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## Failure to collect fines flies under the radar

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One can hardly avoid the near-daily headlines about the budget deficits plaguing the federal, state, and local governments, and the options - tax hikes, slashing social services, laying off or furloughing employees - being considered to deal with them.

But few are aware that tens of billions of dollars in civil, criminal and administrative fines and penalties owed to governments *never get collected*. Oftentimes, the government never even *tries* to collect, even where the offenders-particularly corporations or white-collar criminals - have substantial assets.

Improving collection efforts won't wipe out budget deficits, but it could certainly help. And it would do so by targeting those found to have engaged in wrongdoing, rather than by adversely affecting the law-abiding public.

Unfortunately, the problem has gone largely unnoticed. Academics have long debated *whether* it makes sense to fine corporations (since they may pass the costs on to their shareholders or consumers), as well as how to determine the best *levels* of fines to achieve optimal deterrence. But they invariably fail to address what happens after the fines are imposed. Fine collection is simply assumed or overlooked.

Last year, I, along with Ezra Ross of UCI Law School, set out to determine how big the problem of uncollected fines was; whether it was really the result of undercollection (as opposed to offenders simply not having assets to collect); and why it was happening.

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### Agencies get more public relations value by announcing big fines than they do by following through and collecting them.

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In our article, "The Collection Gap: Underenforcement of Corporate and White Collar Fines and Penalties," 29 YALE L. & POL'Y REV. 453 (2011), we found that, although many fines imposed are simply uncollectible, a significant portion - running into the billions of dollars - *could* be collected. (We are continuing the conversation at [thecollectiongap.com](http://thecollectiongap.com).)

For example, the U.S. Department of Justice typically collects less than 5 percent of penalties and restitution orders imposed on defendants convicted of federal crimes. Granted, 100 percent collection rates are unrealistic: federal judges are often required to impose restitution without regard to offenders' ability to pay. But estimates of the

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portion that is collectible (including estimates by the DOJ itself) have ranged between 10 and 33 percent - meaning the DOJ collects only between one-half and one-seventh of collectible amounts.

White-collar cases account for the largest amount of uncollected federal criminal debt. In one study, only 7 percent of restitution in such cases was paid - even though many of the offenders continued to live comfortably.

Most other federal agencies audited by the U.S. Government Accountability Office have similarly unimpressive figures, with collection rates often in the single digits.

It is not just the federal government. Audits of three out of California's more than 400 agencies showed over \$80 million in uncollected fines as of 2008. The state controller remarked that "poor collection efforts are not unique" to these agencies, but are a "systemic problem that plagues the State." And California, of course, is just one of 50 states that collect such fines.

Even local governments suffer. A 2007 report from the Los Angeles city controller concluded that the city simply did not *know* its total account receivables. The problems plaguing the city's collection efforts had been cited in audits going back to 1991.

Anecdotal evidence, while it cannot prove broad trends, illustrates the outrageous nature of the problem:

When a pipeline ruptured in Washington state, killing three, the U.S. Department of Transportation assessed a \$3 million penalty against the pipeline owner, which was owned and run by well-funded companies like Texaco, Shell and Atlantic Richfield. The agency announced that the historically large penalty was warranted because "[t]ragic events like this pipeline failure must never happen again." But the penalty was ultimately reduced by 92 percent, to \$250,000, without any evidence of inability to pay more.

The California Public Utilities Commission imposed a \$1.2 million fine on San Diego Gas and Electric. The agency's records indicated it had collected 100 percent of the fine; but it had in fact waived the fine altogether, and agreed the utility company could pay \$200,000 for an education program it would administer. Ultimately, there was no evidence showing how or when the company spent any amount on education.

As of February 2011, Massey Energy subsidiaries had 253 coal-related delinquent fines totaling more than \$2 million. Massey owns the West Virginia coal mine in which 25 miners died in April 2010.

So *why* is undercollection so pervasive? Insufficient manpower and training, outdated computers, and other resource deficiencies clearly play a role. But insufficient *incentives* are a critical component.

Agencies get more public relations value by announcing big fines than they do by following through and collecting them. Collections responsibilities are often decentralized among as well as within agencies, making it difficult to hold people or departments accountable. And the individual civil servants tasked with collections typically do not get commissions, promotions, or other benefits that would incentivize them to pursue collections diligently.

There is also the potential for agency "capture," whereby an agency ends up serving the interests of the regulated entities. A report on Los Angeles' collections efforts observed that "city agency personnel at all levels are reluctant to collect so as to avoid angering powerful local businesses."

After "The Collection Gap" was published, some government insiders confided that our analysis of agencies' incentive problems was painfully accurate - spurring us to continue the conversation at our blog, [thecollectiongap.com](http://thecollectiongap.com).

Many agencies have turned to privatizing their collections functions to deal with such problems. But privatization is no panacea, as it creates its own risks of abuse by those with a profit motive to collect. The merits of different approaches must be weighed carefully.

Focusing on improving collections makes sound fiscal sense. A report from Oregon found that the statewide median return rate on collections costs was over eight dollars for each dollar spent. In our efforts to reduce budget deficits, we must not throw out the baby with the bathwater and eliminate revenue-generating positions.

On fairness and fiscal grounds, the public should strongly favor improved collections. But they have put little pressure on their elected officials, likely because they don't know about the problem. Getting the word out is the first step toward getting something done about it.