



March 16, 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,
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 reported 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 have been 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.

Summary of OSHA's Response

OSHA agreed there were instances in which its debt collection actions did not adhere to procedures specified in its Field Operations Manual and the Debt Collection Improvement Act of 1996, but stated that some of the failures identified were not within the agency's control. It stated it concurred with our recommendations and was working aggressively to rectify the identified concerns through a review of existing processes, procedures, policies, and documentation.

OSHA's response to our draft memorandum is included in Attachment A.

Attachment

cc: James Williams
Chief Financial Officer

Robert Sanders
OSHA Audit Liaison

ATTACHMENT A: AGENCY'S RESPONSE TO MEMORANDUM

U.S. Department of Labor

Occupational Safety and Health Administration
Washington, D.C. 20210



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