



DEPARTMENT OF THE TREASURY
BUREAU OF THE FISCAL SERVICE
WASHINGTON, DC 20227

May 12, 2020

Henry J. Kerner
Special Counsel
U.S. Office of Special Counsel
1730 M Street, NW, Suite 300
Washington, D.C. 20036

Dear Mr. Kerner:

I write in reply to your letter of September 10, 2019, concerning how Treasury's Bureau of the Fiscal Service (Fiscal Service) processed delinquent debts owed to the Department of Labor's Occupational Safety and Health Administration (OSHA).

Upon receiving your letter, Treasury's Office of General Counsel requested that Treasury's Office of the Inspector General (OIG) conduct a review of these matters. We worked with OIG over the past several months to assess the issues described in your letter, and OIG concluded its review on February 27, 2020. A copy of the findings is enclosed.

Fiscal Service acknowledges the findings in OIG's report, all of which stemmed from errors in the business rules used by Fiscal Service's debt collection system. The errors caused debts in the system to remain inactive and caused Fiscal Service to incorrectly charge fees on some of these debts. Fiscal Service has addressed all findings and has implemented OIG's recommendations.

Specifically, the following actions have taken place:

- Fiscal Service has corrected the business rule defect and is now actively collecting all OSHA debts and any other agency debts that were affected by this defect.
- Fiscal Service has implemented a robust governance structure to prioritize and identify defects and enhancements with its debt collection system.
- Fiscal Service has returned all erroneously collected fees.

Thank you for the opportunity to respond to your letter. If you would like to discuss this matter further, please contact Jeff Schramek, Deputy Commissioner for Financial Services and Operations at 202-874-7000.

Sincerely,

A handwritten signature in blue ink that reads "Tim Gribben".

Timothy E. Gribben
Commissioner

cc: DOL
Enclosure



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

Attachment A

Memorandum from Treasury Office of General Counsel to Treasury Inspector
General Request to Initiate Review



GENERAL COUNSEL

DEPARTMENT OF THE TREASURY
WASHINGTON, D.C.

September 23, 2019

**MEMORANDUM FOR ACTING TREASURY INSPECTOR GENERAL
RICHARD DELMAR**

FROM: Brian R. Callanan, General Counsel *BRC*

SUBJECT: Request to Initiate Review

The attached letter from the Special Counsel (OSC) to Secretary Mnuchin recently came to my attention. Consistent with past practice, I request that you initiate, on an expedited basis, an appropriate review of the matters referred to the Department by OSC.

As explained in the attached letter, OSC has statutory authority to receive disclosures of information from federal employees alleging violations of law, rule, or regulation, gross mismanagement, gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety (5 U.S.C. § 1213(a) and (b)). If OSC finds on the basis of the information disclosed that there is a substantial likelihood that one of these conditions exists, OSC is required to advise the agency of its findings, and the agency head is required to conduct an investigation of the allegations and prepare a report (5 U.S.C. § 1213(c)).

In its referral, OSC describes an alleged whistleblower disclosure with respect to which OSC believes there is a substantial likelihood of a violation of law, rule, or regulation. Accordingly, please conduct an investigation and prepare a report consistent with the requirements of 5 U.S.C. § 1213 (including subsection (d)). As you know, § 1213(c)(1)(B) requires the report to be submitted to OSC within 60 days of the receipt of the referral letter. Because the Secretary will need to review and sign the report (or delegate that responsibility), please provide it to him with sufficient lead time prior to the OSC deadline of November 11, 2019.

Please feel free to contact me if you have any questions.

ATTACHMENT

Tab 1: Letter from Special Counsel Henry J. Kerner re: OSC File No. DI-19-4553,
September 10, 2019

TAB 1



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
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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.

The Special Counsel

The Honorable Patrick Pizzella
The Honorable Steven Mnuchin
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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).