



May 20, 2020

Hon. Henry J. Kerner
Special Counsel
U.S. Office of Special Counsel
1730 M Street, NW
Washington DC 20036-4505
via e-mail delivery

Re: OSC File No. DI-19-4553

Dear Special Counsel Kerner:

I have been delegated authority by the Secretary of Labor to submit the Department of Labor's (Labor) response in the above referenced matter pursuant to 5 U.S.C. § 1213. By way of background, on September 10, 2019, the U.S. Office of Special Counsel (OSC) referred to the Secretaries of Labor and Treasury for investigation anonymous whistleblower allegations concerning officials at Labor's 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. Because these allegations appeared to involve individuals within both the Departments, OSC sent a referral for investigation to both the then-Acting Labor Secretary and the Treasury Secretary. Both Departments then referred this matter to their respective Offices of Inspector General for coordination, investigation, and reporting pursuant to 5 U.S.C. § 1213(c).

The allegations were:

1. OSHA and Fiscal Service officials failed to ensure debts that OSHA referred to Fiscal Service for collection were processed, resulting in \$79 million of uncollected debts;
2. OSHA officials paid collection fees to Fiscal Service despite Fiscal Service's failure to take any collection actions on referred debts; and
3. OSHA officials recalled debts from Fiscal Service that were less than 3 years old preventing Fiscal Service from attempting to collect the debts.

It was also alleged that OSHA's recall of debts was an attempt to manipulate the data in the Treasury Report on Receivables (TROR) to present itself as more effective than it really is at collecting and writing off debts.

Labor's Office of Inspector General (OIG) conducted a review of the first and third allegations, which were matters specific to OSHA's referral to and reclamation of debt from Treasury. The

Treasury's OIG in turn reviewed the matters specific to Treasury's processing of OSHA's debt and collection of fees in the first and second allegation, respectively.

On February 26, 2020, the Department's Assistant Inspector General for Audit reported the OIG's findings to the Principal Deputy Assistant Secretary of Labor for OSHA along with recommendations to assist OSHA in correcting issues identified in the report. On February 28, 2020, the Department's Inspector General reported the OIG's findings to the Secretary, which are incorporated herein by reference. Labor's OIG substantiated both of the OSHA-related allegations. Additionally, although the OIG did not find OSHA's actions were intended to manipulate data in the TROR, it found that the TROR did not accurately reflect the total number and amount of cases reported to Treasury for new receivables, collections, and amounts written off. On March 11, 2020, the Principal Deputy Assistant Secretary for OSHA responded to the report, concurring with the recommendations. The OIG reports and the Principal Deputy Assistant Secretary's response are attached.

Sincerely,

Kate S. O'Scannlain Digitally signed by Kate S. O'Scannlain
Date: 2020.05.20 16:55:56 -04'00'

Kate S. O'Scannlain
Solicitor of Labor

cc:

Scott S. Dahl, Inspector General, DOL

James Williams, Chief Financial Officer, DOL

Loren Sweatt, Principal Deputy Assistant Secretary, OSHA, DOL

Brian Callanan, General Counsel, Treasury

Attachments



February 26, 2020

MEMORANDUM FOR: LOREN SWEATT
Principal Deputy Assistant Secretary
of Labor for Occupational Safety and Health

Elliot P. Lewis

FROM: ELLIOT P. LEWIS
Assistant Inspector General
for Audit

SUBJECT: Review of the Occupational Safety and Health
Administration's Referral to and Reclamation of Debt
from the U.S. Department of the Treasury
Draft Report No. 22-20-006-10-001

This memorandum is in response to an October 1, 2019, request from then-Acting Secretary of Labor for the OIG to initiate a review of allegations anonymously made against the following: 1) Department of Labor, Occupational Safety and Health Administration (OSHA), Office of Financial Management, Division of Debt Collection and Division of Financial Control; and 2) Department of the Treasury (Treasury), Bureau of the Fiscal Service (Fiscal Service), Debt Management Service.

Because these allegations appeared to involve individuals within both the Department of Labor and Treasury, a referral for investigation was sent to both of their respective Offices of Inspector General for coordination, investigation, and reporting.

The allegations were:

- (1) OSHA and Fiscal Service officials failed to ensure debts that OSHA referred to Fiscal Service for collection were processed, resulting in \$79 million of uncollected debts;

- (2) OSHA officials paid collection fees to Fiscal Service despite Fiscal Service's failure to take any collection actions on referred debts; and
- (3) OSHA officials recalled¹ debts from Fiscal Service that were less than 3 years old,² preventing Fiscal Service from attempting to collect the debts.

It was also alleged OSHA's recall of debts was an attempt to manipulate the data in the Treasury Report on Receivables (TROR) to present itself as more effective than it really is at collecting and writing off debts.

This memorandum addresses the first and third allegations, which are those matters specific to OSHA's referral to and reclamation of debt from Treasury. Treasury OIG will report on the matters specific to Treasury's processing of OSHA's debt and collection of fees in the first and second allegation, respectively.

Background

The Debt Collection Improvement Act (DCIA) of 1996³ centralized the government-wide collection of delinquent, non-tax debt, and required agencies to charge interest, penalties, and administrative costs against such debt. OSHA adheres to the DCIA when managing Federal debt related to its assessment of program penalties.

OSHA is authorized to levy penalties against employers who violate OSHA safety regulations. These penalties serve as OSHA's primary means for motivating employers to prevent or correct hazards voluntarily. Any penalties assessed by OSHA become delinquent 30 calendar days after the due date. Pursuant to DCIA, OSHA must refer any debts over 180 days past due to Treasury's Fiscal Service for collection. Treasury⁴ strongly encourages agencies to transfer all eligible debts sooner.

¹ Recall is notification by the creditor agency that Fiscal Service must cease its debt collection efforts for a particular debt and that the responsibilities for servicing, collecting, or compromising the debt have been transferred back to the creditor agency.

² OSHA Field Operations Manual, Directive Number CPL-02-00-160, Chapter 6, Debt Collection Procedures, Section XIV, 6-28, August 2, 2016, states that uncollectible debts are recalled from Treasury after 3 years.

³ Public Law 104-134 (April 26, 1996)

⁴ Treasury Financial Manual, Chapter 4000, Debt Management Services Collection of Delinquent Nontax Debt. Section 4035.40

Treasury's Fiscal Service is responsible for implementation of many of the DCIA debt collection provisions, and assists Federal agencies with the prevention, collection, and resolution of debts owed to them. As part of Fiscal Service, the Debt Management Service is the business area responsible for administering programs and services related to delinquent debt collection. When OSHA refers a debt to Fiscal Service for collection, the debt remains a debt owed to OSHA. Fiscal Service collects a fee from payments made on the debt it has serviced. Any payment received by OSHA for a debt that has been referred to Fiscal Service must be reported to allow Fiscal Service to properly assess its fees. OSHA may recall a transferred debt when the debtor is bankrupt, the debt is not enforceable, or a mistake is found in its delinquency status, validity, or any reason that would render its debt certification⁵ invalid. When OSHA's Debt Collection Accountability Team (DCAT) recalls a debt from Treasury, it must notify its Area Office⁶ that issued the penalty by preparing a transmittal memorandum stating the final status of the debt and what follow-up actions should be taken.

According to its policy, OSHA must recall debts when Fiscal Service is unable to collect the amount owed 3 years after the point of delinquency. However, this is inconsistent with OMB policy⁷ to generally write off and close out the debt after 2 years, unless it is cost effective for collection efforts to continue.

OSHA reports the status of outstanding debts owed to the agency, also referred to as its penalties receivable information, each quarter through the TROR. The TROR serves as a management report that informs Treasury of the amount of receivables owed to Federal agencies.

Scope and Methodology

In conducting our review of the two allegations, we: (1) reviewed applicable Federal laws and regulations, and Treasury and OSHA policies and procedures relevant to its debt referral and collection responsibilities; (2) selected and tested a non-statistical, judgmental sample of 15 out of 129 cases that were recalled by DCAT from Treasury's Fiscal Service during the period from June 24, 2019, to June 28, 2019; (3) selected and tested the 5 largest debt cases recalled by DCAT from Treasury's Fiscal Service during the period from October 1, 2017, to September 30, 2019; (4) reviewed relevant documentation produced by OSHA

⁵ When a creditor agency refers a debt to Fiscal Service, the creditor agency certifies on behalf of the agency head that, among other things, the referred debts are valid, delinquent, and legally enforceable, that there are no bars to collection, and that all required due process has been provided.

⁶ OSHA carries out its enforcement activities through its 90 area offices.

⁷ OMB Circular No. A-129, Policies for Federal Credit Programs and Non-Tax Receivables. Section V.E.1. January 2013.

related to debt referral and reclamation activities with Treasury's Fiscal Service; (5) interviewed key OSHA personnel with responsibilities related to debt collection services; and (6) coordinated with Treasury's Office of Inspector General officials on their review of the issues related to Treasury.

Results

In addressing the concerns of this referral, we substantiated both OSHA-related allegations referred for our review. Specifically, we found OSHA's DCAT had not been timely in referring delinquent debt to Treasury's Fiscal Service for collection. In addition, although DCAT recalled debts from Treasury's Fiscal Service that were less than 3 years delinquent in the cases we tested, a majority of those cases were recalled when the debt was more than 2 years delinquent, as required by OMB Circular A-129.

Contrary to the allegations, we did not conclude DCAT's actions in recalling debt prematurely from Treasury were performed with the intent to manipulate data in the TROR. However, we did find the DCAT-prepared TROR did not accurately reflect the total number and amount of cases reported to Treasury for new receivables, collections, and amounts of debt that were written off. Further, in most of the cases reviewed, DCAT did not notify the Area Office to provide a status update and specify follow-up actions needed to be taken.

Relevant information as it relates to OSHA's referral and reclamation of debts from Treasury's Fiscal Service is provided below.

Allegation: OSHA and Fiscal Service officials failed to ensure debts OSHA referred to Fiscal Service for collection were processed, resulting in \$79 million of uncollected debts.

OIG Result: In most of the cases reviewed, DCAT did not refer delinquent debt to Treasury's Fiscal Service for collection in a timely manner.

In 15 of the 19 cases selected for review, we found DCAT did not timely refer debts delinquent for more than 180 days to Treasury's Fiscal Service, as required by the DCIA. In 13 of the 15 cases, the debt was not transferred to Treasury's Fiscal Service until more than 30 days after the debt became 180 days delinquent. In one of those cases, the debt was not transferred to Treasury's Fiscal Service until 1,271 days after the debt became 180 days delinquent. Consequently, Treasury's Fiscal Service had a limited amount of time to attempt to collect the debt prior to recall.

Although OSHA's DCAT had a process in place to refer debts to Treasury's Fiscal Service in accordance with the DCIA, there was no monitoring in place to ensure the cases were referred as required. This occurred because OSHA lacked sufficient oversight and monitoring controls to ensure debts were timely

referred to Treasury's Fiscal Service for collection. DCAT officials did inform us they experienced issues with referred files not being received or processed for delinquent debt cases beginning in October 2017 with the launch of Fiscal Service's new debt management system, Cross Servicing-Next Generation (CS-NG). However, DCAT officials did not identify these issues as a contributing factor in the untimely referral of debt to Treasury's Fiscal Service in any of the cases reviewed.

Allegation: OSHA officials recalled debts from Fiscal Service that were less than 3 years old, preventing Fiscal Service from attempting to collect the debts.

OIG Result: DCAT recalled debts from Treasury's Fiscal Service that were less than 3 years delinquent, and in most cases reviewed, did not notify the Area Office on the final status of the debt and what actions should be taken.

From the same sample of cases, we found that for 15 of the 19 reviewed, OSHA's DCAT recalled the debts less than 3 years delinquent, which violated OSHA's Debt Collection Procedures contained in its Field Operations Manual.⁸ However, as we previously noted, OMB policy is to generally write off and close out debts after 2 years. In 2 of the 15 cases, the debt was less than 2 years delinquent at the time the case was recalled from Treasury's Fiscal Service and prior to any Treasury demand letter attempting collection. The remaining 13 cases were recalled when the debt was between 2 and 3 years delinquent. In 6 of the 13 cases, the debt was recalled from Treasury prior to any Treasury demand letter attempting collection. In all 13 cases, DCAT indicated the reason for the recall was to forgive the debt.

According to OSHA officials, this occurred because OSHA had recently started recalling debt greater than 2 years to more closely follow OMB Circular A-129, *Policies for Federal Credit Programs and Non-Tax Receivables*. However, OSHA had not updated its Debt Collection Procedures to reflect this change. OSHA officials also stated this activity was part of a recent Department-wide effort to centralize debt management activities within the Office of the Chief Financial Officer.

From October 1, 2017, through September 30, 2019, DCAT recalled 2,413 cases from Treasury's Fiscal Service, amounting to \$19,122,885 in referred debt. We attempted to determine the delinquency age for all the cases at the time DCAT recalled the debts; however, OSHA informed us this information was not readily available and would require manual queries to be performed within the OSHA Information System (OIS) to pull this data for all 2,413 cases. As such, we were

⁸ OSHA Field Operations Manual, Directive Number CPL-02-00-160. Chapter 6, Debt Collection Procedures. Section XIV, 6-28. August 2, 2016

only able to determine whether OSHA was recalling debts prematurely by selecting a sample of debt cases.

We were able to determine through data analyzed by Treasury's OIG from Fiscal Service's CS-NG that 25 percent of the debt once referred to Treasury's Fiscal Service for collection remained with Treasury for a period of less than 1 year (see Table 1 for a summary of the recalled delinquent debt based on Treasury data) at the time it was recalled by DCAT. Although the debt remained with Treasury for less than 1 year, the actual delinquency age of the debt may be older at the time the debt was recalled since we identified DCAT was not timely in referring delinquent debt to Treasury for collection.

Table 1: Recalled Delinquent Debt Summary

Elapsed Time Debt was with Treasury for Collection	No. of Debt Cases	Percentage of Debt Cases	Total \$ of Debt Cases Referred
< 1 year	593	25%	\$4,313,577
1 to 2 years	663	27%	\$6,409,056
2 to 3 years	1,157	48%	\$8,400,252
Total	2,413	100%	\$19,122,885

Source: Auditor generated based on recalled delinquent debt data provided by Treasury's Fiscal Service

We also found that once DCAT recalled the debt, it did not properly notify the respective Area Office that issued the penalty, as required. In 18 of the 19 cases reviewed, we found DCAT did not comply with its Debt Collection Procedures by failing to notify the Area Office via memorandum regarding the final status of the debt and what additional actions should be taken. Instead, DCAT relied on the Area Offices to self-monitor for cases that required closure, or to follow up through reports generated from OIS. Consequently, the Area Offices may not have been aware of additional actions required or whether the fines levied against the employer were effective. This occurred because OSHA lacked sufficient oversight and monitoring controls to ensure Area Offices were notified on the status and follow-up actions required once the debt was recalled from Treasury's Fiscal Service.

Other Matter: The DCAT-prepared Treasury Report on Receivables did not accurately reflect the total number and amount of cases reported to Treasury for new receivables, collections, and amounts written off.

We did not conclude DCAT's actions in recalling debt prematurely from Treasury were performed with the intent to manipulate data in the TROR. However, the DCAT-prepared TROR for the period ending September 30, 2019, did not accurately reflect the total number and amount of cases reported to Treasury for new receivables, collections, and amounts written off.

We were unable to substantiate the summary information reported in the TROR to individual cases in the reports used to generate the TROR. This was due to DCAT's process in preparing the quarterly report by backing out the prior-period TROR number and amounts. DCAT officials stated this process was due to the carry-over balances from the system that preceded OIS and the limited availability of reports needed to more accurately prepare the TROR. Furthermore, we noted OSHA lacked policies and procedures to specify how the TROR should be prepared.

Conclusion

Our review substantiated both of the OSHA-related allegations referred for our review. We found DCAT had not been timely in referring delinquent debt to Treasury's Fiscal Service for collection. In addition, although DCAT recalled debts from Treasury's Fiscal Service less than 3 years delinquent in the cases we tested, a majority of those cases were recalled when the debt was more than 2 years delinquent, as required by OMB Circular A-129.

While the majority of debts were recalled in line with OMB requirements, the untimely transfer of the debt to Treasury limited the time Treasury had to collect the debt and decreased the likelihood of collection, thereby reducing the effectiveness of OSHA's primary means of preventing or correcting employer safety violations voluntarily.

Although we did not find DCAT's actions were intended to manipulate data in the TROR, we did find the DCAT-prepared TROR did not accurately reflect the total number and amount of cases reported to Treasury for new receivables, collections, and amounts written off. Further, in most cases reviewed, DCAT did not notify the Area Office to provide a status update and specify follow-up actions needed to be taken.

Recommendations

We recommend the Assistant Secretary of Labor for Occupational Safety and Health:

1. Develop and implement a monitoring control policy to ensure delinquent debts are referred to Treasury for collection as required by the Debt Collection Improvement Act;
2. Develop and implement a monitoring control policy to ensure DCAT notifies the Area Office on the status and follow-up actions required of recalled debt;

3. Revise OSHA's Debt Collection Procedures to comply with OMB Circular A-129; and
4. Develop and implement policies and procedures to report on the status of debt in the Treasury Report on Receivables.

We would appreciate your written response to this memorandum and the related recommendations no later than March 11, 2020. Your written comments will be incorporated and included as an attachment to the final Memorandum.

If you have any questions, please contact Joseph L. Donovan, Jr., Audit Director, at 202-693-5248.

Attachment

cc: James Williams, Chief Financial Officer
Robert Sanders, OSHA Audit Liaison



FEB 28 2020

MEMORANDUM FOR THE SECRETARY

FROM: SCOTT S. DAHL *SSD*
Inspector General

SUBJECT: Review of the Occupational Safety and Health Administration's Referral to and Reclamation of Debt from the U.S. Department of the Treasury

This memorandum is in response to an October 1, 2019, request from then-Acting Secretary of Labor for my office to initiate a review of allegations referred to you by the U.S. Office of Special Counsel (OSC) on September 10, 2019. In its referral, OSC described allegations anonymously made against the following: 1) Department of Labor, Occupational Safety and Health Administration (OSHA), Office of Financial Management, Division of Debt Collection and Division of Financial Control; and 2) Department of the Treasury (Treasury), Bureau of the Fiscal Service (Fiscal Service), Debt Management Service (see Attachment A for the original referral, OSC File No. DI-19-4553).

The allegations pertain to conduct that OSHA and Treasury's Fiscal Service officials may have engaged in actions constituting a violation of law, rule, or regulation; gross mismanagement; and a gross waste of funds. Because these allegations appeared to involve individuals within both the Department of Labor and Treasury, OSC sent a referral for investigation to both the then-Acting Secretary of Labor and the Secretary of the Treasury. Both departments then referred this matter to their respective Offices of Inspector General for coordination, investigation, and reporting pursuant to 5 U.S.C. § 1213(c).

The allegations were:

- (1) OSHA and Fiscal Service officials failed to ensure debts that OSHA referred to Fiscal Service for collection were processed, resulting in \$79 million of uncollected debts;

- (2) OSHA officials paid collection fees to Fiscal Service despite Fiscal Service's failure to take any collection actions on referred debts; and
- (3) OSHA officials recalled¹ debts from Fiscal Service that were less than 3 years old,² preventing Fiscal Service from attempting to collect the debts.

It was also alleged OSHA's recall of debts was an attempt to manipulate the data in the Treasury Report on Receivables (TROR) to present itself as more effective than it really is at collecting and writing off debts.

This memorandum addresses the first and third allegations, which are those matters specific to OSHA's referral to and reclamation of debt from Treasury. Treasury OIG will report on the matters specific to Treasury's processing of OSHA's debt and collection of fees in the first and second allegation, respectively.

Background

The Debt Collection Improvement Act (DCIA) of 1996³ centralized the government-wide collection of delinquent, non-tax debt, and required agencies to charge interest, penalties, and administrative costs against such debt. OSHA adheres to the DCIA when managing Federal debt related to its assessment of program penalties.

OSHA is authorized to levy penalties against employers who violate OSHA safety regulations. These penalties serve as OSHA's primary means for motivating employers to prevent or correct hazards voluntarily. Any penalties assessed by OSHA become delinquent 30 calendar days after the due date. Pursuant to DCIA, OSHA must refer any debts over 180 days past due to Treasury's Fiscal Service for collection. Treasury⁴ strongly encourages agencies to transfer all eligible debts sooner.

¹ Recall is notification by the creditor agency that Fiscal Service must cease its debt collection efforts for a particular debt and that the responsibilities for servicing, collecting, or compromising the debt have been transferred back to the creditor agency.

² OSHA Field Operations Manual, Directive Number CPL-02-00-160, Chapter 6, Debt Collection Procedures, Section XIV, 6-28, August 2, 2016, states that uncollectible debts are recalled from Treasury after 3 years.

³ Public Law 104-134 (April 26, 1996)

⁴ Treasury Financial Manual, Chapter 4000, Debt Management Services Collection of Delinquent Nontax Debt. Section 4035.40

Treasury's Fiscal Service is responsible for implementation of many of the DCIA debt collection provisions, and assists Federal agencies with the prevention, collection, and resolution of debts owed to them. As part of Fiscal Service, the Debt Management Service is the business area responsible for administering programs and services related to delinquent debt collection. When OSHA refers a debt to Fiscal Service for collection, the debt remains a debt owed to OSHA. Fiscal Service collects a fee from payments made on the debt it has serviced. Any payment received by OSHA for a debt that has been referred to Fiscal Service must be reported to allow Fiscal Service to properly assess its fees. OSHA may recall a transferred debt when the debtor is bankrupt, the debt is not enforceable, or a mistake is found in its delinquency status, validity, or any reason that would render its debt certification⁵ invalid. When OSHA's Debt Collection Accountability Team (DCAT) recalls a debt from Treasury, it must notify its Area Office⁶ that issued the penalty by preparing a transmittal memorandum stating the final status of the debt and what follow-up actions should be taken.

According to its policy, OSHA must recall debts when Fiscal Service is unable to collect the amount owed 3 years after the point of delinquency. However, this is inconsistent with OMB policy⁷ to generally write off and close out the debt after 2 years, unless it is cost effective for collection efforts to continue.

OSHA reports the status of outstanding debts owed to the agency, also referred to as its penalties receivable information, each quarter through the TROR. The TROR serves as a management report that informs Treasury of the amount of receivables owed to Federal agencies.

Scope and Methodology

In conducting our review of the two allegations, we: (1) reviewed applicable Federal laws and regulations, and Treasury and OSHA policies and procedures relevant to its debt referral and collection responsibilities; (2) selected and tested a non-statistical, judgmental sample of 15 out of 129 cases that were recalled by DCAT from Treasury's Fiscal Service during the period from June 24, 2019, to June 28, 2019; (3) selected and tested the 5 largest debt cases recalled by DCAT from Treasury's Fiscal Service during the period from October 1, 2017, to September 30, 2019; (4) reviewed relevant documentation produced by OSHA

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⁷ OMB Circular No. A-129, Policies for Federal Credit Programs and Non-Tax Receivables. Section V.E.1. January 2013.

related to debt referral and reclamation activities with Treasury's Fiscal Service; (5) interviewed key OSHA personnel with responsibilities related to debt collection services; and (6) coordinated with Treasury's Office of Inspector General officials on their review of the issues related to Treasury.

Results

In addressing the concerns of this referral, we substantiated both OSHA-related allegations referred for our review. Specifically, we found OSHA's DCAT had not been timely in referring delinquent debt to Treasury's Fiscal Service for collection. In addition, although DCAT recalled debts from Treasury's Fiscal Service that were less than 3 years delinquent in the cases we tested, a majority of those cases were recalled when the debt was more than 2 years delinquent, as required by OMB Circular A-129.

Contrary to the allegations, we did not conclude DCAT's actions in recalling debt prematurely from Treasury were performed with the intent to manipulate data in the TROR. However, we did find the DCAT-prepared TROR did not accurately reflect the total number and amount of cases reported to Treasury for new receivables, collections, and amounts of debt that were written off. Further, in most of the cases reviewed, DCAT did not notify the Area Office to provide a status update and specify follow-up actions needed to be taken.

Relevant information as it relates to OSHA's referral and reclamation of debts from Treasury's Fiscal Service is provided below.

Allegation: OSHA and Fiscal Service officials failed to ensure debts OSHA referred to Fiscal Service for collection were processed, resulting in \$79 million of uncollected debts.

OIG Result: In most of the cases reviewed, DCAT did not refer delinquent debt to Treasury's Fiscal Service for collection in a timely manner.

In 15 of the 19 cases selected for review, we found DCAT did not timely refer debts delinquent for more than 180 days to Treasury's Fiscal Service, as required by the DCIA. In 13 of the 15 cases, the debt was not transferred to Treasury's Fiscal Service until more than 30 days after the debt became 180 days delinquent. In one of those cases, the debt was not transferred to Treasury's Fiscal Service until 1,271 days after the debt became 180 days delinquent. Consequently, Treasury's Fiscal Service had a limited amount of time to attempt to collect the debt prior to recall.

Although OSHA's DCAT had a process in place to refer debts to Treasury's Fiscal Service in accordance with the DCIA, there was no monitoring in place to ensure the cases were referred as required. This occurred because OSHA lacked sufficient oversight and monitoring controls to ensure debts were timely

referred to Treasury's Fiscal Service for collection. DCAT officials did inform us they experienced issues with referred files not being received or processed for delinquent debt cases beginning in October 2017 with the launch of Fiscal Service's new debt management system, Cross Servicing-Next Generation (CS-NG). However, DCAT officials did not identify these issues as a contributing factor in the untimely referral of debt to Treasury's Fiscal Service in any of the cases reviewed.

Allegation: OSHA officials recalled debts from Fiscal Service that were less than 3 years old, preventing Fiscal Service from attempting to collect the debts.

OIG Result: DCAT recalled debts from Treasury's Fiscal Service that were less than 3 years delinquent, and in most cases reviewed, did not notify the Area Office on the final status of the debt and what actions should be taken.

From the same sample of cases, we found that for 15 of the 19 reviewed, OSHA's DCAT recalled the debts less than 3 years delinquent, which violated OSHA's Debt Collection Procedures contained in its Field Operations Manual.⁸ However, as we previously noted, OMB policy is to generally write off and close out debts after 2 years. In 2 of the 15 cases, the debt was less than 2 years delinquent at the time the case was recalled from Treasury's Fiscal Service and prior to any Treasury demand letter attempting collection. The remaining 13 cases were recalled when the debt was between 2 and 3 years delinquent. In 6 of the 13 cases, the debt was recalled from Treasury prior to any Treasury demand letter attempting collection. In all 13 cases, DCAT indicated the reason for the recall was to forgive the debt.

According to OSHA officials, this occurred because OSHA had recently started recalling debt greater than 2 years to more closely follow OMB Circular A-129, *Policies for Federal Credit Programs and Non-Tax Receivables*. However, OSHA had not updated its Debt Collection Procedures to reflect this change. OSHA officials also stated this activity was part of a recent Department-wide effort to centralize debt management activities within the Office of the Chief Financial Officer.

From October 1, 2017, through September 30, 2019, DCAT recalled 2,413 cases from Treasury's Fiscal Service, amounting to \$19,122,885 in referred debt. We attempted to determine the delinquency age for all the cases at the time DCAT recalled the debts; however, OSHA informed us this information was not readily available and would require manual queries to be performed within the OSHA Information System (OIS) to pull this data for all 2,413 cases. As such, we were

⁸ OSHA Field Operations Manual, Directive Number CPL-02-00-160. Chapter 6, Debt Collection Procedures. Section XIV, 6-28. August 2, 2016

only able to determine whether OSHA was recalling debts prematurely by selecting a sample of debt cases.

We were able to determine through data analyzed by Treasury's OIG from Fiscal Service's CS-NG that 25 percent of the debt once referred to Treasury's Fiscal Service for collection remained with Treasury for a period of less than 1 year (see Table 1 for a summary of the recalled delinquent debt based on Treasury data) at the time it was recalled by DCAT. Although the debt remained with Treasury for less than 1 year, the actual delinquency age of the debt may be older at the time the debt was recalled since we identified DCAT was not timely in referring delinquent debt to Treasury for collection.

Table 1: Recalled Delinquent Debt Summary

Elapsed Time Debt was with Treasury for Collection	No. of Debt Cases	Percentage of Debt Cases	Total \$ of Debt Cases Referred
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Source: Auditor generated based on recalled delinquent debt data provided by Treasury's Fiscal Service

We also found that once DCAT recalled the debt, it did not properly notify the respective Area Office that issued the penalty, as required. In 18 of the 19 cases reviewed, we found DCAT did not comply with its Debt Collection Procedures by failing to notify the Area Office via memorandum regarding the final status of the debt and what additional actions should be taken. Instead, DCAT relied on the Area Offices to self-monitor for cases that required closure, or to follow up through reports generated from OIS. Consequently, the Area Offices may not have been aware of additional actions required or whether the fines levied against the employer were effective. This occurred because OSHA lacked sufficient oversight and monitoring controls to ensure Area Offices were notified on the status and follow-up actions required once the debt was recalled from Treasury's Fiscal Service.

Other Matter: The DCAT-prepared Treasury Report on Receivables did not accurately reflect the total number and amount of cases reported to Treasury for new receivables, collections, and amounts written off.

We did not conclude DCAT's actions in recalling debt prematurely from Treasury were performed with the intent to manipulate data in the TROR. However, the DCAT-prepared TROR for the period ending September 30, 2019, did not accurately reflect the total number and amount of cases reported to Treasury for new receivables, collections, and amounts written off.

We were unable to substantiate the summary information reported in the TROR to individual cases in the reports used to generate the TROR. This was due to DCAT's process in preparing the quarterly report by backing out the prior-period TROR number and amounts. DCAT officials stated this process was due to the carry-over balances from the system that preceded OIS and the limited availability of reports needed to more accurately prepare the TROR. Furthermore, we noted OSHA lacked policies and procedures to specify how the TROR should be prepared.

Conclusion

Our review substantiated both of the OSHA-related allegations referred for our review. We found DCAT had not been timely in referring delinquent debt to Treasury's Fiscal Service for collection. In addition, although DCAT recalled debts from Treasury's Fiscal Service less than 3 years delinquent in the cases we tested, a majority of those cases were recalled when the debt was more than 2 years delinquent, as required by OMB Circular A-129.

While the majority of debts were recalled in line with OMB requirements, the untimely transfer of the debt to Treasury limited the time Treasury had to collect the debt and decreased the likelihood of collection, thereby reducing the effectiveness of OSHA's primary means of preventing or correcting employer safety violations voluntarily.

Although we did not find DCAT's actions were intended to manipulate data in the TROR, we did find the DCAT-prepared TROR did not accurately reflect the total number and amount of cases reported to Treasury for new receivables, collections, and amounts written off. Further, in most cases reviewed, DCAT did not notify the Area Office to provide a status update and specify follow-up actions needed to be taken.

We made 4 recommendations to the Principal Deputy Assistant Secretary of Labor for Occupation Safety and Health to assist in correcting the issues identified in this report.

If you have any questions, please contact Joseph L. Donovan, Jr., Audit Director, at 202-693-5248.

Attachment

cc: Steven Mnuchin, Secretary of the Treasury
Richard Delmar, Deputy Inspector General of the Treasury
Patrick Pizzella, Deputy Secretary of Labor
Kate O'Scannlain, Solicitor of Labor, DOL

James Williams, Chief Financial Officer, DOL

Loren Sweatt, Principal Deputy Assistant Secretary, OSHA, DOL

Peter Constantine, Associate Solicitor for Legal Counsel, DOL

Delores Thompson, Counsel to the Inspector General, DOL

Elliot P. Lewis, Assistant Inspector General for Audit, DOL


Laura Nicolosi, Deputy Assistant Inspector General for Audit, DOL

ATTACHMENT A: COMPLAINT REFERRAL

DEPUTY SECRETARY OF LABOR
WASHINGTON, D.C. 20210

October 1, 2019

MEMORANDUM FOR: SCOTT S. DAHL,
Inspector General

FROM: PATRICK PIZZELLA 

SUBJECT: Referral of Anonymous Complaint Concerning the Occupational
Safety and Health Administration for Investigation

The Department of Labor (DOL) received the attached September 10, 2019 referral from the U.S. Office of Special Counsel (OSC), pursuant to 5 U.S.C. 1213(c), requesting an investigation into anonymous whistleblower disclosures concerning the Occupational Safety and Health Administration (OSHA). Per our conversation last week, by this memorandum, I am requesting that the Department's Office of Inspector General (OIG) conduct an investigation into the allegations referred from OSC. Upon completion of the OIG's report of investigation, I will review and sign the Department's report to OSC consistent with my obligations under 5 U.S.C. § 1213(d).

OSC likewise referred this matter to the Secretary of the Treasury and I have been informed that it has been assigned to Treasury's OIG for investigation. OSC has requested receipt of the Departments' final reports of investigation into these allegations and any findings by **November 11, 2019**.

Please provide me with periodic status updates on the progress of DOL's OIG investigation and consult with me regarding any unavoidable extension requests to OSC in order to ensure timely completion of the Department's report. I have instructed the Deputy Assistant Secretary of OSHA, the Chief Financial Officer, and the Solicitor to provide you with any necessary assistance. Additionally, I have designated Peter Constantine, Associate Solicitor for Legal Counsel, to serve as the Department's point of contact on this matter for coordination purposes.

cc: Delores Thompson, Counsel to the Inspector General
Kate O'Scannlain, Solicitor of Labor
James Williams, Chief Financial Officer
Loren Sweatt, Deputy Assistant Secretary, OSHA
Peter Constantine, Associate Solicitor for Legal Counsel

Attachment



U.S. OFFICE OF SPECIAL COUNSEL
1730 M Street, N.W., Suite 300
Washington, D.C. 20036-4505

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;

The Special Counsel

The Honorable Patrick Pizzella
The Honorable Steven Mnuchin
September 10, 2019
Page 2 of 3

- 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 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.

The Special Counsel

The Honorable Patrick Pizzella
The Honorable Steven Mnuchin
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Page 3 of 3

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).



MAR 11 2020

MEMORANDUM FOR: ELLIOT P. LEWIS
Assistant Inspector General for Audit

FROM: LOREN SWEATT *Loren Sweatt*
Principal Deputy Assistant Secretary

SUBJECT: Response to the Office of Inspector General's Report No. 22-20-006-10-001, "Review of the Occupational Safety and Health Administration's Referral to and Reclamation of Debt from the U.S. Department of the Treasury"

Thank you for the opportunity to provide comments on the Office of Inspector General (OIG) Audit Report No. 22-20-006-10-001, "Review of the Occupational Safety and Health Administration's Referral to and Reclamation of Debt from the U.S. Department of the Treasury." OSHA appreciates the efforts the OIG undertook to develop this report.

OSHA acknowledges there were some instances in which its debt collection actions did not adhere to procedures specified in OSHA's Field Operations Manual (FOM) and the Debt Collection Improvement Act of 1996 and is committed to complying with applicable debt collection procedures in an effective and efficient manner. The Agency is working aggressively to rectify the identified concerns through a review of existing processes, procedures, policies and documentation.

OSHA notes that some of the failures identified were not within the agency's control. For example, Fiscal Services indicated it would resolve the technical problem identified in October 2017 related to Fiscal Service's Cross-Servicing Debt Collection. Fiscal Service was unable to rectify the incompatibility issue that required OSHA to modify the OSHA information System file format. Please see the attached Department of Treasury Inspector General Report outlining the issue.

With regard to the recommendations made by OIG, OSHA concurs and will work to rectify the deficiencies identified. The following outlines how OSHA will correct issues identified by OIG.

Recommendation 1: Develop and implement a monitoring control policy to ensure delinquent debts are referred to Treasury for collection as required by the Debt Collection Improvement Act.

OSHA's Response: Debt Collection Accountability Team (DCAT) will send bi-weekly emails to the Regional Debt Collection Points of Contact (POC) and attach the OIS Debt Collection Report that identifies upcoming and overdue cases that need to be referred to the National Office or require some other debt collection action. The Regional POC will work with the Area Offices to ensure cases are being reviewed and necessary actions are taken to move the cases forward in the debt collection process. The Regional POC will also provide updates to DCAT on actions taken.

Recommendation 2: Develop and implement a monitoring control policy to ensure DCAT notifies the Area Office on the status and follow-up actions required of recalled debt.

OSHA's Response: DCAT will update Area Offices on the status of, and follow-up actions required for returned debt. These updates will be provided by email as cases are returned. DCAT will also use bi-weekly reports to identify cases that have not been updated with a close date and will send an additional email notification regarding those cases. DCAT is exploring options to have OIS send automated notifications to Area Offices for returned debts.

Recommendation 3: Revise OSHA's Debt Collection Procedures to comply with OMB Circular A-129.

OSHA's Response: OSHA's Debt Collection Procedures found in the FOM calls for debts to be recalled after they become three years delinquent. OSHA intends to update the FOM to comply with OMB Circular A-129 guidance which states that debts will be recalled when they are two years delinquent.

Recommendation 4: Develop and implement policies and procedures to report on the status of debt in the Treasury Report on Receivables.

OSHA's Response: OSHA follows the policies and guidance of Treasury's Instructional Workbook for Preparing the Treasury Report on Receivables and Debt Collection Activities, which is a supplement to the Treasury Financial Manual Volume 1 Part 2 Chapter 4100.

Thank you again for the opportunity to respond to OIG's audit and ways to improve OSHA's debt collection management process.

ATTACHMENT



OFFICE OF
INSPECTOR GENERAL

DEPARTMENT OF THE TREASURY
WASHINGTON, D.C. 20220

February 27, 2020

OIG-CA-20-013

MEMORANDUM FOR THE SECRETARY

FROM: *RKD* Richard K. Delmar, Deputy Inspector General

SUBJECT: Review of the Bureau of the Fiscal Service's Processing of the Department of Labor, Occupational Safety and Health Administration's Delinquent Debts

This memorandum is in response to a September 23, 2019 request from the Department of the Treasury (Treasury) Office of General Counsel for my office to initiate a review of matters referred to you by the U.S. Office of Special Counsel (OSC) on September 10, 2019. In its referral, OSC describes anonymous allegations concerning officials at Treasury Bureau of the Fiscal Service's (Fiscal Service) Debt Management Service and the Department of Labor (Labor) Occupational Safety and Health Administration's (OSHA) Office of Financial Management, Division of Debt Collection and Division of Financial Control. A copy of this request is included in its entirety in Attachment A. The allegations pertain to conduct that OSHA and Treasury officials may have engaged in constituting a violation of law, rule, or regulation; gross mismanagement; and a gross waste of funds. Because these allegations appear to involve individuals within both Treasury and Labor, this referral was sent to both you and the Acting Secretary for Labor. Both departments have referred this issue to their respective Offices of Inspector General (OIG) for investigation and reporting pursuant to 5 U.S.C. § 1213(c).

The allegations were (1) Fiscal Service and OSHA officials have failed to take action to ensure that debts OSHA referred to Fiscal Service for collection are processed, resulting in \$79 million of uncollected debts; (2) OSHA officials continue to pay collection fees to Fiscal Service on debts paid to OSHA despite Fiscal Service's failure to take any collection actions on referred debts; (3) OSHA

officials recalled¹ debts from Fiscal Service that are under 3 years old,² preventing Fiscal Service from attempting to collect on the debts; and (4) the issues impacting OSHA may impact other government organizations served by Fiscal Service.

This memorandum addresses allegations on matters specific to Fiscal Service's administration of the delinquent debt program. Labor OIG's report provides additional information on the first and third allegations on matters specific to OSHA's referral to and reclamation of debt from Fiscal Service.

Background

The Debt Collection Improvement Act (DCIA) of 1996³ centralized the Government-wide collection of delinquent non-tax debt and requires agencies to charge interest, penalties, and administrative costs. Fiscal Service is responsible for Treasury's implementation of many of the DCIA debt collection provisions. Fiscal Service assists Federal agencies with the prevention, collection, and resolution of debts owed to government agencies. As part of Fiscal Service, the Debt Management Service is the business area responsible for administering programs and services related to delinquent debt collection. When a debt is referred to Fiscal Service for collection, the debt remains a debt owed to the creditor agency, in this case, OSHA. Fiscal Service collects a fee from payments made on the debt it has serviced. Any payment received by a creditor agency for a debt that has been referred to Fiscal Service must be reported to allow Fiscal Service to properly assess its fees. A creditor agency may recall a transferred debt when the debtor is bankrupt, the debt is not enforceable, or a mistake is found in its delinquency status, validity, or any reason that would render its debt certification⁴ invalid.

OSHA is authorized to levy fines against employers who violate OSHA safety regulations. Unpaid fines become debts owed to the agency. Pursuant to DCIA, OSHA must refer any debts over 180 days past due to Fiscal Service for collection.

In conducting our review of the allegations, we performed the following: (1) reviewed applicable Federal laws and regulations and Treasury policies and

¹ Recall is notification by the creditor agency that Fiscal Service must cease its debt collection efforts for a particular debt and that the responsibilities for servicing, collecting, or compromising the debt have been transferred back to the creditor agency.

² OSHA Field Operations Manual, Directive Number CPL-02-00-160, Chapter 6, , Section XIV, Debt Collection Procedures, 6-28, August 2, 2016, states that uncollectible debts are recalled from Treasury after 3 years.

³ Public Law 104-134 (April 26, 1996)

⁴ When a creditor agency refers a debt to Fiscal Service, the creditor agency certifies on behalf of the agency head that, among other things, the referred debts are valid, delinquent, and legally enforceable, that there are no bars to collection, and that all required due process has been provided.

procedures relevant to Fiscal Service's administration of its debt collection responsibilities; (2) reviewed relevant documentation produced by Fiscal Service related to debt referral services; (3) interviewed key Fiscal Service personnel with responsibilities related to debt collection services; (4) interviewed contractors with responsibilities for the development of Fiscal Service's new debt collection system,⁵ and (5) coordinated with Labor OIG officials on their review of the issues related to OSHA.

Results in Brief

We found that (1) Fiscal Service did not take action to process \$91.5 million in transferred OSHA debts because of a software problem with CS-NG; (2) OSHA paid Fiscal Service collection fees for debts where Fiscal Service took no collection action; and (3) OSHA paid Fiscal Service collection fees on debts that OSHA recalled.

From the date of the CS-NG launch on October 30, 2017 through the end of fiscal year 2019, OSHA referred 11,320 debts, valued at \$97.0 million, to Fiscal Service for cross-servicing. Fiscal Service did not perform cross-servicing for 10,904 of these debts, valued at \$91.5 million because of a software problem with CS-NG. Cross-servicing efforts for the remaining 416 debts, valued at \$5.5 million, were not impacted by the system issue and Fiscal Service took steps to collect the debt, including issuing demand letters.⁶

Of the \$97 million in OSHA debt referred during the period from October 30, 2017 through September 30, 2019, a total of \$914,933 was collected and fees paid to Fiscal Service totaled \$177,702. Of the \$914,933 collected, Fiscal Service did not perform cross-servicing for OSHA debts valued at \$576,736 but received \$132,911 in related cross-servicing fees. In addition, OSHA collected \$186,281 of recalled debts and still paid \$43,257 in fees to Fiscal Service although these debts were no longer being serviced by Fiscal Service. In total, OSHA recalled 730 debts valued at \$6.7 million from Fiscal Service. Labor OIG's memorandum provides details on the recall of OSHA's debts.

⁵ On October 30, 2017, Fiscal Service launched Cross Servicing-Next Generation (CS-NG) also known as Artiva, a customized web-based cross-servicing system. Cross-Servicing is a consolidated Government-wide program operated by Fiscal Service that fulfills the requirement of the Debt Collection Improvement Act of 1996 to collect delinquent, non-tax debt on behalf of federal agencies.

⁶ A demand letter is a written notification sent by the agency to the debtor to notify the debtor of the debt's delinquent status when the debt is not resolved after the initial contact with the debtor. This is the first step in Fiscal Service's debt collection effort.

Review Results

Relevant information as it relates to Fiscal Service's administration of OSHA's debt referrals are provided below.

- (1) ***Allegation: Neither Treasury nor OSHA officials have taken appropriate action to ensure that OSHA's debt referrals are processed, resulting in \$79 million of uncollected debts.***

We confirmed the existence of a problem with Fiscal Service's CS-NG debt system that prevented Fiscal Service from processing OSHA's debt referrals. On October 30, 2017, Fiscal Service retired FedDebt⁷ and launched CS-NG. After the CS-NG launch, through September 30, 2019, OSHA referred 11,320 debts, valued at \$97.0 million, to Fiscal Service for cross-servicing. However, demand letters for 10,904 of these debts, valued at \$91.5 million, were not mailed because debtor addresses in the business contact address field in OSHA's delinquent debt files did not properly load into CS-NG. Due to a software problem, the debtor address loads into CS-NG in the authorized third party field and not the debtor's primary address field. CS-NG requires the debtor's primary address field to be populated in order to generate and mail demand letters. Because of this error, debtor's contact address fields are blank and demand letters were not generated.

In accordance with the *Managing Federal Receivables*⁸ guide, an agency must notify the debtor of the delinquency status through a written demand letter. Demand letters are to be automatically generated within 30 hours after debts are referred to Fiscal Service, and mailed to debtors. Once demand letters have been mailed, Fiscal Service can begin its cross-servicing efforts, including contacting the debtor by phone within 10 days. However, because demand letters were not generated, Fiscal Service did not start cross-servicing efforts. We asked the Director of Cross-Servicing, who also serves as the system owner of CS-NG, if he was aware of any issues with OSHA's delinquent debt system interfacing with CS-NG. He stated that he was first made aware that OSHA's debt referral addresses were not populating into CS-NG in September 2019 in response to this inquiry. He also noted that OSHA's issues were first reported via Jira,⁹ an online software development tool. We requested and reviewed all Jira service request tickets related to OSHA's debt referrals and determined that Fiscal Service personnel were made aware of the software problem with the addresses on several occasions, with the first notification occurring in January 2018.

⁷ FedDebt was an in-house customized web-based cross-servicing system implemented in 2005 by Fiscal Service's Debt Management Service.

⁸ *Managing Federal Receivables – A Guide for Managing Loans and Administrative Debt*, Rev. March 2015.

⁹ Jira is a software development tool used for bug tracking, issue tracking, and project management.

In January 2018, a Jira service request ticket reported that 17,203 of OSHA's debts migrated from FedDebt to CS-NG without addresses. As reported in this service request, debtor addresses in the business contact field in FedDebt migrated incorrectly to CS-NG in the authorized third party field. This service request included a list of CS-NG account identification numbers whose data in the authorized third party field matched the data in the business contact field in FedDebt under the same account identification number. We noted that demand letters were mailed for 98 percent of these debts and that this service request was (1) unassigned, (2) classified as a minor priority, and (3) unresolved at the time of our inquiry. We also noted there was no formal process to classify, monitor, prioritize, and resolve this service request. Further, Fiscal Service did not have a plan to resolve this issue.

In February 2018, a Jira service request ticket reported that OSHA's debt referrals were populating into CS-NG without the debtor's primary addresses. Similar to the January 2018 issue, CS-NG loaded OSHA's business contact data in the authorized third party field, leaving the debtor's primary address field blank, although OSHA included addresses in its debt referral files. We note that this service request was (1) unassigned, (2) classified as a major priority, and (3) marked as closed. We asked Fiscal Service personnel why this ticket was closed if the issue remains unresolved and were told that the issue was included in a May 2018 Jira service ticket described below.

In May 2018, a Jira service request ticket reported issues similar to those identified in January and February 2018 and that demand letters were not being mailed to debtor's whose address is a business. We note that this service ticket was (1) unassigned, (2) classified as critical, and (3) unresolved at the time of our inquiry.

In April 2019, a Jira service request reported there were 8,000 of OSHA's debts where demand letters had not been generated. This service request stated that creditor agencies can submit debts and list business contacts as the entity to receive the demand letter. However, if the creditor agency only provides a business contact and not a primary address, a demand letter will not be generated. Further, once the initial 30 hour timeframe for issuing the demand letter passes, demand letters will not be mailed. We note that this service ticket was (1) assigned, (2) classified as a major priority, but (3) unresolved at the time of our inquiry. Fiscal Service personnel told us that they believe that the issues identified in this letter impact creditor agencies who submit debts with only a business contact address and no primary address. Fiscal Service subsequently confirmed that four other federal agencies were impacted by this address issue.

Creditor agencies are ultimately responsible for the accuracy of the debt information submitted and must provide updates and corrections of debtor information on a timely basis to Fiscal Service. However, we noted that the

debtor's primary address field, a requirement for debt referrals, was generally blank and not rejected during the debt referral submission process. While there are validation codes in CS-NG that require the debtor's primary address field to be populated before generating demand letters, there is no "reject code" to notify Fiscal Service or agencies that the debtor's primary address field did not load into the system. In addition, we noted concerns with Fiscal Service's CS-NG project management practices. Specifically, after the CS-NG launch, there was no formal process to track, monitor, prioritize, and resolve service request tickets submitted to Jira. We asked Fiscal Service personnel the status on the issues identified in Jira. While the January 2018 issue was unresolved at the time of our inquiry, Fiscal Service stated that it is working with its software developer to address the February and May 2018 and April 2019 service request tickets. We note that a timeline for these resolutions was not provided or established. The fact that these tickets were unresolved without a timeline for resolution confirms mismanagement and impacts the government's ability to collect on these debts. In August 2000, the Government Accountability Office (GAO)¹⁰ attested to the importance of timely delinquent debt recovery efforts to increase the likelihood of collection. GAO provided evidence that the likelihood of debt collection diminishes as delinquent debt ages. Until the issues identified in this letter are addressed, Fiscal Service's cross-servicing efforts for OSHA and the other four creditor agencies will be delayed. The longer these delinquent debts remain outstanding without collection efforts performed, the likelihood of collection diminishes and results in a potential waste of funds for the government.

(2) Allegation: 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.

OSHA paid collection fees to Fiscal Service on debts Fiscal Service took no action to collect. Fees are only paid on debts collected. Of the \$914,933 total debt collected, \$609,524 was paid directly to OSHA. Fiscal Service did not perform cross-servicing for \$576,736 of the \$609,524 paid to OSHA but received \$132,911 in cross-servicing fees. In accordance with the DCIA, Fiscal Service is authorized to charge fees to cover the costs of servicing debts referrals. Fees are based on all collections received after the transfer of the debt from the creditor agency to Fiscal Service. Creditor agencies are required to charge debtors for the cost of collection including the fees charged by Fiscal Service. In the *Managing Federal Receivables* guide, a creditor agency must stop its own collection activity related to debts referred to Fiscal Service. Any payments received by the creditor agency for a debt that has been referred to Fiscal Service for cross-servicing must be reported to allow Fiscal Service to properly assess its fees. While cross-servicing

¹⁰ GAO, Treasury Faces Challenges in Implementing Its Cross-Servicing Initiative, GAO/AIMD-00-234 (August 4, 2000)

fees are paid by the debtor to Fiscal Service when payments are made, the *Treasury Financial Manual* states that Fiscal Service will refund creditor agencies any fees it erroneously charged, regardless of whether Fiscal Service or the creditor agency caused the error. We believe Fiscal Service and OSHA officials should discuss the propriety of cross-servicing fees OSHA paid to Fiscal Service for debts where Fiscal Service mailed no demand letters or took any action to collect the debt. Fiscal Service officials acknowledged and agreed with this recommendation.

(3) Allegation: OSHA officials have recently begun recalling debts from Treasury that are under 3 years old, preventing Treasury from attempting to collect on them as required.

After the CS-NG launch, through September 30, 2019, it was the system software problem related to debtor addresses that prevented Fiscal Service from collecting on 10,904 of OSHA's debts, valued at \$91.5 million. OSHA recalled 730 of these debts valued at \$6.7 million during this period. Among the recalled debts, OSHA collected \$186,821 of its own debt and erroneously paid \$43,257 in fees to Fiscal Service when these debts were no longer serviced by Fiscal Service. While we are unable to verify the age of the debts recalled, we are able to confirm that that these debts were referred to Treasury less than two years ago. In accordance with the *Treasury Financial Manual*, creditor agencies have the authority to recall transferred debt if any of the following exist:

- The debtor has filed for bankruptcy and an automatic stay¹¹ is in effect;
- The debt is not enforceable;
- The debt is not delinquent;
- The debt is not valid or has been paid in full;
- The creditor agency discovers that it incorrectly certified¹² the debt; or
- The creditor agency discovers any other reason that would render its certification invalid.

In our review of OSHA's 730 debts that were recalled, we noted the following reasons, annotating the number of applicable debts:

- OSHA forgave the debt (258)
- Return to agency rolls (237)
- Debt referred in error (181)
- Legal reason (30)
- Debtor has filed for bankruptcy (19)
- Debtor out of business (3)
- Debt paid in full (2)

¹¹ An automatic stay in bankruptcy temporarily stops debt collection efforts.

¹² See Footnote 4.

Fiscal Service does not require creditor agencies to provide a detailed explanation for recalling debt. However, upon the return of recalled debt, the creditor agency is obligated to service, collect, or compromise the debt, or must suspend or terminate collection action on the debt. Alternatively, the creditor agency may transfer previously recalled debts back to Fiscal Service for servicing if appropriate. We believe Fiscal Service and OSHA officials should discuss the propriety of cross-servicing fees OSHA paid to Fiscal Service for recalled debts. Fiscal Service officials acknowledged and agreed with this recommendation.

(4) The issues impacting OSHA may impact other government organizations served by Fiscal Service.

During our efforts to validate the allegations, Fiscal Service personnel told us that the issues identified in this memorandum impact at least four creditor agencies in addition to OSHA that submit debts with only a business contact address and no primary address. Based on our review, we agree that the issues impacting OSHA impact other government agencies served by Fiscal Service. Thus, we are conducting an audit of Fiscal Service's transition to CS-NG to determine the impact on other government agencies.

Conclusion

We confirmed Fiscal Service did not perform cross-servicing on multiple debts referred by OSHA due to the CS-NG software problem. Both Fiscal Service and OSHA were aware of the issue with CS-NG but the issue was unresolved at the time of our inquiry, despite being brought to Fiscal Service's attention as early as January 2018. After our review, Fiscal Service identified four other federal agencies impacted by this issue. Fiscal Service mismanaged this CS-NG software problem which impacts the government's ability to collect on the delinquent debts. The longer delinquent debts remain outstanding without collection efforts performed, the likelihood of collection diminishes and results in a potential waste of funds for the government. We also confirmed that fees paid to Fiscal Service were largely based on collections received after the transfer of the debt from OSHA. However, we identified instances in which OSHA collected its own debt and paid cross-servicing fees on debts Fiscal Service either never serviced, or no longer services.

Fiscal Service officials stated that they have made progress in addressing issues regarding the servicing of OSHA's debt since we concluded our review. Fiscal Service officials noted that they have (1) implemented a system change that prevents debts from getting stuck in the initial phase if no primary address is provided; (2) ensured that all OSHA debts that were stuck in the initial phase due to the address issue were moved into a workflow for collection action; (3) worked

with OSHA to develop and test a solution to correct OSHA's referral files by providing primary addresses in its batch file; (4) begun working with OSHA to determine whether a refund of cross-servicing fees is appropriate when Fiscal Service did not engage in any collection action; and (5) resolved the January and May 2018 and April 2019 JIRA service request tickets. We have not validated Fiscal Service's stated corrective actions.

Based on the results of this review, in January 2020, we initiated an audit of Fiscal Service's transition from FedDebt to CS-NG and related project management practices. The objectives of this audit are to assess Fiscal Service's (1) transfer of data from FedDebt to CS-NG; (2) requirements for creditor agencies for submission of data to CS-NG; (3) internal controls over the receipt of data submissions from creditor agencies; and (4) timeliness of delinquent debt referrals and cross-servicing efforts and the impact on the collectability of delinquent debt. We will also validate Fiscal Service's corrective actions made in response to this inquiry.

If you or members of your staff are interested in a briefing on our response you may contact me at (202) 927-3973 or Deborah Harker, Assistant Inspector General for Audit, at (202) 927-5400.

Cc: Brian Callanan, General Counsel, Department of the Treasury
Eugene Scalia, Secretary of Labor
Scott S. Dahl, Inspector General, Department of Labor