

STATEMENT OF

STEVEN H. COOK

**VICE PRESIDENT
NATIONAL ASSOCIATION OF ASSISTANT
UNITED STATES ATTORNEYS**

**H.R. 2878
THE ENHANCED FINANCIAL RECOVERY
AND
EQUITABLE RETIREMENT TREATMENT
ACT OF 2007**

**BEFORE THE
SUBCOMMITTEE ON CRIME
COMMITTEE ON THE JUDICIARY**

U.S. HOUSE OF REPRESENTATIVES

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Mr. Chairman and Members of the Subcommittee:

On behalf of the National Association of Assistant United States Attorneys, thank you for holding today's hearing on H.R. 2878, the Enhanced Financial Recovery and Equitable Retirement Treatment Act of 2007. We are especially appreciative of the leadership of Rep. Artur Davis, a former Assistant United States Attorney and the chief sponsor of this legislation, as well as others on the Subcommittee who have joined as co-sponsors.

My name is Steve Cook and I serve as the Vice-President of the National Association of Assistant United States Attorneys¹, a non-profit professional association. There are 5,600 Assistant United States Attorneys who serve in the Department of Justice ("DOJ"). I am an Assistant United States Attorney in the United States Attorney's Office for the Eastern District of Tennessee in Knoxville. I currently serve as Section Chief of the Narcotics and Violent Crime Section, as well as the Anti-Gang Coordinator

¹ The National Association of Assistant United States Attorneys (NAAUSA) was founded in 1993 to protect, promote, foster and advance the mission of Assistant United States Attorneys ("AUSAs") and their responsibilities in promoting and preserving the Constitution of the United States, encouraging loyalty and dedication among AUSAs in support of the Department of Justice and encouraging the just enforcement of laws of the United States. NAAUSA is the voluntary "bar association" for the more than 5,600 AUSAs throughout the country and the U.S. territories. NAAUSA's nineteen-member Board of Directors is comprised of criminal and civil AUSAs from large and small offices around the country. The Association's membership includes AUSAs who are acknowledged experts on immigration, terrorism, social security, health care fraud, gang and narcotics prosecutions, bankruptcy litigation, asset forfeiture and collection of debts owed to the United States. From time to time, Congress has sought the Association's advice on numerous legislative proposals addressing crime, prosecutorial latitude and effectiveness and other law enforcement issues.

and the Project Safe Neighborhoods Coordinator. Prior to joining the United States Attorney's Office in 1986, I served as a law clerk to The Honorable H. Ted Milburn, judge of the United States Court of Appeals for the Sixth Circuit and was a police officer in Knoxville at the local and county levels for seven years.

I appear here today in my personal capacity. The views expressed herein are those of the National Association of Assistant United States Attorneys, and not necessarily the Department of Justice.

Assistant United States Attorneys on the Frontline of Justice

As the nation's principal litigators, the 5,600 Assistant United States Attorneys serve on the frontline of our justice system. They are integrally involved in a wide range of civil and criminal litigation responsibilities to enforce our federal laws and fight crime. To appreciate fully the impact of the legislation before you today, it is important to understand the role that Assistant United States Attorneys play in the nation's law enforcement system.

Each United States Attorney is the chief federal law enforcement officer of the United States within his or her particular jurisdiction. Assistant United States Attorneys conduct the vast majority of the trial work in which the United States is a party. According to the United States Attorneys Annual Statistical Report for 2006, Assistant United States Attorneys constituted 56

percent of all DOJ attorneys and about 70 percent of DOJ attorneys with prosecution or litigation responsibilities.

The United States Attorneys have four primary responsibilities under the United States Code:

- The prosecution of criminal cases brought by the Federal government;
- The litigation and defense of civil cases in which the United States is a party;
- The handling of criminal and civil appellate cases before the United States Courts of Appeals; and
- The enforcement of judgments entered in favor of the United States of the victims of crime.

It is this last responsibility – judgment enforcement – that is addressed by Title I of H.R. 2878.

Why Reform of DOJ Judgment Enforcement is Crucial

The Department of Justice has delegated operating responsibility for the collection of debts owed to the United States, or to the victims of crime, to Financial Litigation Units (“FLUs”) within United States Attorney Offices. This primarily consists of enforcing judgments already entered, in civil or criminal cases, but also sometimes involves assisting in the entry of criminal judgments or obtaining civil judgments. The overwhelming amount of the debt due, for which the FLUs are responsible, is for restitution to non-federal victims.

On average, between Fiscal Year 2003 and Fiscal Year 2006, the FLUs collected over \$4 billion a year in outstanding judgments or civil settlements, an amount that is more than twice the total budget of all United States Attorney Offices. These proceeds ultimately are paid to the victims of crime, the Crime Victim Fund, the affected federal agency, or the United States Treasury.

Despite these significant sums collected, substantial sums remain uncollected. In fact, the historical collection rate by FLUs is only about 10 percent. Nearly \$50 billion in outstanding judgments, criminal and civil, remains uncollected. The majority of the outstanding debt is likely uncollectible. A 50-year-old corporate executive who fraudulently obtains \$10 million, but uses most of that money to further the scheme and squanders the rest, may be imprisoned for 10 years. Except in rare cases, a FLU will collect only a fraction of that debt.

But some similarly situated individuals have not spent or squandered all of their ill-gotten gains. Rather, they have fraudulently transferred or hidden their assets. The fraudulent transfers, or the hidden locations, are not advertised by the defendant. It takes hard work to uncover and unravel their deceit.

Other defendants have the ability to pay at least some of their debt, but they have insufficient motivation to do so. They may owe a \$1000 fine and also have a cable bill for \$100. If they don't pay the fine, next month

they still owe \$1000. If they don't pay their cable bill, next month they have no TV. Not surprisingly, many defendants would rather watch repeats of *Law and Order* rather than satisfy their own debt to society.

What the United States Attorneys' Offices primarily need are additional resources to investigate and determine which debtors have the resources to satisfy their outstanding judgments but refuse to do so, and then to enforce the judgments already entered against those defendants. What many defendants need is an incentive to pay the judgments entered against them as promptly as they reasonably can pay.

How H.R. 2878 Reforms DOJ Judgment Enforcement

The Government Accountability Office has criticized DOJ's judgment enforcement efforts.² H.R. 2878 responds to that criticism by authorizing at least an additional \$20 million annually for enhanced judgment enforcement efforts, and also by reforming federal debt collection procedures.

The collection reforms in H.R. 2878 rely upon a series of surcharges or late fees, which provide an incentive to defendants to pay more promptly,

² See, e.g., GAO, *Criminal Debt: Court-Ordered Restitution Amounts Far Exceed Likely Collections for the Crime Victims in Selected Financial Fraud Cases*, GAO-05-80 (Washington, D.C.: January 31, 2005); GAO, *Criminal Debt: Actions Still Needed to Address Deficiencies in Justice's Collection Processes*, GAO-04-338 (Washington, D.C.: Mar. 5, 2004); GAO, *Criminal Debt: Oversight and Actions Needed to Address Deficiencies in Collection Processes*, GAO-01-664 (Washington, D.C.: July 16, 2001).

and offsets, or collection fees, to be subtracted from debts collected for federal agencies by DOJ.

The surcharges -- constituting a five percent late fee on debts not paid within 15 days of the judgment -- will provide a modest, proportionate incentive that will encourage defendants to satisfy their judgments promptly. In criminal cases, when the defendant is indigent, both the Court and DOJ will retain the ability to reduce or remit interest on the judgment, to impose or agree to a payment schedule, or in some cases to remit the unpaid portion of the underlying judgment. In civil cases, when the defendant is indigent, DOJ retains the ability to compromise the judgment. These automatic surcharges will replace a complicated web of delinquent and default penalties that are difficult to administer, rarely imposed, and almost never collected.

The offsets from the debts collected by DOJ for other federal agencies will provide a collection fee that will associate the cost of collection with the ultimate recipient. The offsets will not apply to non-federal victims, nor to the Crime Victim Fund. In civil litigation, it will increase the current three percent offset by an additional two percent. In addition, the measure will add a five percent offset in cases involving federal restitution.

These surcharges and offsets will be used to fund the \$20 million annual increase for enhanced judgment enforcement in the United States Attorneys Offices.

The funding also will be used to provide a sufficient source for DOJ to pay for the additional cost it will incur as a result of Title II of the Bill, which provides for an equitable AUSA pension.

Parity Between the Pensions of AUSAs and Law Enforcement Officers

H.R. 2878 provides parity between the retirement benefits of Assistant United States Attorneys and those of federal law enforcement officers,³ and in so doing, strengthens the Department of Justice's ability to enforce federal laws and pursue justice by better ensuring the retention of skilled, experienced federal prosecutors.

Improving the retirement benefit of Assistant United States Attorneys confronts the growing exodus of outstanding prosecutors from the Department of Justice, a trend that is harming the Department's ability to prosecute terrorists, gang leaders, drug kingpins, intellectual property pirates, and white collar criminals.

DOJ internal studies and surveys have identified the Assistant United States Attorney retention rate as a significant problem and the enhancement of the AUSA retirement benefit as a singularly attractive remedy. This is because the average AUSA remains with DOJ for only eight years, and these

³ The legislation provides to AUSAs the same retirement benefit that law enforcement officers receive: for those under FERS, a basic annuity of 34% of salary after 20 years of service at age 50; and for those under CSRS, an annuity of 50% of salary, with no social security benefits, after 20 years of service at age 50. AUSAs under FERS currently receive a basic annuity of 20% of salary after 20 years of service at age 60; those under CSRS receive an annuity of 36.25% of salary, with no social security benefits, after 20 years of service at age 60.

early departures cause a critical loss of litigation skill and experience to the Government. The retention problem varies from district to district, and is most dramatic in higher-cost districts. In the larger offices and in the metropolitan areas, the United States Attorneys Offices are the boot camp for the litigation divisions of private law firms, who then use the trained former AUSAs in litigation against the government.

Bringing the pension benefits of Assistant United States Attorneys into line with the retirement benefit package received by the other tens of thousands of federal law enforcement employees⁴ will prompt a significant number of younger AUSAs to remain with the Department for a career. This process will help assure the government's retention of a greater number of skilled litigators to handle increasingly complex cases. Elevating the AUSA retirement benefit will assist DOJ more immediately in its current effort to realign the skill base of the AUSA workforce. Recent DOJ workforce realignment efforts have been only modestly successful, with cash incentive retirement offers prompting a limited response among eligible AUSAs.

Numerous United States Attorneys informally have praised the legislation for these and other reasons, and are increasingly supportive

⁴ Assistant United States Attorneys regularly and routinely coordinate and collaborate with law enforcement officers in the investigation, apprehension and detention of persons suspected or convicted of offenses against the criminal laws of the United States. These law enforcement officers, all of whom receive an enhanced pension benefit, include Special Agents of the Federal Bureau of Investigation, Secret Service, Internal Revenue Service and Drug Enforcement Administration, Deputy United States Marshals, United States Postal Inspectors, probation and pretrial service officers and Bureau of Prison employees.

because of the judgment enforcement reforms included in Title I of the measure.

Mr. Chairman, thank you for your leadership and concern for the challenges facing federal prosecutors and for the opportunity to appear before you today. I will be happy to answer any questions you may have.