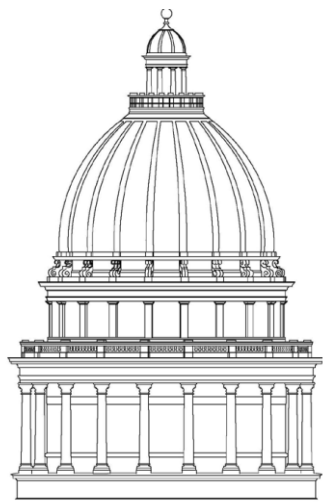
REPORT TO THE

UTAH LEGISLATURE

Number 2020-07



A Performance Audit of the Office of State Debt Collection

September 2020

Office of the
LEGISLATIVE AUDITOR GENERAL
State of Utah

STATE OF UTAH

Office of the Legislative Auditor General

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KADE R. MINCHEY, CIA, CFE
AUDITOR GENERAL

September 15, 2020

TO: THE UTAH STATE LEGISLATURE

Transmitted herewith is our report, **A Performance Audit of the Office of State Debt Collection** (Report #2020-07). An audit summary is found at the front of the report. The objectives and scope of the audit are explained in the Introduction.

We will be happy to meet with appropriate legislative committees, individual legislators, and other state officials to discuss any item contained in the report in order to facilitate the implementation of the recommendations.

Sincerely,

Kade Minchey

Kade R. Minchey, CIA, CFE
Auditor General

UTAH STATE LEGISLATURE

AUDIT SUMMARY

REPORT #2020-07 | SEPTEMBER 2020

Office of the Legislative Auditor General | Kade R. Minchey, Auditor General

PERFORMANCE AUDIT

Office of State Debt Collection

AUDIT REQUEST

We were asked to audit the Office of State Debt Collection (OSDC) and evaluate its debt collection methods, debt settlement practices, funding structure, and whether OSDC is operating efficiently and effectively.

BACKGROUND

OSDC serves as a central agency for collecting delinquent debts owed to agencies in the executive, legislative, and judicial branches of government. After state agencies make initial collection efforts, they send the debt to OSDC for collection. OSDC uses tools such as wage garnishments, retaining annual income tax refunds, and outside collection agencies to collect on these delinquent debts. OSDC also provides general oversight of state receivables including measuring state agency collections performance.

OSDC is part of the Department of Administrative Services' Division of Finance and is funded through a combination of fees, penalties, and interest charged to debtors based on the amounts they owe. A significant majority of the debts sent to OSDC for collection are for criminal offenses.

KEY FINDINGS

- Offenders sent to prison are not given a fair opportunity to pay off their debts before OSDC fees and penalties are added to their debts.
- Inadequate policy and training have resulted in inconsistent treatment of debtors seeking to settle debts with OSDC.
- OSDC is not providing statutorily required oversight of state receivables including measuring state agency collections performance.
- OSDC's practice of charging fees, penalties, and interest to debtors is consistent with practices in other states at similar centralized collection agencies. Large annual surpluses at OSDC indicate the need for an evaluation of fee rates and the purpose of OSDC fees.

RECOMMENDATIONS

- OSDC should amend rule to allow offenders released from prison the opportunity to pay their debts before fees and penalties are imposed.
- OSDC should amend its policy to clearly define settlement terms and provide guidance on common settlement scenarios.
- OSDC should implement annual performance metrics for state agency collections to identify underperforming agencies.
- The Legislature should consider whether OSDC should generate revenue for the general fund or limit excess revenues generated through fees.

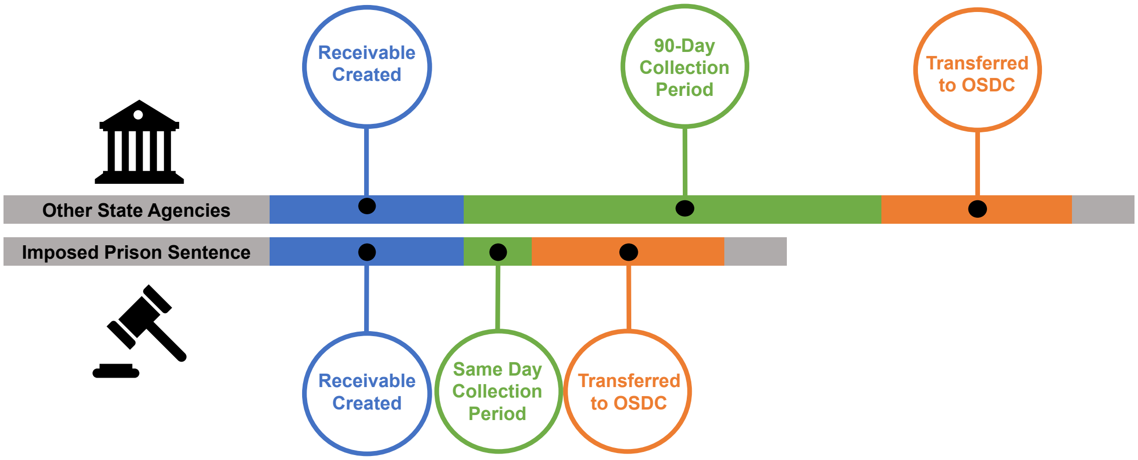
Summary continues on back >>

REPORT SUMMARY

Certain Offender Debts Are Treated Inequitably

We found that debts for offenders sent to prison are treated differently from other state debts. Offenders sent to prison are allowed to pay off their debts on the day of sentencing. However, any remaining amounts owed are immediately sent to OSDC at which point fees and penalties are assessed. Typically, state agencies collect on debts for 90 days before sending debts to OSDC.

Figure 2.1 *Unpaid debts for offenders with direct prison commitments are transferred to OSDC on the date of sentencing*



OSDC Settlement Requests Are Treated Inconsistently

We found that OSDC policy lacked the necessary guidance for common settlement scenarios; in other cases, policy was not followed. Inadequate policy has resulted in inconsistent treatment of debtors seeking to settle debts with OSDC. OSDC should revise policy to clearly define settlement terms, provide adequate guidance for settlement negotiations, and better reflect account-level costs of collection.

OSDC Has Not Provided Adequate Oversight of State Receivables

OSDC has not measured collections performance by state agencies. Neither has OSDC engaged in other oversight activities, such as reviewing agency policies, collection methods, and accounting procedures. These deficiencies have occurred because OSDC management has not made performance management a priority.

OSDC Should Focus on Improving Processes to More Efficiently Use Funding

Concerns were raised that OSDC, as the agency in charge of collecting on delinquent debts, charges debtors fees to pay for internal operational costs. We found that this practice is consistent with funding practices for similar collections entities in other states. However, the size and frequency of annual surpluses raises questions about the appropriate amount and purpose of fees charged to debtors.

REPORT TO THE

UTAH LEGISLATURE

Report No. 2020-07

A Performance Audit of the Office of State Debt Collection

September 2020

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Table of Contents

Chapter I
Introduction

Utah's Office of State Debt Collection (OSDC) serves as a central agency for collecting delinquent debts owed to almost all agencies in the executive, legislative, and judicial branches of government. OSDC also provides oversight of state receivables.[1] It is part of the Department of Administrative Services' Division of Finance. OSDC is funded through a combination of fees, penalties, and interest charged to debtors based on the original amounts they owe.

OSDC serves as a central agency for collecting delinquent debts.

Statute Requires OSDC to Collect Debts and Provide Oversight for State Receivables

Utah Code[2] outlines two main areas of responsibility for OSDC: collect on debts that other state agencies were unable to collect and monitor state agencies' debt collection efforts. Agencies are statutorily required to send their debts to OSDC based on a timeline established by OSDC in Administrative Rule. The Administrative Rule[3] dictates the timeline for agencies to send debts to OSDC, which is either within 90 days of initial billing or when the debt is delinquent by 61 days. Once a debt is sent to OSDC, the office can collect the debt using various collection methods. These collection methods include the following:

Agencies are statutorily required to send their debts to OSDC based on a timeline established in Administrative Rule.

- Mailing demand letters to debtors requesting payment
- Retaining annual income tax refunds to offset debts
- Ordering employers to garnish debtor wages
- Sending debts to outside collection agencies[4]
- Making outbound phone calls to debtors[5]

[1] The term receivable is defined in ***Utah Code*** 63A-3-501(1)(a) as "…any amount due to a state agency from an entity for which payment has not been received by the state agency that is servicing the debt." This report uses receivable interchangeably with the word "debt."

[2] ***Utah Code*** 63A-3 Part 5

[3] *Administrative Rule* R21-1-5

[4] OSDC currently works with eight outside collections agencies.

[5] OSDC is in the process of hiring for two positions to make outbound phone calls. This is part of a new pilot program.

For OSDC placement information, click here.

All state agencies are required to send their delinquent debts to OSDC except the Utah State Tax Commission, institutions of higher education,[6] and certain divisions within the Labor Commission. For more information regarding delinquent debt transferred to OSDC (placements) and OSDC collections, see the interactive dashboard here.[7]

OSDC is required by statute to monitor state agencies' collections performance, practices, and policies.

Along with collection responsibilities, OSDC is required by statute to monitor state agencies' collections performance, practices, and policies. This requirement will be discussed in greater detail in Chapter IV of this report.

OSDC Is Funded Through Fees and Interest Paid by Debtors

OSDC attaches fees, penalties, and interest to debts sent to them by state agencies, increasing the overall amount owed by the debtor. These include the following:

- A 6 percent late penalty fee applied when OSDC receives the debt
- An 18.34 percent effective rate for collection fees applied when OSDC receives the debt
- Simple interest at a rate of 7.50 percent if the debt does not already have interest attached to it[8]

Collected fees, penalties, and interest pay for OSDC's operating expenses.

Collected fees, penalties, and interest pay for OSDC's operating expenses. Money collected in fees, penalties, and interest in excess of OSDC expenses is deposited in the state's general fund. Over the last five years, OSDC returned an average of $744,000 per year to the general fund. Discussion of OSDC's funding structure, along with additional financial information, are found in Chapter V of this report.

[6] Institutions of higher education and political subdivisions can request OSDC to collect on their delinquent debts but are not required to use OSDC.

[7] We examined OSDC policies and procedures. Agency-specific differences in collection performance were outside the scope of this audit.

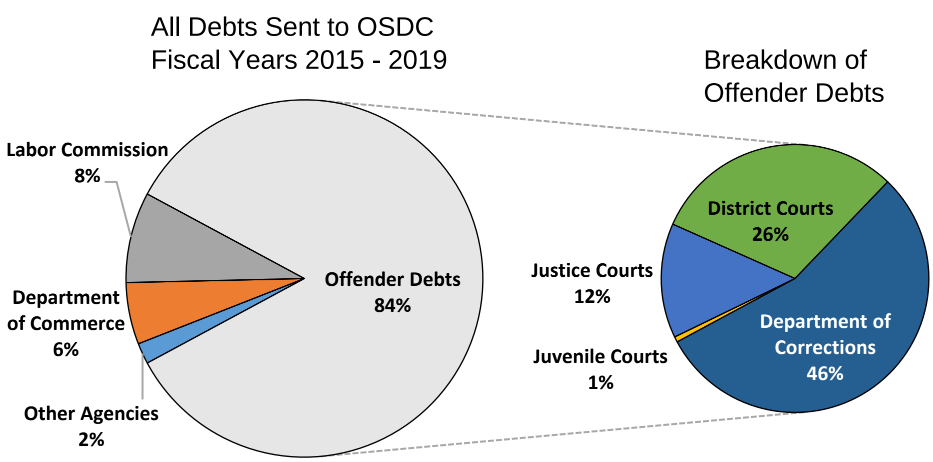
[8] This interest rate depends on the prime interest rate and applies to the whole fiscal year. OSDC does not apply interest to certain debts, while post judgement interest is assigned to criminal offender debts. This was the OSDC interest rate for fiscal year 2020.

Most Debts Sent to OSDC Are for Criminal Offenses

Of the many state agencies that refer debts to OSDC, agencies that deal with criminal offender debts send the most. Approximately 84 percent of debts sent to OSDC came from state district courts, local justice courts, juvenile courts, and the Utah Department of Corrections (UDC). Figure 1.1 shows how these agencies compare to others that sent debts to OSDC from fiscal year 2015 to fiscal year 2019.

Approximately 84 percent of debts sent to OSDC came from state district courts, justice courts, juvenile courts, and the Utah Department of Corrections.

Figure 1.1 Offender Debts Made Up a Significant Majority of All Debts Sent to OSDC in Recent Years. In the last five years, total debts from the justice courts, district courts, juvenile courts, and UDC comprised 84 percent of the funds owed to the state that were sent to OSDC. Just over half of offender debts came from UDC.



Source: OSDC

Offender debts can include fines, court fees, victim restitution, and interest. While UDC currently sends a significant amount of debt to OSDC, the number should decrease over time. Offenders sentenced to prison now have their debts sent immediately to OSDC instead of UDC. Offender debts will be discussed in greater detail in Chapter II of this report.

Offender debts can include fines, court fees, victim restitution, and interest.

Audit Scope and Objectives

We reviewed records for debts sent to OSDC as well as policies and practices for OSDC and related agencies. We also spoke with state agencies involved with debt collection and agencies in surrounding states. This audit had three main objectives:

- Determine whether OSDC is fulfilling its statutory responsibilities
- Determine whether OSDC's funding structure is fair and equitable
- Evaluate the debt settlement process and determine if debtors are treated fairly

Chapter II
Certain Offender Debts Are Treated Inequitably

Offenders sentenced to prison[9] face significant hurdles in paying down debts compared to other individuals who owe the state money. These hurdles are significant not only because of financial constraints that are common with offenders, but also because of the way these debts are treated. Compared to incarcerated offenders, debtors who owe money to other state agencies are given more time to make payments on their debt before additional fees and penalties are added by the Office of State Debt Collection (OSDC). States such as Colorado, Arizona, Oregon, and Wisconsin[10] provide offenders sentenced to prison with reasonable opportunities to pay their debts before collection fees and penalties are added by a centralized collection agency. In addition to fees and penalties, postjudgment interest on offender debts in Utah begins accruing the day after sentencing, whereas debts associated with other state agencies only accrue interest if debtors fail to pay and receivables are sent to OSDC. To address this issue, OSDC should amend Administrative Rule to delay the application of fees and penalties to the accounts of offenders sentenced directly to prison.

Compared to incarcerated offenders, debtors who owe money to other state agencies are given more time to make payments on their debt before additional fees and penalties are added by OSDC.

Offenders Sent to Prison Are Immediately Charged Additional Fees and Penalties

When an offender is sent to prison, any remaining unpaid balance is transferred directly to OSDC on the date of sentencing. This practice is concerning because OSDC immediately adds approximately 25 percent to the owed amount through a combination of fees and penalties. Debtors from other state agencies are given a more reasonable 90-day period to make a payment before the debt is assigned to OSDC. Other state agencies allow debtors to make payments towards a debt and will not send the debt to OSDC if

OSDC adds approximately 25 percent to the owed amount through a combination of fees and penalties.

[9] Offenders discussed in this chapter refer to offenders with prison sentences that are imposed and not suspended, unless otherwise specified.

[10] Wisconsin was included in the sample of surrounding states because Wisconsin was identified by another state as having a well-developed debt collections program.

payments are current. Other states either suspend collections or grant grace periods to incarcerated offenders, giving them an opportunity to make payments on their debts before incurring additional fees and penalties from the state's centralized collection agency.

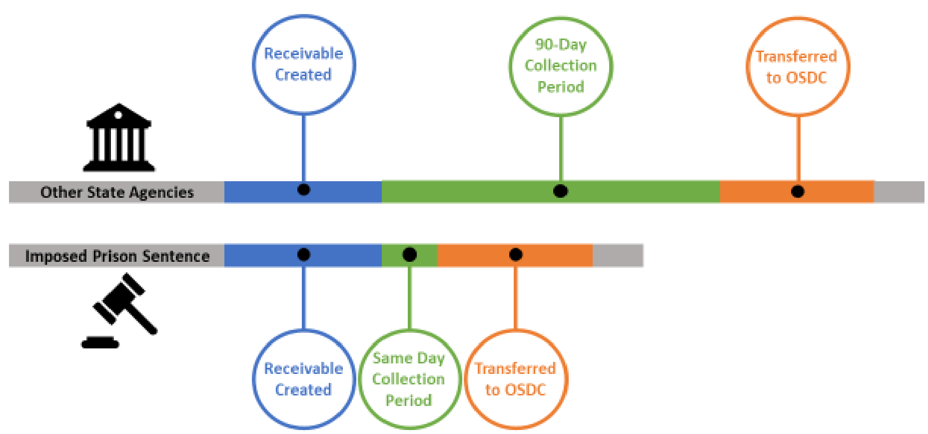
We recommend that OSDC amend Administrative Rule to allow offenders sentenced to prison the opportunity to pay their debts before fees and penalties are imposed.

Collection Timelines for Offenders and Debtors from Other State Agencies Differ

Debts that do not stem from direct commitment criminal judgments give debtors at least 90 days to make a payment.

Debt collection requirements vary depending on the type of debt incurred. For example, debts that do not stem from direct commitment criminal judgments give debtors at least 90 days to make a payment. In addition, other state agencies may hold the debt much longer if payments are being made. However, debts for offenders sentenced directly to prison are immediately sent to OSDC. Figure 2.1 summarizes the differences between the two processes.

Figure 2.1 Offenders Are Not Given as Much Time as Other Debtors to Pay Off Their Debts Before Fees and Penalties Are Imposed. Unpaid debts for offenders with direct prison commitments are transferred to OSDC on the date of sentencing.



Source: ***Utah Code*** *and Administrative Rule*

The green bars in Figure 2.1 illustrate the difference between the collection time periods for offenders and debtors from other state agencies. These timeline requirements are specified in ***Utah Code*** and Administrative Rule and are discussed in detail in the following section.

Debts for Offenders Sentenced to Prison Must Be Sent Directly to OSDC. ***Utah Code*** states that the court:

> …shall, when a prison sentence is imposed and not suspended, accept any payment on the criminal judgment account receivable tendered on the date of sentencing, enter any remaining unpaid criminal judgment account receivable as a civil judgment and transfer the responsibility for collecting the judgment to the Office of State Debt Collection….[11]

Offenders with prison sentences have less than 24 hours to pay their debts before the outstanding amount is transferred to OSDC.

Offenders with imposed prison sentences have the date of sentencing to make payments before the outstanding amount is transferred to OSDC. Even if a partial payment has been made, the remaining balance will be immediately transferred to OSDC.

Statute allows OSDC to assign collection fees and late penalties to an account.[12] Each year, the Legislature authorizes the maximum amounts that OSDC can charge. In fiscal year 2019, the authorized amounts were a collection fee of 15.5 percent (18.34 effective rate) and a late penalty of 6 percent. Statute does not specify that OSDC must charge the maximum allowed amounts or that it must apply these universally to all debts. Currently, OSDC charges the maximum amount authorized for all debts. This practice is concerning because OSDC charges these amounts to offenders sentenced directly to prison without giving them an equal opportunity to pay off their debts.

The statutory provision requiring the immediate transfer of offender debts to OSDC was established by Senate Bill 71, which passed during the 2017 Legislative General Session.

The statutory provision requiring the immediate transfer of offender debts to OSDC was established by Senate Bill 71, which passed during the 2017 Legislative General Session. Debts for offenders sentenced to prison prior to 2017 were transferred from the courts to the Utah Department of Corrections (UDC). The debt remained with UDC until the sentence was terminated or until the end of parole. Once the sentence was terminated or parole ended, the responsibility for collecting the debt was then transferred to OSDC. Senate Bill 71 simplified the debt collection process for debts owed by offenders sentenced to prison and routed these debts to OSDC, since

[11] ***Utah Code*** 77-32a-102(2)(a)

[12] OSDC can also assign interest to debts sent to them. However, ***Utah Code*** 63A-3-502(6)(b*)* prohibits OSDC from assigning interest to an account that is already subject to postjudgment interest.

it has greater collection capabilities than UDC.[13] However, with the immediate transfer of the debt to OSDC, the bill had the effect of instantly increasing amounts owed by almost 25 percent in fees and penalties before the offenders could pay off their debts.

Senate Bill 71 simplified the debt collection process for debts owed by offenders sentenced to prison and routed these debts to directly to OSDC.

Furthermore, any unpaid debts or expenses incurred while in prison (including dental and medical services) are also directly transferred to OSDC and their fees are imposed at the time the offender is released from parole. This transfer occurs even if the account is in good standing and not delinquent. Offenders are not given a chance to continue to pay down debts without incurring the additional fees and penalties that are automatically assessed on all accounts sent to OSDC.

Other State Agencies Are Required to Send Their Accounts to OSDC After the Agency Makes Initial Collection Efforts. Statute[14] requires OSDC to establish time limits for how long state agencies should collect on their debts before the debts are sent to OSDC. OSDC specified the timeline in Administrative Rule:

> A state agency or user of the Office of State Debt Collection services shall transfer collection responsibility to the Office, or its designee, when the account receivable is not paid within 90 days of the initial billing or is delinquent 61 days. [15]

The 90-day collection period for non-offender debts appears to be a standard practice as it is used in other states.

Likewise, financial policies and procedures created by the Utah Division of Finance require state agencies to pursue collection efforts on past-due receivables for 60 days. After the 60-day collection period, past due or delinquent receivables should be sent to OSDC for additional collection efforts unless the agency has a written exemption from OSDC. The 90-day collection period appears to be standard as it is used in other states such as Colorado, Wisconsin, and Oregon.

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[13] The Utah Commission on Criminal and Juvenile Justice agreed that OSDC is the best agency to collect on these debts.

[14] ***Utah Code*** 63A-3-502(3)(n)

[15] *Administrative Rule R21-1-5*

The two largest state agencies placing debt with OSDC, besides those associated with offender debts, are the Labor Commission and the Department of Commerce. These two agencies give debtors a 90-day window to make a payment on the debt prior to the account being transferred to OSDC. If a debtor from one of these two state agencies makes a partial payment during the 90-day collection period, the timeline is reset. The debtor is then given another 90 days to make additional payments before the agency transfers the debt to OSDC. It is important to note that offenders on probation (or other offenders who are not sentenced to prison) are typically also afforded the same 90-day collection period by the courts. This collection practice provides debtors the flexibility to make partial payments without having their debts sent to OSDC.

Offenders on probation are typically afforded a 90-day collection period, similar to non-offender debts.

Other States Provide Offenders Opportunities to Pay Their Debts Without Additional Fees

Oregon, Arizona, Colorado, and Wisconsin provide offenders with imposed prison sentences an opportunity to pay their debt before collection fees and fines are added by a centralized collection agency. However, collection practices and procedures among these states vary.

Other states provide offenders with imposed prison sentences an opportunity to pay their debt before collection fees and fines are added by a centralized collection agency.

Figure 2.2 Other States Give Offenders Sent to Prison an Opportunity to Pay Their Debts Before Central Collection Agencies Assess Fees and Penalties. In Utah, these debts are immediately transferred to OSDC, which adds fees and penalties.

State	Immediately Sent to Central Collections	Fees and Penalties Applied Immediately by Central Collections
Arizona	No	Yes
Oregon	No	Yes*
Wisconsin**	No	Yes
Colorado	Yes	No***
Utah	Yes	Yes

Source: Utah Administrative Rule, conversations with other states, other state statute
**The Oregon Department of Corrections assesses fees to debtors immediately before sending the debt to the Department of Revenue.*
***Wisconsin was included in the sample of surrounding states because Wisconsin was identified by another state as having a well-developed debt collections program.*
****Colorado courts assess a $25 fine after the day of sentencing, but all other fees are stayed until after parole. In addition, an 18 percent fee is assessed if debts are delinquent and sent to an outside collection agency.*

Except for Utah, each of these states provide offenders opportunities to pay their debt before their centralized collection agencies add significant fees and penalties to delinquent accounts. Oregon suspends collection efforts upon incarceration, then resumes them once the prison sentence is completed or terminated. Colorado provides incarcerated offenders a 90-day grace period once the offender is released from prison and on parole. Of the states we contacted, Utah was the only state to transfer judgment accounts for offenders sentenced to prison directly to a centralized collection agency (OSDC) that immediately assesses fees and penalties. The concern with this practice is that offenders in Utah are not given a reasonable opportunity to pay their debt before incurring fees and penalties.

CCJJ and the Sentencing Commission Recommend a Payment Grace Period

In 2019, a Utah Commission on Criminal and Juvenile Justice (CCJJ) task force[16] examined the issues that offenders face during community supervision. The task force recognized the financial hardships associated with offender debts and the penalties and fees added by OSDC.

A recent report released by the task force states the following.

> [O]nce a prison sentence is imposed, all criminal debt is transferred to the Office of State Debt Collection (OSDC), where interest begins to accrue. These costs can present a tremendous hardship for those on supervision who are struggling to integrate into their communities. Individuals leaving prison may owe as much as 60 percent of their income to criminal debts… Although many fines and fees serve a legitimate criminal justice purpose to hold individuals accountable for financial loss, the standard application of these and other legal financial obligations may place severe burdens on criminal justice-involved individuals who simply cannot afford to pay.

CCJJ's task force noted individuals leaving prison may owe as much as 60 percent of their income to criminal debts.

[16] The task force consists of representatives from the Administrative Office of the Courts, the Salt Lake Legal Defender Association, the Utah Board of Pardons and Parole, the Utah Commission on Criminal and Juvenile Justice, the Utah Department of Corrections, the Sentencing Commission, and the Utah Department of Human Services.

The task force made several recommendations to modify the financial obligations for offenders including a recommendation to "Provid[e] a grace period, after incarceration, for payment of [legal financial obligations] through OSDC…." We agree with this recommendation. To address these issues, we recommend that OSDC amend Administrative Rule to allow offenders released from prison the opportunity to pay their debts before fees and penalties are imposed. The next section of this chapter discusses postjudgment interest charged on criminal judgment accounts.

CCJJ's task force recommended that offenders be given a grace period after incarceration to pay their financial obligations without additional fees.

Debts for Offenders Sentenced to Prison Accumulate Interest During Incarceration

All debts for offenders sentenced to prison are directly sent to OSDC, which immediately assesses fees and penalties. Before the debt is sent to OSDC, courts apply postjudgment interest to all criminal judgment accounts. For offenders sentenced to prison, accruing interest during incarceration drastically increases debts. For example, the owed amount increases by 50 percent over a 15-year prison term based on 2020 interest rates.[17] To limit financial hardship, other states generally restrict interest charged to offenders in prison. CCJJ should study the financial impacts interest charges have on the judgment accounts of offenders sentenced to prison. The financial burden should be weighed against the rights of victims who may be owed restitution.

Courts apply postjudgment interest to all criminal judgment accounts.

Statute Requires Offenders Be Charged Interest on Criminal Judgments

Utah Code[18] requires criminal judgement accounts of district and justice courts to bear interest at the federal postjudgment interest rate on January 1 of each year, plus two percent. The federal postjudgment interest rate was calculated to be 1.53 percent on January 1, 2020. This means that beginning January 1, 2020, all criminal judgment accounts in Utah should bear an annual interest rate of 3.53 percent (1.53 percent + 2 percent).

All criminal judgment accounts in calendar year 2020 bear an annual interest rate of 3.53 percent.

[17] This calculation applies to offenders sentenced to prison during calendar year 2020. Most of the increase comes from accrued interest; the rest is OSDC fees and penalties charged on the accrued interest.

[18] ***Utah Code*** 15-1-4(3)(a)

Currently, the judgment accounts of offenders sentenced to prison will accrue interest throughout the duration of incarceration. The Administrative Office of the Courts reports that postjudgment interest begins accruing the day after judgment.

Other States Generally Do Not Charge Offenders Interest During Incarceration

Utah charges interest on all portions of a criminal judgment, which can include fines, court fees, and victim restitution.

Other states vary on what portions of a criminal judgment are charged interest. Some states do not charge interest on any portion of the criminal judgment. Utah, however, charges interest on all portions of a criminal judgment, which can include fines, court fees, and victim restitution. Figure 2.3 summarizes the responses from the states we contacted and illustrates how interest is charged on criminal judgments.

Figure 2.3 Other States Generally Do Not Charge Interest on Criminal Judgments During Incarceration. Wisconsin is the only state we contacted that attaches interest to the judgment and does not postpone interest accrual during incarceration.

State	Interest Accrues During Incarceration	Interest Applied to Entire Criminal Judgment
Arizona	No	No
Colorado	No*	No
Oregon	No	No
Wyoming	No	No**
Wisconsin***	Yes	No
Utah	Yes	Yes

Source: Arizona FARE Program, Colorado State Courts, Nevada Statute, Oregon Courts, Wyoming AP&P, Wisconsin Department of Revenue
**The restitution portion of the criminal judgment accrues interest during incarceration.*
***Wyoming reported that a majority of cases do not include court ordered interest.*
****Wisconsin was included in the sample of surrounding states because Wisconsin was identified by another state as having a well-developed debt collections program.*

Other states generally do not charge interest on criminal judgments while the offender is incarcerated.

Colorado and Arizona do not charge interest on debts for offenders that are directly sentenced to prison. While the offender is incarcerated, interest on the criminal judgment account is postponed until the offender is released. Like Oregon, Wyoming reports that most of their court cases do not include court-ordered interest. These states generally do not charge interest on criminal judgments while the offender is incarcerated.

Interest Charged While Offenders Are in Prison Can Dramatically Increase Debts

The courts and OSDC use simple interest to calculate interest owed on criminal judgment accounts. The principal amount owed is multiplied by the specified interest rate. Simple interest is not compounded; therefore, interest is not paid on any accumulated interest. Even without compounding interest, interest charges for an offender with a 15-year prison sentence could increase the original judgment amount by 50 percent based on the 2020 interest rate of 3.53 percent. Figure 2.4 shows a sample of offenders that illustrates the degree to which debts can increase, depending on the length of the prison term.

An incarcerated offender's debt could increase by 50 percent over a 15-year prison term.

Figure 2.4 Interest Charges Significantly Increase Offender Debts During Incarceration. Offenders who remain in prison for 15 years could see their debt from the original judgment amount increase by 87 percent if no payments are made.

Account	Original Judgment Amount	OSDC Amount*	After 2 Years**	After 5 Years**	After 10 Years**	After 15 Years**
Offender A	$ 200	$ 249	$ 265	$ 290	$ 332	**$ 374**
Offender B	$ 993	$ 1,235	$ 1,318	$ 1,442	$ 1,650	**$ 1,857**
Offender C	$ 2,890	$ 3,594	$ 3,835	$ 4,197	$ 4,800	**$ 5,404**
Offender D	$ 45,138	$ 56,126	$ 59,897	$ 65,554	$ 74,983	**$ 84,411**

Source: Administrative Office of the Courts, OSDC, and auditor calculations (the calculations in this figure assume that no payments were made throughout the duration of incarceration).
**The OSDC Amount includes all fees and penalties assessed by OSDC upon receipt of the account.*
***Totals include OSDC fees and penalties, accrued interest, and OSDC fees charged on accrued interest.*

Once OSDC receives a criminal judgment account from the courts, a penalty of 6 percent and a collection fee of 18.34 percent is applied directly to the account. Over time, postjudgment interest accrues on the principal judgment amount with an additional collection fee assigned to the accrued interest. After initial OSDC fees and penalties are added, an incarcerated offender's debt could increase from 7 to 50 percent, depending on the length of the prison term. Higher interest rates would accelerate the growth in amounts owed. For example, the postjudgment interest rate in 2006 was approximately 6.4 percent. If a criminal judgment account accrued interest at this rate, after 15 years of incarceration, the account balance would more than double.

CCJJ's task force recommended postponing interest charges on criminal judgment accounts for an incarcerated offender.

Utah Task Force Recommended No Interest Charges in Prison

Postponing interest on offender debts during incarceration would result in lower amounts owed to victims and the state.

As previously mentioned, CCJJ created a task force to improve community supervision for offenders and help offenders succeed. The task force recommended postponing interest charges on criminal judgment accounts for an incarcerated offender. Once a prison sentence is imposed, all criminal debt is transferred to OSDC, where interest begins to accrue. The task force asserted that, "Individuals leaving prison may owe as much as 60 percent of their income to criminal debts." These costs could present a tremendous hardship for those on supervision who are struggling to integrate into their communities.

Postponing interest charges on criminal judgment accounts would result in lower amounts owed to victims and the state, a point echoed by the Utah Office for Victims of Crime.[19] However, OSDC's average collection rate of 11 percent of their receivables means the decrease in interest accrued may have minimal impact on actual dollars collected. A reduction in amounts owed victims is particularly relevant because victims may have difficulty paying their own financial obligations resulting from the crime committed against them.

We recommend CCJJ further study the issue of interest that accrues on offender debts while an offender is incarcerated. They should consider the impact of interest charges both on the released offender who owes additional amounts (because of the accrued interest) and the amount of money victims and the state eventually receive.

Recommendations

1. We recommend that the Office of State Debt Collection amend Administrative Rule to allow offenders released from prison the opportunity to pay their debts before fees and penalties are imposed.

[19] The Utah Office for Victims of Crime is a division of the Utah Commission on Criminal and Juvenile Justice. It provides financial compensation for crime victims, networks victim services throughout the state, offers training, and provides support to the Utah Council on Victims of Crime.

2. We recommend that the Utah Commission on Criminal and Juvenile Justice study the impacts of interest charges on incarcerated offenders and the amount of money victims receive in restitution.

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Chapter III
OSDC Settlement Requests Are Treated Inconsistently

Debtors who owe money to the State of Utah are not always treated equally. According to statute, the Office of State Debt Collection (OSDC) is required to develop policies that consistently govern the collection and management of state receivables. However, we found that OSDC has not adequately formed these policies. In some cases, policy lacked the necessary guidance for common settlement scenarios; in other cases, policy was not followed. Inadequate policy has resulted in inconsistent treatment of debtors seeking to settle debts with OSDC. Additionally, OSDC management has not implemented a methodology to evaluate the costs of collections for settlement negotiations. The failure to do so has resulted in debtors being charged variable collection costs. We recommend that OSDC revise policy to clearly define settlement terms, provide adequate guidance for settlement negotiations, and better reflect account-level costs of collection.

OSDC is required to develop policies that consistently govern the collection and management of state receivables; however, these policies have not been adequately formed.

Debtors Seeking to Settle Debts With OSDC Are Not Treated Equally

During our audit, we found OSDC settlement policy is incomplete, resulting in settlement practices that are applied inconsistently and do not follow policy. When considering a settlement request, OSDC negotiates fee and penalty amounts without clear guidance or methodology. Consequently, some debtors are paying upwards of 50 percentage points more in fees and penalty amounts than other debtors for no discernible reason. We believe that debtors seeking similar settlement opportunities should be treated equally according to OSDC policy.

Some debtors are paying upwards of 50 percentage points more in fees and penalty amounts than other debtors for no discernible reason.

OSDC Settlement Policy Is Applied Inconsistently and Incorrectly

A sample of settlement requests revealed that OSDC is treating debtors with similar accounts differently. We found instances of OSDC staff notifying debtors that OSDC, as a practice, does not settle debts. Several debtors were denied settlement opportunities because they owed restitution. These debtors were treated inequitably because OSDC does allow settlements and many debtors are given that opportunity. We also found that deadlines for settlement agreements were not consistently enforced. These inconsistent practices have resulted in unequal treatment among debtors.

OSDC Settlement Practices Do Not Follow Policy. We found three major areas of settlement policy[20] that OSDC staff did not consistently follow: settlements in general, settlements on restitution accounts, and settlement deadlines.

Despite having a settlement policy, OSDC notified debtors in 16 instances that, as a general practice, OSDC does not settle debts.

A sample of settlement request data[21] revealed 16 examples of OSDC notifying debtors that, as a general practice, it does not settle debts. However, OSDC has had a Settlement of Debts policy in place since February 2010. According to OSDC management, internal procedures require all settlements be reviewed by an OSDC supervisor or designee. Policy permits staff to negotiate settlements, but clearly mandates that all settlement approvals must be in writing from the OSDC manager or designee. Therefore, denying requests for settlement without consideration violates OSDC settlement policy and procedures.

OSDC refused to consider settlements on nearly two dozen accounts with victim restitution, contrary to OSDC policy.

Nearly two dozen other cases revealed that OSDC specifically refused to consider settlements on accounts with victim restitution. OSDC management acknowledges that settlements on accounts with restitution are accepted and stated that any proposed reduction in payment must first be approved by the victim. Policy states that OSDC staff are responsible for contacting each victim owed restitution on an account that a debtor is attempting to settle. While

[20] Policy acknowledges that extenuating circumstances may prevent strict adherence to the exact rules. According to policy, extenuating circumstances may be applied when there are significant reductions of OSDC fees and penalties, or when principal amounts are negotiated. For the purposes of this chapter, the principal amount is the total amount sent to OSDC by the referring agency, which can include court fines and restitution. Extenuating circumstances that may warrant principal amounts to be negotiated include the age of the debt, prior payment patterns, write-offs in the state's receivables database, victims agreeing to lower payment amounts, and types of accounts (referring agency).

[21] Since OSDC does not track settlement requests that do not result in a settlement, a data query searching the notes field for all accounts containing variations of the word "settle" was conducted. After removing accounts that eventually resulted in a settlement, the remaining data included 1,570 unique accounts for 348 debtors (one debtor may have multiple accounts).

there were two examples of OSDC staff following policy and contacting victims, 20 other debtors were instantly denied settlements because their accounts included restitution.

Contacting each victim about a settlement request in a case involving restitution would require significant effort, especially for cases with multiple victims. OSDC management tries to balance giving victims the opportunity to approve or reject a settlement against the potential of reminding victims of past trauma. For this reason, OSDC management states that a situation would have to be compelling for restitution accounts to be considered for settlement. Courts in Oregon do not allow settlements for offender debts that include restitution. Central collections agencies in Colorado and Arizona refer offender debt settlement requests that include restitution back to the courts for review. OSDC should coordinate with the Utah Commission on Criminal and Juvenile Justice (CCJJ) and the Utah Office for Victims of Crime to determine how to best meet the needs of victims. If OSDC's involvement in settling these types of debts continues, staff should be trained to ensure that settlement practices are more consistently applied.

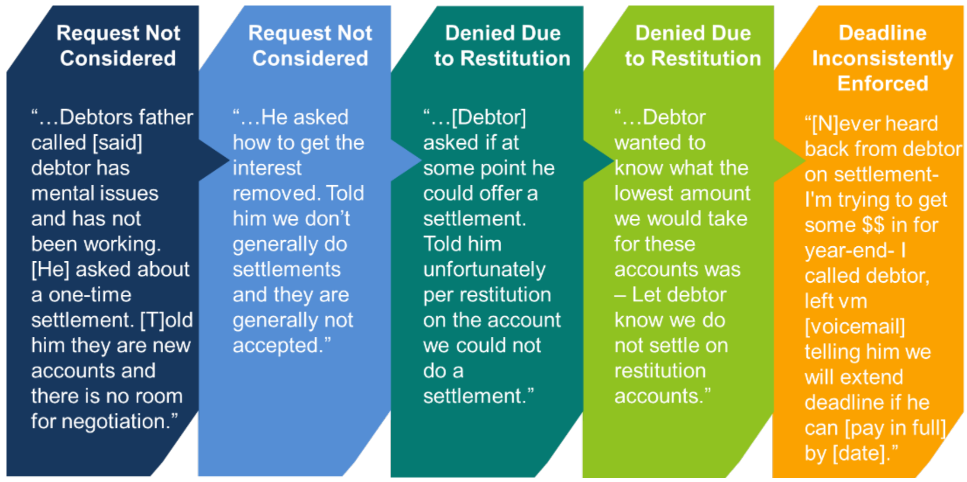
OSDC management states that a situation would have to be compelling for restitution accounts to be considered for settlement.

Lastly, settlement deadlines seem to be extended for some accounts but not for others. Internal settlement policy states that "all settlements must be paid in full by the end of the month in which they are negotiated." Other states have a similar 30-day deadline for settlement payments. According to OSDC data, a handful of debtors were granted extended settlement deadlines for the purpose of bringing in additional funds before the fiscal year ended. In contrast, one debtor asked for her settlement deadline to be extended by four days, but her request was denied. The account note did not provide any justification for refusing the debtor's request for extension.

Some debtors were granted extended settlement deadlines for the purpose of bringing in additional funds before the end of the fiscal year.

The above examples represent instances where OSDC settlement practices did not follow current policy. Figure 3.1 illustrates specific instances for each of these issues.

Figure 3.1 OSDC Is Not Considering Settlement Requests According to Policy. Contrary to policy, OSDC rejected several settlement requests without consideration, denied several settlement requests that involved restitution, and inconsistently enforced settlement deadlines.



Source: OSDC

OSDC needs to ensure that staff are properly trained and understand current policy regarding debt settlements.

OSDC should universally apply existing settlement policy and explicitly identify situations that merit deviating from policy. Furthermore, OSDC needs to ensure that staff are properly trained and understand current policy regarding debt settlements.

OSDC's Existing Settlement Policy Is Inadequate and Unclear. Other examples of inconsistent treatment between debtors seem to stem from inadequate and unclear policy. For example, OSDC lacks clear policy for debtors with expired settlement offers and debtors attempting to settle some, but not all, of their accounts.

Policy is unclear regarding the type or amount of concessions that would disqualify a debtor from receiving a subsequent settlement offer.

Policy lacks guidance for common settlement scenarios such as debtors seeking multiple settlement offers. In practice, debtors with expired settlement offers are being refused subsequent reviews. OSDC settlement policy directs staff to determine whether OSDC has previously made concessions to the debtor of inquiry. Likewise, OSDC management cautioned that a settlement proposal would be denied if the debtor is found to be taking advantage of the settlement process. However, policy is not clear regarding the type or amount of concessions that would disqualify a debtor from receiving a subsequent settlement offer. As a result, debtors were informed that once a settlement offer expires, the offer is obsolete and the amount due is the full balance on the account. Policy should clearly define what constitutes a concession and what it means to take advantage of the settlement process to allow for consistent and fair treatment among debtors.

OSDC also denied settlement requests from debtors attempting to settle some, but not all, of their accounts. Debtors with multiple accounts were told that settlement negotiations are only possible if all accounts are considered. However, nothing in policy prohibits a debtor from settling individual accounts. Settlement request data revealed that over a dozen debtors were denied settlement requests because they did not settle all their accounts simultaneously. When asked about these accounts, OSDC management maintained that all accounts should be treated as a collective whole. To ensure equal treatment to debtors, OSDC should clarify settlement policy as it relates to debtors with multiple accounts.

Over a dozen debtors were denied settlement requests because they did not settle all their accounts simultaneously.

OSDC Lacks Policy for Determining Revenues on Settlements

Once OSDC agrees to consider a settlement request, OSDC reviews four main elements of a potential settlement.

- Principal amount
- Interest on victim restitution (if any)
- Commission due to outside collection agencies (OCAs)[22]
- OSDC revenue

When evaluating a settlement request, OSDC revenue is the only element directly controlled by OSDC.

Of these four elements, the OSDC revenue amount is the only element directly controlled by OSDC. As previously mentioned, policy directs OSDC to collect enough funds to pay 100 percent of the principal amount. The principal amount, interest on victim restitution, and OCA commission rates are all determined externally by referring agencies or OCA contracts.

[22] There are primary and secondary commission fees for OCAs. The primary rate is between 12 and 16 percent, depending on the OCA, and is the fee charged for initial collection attempts. The secondary rate is between 16 and 19.5 percent, depending on the OCA, and is the fee charged for subsequent collection attempts.

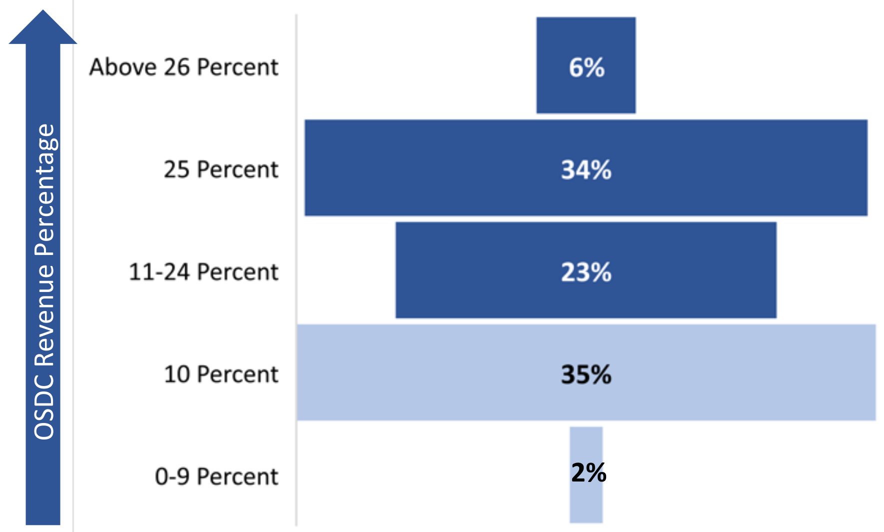
OSDC should develop a consistent methodology based on account-level detail to calculate a fair revenue amount that can be consistently applied.

OSDC uses a flexible revenue percentage that varies from one settlement request to another.

OSDC management state that they select a revenue percentage that represents the actual cost of collection on the account. For example, some cases may require work by an OSDC attorney resulting in legal fees that can significantly increase collection costs. A flexible revenue percent allows OSDC to recoup these additional collection costs. However, policy does not provide any clear guidance or methodology as to how a specific rate is chosen. Comparatively, Colorado's Central Collections Services charges a fixed rate of 18 percent to any proposed settlement amount. Whether the amount is fixed or flexible, OSDC should develop a consistent methodology based on account-level detail to calculate a fair revenue amount that can be consistently applied.

Currently, OSDC uses a flexible revenue percentage that varies from one settlement request to another. A sample of 127 settlement offers from fiscal year 2019 revealed that debtors were subjected to rates ranging between 5 and 62 percent. Figure 3.2 breaks down the sample of settlement offers[23] to show the various revenue percentages that were used in fiscal year 2019.

Figure 3.2 OSDC Revenue Percentage Exceeds Policy Standard Over 60 Percent of the Time. OSDC settlement policy indicates a baseline of 10 percent.



Source: OSDC
** Sample may include more than one settlement offer per account.*

[23] OSDC uses an automated worksheet to assess the acceptability of settlement requests. OSDC management reports that using the automated worksheet is procedure, but that sometimes negotiations must be done at a quicker pace, so not all settlement requests are formally documented.

Roughly 63 percent of settlement offers in Figure 3.2 were above the 10 percent baseline found in policy. When questioned about the inconsistent revenue amounts, management reported adjusting the rate upward if the forgiven amount appeared to reflect too large of a discount. Management also reported using a baseline of 25 percent and adjusting the rate from there. It is concerning that variations in the revenue percentage are based on discount amounts rather than actual costs of collection. Management shared that OSDC is going through a culture change and working to shift the mindset from analyzing the amount of the discount to strictly covering the costs of collection. OSDC should adjust settlement policy to better reflect actual costs of collection as they relate to revenues.

Variations in the revenue percentage are based on discount amounts rather than actual costs of collection.

OSDC Rarely Seeks Agency Involvement During Settlement Negotiations

OSDC settlement policy requires that 100 percent of the principal amount be collected, which may not always consider the needs of referring agencies. For example, referring agencies such as the Utah Department of Transportation (UDOT) might receive more money through potential settlements than through normal collection practices. Full payment of the principal amount eliminates the need to involve referring agencies in the settlement process. In contrast, other states heavily involve referring agencies in debt settlement processes and require the referring agencies' approval before attempting to settle debts on their behalf. Almost all Utah agencies we contacted indicated a willingness for OSDC to negotiate the principal amount. Because agencies vary in their desired level of involvement in the settlement process, OSDC should work with agencies to determine acceptable settlement practices.

OSDC settlement policy requires that 100 percent of the principal amount be collected, which may not always consider the needs of referring agencies.

Other States Require the Referring Agency's Approval to Settle

Other states such as Oregon, Arizona, Colorado, Nevada, and Wisconsin[24] require the referring agency's approval prior to pursuing a settlement. In these states nearly all settlement requests are rerouted

[24] Wisconsin was included in the sample of surrounding states because Wisconsin was identified by another state as having a well-developed debt collections program.

back to the agency, board, or commission where the debt originated.[25] In this model, the immediate needs of referring agencies are expressly considered as indicated by their direct involvement in the settlement process.

OSDC's settlement policy does not provide direction on how or when to involve a referring agency.

Statute specifies that OSDC has overall responsibility for collecting and managing the state's receivables.[26] However, neither statute nor rule outline settlement procedures. The most recent internal policy on the settlement of debts took effect on February 3, 2010. OSDC's settlement policy does not provide direction on how or when to involve a referring agency. According to OSDC management, memoranda of understanding (MOU) with referring agencies provide the authority for OSDC to settle on their behalf. However, OSDC currently does not have a comprehensive list of agencies that have MOUs in place. Therefore, the number of agencies with MOUs is unclear.

The MOUs we reviewed state that OSDC may contact a designated person at the referring agency when any settlement negotiations result in less than a full payment of the principal debt. However, since OSDC policy requires the settlement request to include enough funds to pay 100 percent of the principal amount, agency involvement is rare. Several Utah agencies with the most accounts managed by OSDC are open to negotiating the principal amount to collect some money rather than none.

Referring Agencies Are Willing to Negotiate the Principal Amount

If a UDOT account is not paid, taxpayers make up the difference, so UDOT would like to see some money through potential settlements rather than none.

OSDC settlement policy does not currently consider the needs of referring agencies. For example, any money collected for UDOT has a direct effect on the agency's budget. Debts owed to UDOT are largely damage claims from motor vehicle accidents. If any account is not paid, taxpayers make up the difference—a reason why UDOT would like to see some money through potential settlements rather than none. UDOT reports that accounts over $10,000 sent to OSDC have a collection rate of only 0.9 percent. By comparison, OSDC's average collection rate is 11 percent. Potential settlement agreements could

[25] In Nevada and Arizona, central collections and the referring agency are required to jointly agree on the settlement request.

[26] ***Utah Code*** 63A-3-502(3)

increase the rate of collection to better meet the needs of referring agencies such as UDOT.

As shown below, other agencies also indicated a willingness to negotiate the principal amount. The Labor Commission was the only agency that would not settle for less than 100 percent of the principal because, in some cases, the types of debt sent to OSDC are owed to a third party. Figure 3.3 shows each agency contacted and the agencies' responses regarding OSDC settlement negotiations.

Figure 3.3 Agencies Are Generally Open to Negotiating the Principal Amount. Agencies expressed a desire for OSDC to negotiate on their behalf.

Agency	Willing to Negotiate Principal Amount	Involved in Every Settlement Request
Department of Commerce	Yes	No*
Labor Commission	No	Yes
Department of Environmental Quality	Yes	Yes*
Department of Transportation	Yes	No*
Division of Risk Management	Yes	Yes
Administrative Office of the Courts	Yes**	No

Source: Conversations with state agencies
**Suggested that there be a threshold for reduction or a dollar amount that initiates agency involvement.*
***Victim restitution was excluded from this discussion because it would require approval by victims. Additional steps may need to be taken before courts are able to settle non-restitution amounts.*

Most state agencies contacted are willing to negotiate the principal amount.

Figure 3.3 demonstrates a high level of agency interest in negotiating principal amounts. The Administrative Office of the Courts raised some concerns over the possible need to create new judgments and involve multiple parties such as the judge or other legal representation. Courts in Oregon do not allow settlements. Similarly, Nevada's state controller's office does not handle restitution accounts.

Some agencies suggested setting a settlement threshold that would govern when OSDC contacts agencies concerning a settlement request.

Each agency in Figure 3.3 was also asked about its desired level of involvement in approving settlement requests. Some agencies indicated a preference not to be heavily involved in the settlement process, while others indicated a preference to be involved in each settlement request. As a result, OSDC should work with each agency individually to determine acceptable settlement practices. Furthermore, some agencies suggested setting a threshold for reduction or a dollar amount that would initiate contact. For example, anything under 75 percent of the principal amount could require agency approval. OSDC could also consider a debtor's ability to pay when evaluating settlement requests.[27] In practice, considering ability to pay may require the referring agency and OSDC to agree to settlement terms specified in an MOU, as discussed previously in this chapter.

The referring agency and OSDC should agree on settlement terms, which should be documented, revisited, and updated regularly.

The referring agency and OSDC should agree on settlement terms, which should be documented, revisited, and updated regularly. We recommend that OSDC work more closely with referring agencies to determine acceptable settlement practices. OSDC should evaluate the types of accounts that they are prepared to settle and clearly define those accounts in settlement policy.

Recommendations

1. We recommend that the Office of State Debt Collection coordinate with the Utah Commission on Criminal and Juvenile Justice and the Utah Office for Victims of Crime to determine how to best meet the needs of victims in relation to restitution settlements.

2. We recommend that the Office of State Debt Collection amend its policy to clearly define settlement terms and provide guidance on common settlement scenarios.

3. We recommend that the Office of State Debt Collection ensure staff is properly trained to understand settlement policies for debt settlements.

4. We recommend that the Office of State Debt Collection amend settlement policy to better reflect actual costs of collection as they relate to revenues.

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[27] OSDC already has a process in place for reviewing a debtor's ability to pay when developing a payment plan for the debtor. They do not currently use this information when evaluating settlements. The state of Arizona requires every debtor to fill out a formal "Offer and Compromise Packet" to initiate a settlement request. The packet requires the debtor to provide tax returns, credit card statements, rental and lease agreements, and bank statements among other things.

5. We recommend that the Office of State Debt Collection work with referring agencies to determine acceptable settlement practices for principal amounts.

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Chapter IV
OSDC Has Not Provided Adequate Oversight of State Receivables

Statute has designated the Office of State Debt Collection (OSDC) as the primary agency over state receivables and requires OSDC to fulfill specific oversight responsibilities. OSDC has provided limited oversight of agencies in their initial collection efforts. Specifically, OSDC has not measured collections performance by state agencies. OSDC has also not engaged in other oversight activities, such as reviewing agency policies, collection methods, and accounting procedures. These deficiencies have occurred because OSDC management has not made performance management a priority.

OSDC has not measured collections performance by state agencies or provided other required oversight.

Effective performance management is important to maximize efficiency and productivity. The lack of data by OSDC did not allow us to measure collection performance of state agencies. We recommend OSDC, as required by statute, implement annual performance metrics for state agency collections to identify underperforming agencies and then measure those metrics for three years to determine if they are appropriate and useful.

OSDC Is Not Measuring Collections Performance

Statute requires OSDC measure collections performance at all state agencies that it oversees and use those metrics to help agencies improve. OSDC previously produced performance metrics but has not done so in 12 years. Further, there is no evidence that OSDC used the metrics to hold agencies accountable. If produced, performance metrics would help determine whether additional oversight activities would be beneficial.

OSDC previously produced performance metrics but has not done so in 12 years.

Statute and Best Practices Entail Measurement of Collections Performance

As the agency with overall responsibility for the state's receivables, OSDC is required to monitor collections performance of state agencies. ***Utah Code*** contains three requirements that relate directly to OSDC's role in measuring agency performance.

- The office shall…develop reasonable criteria to gauge state agencies' efforts in maintaining an effective accounts receivable program…[28]

- The office shall…identify any state agency that is not making satisfactory progress toward implementing collection techniques and improving accounts receivable collections…[29]

- The office shall require a state agency to…make annual progress towards implementing collection techniques and improved accounts receivable collections….[30]

OSDC is required to develop performance measures and use them to evaluate state agency collections performance annually.

These requirements have been in place for at least 21 years. Taken together, statute requires OSDC to develop performance measures and use them to evaluate state agency collections performance annually.

In addition to these statutory requirements, measuring performance is a sound management practice. OSDC has responsibility for collecting and overseeing state receivables, something it cannot do effectively without information about how other agencies are collecting on state debts. The manual, *Best Practices for Good Management*, published by the Utah Office of the Legislative Auditor General, stresses the importance of performance measures. It notes the following benefits of performance measurement:

Measuring performance is a sound management practice that enhances decision making and improves accountability.

- Enhances decision making
- Improves internal accountability
- Enhances public accountability
- Supports strategic planning and goal setting
- Allows entities to determine effective resource use

It is for these reasons that Oregon, which also uses a state agency to oversee state receivables, places a strong emphasis on performance metrics. State agencies in Oregon are required to monitor and report performance metrics to evaluate the effectiveness of collections and identify areas that can be improved.

[28] ***Utah Code*** 63A-3-502(3)(i)
[29] ***Utah Code*** 63A-3-502(3)(j)
[30] ***Utah Code*** 63A-3-502(7)(b)

Developing performance metrics and using them effectively not only satisfies statutory requirements but would help OSDC assess the extent or necessity of other oversight responsibilities. These oversight responsibilities are discussed later in this chapter. The next section discusses metrics OSDC produced prior to 2009.

OSDC Is Not Measuring Agency Performance

Prior to fiscal year 2016, OSDC released the Annual Account Receivables Report that summarized receivables at state agencies, including information about how long ago the debts were created. Prior to 2009, this report included performance metrics about individual state agencies, but these metrics have not been calculated or shared since then, despite statutory requirements to annually evaluate agency collections performance. This omission is concerning because agencies often face disincentives to collect on their own receivables, making agencies less likely to pursue receivables, making it difficult to ultimately collect as the receivable ages. Monitoring performance metrics may help address these concerns.

Lack of performance metrics is concerning because agencies often face disincentives to collect on their own receivables.

OSDC Has Not Produced Agency Performance Metrics in 12 Years. The Annual Account Receivables Report for fiscal year 2008 included collections performance metrics for individual state agencies. Figure 4.1 shows the metrics used (the column titles) for a selection of the agencies included in the report. It is unclear if performance has changed since 2008 because the performance metrics cannot be recreated using current data.

It is unclear if collections performance has changed since 2008 because the performance metrics cannot be recreated.

Figure 4.1 The 2008 Annual Account Receivables Report Was the Last Report Published by OSDC with Performance Metrics. These metrics focused on effectiveness of agency collections programs. This snapshot shows some of the agencies assessed.

Summary of State of Utah Performance Measures

For Quarters Ending 01-Jul-2007 *Through* 30-Jun-2008

Agency	*Avg. Collections as a % of Billings*	*Avg. Days to Collection*	*Collectible as a % of Gross*	*Past-Due as a % of Gross*	*Over 90 Days Past-Due as a % of Total*	*Write-Off as a % of Total Past-Due*
District Courts	70.18%	1,414.00	74.01%	70.99%	19.39%	2.80%
Juvenile Courts	76.95%	608.18	75.00%	44.26%	74.17%	0.00%
State Treasurer	0.00%	0.00	0.00%	0.00%	0.00%	0.00%
Governor's Office	100.49%	20.76	100.00%	0.44%	96.95%	0.00%
Attorney General	158.29%	47.08	100.00%	0.00%	0.00%	0.00%
State Auditor	100.00%	17.90	0.00%	0.00%	0.00%	0.00%
Dept of Administrative Services	98.03%	49.96	100.00%	10.63%	71.17%	0.00%
Office of State Debt Collection	11.68%	4,997.74	6.75%	99.94%	99.57%	14.05%
Department of Technology Services	111.27%	115.23	100.00%	107.50%	98.20%	0.00%
Tax Commission	55.54%	267.06	33.03%	87.24%	52.75%	7.90%
Career Service Review Board	0.00%	0.00	0.00%	0.00%	0.00%	0.00%
Human Resource Management	98.26%	9.80	100.00%	75.66%	20.27%	0.00%

Source: OSDC 2008 Annual Account Receivables Report

These metrics focus on how quickly and effectively agencies are collecting the money owed them.

The most recent data available for state receivables indicates agency collection performance has been inconsistent and has not met annual improvement requirements.

OSDC made these metrics public through their annual report and identified underperforming agencies, but OSDC did not use this data to ensure these agencies improved over time. OSDC stated they have not measured performance since 2008 because of the large amount of resources it took to calculate the metrics. Because metrics were not produced for any other years, it is impossible to know how the metrics changed over time and whether they led to improved collections performance.[31] The most recent data available for state receivables (starting in fiscal year 2015 and going back) indicates agency collection performance has been inconsistent and has not met annual improvement requirements.[32]

OSDC did create a set of performance metrics, but it has not calculated them since 2008 and did not previously use them to help agencies improve their collections performance. Furthermore, the performance metrics in Figure 4.1 cannot currently be calculated for

[31] The Division of Finance currently publishes limited data about OSDC operations on their Dashboard website. The data includes receivables collected by OSDC and debts sent to OSDC by state agencies, both reported by fiscal year. There is no agency level information provided.

[32] This assessment is based on dollars collected as a percentage of current receivables. It approximates the first metric in Figure 4.1.

past fiscal years because OSDC did not pull data from the state's accounting system at the appropriate time and misplaced data from at least one agency. OSDC reports this data cannot be reproduced after the fact, so it is important that OSDC begin measuring and recording agency performance on a regular basis.

Measuring Performance Is Important Due to the Lack of Agency Incentives and the Nature of Receivables. State agencies handle initial collection of receivables before they are sent to OSDC. However, agencies do not always have an incentive to dedicate resources to collect on their own debts. For example, agencies may not be able to use collected receivables for internal purposes for two main reasons. First, the state budgeting process may not allow agencies to retain collected receivables to pay for internal expenses. Second, some agencies collect on receivables that need to be sent to outside parties. The Utah Labor Commission, district and justice courts, and the Department of Corrections all collect debts on behalf of third parties, such as restitution for victims.

State agencies do not always have an incentive to collect receivables because they may not be able to use collected funds.

Even if money collected by agencies provided a direct benefit to the agency, OSDC's funding structure and policies provide further disincentives for agencies to collect on their own receivables. OSDC does not charge agencies fees to collect on receivables sent to them but funds its operations by charging fees, penalties, and interest that are paid by debtors. When a debtor pays the debt in full, the agency that sent the debt to OSDC receives the full amount that was originally owed. In other words, if either the referring agency or OSDC collect on the debt, the referring agency receives the same amount of money. OSDC's funding structure is discussed more fully in Chapter V of this report and is largely consistent with other states we contacted except for Arizona. Arizona's central collections agency reports they are funded by retaining some of the money owed the state agency, which they believe helps address this specific disincentive.

OSDC's funding structure also provides a disincentive for agencies to collect on receivables.

These incentive problems are concerning because receivables are generally easier to collect closer to when the receivable was created. Agencies that create the receivable may have the best opportunity to make initial collections on a debt.[33] They have unique tools to encourage payment that OSDC does not have. For example, the Utah

[33] In a majority of the states we contacted, the agencies that created the receivable make initial collection efforts before sending the receivable to a central collections agency.

Department of Commerce can withhold professional license renewals to encourage payment.[34] Courts can hold hearings to encourage debtor payment or impose jail sanctions for debtors held in contempt. If agencies do not put forth adequate effort to collect their debts, the debts become increasingly less likely to be collected as they age.

Given current office priorities, OSDC may not have the available resources to produce performance metrics and use them to evaluate state agencies.

Impediments Exist to Measuring Agency Collections Performance

Measuring agency performance would help address these risks by objectively assessing the effectiveness of their collection efforts. It would also satisfy statutory requirements and provide insight on the necessity for other oversight activities. Given current office priorities, however, OSDC may not have the available resources to produce performance metrics and use them to evaluate state agencies. OSDC appears to be dedicating all its resources to debt collection, not to oversight activities such as monitoring performance metrics and other areas mentioned later in this chapter.

OSDC plans to hire staff to make outgoing calls and upgrade or replace its receivables management system. These changes may allow OSDC to reallocate resources to monitoring state agency performance. These changes could lead to internal cost savings and a more streamlined approach to collections activities. Furthermore, OSDC may be able to simplify the process of creating performance metrics by requiring state agencies to submit receivables in a uniform fashion.

Hiring additional staff and replacing its receivables management system may allow OSDC to reallocate resources to monitoring state agency performance.

Taking into account the disincentives faced by state agencies and the inconsistent past performance of state receivables, OSDC should begin measuring collections performance for state agencies and identify underperforming agencies. We recommend that OSDC study the benefits of these efforts and report annually to the Government Operations Interim Committee.

[34] The Utah Department of Commerce can also seize bonds for certain professional licensees that owe money. The Utah Labor Commission can work with the Utah Department of Commerce to act against a professional license for companies that owe the Commission money. The Utah Labor Commission's safety division can also suspend an operating certificate.

OSDC Is Not Fulfilling Other Oversight Responsibilities

As previously stated, OSDC has overall responsibility for state receivables, which includes oversight activities and collecting on delinquent state receivables.[35] There is little evidence that OSDC has provided oversight of collections at state agencies according to statutory requirements. However, we are uncertain whether the benefits of receivables oversight, if undertaken, would justify the costs. The lack of performance metrics for state receivables, detailed in the previous section, makes cost versus benefit difficult to discern. Measuring performance is a best practice in evaluating management of government programs.

We are uncertain whether the benefits of receivables oversight, if undertaken, would justify the costs.

OSDC Is Required to Ensure Compliance by State Agencies

Statute requires OSDC to provide oversight in addition to measuring agency performance. The specific requirements are to provide oversight and monitoring of state receivables to ensure that state agencies are:

- Implementing all appropriate collection methods
- Following established receivables guidelines
- Accounting for and reporting receivables in the appropriate manner[36]

OSDC is required to provide oversight and monitoring of state receivables.

Furthermore, OSDC is to play a role in requiring state agencies to do the following:

- Develop and implement internal policies and procedures that comply with the collections policies and guidelines established by [OSDC]

- Provide internal accounts receivable training to staff involved in the management and collection of receivables as a supplement to statewide training

[35] OSDC does not have responsibility over money owed to the Utah State Tax Commission, institutions of higher education, or certain parts of the Utah Labor Commission.

[36] ***Utah Code*** 63A-3-502(3)(c)

- Bill for and make initial collection efforts of its receivables up to the time the accounts must be transferred.[37]

These responsibilities placed on OSDC provide context for the statutory requirement that OSDC "…have overall responsibility for collecting and managing state receivables…."

We spoke with state agencies that send the most debt to OSDC to determine whether OSDC is providing oversight of state receivables.

State Agencies Report Minimal Oversight by OSDC

We spoke with a sample of state agencies that work closely with OSDC. These agencies sent the most receivables to OSDC over the last five fiscal years (2015 through 2019), representing 98 percent[38] of the receivables that OSDC received for collection. Figure 4.2 summarizes their responses about whether OSDC engaged in specific oversight activities for their agencies. The oversight categories stem from the previously mentioned statutory language.

[37] ***Utah Code*** 63A-3-502(7)

[38] This number includes receivables sent to OSDC by all justice courts. We spoke to three justice courts, Salt Lake City, West Valley City, and Midvale City, that appeared to send the most receivables to OSDC among justice courts.

Figure 4.2 OSDC Has Not Provided Oversight Over State Agency Collections. The agencies that send the most debts to OSDC report that OSDC has not provided collections oversight. "Yes" indicates that OSDC provided oversight for that category to that agency, and "No" indicates they did not.

Oversight Categories	District Courts	Department of Corrections	Labor Commission*	Department of Commerce	SLC Justice Court	WVC Justice Court	Midvale City Justice
Performance Metrics	No	No	No	No	Yes	No	No
Collection Methods	No	No	No	No	No	No	No
Receivables Guidelines	No	No	No	No	No	No	No
Accounting/ Reporting Receivables	No	No	No	No	No	No	No
Policies and Procedures**	No	No	Yes	No	No	No	No
Receivables Training	No	No	No	No	No	No	No
Initial Collection	No	No	No	No	No	No	No

Source: Admin Office of the Courts, Department of Corrections, Labor Commission, Utah Department of Commerce, Salt Lake City Justice Court, West Valley City Justice Court, Midvale City Justice Court
**According to the Labor Commission, previous discussions with OSDC were informal. None of these oversight categories were addressed in formal discussions. This information only applies to the parts of the Labor Commission that are not excluded from OSDC oversight.*
***OSDC stated they helped draft Division of Finance policies related to receivables management. However, this table shows they have not verified that agencies have adopted these or similar policies.*

State agencies we surveyed stated that OSDC has not provided oversight for the areas mentioned in statute.

Almost universally, state agencies we surveyed stated that OSDC has not provided oversight for the areas mentioned in statute. These agencies' interactions with OSDC largely related to the process of sending receivables to OSDC. Therefore, agencies that send fewer receivables to OSDC, but still fall under the oversight of OSDC, may have even less contact with OSDC.

Agencies that send fewer receivables to OSDC may have even less contact with them.

It is unclear what impact this lack of oversight has had for state receivables collections. OSDC's failure to measure agency performance makes it difficult to see if its lack of oversight negatively affected agency collections performance. The previous discussion in this chapter about the nature of receivables and the disincentives for agencies to collect on their debts, however, indicates some level of risk may be present. Agencies may not make sufficient efforts to have an effective collections program and receivables become harder to collect over time.

Performance metrics will inform whether state agencies are making annual improvement to collections programs and whether additional oversight is necessary.

We recommend that OSDC assess whether state agencies are making annual progress to improve their collections programs. This assessment would require OSDC to produce agency performance metrics for multiple years. With this information, OSDC should evaluate the need for its oversight of state receivables and make recommendations to the Government Operations Interim Committee on whether OSDC should provide oversight according to current statutory requirements.

OSDC Has Not Produced Required Reports on State Receivables

Related to the lack of performance metrics and general oversight, OSDC has not created quarterly and annual reports of the state's receivables, nor can they produce historical reports. If properly produced, these reports would make performance metrics public and gather disparate data to show the state's financial position in relation to outstanding receivables. OSDC should resume producing annual reports with the focus on performance metrics and information useful to policy makers.

OSDC last published an annual report for fiscal year 2015.

State agencies are required to "…submit quarterly receivable reports to [OSDC] that identify the age, collection status, and funding source of each receivable…."[39] OSDC uses this data, as well as data directly from the state accounting system, to fulfil the statutory requirement to "…prepare quarterly and annual reports of the state's receivables…."[40] OSDC last published an annual report for fiscal year 2015 and does not appear to have ever published a separate, quarterly report.[41]

House Bill 98, which passed during the 2017 Legislative General Session, eliminated a separate requirement to create summaries of individual agency receivables to be sent to the Governor and the Legislature. The Utah Division of Finance requested this change because there was little evidence that the summaries were being used. However, the requirement to produce annual and quarterly reports remained in place. The Division of Finance currently interprets statute

[39] ***Utah Code*** 63A-3-502(7)(g)

[40] ***Utah Code*** 63A-3-502(3)(g)

[41] Quarterly receivables information also does not appear in OSDC's annual receivables reports.

to mean that OSDC needs to be able to prepare the annual receivables report upon request. Failing to create annual reports in real time creates problems because certain data cannot be created or queried after the fact. In addition, OSDC lost data they would need to prepare these reports. When we requested OSDC to prepare an annual report, they stated that they are unable to do so. Even if OSDC had the data, they have stated that preparing the report was labor intensive and would take months to complete. We believe that annual reports with useful information that drive and illustrate performance are generally more valuable than annual reports that are strictly information based. OSDC should seek to produce a useful annual report that will drive performance of debt collection in the state and inform policy makers and the public of its actions. Annual reports do not need to be lengthy to be effective.

We believe that annual reports with useful information that drive and illustrate performance are generally more valuable than annual reports that are strictly information based.

Recommendations

1. We recommend that the Office of State Debt Collection, as required by statute, implement annual performance metrics for state agency collections to identify underperforming agencies.

2. We recommend that the Office of State Debt Collection report annually to the Government Operations Interim Committee on agency performance metrics to gauge the usefulness of these measures.

3. We recommend that the Office of State Debt Collection use performance metrics to evaluate the need for oversight of state receivables and make recommendations to the Government Operations Interim Committee on whether oversight requirements are necessary.

4. We recommend that the Office of State Debt Collection resume producing annual reports with a focus on performance metrics.

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Chapter V
OSDC Should Focus on Improving Processes to More Efficiently Use Funding

The Office of State Debt Collection (OSDC) can improve its collections efficiency by addressing bottlenecks in its processes and procedures and making investments in collections capabilities. Specifically, changes to how OSDC verifies employment and pays fees to employers to garnish wages could improve the efficiency of the wage garnishment process. In addition, OSDC plans to invest in new systems and collection capabilities that will improve overall collection efficiency. Improvements to collection efficiency and wage garnishments could allow OSDC to either lower fees charged to debtors or send more excess revenues to the state general fund. This funding structure, charging fees to debtors, appears to be consistent with similar agencies in other states. OSDC fee amounts have resulted in annual revenues collected in excess of costs after paying principal to referring state agencies.

OSDC can improve its collections efficiency by addressing bottlenecks and making investments in collections capabilities.

OSDC Should Work to Increase Collections and Efficiency

Improved processes and a statutory change could increase OSDC's collections efficiency, specifically as it relates to wage garnishments. These improvements should be pursued simultaneously with planned investments in OSDC's collections capabilities. OSDC is preparing to dedicate additional financial resources to hiring personnel and updating their receivables management system, with the potential of significantly increasing OSDC's overall collections efficiency.

Improved processes and a statutory change should be pursued simultaneously with planned investments.

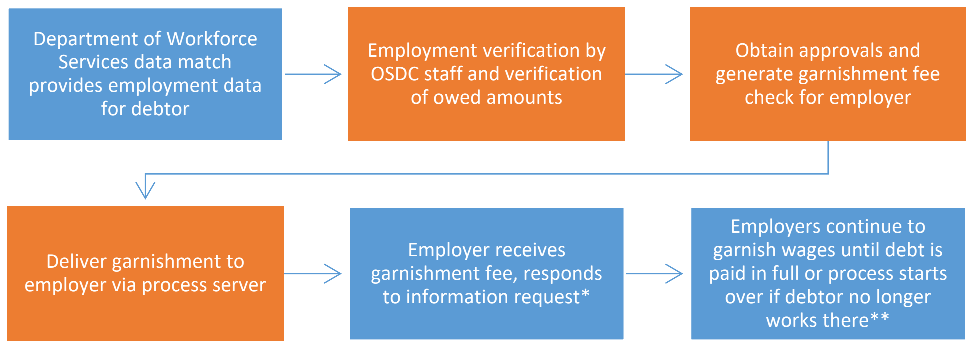
Wage Garnishments Can Be Improved Through New Processes and a Change to Statute

Wage garnishments are one of OSDC's means for collecting debts. OSDC has identified different steps in this process that can be improved. Some changes could be implemented immediately, and another relies on a change to statute. If implemented, these changes could allow OSDC to charge lower fees or send additional money to the general fund annually.

The typical process for a wage garnishment[42] starts with reviewing employment information and ends with an employer sending a percentage of a debtor's wages to OSDC. Figure 5.1 shows a flowchart of important steps in this process.

The typical process for a wage garnishment starts with reviewing employment information and ends with an employer sending a percentage of a debtor's wages to OSDC.

Figure 5.1 The Wage Garnishment Process Goes Through Six Main Steps Between Initiation and Payment. Bottlenecks (shown in orange) exist at key points along the way.



Source: OSDC garnishment flowchart
**If the employer does not respond, they can become liable for the amount owed by the debtor.*
***OSDC leaves a garnishment in place for at least three months unless the debtor claims hardship or the debt is paid in full. OSDC may attempt a subsequent garnishment using other employment information.*

OSDC has identified the three steps in this process that take the most time (shown in orange in Figure 5.1).

- Employment verification and verification of owed amounts
- Printing garnishment fee checks
- Waiting on process servers for service

OSDC identified three bottlenecks in the wage garnishment process: employment verification and verification of owed amounts, printing garnishment checks, and waiting on process servers for service.

Because of the potential liability for employers that don't respond to wage garnishments, it may not be appropriate to change garnishment delivery requirements at this time. However, other process improvements could increase the verification efficiency of employment and owed amounts as well as the payment of garnishment fees to employers.

The Utah Department of Corrections Has Not Properly Handled Restitution Orders, Reducing OSDC Efficiency. During the second step of the garnishment process illustrated in Figure 5.1,

[42] OSDC reports they use two types of wage garnishments, administrative garnishments and court garnishments. OSDC can use administrative garnishments, which do not involve the courts, for a majority of the debts sent to OSDC. Court garnishments, however, must be issued by a court with jurisdiction and is the only garnishment option for a subset of OSDC debts. The two types of garnishments differ slightly in process.

OSDC states they contact the courts to verify the amount owed for a given debtor. This process is slowed down if relevant state agencies have not properly updated owed amounts.

The Board of Pardons and Parole (BOPP) has the ability to modify restitution amounts owed while offenders are in prison, on parole, and up to 60 days after termination or expiration of a sentence. This can be done, for example, if restitution is higher than previously estimated as part of the original criminal judgment. When this occurs, statute[43] requires BOPP to send the updated information to the courts. The courts should then send the information to OSDC so they can collect on the correct amount.

BOPP has the ability to modify restitution amounts owed. When they do so, they are required to send updated information to the courts.

Instead, BOPP, through the Utah Department of Corrections, has been sending restitution order information to both OSDC and district courts simultaneously. Problems ensue when OSDC attempts to garnish wages on debts stemming from criminal judgments but OSDC numbers do not match those at the courts because of incorrect or incomplete entry by the courts. OSDC reports they must send documents to individual courts in order to update the criminal judgment and identify the source of discrepancies, slowing down the garnishment process. OSDC and the courts report this has been an issue since the passage of Senate Bill 71 in 2017.

BOPP is sending updated restitution information to both the courts and OSDC, which can lead to discrepancies between court and OSDC records.

We recommend that BOPP send updated restitution information only to the courts. The courts would then update the judgment and forward the necessary information to OSDC for collection, eliminating the opportunity for mismatched amounts. The courts state they are working on a process to receive this information and ensure judgment amounts are updated properly.

OSDC May Benefit from Obtaining Real-Time Access to Department of Workforce Services' (DWS) Data. OSDC obtains debtor employment data by matching debtor information against DWS employment data (found in the first step of Figure 5.1). Because this is done quarterly, the data may be outdated, necessitating employment verification. This can take the form of calling employers but can take additional time if contact information is unreliable. This bottleneck may have contributed to OSDC only verifying employment for seven percent of the accounts on each quarter's DWS data match.

Bottlenecks in the employment verification process may have contributed to OSDC only verifying employment of seven percent of the accounts on each quarter's DWS data match.

[43] ***Utah Code*** 77-27-6(4)

The Utah State Tax Commission (USTC) receives a quarterly data match similar to OSDC's but also has direct access to DWS's database according to a signed memorandum of understanding. USTC stated that they query DWS's database when it needs the most up-to-date information in their delinquent tax collection efforts. Real-time access to DWS data is beneficial because OSDC's data match is done quarterly whereas DWS's database has the most up-to-date information available at any given time. OSDC should work with DWS to obtain access to DWS' database so OSDC can access current employment information.

Each employer that garnishes wages receives a one-time payment of $25, which is added to a debtor's outstanding debt.

Withholding Garnishment Fee Amount Would Increase Efficiency. Each employer that is told to garnish wages receives a one-time payment of $25, which is added to a debtor's outstanding debt (found in the third step of Figure 5.1). OSDC reports the process for generating the check from the Division of Finance requires multiple approvals, despite it being a small dollar amount. Instead of writing a check to the debtor's employer, OSDC would like to have the employer deduct the fee amount from the initial wage garnishment payment.[44] This could save time and, in some instances, reduce the financial burden on debtors.[45] Withholding the garnishment fee is also similar to how these fees are handled in Arizona, Oregon, Washington, and Idaho. However, this process would require a change in statute which currently requires direct payment to the employer. We recommend the Legislature consider modifying statute to allow wage garnishment payments to employers be done by withholding the payment from the initial wage garnishment.

The new receivables system will replace the current system that has been in place for 18 years.

New System and New Employee Positions May Have Positive Return on Investment

OSDC is pursuing two initiatives: a new receivables management system and two new positions for collection agents, both of which are expected to lead to benefits in excess of costs. The receivables system

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[44] Restricting this change to OSDC administrative garnishments would avoid impacting other legal proceedings in the state.

[45] Changing the fee to the employer retaining money from the garnishment has the added of benefit of only paying employers if the debtor still works there and a garnishment is possible. Currently, OSDC sends a wage garnishment request to an employer along with a check for $25. If the debtor no longer works there, the employer can keep the $25 and communicate to OSDC the debtor is not employed there anymore. Garnishment fees paid to employers are added to the debtors outstanding balance.

will replace the current system that has been in place for approximately 18 years. OSDC reports the two collection agents will perform functions similar, in some respects, to those currently performed by outside collection agencies (OCA) at a lower cost to OSDC.

New Receivables Management System Would Provide Millions of Dollars in Benefits. OSDC's current receivables system, Collection Management System (CMS), does not appear to be meeting OSDC's current needs for managing state receivables. OSDC reports it is primarily an accounting system and does not easily allow follow-up by OSDC staff. This makes it difficult, for example, to efficiently move accounts through the wage garnishment process, discussed previously in this chapter. OSDC staff are tracking actions taken on accounts in a shared document and manually inputting duplicate information already found in CMS, which can lead to errors. Staff check dates and actions taken on these shared documents to determine when they should take the next required action on an account.

OSDC's current receivables system does not appear to be meeting OSDC's current needs.

Other states, and USTC, use systems that automate these processes, ensuring that timely action is taken on accounts. OSDC also reports that CMS limits its ability to go paperless for various approvals necessary for things like wage garnishments. OSDC estimates that a new system will cost about $3 million over five years but have total benefits of $20 million over the same time period. According to these estimates, the new system will pay for itself in staff efficiencies and cost savings after 13 months. After reviewing projected costs and benefits, this appears to be a reasonable estimate.[46]

Other states and the Utah State Tax Commission use receivable management systems that automate processes and promote tracking of accounts.

Internal Collection Agents Could Be a Cost-Effective Collection Method. OSDC is also in the process of hiring two temporary positions for collections agents. OSDC does not currently make outbound telephone calls to debtors, instead relying on other collection methods and OCAs. OSDC believes the two collection

[46] According to OSDC, their estimated costs are based on the highest-cost system they considered. Their benefit projections are also based, in part, on the benefits experienced at USTC when they automated garnishment processes. Even if monthly benefit estimates are cut in half, the new system will pay for itself in 19 months.

agents will be a more cost-effective solution than OCAs.[47] In addition, OSDC believes these employees will provide more customer service and accountability than OSDC currently receives from OCAs. OSDC will evaluate the benefits of the new positions over time to determine whether they should be made permanent.

Source of OSDC Funding Is Consistent with Other States

Concerns were raised that OSDC, as the agency in charge of collecting on delinquent debts, charges debtors fees to pay for internal operational costs. We were asked to determine if there is a better way to fund the office. We found that this practice is consistent with funding practices for similar collections entities in other states. However, the size and frequency of annual surpluses raises questions about the appropriate amount and purpose of fees charged to debtors.

Charging debtors fees to fund OSDC appears to be consistent with funding practices for similar agencies in other states.

Statute Allows OSDC to Charge Fees, Penalties, and Interest to Debtors

The Legislature annually approves rates that OSDC can charge for collection fees, late penalties, and interest. The rates for fiscal year 2020 were the following:

- Collection fee: 15.5 percent (18.34 percent effective rate)
- Collection interest: prime + 2 percent[48]
- Late penalty: 6 percent[49]

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[47] OCAs cost $0.166 to collect $1, on average, in fiscal year 2019. The agents will be more cost effective if they collect at least $782,000 given their estimated costs of $130,000.

[48] According to the Federal Reserve, the prime rate "…is an interest rate determined by individual banks…used as a reference rate (also called the base rate) for many types of loans, including loans to small businesses and credit card loans." The prime rate on July 1, 2019, was 5.50 percent. Therefore, OSDC's interest rate was 7.5 percent for fiscal year 2020. OSDC only attaches this interest rate to accounts that do not already have postjudgment interest or stem from wage claims, non-sufficient fund claims, or tuition claims.

[49] The late penalty and interest rate have remained at these values since at least fiscal year 2015. The collection fee was 18 percent (21.95 percent effective rate) from fiscal year 2015 to 2018. This rate was reduced to the current rate in fiscal year 2019.

The collection fee and late penalty are applied to accounts placed with OSDC. Administrative Rule clarifies that these fees, penalties, and interest are paid by the debtor[50] and are the means of funding OSDC operations.[51] Administrative Rule requires that a portion of every payment made to OSDC go towards OSDC fees and penalties before it is applied to the principal amount owed.[52]

The Legislature annually approves rates that OSDC can charge for collection fees, late penalties, and interest.

Other States Fund Collections Operations Similar to Utah

Of the states we talked to, Wisconsin,[53] Colorado, Arizona, Nevada, and Oregon all have central collection agencies like OSDC. These agencies collect on debts sent to them by other agencies in their respective states. Except for Arizona, which charges a fee to the referring agency, all these agencies fund their operations by charging fees and penalties to debtors. In addition, two court collection agencies, one in Arizona and one in Colorado, fund their operations using fees charged to debtors. This information is summarized in Figure 5.2.

Other states have collection agencies that are funded through fees charged to debtors.

Figure 5.2 Almost All Collection Agencies Reviewed Charge Fees to Debtors. The only exception is the Arizona Office of the Attorney General which charges fees to the referring agency.

Charges Fees to Debtors

Arizona: Fines Fees Restitution and Enforcement (courts)

Colorado: Central Collections Services

Colorado: State Court Administrator's Office

Nevada: State controller's Office*

Oregon: Department of Revenue**

Utah: OSDC

Wisconsin: Department of Revenue

Does Not Charge Fee to Debtors

Arizona: Attorney General

Source: Administrative Rule *R21-1-7, conversations with other states*
**Nevada charges fees to debtors if debt is over $300. If under $300, fee is paid by referring agency.*
***Oregon allows agencies that refer the debt for collections to decide whether the debtor or the agency pays the collection fee. The Oregon Judicial Department accounts for 70 percent of the debts sent to the Department of Revenue. Debtors are charged fees on these accounts.*

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[50] *Administrative Rule* R21-1-7

[51] OSDC reports other miscellaneous revenue sources represented 0.4 percent of all revenues in fiscal year 2019.

[52] *Administrative Rule* R21-1-7(d) through *Administrative Rule* R21-1-7(f)

[53] We contacted the Wisconsin Department of Revenue because another state identified them as having a well-developed debt collections program.

Not all collection agencies in other states are funded exclusively through fees charged to debtors.

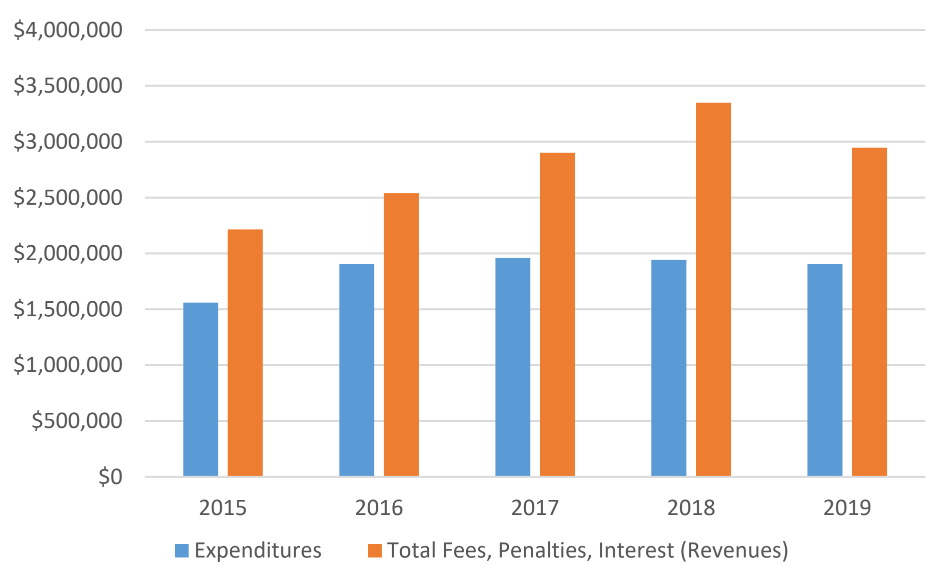
While almost all these agencies charge fees to debtors, not all are exclusively funded by these fees. At least part of the budget is offset by other sources of funding. For example, the Colorado court system collects fees from debtors but also uses the proceeds from misdemeanor and felony fines. The Nevada State Controller's Office collects fees from debtors but pays their personnel with general fund money. The agency most comparable to OSDC is Colorado Collections Services, which pays for all their operations using fees paid by debtors. However, this agency charges significantly lower fees than OSDC.[54]

OSDC Funds Operations Through Debtor Fees, Penalties, and Interest

Revenues from fees, penalties, and interest exclusively fund OSDC.

OSDC attaches debtor fees, penalties, and interest to accounts sent to them from other agencies. Revenues from fees, penalties, and interest exclusively fund OSDC. For the last five years, these revenues have annually exceeded OSDC expenditures. Figure 5.3 illustrates this information.

Figure 5.3 OSDC's Revenues Annually Exceed Expenditures. Most remaining revenue, after expenditures, is transferred to the state general fund.



Source: FINET, OSDC receivables database

[54] Colorado Central Collections Services charges debtors an 18 percent fee on all debts compared to OSDC's 18.34 percent collection fee, 6 percent late penalty, and 7.4 percent interest.

Collection fees charged by OSDC make up a majority of its annual revenue with late penalties, interest, and other revenue making up the rest. After retaining revenues for reserves, revenue in excess of expenditures is deposited into the state's general fund at the end of the year. Over the last five years, OSDC has annually deposited an average of $744,000 to the general fund.

Over the last five years, OSDC has annually deposited an average of $744,000 to the state general fund.

In Chapter II of this report, we discussed our concerns with OSDC assigning fees and penalties to debts owed by offenders sent to prison. Besides this practice, it appears OSDC's funding structure is similar to those found in other states. OSDC may be able to lower its fees or send additional money to the general fund by addressing inefficiencies discussed in the previous section of this chapter. However, even without implementing these changes, OSDC has consistently collected more revenues than needed to operate. This practice is discussed in the next section.

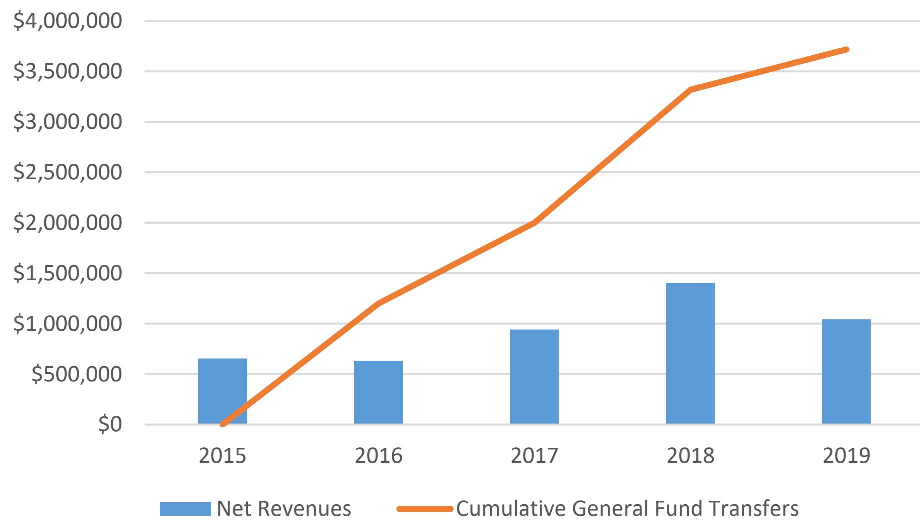
Large Annual Surpluses Indicate Need for Evaluation of Fee Rates and Purpose

As previously noted, debtors pay fees, penalties, and interest to OSDC on top of principal to owed state agencies. These amounts pay for OSDC's operating costs. However, OSDC has consistently collected more revenue in fees, penalties, and interest than necessary to operate. The Legislature should determine if they intend that OSDC be a revenue-generating agency or whether to minimize the fees charged to debtors.

OSDC has consistently collected more revenue in fees, penalties, and interest than necessary to operate.

Statute requires that all money collected by OSDC should be sent to referring agencies or used to pay for OSDC internal costs. Any money left at the end of the year that is not committed to these purposes is to be deposited into the state's general fund. OSDC has consistently had positive net revenues in fiscal years 2015 through 2019. Figure 5.4 shows annual net revenues for five fiscal years and the running total of money sent to the general fund for the same time period.

Figure 5.4 OSDC Consistently Collects Money in Excess of Its Expenditures and Deposits it in the General Fund. The running total of money deposited in the general fund for these five fiscal years reached $3.7 million in fiscal year 2019.



Source: FINET

Of the $4.7 million in net revenues collected over five years, $3.7 was transferred to the state general fund.

Over the course of these five fiscal years, OSDC collected approximately $4.7 million in excess of internal expenses from debtors.[55] Of this $4.7 million, $3.7 million was transferred to the state general fund. The rest of the money accrued in the State Debt Collection Fund. The Legislature reduced OSDC's collection fee starting in fiscal year 2020, but it is unclear how much of an immediate impact this will have on net revenues.[56] The Legislature should determine if they want OSDC fees to continue to subsidize other government programs beyond OSDC operations or be set in a way that minimizes excess revenues.

[55] It is important to note that the State Debt Collection Fund, which consists of OSDC revenues, had a positive balance of $508,151 at the beginning of fiscal year 2015. Therefore, net revenues between fiscal years 2015 and 2019 were not used to cover previous financial obligations.

[56] The full effect of the fee reduction was not immediately felt because the new rate only applied to new debts transferred to OSDC. All existing debts prior to fiscal year 2019 had the higher collection fee rate.

Recommendations

1. We recommend that the Board of Pardons and Parole send updated restitution information solely to the courts, consistent with statute.

2. We recommend that the Office of State Debt Collection coordinate with the Department of Workforce Services to obtain access to employment databases.

3. We recommend that the Legislature consider modifying statute to allow wage garnishment payments to employers be accomplished by withholding the payment from the initial wage garnishment.

4. We recommend that the Legislature consider whether the Office of State Debt Collection should generate revenue for the general fund or limit excess revenues generated through fees.

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Agency Response

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State of Utah

GARY R. HERBERT
Governor

SPENCER J. COX
Lieutenant Governor

Department of Administrative Services

Tani Pack Downing
Executive Director

Division of Finance
Marilee Richins
Interim Director

September 4, 2020

Kade R. Minchey, CIA, CFE
Auditor General
Office of the Legislative Auditor General
W315 State Capitol Complex
Salt Lake City, Utah 84114-5315

RE: Response to "A Performance Audit of the Office of State Debt Collection" (Report No. 2020-07)

Dear Mr. Minchey:

The Department of Administrative Services (the Department) appreciates the work performed by the Office of the Legislative Auditor General (OLAG). Overall, the Department and the OLAG auditors worked well together with the intent of identifying areas for improvement within the Office of State Collection (OSDC).

Chapter 1 Assertions
The Department agrees with the assertions made in the introductory chapter

Chapter 2 Assertions
The Department agrees with the assertions made regarding the treatment of offender debt. Furthermore, we agree with the sentiment of the OLAG that it is not fair to incarcerated offenders that they are not given adequate opportunity to pay prior to accruing fees, penalties and interest. The Department had not received the CCJJ report and was unaware of the conclusions made by CCJJ. OSDC, the Courts and the Department of Corrections have been working together to address the effects of Senate Bill 71, which passed during the 2017 Legislative General Session. Those effects have been very impactful to the three departments. OSDC does not have authority to control the application of interest, but it can control the application of penalties and fees.

There is a philosophical matter to resolve regarding delaying penalties and fees, due to the manner in which OSDC is funded. OSDC is funded through the collection of penalties and fees. If OSDC begins servicing a population without imposing fees and penalties, the related collection costs will need to be covered by placing extra burden on those paying delinquent debts.

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In chapter five of this report, OLAG makes a recommendation for the Legislature to consider whether revenue generation by OSDC should be supplementing general fund activities. The Department requests that the Legislature also consider and provide policy guidance on this related matter as well as a way to fund OSDC's servicing of this population's debt if the Legislature determines it not be done through penalties and fees.

Chapter 2 Recommendations

1. Currently, in order to provide a delayed application of fees and interest imposed as debts are received by OSDC, there would have to be an unachievable manual review of those new debts followed by a manual adjustment to accounts. OSDC is researching whether its current system can automate the process. OSDC is in the process of acquiring a new system and will ensure that this functionality is included when the system goes to production. When the functionality exists, OSDC will update administrative rule R21-1 to include a 90 day delay after termination of a prison term before applying fees and penalties imposed by OSDC.

2. The Department looks forward to working with CCJJ on the recommended study.

Chapter 3 Assertions

The Department agrees that debtors have not been treated equally when requesting settlements. We also assert that OSDC has no obligation to settle debts. The policy on settlements has historically been left vague to allow for flexibility to accommodate the variability in debtors and debts. Two relevant factors in the Department's current approach are that OSDC represents the interests of the State, not the interest of the debtors; and that OSDC does not have a profit motive. The Department agrees that making settlement agreements more available will allow for better collection, improve the State's cash position and allow more debtors to move on with their lives.

OSDC expects settlements to include all debts owed by debtors. If all debts are not included in the settlement, there may be circumstances where a debtor would be incentivized to settle certain debts, but leave others unpaid. OSDC also is not aware of any situations where a debtor has been unable, rather than simply unwilling, to settle all debts owed when OSDC has required the settlement to be at the debtor level.

Chapter 3 Recommendations

1. Settling debts owed to victims, especially criminal restitution orders, is a difficult matter. OSDC will reach out to UOVC and CCJJ to request input on handling requests to settle debts owed to victims, most often criminal restitution orders. OSDC does like the idea of sending the debt back to the courts for a fair hearing. We will consider both the best practices identified within the report and the feedback from UOVC and CCJJ in the development of a policy for handling settlement of debts owed to victims.

2. OSDC has modified its policy for the handling of settlement requests. The policy clarifies a set amount of what should be included in a settlement, defines a threshold for staff level employees to offer a settlement without management approval, details a more comprehensive, but not exhaustive list of considerations when determining whether to accept a settlement offer, and provides guidance on when to engage senior management. The policy modification now also specifies that debts must be settled at the debtor level.

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3. OSDC staff have been trained and will continue to be trained on the settlement policy.

4. As noted in the report, OSDC has been working on changing its culture. The policy has been modified to accept settlements that simply pay the agency in accordance with agreements and cover the costs of OSDC.

5. OSDC will reach out to client agencies to determine approved settlement practices and thresholds. These agency specific guidelines will be added to the settlement policy and will be periodically reviewed in meetings with agencies.

Chapter 4 Assertions
The Division of Finance, including OSDC, has developed and published policies and guidelines to state agencies through administrative rule and statewide finance policy governing the collection and management of state receivables. The Department agrees that OSDC has not provided oversight in terms of enforcement regarding the performance in collection of current receivables.

OSDC, since its inception, has primarily focused on collections. OSDC has prepared accounts receivable performance reports in the past, however, the reports were not being put to beneficial use. As noted in the report, the Division of Finance has interpreted statute changes to mean that the reports were no longer required, except upon request. Therefore, OSDC discontinued generating the performance reports on a regular basis. To date, we have received no requests for the performance report. The Department agrees that modifying the reports in a way to make them more useful and then using the information to create accountability may be beneficial to the State.

Chapter 4 Recommendations

1. OSDC will review possible performance metrics for agencies and then will create meaningful metrics that are manageable from an administrative perspective.

2. Once there is adequate data on performance, OSDC will gladly present reports to the Government Operations Interim Committee. OSDC proposes to be an agenda item for the Committee in 18 months.

3. OSDC will be prepared with recommendations at the aforementioned meeting.

4. OSDC agrees to prepare annual reports that are focused on performance metrics. These reports will be developed and used with the intent of improving agency collection of current receivables. OSDC is adding resources to allow for better oversight of state agencies.

Chapter 5 Assertions
Over the past several years, OSDC has been focused on continuous improvement. OSDC welcomes any feedback that will help it improve its operations. OSDC has been preparing for and is moving forward with a system purchase that will be used together with operational improvements to further improve efficiencies. Hiring for the pilot program to compare internal collection agents to the use of third party outside collection agencies was paused due to the need to adjust existing business processes to the COVID response. The Department has begun recruiting for this pilot again.

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The Department's understanding is that BOPP handling of restitution orders has been influenced by some constraints at District Courts. As stated previously in this response, the three departments have worked together on the implementation of Senate Bill 71, which has proven to be a very difficult task.

Regarding the funding model for OSDC, the Department plans to review the fee structure and make comprehensive changes once OSDC has stabilized its collections and costs after implementing a new system and additional improvements. The Department welcomes input on the design of a new fee structure. Currently, the intent is to reduce excess revenues and amounts available for transfer to the general fund. This analysis will probably take place with the intent of including the changes in the fiscal 2024 fee bill.

Chapter 5 Recommendations

1. OSDC will work with the Judicial Branch and the Department of Corrections, as needed, to help with compliance in this area.

2. OSDC has reached out to the Department of Workforce Services (DWS) regarding the recommended change to the agreement between the two agencies. OSDC also hopes to gain API access to DWS data that can be used within the new system to scrub new debts being added to the system.

3. OSDC welcomes this modification and is happy to provide statutory language for a bill.

4. As noted above, OSDC welcomes this guidance along with guidance regarding the funding of resources needed to collect current receivables of incarcerated or recently released offenders. OSDC's current intent is to reduce fees and create a fee structure that is not as prone to over-collection. Feedback on this matter is appreciated.

Sincerely,

Department of Administrative Services

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