



U.S. OFFICE OF SPECIAL COUNSEL

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The Special Counsel

September 10, 2019

The Honorable Patrick Pizzella
Acting Secretary
U.S. Department of Labor
200 Constitution Ave., N.W.
Washington, D.C. 20210

The Honorable Steven Mnuchin
Secretary
U.S. Department of the Treasury
1500 Pennsylvania Ave., N.W.
Washington, D.C. 20220

Re: OSC File No. DI-19-4553
Referral for Investigation--5 U.S.C. § 1213(c)

Dear Acting Secretary Pizzella and Secretary Mnuchin:

Pursuant to my responsibilities as Special Counsel, I am referring to you for investigation whistleblower disclosures concerning officials at the Department of Labor, Occupational Safety and Health Administration (OSHA), Office of Financial Management, Division of Debt Collection and Division of Financial Control, Washington, D.C. and the Department of Treasury (Treasury), Bureau of the Fiscal Service, Debt Management Services, Washington, D.C.

The whistleblower alleged that OSHA and Treasury officials may have engaged in conduct that constitutes a violation of law, rule, or regulation; gross mismanagement; and a gross waste of funds. Because these allegations appear to involve individuals within both Departments, I am forwarding these allegations to you both for an investigation and report pursuant to 5 U.S.C. § 1213(c). It is my expectation that I will receive a report of investigation on these allegations and any related matters from each Department on November 11, 2019.

The whistleblower, who chose to remain anonymous, disclosed that Treasury and OSHA officials have failed to take any action on debts transferred by OSHA to Treasury for collection. The whistleblower also disclosed that OSHA officials are recalling debts from Treasury early in order to allow OSHA to write them off. The allegations to be investigated include:

- Neither Treasury nor OSHA officials have taken appropriate action to ensure that OSHA debts that are transferred to Treasury are processed, resulting in \$79 million of uncollected debts;

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- OSHA officials continue to pay collection fees to Treasury on debts paid to OSHA despite Treasury's failure to take any collection actions on referred debts; and,
- OSHA officials have recently begun recalling debts from Treasury that are under three years old, preventing Treasury from attempting to collect on them as required.

OSHA is authorized to levy fines against employers who violate OSHA safety regulations. Unpaid fines become debts owed to the agency. Pursuant to the Debt Collection Improvement Act of 1996 (DCIA), OSHA must refer any debts over 180 days past due to the Department of Treasury for collection. According to the whistleblower, in October 2017, Treasury implemented new software¹ for processing these debts that allegedly does not work with OSHA's existing processing software. Specifically, Treasury's software does not populate the contact information for the responsible party, without which a demand letter cannot be mailed. According to the whistleblower, no action can be taken on a debt without Treasury first sending a demand letter. Both Treasury and OSHA are aware of, but have not corrected, this failure. As a result, the whistleblower alleged that as of July 2019, Treasury had over 9,000 OSHA debts with a value of approximately \$79 million in "New Account" status, with no action taken on them. The whistleblower noted that because Treasury services debt for over 600 government organizations, there is a possibility other agencies are having similar difficulties.

As noted in the DCIA, Treasury will also assess fees for any debts OSHA transfers. The whistleblower disclosed that OSHA continues to pay these fees to Treasury on debts for which OSHA received direct payment, despite Treasury having taken no action to collect those debts. The whistleblower noted that over a period of just two weeks between January and March 2019, Treasury reported collection fees in excess of \$13,000 for debts on which it took no action. The whistleblower maintains that fee payments to Treasury in these circumstances are inappropriate and that OSHA should instead recall the debts from Treasury when payment is received.

The whistleblower also disclosed that OSHA officials recently began recalling debts from Treasury that have large balances but, in some cases, are less than three years old.² The whistleblower explained that these debts are being returned to OSHA before Treasury has had an opportunity to collect them as required by the DCIA. In most cases, the debts are then written off. The whistleblower alleged that there is no reason to recall these debts early and that doing so prevents Treasury from working to collect the debts as required by the DCIA. The whistleblower further alleged that the recall of newer, larger debts is an attempt to manipulate the data in the Treasury Report of Receivables (TROR) by rebalancing the

¹ Known as Artiva or Cross-Servicing Next Generation.

² As noted in OSHA Instruction CPL-02-00-160, Field Operations Manual, p. 6-28, most uncollectible debts are recalled from Treasury after three years. Nevertheless, between June 24 and June 28, 2019, OSHA accountant [REDACTED] recalled approximately 100 debts of less than three years with a write-off value of approximately \$4.7 million.

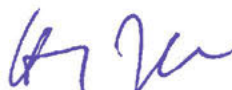
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categories of debts it contains.³ This rebalancing permits the agency to present itself as more effective than it really is at collecting and writing off debts. Additionally, upon recalling a debt, the Field Operations Manual requires staff to notify the local office receiving the debt of the reason for the recall. The whistleblower alleged that this step is not being completed, causing confusion for local office staff.

Pursuant to my authority under 5 U.S.C. § 1213(c), I have concluded that there is a substantial likelihood that the information provided to OSC discloses a violation of law, rule, or regulation; gross mismanagement; and a gross waste of funds. Please note that specific allegations and references to specific violations of law, rule or regulation are not intended to be exclusive. If, in the course of your investigation, you discover additional violations, please include your findings on these additional matters in the report to OSC. As previously noted, your agency must conduct an investigation of these matters and produce a report, which must be reviewed and signed by you. Per statutory requirements, I will review the report for sufficiency and reasonableness before sending copies of the agency report, along with the whistleblower's comments and any comments or recommendations I may have, to the President and congressional oversight committees and making these documents publicly available.

Additional important requirements and guidance on the agency report are included in the attached Appendix, which can also be accessed at <https://osc.gov/Pages/DOW.aspx>. If your investigators have questions regarding the statutory process or the report required under 5 U.S.C. §1213, please contact Catherine A. McMullen, Chief, Disclosure Unit, at (202) 804-7088 for assistance. I am also available for any questions you may have.

Sincerely,



Henry J. Kerner
Special Counsel

Enclosure

cc: The Honorable Eric M. Thorson, Inspector General
The Honorable Scott S. Dahl, Inspector General

³ The whistleblower further noted that [REDACTED] who is primarily recalling the newer debts, is also responsible for compiling OSHA's data for the TROR.

APPENDIX
AGENCY REPORTS UNDER 5 U.S.C. § 1213

GUIDANCE ON 1213 REPORT

- OSC requires that your investigators interview the whistleblower at the beginning of the agency investigation when the whistleblower consents to the disclosure of his or her name.
- Should the agency head delegate the authority to review and sign the report, the delegation must be specifically stated and include the authority to take the actions necessary under 5 U.S.C. § 1213(d)(5).
- OSC will consider extension requests in 60-day increments when an agency evidences that it is conducting a good faith investigation that will require more time to complete.
- Identify agency employees by position title in the report and attach a key identifying the employees by both name and position. The key identifying employees will be used by OSC in its review and evaluation of the report. OSC will place the report without the employee identification key in its public file.
- Do not include in the report personally identifiable information, such as social security numbers, home addresses and telephone numbers, personal e-mails, dates and places of birth, and personal financial information.
- Include information about actual or projected financial savings as a result of the investigation as well as any policy changes related to the financial savings.
- Reports previously provided to OSC may be reviewed through OSC's public file, which is available here: <https://osc.gov/Pages/Resources-PublicFiles.aspx>. Please refer to our file number in any correspondence on this matter.

RETALIATION AGAINST WHISTLEBLOWERS

In some cases, whistleblowers who have made disclosures to OSC that are referred for investigation pursuant to 5 U.S.C. § 1213 also allege retaliation for whistleblowing once the agency is on notice of their allegations. The Special Counsel strongly recommends the agency take all appropriate measures to protect individuals from retaliation and other prohibited personnel practices.

EXCEPTIONS TO PUBLIC FILE REQUIREMENT

OSC will place a copy of the agency report in its public file unless it is classified or prohibited from release by law or by Executive Order requiring that information be kept secret in the interest of national defense or the conduct of foreign affairs. 5 U.S.C. § 1219(a).

EVIDENCE OF CRIMINAL CONDUCT

If the agency discovers evidence of a criminal violation during the course of its investigation and refers the evidence to the Attorney General, the agency must notify the Office of Personnel Management and the Office of Management and Budget. 5 U.S.C. § 1213(f). In such cases, the agency must still submit its report to OSC, but OSC must not share the report with the whistleblower or make it publicly available. See 5 U.S.C. §§ 1213(f), 1219(a)(1).