



February 2015

# DEPARTMENT OF JUSTICE

## Alternative Sources of Funding Are a Key Source of Budgetary Resources and Could Be Better Managed

## Why GAO Did This Study

DOJ is composed of approximately 40 components that carry out its activities and functions. The majority of DOJ's budget authority is provided through annual appropriations, but, in some cases, DOJ has the ability to fund its programs by using money it collects through alternative sources, such as fines, fees, and penalties. The authority to use these sources may come from either permanent statutory authority or may be contained within an annual appropriations act.

GAO was requested to examine DOJ's alternative sources of funds. Specifically, this report addresses (1) how much of DOJ's total budgetary resources come from major alternative sources of funding and the key statutory characteristics that provide agency flexibility regarding these sources, and (2) any opportunities that may exist for DOJ to better manage unobligated balances for selected major alternative sources of funding. GAO reviewed DOJ budget documents and relevant laws, and interviewed DOJ officials.

## What GAO Recommends

GAO recommends that DOJ develop a policy to analyze unobligated carryover balances of the Three Percent Fund. GAO also recommends that the FBI publish cost recovery and automation portions of fingerprint checks fees and develop a policy to analyze and determine an appropriate range for unobligated balances from automation fees. DOJ generally concurred with our recommendations, but noted concerns with developing revenue estimates for the Three Percent Fund and establishing a range of carryover balances for FBI fingerprint check fees.

View [GAO-15-48](#). For more information, contact David Maurer at (202) 512-9627 or [maurerd@gao.gov](mailto:maurerd@gao.gov).

## DEPARTMENT OF JUSTICE

### Alternative Sources of Funding Are a Key Source of Budgetary Resources and Could Be Better Managed

## What GAO Found

Alternative sources of funding—collections by the Department of Justice (DOJ) from sources such as fines, fees, and penalties—made up about 15 percent of DOJ's total budgetary resources in fiscal year 2013. Specifically, DOJ collected about \$4.3 billion from seven major alternative sources of funding—including the Assets Forfeiture Fund, the Crime Victims Fund (CVF), and noncriminal fingerprint checks fees, among others—which were available to DOJ. Agency flexibility regarding the use of the seven funding sources varied with laws specifying funding purposes, amounts, and availability by, for instance, limiting obligations from a source or limiting the period in which funds may be obligated.

DOJ can improve management of two alternative sources of funding. Specifically:

- DOJ has the authority to deposit up to 3 percent of amounts collected from civil debt collection activities in the Three Percent Fund. Collections are used to defray the costs of DOJ's civil debt collection activities. DOJ does not analyze its unobligated balances by, for example, estimating projected collections or developing future year fund reserves to conduct Three Percent Fund activities. As a result, DOJ consistently had end-of-year unobligated balances that were at least twice as large as the amount DOJ reported was required to remain in the fund at the end of the year. Moreover, DOJ asserted that the Three Percent Fund could not support more activities during the fiscal years than what had been obligated.
- The Federal Bureau of Investigation's (FBI) Criminal Justice Information Services (CJIS) Division collected \$396 million in fees for providing non-criminal justice fingerprint checks during fiscal year 2013. The fee is made up of a cost recovery and automation portion but the breakout between the two portions of the fee is not explicitly communicated to stakeholders. As a result, stakeholders do not have complete information for providing meaningful feedback. Additionally, CJIS sets fees, in part, based on projected volume of transactions. Actual volumes have exceeded projected volumes, resulting in CJIS bringing in more than anticipated in automation fees and contributing to an unobligated balance of \$284 million at the end of fiscal year 2013. CJIS officials stated that they are aware of growing unobligated balances but have not evaluated what an appropriate amount should be. As a result, CJIS does not know if it is carrying over a suitable amount to meet future needs.

In addition, unobligated balances in the CVF grew to nearly \$9 billion by the end of fiscal year 2013. Statutory provisions annually limit DOJ's ability to obligate collections in the fund. For example, during fiscal year 2013, DOJ received about \$1.5 billion in deposits to the fund, from sources such as criminal fines, and had statutory authority to obligate \$730 million from the fund for crime victim assistance programs. Consistent with scorekeeping guidelines used during the congressional budget process, DOJ reported funds not available for obligation as a credit or offset to its annual discretionary budget authority. From fiscal years 2009 through 2013, DOJ reported \$32 billion in offsets provided primarily by the CVF. As a result, DOJ's reported net discretionary budgetary authority decreased about 36 percent from 2009 to 2013, while DOJ's actual total discretionary budget authority remained relatively constant during these years.

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### Abbreviations

AFF	Assets Forfeiture Fund
AFP	Asset Forfeiture Program
BOP	Bureau of Prisons
CDCS	Consolidated Debt Collections System
CHRI	Criminal History Record Information
CJIS	Criminal Justice Information Services
CRAB	Collection Resources Allocation Board
CVF	Crime Victims Fund
DCFA	Diversion Control Fee Account
DCM	Debt Collection Management Staff
DCP	Diversion Control Program
DEA	Drug Enforcement Administration
DOJ	Department of Justice
EOUSA	Executive Office for U.S. Attorneys
EPA	Environmental Protection Agency
FBI	Federal Bureau of Investigation
FPI	Federal Prison Industries
HCFA	Health Care Fraud and Abuse Control
ITVERP	International Terrorism Victim Expense Reimbursement Program
OJP	Office of Justice Programs
OMB	Office of Management and Budget
OVC	Office for Victims of Crime
SBR	statement of budgetary resources
USMS	U.S. Marshals Service
USTP	U.S. Trustee Program
USTSF	United States Trustee System Fund
VOCA	Victims of Crime Act of 1984
WCF	Working Capital Fund

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February 19, 2015

### Congressional Requesters

The Department of Justice (DOJ) is responsible for the administration of justice and oversees activities related to federal law enforcement, and criminal and civil litigation in which the federal government has an interest, as well as certain national security functions. DOJ is composed of approximately 40 components that carry out these activities and functions. The majority of DOJ's budget authority is provided through annual appropriations.<sup>1</sup> In some cases, DOJ has the authority to fund its programs with money it collects from other sources such as fines, fees, penalties, and other activities related to DOJ's administration of justice. DOJ's total budgetary resources in fiscal year 2013 were about \$39.5 billion, some of which was generated from these sources.<sup>2</sup> The authority to obligate and expend these sources may come from either permanent statutory authority or may be contained within an annual appropriations act.<sup>3</sup> For the purposes of this report, "alternative sources of funding" refers to collections<sup>4</sup> by DOJ and other agencies that are available to DOJ

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<sup>1</sup>Congress finances federal programs and activities by providing "budget authority." Budget authority is authority provided by federal law to enter into financial obligations that will result in immediate or future outlays involving federal government funds. The basic forms of budget authority include (1) appropriations, (2) borrowing authority, (3) contract authority, and (4) authority to obligate and expend offsetting receipts and collections.

<sup>2</sup>U.S. Department of Justice: *2013 Agency Financial Report* (Washington, D.C.: December 2013). Budgetary resources means an amount available to enter into new obligations and to liquidate them. Budgetary resources are made up of new budget authority and unobligated balances of budget authority provided in previous years. Total budgetary resources is a specific line in the *Statement of Budgetary Resources* that denotes all amounts available to enter into new obligations.

<sup>3</sup>An obligation is a definite commitment that creates a legal liability of the government for the payment of goods and services ordered or received. An expenditure is the actual spending of money, also known as an outlay. An outlay is defined as the issuance of checks, disbursement of cash, or electronic transfer of funds made to liquidate a federal obligation.

<sup>4</sup>Collections are amounts received by the federal government during the fiscal year. For the purposes of this report, we use the term "collections" to refer to amounts in DOJ's Statement of Budgetary Resources (SBR). "Collections" represents all the budgetary resources contributed and disclosed on the SBR less beginning unobligated balances and recoveries and other changes to unobligated balances from prior years.

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to obligate and expend.<sup>5</sup> Examples of alternative sources of funding include collections from criminal and civil fines and penalties, forfeiture of assets and property, and businesslike transactions such as sales of prison-manufactured goods and services.<sup>6</sup> For a list of identified alternative sources of funding within DOJ, see appendix I.

Alternative sources of funding are subject to congressional oversight and review as other funds are, but that review may not necessarily be part of the annual appropriations process. For instance, DOJ receives some offsetting collections that it can obligate and expend without further action from Congress.<sup>7</sup> Additionally, collections from some alternative sources of funding are not required to be obligated in the year in which they were collected, providing opportunities for unobligated balances to be brought forward for the following fiscal year.<sup>8</sup> Therefore, the use of some alternative sources may not be subject to the same scrutiny as it would be in programs where, for example, 1-year budget authority is provided through annual appropriations acts. Further, there are additional requirements established in law that allow DOJ to obligate and expend funds from alternative sources that are unique to each source, and these varying requirements present different oversight challenges to programs that are financed by alternative sources.

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<sup>5</sup>The collections discussed in this report include collections effected by DOJ and, in some cases, collections by other agencies that are then transferred by law to DOJ to obligate and expend. For example, the Federal Trade Commission collects fees from persons who are required to file premerger notifications. Half of the fees collected are then transferred to DOJ's Antitrust Division. Collections also include sales of goods by a wholly owned, government corporation—the Federal Prison Industries (FPI)—which is under the management of the Bureau of Prisons.

<sup>6</sup>Other departments and agencies also have various authorities allowing them to obligate and expend collections.

<sup>7</sup>Offsetting collections are collections authorized by law to be credited to appropriation or fund expenditure accounts. Laws authorizing offsetting collections make them available for obligation to meet the account's purpose without further legislative action. Annual appropriations acts may include limitations on the obligations to be financed by these collections.

<sup>8</sup>Specifically, an unobligated balance is the portion of obligation authority that has not yet been obligated. For accounts with no time limit on obligation authority, the unobligated balance is carried forward indefinitely until (1) specifically rescinded by law or (2) the head of the agency concerned or the President determines that the purposes for which the appropriation was made have been carried out and disbursements have not been made from the appropriation for 2 consecutive years.

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You expressed interest in DOJ's alternative sources of funding and DOJ's flexibility in using these funds. This report addresses the following questions:

1. How much of DOJ's total budgetary resources comes from major alternative sources of funding, and what are the key statutory characteristics that provide agency flexibility regarding use of these sources?
2. What opportunities, if any, exist for DOJ to better manage unobligated balances from selected major alternative sources of funding?

To address the first question, we identified various alternative sources of funding that DOJ receives across multiple accounts or programs.<sup>9</sup> To do this, we interviewed DOJ officials knowledgeable about the DOJ budget and we reviewed various budget documents. We initially identified 21 accounts or programs that are financed by alternative sources of funding. We narrowed our review to the seven major alternative sources of funding, determined by the following decision criteria:<sup>10</sup> Collections must be at or above \$100 million annually to focus on the alternative sources bringing in the largest sums to DOJ, the funds must be managed primarily by DOJ, and they must not be entitlement or trust funds.<sup>11</sup> The scope of

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<sup>9</sup>An account is a separate financial reporting unit for budget, management, or accounting purposes. All budgetary transactions are recorded in accounts, but not all accounts are budgetary in nature. Further, a single account may support a single program or multiple programs. Conversely, a single program may be supported by multiple accounts.

<sup>10</sup>Of the seven alternative sources of funding that were part of this review, five are single accounts supporting a single program (Assets Forfeiture Fund, Crime Victims Fund, Diversion Control Fee Account, Federal Prison Industries, and United States Trustee System Fund). One alternative source of funding, the Three Percent Fund, is a part of DOJ's broader Working Capital Fund; however, it operates as a single program that is managed separately from the Working Capital Fund. The last alternative source of funding comes from fingerprint-based Criminal History Record Information (CHRI) checks fees. Fingerprint checks are conducted by the Federal Bureau of Investigation's Criminal Justice Information Services (CJIS) Division for noncriminal justice purposes. CJIS is a division made up of multiple programs and supported by multiple accounts. We only considered the fees coming in to CJIS through the fingerprint-based CHRI checks.

<sup>11</sup>Entitlement refers to a program in which the federal government is legally obligated to make payments or provide aid to any person who, or state or local government that, meets the legal criteria for eligibility. Examples include benefit payments for Social Security, Medicare, Medicaid, and unemployment insurance. Trust funds are accounts designated as "trust funds" by law, regardless of any other meaning of the term "trust fund." Except in rare circumstances, a trust fund account imposes no fiduciary responsibility on the federal government. The Federal Prison Commissary Fund is an example of a DOJ trust fund.

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our review covered funding from fiscal years 2009 through 2013 so that we could include enough years to identify any recent trends in collections, obligations, and unobligated balances. To report the financial information such as collections and obligations related to alternative sources of funding for the 5 years, we analyzed DOJ performance and accountability reports, president's budgets appendixes, congressional budget submissions, and supporting data provided by DOJ. We compared the amounts in the seven selected alternative sources of funding against DOJ's statement of budgetary resources using DOJ's audited information reported in its annual financial statements. For six of the seven alternative sources of funding, we determined that the data on the amounts reported for the years under review DOJ-wide were sufficiently reliable for determining how much of DOJ's budgetary resources comes from these alternative sources of funding.<sup>12</sup> We also determined that for fiscal year 2013, the fingerprint-based Criminal History Record Information checks provided by the Federal Bureau of Investigation (FBI) Criminal Justice Information Services (CJIS) Division (CJIS fingerprint checks fees) were also reliable for our purposes.<sup>13</sup> However, as discussed later in this report, the amounts for fiscal years 2009 through 2012 for the CJIS fingerprint checks fees were provided by DOJ sources and could not be reconciled to the audited financial statements.<sup>14</sup> We analyzed DOJ's statutory requirements applicable to the funding, specifically considering constraints on the purpose of the funds, the amount of funds available, the period of the availability of funds, and reporting requirements on activities. We also interviewed agency officials about the various alternative sources of funding to understand their interpretation of the laws governing them.

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<sup>12</sup>The six alternative sources of funding were the Assets Forfeiture Fund, the Crime Victims Fund, the Diversion Control Fee Account, the Federal Prison Industries, the Three Percent Fund, and the United States Trustee System Fund.

<sup>13</sup>The fees collected by CJIS are the fingerprint-based Criminal History Record Information checks. Another division within the FBI, the Records Management Division collects fees for the name-based CHRI checks. For the purposes of this report, we refer to the fingerprint-based CHRI checks provided by CJIS as "CJIS fingerprint checks fees."

<sup>14</sup>According to FBI officials, the FBI could not reconcile user fee amounts to its audited financial statements for fiscal years 2009 through 2012 because records were not integrated with the core financial system, and therefore they were unable to separate fee amounts. In fiscal year 2013, the FBI began using the Unified Financial Management System, which enabled the agency to segregate fee data starting in 2013.

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To address the second question, we selected for review three of the seven alternative sources we examined under the first question based on, among other things, the highest percentage of unobligated balance at the end of fiscal year 2013 compared with the total collections from fiscal years 2009 through 2013.<sup>15</sup> We removed the Assets Forfeiture Fund (AFF) from consideration in the second question because GAO has conducted recent reviews of AFF fund management.<sup>16</sup> We then interviewed agency officials responsible for these alternative sources about how they manage unobligated balances. We compared the management of the funds with criteria developed in our past work on evaluating carryover balances.<sup>17</sup> For the one alternative source of funding derived from user fees, we also compared the setting of fees with (1) our design guide for federal user fees and (2) our past work on identifying fee design options for managing carryover balances in fee accounts.<sup>18</sup> To determine financial activity for the Crime Victims Fund (CVF), we compared both reconciled financial information and separate DOJ-provided information on receipts. To report on the impact of unavailable balances from the CVF and the AFF to the department's annual discretionary budget authority, we used reported information from the President's Budget for DOJ's total discretionary budget authority and the scorekeeping credit. Appendix II provides more information on our scope and methodology.

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<sup>15</sup>The three alternative sources of funding examined are the Three Percent Fund, CJIS fingerprint checks fees, and the Crime Victims Fund.

<sup>16</sup>See GAO, *Justice Assets Forfeiture Fund: Transparency of Balances and Controls over Equitable Sharing Should Be Improved*, [GAO-12-736](#) (Washington, D.C.: July 12, 2012), and *Department of Justice: Working Capital Fund Adheres to Some Key Operating Principles but Could Better Measure Performance and Communicate with Customers*, [GAO-12-289](#) (Washington, D.C.: Jan. 20, 2012).

<sup>17</sup>GAO, *Budget Issues: Key Questions to Consider When Evaluating Balances in Federal Accounts*, [GAO-13-798](#) (Washington, D.C.: Sept. 30, 2013). In developing those criteria, we identified common themes and factors that contribute to fluctuations in carryover balances and worked with stakeholders such as the Office of Management and Budget to develop a list of questions on four broad topics for congressional committees, managers, and others to consider when examining such balances government-wide.

<sup>18</sup>GAO, *Federal User Fees: A Design Guide*, [GAO-08-386SP](#) (Washington, D.C.: May 29, 2008), and *Federal User Fees: Fee Design Options and Implications for Managing Revenue Instability*, [GAO-13-820](#) (Washington, D.C.: Sept. 30, 2013). Our design guide on federal user fees drew from economic and policy literature on federal and nonfederal user fees and prior work on user fees. This guide also discusses case examples to highlight questions that should be considered when setting user fees.

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We conducted this performance audit from September 2013 to February 2015 in accordance with generally accepted government auditing standards. 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.

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## Background

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### Budget Authority and Collections

The congressional “power of the purse” refers to the power of Congress to appropriate funds and to prescribe the conditions governing the use of those funds. Congress exercises this power by providing budget authority, which is authority provided by federal law to enter into financial obligations that will result in immediate or future outlays involving federal government funds.

For the purposes of this report, “alternative sources of funding” refers to collections that are available to DOJ to obligate and expend. Some of these collections, known as offsetting collections, are available for obligation and expenditure without further legislative action. Others, however, called offsetting receipts, cannot be used without being appropriated. Examples of the various types of collections at DOJ include fees from regulated industries, such as fees associated with the federal bankruptcy system collected through the United States Trustee Program; the collection of fines, settlements, and other penalties associated with criminal and civil litigation activities; businesslike transactions such as the Bureau of Prisons’ Federal Prison Industries (FPI) sale of goods and services; and CJIS fingerprint checks fees.



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## Agency Flexibility Regarding Uses of Funding from Alternative Sources

Congress typically appropriates and conducts oversight of funds for DOJ at the account level, directing that accounts be used for specific purposes, restricting the amount or purpose for which the funds can be used, and at times requiring DOJ to report on activities conducted at the account level.<sup>19</sup> For each alternative source of funding, Congress must provide DOJ authority to (1) collect amounts, (2) conduct the activity in question, and (3) obligate and expend the funds collected on that activity. In each of these three areas, Congress can delegate some flexibility to agencies in how they exercise these authorities, or it can retain control. Regardless of the flexibility Congress provides DOJ regarding alternative sources of funding, it always retains oversight over the funding and associated activities. Figure 1 outlines key characteristics through which Congress may increase or decrease an agency's flexibility in funding.

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<sup>19</sup>An appropriation account is the basic unit of an appropriation generally reflecting each unnumbered paragraph in an appropriation act. An appropriation account typically encompasses a number of activities or projects and may be subject to restrictions or conditions applicable to only the account, the appropriation act, titles within an appropriation act, other appropriation acts, or the government as a whole. In addition, the Treasury maintains a list of accounts that are maintained through the Treasury Account Symbol system. Accounts maintained by the Treasury receive an identification code, in collaboration with the Office of Management and Budget and the owner agency, for an individual appropriation, receipt, or other fund account.

**Figure 1: Key Statutory Characteristics Increasing or Decreasing Agency Flexibility Over the Use of Funding**



Key questions	Options increasing agency flexibility	Options increasing congressional control
<b>Purpose</b>	For what purposes may the funding be used?	Broadly defined uses for the funds
<b>Amount</b>	How is the available amount determined and to what extent will Congress limit the amount available?	Agency has the authority to determine the amount available for obligation
	What congressional action triggers the use of funding?	Congress specifies the amount available for obligation.
<b>Time</b>	What is the period of availability for the source of funding?	The funds are available for obligation until expended (no-year authority)
<b>Review</b>	What specific reporting requirements apply to the source of funding?	The funds are available for obligation only during a specific fiscal year (1-year authority) <sup>a</sup>
	Basic reporting requirements, such as chief financial office reporting requirements	Additional reporting requirements, such as financial reports

Source: GAO. | GAO-15-48

<sup>a</sup>Congress may also provide multiyear funding, where an agency's access to funding is prescribed in law for a specific number of years, but is not available indefinitely.

## Budgetary Resources and Government Financial Statements

The President's Budget provides agencies' estimated and actual budget authority, obligations, and unobligated balances, among other things. Total budgetary resources are also reported annually in an agency's statement of budgetary resources, which is published in either a performance and accountability report, or an agency financial report.<sup>20</sup> Whereas the President's Budget provides information used by the Office of Management and Budget (OMB) for planning and controls, the financial reports prepared by agencies are required as part of the Chief Financial Officers Act of 1990, as amended.<sup>21</sup> The financial statements associated with the financial reports are subject to audit.

<sup>20</sup>For the purposes of this report, we used total budgetary resources as reported in the *Statement of Budgetary Resources* and not as reported in the President's Budget.

<sup>21</sup>31 U.S.C. §§ 3515, 3521.

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## About 15 Percent of DOJ's Total Budgetary Resources Comes from Alternative Sources of Funding, and Laws Specific to Each Source Determine How Funds Should Be Obligated

Seven alternative sources of funding made up approximately 15 percent of DOJ's total budgetary resources in fiscal year 2013, and different legislative requirements affect the agency's flexibility in using these funds. Specifically, DOJ had about \$4.3 billion in collections from seven major alternative sources of funding in 2013, and generally used this funding for related program costs. In addition, agency flexibility regarding using the seven funding sources varied with laws specifying funding purposes, amounts, and availability.

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## About 15 Percent of DOJ's Budgetary Resources Comes from Seven Alternative Sources of Funding

In fiscal year 2013, about 15 percent of DOJ's total budgetary resources—or \$5.8 billion out of \$39.5 billion—came from seven major alternative sources of funding. Specifically, during fiscal year 2013, collections for these seven sources totaled about \$4.3 billion, which was available to DOJ to obligate. DOJ also brought forward \$1.3 billion in unobligated balances from fiscal year 2012 for these seven sources.<sup>22</sup>

In addition to collections that DOJ had the authority to use, in fiscal year 2013, DOJ received deposits of about \$1.6 billion from two of the seven alternative sources of funding that were by law not available for the department to obligate, and therefore not counted as a budgetary resource.<sup>23</sup>

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<sup>22</sup>Total budgetary resources include unobligated balances from the prior fiscal year, recoveries and other changes to unobligated balances, and collections. For fiscal year 2013, recoveries and other changes to unobligated balances were about \$100 million. Numbers do not add up because of rounding. For a breakout of the financial activity for the seven major alternative sources of funding, see app. III.

<sup>23</sup>For the purposes of this report, the term “deposits” refers to both collections that were available as a budgetary resource for DOJ to obligate during the year as well as any receipts above the obligation limitation or any amounts made unavailable to use as a budgetary resource. The term “collection” refers only to receipts that are available to DOJ as a budgetary resource.

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The seven major alternative sources of funding are the following:

- *Assets Forfeiture Fund*: The AFF receives monies from the proceeds of forfeiture of assets used in criminal operations. Proceeds deposited in the AFF are used to pay for expenses of the Asset Forfeiture Program, including asset management and disposal, the equity of innocent third parties and lienholders, equitable sharing payments, program investigative expenses, and other authorized expenses of the program.
- *Crime Victims Fund*: Criminal fines and penalties collected from offenders, among other sources, are deposited in the CVF. The CVF funds victims' assistance programs and provides direct compensation to crime victims.
- *Criminal Justice Information Services fingerprint checks fees*: CJIS, a division of the FBI, collects fees from federal, state, and other authorized entities requesting fingerprint identification records for noncriminal justice purposes such as employment and licensing. Fees collected pay for the costs of providing the service and for the automation of fingerprint identification and other criminal justice information services.
- *Diversion Control Fee Account (DCFA)*: Fees paid by Drug Enforcement Administration (DEA) registrants, such as manufacturers, distributors, dispensers (including physicians), importers, and exporters of controlled substances (such as narcotics and stimulants) and certain listed chemicals (such as ephedrine) are deposited in the DCFA. Fees collected are used to recover the full costs of the program, including personnel costs and operation costs such as investigative costs, travel, and the purchase of goods and services.<sup>24</sup>
- *Federal Prison Industries, Inc.*: FPI, a wholly owned government corporation within the Bureau of Prisons (BOP), sells products and

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<sup>24</sup>Each fiscal year, the first \$15 million collected is transferred to the Treasury and is not available for obligation for the Diversion Control Program. Therefore, the Drug Enforcement Administration, the agency responsible for the Diversion Control Program, needs to collect an additional \$15 million per year beyond estimated costs. 21 U.S.C. § 886a.

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services manufactured by federal inmates.<sup>25</sup> FPI uses sales proceeds for FPI program expenses, such as wages for federal inmates.

- *Three Percent Fund*: DOJ collects 3 percent of most amounts paid resulting from “civil debt collection litigation activities,” including civil judgments in Medicare fraud cases and student loan collections. DOJ uses these funds to defray costs associated with its debt collection activities, such as paying the costs of the Debt Collection Management Staff (DCM) and financial litigation unit personnel and activities at the U.S. Attorneys’ Offices.
- *United States Trustee System Fund (USTSF)*: The U.S. Trustee Program (USTP) receives and deposits in the USTSF fees collected generally from four sources:<sup>26</sup> (1) a portion of the filing fee paid at the beginning of each bankruptcy case for chapters 7, 11, 12, and 13; (2) chapter 11 quarterly fees; (3) excess percentage fees collected by chapter 12 or chapter 13 standing trustees; and (4) interest on invested funds.<sup>27</sup> These fees are used by the USTP for expenses, such as salaries and benefits, related to overseeing the bankruptcy process as specified in annual appropriations acts.

To determine collections, obligations, and unobligated balance amounts for the seven alternative sources of funding, we relied on data that were reconciled to DOJ’s audited financial statements. DOJ was able to reconcile the data for six of the seven alternative sources for fiscal years 2009 through 2013. For the CJIS fingerprint checks fees, as part of our

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<sup>25</sup>A wholly owned government corporation is an enterprise or business activity designated by the Government Corporation Control Act of 1945 (31 U.S.C. § 9101) or some other statute as a wholly owned government corporation. Each such corporation is required to submit an annual business-type statement to the Office of Management and Budget.

<sup>26</sup>28 U.S.C. § 589a. The USTSF also receives deposits from fines imposed on bankruptcy petition preparers, compensation for cases in which the United States trustee serves as trustee, and a portion of fees from conversion of cases from chapter 7 or 13 to chapter 11.

<sup>27</sup>Chapter 7 bankruptcy is available for individuals and businesses, in which a case trustee liquidates nonexempt assets for distribution to creditors. Chapter 11 bankruptcy permits an individual or a business to reorganize debts while continuing to operate. Chapter 12 bankruptcy allows an eligible family farmer or a fisherman to file for bankruptcy, reorganize the business’ affairs of the farm or fishing business, and repay all or part of the business’ debts while continuing to operate. Chapter 13 bankruptcy is used by individuals with regular income to reorganize their financial affairs under a repayment plan that must be completed within 3 to 5 years. Standing trustees are appointed for chapter 12 and 13 bankruptcy cases by the U.S. Trustee Program and typically serve as the trustees of the debtor’s estate pending fulfillment of the repayment plan. See 28 U.S.C. § 586(b).

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procedures, we obtained collections, obligations, and unobligated balances data from the FBI program offices for fiscal years 2009 through 2013. To validate the data provided, we requested that the FBI reconcile these amounts with the FBI's audited statement of budgetary resources (SBR) for those respective periods. The FBI provided updated amounts for fiscal year 2013 based on its reconciliation to the FBI's audited SBR. However, the FBI was unable to demonstrate that it could reconcile amounts it provided for fiscal years 2009 through 2012 to the amounts in its audited SBR for each of the respective years.<sup>28</sup> For the purposes of this report, we will be reporting CJIS fingerprint checks fees data for fiscal years 2009 through 2012 as reported to us by the FBI.

Of the seven major alternative sources of funding, the two with the highest amount of deposits were the AFF and the CVF, each receiving deposits of \$10.5 billion and \$10.4 billion respectively over the 5-year time period, not all of which was available to DOJ to obligate. The remaining five alternative sources of funding brought in collections totaling \$9.0 billion during this same time period.<sup>29</sup>

Generally, collections from the seven major alternative sources of funding were obligated to support the associated programs or activities. For example, fees collected and deposited into the DCFA paid for all expenses required to run the Diversion Control Program.

For all seven major alternative sources of funding, DOJ obligated about \$22.8 billion, or on average about \$4.6 billion a year, from fiscal years

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<sup>28</sup>According to FBI officials, prior to fiscal year 2013, the FBI managed and tracked fingerprint checks fees through records not integrated with the core financial system. Therefore the agency was unable to separately distinguish amounts it provided for fiscal years 2009 through 2012 within its audited SBR. Starting in fiscal year 2013, FBI began using the Unified Financial Management System, which enabled the agency to segregate fee data.

<sup>29</sup>The \$9.0 billion for the five remaining alternative sources of funding includes collections from CJIS fingerprint checks fees for fiscal years 2009 through 2012, which the FBI could not demonstrate that it could reconcile to its audited statement of budgetary resources. According to the FBI, CJIS fingerprint checks fees for fiscal years 2009 through 2012 totaled about \$1.5 billion.

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2009 through 2013.<sup>30</sup> Specifically, for five of the seven alternative sources of funding—CJIS fingerprint checks fees, DCFA, FPI, the Three Percent Fund, and USTSF—DOJ obligated about 97 percent of total collections, or about \$8.8 billion of \$9.0 billion collected.<sup>31</sup> For the two remaining alternative sources of funding—the CVF and the AFF—DOJ obligated about \$14.0 billion. The AFF and the CVF included deposits that, pursuant to law, have not been available for obligation.<sup>32</sup> At the end of fiscal year 2013, about \$9.7 billion from the AFF and the CVF was unavailable for obligation by DOJ. The majority of this amount came from the CVF, which will be discussed in more detail later in this report.

While the majority of DOJ's alternative sources of funding came from these seven sources, DOJ has other alternative sources of funding, which are listed in appendix I. In addition, appendix III provides more detail on collections and obligations for the seven major alternative sources of funding, including relevant legal requirements.

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### DOJ Flexibility to Use Alternative Sources of Funding Varies across the Seven Major Sources of Funding

Congress has used different options to either increase or decrease agency flexibility related to the use of DOJ's seven major alternative sources of funding. As previously discussed, Congress establishes agency flexibility through the requirements in authorizing legislation, appropriation acts, or other laws that, for instance, require agencies to obligate the funds in a given year or over multiple years, or obligate a certain amount for a certain purpose.

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<sup>30</sup>The \$22.8 billion obligated includes obligation amounts provided for CJIS fingerprint checks fees for fiscal years 2009 through 2012, which the FBI could not demonstrate that it could reconcile to its audited statement of budgetary resources. According to the FBI, obligations for the CJIS fingerprint checks fees for fiscal years 2009 through 2012 totaled about \$1.5 billion.

<sup>31</sup>The 97 percent obligated includes obligation amounts provided for CJIS fingerprint checks fees for fiscal years 2009 through 2012, which the FBI could not demonstrate that it could reconcile to its audited statement of budgetary resources.

<sup>32</sup>Funds may be unavailable pursuant to a statutory obligation limitation for 1 or more fiscal years—or may be permanently rescinded. A limitation is a restriction on the amount, purpose, or period of availability of budget authority. While limitations are most often established through appropriations acts, they may also be established through authorization legislation. A rescission is legislation that cancels the availability of budget authority previously enacted before the authority would otherwise expire.

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- Congress may limit the availability of funds so they are available for obligation only in a given fiscal year—characterized as 1-year funds—such as a portion of the CJIS fingerprint checks fee amounts. In contrast, Congress may establish funding as available for obligation indefinitely—characterized as no-year funds—such as funds deposited in other major alternative sources of funding like the Three Percent Fund, which can be carried over from 1 year to the next.<sup>33</sup>
  - Congress has imposed additional annual reporting requirements for certain of the seven alternative sources of funding (see app. III). For example, DOJ is required to provide annual reports for the AFF.<sup>34</sup>

Table 1 shows requirements related to authorized purposes and amounts for the seven major alternative sources of funding.

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<sup>33</sup>With respect to collections deposited in the USTSF, collections remain in the fund until they are expended, but DOJ's ability to obligate these funds depends on whether it is given budget authority to do so in annual appropriations acts. Fees collected by CJIS to process fingerprint identification records are available to reimburse the FBI's Salaries and Expenses accounts for costs incurred in providing these services; these funds are available for 1 year. However, CJIS may collect additional fees to establish a no-year fund that can be used for the automation of fingerprint identification and criminal justice information services and associated costs.

<sup>34</sup>Specifically, pursuant to 28 U.S.C. § 524(c)(6), DOJ is required to submit a report to Congress and make it available to the public not later than 4 months after the end of each fiscal year. The report must include extensive information related to the AFF, including, for example, total deposits to the AFF by state and total expenses paid from the AFF, by category and recipient agency, among other things. DOJ is also required to make available to Congress and the public the audited financial statements of the fund. The Consolidated and Further Continuing Appropriations Act, 2013, contains an additional spend plan requirement for DOJ to detail the planned distribution of AFF joint law enforcement operations funding for 2013. Pub. L. No. 113-6, div. B, tit. II, § 218, 127 Stat. 198, 260.



**Table 1: Summary of Department of Justice (DOJ) Flexibility across Its Major Alternative Sources of Funding**

DOJ alternative source of funding	Purpose and amount requirements
Assets Forfeiture Fund (AFF)	The Asset Forfeiture Program may obligate AFF amounts for specific program purposes, such as the costs of storing, maintaining, and disposing of seized assets, and for equitable sharing payments to participating law enforcement agencies. <sup>a</sup> Any excess unobligated amount may be available for any authorized DOJ purpose, subject to congressional notification requirements. Congress has limited AFF amounts available for DOJ use by temporarily rescinding specific amounts in the fiscal years 2009 through 2013 annual appropriations acts. In addition, in fiscal year 2013, Congress asserted additional requirements over the purpose and amounts available for obligation.
Crime Victims Fund (CVF)	CVF amounts—collected from persons convicted of federal crimes, for example—are available for specific victims’ grant programs and services, such as state crime victim assistance programs. From fiscal years 2009 through 2013, annual appropriations acts have limited the CVF amounts the Office of Justice Programs (OJP) may obligate for these purposes.
Criminal Justice Information Services (CJIS) Fingerprint Checks Fees	CJIS may obligate fees collected for salaries and other expenses incurred in processing fingerprint identification records for certain purposes (cost recovery portion of the fee), and for expenses related to the automation of fingerprint identification and criminal justice information services (automation portion of the fee). The Federal Bureau of Investigation (FBI) determines the level of fees collected for these purposes.
Diversion Control Fee Account (DCFA)	The Drug Enforcement Administration (DEA) may obligate the DCFA for expenses of the Diversion Control Program (DCP), such as personnel costs, as set forth in DOJ’s annual budget request. <sup>b</sup> Fees collected must be reasonable and set at a level that ensures that the DCP recovers the full costs of operating its program. <sup>c</sup>
Federal Prison Industries, Inc. (FPI)	FPI may obligate proceeds from its sales for FPI program expenses, such as wages for federal inmates. DOJ determines the amount available for these purposes, as set forth in FPI’s annual budget, except for administrative uses, which were limited by annual appropriations acts in fiscal years 2009 through 2013.
Three Percent Fund	The Three Percent Fund is available for expenses related to processing and tracking civil and criminal debt collection litigation. Thereafter, it is available for financial systems and debt collection–related personnel, administrative, and litigation expenses. Available amounts are determined by calculating 3 percent of eligible amounts collected pursuant to civil debt collection litigation activities, and DOJ determines the amount it obligates for authorized purposes.
U.S. Trustee System Fund (USTSF)	The U.S. Trustee Program (USTP) may obligate the USTSF for program-related expenses, such as salaries and benefits, as specified in annual appropriation acts.

Source: GAO analysis of related statutory authorities. | GAO-15-48

<sup>a</sup>DOJ’s fiscal year 2013 annual appropriation act directed that a specific amount be used for joint law enforcement operations and imposed a limit of \$10 million for excess unobligated balances available for obligation.

<sup>b</sup>Any changes in the amounts designated in the budget requests can be made only after notification to the Appropriations Committees.

<sup>c</sup>Each fiscal year, the first \$15 million collected is transferred to the Treasury and is not available for use by the Diversion Control Program. Therefore, DEA needs to collect an additional \$15 million per year beyond estimated costs. 21 U.S.C. § 886a.

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## DOJ Can Improve the Management of Unobligated Balances of Selected Alternative Sources of Funding

Selected alternative sources of funding have growing unobligated balances, some of which could benefit from improved management. We conducted case studies for three alternative sources of funding with unobligated balances: the Three Percent Fund, CJIS fingerprint checks fees, and the Crime Victims Fund. DOJ officials responsible for the Three Percent Fund have taken steps to manage the fund such as annually reviewing how much they allocate in the fiscal year. However, they have not, for example, projected collections for the following year when determining the availability of funding for the next fiscal year. In addition, DOJ lacks transparency over how fingerprint checks fees are broken out, and has not evaluated what an appropriate carryover balance should be. Finally, unobligated balances that have been made temporarily unavailable to DOJ in the Crime Victims Fund have continued to grow, and these balances have an increasing impact on DOJ's reporting of annual discretionary budget authority.

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## DOJ Has Taken Steps to Manage the Three Percent Fund but Could Better Clarify a Reserve Policy and Estimates of Future Needs

DOJ has processes to manage Three Percent Fund obligations, but could better manage unobligated balances. DOJ has the authority to credit up to 3 percent of all amounts collected pursuant to civil debt collection litigation activities, which are deposited in the Three Percent Fund.<sup>35</sup> If, for example, a civil settlement results in \$100 for the government, DOJ generally manages the transaction from the debtor to the government entity receiving the funds. Of the \$100, \$3 would be deposited into the Three Percent Fund.<sup>36</sup> Currently, DOJ assesses the 3 percent offset for most debt referred to DOJ for collection<sup>37</sup> or where DOJ litigation

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<sup>35</sup>21st Century Department of Justice Appropriations Authorization Act, Pub. L. No. 107-273, div. C, tit. I, § 11013(a), 116 Stat. 1758, 1823 (2002) (28 U.S.C. § 527 note).

<sup>36</sup>DOJ only offsets funds that are sent through the department for disbursement. DOJ officials stated that if DOJ does not collect the funds, the offset may not be taken. In addition, certain types of judgments and litigants are exempted from the 3 percent assessment; for example, DOJ does not assess 3 percent on damages awards that are subject to the joint or shared control of another entity or recoveries due to relators under the False Claims Act.

<sup>37</sup>DOJ is the government's collector of last resort. After a federal department or agency exhausts all reasonable efforts short of litigation to persuade debtors to pay what they owe, the matter is referred to DOJ to collect such civil debts. DOJ may file suit and obtain and enforce judgments in order to collect the civil debt.

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**Three Percent Fund Awards' Purpose and Process**

Three Percent Fund awards defray costs associated with the Department of Justice's (DOJ) civil debt collection and civil and criminal litigation activities conducted by the department. Recipients of awards include DOJ's litigation divisions (for instance the Tax and Civil Divisions), the Executive Office of the U.S. Attorneys, the Federal Bureau of Investigation, and the Debt Collection Management Staff (DCM). Components are allocated funds through a solicitation process overseen by the Collection Resources Allocation Board (CRAB). Awards are accompanied by a memo written by the CRAB, which specifies the purposes and allocation amounts.

**Civil Debt Collection Management**

The DCM manages DOJ's collection, disbursement, accounting, and reporting of payments received from and on behalf of debtors collected by DOJ. DCM's primary systems for managing civil debt collections are the Consolidated Debt Collection System and the Debt Management Module. Through these systems, payments are made to receiving federal agencies that were parties to civil judgments.

For more information on funding purposes, see appendix III

Source: GAO analysis of DOJ information. | GAO-15-48

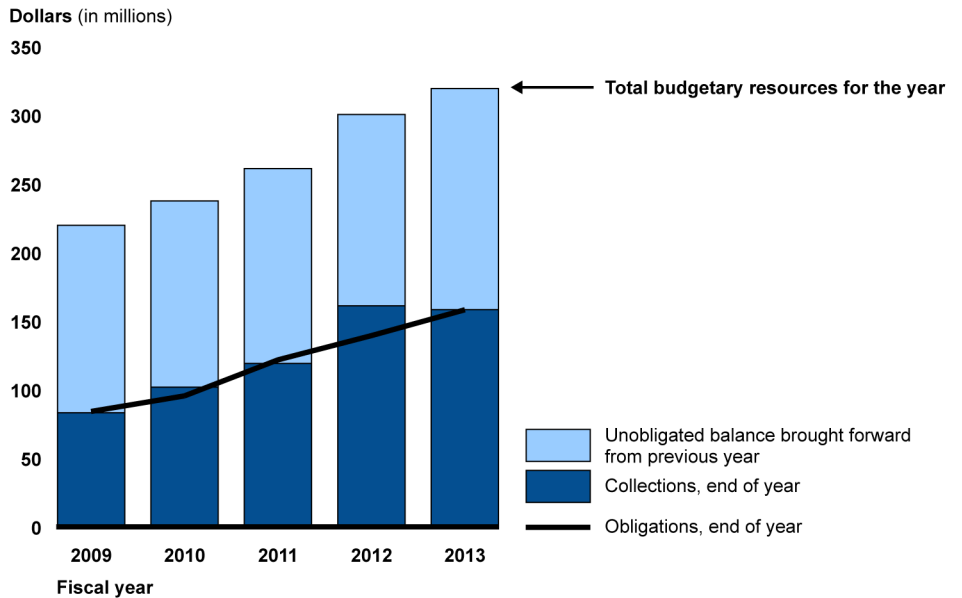
results in a civil judgment.<sup>38</sup> For example, in one case that was resolved in fiscal year 2013, DOJ reportedly collected \$13 million from a civil settlement involving fraud against the U.S. Postal Service. Of the \$13 million that was awarded to the U.S. Postal Service, DOJ deposited \$390,000 into the Three Percent Fund. Amounts from the Three Percent fund are then allocated to DOJ components that requested funds for specified activities, such as tracking civil and criminal debt collection litigation.<sup>39</sup> Officials responsible for the Three Percent Fund stated that they generally review and fund component requests at the beginning of the fiscal year. As shown in figure 2, obligations of the Three Percent Fund have generally risen with increased budgetary resources. Specifically, from fiscal years 2009 through 2013, obligations increased by about \$74 million, while collections in the Three Percent Fund have increased by almost \$75 million over the same 5 years.

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<sup>38</sup>Pursuant to DOJ's interpretation of its authority. Assessments are only made once payment has been made.

<sup>39</sup>The fund is available for various purposes, which include, in order of priority, (1) paying the costs of processing and tracking civil and criminal debt collection litigation, and, thereafter, (2) for financial systems and for debt collection-related personnel, administrative, and litigation expenses. DOJ interprets this authority to include activities related to both referred debt collection and affirmative civil and criminal investigations and cases that could produce a debt to the government. Litigation costs may include, but are not limited to, administrative and labor costs for court cases and investigations. Collection costs may include, but are not limited to, running credit reports on debtors or administration costs associated with tracking and contacting debtors. For more information on awards and recipients, see app. III.

**Figure 2: Three Percent Fund Total Budgetary Resources from Collections and Unobligated Balances Brought Forward from Previous Years, and Obligations, Fiscal Years 2009 through 2013**



Source: GAO analysis of Department of Justice data. | GAO-15-48

Note: Three Percent Fund total budgetary resources are primarily composed of current-year collections and unobligated balances from the previous year. Unobligated balances are determined through the difference between total budgetary resources for the fiscal year and obligations made during the year. The difference is generally carried to the next fiscal year.

**Department of Justice (DOJ) Collection Resources Allocation Board (CRAB) Membership**

The CRAB was established in 1994, and the board is composed of three members:

- DOJ Controller (permanent member and chair)
- Director of the Debt Collection Management Staff (permanent member)
- Chief Financial Officer of the U.S. Marshals Service (nonpermanent member)

Components represented on the board as nonpermanent members may not request funds from the Three Percent Fund.

Source: GAO analysis of DOJ information. | GAO-15-48

DOJ officials stated that they have taken steps to manage the Three Percent Fund and analyze the availability of funding for obligations such as allocations to components, the costs of managing the systems that collect and disburse civil collections, and administrative support. Specifically, the Collection Resources Allocation Board (CRAB)—the body established by DOJ to allocate collections among eligible components to offset litigation and collection costs—manages the fund in several ways:

- The CRAB sets aside funding to operate the Debt Collection Management Staff for the following fiscal year prior to considering annual allocations for other debt-collection related activities. DCM is fully funded through Three Percent Fund collections and receives no other appropriation.
- CRAB officials consider the longer-term viability of the program when making funding decisions by, for example, considering whether

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programs receiving funding may bring in additional Three Percent Fund collections in future years. Programs that have potential to bring in more funding to the Three Percent Fund may be prioritized over programs that bring in less or no funding to the Three Percent Fund.

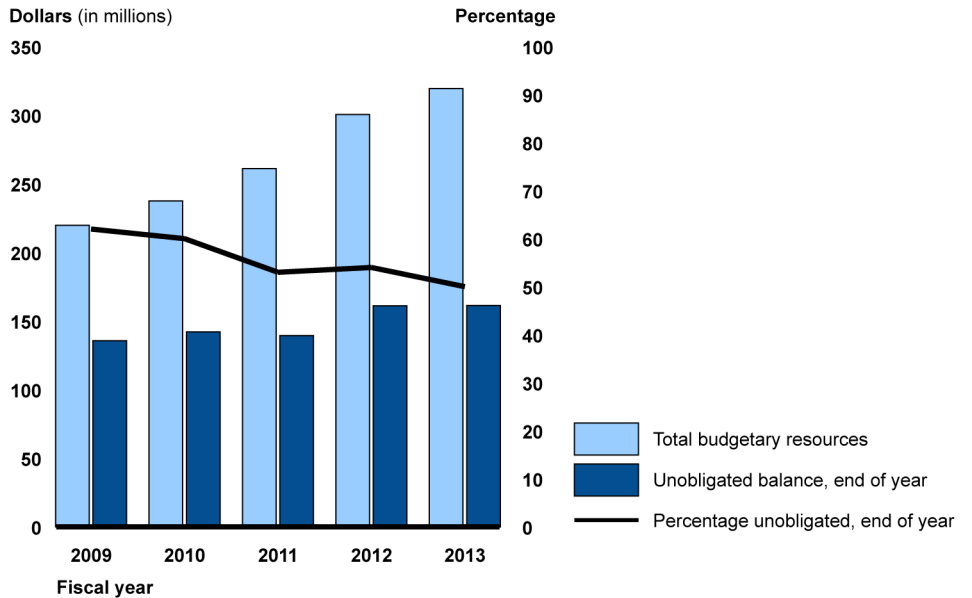
- The CRAB informs components making requests that any employees hired should be term employees and not holders of permanent positions. CRAB officials stated this policy stresses to components that they should not rely on Three Percent Fund allocations in the future, even if funds were allocated for such positions in the past.
- CRAB officials consider allocating resources for activities that may span multiple years and set aside more resources at the beginning of the year for these activities instead of funding new activities.<sup>40</sup>
- CRAB officials identify a reserve, an amount needed in the Three Percent Fund at the beginning of the following fiscal year.

While CRAB officials have taken steps to manage the Three Percent Fund, according to officials responsible for managing the fund, they do not know how, if at all, changes in unobligated balances affect identified future resource needs because they do not conduct analyses that include projected collections, reserves that align with DOJ priorities and stated needs, or the impact of previous obligation rates on unobligated balances. As shown in figure 3, the CRAB's rate of allocations has resulted in a 12-point decrease in the percentage of unobligated balances remaining at the end of the following year from fiscal years 2009 through 2013. Specifically, while DOJ's unobligated balances have marginally increased, the CRAB has had more total budgetary resources available during the fiscal year and has obligated a larger portion of those resources. CRAB officials stated that they conduct analyses to determine how to allocate Three Percent Fund amounts in the following year, but they could not demonstrate how, if at all, increasing obligation rates may have an impact on the availability of funding in future years. Without analyzing trends in unobligated balances, it is difficult to determine if committing larger portions of budgetary resources is sustainable or has an impact on future-year funding.

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<sup>40</sup>Examples of previous multiyear activities it has funded include *Deepwater Horizon* Gulf Oil Spill–related litigation support and past health care fraud initiatives.

**Figure 3: Three Percent Fund Total Budgetary Resources, End-of-Year Unobligated Balances, and Percentage of Budgetary Resources Unobligated from Fiscal Years 2009 through 2013**



Source: GAO analysis of Department of Justice data. | GAO-15-48

In response, CRAB officials stated that the CRAB’s typical practice is to obligate only the amount that is carried forward from the previous year, and not to consider any amounts that may come into the Three Percent Fund in the following year. The agency does not conduct analyses of unobligated balances to, for example, help estimate future collections or determine future reserve needs. According to CRAB officials, they do not incorporate estimates for collection amounts from year to year because the CRAB does not have control over how much will be collected in the Three Percent Fund. Collections are determined from civil settlements and other judgments, and CRAB officials believe that soliciting information from litigating units to develop estimates may be viewed as inappropriate pressure on litigators. However, in the 5-year time period we examined, DOJ consistently collected at least \$83 million annually, indicating stability in collections.

While we understand DOJ’s concerns about determining precise estimates, these concerns could be mitigated by developing strategies for projecting collections without a negative perception. For example, in lieu of projecting a specific dollar amount, CRAB could determine a range

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between the potential lowest and highest collection amounts based on historical trends and current collection activities.

Additionally, while CRAB officials identified a reserve to set aside for the following fiscal year, as shown in table 2, the Three Percent Fund's unobligated balances at the end of the year have been notably higher than DOJ's identified reserve in each fiscal year from 2009 through 2013. Specifically, in comparing the reserve that officials reported they needed and the unobligated balance, the amount carried over was consistently larger by a factor of at least two. Such a consistent difference between the unobligated balance and the reserve fund needed the following year may indicate that the Three Percent Fund could fund additional activities during the following year. For example, CRAB officials stated that several activities and initiatives either do not receive funding or receive a smaller portion of funding, including funding for more litigative term personnel for civil debt collection activities. Some of these activities, if funded, could result in more collections for the Three Percent Fund.

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**Table 2: Three Percent Fund Reported Reserves and Actual Unobligated Balance from the Prior Year from Fiscal Years 2009 through 2013**

(Dollars in thousands)

<b>Year</b>	<b>Reserve set aside in Three Percent Fund</b>	<b>Unobligated balance at beginning of year</b>
2009	\$29,200	\$136,590
2010	\$32,800	\$135,672
2011	\$38,900	\$142,002
2012	\$57,000	\$139,351
2013	\$58,900	\$161,105

Source: Three Percent Fund officials and GAO analysis of Department of Justice financial statements. | GAO-15-48

CRAB officials stated that DOJ has limited discretion for when amounts are received in the Three Percent Fund because many transactions result from judgments from courts and are not controlled by DOJ. As a result, CRAB officials stated that they could not commit more funding during the year because they do not know what amounts may come in the following year and generally make funding decisions only once during the year. If the CRAB has determined that no more funds can be committed in a fiscal year than it currently allocates, then the reported reserve needed in the Three Percent Fund may be too low and not accurately reflect the Three Percent Fund operational needs. However, if the CRAB is confident that the reported reserve for the following year is correct and

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the reserve is much lower than the beginning unobligated balances as reported in table 2, then the CRAB may be missing opportunities to fund additional activities.

GAO's *Key Questions to Consider When Evaluating Balances in Federal Accounts* has emphasized the importance of regularly analyzing these balances by, for example, estimating and managing such balances—such as estimating collections and determining reserve needs—in order to effectively anticipate program needs and ensure the most efficient use of resources.<sup>41</sup> The *Key Questions* also concluded that if an agency does not have a robust strategy in place for estimating and managing carryover balances, balances may either fall too low to efficiently manage operations or rise to unnecessarily high levels. While DOJ officials disagreed that they may allocate and obligate more because their practice is to allocate only what is in the fund at the beginning of the year, our analysis demonstrated that the Three Percent Fund's beginning unobligated balances consistently outpace DOJ's stated reserve needs. This is, in part, because DOJ does not consider estimates of collections in future years as part of its determination of reserve needs. DOJ's current practice has resulted in increasing balances in the fund as it allocates a larger portion of its total budgetary resources. Without an analysis that includes projected collections, reserves that align with DOJ priorities and stated needs, and the impact of previous obligation rates on unobligated balances, it is difficult to determine the impact of committing funds on unobligated balances in the Three Percent Fund. By developing a policy for conducting regular analyses of unobligated balances by, for example, estimating future collections and determining future reserve needs, DOJ could better ensure it is able to efficiently fund as many programs as possible and best support the fund's priorities.

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<sup>41</sup>GAO, *Budget Issues: Key Questions to Consider When Evaluating Balances in Federal Accounts*, [GAO-13-798](#) (Washington, D.C.: Sept. 30, 2013). In this report, we identified examples of agencies relying on historical data, including the Department of Housing and Urban Development's Homeless Assistance Grants, to inform the management of its carryover balances.



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DOJ Could Improve  
Transparency in  
Fingerprint Checks Fees  
and Determine  
Appropriate Size of  
Unobligated Balances

According to DOJ-provided data, in fiscal years 2009 through 2013, the FBI's CJIS Division collected on average about \$385 million per year in fingerprint checks fees. Of this, on average \$154 million was for cost recovery and \$231 million was for automation.<sup>42</sup> CJIS determines fingerprint checks fees using three major elements: (1) estimates of the cost to provide the fingerprint checks services—this makes up the cost recovery portion; (2) depreciation of current infrastructure for fingerprint identification, such as the Integrated Automated Fingerprint Identification System,<sup>43</sup> and other criminal justice information services systems—this makes up the automation portion; and (3) the expected volume of individual transactions.<sup>44</sup>

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<sup>42</sup>Pub. L. No. 101-515, tit. II, 104, Stat. 2101, 2112 (1990), as amended (28 U.S.C. § 534 note). The user fee is for non-criminal-justice, non-law-enforcement employment, and licensing purposes. Fee rates vary depending on whether the submission is electronic or manual.

<sup>43</sup>The Integrated Automated Fingerprint Identification System is a national fingerprint and criminal history system that supports local, state, and federal law enforcement agencies.

<sup>44</sup>The statute providing authority for the FBI to set the automation portion of the fee does not dictate a specific methodology for determining the fee amount, which specific services should be included, or how much should be maintained in the no-year fund. As explained in its 2008 Notice of Proposed Rule Making, the FBI determined that the most appropriate basis for the calculation of this portion of the fee was the capital investment and anticipated depreciation costs for automated fingerprint identification and other criminal justice information service capabilities and enhancements to certain automated systems.

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**Criminal Justice Information Services (CJIS) Fingerprint Checks Fees Purpose**

Fingerprint checks fees are paid by entities requesting a fingerprint check for individuals for non-criminal justice purposes. The fee is made up of two parts:

- The **cost recovery** portion covers the cost of providing the service, which includes operational labor cost, support labor cost, and nonlabor costs such as printing, utilities, supplies and equipment.
- The **automation** portion covers expenses for automation of fingerprint identification and criminal justice information services such as the Next Generation Identification, a system that offers biometric identification services. CJIS also uses automation fees for information-sharing technology and for operational support.

Starting in March 2012, the fee for an electronic fingerprint check was \$14.50, of which \$6.38 was cost recovery and \$8.12 was automation. About 64 percent of the volume of fingerprint checks comes from other federal agencies with the remaining 33 percent coming from state, tribal, and local governments, and other entities that submit fingerprint checks.

Source: GAO analysis of Department of Justice information. | GAO-15-48

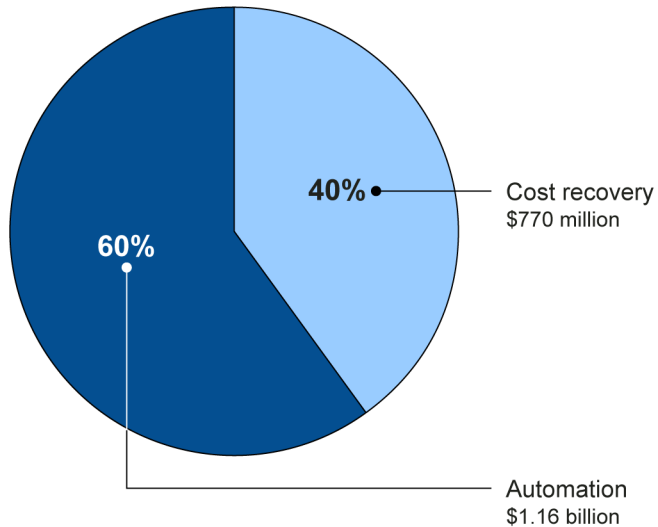
The two portions of the fee have different statutory requirements. The cost recovery portion of the fee is 1-year money that must be obligated in the same year it is collected to cover the cost of providing the service. The automation portion of the fee is no-year money that can be carried over from year to year. It is collected for the purpose of helping to defray the cost of any new automation initiative in the future. The law provides the FBI with broad authority to set the automation portion of the fee.<sup>45</sup> According to CJIS officials, CJIS reviews the fingerprint checks fee every year.<sup>46</sup> As shown in figure 4, according to data provided by CJIS, for fiscal years 2009 through 2013, about 40 percent of the total collected in fingerprint checks fees—about \$770 million of about \$1.93 billion—was from cost recovery collections to cover the costs of providing the service. The automation portion of the fingerprint checks fee composed the other 60 percent, or about \$1.16 billion.

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<sup>45</sup>Pub. L. No. 101-515, as amended (providing the Director of the FBI with the authority to establish fees at a level to include an additional amount to establish a no-year fund to remain available to defray expenses for the automation of fingerprint identification and criminal justice information services and associated costs).

<sup>46</sup>FBI regulations require the FBI to review the amount of the fee periodically, but not less than every 4 years, to determine the current cost of processing fingerprint identification records. 28 C.F.R. § 20.31(e)(1).

**Figure 4: Criminal Justice Information Services Fingerprint Checks Fee Collections Total, by Cost Recovery and Automation, for Fiscal Years 2009 through 2013, as Reported by the Department of Justice (DOJ)**



Source: GAO analysis of Federal Bureau of Investigation data. | GAO-15-48

For example, in fiscal year 2013, CJIS collected about \$173 million in cost recovery—almost all of which was obligated for costs such as labor and operational support. In the same year, CJIS collected about \$223 million in automation—less than half of which, or about \$105 million, was obligated for information-sharing programs such as the National Crime Information Center, and operational support. The remainder was carried over as unobligated balances.

The automation portion of the fee assessed on each transaction has varied in the past, and for each fee adjustment, it is unclear how much of each transaction goes toward automation. According to CJIS officials, prior to October 2007, automation was \$6 per transaction.<sup>47</sup> This increased to about \$11 per transaction in October 2007.<sup>48</sup> For the 2007 fee adjustment, CJIS outlined the methodology for calculating the cost

<sup>47</sup>Prior to this adjustment, the fingerprints checks fees were last adjusted in 1994.

<sup>48</sup>According to the FBI's June 19, 2008, Notice of Proposed Rule Making (NPRM), which became effective May 13, 2010, as a final rule, the fee schedule proposed in the NPRM was established on an interim basis effective October 1, 2007, through a CJIS Information Letter.

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recovery portion of the fee in the 2008 *CJIS User Fees Notice of Proposed Rule Making* (NPRM) and stated that the automation portion of the fee was based on the depreciation of assets already in place and the costs of FBI-approved enhancements to automated services.<sup>49</sup> The NPRM included total cost recovery and automation costs, as well as projected volumes in addition to the fee schedule. While the NPRM provided total costs for each portion of the fee, it did not break out the fee schedule by cost recovery and by automation. As a result, it is not apparent how much of an individual transaction is going toward recouping the cost for providing the service and how much is going to the automation pool of money.<sup>50</sup>

The next fee revision took effect in March 2012 and the automation portion of the fee decreased to about \$8 per transaction. CJIS officials stated that the decrease in 2012 was due to an increase in the volume of transactions and a decrease in depreciation costs, which are used to calculate the automation portion of the fee. For the 2012 fee adjustment, CJIS published its revised fingerprint checks fees in a December 2011 *Federal Register* notice. As in 2008, CJIS did not include the breakout of the fee by cost recovery and automation.<sup>51</sup> For example, starting in March 2012, the cost of an electronic-based fingerprint checks fee was \$14.50—of which \$6.38 was to cover the cost of the service and \$8.12 was for the automation pool of money—but only the total cost of \$14.50 was published. As a result, for the 2012 fee adjustment customers and stakeholders did not know how much of each fee was being collected to cover the cost of providing the fingerprint checks service and how much was being collected for the automation portion of the fee.

During the course of our review, CJIS initiated an additional fee change, which was announced in an October 2014 *Federal Register* notice, and

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<sup>49</sup>The FBI published an NPRM in 2008 setting forth the methodology used to calculate the FBI's revised fees, among other things. FBI Criminal Justice Information Services Division User Fees, 73 Fed. Reg. 34905 (proposed June 19, 2008). The FBI's final rule was issued in 2010. FBI Criminal Justice Information Services Division User Fees, 75 Fed. Reg. 18751 (Apr. 13, 2010).

<sup>50</sup>See FBI Criminal Justice Information Services Division User Fees, 75 Fed. Reg. 18751.

<sup>51</sup>FBI Criminal Justice Information Services Division; Revised User Fee Schedule, 76 Fed. Reg. 78950 (Dec. 20, 2011) (fees effective Mar. 19, 2012).

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becomes effective in February 2015.<sup>52</sup> This *Federal Register* notice also did not include a breakout of the fee schedule by cost recovery and by automation.

CJIS officials explained that they provide transparency in how they set the fees in different ways.

- CJIS sends a CJIS Information Letter to state and federal stakeholders that provides written notification that a fee change will take effect. However, the CJIS Information Letter provides less information than is included in the NPRM or the *Federal Register*, and does not break out the fee schedule by cost recovery and by automation.
- According to CJIS officials, the FBI offered a presentation to the CJIS Advisory Policy Board and the Compact Council, two advisory committees composed of representatives from local, state, and federal law enforcement, and the noncriminal justice community. The presentation materials provided information on the framework of the user fee program, policy, the applicable regulation, user fee-setting methodology, information about review and approval cycles, and an implementation schedule. However, as in the NPRM, the *Federal Register*, and the CJIS Information Letters, the presentation materials did not include a breakout of the fee by cost recovery and by automation. Further, CJIS officials said they did not share with the board how much of each transaction fee collected goes to the automation pool of money.

The *Design Guide for Federal User Fees (Design Guide)* emphasized the need for agencies to ensure substantive information about program costs and fee collections be made available to the public through notices in the *Federal Register* when an agency has the authority to adjust a fee, as the FBI does.<sup>53</sup> In addition, the *Design Guide* called for transparent processes for reviewing and updating fees, as well as effectively communicating with stakeholders, to help assure payers and other stakeholders that fees are set fairly, and accurately. In past reviews looking at federal fee programs, stakeholders have expressed distrust and concern about fee rates set by

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<sup>52</sup>FBI Criminal Justice Information Services Division User Fee Schedule, 79 Fed. Reg. 63943 (Oct. 27, 2014).

<sup>53</sup>[GAO-08-386SP](#).

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regulation because agencies that retain fee collections may have incentives to artificially inflate the costs of user fee programs. According to the *Design Guide*, this risk may be reduced, and tools for congressional and stakeholder oversight enhanced, if the agency clearly reports its methods for setting the fee.<sup>54</sup>

While CJIS provided the basic methodology for its fee-setting process in the 2008 NPRM, it did not make it clear that the fee is made up of two parts, nor did it show how much of each fee is held for future automation initiatives. CJIS could provide more transparency by clarifying to customers and stakeholders the portion of each transaction fee that is dedicated to recovering the cost for the fingerprint check and the portion dedicated to other costs for current and future automation purposes not specifically related to the transaction. CJIS officials stated that they believed the information provided in the 2008 NPRM was sufficient for customers and stakeholders to determine how much is being collected for automation. While the 2008 NPRM provided more detail in how fees are set, the cost and volume information provided was for the 2007 revision and therefore could not be used for calculating the cost recovery and automation portions of the 2012 or the 2015 fee revisions. Also, since CJIS does not break out the 2012 or the 2015 fingerprint checks fees by cost recovery and by automation in the *Federal Register* or elsewhere, it is difficult for stakeholders to determine how much of each fee is going toward the automation pool of money. By publishing more complete information in the *Federal Register* or other documents on the breakout of the fee, payers and stakeholders would have more information with which to provide meaningful feedback. As reported in the *Design Guide for Federal User Fees*, agencies can accommodate payers' and stakeholders' input in various ways, including through an advisory committee. Moreover, as noted the *Design Guide*, creating a structure for oversight becomes even more important when agency discretion to use fee collections is expanded.<sup>55</sup> However, complete information is needed in order to provide meaningful feedback and to provide oversight.

In addition, CJIS does not evaluate the appropriate range of its carryover amounts for the automation portion of the fingerprint checks fees, and at the end of fiscal year 2013 had an unobligated balance of about \$284

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<sup>54</sup>[GAO-08-386SP](#).

<sup>55</sup>[GAO-08-386SP](#).

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million in automation fees. As mentioned previously, in its fee-setting process, CJIS estimated the overall amounts needed to recover the cost of providing the service and calculated the depreciation of assets in place to determine the automation portion of the fee. CJIS also estimated projected transaction volumes based upon historical data. However, actual volumes generally exceeded estimated volumes, resulting in CJIS collecting more in automation fees than anticipated. For example, for the March 2012 fee change, CJIS estimated the automation portion of the fee in March 2011 using historical volumes. CJIS estimated processing about 22.4 million transactions in fiscal year 2012 but actually processed 25.3 million transactions—a difference of about 13 percent more volume than anticipated.

Additionally, according to our analysis of DOJ-reported information on volume, in fiscal year 2013, while the March 2012 fee change was still in effect, actual transactions exceeded projected transactions by about at least 21 percent. As a result, CJIS collected about \$39 million more in automation fees than it would have based on projected volume for that fiscal year. The 2008 NPRM states that fees are to be set to ensure calculation of full costs while avoiding calculation of excessive user fee revenues, and that fees will be revised, as appropriate, based on changes in cost and volume. While CJIS did revise the fingerprint checks fees, it did so infrequently. According to CJIS officials, CJIS reviews the fees every year. Between 1994 and 2014, CJIS has adjusted the total fee for the fingerprint checks twice—in October 2007 and about 4.5 years later in March 2012. In the *Design Guide for Federal User Fees*, we noted that fees that are not reviewed and adjusted regularly run the risk of undercharging or overcharging users, raising equity, efficiency, and revenue adequacy concerns.<sup>56</sup>

According to CJIS officials, actual volumes generally exceeded their estimates because of circumstances beyond their control, such as changes in law. Nevertheless, when actual volumes exceed projected volumes, CJIS collects more in automation fees, which contributes to unobligated balances. CJIS officials stated that they are aware of growing unobligated balances from the automation pool of money over time, but, according to these officials, they have conducted no study, analysis, or evaluation of what an appropriate carryover amount should be.

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<sup>56</sup>[GAO-08-386SP](#).

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As stated earlier, GAO's *Key Questions to Consider When Evaluating Balances in Federal Accounts* emphasized the need for agencies to estimate and manage carryover balances to assess how effective agencies are in anticipating program needs and ensuring the most efficient use of resources.<sup>57</sup> Further, *Fee Design Options and Implications for Managing Revenue Instability* calls for agencies managing fee accounts with a reserve to assess the level of reserve for reasonableness, set clear goals for the reserve—such as minimum and maximum reserve levels—and clarify how the reserve will be implemented in order to help ensure accountability and transparency to Congress and users of fee-based programs.<sup>58</sup>

CJIS officials stated that because the automation pool of money is based solely on depreciation, there is no range of appropriate carryover amounts and therefore no need to assess what an acceptable range would be. Officials reported that they chose this approach so that the amounts paid by users for automation would be tied to the CJIS systems from which those users benefitted at the time of the fingerprint check request and because using depreciation as the basis for the fee has the benefit of minimizing fluctuations in fee amounts. However, while the automation portion of the fee is tied to the depreciation of assets linked to the automation of fingerprint checks services, it is not tied to the purposes for which CJIS intends to spend the funds.

Further, the unobligated balances related to the automation portion of the fee have been growing, in part because of actual volume exceeding estimated volume. While we recognize that the FBI has authority to create this no-year fund, and that CJIS has chosen a methodology for calculating the automation portion of the fee that is tied to the systems in place, rather than anticipated costs of future systems, it does not eliminate the need for careful monitoring and managing of unobligated balances. In fact, if future capital investments are dependent upon funds collected through the automation portion of the fingerprint checks fees, evaluating how much is needed is even more critical as CJIS will need to know if it has collected too much money or not enough for capital investments. While we recognize there are several factors to consider

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<sup>57</sup>[GAO-13-798](#).

<sup>58</sup>GAO, *Federal User Fees: Fee Design Options and Implications for Managing Revenue Instability*, [GAO-13-820](#) (Washington, D.C.: Sept. 30, 2013).



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when managing balances in fee accounts, including fee stability, CJIS has not evaluated the appropriate range of its carryover amounts; nor has it developed a policy to do so. As a result, it does not know if it is carrying over too much, too little, or just enough in automation money to meet its future automation needs. Without knowing this, CJIS might be charging too much (or too little) in automation fees.

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## Unobligated Balances in the Crime Victims Fund Have Continued to Grow and Have Impacted DOJ's Reporting of Annual Discretionary Budget Authority

### Crime Victims Fund (CVF) Administration

The Office of Justice Programs (OJP) is the primary component within the Department of Justice (DOJ) responsible for managing DOJ grant programs, with the Office for Victims of Crime being the primary component within OJP that administers and manages CVF funding.

Source: GAO analysis of Department of Justice information | GAO-15-48

Unobligated balances in the Crime Victims Fund have continued to grow and have impacted DOJ's reporting of annual discretionary budget authority. From fiscal years 2009 through 2013, the CVF—which is funded by collections of criminal fines, forfeited bail bonds, penalties, and assessments—collected about \$3.3 billion in budgetary resources and received additional deposits not available as a budgetary resource of \$7.1 billion, totaling about \$10.4 billion in deposits.<sup>59</sup> OJP obligated over \$3.5 billion of these funds. When including balances from fiscal years prior to 2009, the CVF had a temporarily unavailable balance—composed of funds received in excess of obligations made—of nearly \$9 billion at the end of fiscal year 2013.

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<sup>59</sup>For the purposes of this report, deposits consist of all amounts in the CVF, including both collections available as a budgetary resource and additional amounts that are not available as a budgetary resource during the fiscal year. The term “collection” refers to only additional budgetary resources obtained from deposits, which in the CVF do not total all receipts. In addition to these sources of funds, the CVF may also receive gifts, bequests, or donations from private entities.

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### Crime Victims Fund (CVF) Purposes

The Victims of Crime Act of 1984 (VOCA), as amended, establishes the CVF and authorizes the fund to be used for specific crime victims assistance purposes and provides formulas for the Department of Justice (DOJ) to allocate funding among those purposes. These include

1. up to \$20 million for grants under the Children's Justice Act program, and
2. funding for victim assistance services at the U.S. Attorneys' Offices, the Federal Bureau of Investigation, and for a victim notification system.

After the above programs and services have been funded, the remaining funds are broken out in the following manner:

3. A total of 47.5 percent of the remaining funds is for victims' compensation grants,
4. 47.5 percent is for victims' assistance grants, and
5. 5 percent is for discretionary grants to support federal crime victims or training and technical assistance, among other things.

In addition to these amounts, DOJ may have an antiterrorism emergency reserve fund of up to \$50 million to support victims of terrorism within and outside the United States.

Source: GAO analysis of Department of Justice information | GAO-15-48

The Victims of Crimes Act of 1984 (VOCA), as amended, provides DOJ the authority to obligate all CVF funds for specified purposes without further congressional action.<sup>60</sup> However, appropriations acts have capped annual CVF spending, or set a limit to the funding amount available to obligate during the year. For instance in fiscal year 2013, DOJ's appropriation act limited allowable CVF obligations at \$730 million, in addition to \$50 million in allowable obligations for an antiterrorism emergency reserve fund.<sup>61</sup> CVF obligations in 2013 totaled about \$736 million, and DOJ reported that obligations were for crime victim service

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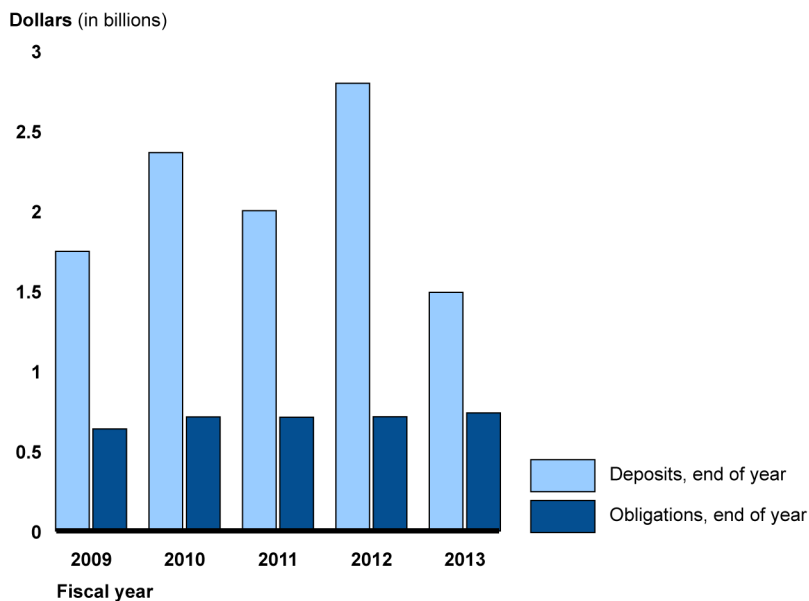
<sup>60</sup>Pub. L. No. 98-473, tit. II, chp. XIV, §1402, 98 Stat. 1837, 2170-71 (codified as amended at 42 U.S.C. § 10601). The largest programs funded by the CVF are formula grants to states and territories to provide assistance to victims of crimes for state-managed programs that respond to victims' emotional and physical needs, stabilize their lives after victimization, and help provide them with safety and security measures, among other things. In addition, states receive grants from the CVF to provide compensation to cover loss of wages and health care costs related to physical and emotional damage caused as a result of the crime.

<sup>61</sup>In fiscal year 2009, DOJ's appropriation limited obligations in the CVF to \$635 million. In fiscal years 2010 through 2012, DOJ's appropriation limited CVF obligations to \$705 million, and in fiscal year 2013, CVF obligations were limited to \$730 million. In addition, DOJ is authorized to set aside up to an additional \$50 million as an antiterrorism emergency reserve, which may be used for providing grants to states and other entities to provide emergency relief for victims of terrorist acts or mass violence occurring outside the United States, among other things. All such obligations are included as a budgetary resource from the CVF, which may provide the appearance of total obligations greater than the annual obligation limits prescribed. However, the antiterrorism emergency reserve fund is not subject to the annual obligation limitations and may be replenished annually.

programs such as \$425 million for state-administered victim assistance grants and almost \$160 million in state victim compensation grants.<sup>62</sup>

Congress placed limitations on DOJ’s ability to use amounts in the CVF in excess of the annual obligation limits. Specifically, annual appropriations legislation prohibited DOJ from making obligations in excess of the obligation limitation, and as a result, DOJ could not obligate the excess funds during the course of the given fiscal year. For instance, CVF deposits totaled about \$1.75 billion during fiscal year 2009. However, because federal law limited DOJ’s allowable CVF obligations to about \$640 million that year, DOJ was unable to obligate over \$1 billion of CVF deposits during the remaining fiscal year. Figure 5 shows the annual deposits and obligations in the CVF.

**Figure 5: Crime Victims Fund Deposits and Obligations, Fiscal Years 2009 through 2013**



Source: GAO analysis of Department of Justice data. | GAO-15-48

<sup>62</sup>According to DOJ data, OJP assessed a portion of the CVF appropriation to cover management and administration costs such as grants management support and infrastructure and legal salaries and expenses. OJP officials stated that the management and administration assessment applied to other appropriations as well. In fiscal year 2013, OJP management and administration assessments totaled about \$50 million.

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In fiscal years 2009 through 2013, annual CVF deposits exceeded the limit in allowable annual obligations. During this time period, funds not available for obligation by DOJ in this account have served as a credit or offset to DOJ's total discretionary budget, as reported in DOJ's budget submissions.<sup>63</sup> Specifically, during the annual appropriations process, the CVF balance unavailable for obligation by DOJ during the year counts as a "savings." Consistent with scorekeeping guidelines used during the congressional budget process, this savings resulted in DOJ reporting a lower level of net budget authority because the unavailable CVF balance is applied as a credit to DOJ's total discretionary budget.<sup>64</sup> For example, in fiscal year 2013,

- DOJ received about \$25 billion in enacted total discretionary budget authority according to DOJ's congressional budget justification. DOJ obligated these funds to pay for the department's programs and activities.
- Balances primarily composed of CVF funds provided a credit of about \$10 billion.<sup>65</sup> These unavailable balances remained in the CVF account and were not spent.

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<sup>63</sup>Discretionary spending refers to outlays from budget authority that is provided through an annual appropriations act. Scorekeeping guidelines allow certain changes in mandatory spending in an appropriation bill to be scored against the limits faced by congressional appropriations subcommittees, which potentially allows an increase in discretionary spending. The Congressional Budget Office, the Office of Management and Budget, and the House and Senate Budget Committees are responsible for the scorekeeping process.

<sup>64</sup>Appropriations Committees are allocated spending levels. These allocations are then divided among subcommittees in what are known as 302(b) allocations, which are subject to a cap. Certain changes in mandatory spending can serve as offsets, or savings, which allow the subcommittee to propose total discretionary spending that is equal to its suballocation plus the savings while maintaining compliance with the caps imposed by the 302(b) limits. DOJ's budget authority is set by the Commerce, Justice, and Science appropriations act.

<sup>65</sup>In addition to the almost \$9.25 billion in discretionary offset from the CVF balance, funds made unavailable in the AFF provided an offset of about \$725 million to DOJ's discretionary budget in fiscal year 2013.

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- The credit from these balances lowered DOJ's reported net discretionary budget authority to about \$15 billion.<sup>66</sup>
  - As a result, DOJ's total discretionary budget authority provided in law of \$25 billion was \$10 billion higher than the reported net discretionary budget authority of \$15 billion.<sup>67</sup>

Since fiscal year 2009, the growing CVF unavailable balance has resulted in increasingly higher offsets to DOJ's budget authority and has represented a higher percentage of DOJ's total discretionary budget authority. For example, according to DOJ's congressional budget justification, in fiscal year 2009, balances composed mostly of CVF funds created an offset of about \$2.7 billion, or 10 percent of DOJ's total discretionary budget authority.<sup>68</sup> However, in fiscal year 2013, the \$10 billion offset made up about 39 percent of DOJ's total discretionary budget authority. For more details, see figure 6.

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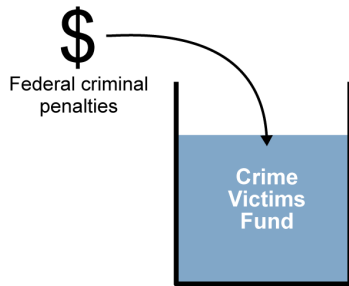
<sup>66</sup>Discretionary budget authority refers to the budgetary resources provided in an annual appropriations act. This is separate from mandatory spending, or direct spending, which is not determined through annual appropriations acts.

<sup>67</sup>DOJ's budget justifications report both the gross discretionary budget authority prior to the scorekeeping credits being applied as well as the net total discretionary authority after scorekeeping credits are applied to the gross discretionary authority.

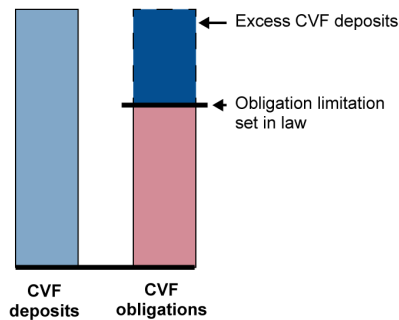
<sup>68</sup>For fiscal year 2009, DOJ's offsetting balance comprised about \$2.27 billion offset from CVF, \$285 million from the AFF temporary rescission, and \$100 million rescission from the Working Capital Fund.

**Figure 6: Crime Victims Fund Deposits, Accumulation of Unobligated Balances, and Impacts on the Department of Justice's (DOJ) Annual Discretionary Budget from Fiscal Years 2009 through 2013**

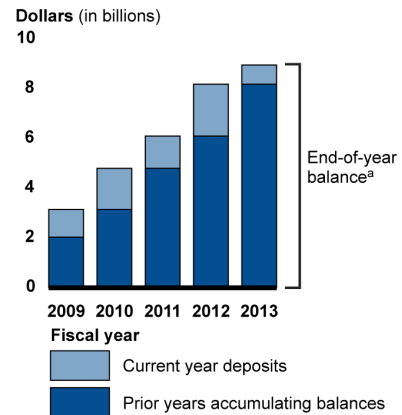
Crime Victims Fund (CVF) deposits come from federal criminal fines and penalties, and are indefinitely available for DOJ to fund crime victims programs, such as victim assistance grants to states.



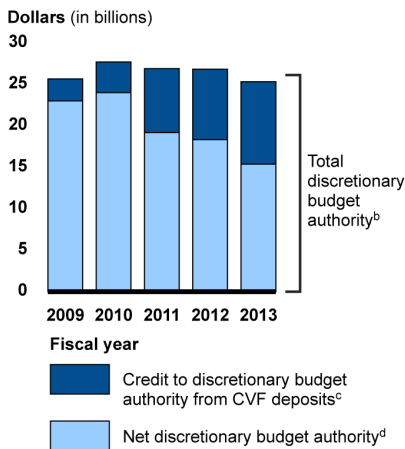
Annually, Congress has limited the amount that can be obligated from the CVF. Excess deposits remain in the fund.



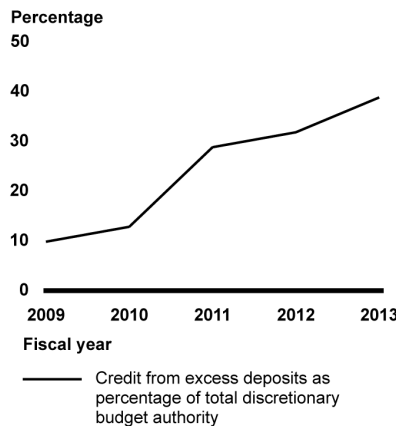
Each year from fiscal years 2009 through 2013, deposits into the CVF have exceeded the obligation limitation placed on the fund. The end-of-year balance in the CVF has accumulated.



DOJ may not obligate CVF funds beyond the limitation set in law. Funds not available to DOJ in this account have served in recent years as an offset to DOJ's total discretionary budget authority. As shown below, these offsets contributed to DOJ's total discretionary budget authority in fiscal years 2009 through 2013.



The offsets from accumulating deposits in the CVF has accounted for an increasing percentage of DOJ's total discretionary budget authority, growing from 10 to 39 percent from fiscal year 2009 to fiscal year 2013.



**Results**

DOJ has reported decreasing net discretionary budget authority from \$24 billion to \$15.4 billion, a decrease of 36 percent from fiscal years 2009 through 2013. Taking into account offsets from the CVF, DOJ's actual total discretionary budget authority remained relatively constant over the given years.

DOJ's total discretionary budget authority for fiscal years 2009 through 2013 totaled about \$132 billion for all 5 years. Offsets composed mostly of CVF balances were credited to DOJ, reducing the department's reported budget authority by \$32 billion. Because of the credit, DOJ's reported net discretionary budget authority totaled about \$100 billion. CVF balances remained in the fund and were not spent.

Source: GAO analysis of DOJ information and DOJ budget summaries. | GAO-15-48

<sup>a</sup>End-of-year balances include deposits as well as amounts that were recovered from prior-year obligations. Recoveries for all five years totaled less than \$35 million.

<sup>b</sup>Total discretionary budget authority is the sum of all new budget authority amounts provided to DOJ for the fiscal year in the annual appropriations.

<sup>c</sup>While most credits to DOJ discretionary budget authority resulted from offsets composed of temporarily unavailable credit from the CVF, a portion of the credit to the annual discretionary budget

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came from the Assets Forfeiture Fund (AFF) and the Working Capital Fund (WCF). About \$2.7 billion of the \$33 billion in offsets came from amounts in the AFF and WCF.

<sup>4</sup>Net discretionary budget authority is DOJ's annual budget authority provided to the department after offsetting amounts from the CVF's temporarily unavailable balances have been subtracted from DOJ's actual total discretionary authority budget.

While the CVF funding has been subject to an obligation limitation each year, OJP officials responsible for managing the programs funded by the CVF have started to take some steps in determining how more of the CVF unavailable balance could be obligated in the future should the limit be increased. Specifically, OJP officials stated that victim assistance stakeholders such as state administrators of crime victims' grants have told them that the current funding levels provided in law are not adequately addressing the needs of crime victims nationwide. However, OJP officials state that stakeholders have not been able to verify how much funding need exists nationwide, in part because of current restraints on administrative spending in VOCA that limit state administrators' ability to monitor the effectiveness of grants or evaluate crime victim needs.

In response, OJP has taken steps to determine crime victim needs. For instance, in 2010, OJP developed an initiative called Vision 21, where the goals are to identify recommendations to help OJP adopt a systematic approach in addressing crime victim needs. This culminated in a report released in 2013 that contained recommendations for better addressing crime victim needs, including overcoming challenges related to constraints in CVF funding due to VOCA restrictions.<sup>69</sup> In addition, in 2012, OJP entered into an interagency agreement with the U.S. Bureau of Justice Statistics to conduct a survey of victim assistance administrators and other stakeholders, the purpose of which includes validating crime victim needs nationwide. OJP officials stated that the results of the survey will help determine and validate funding needs and help OJP provide empirically driven policy options to address such needs. OJP officials responsible for CVF funding stated that the results from the survey may be obtained as late as 2016.

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<sup>69</sup>DOJ, Office of Justice Programs, Office for Victims of Crime, *Vision 21: Transforming Victim Services Final Report*, NCJ 239957 (Washington, D.C.: May 2013). The report contains 4 major recommendations, along with 12 smaller recommendations that align with the major recommendations. The 4 include (1) continuous strategic planning at all levels, (2) addressing the research gap existing in the crime victims field, (3) building and institutionalizing capacity for caring for crime victims, and (4) partnering with Congress to ensure flexibility and innovation in crime victim programming and funding.

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## Conclusions

The seven major sources of DOJ's alternative funding bring in more than \$3 billion annually. This represents a significant portion of DOJ's budgetary resources. For example, in fiscal year 2013, 15 percent of DOJ's total budgetary resources came from alternative sources of funding. DOJ used these resources to support several programs, including funding for victims compensation and assistance, and generally help DOJ fulfill its law enforcement and criminal and civil litigation missions. DOJ's annual use of billions of dollars from these funds highlights the importance of ensuring program needs are met and resources are used effectively.

In some cases, DOJ brings in significantly more in collections than it obligates, underscoring the importance of properly managing these funds. By developing a policy to analyze unobligated balances from the Three Percent Fund, DOJ could better manage balances to ensure efficient and effective use of resources to support program activities. In addition, CJIS is missing opportunities for meaningful feedback that could affect the outcome of changes in fees and program implementation by not transparently communicating with stakeholders and customers the breakout of cost recovery and automation fees. Finally, by developing a policy to estimate the extent to which carryover balances from CJIS's fingerprint automation pool of money are appropriate and implementing that policy, CJIS could better ensure that its automation fees are set at a level to avoid excessive revenues.

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## Recommendations for Executive Action

To help ensure the efficient use of resources for the Three Percent Fund, we recommend that the Attorney General develop a policy and implement procedures to regularly analyze unobligated balances and develop collection estimates in order to determine an appropriate reserve amount and inform estimates of future funding needs.

To improve transparency and ensure the effective use of automation fees for the CJIS fingerprint checks fees, we recommend that the Director of the Federal Bureau of Investigation take the following actions:

- Publish in the *Federal Register*, or other documents such as annual reports, how much is assessed for automation and cost recovery in each transaction to better communicate the cost of the service to customers and stakeholders.
- Develop a policy to analyze the unobligated balances coming from the automation portion of the fee to inform program needs, including



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improving methods for anticipating automation collections, and establishing a range of appropriate carryover amounts to support program needs.

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## Agency Comments and Our Evaluation

We provided a draft of this report to DOJ for review and comment. We received written comments from DOJ, which are reproduced in full in appendix IV. DOJ also provided technical comments on this report that we incorporated as appropriate.

Our first recommendation directed the Attorney General to develop a policy and implement procedures to regularly analyze unobligated balances and develop collection estimates for the Three Percent Fund in order to determine an appropriate reserve amount. DOJ agreed that it could improve how it estimates the amount of reserve funds needed for the next fiscal year. DOJ stated it is going to adjust the current methodology for improving reserve estimates by, for example, including additional costs such as one quarter of the previous year's administrative and professional contract costs.

DOJ also provided various reasons why it does not query or calculate revenue estimates. For example, DOJ does not query litigating components for the number of cases that will be settled because the agency does not want to be perceived as inappropriately encouraging larger government civil collections. Additionally, DOJ does not calculate such estimates due to the high level of variability in the civil debt litigation cases that make it difficult to use historical information to estimate reserves. The report recognizes these concerns. Specifically, on page 20, we acknowledge DOJ's concern about soliciting information from its litigating units. However, we believe that DOJ could develop an estimated range of potential collections based on historical trends and current collection activities. Estimates are not expected to be perfect predictions of the future; however, analyzing historical data can help the agency to identify patterns and anomalies and to understand the magnitude of significant events.

DOJ concurred with our second recommendation and agreed to break out the automation and cost recovery portions of the CJIS fingerprint checks fees more explicitly in the future. DOJ stated it believed the FBI had been transparent with its stakeholders and that this recommendation is consistent with current business practices.

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DOJ concurred with our third recommendation, which called for the FBI to develop a policy to analyze the unobligated balances coming from the automation portion of the CJIS fingerprint checks fees and establish a range of appropriate carryover amounts to support program needs. Specifically, DOJ stated it would analyze the balances coming from the automation portion of the fee. DOJ also noted that it does not believe that establishing a range of carryover balances would enhance the current financial business practices of the CJIS fund. We believe the FBI would benefit from assessing what an appropriate range should be to ensure the funds will be available for agreed upon future investments.

In its comments, DOJ also referred to the report's discussion on the CVF and its associated scorekeeping rules. In particular, DOJ noted that the department reports both net budget authority and total discretionary budget authority. We agree that both numbers can be found in the annual budget materials, appropriately labeled, and we included both in our report on pages 34-35.

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As agreed with your offices, unless you publicly announce the contents of this report earlier, we plan no further distribution until 30 days from the report date. At that time, we will send copies of this report to the Attorney General, selected congressional committees, and other interested parties. In addition, this report is also available at no charge on the GAO website at <http://www.gao.gov>.

If you or your staff have any further questions about this report, please contact me at (202) 512-9627 or [maurerd@gao.gov](mailto:maurerd@gao.gov). Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. Key contributions to this reported are listed in appendix V.



David C. Maurer  
Director, Homeland Security and Justice Issues

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*List of Requesters*

The Honorable Charles E. Grassley  
Chairman  
Committee on the Judiciary  
United States Senate

The Honorable Bob Goodlatte  
Chairman  
Committee on the Judiciary  
House of Representatives

The Honorable Jason Chaffetz  
Chairman  
Committee on Oversight and Government Reform  
House of Representatives

The Honorable Steve King  
Committee on the Judiciary  
House of Representatives

# Appendix I: Department of Justice (DOJ) Alternative Sources of Funding in Fiscal Year 2013

In fiscal year 2013, according to DOJ-provided data, the department collected approximately \$4.9 billion through 21 “alternative sources of funding,” which, for the purposes of this report, refers to collections by DOJ and other agencies that are available to DOJ to obligate and expend.<sup>1</sup> Specifically, DOJ collections for these 21 sources of funding ranged from 0 to about \$1.9 billion in fiscal year 2013. For the seven major alternative sources of funding, we used information from DOJ’s annual financial statements in its corresponding performance and accountability reports or agency financial reports.<sup>2</sup> For the remaining 14 alternative sources of funding, which are otherwise not included in this report, we relied primarily on DOJ-reported information from its financial information systems (See app. II for more information on our scope and methodology). Table 3 describes each of the 21 alternative funding sources, as well as total collections and funding availability in fiscal year 2013.

**Table 3: Description of Department of Justice (DOJ) Alternative Sources of Funding, Fiscal Year 2013** (Dollars in millions)

DOJ account source of funding	Description	Total collections	Funding availability
Antitrust Pre-Merger Filing fees	Collected from persons required to file premerger notifications to the Federal Trade Commission and DOJ. Fees may be used by DOJ for the salaries and expenses of the Antitrust Division.	81.2	Until expended
Assets Forfeiture Fund (AFF)	A repository for forfeited cash and the proceeds of sales from the civil and criminal forfeiture of seized assets. Funds in the AFF are available to pay for expenses of the Asset Forfeiture Program, including asset management and disposal, the equity of innocent third parties and lien holders, program investigative expenses, and other authorized expenses of the program.	1,869.6	Until expended
Federal Bureau of Prisons (BOP) Cost of Incarceration fees	Collected from certain inmates required to pay for a portion or all of the costs associated with their first year of incarceration based on their assets.	0	1 year

<sup>1</sup>Collections discussed in this report include collections effected by DOJ and collections by other agencies that are then transferred by law to DOJ to obligate and expend as well as collections by a wholly owned government corporation—the Federal Prison Industries (FPI)—which is under the management of the Federal Bureau of Prisons.

<sup>2</sup>Specifically, the seven major alternative sources of funding are the Assets Forfeiture Fund; the Crime Victims Fund; Criminal Justice Information Services fingerprint checks fees; the Diversion Control Fee Account; Federal Prison Industries, Inc. sales; the Three Percent Fund; and the United States Trustee System Fund.

**Appendix I: Department of Justice (DOJ)  
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2013**

<b>DOJ account source of funding</b>	<b>Description</b>	<b>Total collections</b>	<b>Funding availability</b>
BOP Commissary Funds	Profits from the operation of BOP inmate commissaries are used for programs, goods, and services for the benefit of inmates.	370.1	Until expended
BOP Custody of State Offenders fee	Collected from state governments to reimburse BOP for housing state prisoners in BOP facilities.	13.0	1 year
BOP Fees for Health Care Services	Collected from inmates for health care services.	0	1 year
BOP Meal Tickets	Collections from BOP staff who elect to eat meals prepared by BOP's food services.	0.5	1 year
BOP Rental of Staff Residence fee	Collected from staff for rental of government-owned staff housing.	5.0	1 year
Crime Victims Fund (CVF)	Receives collections including criminal fines and penalties from offenders, among other sources. The CVF funds victims' assistance programs and provides direct compensation to crime victims, among other activities.	722.2	Until expended
Criminal Justice Information Services (CJIS) Fingerprint Checks fees	Fees collected from federal, state, and other authorized entities requesting fingerprint identification records for noncriminal justice purposes such as employment and licensing. Fees collected pay for the costs of providing the service and for the automation of fingerprint identification and other CJIS services.	395.8	1 year (cost recovery) and until expended (automation)
Department of Homeland Security Immigration Fees	Collected from immigration adjudication cases, and obligated by DOJ's Executive Office for Immigration Review for expenses necessary for the administration of pardon and clemency petitions and immigration-related activities.	3.8	1 year
Diversion Control Fee Account (DCFA)	Receives fees collected from Drug Enforcement Administration registrants such as manufacturers, distributors, dispensers (including physicians), importers, and exporters of controlled substances (such as narcotics and stimulants) and certain listed chemicals (such as ephedrine). Fees collected are obligated to recover the full costs of the program, including personnel costs and operation costs such as investigative costs, travel, and purchase of goods and services. <sup>a</sup>	327.5	Until expended
FBI National Name Check Program fees	Collected for processing name checks requests received from federal agencies for the purpose of government employment or appointment, immigration benefits, and name searches in direct support to national security programs.	53.3	1 year (cost recovery portion) and until expended (automation portion)
Federal Prison Industries, Inc. (FPI)	Funds are generated from the sale of products and services produced by federal inmates. <sup>b</sup> FPI uses sales proceeds for FPI program expenses, such as wages for federal inmates.	614.7	Until expended

**Appendix I: Department of Justice (DOJ)  
Alternative Sources of Funding in Fiscal Year  
2013**

<b>DOJ account source of funding</b>	<b>Description</b>	<b>Total collections</b>	<b>Funding availability</b>
Foreign Agents Registration Act fees	Collected from persons acting as agents of foreign principals in a political or quasipolitical capacity required to make periodic public disclosure of their relationship with the foreign principal, as well as activities, receipts, and disbursements in support of those activities. Agents are required to register within 10 days of agreeing to become an agent and before performing any activities for the foreign principals. Fees are available to reimburse DOJ for program expenses.	0.3	Until expended
Hazardous Substance Superfund	Provided by the Environmental Protection Agency (EPA) to DOJ for reimbursement for litigation support and consultant services related to the EPA's authority to clean up toxic waste dumps and to compel responsible parties to perform cleanups or reimburse the government for EPA-led cleanups.	Not provided <sup>c</sup>	1 year
Health Care Fraud and Abuse Control Program (HCFAC)	Designed to coordinate federal, state, and local law enforcement activities with respect to health care fraud and abuse as a joint responsibility with the Department of Health and Human Services (HHS) and DOJ.	87.7 <sup>d</sup>	2 year (discretionary) and until expended (mandatory)
Three Percent Fund	Receives 3 percent of most amounts paid resulting from "civil debt collection litigation activities" including civil judgments in Medicare fraud cases and student loan collections. DOJ uses these funds to defray costs associated with its debt collection activities, such as paying the costs of the Debt Collection Management Staff, financial litigation unit personnel, and activities at the U.S. Attorneys' Offices.	158.3	Until expended
U.S. Marshals Service (USMS) Civil Process fee	Collected from federal, state, and local governments for USMS costs associated with civil processing services, such as serving subpoenas.	1.8	1 year
U.S. Trustee System Fund (USTSF)	Receives deposits of fees by the U.S. Trustee Program (USTP) generally from four sources: (1) a portion of the filing fee paid at the beginning of each bankruptcy case for chapters 7, 11, 12, and 13; (2) chapter 11 quarterly fees; (3) excess percentage fees collected by chapter 12 or chapter 13 standing trustees; and (4) interest on invested funds. <sup>e</sup> The USTSF also receives funding from fines imposed on bankruptcy petition preparers, compensation for cases in which the United States trustee serves as trustee, and a portion of fees for conversion of cases from chapter 7 or 13 to chapter 11. The USTP may obligate funds for program-related expenses, such as employee salaries and benefits, as specified in annual appropriations acts.	217.3	Until expended <sup>f</sup>
Vaccine Injury Compensation Program Trust Fund	Receives net revenues from taxes imposed on certain vaccines and provides compensation, as decided by the U.S. Court of Federal Claims, to individuals found to be injured by certain vaccines.	7.6	Until expended

Source: DOJ officials and GAO analysis of DOJ financial statements and statutes. | GAO-15-48

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**Appendix I: Department of Justice (DOJ)  
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2013**

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<sup>a</sup>Each fiscal year, the first \$15 million collected is transferred to the U.S. Department of the Treasury (Treasury) and is not available for use by the Diversion Control Program. Therefore, the Drug Enforcement Administration needs to collect an additional \$15 million per year beyond estimated costs for transfer to the Treasury.

<sup>b</sup>A wholly owned government corporation is an enterprise or business activity designated as such by the Government Corporation Control Act of 1945 (31 U.S.C. §9101) or some other statute. Each corporation is required to submit an annual business-type statement to the Office of Management and Budget.

<sup>c</sup>DOJ did not provide total collections for the Hazardous Substance Superfund because, according to officials, EPA maintains and obligates the funding. We included this source of funding in the scope of our review because the funds are allocated to DOJ by EPA pursuant to an annual appropriation from the Hazardous Substance Superfund, which is generally composed of collections. For fiscal year 2012, DOJ reported that it received \$24.6 million from EPA.

<sup>d</sup>This figure includes discretionary and mandatory funding allocated to DOJ from the Medicare Trust Funds. Discretionary funding has generally been available for 2 years. The FBI also receives mandatory funding to conduct health care fraud and abuse activities, which is appropriated from the general fund of the U.S. Treasury.

<sup>e</sup>Chapter 7 bankruptcy is available to individuals and businesses, in which a case trustee liquidates nonexempt assets for distribution to creditors. Chapter 11 bankruptcy permits an individual or a business to reorganize debts while continuing to operate. Chapter 12 bankruptcy allows an eligible family farmer or a fisherman to file for bankruptcy, reorganize the business' affairs, and repay all or part of the business' debts while continuing to operate. Chapter 13 bankruptcy is used by individuals with regular income to reorganize their financial affairs under a repayment plan that must be completed within 3 to 5 years. Standing trustees are appointed for chapter 12 and 13 bankruptcy cases by the U.S. Trustee Program to serve as the trustees of the debtor's estate pending fulfillment of the repayment plan. See 28 U.S.C. § 586(b).

<sup>f</sup>USTSF collections remain in the fund until expended, but their availability is subject to annual appropriations.

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# Appendix II: Objectives, Scope, and Methodology

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To address the first question, we identified various alternative sources of funding across the Department of Justice (DOJ) accounts or programs by interviewing DOJ officials knowledgeable about the DOJ budget and reviewing various budget documents.<sup>1</sup> We identified 21 accounts or programs that received “alternative sources of funding,”<sup>2</sup> which, for the purposes of this report, refers to collections by DOJ and other agencies that are available to DOJ to obligate and expend.<sup>3</sup> We narrowed our review to seven alternative sources of funding using the following decision criteria:<sup>4</sup> Collections must be at or above \$100 million annually in order to focus on the alternative sources bringing in the most money to DOJ, the funds must be managed primarily by DOJ, and the funds must not be entitlements or trust funds.<sup>5</sup> We excluded alternative sources that funded entitlement programs from our review because entitlement authorities are controlled by statute, and DOJ does not have authority to determine eligibility requirements or the amounts provided to recipients.

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<sup>1</sup>An account is a separate financial reporting unit for budget, management, or accounting purposes. All budgetary transactions are recorded in accounts, but not all accounts are budgetary in nature. Further, a single account may support a single program or multiple programs. Conversely, a single program may be supported by multiple accounts.

<sup>2</sup>For a complete list of alternative sources of funding we identified, see app. I.

<sup>3</sup>The collections discussed in this report include collections effected by DOJ and collections by other agencies that are then transferred by law to DOJ to obligate and expend as well as collections by a wholly owned government corporation—the Federal Prison Industries (FPI)—which is under the management of the Bureau of Prisons.

<sup>4</sup>Of the seven alternative sources of funding that were part of this review, five are single accounts (Assets Forfeiture Fund, Crime Victims Fund, Diversion Control Fee Account, Federal Prison Industries, and United States Trustee System Fund). One alternative source of funding, the Three Percent Fund, is a part of DOJ’s broader Working Capital Fund; however, it operates as a single program that is managed separately from the Working Capital Fund. Another alternative source of funding comes from fingerprint-based Criminal History Record Information (CHRI) checks fees. Fingerprint checks are provided by the Federal Bureau of Investigation’s Criminal Justice Information Services (CJIS) Division. CJIS is a division made up of multiple programs and supported by multiple accounts. We only considered the fees coming in to CJIS through the fingerprint-based CHRI checks.

<sup>5</sup>Entitlement refers to a program in which the federal government is legally obligated to make payments or provide aid to any person who, or state or local government that, meets the legal criteria for eligibility. Examples include benefit payments for Social Security, Medicare, Medicaid, and unemployment insurance. Trust funds are accounts designated as “trust funds” by law, regardless of any other meaning of the term “trust fund.” Except in rare circumstances, a trust fund account imposes no fiduciary responsibility on the federal government. The Federal Prison Commissary Fund is an example of a DOJ trust fund.



Further, we excluded alternative sources of funding that are deposited into trust funds—such as the Federal Prison Commissary Fund—because trust funds generally do not impose a fiduciary responsibility on the government. The scope of our review covered funding from fiscal years 2009 through 2013 so that we could include enough years to identify any recent trends in collections, obligations, and unobligated balances. To report the financial information such as collections and obligations related to alternative sources of funding for the 5 years, we analyzed DOJ annual financial statements in its corresponding performance and accountability reports or agency financial report and data provided by DOJ. We compared the amounts in the selected seven alternative sources of funding against DOJ’s statement of budgetary resources using DOJ’s audited information reported in its annual financial statements. For six of the seven alternative sources of funding—the Assets Forfeiture Fund, the Crime Victims Fund, the Diversion Control Fee Account, the Federal Prison Industries, the Three Percent Fund, and the United States Trustee System Fund—we determined that the data on the amounts reported for the years under review DOJ-wide were sufficiently reliable for determining how much of DOJ’s budgetary resources come from these alternative sources of funding. We also determined that for fiscal year 2013, the fingerprint-based Criminal History Record Information checks provided by the Federal Bureau of Investigation (FBI) Criminal Justice Information Services (CJIS) Division (CJIS fingerprint checks fees) were also reliable for our purposes.<sup>6</sup> However, the amounts for fiscal years 2009 through 2012 for the CJIS fingerprint checks fees were provided by DOJ sources and could not be reconciled to the audited financial statements.<sup>7</sup> See the section on DOJ’s total budgetary resources regarding data limitations. To report on DOJ’s flexibility in using alternative sources of funding for DOJ activities, we identified key statutory characteristics that increase or decrease agency flexibility with respect to these funds by reviewing

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<sup>6</sup>The fees collected by CJIS are the fingerprint-based Criminal History Record Information (CHRI) checks. Another division within the FBI, the Records Management Division collects fees for the name-based CHRI checks. For the purposes of this report, we refer to the fingerprint-based CHRI checks provided by CJIS as CJIS fingerprint checks fees.

<sup>7</sup>According to FBI officials, the FBI could not reconcile user fee amounts to its audited financial statements for fiscal years 2009 through 2012 because records were not integrated with the core financial system, and therefore they were unable to separate fee amounts. Starting in fiscal year 2013, the FBI began using the Unified Financial Management System, which enabled the agency to segregate fee data.

principles of appropriations law and our prior work.<sup>8</sup> We then reviewed statutory language and identified legal requirements applicable to the seven funds in the scope of this objective for each of these key areas: (1) purpose—for what purposes the funds may be obligated, (2) amount—how available amounts are determined and what action triggers the availability of funding, (3) time—what is the period of availability for the funding, and (4) review—what specific reporting requirements apply to the funding. We also interviewed agency officials about the alternative sources of funding to understand their interpretation of the laws.

To address the second question, we selected for review three of the seven alternative sources we examined under objective one—the Three Percent Fund, CJIS fingerprint checks fees, and the Crime Victims Fund (CVF)—based on financial aspects of the sources, including the highest percentage of unobligated balance at the end of fiscal year 2013 compared with the total collections from fiscal years 2009 through 2013. We removed the Assets Forfeiture Fund (AFF) from consideration in the second objective because GAO conducted recent reviews of fund management from the AFF.<sup>9</sup> The alternative sources of funding with the highest percentage of unobligated balances of the seven after the AFF was removed were CJIS fingerprint checks fees, the Three Percent Fund, and the CVF. We interviewed agency officials responsible for these three alternative sources of funding about how they manage unobligated balances. We compared the management of the funds with criteria identified in our past work on evaluating carryover balances.<sup>10</sup> For the one alternative source receiving funding through user fees—CJIS fingerprint checks fees—we also compared the setting of fees with (1) our design

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<sup>8</sup>See GAO, *Principles of Federal Appropriations Law*, [GAO-04-261SP](#) (Washington, D.C.: January 2004), and *Federal User Fees: A Design Guide*, [GAO-08-386SP](#) (Washington, D.C.: May 29, 2008). See also fig. 1 for a presentation of these characteristics.

<sup>9</sup>See GAO, *Justice Assets Forfeiture Fund: Transparency of Balances and Controls over Equitable Sharing Should Be Improved*, [GAO-12-736](#) (Washington, D.C.: July 12, 2012), and *Department of Justice: Working Capital Fund Adheres to Some Key Operating Principles but Could Better Measure Performance and Communicate with Customers*, [GAO-12-289](#) (Washington, D.C.: Jan. 20, 2012).

<sup>10</sup>GAO, *Budget Issues: Key Questions to Consider When Evaluating Balances in Federal Accounts*, [GAO-13-798](#) (Washington, D.C.: Sept. 30, 2013). In developing those criteria, we identified common themes and factors that contribute to fluctuations in carryover balances and worked with stakeholders such as the Office of Management and Budget to develop a list of questions on four broad topics for congressional committees, managers, and others to consider when examining such balances government-wide.

guide for federal user fees and (2) our past work identifying fee design options for managing carryover balances in fee accounts.<sup>11</sup> To determine financial activity for the CVF, we compared both reconciled financial information and separate DOJ-provided information on receipts. To report on the impact of unavailable balances from the CVF and the AFF to the department's annual discretionary budget authority, we used reported information from the President's Budget for DOJ's total discretionary budget authority and the scorekeeping credit from the three sources (the Crime Victims Fund, the Assets Forfeiture Fund, and the Working Capital Fund). We used information from the President's Budget instead of the audited financial information reported in the previous objective because credits provided to DOJ's discretionary budget authority were not recorded in DOJ's audited statements. Moreover, the President's Budget was used by decision makers for determining DOJ's annual discretionary budget authority.

To list the collections for all 21 sources in fiscal year 2013 as shown in appendix I, we relied primarily on DOJ-reported data for the 14 sources that otherwise were not included in this report. We asked DOJ about the reliability of the data for these 14 sources and determined that the data were sufficiently reliable to convey a description of each funding source and the general magnitude of funding source collections and obligations. In addition, for the 7 major alternative sources of funding in appendix III, we relied primarily on DOJ's statements of budgetary resources from fiscal years 2009 through 2013. However, in a few instances, we provided additional details that were obtained from other sources. Those sources are discussed, when appropriate, in the particular section of the appendix.

We conducted this performance audit from September 2013 through February 2015 in accordance with generally accepted government auditing standards. 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.

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<sup>11</sup>GAO, *Implications for Managing Revenue Instability*, [GAO-13-820](#) (Washington, D.C.: Sept. 30, 2013), and [GAO-08-386SP](#). Our design guide on federal user fees drew from economic and policy literature on federal and nonfederal user fees and prior work on user fees. This guide also discusses case examples to highlight questions that should be considered when setting user fees.

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# Appendix III: Information on the Seven Selected Alternative Sources of Funding

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This appendix describes background information, funding characteristics, budgetary information, and legal requirements for the seven accounts within the Department of Justice (DOJ) receiving major alternative sources of funding:

- Assets Forfeiture Fund;
- Crime Victims Fund;
- Criminal Justice Information Services fees;
- Diversion Control Fee Account;
- Federal Prison Industries, Inc.;
- Three Percent Fund; and
- United States Trustee System Fund.

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## Assets Forfeiture Fund

### Background

Every year, federal, state, and local law enforcement agencies seize millions of dollars in assets that are forfeited through the DOJ Asset Forfeiture Program (AFP). Forfeited assets can include, but are not limited to, businesses, cash, bank accounts, automobiles, boats, airplanes, jewelry, art objects, and real estate.<sup>1</sup> A primary goal of the program is preventing and reducing crime through the seizure and forfeiture of assets that were used in or acquired as a result of criminal activity. The Comprehensive Crime Control Act of 1984 established the Assets Forfeiture Fund (AFF) to receive the millions of dollars in assets that are forfeited through the AFP.

### Legal Requirements

Funds are available for program-related expenses, including payments to victims and lien holders and the costs of storing and maintaining forfeited assets, and certain law enforcement activities, such as the payment of overtime salaries, travel, fuel, among other things, for state and local law enforcement officers when they participate in a joint operation with federal

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<sup>1</sup>Once a seized asset is officially forfeited, it becomes the property of the U.S. government. DOJ also seizes illegal drugs and counterfeit items that have no resale value to the federal government. These items are typically held by agencies until they are approved for destruction.

law enforcement agencies participating in the fund.<sup>2</sup> After the AFF sets aside enough to ensure amounts are available in subsequent fiscal years for the specified purposes, it can use the excess generated by that fiscal year's operations for other purposes. This excess is called the excess unobligated balance. Subject to certain notification procedures to Congress, any excess unobligated balance remaining in the AFF is available to DOJ "for any federal law enforcement, litigative/prosecutive, and correctional activities, or any other authorized purpose of [DOJ]."<sup>3</sup>

## Funding Characteristics

### Collections Characteristics

The AFF is financed primarily through the forfeiture of assets that were seized as a result of criminal activity. From fiscal years 2009 through 2013, collections in the AFF totaled about \$10.5 billion, which does not include amounts deposited in the AFF and then made unavailable pursuant to law. At the end of fiscal year 2013, about \$792 million was temporarily unavailable because of annual enacted temporary rescissions.

### Obligations Characteristics

From fiscal years 2009 through 2013, obligations from the AFF totaled about \$10.6 billion. Obligations made from the AFF cover three major categories: (1) payments to third parties, including payments to satisfy interested parties such as lien holders of forfeited properties, as well as the return of funds to victims of large-scale fraud; (2) equitable sharing payments to state and local law enforcement agencies that participate in law enforcement efforts resulting in the forfeitures; and (3) all other program operations expenses that include expenditure categories such as asset management and disposal, the storage and destruction of drugs, and investigative expenses leading to a seizure. According to DOJ data, of the funds obligated during this time period, about 44 percent went for

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<sup>2</sup>These authorized uses of these revenues are enumerated in 28 U.S.C. § 524(c)(1). The amount of fund revenues that can be spent on certain types of expenses, such as the purchase of evidence of a drug offense, is to be specified in annual appropriations acts, but revenues can be used without limitation for all other authorized purposes. Provisions governing equitable sharing are found at 21 U.S.C. § 881(e)(1)(A),(e)(3), 18 U.S.C. § 981(e)(2), and 19 U.S.C. § 1616a.

<sup>3</sup>28 U.S.C. § 524(c)(8)(E).

payments to third parties, about 26 percent went to equitable sharing, and about 30 percent covered all other program operation expenses.

### **Trends in Annual Collections, Obligations, and Unobligated Balances**

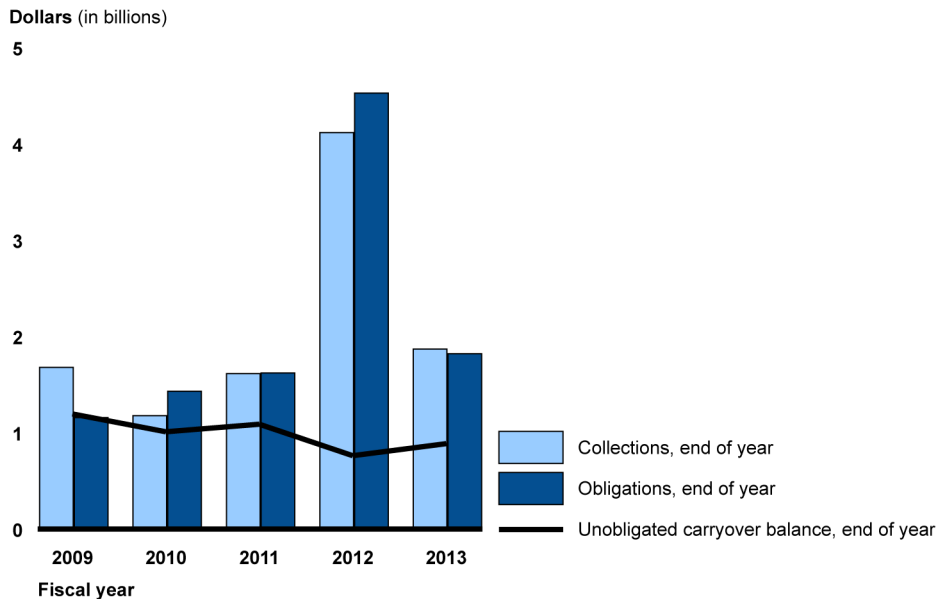
From fiscal years 2009 through 2013, obligations have generally tracked closely with collections. Generally, AFF collections have been increasing, with a large spike in fiscal year 2012, and a corresponding spike in obligations, attributable to a \$2.2 billion deposit into the AFF related to the Bernard Madoff financial fraud case. End-of-year unobligated balances were over \$1 billion for fiscal years 2009 through 2011 and then dropped to about \$762 million in fiscal year 2012 and \$887 million in fiscal year 2013. As we previously reported, DOJ carries forward unobligated balances in order to ensure solvency, equitable sharing, and third-party payments in the following fiscal year.<sup>4</sup>

Figure 7 shows AFF collections, obligations, and unobligated balances for fiscal years 2009 through 2013.

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<sup>4</sup>GAO, *Justice Assets Forfeiture Fund: Transparency of Balances and Controls over Equitable Sharing Should be Improved*, [GAO-12-736](#) (Washington, D.C.: July 12, 2012), and *Department of Justice: Working Capital Fund Adheres to Some Key Operating Principles but Could Better Measure Performance and Communicate with Customers*, [GAO-12-289](#) (Washington, D.C.: Jan. 20, 2012).

**Figure 7: Assets Forfeiture Fund Annual Collections, Obligations, and Unobligated Balances, Fiscal Years 2009 through 2013**



Source: GAO analysis of Department of Justice data. | GAO-15-48

## Crime Victims Fund

### Background

The Crime Victims Fund (CVF) was established by the Victims of Crime Act of 1984 (VOCA) to provide assistance and grants for victim services throughout the United States. It is managed by the Office for Victims of Crime (OVC) within the Office of Justice Programs (OJP). The CVF supports several state and federal crime victim assistance–related grants and activities. The VOCA outlines these activities and prescribes specific funding limitations and requirements.

### Legal Requirements

Funding from the CVF is allocated for specific purposes outlined in statute:

1. Based on amounts collected, up to \$20 million is available to fund programs authorized under the Children’s Justice Act, as amended. Up to \$17 million is transferred to the Department of Health and Human Services to administer state grants, while OVC administers up to \$3 million to support similar grants benefiting Native American tribal lands. Programs include funding activities to revise tribal codes to address child sexual abuse, providing child advocacy services for

children in court proceedings, and developing procedures for reporting, investigating, and prosecuting child abuse cases, among others.

2. Funds required for managing victim assistance programs in the Federal Bureau of Investigation (FBI) and Executive Office for U.S. Attorneys (EOUSA) to improve crime victims services, and for amounts to run the Federal Victim Notification System. The notification system provides victims of crimes computer automated services on the investigative, prosecutorial, and corrections aspects of related cases. It is run by EOUSA, the Federal Bureau of Prisons, and the FBI.

After these activities have been funded, the remaining CVF funding is to be determined as follows.

3. A 47.5 percent share of funds is available for a grant program for states to provide crime victim compensation. The law provides that CVF is available for up to a 60 percent match of what the state provided in compensation. Any remaining funding set aside for victims compensation up to the 47.5 percent may be used to support victim assistance grants. Compensation grants reimburse victims for out-of-pocket expenses such as medical and mental health counseling, lost wages, and funeral and burials costs.
4. Another 47.5 percent is available for a grant program for states to provide victim assistance. Grants are provided to states to administer to domestic violence shelters, rape crisis centers, and child abuse programs, among other advocacy groups that support comprehensive services to victims.
5. Last, 5 percent is available to fund discretionary grant programs to support federal crime victim assistance program evaluation, compliance efforts, and training and technical assistance services, among other things, including services for victims of federal crime. At least half of these funds must be allocated for specified activities, including training, technical assistance, and demonstration or evaluation projects, and improving outreach and services.

In addition to these amounts, DOJ is authorized to maintain a reserve of \$50 million for the Antiterrorism Emergency Reserve Fund. These funds are available for grants to states and other entities that provide assistance to victims of crime to provide emergency relief—including crisis response efforts, assistance, and training—to victims of terrorist acts or mass violence occurring outside the United States, as well as for carrying out a



program to compensate victims of international terrorism occurring outside the United States.<sup>5</sup> This reserve can be replenished annually.

While VOCA authorizes funds collected in the CVF to be available until expended, annual appropriations acts have included obligation limitations. See table 4 for annual obligation limitations from fiscal years 2009 through 2013.

**Table 4: Crime Victims Fund Annual Appropriation Act Obligation Limitations from Fiscal Years 2009 through 2013**

(Dollars in millions)

Year	2009	2010	2011	2012	2013
Obligation limitation	\$685	\$755	\$755	\$755	\$780

Source: GAO analysis of Department of Justice appropriations. | GAO-15-48

Note: Obligation limitation includes \$50 million authorized to fund the Antiterrorism Emergency Reserve Fund to meet the needs of victims of terrorism and mass violence, including the International Terrorism Victim Expense Reimbursement program.

## Funding Characteristics

### Collections Characteristics

The CVF is financed primarily by the federal courts, U.S. Attorneys' Offices, and Federal Bureau of Prisons collections of fines, penalty assessments, and bond forfeitures collected from convicted federal offenders.<sup>6</sup> From fiscal years 2009 through 2013, deposits in the CVF totaled about \$10.4 billion.<sup>7</sup> While DOJ officials stated that most of these fines are small amounts for bail forfeitures or other criminal fines, larger

<sup>5</sup>The Office for Victims of Crime established the International Terrorism Victim Expense Reimbursement Program (ITVERP) to implement this program. See 28 C.F.R. pt. 94.

<sup>6</sup>In addition to these sources, some funding originates from military crime victim payments. The CVF is also authorized to receive gifts and bequests from the public for use in the fund.

<sup>7</sup>For the purposes of this report, deposits include both collections in the CVF that were available as a budgetary resource for DOJ to obligate during the year as well as receipts above the obligation limit that are temporarily unavailable to use as a budgetary resource. To report on total deposits, we used both reconciled audited financial data and information provided by DOJ on its total receipts. These receipts are statements provided by the Department of the Treasury that show new amounts coming into the CVF account. While these data were not reconciled to DOJ's audited financial statements, we were able to determine that these data were reliable for this report by comparing amounts with the audited financial data.

amounts have contributed to rising collection amounts. For instance, in fiscal year 2010, the largest single deposit into the CVF was over \$1 billion and made up about half of the total deposits during the fiscal year.

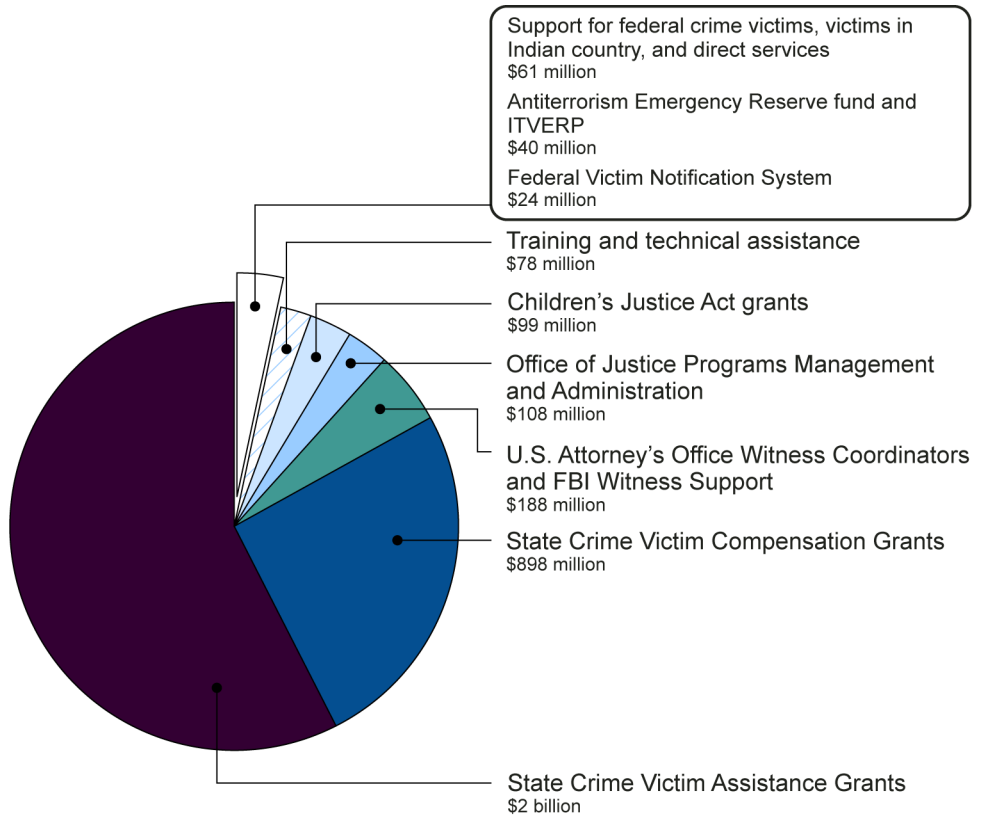
### **Obligation Characteristics**

From fiscal years 2009 through 2013, DOJ obligated over \$3.5 billion in CVF funding. According to DOJ data, the majority of CVF funding was allocated for state grants to victims of crimes assistance and compensation. Specifically, DOJ data show that over \$2.9 billion, or over 80 percent of all obligations, was allocated through victim assistance and compensation grant programs.<sup>8</sup> See figure 8 for a breakout of CVF obligations by category.

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<sup>8</sup>To report on the allocation of CVF allocations, we received information from DOJ's Office of Justice Programs (OJP), the component responsible for managing CVF funds. These data were provided separately from DOJ's audited financial statements. When comparing the data, we found that there was less than \$2 million difference between obligations reported in the financial statements (about \$3.507 billion) and OJP-reported obligations (about \$3.505 billion). This is a 0.03 percent difference in totals. Because of the small difference in reporting totals, we determined these data were reliable for reporting obligations for the purpose of showing the proportion of CVF funding among the different programs.

**Figure 8: Crime Victims Fund Obligations by Category of Expenditure from Fiscals Year 2009 through 2013**



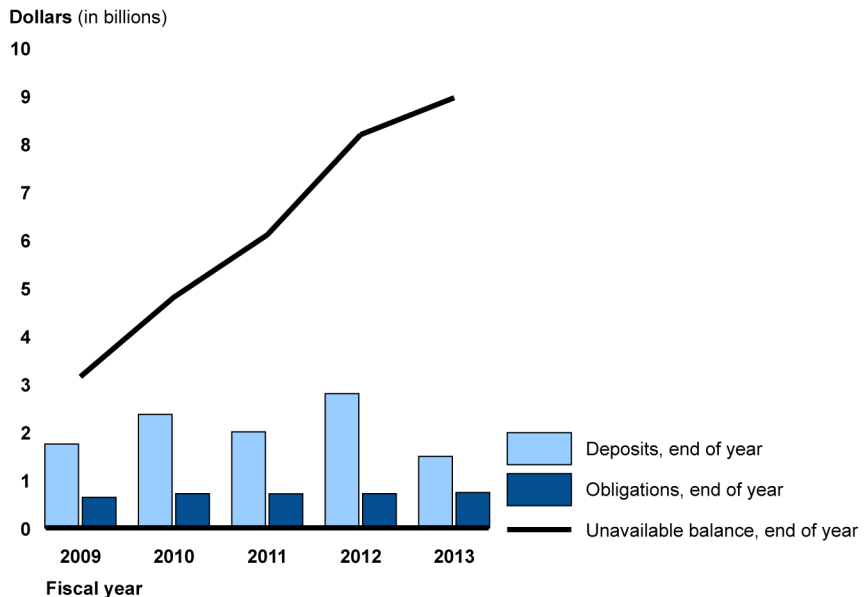
Source: GAO analysis of DOJ Office of Justice Programs data. | GAO-15-48

Note: ITVERP is the International Terrorism Victim Expense Reimbursement Program. ITVERP funds are obligated through the Antiterrorism Emergency Reserve Fund.

### Trends in Annual Collections, Obligations, and Unavailable Balances

As discussed previously in the report, from fiscal years 2009 through 2013, the CVF received deposits of about \$10.4 billion in total. Annual deposits varied from year to year, the lowest total occurring in fiscal year 2013 at about \$1.5 billion. Fiscal year 2012 marked the year with the largest CVF deposit amount, totaling almost \$2.8 billion. Figure 9 illustrates annual deposit totals.

**Figure 9: Crime Victims Fund Annual Deposits, Obligations, and End-of-Year Unavailable Balances, Fiscal Years 2009 through 2013**



Source: GAO analysis of Department of Justice data. | GAO-15-48

As noted above, annual appropriation acts have included obligations limitations for CVF funds. In accordance with the limits placed on the fund, DOJ obligations have steadily increased from fiscal years 2009 through 2013. DOJ obligations from CVF funding were around \$637 million in fiscal years 2009. In 2013, obligations increased by nearly \$100 million to \$736 million.

As discussed in our report, unavailable balances in the CVF have increased steadily in each year, as deposits into the CVF outpace obligations. CVF balances increased from just over \$3 billion in 2009 to about \$9 billion in 2013.<sup>9</sup> The unavailable balance has increased as a result of deposits in excess of obligation limits on the fund.

<sup>9</sup>The CVF's unavailable balances are funds that DOJ may not obligate during the fiscal year. We used supporting information received from DOJ sources to obtain these amounts and, where data were available, we reconciled reported annual amounts to the audited financial statements.

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## Criminal Justice Information Services Fees

### Background

Within the Federal Bureau of Investigation (FBI), the Criminal Justice Information Services Division (CJIS) provides criminal justice information services to state, tribal, federal, local law enforcement, authorized noncriminal justice entities, and intelligence community partners. CJIS also collects fees from authorized users requesting fingerprint-based Criminal History Record Information (CHRI) checks for noncriminal justice purposes. The FBI has collected user fees for fingerprint checks since 1982.

### Legal Requirements

The FBI is authorized to establish and collect fees for providing fingerprint-based CHRI checks and other identification services submitted by authorized users for noncriminal justice purposes, including employment and licensing. The FBI may set such fees at a level to include an amount to establish a fund to defray expenses for the automation of fingerprint identification and criminal justice information services and associated costs.

### Funding Characteristics

To report collection, obligation, and unobligated balance amounts for the CJIS fingerprint checks fees for fiscal years 2009 through 2013, we requested and received data provided by the FBI. In order to determine that the data were reliable, we requested that the FBI reconcile these amounts with the FBI's audited statement of budgetary resources (SBR). FBI officials provided updated amounts for fiscal year 2013 based on their reconciliation to the FBI's SBR; however, officials were unable to demonstrate that they could reconcile amounts for fiscal years 2009 through 2012.<sup>10</sup> Accordingly, in table 5, we are providing the numbers that were given to us by the FBI for fiscal years 2009 through 2012 but we cannot determine if the numbers are reliable. The numbers reported for fiscal year 2013, as seen in table 6, were reconciled to the audited SBR.

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<sup>10</sup>According to FBI officials, the FBI could not reconcile user fee amounts to its audited financial statements for fiscal years 2009 through 2012 because records were not integrated with the core financial system, and therefore they were unable to separate fee amounts. In fiscal year 2013, the FBI began using the Unified Financial Management System, which enabled the agency to segregate fee data starting in 2013.

**Table 5: Criminal Justice Information Services Fingerprint Checks Fees (Cost Recovery and Automation) Collections, Obligations, and Unobligated Balances for Fiscal Years 2009 through 2012, as Reported by the FBI (Dollars in thousands)**

Year	Collections	Obligations	End-of-year unobligated balance
2009	\$362,816	\$334,181	\$206,979
2010	\$382,883	\$338,782	\$246,879
2011	\$395,753	\$390,825	\$246,317
2012	\$389,584	\$395,593	\$234,393

Source: Federal Bureau of Investigation's (FBI) Criminal Justice Information Services Division. | GAO-15-48

**Table 6: Criminal Justice Information Services Fingerprint Checks Fees (Cost Recovery and Automation) Collections, Obligations, and Unobligated Balances for Fiscal Year 2013 (Dollars in thousands)**

Year	Collections	Obligations	End-of-year unobligated balance
2013	\$395,823	\$277,268	\$284,948

Source: Federal Bureau of Investigation's Finance Division. | GAO-15-48

## Diversion Control Fee Account

### Background

The Drug Enforcement Administration (DEA) is the primary agency for enforcing the provisions of the Controlled Substances Act that pertain to the diversion of controlled pharmaceuticals, such as narcotics, stimulants, depressants, and regulated chemicals such as ephedrine. DEA's Office of Diversion Control oversees the Diversion Control Program (DCP), and carries out the mandates of the Controlled Substances Act by preventing the diversion of controlled substances and listed chemicals into the illicit market while ensuring a sufficient supply of the substances and chemicals for legitimate medical, scientific, research, and industrial purposes. The DCP is funded through registration fees that manufacturers, distributors, dispensers (such as physicians), importers, and exporters of controlled substances and certain regulated chemicals pay into an account called the Diversion Control Fee Account (DCFA).

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Legal Requirements

The purposes of the funds deposited in the DCFA are for the operation of the DCP. Federal law directs DEA to set the fees at a level that ensures the recovery of the full costs of operating the various aspects of the program.<sup>11</sup> Collections over \$15 million are to be deposited in the DCFA, which means that the first \$15 million goes to the Treasury and the rest of the fees are available to DEA. Fees charged are periodically refunded by the Treasury to DEA to reimburse expenses incurred in the DCP, in accordance with estimates made in DEA's budget request. Changes in the amounts designated in the budget requests can be made only after notification to the Appropriations Committees, 15 days in advance.

The DCFA fee schedule is contained in regulations that DEA issues, and when amending the fee amounts, DEA issues a notice of proposed rulemaking describing the process for determining the fee amounts and then issues a final rule setting the fees. DEA's most recent rule was issued in 2012.

Funding Characteristics

**Collections Characteristics**

The DCP is fully funded by fees relating to the registration and control of the manufacture, distribution, dispensing, import, and export of controlled substances and listed chemicals. Fees vary based on the registrant class (e.g., researcher, practitioner, distributor, manufacturer, etc.) and range from \$244 annually for a researcher, for example, to \$3,047 annually for a manufacturer of chemical and controlled substances.<sup>12</sup> From fiscal years 2009 through 2013, DEA collected a total of about \$1.39 billion in fees.

**Obligations Characteristics**

From fiscal years 2009 through 2013, DEA obligated a total of about \$1.37 billion. According to DOJ data, about 58 percent of obligations were for personnel costs of salaries and benefits, and the other 42 percent covered nonpersonnel costs such as rent, equipment, operations and maintenance of equipment, and purchase of goods and services.

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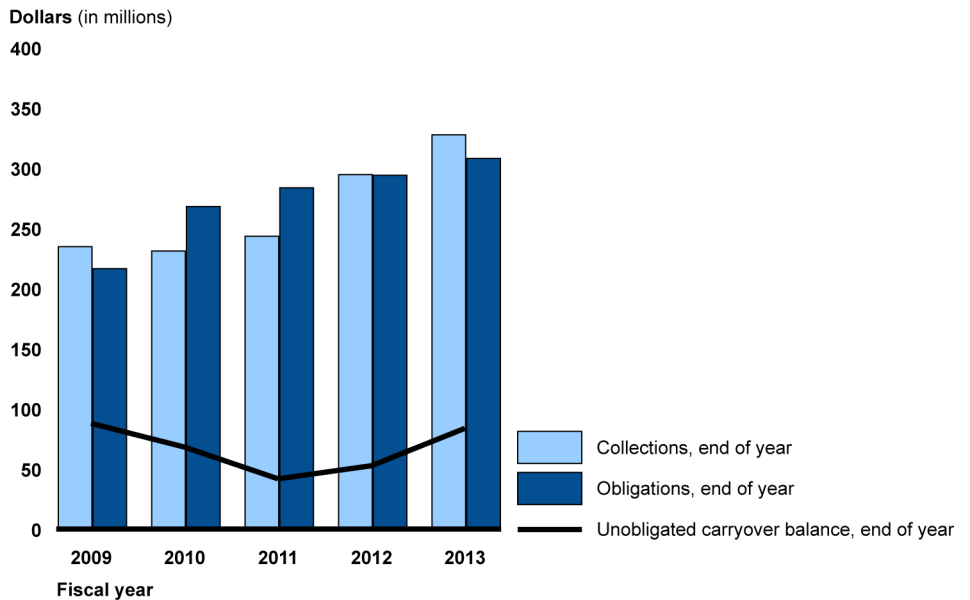
<sup>11</sup>21 U.S.C. § 886a(1)(C).

<sup>12</sup>These fees became effective in April 2012.

### Trends in Annual Collections, Obligations, and Unobligated Balances

As can be seen in figure 10, collections have been slightly increasing over time. For example, in fiscal year 2009, DEA collected about \$235 million in fees and in fiscal year 2013, collected about \$328 million in fees. Likewise, obligations have also increased slightly over time. Generally, unobligated balances have remained relatively stable and averaged about \$67 million a year. The highest unobligated balance was at the end of fiscal year 2009, at about \$88 million, and the lowest was at the end of fiscal year 2011, at about \$42 million. DEA maintains an unobligated balance, called the operational continuity fund, in order to avoid operational disruptions throughout the year that might occur because of fluctuations in collections and obligations. Figure 10 shows collections, obligations, and unobligated balances for fiscal years 2009 through 2013.

**Figure 10: Diversion Control Fee Account Annual Collections, Obligations, and Unobligated Balances, Fiscal Years 2009 through 2013**



Source: GAO analysis of Department of Justice data. | GAO-15-48



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## Federal Prison Industries, Inc. (FPI)

### Background

FPI, managed by the Federal Bureau of Prisons (BOP) and governed by a presidentially appointed Board of Directors, is a wholly owned government corporation created by federal law in 1934.<sup>13</sup> FPI's mission is to protect society and reduce crime by preparing inmates in federal penal and correctional institutions and disciplinary barracks for successful reentry into society through job training. Specifically, FPI provides inmates employment and job skills through the production of market-priced high-quality goods, such as furniture, clothing, electronics, and vehicular and metal products, and through services such as printing, data processing, call centers, and laundry. FPI's factories are operated by civilian supervisors and managers responsible for training and overseeing the work of inmates.

Federal law generally requires agencies to purchase products from FPI.<sup>14</sup> According to FPI, it was designed to be a "mandatory source" of federal supply for the products it manufactures to help ensure a steady work flow and partially offset some of the competitive disadvantages associated with operating in a correctional environment, such as lower productivity levels. In fiscal year 2013, FPI products were organized into five business sectors: clothing and textiles, electronics, (which includes fleet management and vehicular products), office furniture, recycling, and services.<sup>15</sup> As of September 30, 2013, FPI had industrial and service operations at 78 factories located at 62 prison facilities, and employed about 13,000 inmates.

### Legal Requirements

FPI is authorized to obligate proceeds from its sales for all FPI operating costs, such as wages for federal inmates. FPI generally determines the amount it obligates for these purposes, as described in its annual budget submission. Each year, appropriations acts have imposed a limit for

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<sup>13</sup>A wholly owned government corporation is an enterprise or business activity designated by the Government Corporation Control Act of 1945 (31 U.S.C. § 9101) or some other statute as a wholly owned government corporation. Each such corporation is required to submit an annual business-type statement to the Office of Management and Budget.

<sup>14</sup>See 18 U.S.C. § 4124 and 48 C.F.R. §§ 8.601-08.

<sup>15</sup>The mandatory source designation does not apply to any of FPI's services or recycling activities.

## Funding Characteristics

administrative costs, including salaries for management personnel, travel expenses, and supplies. FPI funds are generally available until expended without further action from Congress. That is, FPI has the authority to carry over balances from 1 fiscal year to the next.

FPI is fully funded by and operated as a revolving fund—that is, it charges for the sale of products or services and uses the proceeds to finance its spending, usually on a self-sustaining basis—and does not receive an annual appropriation.

### **Collections Characteristics**

The majority of FPI's funding is derived from the sale of products and services to other federal departments, agencies, and bureaus, and FPI's sales revenue has declined from fiscal years 2009 through 2013.<sup>16</sup> In addition to sales revenue, FPI received income from the interest earned by investing its carryover balances. In fiscal year 2013, three of FPI's five business sectors—clothing and textiles, electronics, and office furniture—reported a decline in sales revenue compared with fiscal year 2009 revenue.

### **Obligations Characteristics**

Sales revenue from FPI's activities is obligated to defray all operating costs, including the purchase of raw materials and equipment, staff salaries and benefits, and inmate wages, among other things. For example, factories utilize raw materials and parts purchased from the private sector to produce finished goods, such as office furniture.

### **Trends in Annual Collections, Obligations, and Carryover**

From fiscal years 2009 through 2013, FPI's total proceeds of sales and operation costs decreased each year, and these operating costs have generally decreased at a faster rate than its sales revenues declined. Because FPI's operating costs have declined at a greater rate than its sales revenues have declined, FPI's unobligated balance has increased during this time period. Specifically, at the end of fiscal year 2013, FPI's

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<sup>16</sup>According to FPI financial statements, FPI's largest customers include the Department of Defense, the Department of Homeland Security, DOJ, the General Services Administration, and the Social Security Administration.

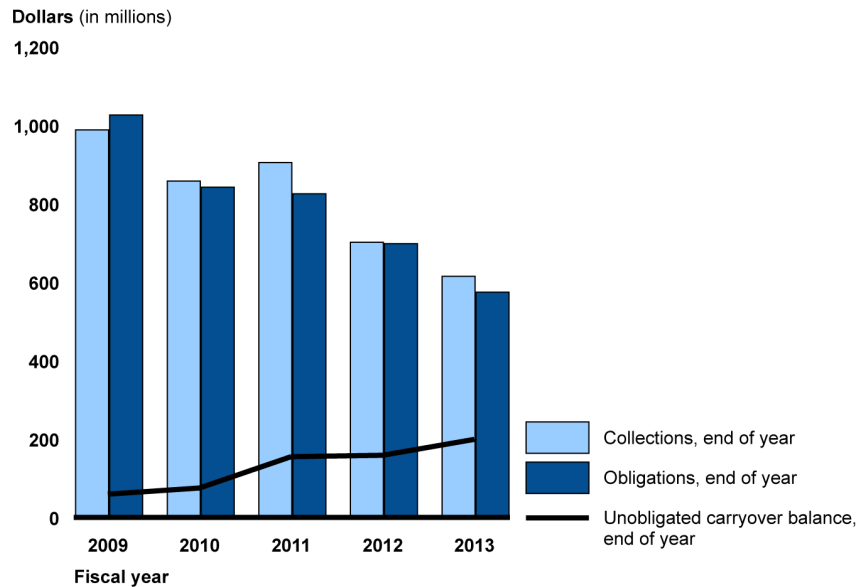
unobligated balance had increased by more than \$139 million compared with its end-of-year balance in fiscal year 2009. According to FPI's annual financial statements, a decline in overall federal spending, coupled with declining interest rates, has negatively affected FPI's sources of funding. In addition, the passage of legislation that affected FPI's designation as a mandatory source of federal supply for the products it manufactures contributed to declines in sales during this time period.<sup>17</sup> For example, before purchasing an item from FPI, agencies are generally required to conduct market research to determine whether the item is comparable to items available from the private sector that best meet the government's price, quality, and time-of-delivery specifications.<sup>18</sup> Figure 11 shows that FPI's sales revenues and obligations have generally decreased, while unobligated balances have increased during this time period.

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<sup>17</sup>Under FPI's authorizing statute, federal agencies are generally required to purchase products from FPI, known as the mandatory source clause. 18 U.S.C. § 4124. However, various provisions of legislation, starting in 2002, have affected the mandatory source clause.

<sup>18</sup>See 48 C.F.R. § 8.602 (implementing 10 U.S.C. § 2410n and Pub. L. No. 108-447, div. H, § 637 (18 U.S.C. § 4124 note)). If the FPI item is not comparable in one or more of the areas of price, quality, and time of delivery, among other requirements, the agency must acquire the item using competitive procedures.

**Figure 11: Federal Prison Industries, Inc., Annual Collections, Obligations, and Unobligated Balances, Fiscal Years 2009 through 2013**



Source: GAO analysis of Department of Justice data. | GAO-15-48

## Three Percent Fund

### Background

The DOJ Three Percent Fund is an account composed of 3 percent of amounts collected “pursuant to civil debt collection litigation activities.”<sup>19</sup> According to DOJ officials, civil debt litigation activities may include activities such as bringing civil cases to court or conducting administrative activities such as tracking unpaid debts and issuing notices for payments due. Civil debt does not include criminal fines and penalties or forfeiture of properties and assets. Eligible transactions from the payor to the government are assessed a 3 percent fee, which is used to offset costs for DOJ to manage the collection and distribution of funds to federal agencies awarded the civil judgment as well as civil and criminal litigation activities conducted by the department.

<sup>19</sup>The Three Percent Fund is part of DOJ’s Working Capital Fund. 21st Century Department of Justice Appropriations Authorization Act, Pub. L. No. 107-273, div. C, tit. I, § 11013(a), 116 Stat. 1758, 1823 (2002) (28 U.S.C. § 527 note).

Civil debt transactions provided to the Three Percent Fund are managed by the DOJ Justice Management Division Debt Collection Management Staff (DCM). DCM provides the operational, policy, and client support services—including training and reporting—to facilitate the collection of debts owed to the United States government. DCM manages the computer systems used to manage transactions and collections retained in the Three Percent Fund.

DOJ annually disburses Three Percent Fund collections to DOJ components that conduct activities related to civil and criminal debt collections—which, according to DOJ, also include investigatory, litigation, and administrative activities related to obtaining these debts—based on eligibility of costs and DOJ priorities. DOJ established the Collection Resources Allocation Board (CRAB) to review components' requests for funds based on intended uses, awarding funds to the components to offset costs for activities covered in the requests for funding for the year. Funds are offsetting collections that reduce the costs for conducting these activities, which otherwise do not obtain funding or are funded through other appropriations provided to the DOJ component conducting the activities.

## Legal Requirements

Three Percent Fund collections are no-year funds available for paying the costs of processing and tracking civil and criminal debt collection litigation and, thereafter, for financial systems and for debt collection–related personnel, administrative, and litigation expenses.<sup>20</sup> The CRAB is responsible for determining the activities that receive agency funding. Any amounts unobligated at the end of the fiscal year are retained as an unobligated balance in the Three Percent Fund. They are available the following year to DOJ to obligate and expend.

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<sup>20</sup>Pub. L. No. 107-273, § 11013(a). According to DOJ officials, this includes activities related to both referred debt collection and affirmative civil and criminal investigations and cases that could produce a debt to the government.

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Funding Characteristics

**Collections Characteristics**

Three Percent Fund collections are received from payors that owe debts resulting from civil settlements, judgments, or referred debt to DOJ.<sup>21</sup> From fiscal years 2009 through 2013, Three Percent Fund collections totaled more than \$623 million. According to DCM officials, debt collections are from private individuals as well as from businesses. DCM officials stated that while most collections are from small debts, single transactions for larger civil debts may provide several million dollars to the fund. For instance, according to information provided by DCM, in 2013, there were over 15,000 separate transactions of funds in the Three Percent Fund. According to these transactional data, fewer than 30 transactions provided collections of \$1 million or more. The largest transaction resulted in a deposit of over \$22 million to the Three Percent Fund.

**Obligations Characteristics**

The CRAB awards Three Percent funds based on priorities established by the board. According to DOJ officials responsible for the fund, amounts are provided using the following broader priorities:

1. Costs to manage debt collection activities, including full funding for DCM costs and the computer system infrastructure to manage transfers of funds from payors to the various federal agencies receiving civil collections.
2. Debt collection activities such as tracking debtors' funds, training for properly conducting debt collections and understanding the resources available to federal agencies for obtaining debts, and conducting administrative activities such as sending demand letters to debtors.
3. Costs of conducting civil litigation and investigation where collections are presumed to be obtained. This includes both referred debt where the debt has already been established, and affirmative civil litigation where the debt has not yet been established in court. Such activities

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<sup>21</sup>Referred debt is debt owed to other agencies that is referred to DOJ to collect. This can include civil penalties, fines, and defaults on federal loans. Many federal agencies have authority to assess civil penalties on businesses or individuals, and DOJ has conducted debt collection at the behest of several agencies. These include the Internal Revenue Service, the U.S. Army and Navy, the Federal Trade Commission, and the U.S. Customs and Border Protection, among others.

include personnel, court costs, and administrative activities that support such litigation.

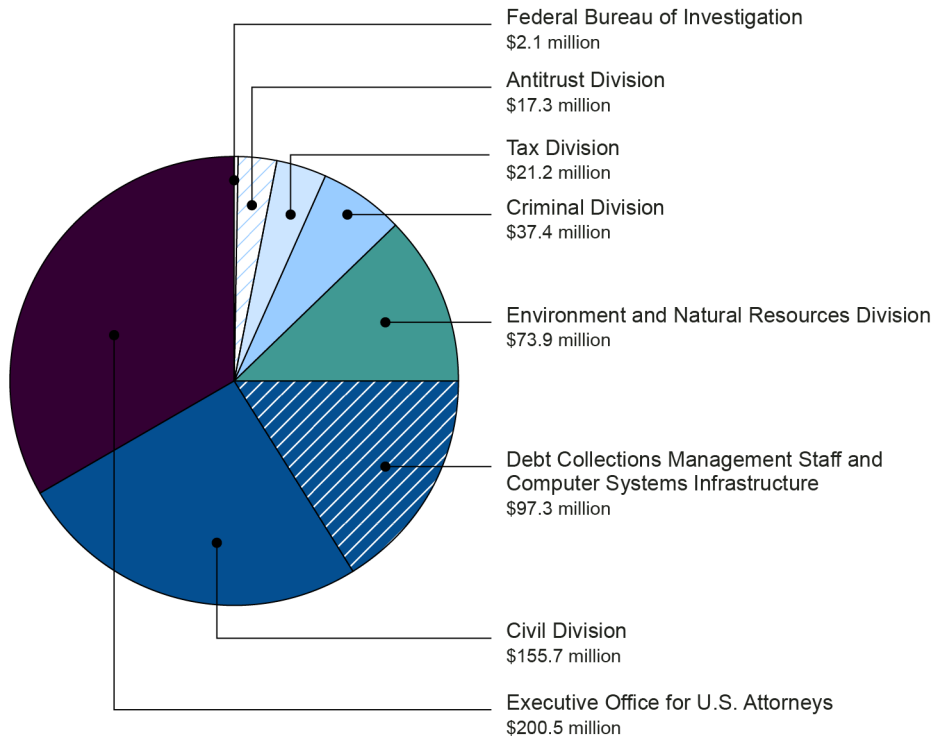
4. Costs of conducting criminal litigation or investigation where collections are presumed to be obtained from the defendant. Such activities include personnel and administrative activities that support such litigation.

From 2009 through 2013, seven DOJ components have received Three Percent Fund allocations, in addition to DCM being fully funded. Of the total \$600 million allocated during that time, about 33 percent—about \$200 million—was to the Executive Office for U.S. Attorneys (EOUSA). About 26 percent—over \$150 million—was awarded to the Civil Division. Officials responsible for awarding amounts from the Three Percent Fund said that this reflects the prioritization process as the U.S. Attorneys conduct most of the litigation activities for DOJ, and the Civil Division is the component within DOJ that specializes in larger, more complex civil litigation activities.<sup>22</sup> See figure 12 for a breakout of amounts in the Three Percent Fund by the receiving component within DOJ.

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<sup>22</sup>Total obligations presented by component were reported separately from DOJ's audited financial statements. These data show that DOJ obligated about \$605 million, while DOJ's financial statements show that Three Percent Fund obligations totaled about \$599 million. The difference is \$6 million, or about a 1 percent difference. We determined these data were sufficiently reliable for the purposes of presenting the proportion of amounts allocated from the Three Percent Fund among the different components. However, we present total obligations as they are reported in DOJ's audited financial statements throughout the report and in analyses requiring a comparison of obligations with collections and unobligated balances.

**Figure 12: Three Percent Fund Allocation Totals by Component from Fiscal Years 2009 through 2013**



Source: GAO analysis of DOJ Debt Collection Management Staff data. | GAO-15-48

Note: Total for the Debt Collection Management Staff (DCM) includes about \$20 million in funding provided to the Office of the Chief Information Officer in fiscal years 2009 through 2011 to manage the Consolidated Debt Collection System (CDCS). The CDCS is the Department of Justice's (DOJ) primary management and financial system for federal civil debt collection management. In fiscal year 2012, responsibility for the CDCS moved to DCM. The data shown do not originate from DOJ's audited financial statements but were reported separately by DCM, the office responsible for the financial management of the Three Percent Fund.

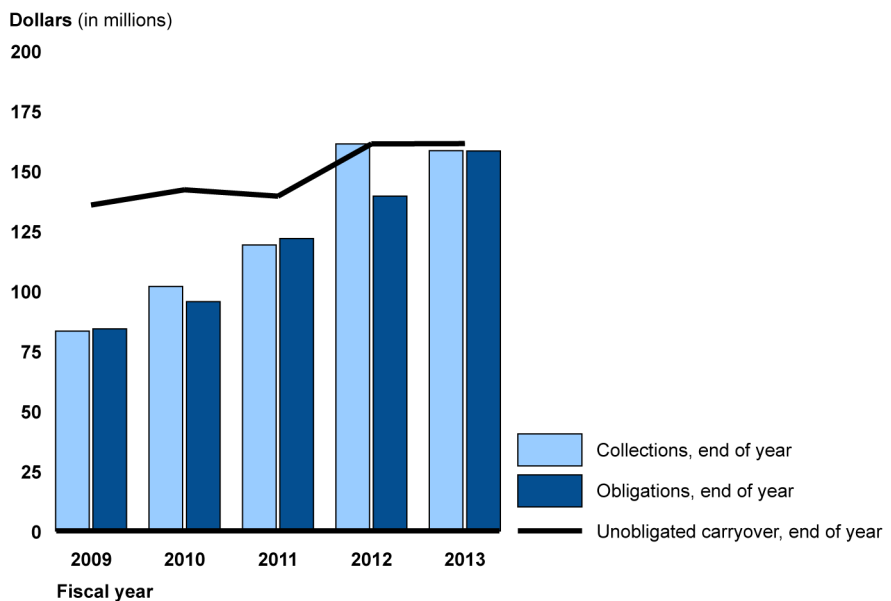
### Trends in Collections, Obligations, and Unobligated Balances

From fiscal years 2009 through 2013, both collections and obligations in the Three Percent Fund generally increased at similar rates, while unobligated balances fluctuated but generally increased during the 5-year period. Specifically, collections increased from \$83 million in fiscal year 2009 to \$158 million in fiscal year 2013—an increase of about 90 percent



over the 5-year period.<sup>23</sup> Obligations increased from about \$84 million in fiscal year 2009 to about \$158 million in fiscal year 2013—an increase of about 88 percent. Over the 5-year period, unobligated balances increased from about \$136 million to \$161 million. See figure 13 for collections, obligations, and end-of-year unobligated balances from fiscal years 2009 through 2013.

**Figure 13: Three Percent Fund Annual Collections, Obligations, and End-of-Year Unobligated Balances, Fiscal Years 2009 through 2013**



Source: GAO analysis of Department of Justice data. | GAO-15-48

## United States Trustee System Fund

### Background

The U.S. Trustee Program’s (USTP) mission is to promote the integrity and efficiency of the bankruptcy system for the benefit of all stakeholders—debtors, creditors, and the public. The USTP investigates and civilly prosecutes bankruptcy fraud and abuse; refers suspected

<sup>23</sup>In fiscal year 2012, Three Percent Fund collections totaled about \$161 million—about \$3 million more than fiscal year 2013 collections.

criminal activity to the U.S. Attorney and other law enforcement partners; monitors and takes action to address the conduct of debtors, creditors, attorneys, credit counselors, and others; oversees private trustees; and ensures compliance with applicable laws and regulations in all bankruptcy cases, from individual consumer filings to large corporate reorganizations. In fiscal year 2013, the USTP oversaw the administration of more than 1 million bankruptcy cases filed by both individual and business debtors in federal judicial districts. The USTP is primarily funded through fees paid by bankruptcy debtors that are deposited into the United States Trustee System Fund (USTSF). According to USTP annual budget justifications, the total number of bankruptcy cases filings increased from fiscal year 2009 to 2010, and has steadily decreased from fiscal years 2010 through 2013. In fiscal year 2013, chapter 7 case filings constituted 69 percent of total bankruptcy cases filed, compared with 30 percent of chapter 13 cases, and 1 percent or less of chapter 11 and chapter 12 filings.<sup>24</sup>

## Legal Requirements

The USTP may obligate deposits in the USTSF for specified program-related expenses, such as salaries and benefits, as specified in annual appropriation acts. While amounts deposited in the USTSF remain in the fund until expended, they are not available to the USTP until appropriated.<sup>25</sup> In addition, the Attorney General is required to transmit a detailed report on the amounts deposited in the USTSF and a description of related expenditures to Congress 120 days after the end of each fiscal year.

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<sup>24</sup>Chapter 7 bankruptcy is a liquidation in which a case trustee liquidates the debtor's nonexempt assets and distributes the proceeds to creditors. The U.S. Trustee maintains a number of chapter 7 trustees in each district, known as "panel trustees." See 28 U.S.C. § 586(a). According to USTP officials, assignment of cases to individual chapter 7 trustees is generally done through a blind rotation process. Chapter 13 bankruptcy is used by individuals with regular income to reorganize their financial affairs under a repayment plan that must be completed within 3 to 5 years. Chapter 11 bankruptcy permits an individual or a business to reorganize debts while continuing to operate. Chapter 12 bankruptcy allows an eligible family farmer or a fisherman to file for bankruptcy, reorganize the business affairs of the farm or fishing business, and repay all or part of the business' debts while continuing to operate. Standing trustees are appointed for chapter 12 and 13 bankruptcy cases by the U.S. Trustee Program and typically serve as the trustees of a debtor's estate pending fulfillment of the repayment plan. See 28 U.S.C. § 586(b).

<sup>25</sup>The USTP may also invest funds not currently needed for program purposes. 28 U.S.C. § 589a(c).

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Funding Characteristics

**Collections Characteristics**

USTP receives and deposits into the USTSF fees collected generally from four sources: (1) a portion of the filing fee in every bankruptcy case paid at the beginning of each case for chapters 7, 11, 12, and 13, (2) chapter 11 quarterly fees, (3) excess percentage fees collected by chapter 12 or chapter 13 standing trustees, and (4) interest on invested funds.<sup>26</sup> According to USTP data, from fiscal years 2009 through 2013, chapter 11 quarterly fees accounted for about \$692 million, or about 57 percent of total fees deposited in the USTSF.<sup>27</sup> In comparison, bankruptcy filing and conversion fees accounted for about \$515 million, or about 42 percent of total USTSF fees deposited.<sup>28</sup>

**Obligations Characteristics**

During this time period, the majority of the USTP's obligations were related to personnel costs. According to USTP data, in fiscal year 2013, personnel pay and benefits accounted for 74 percent of the USTP's obligations, and rental payments for USTP office space accounted for 13 percent of obligations. According to the USTP, it allocates funding for personnel according to hours used by USTP staff performing bankruptcy enforcement and case administration activities, as well as resources directly related to the performance of these activities.

**Trends in Collections, Obligations, and Unobligated Balances**

USTSF collections and obligations from fiscal years 2009 through 2013 were relatively stable. Specifically, collections totals ranged from \$217 million to about \$223 million. During the same time, obligations ranged from about \$214 million to about \$226 million. The smallest collection and

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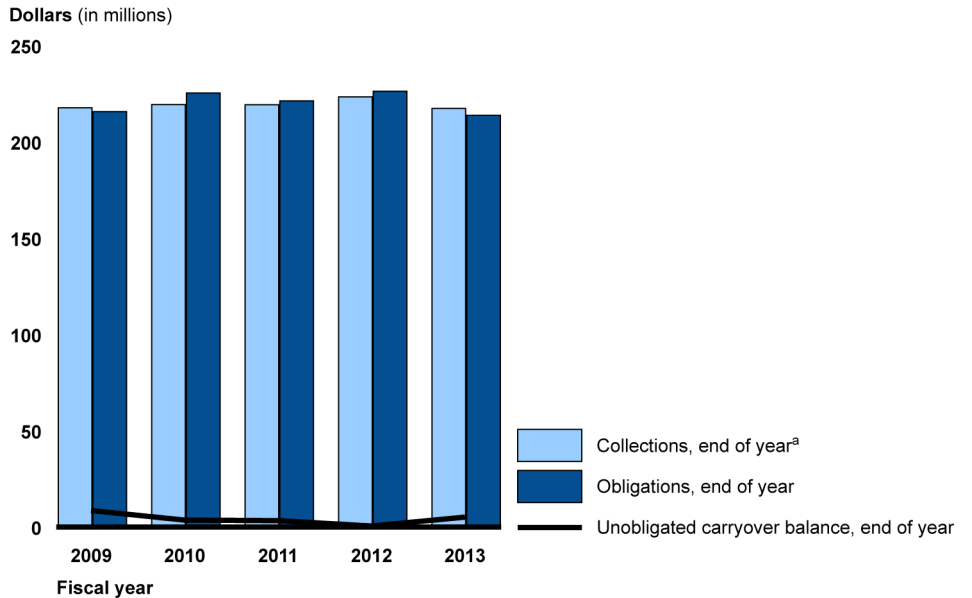
<sup>26</sup>28 U.S.C. § 589a. The USTSF also receives deposits from fines imposed on bankruptcy petition preparers, compensation for cases in which the United States trustee serves as trustee, and a portion of fees from conversion of cases from chapter 7 or 13 to chapter 11.

<sup>27</sup>Chapter 11 quarterly fees are determined by the debtor's cash disbursement levels—or amount paid by the business each quarter while in a chapter 11 proceeding. According to USTP, reported chapter 11 fees deposited in the USTSF exclude quarterly fees that were referred to and collected by the Department of Treasury. Chapter 11 cases make up about 1 percent of all bankruptcy case filings.

<sup>28</sup>Investment interest and other miscellaneous income accounted for about \$4.9 million, or less than 1 percent of total USTSF fees deposited in the USTSF.

obligation totals were both in fiscal year 2013. The end-of-year unobligated balances from fiscal years 2009 through 2013 were also relatively stable, ranging from about \$500,000 to about \$8.6 million.<sup>29</sup> According to USTP officials, the USTP uses the unobligated balance to meet its obligations to fund the program’s continuing operations.

**Figure 14: U.S. Trustee System Fund Annual Collections, Obligations, and Carryover Balances, Fiscal Years 2009 through 2013**



Source: GAO analysis of Department of Justice data. | GAO-15-48

<sup>a</sup>Unobligated balances do not include amounts that have been invested in U.S. Treasuries to fund future-year activities for the United States Trustee Program.

<sup>29</sup>USTSF unobligated balances do not include investments that the USTP has made with these funds in the Treasury. According to DOJ’s 2013 agency financial report, the USTSF had net investments of about \$232 million.

# Appendix IV: Comments from the Department of Justice



U.S. Department of Justice

FEB 09 2015

Washington, D.C. 20530

David Maurer  
Director, Homeland Security and Justice Issues  
Government Accountability Office  
441 G Street, NW  
Washington, DC 20548

Dear Mr. Maurer:

Thank you for the opportunity to review and comment on the GAO's draft report entitled Department of Justice: Alternative Sources of Funding Are a Key Source of Budgetary Resources and Could be Better Managed (GAO-15-48/441174). Below we describe what actions the DOJ plans to take to implement the recommendations and also identifies where we have concerns with some portions of GAO's recommendations. Technical comments for GAO's consideration have been sent under separate cover.

**Recommendation Number 1:** Regarding the Three Percent Fund, the Attorney General develop a policy and implement procedures to regularly analyze unobligated balance and develop collection estimates in order to determine an appropriate reserve amount and inform estimates of future funding needs.

**Response:** Improving Reserve Estimates: DOJ agrees with GAO that it could improve its current methodology for estimating the amount of funds that are needed in reserve for the next fiscal year. The current methodology calculates the amount of funding needed to support the component's FTE approved in the prior fiscal year as well as funding the entire budget for Debt Collection Management Staff (DCM). This methodology is based on the premise that if collections did not materialize at the same rate as the prior year, the Three Percent Fund's (Fund) "must fund" items are DCM and the 1<sup>st</sup> quarter of component FTE, and that by funding these two items, we can ensure that the Fund continues to operate.

DOJ will modify the reserve estimate to include the following:

- one quarter of the previous fiscal year's funding for administrative and professional contracts;
- half of the previous year's funding for the Consolidated Debt Collection System, the Department's only debt collection information system;

David Maurer

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- half of the previous year's funding for the Debt Management Module, the Department's system for disbursing collections and executing the Three Percent offset;
- full costs of the previous year's expenses for government salaries that have been approved by the Attorney General.

Improving Collection Estimates: As previously stated in discussions with GAO, DCM does not query litigating components for estimates of the number of cases that will be settled or judgment reached within a certain timeframe, or the amount estimated to be eligible for the Three Percent offset.

DCM does not request revenue estimates for two reasons. The first is to eliminate the perception that the CRAB is using the Three Percent Fund in a manner which could be seen as bounty-hunting. The Collection Resources Allocation Board (CRAB) approves Three Percent Fund requests from components for a variety of civil and criminal litigation matters. The vast majority of these have the potential to bring returns to the Three Percent Fund. The CRAB, once the funds are allocated, does not involve itself either in the litigation or settlement, to ensure that there is no perception that we are influencing decisions being made regarding the cases and activities funded. The only time the CRAB, or DCM, is involved is when an attorney may have a question about how the offset works, to ensure that the settlement is structured correctly so that the Fund receives the full Three Percent offset amount.

The second reason why DCM does not calculate revenue estimates is that, because of the great variability associated with civil debt litigation cases, there is no sound way to estimate when a case may be settled, how much the settlement will be for, or when the funds will be disbursed. Using the recent financial fraud settlements with major lenders for example, there is no way for DCM or the litigators to know when a settlement will occur (if at all), or the amount. While DCM and the CRAB were aware that discussions were ongoing, we did not know the exact amount of the settlement discussions, which were being negotiated at high levels within the DOJ. Further, once settlements are made, some defendants make payment quickly, while others, based on the settlement agreements, are allowed to make payment a few months following the settlement. In addition, the more complicated settlements involved multiple government agencies, relators, and others, which can affect when the funds are disbursed and the Three Percent offset taken.

In addition, examining historical trends of litigation and returns to the Fund is not an effective means by which to predict future revenue to the Three Percent Fund. As the GAO has pointed out, over the past few years, the Fund has maintained high collections. This was due in part to billion dollar health care fraud settlements, and most recently the aforementioned multi-billion dollar settlements with large lending institutions. However, an examination of settlements in recent years shows that the large billion dollar health care fraud settlements have peaked, and

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while the Fund is enjoying record deposits, this is due to the multi-billion dollar settlements with the large lending institutions. The nature of the settlements is fluid, predicted upon a multitude of factors, and attempting to estimate revenue for the next three years based on one-time litigation is not an effective method for producing reliable results. In sum, rather than forecast future litigation settlement outcomes, DOJ believes it is more conservative to base our allocations on known collections.

**Recommendation Number 2:** Regarding the CJIS FBI fees, publish in the *Federal Register*, or other documents such as annual reports, how much is assessed for automation and cost recovery in each transaction to better communicate the cost of the service for customers and stakeholders.

**Response:** The FBI has a robust and dynamic relationship with its stakeholders, providing them with multiple opportunities to inquire about the components of the FBI's Criminal Justice Information Services (CJIS) user fee. DOJ believes that the FBI has been transparent with its stakeholders in this regard. Nonetheless, as this recommendation is consistent with current business practices, DOJ agrees to break out the automation and recovery portions of the CJIS user fee more explicitly in the future.

**Recommendation Number 3:** Develop a policy to analyze the carryover balances coming from the automation portion of the fee to inform program needs, including improving methods for anticipating automation collections, and establishing a range of appropriate carryover amounts to support program needs and ensure the most efficient use of resources.

**Response:** DOJ concurs and agrees to analyze carryover balances coming from the automation portion of the FBI's CJIS user fee. However, given the complexities of the account and estimating future deposits, DOJ does not believe that establishing a range of appropriate carryover balances would enhance the current financial business practices of the CJIS fund.

Finally, we note that during its discussion of the Crime Victims Fund and its associated scorekeeping rules, GAO makes reference to the fact that "DOJ reported net budget authority of \$15 billion" rather than our total discretionary request amount of approximately \$25 billion for the year in question (page 31). In fact, annual discretionary budgets are reported in different ways, both with and without scorekeeping offsets. Thus, to use the recently released President's Budget for Fiscal Year 2016 as an example, DOJ itself reported a discretionary request of \$28.7 billion, while certain OMB tables (e.g. OMB Appendix Table 5.2) show on some lines the request net of offsets, or roughly \$14.9 billion. Both numbers can be found in the annual budget materials, appropriately labeled. DOJ follows OMB Circular A-11 reporting requirements in its budget displays, and most importantly, DOJ's annual budget execution reports track directly to the full enacted discretionary budget, i.e. \$28.7 should the FY 2016 budget be enacted as requested.

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Thank you again for the opportunity to comment on this report. We look forward to working with the GAO as we strive to improve our programs and further our mission.

Sincerely,



Lee J. Lofthus  
Assistant Attorney General  
for Administration



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# Appendix V: GAO Contact and Staff Acknowledgments

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## GAO Contact

David C. Maurer, (202) 512-9627 or [maurerd@gao.gov](mailto:maurerd@gao.gov)

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## Staff Acknowledgments

In addition to the contact named above, Dawn Locke (Assistant Director), Valerie P. Kasindi and Jeremy P. Manion (Analysts-in-Charge), Thomas Beall, Dean D. Carpenter, Wendy Dye, Cynthia Grant, Eric Hauswirth, Felicia Lopez, Alicia Loucks, Cory A. Mazer, Leah Q. Nash, Jessica S. Orr, Amanda J. Postiglione, and Janet Temko-Blinder made key contributions to this report.

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