The FLU performs certain debt collection activities, such as filing liens on property, issuing restraining notices, performing title searches, and obtaining financial information about offenders. Both the courts and certain FLUs receive and disburse restitution payments to the applicable victims or entities as directed by the courts. The FLU enforces restitution orders for 20 years from the filing date (plus the time of actual incarceration) or until the death of the defendant.³

AMAC's Restitution Orders Process

In early 2001, NCUA's Office of General Counsel, Office of Examination and Insurance, and the Office of Chief Financial Officer decided through mutual agreement that AMAC would be responsible for maintaining a system of accounting for restitutions through AFTECH, AMAC's in-house accounting system, and the collection of agency restitutions. Today, AMAC continues to monitor, record, and value restitutions awarded to NCUA through three divisions, the Division of Liquidation and Member Services (DLMS), the Division of Finance (DOF), and the Division of Asset Recovery (DAR).

AMAC's restitution orders process begins after sentencing, when the courts notify AMAC of an executed restitution order. Upon receipt of the order, DLMS makes a request to DOF to set up the restitution in AFTECH as a loan. Following are the forms and processes completed to set up the account:

- The Restitution Order form, which includes such information as the name of the harmed credit union, defendant information, incarceration or employment information, the original amount of the order, the date the order was signed, and court information.
- An AFTECH Loan Maintenance form, which provides DOF the information to establish the restitution into AFTECH, and indicates if the restitution is for a single defendant or multiple co-defendants.

² 18 U.S.C §3363A

³ NCUA Instruction No. AMAC 3900.01, issued March 31, 2015.



- Scanning the Judgment and Commitment Order into AMAC's ImageNow application, which links the order directly to the defendant's AFTECH account.

Account set up also includes preparation of a Member Account Journal Voucher to input the balance, as well as preparing a General Ledger Journal Voucher to record the Net Realizable Value (NRV). When DOF receives the restitution information with this documentation, they make the accounting entries to record the restitution. When AMAC receives restitution payments, DOF will associate the payment with the correct account and post the payment in AFTECH. On rare occasions, DOF may receive a payment prior to establishment of the account in AFTECH. When this occurs, DOF posts the payment to a suspense account until the establishment of a restitution account in AFTECH.

After AMAC records the restitution order, DAR's responsibilities include monitoring and overseeing the restitution process. Specifically, a DAR technician runs a weekly report of AFTECH data to determine whether there are any new loans. When new loans are noted, they are assigned to DAR staff.

As the victim, the liquidating agent cannot pursue collection on the restitution directly from the offender. Therefore, AMAC must wait for the Marshal's Service or the DOJ, typically through Treasury, to send in payments⁴ for restitution orders. The largest recoveries generally occur early in the process when the offender's liquidated assets are forfeited to the DOJ. AMAC may assist the DOJ identify assets the defendant owned during the prosecution phase. AMAC also receives subsequent restitution payments, which are typically smaller in amount because the offender is incarcerated with little or no earning power.

DAR is also responsible for determining the NRV of all restitutions on the books. During the quarterly NRV process, DAR reviews all restitution loan accounts and determines the potential recovery for each, based on payment activity or other known recovery options. DAR recommends adjustments, as necessary, to ensure there are no negative asset values and to ensure an unrealistic restitution value is not building.

As of December 11, 2014, AMAC accounted for 117 restitution orders totaling approximately \$334 million.

⁴ The Marshal's Service typically sends accrued payments to AMAC after a certain amount has been collected from a defendant.



RESULTS IN DETAIL

We determined that AMAC adequately documents restitution orders and receipt of restitution payment. However, we also determined there are areas where AMAC management could improve the restitution orders process by following up and assisting the DOJ to potentially improve collections and confirm accuracy when accounting for restitution orders owed to liquidation estates. Specifically, we determined AMAC management:

1. Does not assist the DOJ through systematic follow-up regarding the status of offenders and receipt of payments. Specifically, AMAC does not:
 - a. Take advantage of an available federal resource for assistance with the collection of restitution orders, or
 - b. Conduct periodic reconciliations with the DOJ on the number of restitutions ordered and the amount of restitution owed to liquidation estates.
2. Does not have write down policies and procedures for expired and uncollectible restitution orders.
3. Had no policies and or procedures in place over the restitution process at the onset of our review.

Improvements Needed Over Restitution Follow-up

We determined AMAC does not conduct regular follow-up to assist the FLU on the status of offenders ordered to pay restitution to liquidation estates; does not take advantage of an available federal resource for assistance in the collection of restitution orders, and does not conduct regular reconciliation with the DOJ on the number of restitutions ordered by the courts. Specifically, AMAC management does not consistently:

- follow up with the appropriate FLU after an offender's release from prison,
- take advantage of the Treasury Offset Program (TOP) to collect restitution, and
- conduct periodic reconciliations with the appropriate U.S. District Courts on the number of restitutions ordered.

AMAC management explained there are numerous reasons why they do not regularly assist the DOJ in restitution collection efforts, noting a lack of resources (human capital) to conduct such follow-up activities chief among them. In addition to a lack of resources, AMAC management also indicated:

- they lack the authority to enforce collection, which hinders their effort to collect;



- most criminals report and surrender their viable assets during the prosecution phase as part of a plea arrangement;
- there is little or no return on investment (ROI);
- DOJ has little interest in pursuing the collection of restitution orders after the sentencing of an offender; and
- most criminals' earning power is uncertain once they are released from prison.

We disagree. Prudent business practices would suggest that development and implementation of a formalized systematic method of follow-up and reconciliation with the DOJ could be of monetary benefit to the NCUA. We believe follow-up could provide the financial status of an offender as well as providing other potential avenues to collect restitutions.

During our review, we learned that AMAC adequately documents restitution orders and receipt of payments. However, once the restitution order has been set up as a loan account in AFTECH and AMAC posts payments from the liquidation of the offender's assets, and subsequent payments forwarded from the DOJ, we determined AMAC does very little to proactively pursue monies owed to the NCUA. Instead, we found AMAC relies on the DOJ to forward additional restitution payments.

Although AMAC performs most of its efforts to identify an offender's assets early on in the prosecution phase and before sentencing, we determined most offender follow-up was informal and on an ad-hoc basis. AMAC officials explained they have excellent working relationships with the attorneys involved in their cases. AMAC officials also indicated that in their high profile cases, the attorneys generally keep tabs on the offenders. AMAC officials noted that if they happen to run into an attorney from one of their prior high-profile cases, they will informally inquire about the offender and check on whether there has been any change in the offender's financial status.

We asked AMAC management about efforts to follow-up with DOJ on the status of offenders. We learned there was a previous attempt conducted by AMAC staff to bolster recoveries where AMAC staff wrote letters to the courts inquiring on offenders' statuses. However, the responses staff received from DOJ indicated they had either closed their books on the cases, deeming them uncollectable, or that they would no longer be actively pursuing collection.



Department of Justice Financial Litigation Unit

As previously mentioned, the USAO, through its FLU, performs certain debt collection activities on behalf of federal crime victims awarded restitution. The FLU may file liens on property, issue restraining notices, perform title searches, and obtain financial information about offenders.

We benchmarked with officials from FDIC and learned they have a robust restitution program where a significant portion of their efforts are aimed at following up on offenders after release from prison and are either still serving or completed parole. FDIC officials indicated that they routinely reach out to the FLU to check on the status of offenders and whether there is any change in their financial status or discovery of additional assets throughout the life of the restitution. As previously noted, AMAC officials do not conduct routine follow up on offenders after the prosecution phase. AMAC officials explained that because the offenders generally forfeit all their assets when making a plea arrangement prior to sentencing, they believe there is minimal return on investment to continue to track an offender. AMAC officials also indicated they do not follow up because it is their belief that even if a second asset search were conducted after the offender's release from prison, the DOJ would not have an interest in pursuing the matter further.

We disagree. Officials from FDIC indicated that with the assistance of the FLU, they actually collect more restitution *after* the completion of an offender's prison term. We asked how this is accomplished and were told that FDIC monitors the offender throughout the life of the restitution and regularly conducts asset searches, searches for property, and any fraudulent conveyances, particularly after the offender is released, not just before sentencing during the prosecution phase. FDIC officials noted that the combination of providing regular asset search results to the FLU and placing offenders into the TOP, have been responsible for the collection of millions in additional restitution payments.

Treasury Offset Program

Fiscal Service, a bureau of the U.S. Department of the Treasury, serves as the government's central debt collection agency, maintaining the government's delinquent debts. The TOP is a centralized offset program, administered by the Fiscal Service's Debt Management Services (DMS) to collect delinquent debts owed to federal agencies and states.⁵ Under TOP, Fiscal Service matches a database of delinquent debtors against payments issued by Treasury. With a match, a recipient of a federal payment (i.e. tax refund or Social Security payment) who also owes delinquent debt, will have their payment withheld (or reduced in the case of Social Security payments)⁶ to satisfy the debt. The program works as follows:

- Individuals with delinquent debt, such as restitution, owed to a government agency, have their debt information sent from that agency to the Fiscal Service for entry into the DMS database.

⁵ 26 U.S.C. § 6402(d) and 31 U.S.C. § 3720A

⁶ TOP can withhold up to 15 percent of a Social Security recipient's payment.



- Before the individual receives a federal payment, DMS searches their database to see if the individual owes a delinquent debt.
- If the individual's debt is in the database, DMS will offset (reduce or withhold) the federal payment to pay the individual's debt.
- Once the payment is taken from the individual, DMS sends a notification letter to the individual notifying them of the action.

Officials from FDIC indicated they have collected an additional \$35.6 million through the TOP program in restitution owed to them between 2009 – 2013. We believe working with the TOP to collect additional restitution is an avenue well worth exploring.

No Periodic Reconciliation with DOJ

We determined AMAC officials do not perform periodic reconciliations with DOJ. Specifically, AMAC does not perform routine reconciliations on the number of restitution orders awarded or the amount of payments received from the DOJ. To ensure uniform reporting by regulatory agencies, the SIG requires each regulatory agency named as a recipient of restitution, to regularly provide information they possess regarding the collection and reporting of restitution information⁷ to the DOJ.⁸ As a result of not performing regular reconciliations with DOJ, AMAC is not assured that all orders of restitution and any associated payments are being tracked in AFTECH, putting NCUA at risk of not recovering all restitution payments made.

During our review, AMAC officials told us they do not conduct reconciliations with DOJ related to the number of restitutions ordered by the courts, or the amount of payment activity collected by DOJ and forwarded to AMAC. Although AMAC officials indicated they regularly communicate with DOJ during the prosecution phase of financial institution fraud, once the offender is sentenced, they have no evidence DOJ is interested in continually pursuing offenders' assets with the exception of the minimal payments they forward. We disagree. The FLU is specifically mandated to assist regulatory agencies in identifying assets and work with agencies to uncover and collect on them.

Because AMAC management does not consistently follow up with the DOJ's FLU, take advantage of the TOP to collect restitution, or conduct periodic reconciliations with the DOJ on the number of restitutions ordered and the amount of restitution owed to the liquidation estate, we are making the following recommendations to AMAC management.

⁷ Restitution information includes information they possess on payment activity as well as recoveries they obtained through enforcement and liquidation activities, including civil litigation and administrative proceedings.

⁸ Regulatory agencies are required to provide this information to the Priority Programs Team, Executive Office for U. S. Attorneys, DOJ.



Recommendations

We recommend AMAC management:

1. Establish a line of communication and, if necessary, enter into a Memorandum of Understanding with both the Department of Justice's Financial Litigation Unit and the Treasury Offset Program to maximize restitution recovery opportunities.

Management Response:

Management agreed with the recommendation and plans to establish a line of communication by March 2016 and enter into an MOU with both the Department of Justice's Financial Litigation Unit and the Treasury Offset Program by March 2017.

OIG Response:

We concur with management's planned actions.

2. Once a line of communication is established based on Recommendation 1, follow-up periodically with the Department of Justice and the Treasury Offset Program regarding the status of offenders. Follow-up activity should extend through the end of the statute of each restitution order currently on file.

Management Response:

Management agreed with the recommendation and plans to update the directives to document requirements for periodic follow-up with the Department of Justice. Desktop procedures will also be prepared and maintained with current contact information by June 2016.

OIG Response:

We concur with management's planned action.

3. Develop a process to reconcile restitution orders listed in AMAC's accounting system, AFTECH, with the Clerks of the U.S. District Courts to ensure that all restitution orders and payments are accurately tracked.

Management Response:

Management agreed with the recommendation and plans to work with the Department of Justice's Financial Litigation Unit or the individual courts to determine the best process to ensure reporting accuracy. Management plans to complete this process by June 2016 at the latest.



OIG Response:

We concur with management's planned action.

4. Once the process is developed based on Recommendation 3, develop a requirement to provide for periodic reconciliation of AFTECH to the official restitution order tracking systems maintained by the Clerks of the U.S. District Court.

Management Response:

Management agreed with the recommendation and plans to develop a reconciliation process with the courts' tracking systems. The periodic reconciliation process and the requirement to provide for periodic reconciliation will be documented in the directive.

OIG Response:

We concur with management's planned actions.

**Write-down and
Write-off Actions
Not Taken**

We determined AMAC does not take write-down or write-off actions on unenforceable and uncollectible restitution orders, nor do they have formal policies concerning such actions. Title 18 U.S.C. section 3613(b) states in part that the liability to pay a fine shall terminate the later of 20 years from the entry of judgment, 20 years after the release from imprisonment, or upon the death of the individual. Although AMAC issued a directive in March 2015, which includes restitution orders, our review of NCUA Instruction No. AMAC 3900.01 identified no specific write-down procedures for unenforceable and uncollectible restitution orders. As a result, AMAC's restitution tracking system and receivables account may reflect restitutions that are no longer collectible or enforceable.

A write-down is an action that would place a restitution order into an inactive status within AMAC's records.⁹ Reasons for writing down or writing off a restitution order include a determination that a defendant has few or no assets to satisfy restitution or is deceased. The FLU will only pursue restitution orders for 20 years from the filing date of the judgment. For this reason, we believe AMAC should consider taking write-down or write-off actions for restitution orders older than 20 years, or when an event occurs that would preclude further pursuit of the order, either legally or practically.

During our review, we obtained a listing from AMAC of all restitutions tracked as of December 11, 2014. The listing showed that AMAC was tracking 117 restitution orders from liquidations dating back to 1988. We asked AMAC officials how they know when a restitution order is active versus inactive. AMAC officials stated they do not ever consider a restitution order "closed" because as long as it is on AMAC's books and is within the 20-year period, the order is active. We also asked AMAC officials if they write down restitution orders over 20

⁹ Although similar to a write-off, a write-down action typically occurs when the carrying value of the asset can no longer be justified as fair value and the likelihood of receiving the cost (book value) is questionable at best.



years old, which would make them unenforceable, or perhaps when payments cease altogether, making them essentially uncollectable. AMAC officials indicated they do not. However, these same officials indicated they have considered taking write-down actions in the past, and admitted they probably should begin to write down those orders that are unenforceable and uncollectable.

We asked AMAC officials if they could provide a list of restitutions that were over 20 years old as well as those that were no longer collectable for other reasons such as the death of the offender, little or no earning potential, or lack of assets. AMAC officials could not provide lists that included these specific components because AFTECH is a loan system, and is not a system or tool specifically designed to track restitution orders. In addition, AMAC officials indicated they had not culled through the listing to determine those restitution orders that have expired, noting they do not remove uncollectable and unenforceable orders off the books. AMAC did provide payment information from 2000 through March 2015, which included balances owed at that time.

We benchmarked with FDIC regarding their write-down process and learned that they perform a thorough review of an offender's financial background throughout the entire life of the restitution order and have a systematic method for follow-up with the FLU. For example, we learned FDIC collects financial statements from the offender before incarceration as well as when the offender transfers from incarceration to probation. In addition, FDIC runs CLEAR reports¹⁰ and conducts asset searches and other reviews throughout the life of the restitution. FDIC officials stated they review an offender's assets and financial background frequently and write-down restitution orders when there are no assets remaining, or when the offender no longer has the ability to pay. In addition, these same officials indicated that even if the restitution has not reached the 20-year expiration date, if they have not received payments in two to three years, they confirm whether the FLU has collected any payments or performed additional assessments to determine future collectability before taking write-down actions.

As previously mentioned, AMAC's follow-up on offenders' financial background after sentencing has been limited with no specific policy for write-down or write-off actions on restitution orders. As a result, AMAC is unable to determine which restitution orders are eligible for write-down or write-off action. AMAC's Balance Sheet carried a restitution balance of approximately \$348 million as of December 31, 2014. Although AMAC officials were unable to determine the number and amount of unenforceable or uncollectable orders, the NRV shown on AMAC's December 31, 2014 Balance Sheet was approximately \$5.5 million. We asked AMAC management how they derived at the \$5.5 million in NRV. AMAC management advised that they derived the amount from approximately five of 126 restitution order cases, noting that 90 percent of the \$5.5 million NRV stemmed from one particular case. Based on the estimated NRV for all its restitution cases, and to avoid expending unnecessary resources to monitor restitution orders that are no longer practical to pursue, we believe it is necessary for AMAC officials to review the other 121 cases to determine whether they are uncollectable or unenforceable. Therefore, we are making the following recommendations.

¹⁰ CLEAR is an online investigative software that provides proprietary and public records for fraud investigations.



Recommendations

We recommend AMAC management:

5. Develop write-down and write-off policies and procedures for uncollectable and unenforceable restitution orders. This would include a requirement that all procedure steps are documented within the comment field in AFTECH to ensure justification for taking write-down or write-off actions.

Management Response:

Management agreed with the recommendation and plans to develop guidelines to determine when restitutions should no longer be considered collectible by September 2016. Management also plans to develop desktop procedures that will require documentation of the steps taken in the Collector Comments fields in AFTECH.

OIG Response:

We concur with management's planned actions.

6. Perform a review of every restitution case currently tracked by AMAC to determine whether the case is unenforceable or uncollectable and eligible for write-down or write-off action.

Management Response

Management agreed with the recommendation and plans to work with NCUA Office of General Counsel to define when restitutions are unenforceable, and write-off all unenforceable restitutions by June 2016.

OIG Response

We concur with management's planned actions.

Restitution Orders Policy and Procedures

At the onset of our review, we determined AMAC did not have policies and procedures in place regarding the collection, management, and monitoring of restitution orders. AMAC management indicated that over a decade ago they had drafted a restitution orders policy, but did not approve it at the time. GAO's *Standards for Internal Control in the Federal Government*¹¹ states in part that internal control comprises the plans, methods, policies, and procedures used to fulfill the mission, strategic plan, goals, and objectives of the entity. As a result of not having approved policies and procedures, AMAC management

¹¹ GAO-14-704G



could not provide reasonable assurance over the effective and efficient operation of the restitution orders process.

During our review, we learned that in 2004, AMAC management drafted a restitution orders policy but did not seek approval at the time because they determined there was no return on investment to warrant implementation. Management explained they based their decision on two factors; their historical knowledge of restitution payment activity and a review of several restitution order cases at that time. Management further explained that had they conducted a systematic and detailed review of restitution ROI, it would have produced inaccurate results based on the inconsistent nature of the restitution revenue stream. Therefore, the policy remained in draft.

During our review, AMAC management cancelled its legacy policy on Bond Claims and Civil Judgments¹² and issued a new NCUA Instruction¹³ establishing procedures for pursuing bond claims and civil judgments in liquidation cases, and managing, collecting, and monitoring restitutions and activities related to criminal litigation cases. AMAC management advised the OIG that the policy issued in March 2015 was an initial policy to comply with NCUA's Directives System, and if necessary, they would issue a revised policy at the conclusion of this review. In addition, in April 2015, AMAC's DLMS developed and issued a new AMAC Desktop Procedure titled: *Restitution Setup*.¹⁴ The new procedure provides specific steps DLMS staff must follow when establishing a new restitution account in AFTECH.

We reviewed AMAC policy 3900.01 and determined that although it provides a description of the functions AMAC officials perform related to their responsibilities for processing the collection of restitution payments, it is lacking specific details related to monitoring and follow-up. Therefore, we are making the following recommendation to AMAC management.

Recommendations

We recommend AMAC management:

7. Once the new processes are developed based on Recommendations 1 through 6, revise NCUA Instruction No. AMAC 3900.01 to reflect any function, procedures, or processes conducted by any AMAC official related to internal and external monitoring and follow-up of restitution orders.

Management Response:

Management agreed with the recommendation and plans to update Instruction No. AMAC 3900.01 by June 2017.

¹² National Credit Union Administration – Policy Manual Asset Management and Assistance Center, Policy 218 and Policy 219, revised December 2010.

¹³ NCUA Instruction: Bond Claims, Criminal Litigation, Civil Judgments, and Restitutions, No. AMAC 3900.01, issued March 31, 2015.

¹⁴ Procedure #: DLMS-LG002



OIG Response:

We concur with management's planned action.

8. Develop Desktop Procedures for all AMAC Divisions involved in the restitution orders process. The procedures should capture the flow of the entire restitution order process from initial receipt of the order to the closing of the loan account.

Management Response:

Management agreed with the recommendation and plans to develop and document desktop procedures by September 2017.

OIG Response:

We concur with management's planned actions.



Appendix A:

OBJECTIVE, SCOPE AND METHODOLOGY

Our audit objectives were to determine whether AMAC had effective policies, procedures, and resources in place to recover money owed from restitution orders, and assess the internal control environment over AMAC's restitution order process. Our audit scope included an assessment of AMAC's restitution orders process as of December 31, 2014.

We conducted this audit in accordance with performance audit standards contained in *Generally Accepted Government Auditing Standards* (GAGAS), issued by the Comptroller General of the United States. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives. We relied on computer-processed data from AMAC's AFTECH system. We did not test controls over this system; however, we relied on our analysis of information from interviews and other documents and files to corroborate data obtained from this system. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Because of inherent limitations of an audit, together with the inherent limitations of internal control, an unavoidable risk exists that some material misstatements or material non-compliance may not be detected, even though the audit is properly planned and performed in accordance with applicable standards. An audit is not designed to detect error or fraud that is immaterial to the performance audit objectives.

In making our risk assessments, we considered those internal controls that were significant within the context of the audit objectives in order to design audit procedures that were appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of AMAC's internal control environment. However, this report communicates in writing to those charged with governance and management concerning any significant deficiencies or material weaknesses in internal control significant within the context of the audit objectives that we have identified during the audit.

We conducted an audit of AMAC's internal controls over its restitution orders process. Because AMAC had no documented policies and procedures regarding the restitution orders process, we relied on interviews with management and walk-throughs of the restitution orders process to determine the actual process performed. We assessed the current process and controls for restitutions and determined any deficiencies in the process (e.g. no systematic follow-up, no collaboration with outside collection resources, and no reconciliations performed).

To accomplish this audit, we conducted fieldwork at NCUA's headquarters in Alexandria, Virginia and at AMAC in Austin, Texas from March 2015 to February 2016. We interviewed staff from AMAC. We also benchmarked with the FDIC to conduct a best practices comparison of NCUA's restitution process to FDIC's restitution orders program.



Prior Audit Coverage

We did not identify any reports issued by the NCUA OIG within the last five years related to this subject.




Appendix B: NCUA Management Response



National Credit Union Administration
Office of the Executive Director

SENT BY EMAIL

TO: Inspector General Jim Hagen

FROM: Executive Director Mark Treichel 

SUBJ: Agency Comments on the Audit of NCUA's Restitution Orders Process at the Asset Management and Assistance Center (AMAC)

DATE: February 4, 2016

This memorandum responds to the draft report titled: "*Audit of the National Credit Union Administration's Restitution Orders Process at the Asset Management and Assistance Center.*" Thank you for the opportunity to review and comment on your report's findings and recommendations.

We appreciate the Office of Inspector General's (OIG) recommendations to improve recoveries and plan to reach out to contacts at the FDIC, Department of Justice and Department of the Treasury. Although considerable recoveries have been made following our current processes, we agree additional follow-up and monitoring could be useful. AMAC is active in the early phase of the asset recovery process, however, could continue to follow-up with the Department of Justice. A couple of steps to continued success will be entering into a Memorandum of Understanding (MOU) with the Department of Justice to more formally define our role while also participating in the Treasury Offset Program.

We concur with all recommendations as outlined below in our responses.

OIG Report Recommendation 1:

Establish a line of communication and, if necessary, enter into an MOU with both the Department of Justice's Financial Litigation Unit and the Treasury Offset Program to maximize restitution recovery opportunities.

Response:

AMAC will work with the Office of General Counsel (OGC) to enter into an MOU with the Department of Justice by March 2017. AMAC will contact the Department of Justice to confirm the appropriate points of contact for the Financial Litigation Unit. AMAC will also work with Office of the Chief Financial Officer (OCFO) to enter into an MOU with Treasury to enroll restitutions in the Treasury Offset Program by March 2017.



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OIG Report Recommendation 2:

Once a line of communication is established based on Recommendation 1, conduct periodic follow-ups with the Department of Justice and the Treasury Offset Program regarding the status of offenders extending through end of the statute of the restitution orders currently on file.

Response:

AMAC will update the directives to document requirements for periodic follow-up with the Department of Justice. Desktop procedures will also be prepared and maintained with current contact information by June 2016.

The initial line of communication will be established by March 2016; periodic follow-up will commence quarterly following initial contact.

Within 60 days of enrollment, AMAC will document procedures for complying with the Treasury Offset Program as applicable, after restitutions are enrolled in the program.

OIG Report Recommendation 3:

Develop a process to reconcile restitution orders listed in AMAC's accounting system, AFTECH, with the Clerks of the U.S. District Courts to ensure that all restitution orders and payments are accurately tracked.

Response:

After contact is established with the Department of Justice's Financial Litigation Unit or the individual courts, AMAC will determine the best process to ensure reporting accuracy. The process will be developed within 60 days of response from the Department of Justice or by June 2016, whichever occurs first.

OIG Report Recommendation 4:

Once the process is developed based on Recommendation 3, develop a requirement to provide for periodic reconciliation of AFTECH to the official restitution order tracking systems maintained by the Clerks of the U.S. District Court.

Response:

AMAC will develop a reconciliation process with the courts' tracking systems. A periodic reconciliation process will be documented in the directive. After the process is developed in Recommendation 3, the requirement to provide for periodic reconciliation will be documented within 60 days.



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OIG Report Recommendation 5

Develop write-down and write-off policies and procedures for uncollectable and unenforceable restitution orders. This would include a requirement that all procedure steps are documented within the comment field in AFTECH to ensure justification for taking write-down or write-off actions.

Response:

The desktop procedures will require documentation of the steps taken in the Collector Comments fields in Aftech. Currently, all restitutions are valued on a quarterly basis as part of AMAC's normal valuation process. By September 2016, AMAC will develop guidelines to determine when restitutions should no longer be considered collectible.

OIG Report Recommendation 6:

Perform a review of every restitution case currently tracked by AMAC to determine whether the case is unenforceable or uncollectable and eligible for write-down or write-off action.

Response:

AMAC will gather the needed information on all our current restitution cases and work with OGC to define when restitutions are unenforceable; then we will write-off all unenforceable restitutions by June 2016.

OIG Report Recommendation 7:

Once the new processes are developed based on Recommendations 1 through 7, revise NCUA Instruction No. AMAC 3900.01 to reflect any function, procedures or processes conducted by any AMAC official related to internal and external monitoring and follow-up of restitution orders.

Response:

AMAC will update the instruction within 60 days after individual changes to processes are developed with full completion by June 2017.

OIG Report Recommendation 8:

Develop Desktop Procedures for all AMAC Divisions involved in the restitution orders process. The procedures should capture the flow of the entire restitution order process from initial receipt of the order to the closing of the loan account.

Response:

AMAC will document the desktop procedures within 60 days of process development with full completion by September 2017.

Thank you for the opportunity to comment.



Appendix C: Acronyms and Abbreviations

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| AMAC | Asset Management and Assistance Center |
| AUSA | Assistant United States Attorney |
| DAR | Division of Asset Recovery |
| DLMS | Division of Liquidation and Management Services |
| DOF | Division of Finance |
| DOJ | Department of Justice |
| FDIC | Federal Deposit Insurance Corporation |
| FLU | Financial Litigation Unit |
| GAS | Government Auditing Standards |
| MVRA | Mandatory Victim Restitution Act of 1996 |
| NCUA | National Credit Union Administration |
| NCUSIF | National Credit Union Share Insurance Fund |
| NRV | Net Realizable Value |
| OIG | Office of Inspector General |
| PPT | Priority Programs Team |
| SIG | Senior Interagency Group |
| TOP | Treasury Offset Program |