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The Special Counsel

June 4, 2020

The President  
The White House  
Washington, D.C. 20500

Re: OSC File No. DI-19-4553

Dear Mr. President:

I am forwarding to you reports transmitted to the Office of Special Counsel (OSC) by the Department of Labor (Labor) and Department of Treasury (Treasury) in response to disclosures of wrongdoing in Labor's Occupational Safety and Health Administration (OSHA), Office of Financial Management, Division of Debt Collection and Division of Financial Control and Treasury's Bureau of the Fiscal Service (Fiscal Service), Debt Management Services, Washington, D.C. I have reviewed the agency reports and, in accordance with 5 U.S.C. § 1213(e), provide the following summary of the reports and my findings.<sup>1</sup> The whistleblower, who chose to remain anonymous, declined to comment on the reports.

The whistleblower alleged that neither Treasury nor OSHA officials took prompt action to correct a software error that prevented Treasury from collecting OSHA debts totaling approximately \$79 million. In its report, Treasury substantiated this allegation, finding that the Fiscal Service failed to service 10,904 OSHA debts valued at \$91.5 million. Treasury also identified 12 additional agencies affected by the error and is auditing Fiscal Service's management of its transition to the flawed software. Treasury will provide OSC with a follow-up report when the audit is complete that will include the total monetary value of the outstanding uncollected money owed to the 12 additional agencies.

OSHA is authorized to levy fines against employers who violate OSHA safety regulations. Pursuant to the Debt Collection Improvement Act of 1996, OSHA must transfer any fines that are unpaid after 180 days to the Fiscal Service for collection. The Fiscal Service assists agencies with the "prevention, collection, and resolution of debts owed to government agencies." The Treasury report explains that the Fiscal Service launched a new collection-servicing system—Cross-Servicing Next Generation or CS-NG—in October 2017. According to the report, when OSHA transferred its debts to the Fiscal Service, the debtor's contact address did not properly load in CS-NG. This prevented CS-NG from automatically generating demand letters, which are

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<sup>1</sup> The whistleblower's allegations were referred to former Acting Labor Secretary Patrick Pizzella and Treasury Secretary Steven Mnuchin for investigation pursuant to 5 U.S.C. § 1213(c) and (d). The Labor and Treasury Offices of Inspector General conducted the investigation. Solicitor of Labor Kate S. O'Scannlain reviewed and signed Labor's report. Treasury Bureau of Fiscal Service Commissioner Timothy E. Gribben reviewed and signed Treasury's report.

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required by federal policy to be mailed before the Fiscal Service can take action to collect a debt. Without a demand letter, no action was taken to collect OSHA's transferred debts.

Treasury also discovered several unresolved service requests regarding CS-NG dating back to January 2018. However, the Fiscal Service Director of Cross-Servicing stated that he was unaware of the CS-NG software problem until September 2019, when he was informed of OSC's referral. Treasury found that following the launch of CS-NG, the Fiscal Service did not implement a system to track, monitor, prioritize and resolve service request tickets, and that although the Fiscal Service is working with its software developer to resolve its deficiencies with CS-NG, it did not provide or establish a timeline for resolution.

Labor determined through its investigation that its Debt Collection Accountability Team (DCAT) did not refer delinquent debts to the Fiscal Service in a timely manner. The report noted that OSHA lacked oversight and monitoring controls to ensure timeliness, which limited the amount of time Treasury could collect the debts before they were recalled. DCAT officials reported that they experienced the problems described above following Treasury's move to CS-NG but did not feel that the software errors contributed to OSHA's own delays in initiating the transfer of debts.

The whistleblower further alleged that OSHA officials continued to pay certain collection fees to Treasury despite Treasury's failure to take any action to collect the debts. Treasury substantiated this allegation, finding that OSHA paid the Fiscal Service \$132,911 in cross-servicing fees for debts that OSHA collected itself. Federal policy permits the Fiscal Service to collect fees on any debts that it has serviced, even if payments are made directly to OSHA. However, in this instance, Treasury questioned the propriety of OSHA paying fees to Fiscal Service for debts where Fiscal Service sent no demand letter and took no action to collect.

Finally, the whistleblower alleged that OSHA officials have recently begun recalling debts from Treasury that are under three years old, preventing Treasury from attempting to collect them as required, notwithstanding the CS-NG software error. Treasury and Labor both substantiated this allegation. Treasury determined that, of the 10,904 debts discussed above, OSHA recalled 730 debts worth \$6.7 million that were referred to Treasury less than two years ago. Labor clarified that OSHA's policy to recall debts after three years is inconsistent with Office of Management and Budget (OMB) policy advising agencies to write off and close out debt after two years. According to Labor's report, OSHA recently began following OMB policy but had not yet aligned its debt-collection procedures with the change. Labor also found that DCAT was not notifying area offices of the recalled debts, in violation of OSHA policy. Because of this communication breakdown, area offices were not always aware of additional required actions or whether the fines were effective against employers who violated OSHA regulations. Labor determined these missteps resulted in inaccurate reporting to Treasury and occurred because OSHA "lacked sufficient oversight and monitoring controls."

Both agencies made recommendations in response to their findings. Labor updated DCAT's procedures for monitoring and transferring debts, including increased communication

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with area offices. OSHA will also update its debt collection policy to align with OMB guidance. Treasury's Fiscal Service has corrected the software issue that prevented it from collecting referred debts and is now actively collecting all OSHA debts and any other agency debts affected by the error.<sup>2</sup> Fiscal Service also implemented a governance structure to identify and prioritize defects and improvements in its debt-collection systems, and it returned all erroneously collected fees.

I have reviewed the original disclosure and agency reports. Both agencies conducted thorough investigations and took prompt and appropriate corrective action in response to their findings. I am particularly encouraged by Treasury's quick action to begin collecting nearly \$85 million of uncollected OSHA debts and to assess the outstanding uncollected debts of 12 additional agencies. I also commend the whistleblower for bringing these allegations forward, not only for the benefit of Treasury and Labor, but for the other agencies affected by mismanagement within these programs. In light of Treasury's and Labor's response, I have determined that the findings of the reports appear reasonable, and the reports meet all statutory requirements. I look forward to receiving a supplemental report, upon conclusion of Treasury's ongoing audit, detailing the effects of the CS-NG software error on the additional 12 identified agencies.

As required by 5 U.S.C. § 1213(e)(3), I have sent a copy of this letter and the agency reports to the Chairmen and Ranking Members of the Senate Committees on Finance and Health, Education, Labor, and Pensions and the House Committees on Financial Services and Education and Labor. I have also filed redacted copies of these documents and the redacted § 1213(c) referral letter in our public file, which is available at [www.osc.gov](http://www.osc.gov). This matter is now closed.

Respectfully,



Henry J. Kerner  
*Special Counsel*

Enclosures

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<sup>2</sup> As described in the report, OSHA recalled from Treasury \$6.7 million of the initial \$91.5 million in uncollected debts. It is OSC's understanding that Treasury is collecting approximately \$84.8 million in remaining uncollected OSHA debts.