

**OFFICE OF INSPECTOR GENERAL**

**EVALUATION OF THE COMMISSION'S  
NON-TAX DEBT AND DEBT COLLECTION PRACTICES**

**Inspection Report IG-04-99**

June 28, 1999

## **I. BACKGROUND**

Significant Congressional concern regarding the estimated \$60 billion in non-tax delinquent debt owed to the federal government prompted Congress to enact the Debt Collection Improvement Act (DCIA) on April 26, 1996. The DCIA requires individual program agencies to aggressively pursue the collection of debt once it becomes 30 days delinquent. In order to collect the debt, a program agency may employ collection tools such as demand letters, negotiated repayment agreements, wage garnishment, debt sales, and other means to collect non-tax delinquent debt. Also, the DCIA requires program agencies to reduce losses arising from outstanding debts by requiring proper screening of potential borrowers, aggressive monitoring of accounts, and sharing of information among federal agencies.

The DCIA specifically mandates that federal agencies, with certain exceptions, transfer non-tax debt that is over 180 days delinquent to the U.S. Department of Treasury (Treasury) for collection. Treasury utilizes both centralized administrative offset and government-wide cross-servicing to facilitate collection of the non-tax delinquent debt.

In order to implement the provisions of the DCIA, the Commission issued interim Debt Collection regulations 19 C.F.R. sections 201.201 through 201.208 on July 16, 1997.

## **II. DEBT MANAGEMENT ACTIVITIES**

The DCIA and the regulations promulgated under the DCIA facilitate the timely and cost-effective collection of government debts while simultaneously protecting debtors' rights. The Director of the Office of Finance and Budget (OFB) has primary responsibility for collecting debts owed to the Commission.

The Office of Inspector General (OIG) found that in two circumstances, the Director OFB did not follow regulations or exercise good financial management in collecting debt owed to the Commission. In one collection action, the Director OFB initiated an involuntary offset when instructed to collect voluntary payments from employees for nearly \$3,000 in repayment of car pool subsidies. The procedures ultimately used to collect this debt did not conform to Commission regulations. In the second situation, occurring from 1996 to 1998, the Director OFB did not attempt to collect nearly \$7,000 in debt payable to the Commission from salary and health benefit overpayments after notices were issued by the payroll system to the Director OFB.

### **A. Recent Collection Activity - Car Pool Subsidies**

Recently, the Commission failed to follow DCIA regulations and standards in the collection of \$2,845.44 in car pool subsidies from five employees. This failure resulted in an ineffective collection effort that led to unnecessary confusion on the part of both employees and management regarding the debt collection process. Note that the failure to follow established regulations and standards did not affect the substantive rights of these employees.

The only action necessary to collect this debt on the part of the Director OFB was to obtain a signed statement regarding the negotiated payment plan from the employees. The Director OFB did not follow this course of action. Instead, she initiated formal offset procedures that constituted a hybrid of the Commission's salary offset and the administrative offset regulations. During each step of the process, the employees were afforded more leniency or protection than provided in the regulations. It is highly likely that as a result of not following the regulations, the Commission expended more costs in terms of managerial and employee salaries than the sums collected.

## 1. Compromise of Voluntary Debt Payment

The Chairman has broad compromise authority for debts under \$100,000.<sup>2</sup> There are no real substantive prerequisites to exercising compromise authority except where an agency plans to report the debt to a consumer reporting agency. The Commission's compromise authority has been delegated to the Director OFB.<sup>3</sup> Notably, compromise authority must be used prior to collecting a debt by administrative offset.<sup>4</sup>

The Director of Administration determined that five employees who had received car pool subsidies from July 1997 to December 1997 were not entitled to those subsidies. Thus, the improperly received subsidies constituted a debt to the Commission. In September of 1998, in consultation with the Director of Personnel, the Director of Administration and the respective supervisor met individually with each of five debtor employees regarding both a written reprimand for the employees' conduct in relation to their car pool application and repayment of the associated subsidy. During the course of those meetings, in which the employees were represented by their union, the employees indicated a willingness to make voluntarily restitution. As a concession to the employees, the Commission representatives agreed that the employees could specify the amount of payroll deductions to the Director OFB. The letter of reprimand would remain in their personal folders until full payment was received or two years had passed, whichever came first.

The Assistant Director of Personnel wrote the names of the five employees and the amount each of the employees owed on a note and gave the note to the Finance Division Chief. The Assistant Director of Personnel told the Finance Division Chief that the employees would be contacting the Finance Division to arrange acceptable payment terms through payroll deductions. The Finance Division Chief forwarded the note to the Director OFB. The

### FINDINGS RE: Subsidies Collection

- Procedures for involuntary debt collection were initiated rather than making voluntary payment arrangements.
- The memoranda issued to employees did not completely conform to the written regulations.
- The appropriate offset regulations were not followed.
- A non-binding mediation process was initiated that is not a part of the offset regulations.
- An unnecessary oral hearing was held on matters that could have been handled in a "paper hearing."
- Employees were given a choice of hearing officials.
- The scope of the debt collection hearings was improperly expanded beyond the intended purpose of the hearings.
- The Commission's court reporting services were unnecessarily used.
- The debts were compromised by accepting payment in amounts less than the promulgated guidelines. These payments were received without interest, administrative fees, or any documentation from the debtors regarding financial hardship.

<sup>2</sup> 5 U.S.C. § 3711(a)(2). Federal Claims Collection Standards, 4 C.F.R. §§ 101.1 et seq provide some guidance in exercising compromise authority. However, these standards are not binding and failure to follow them is not an available defense to a debtor. See 4 C.F.R. § 101.8. *See also* Appendix A.

<sup>3</sup> 19 C.F.R. § 201.203(b). *See* Appendix A.

<sup>4</sup> 31 U.S.C. § 3716 states that "[a]fter trying to collect a claim from a person under section 3711(a) of this title, the head of an [agency] may collect the claim by administrative offset."

Director OFB immediately sent an e-mail to the Assistant Director of Personnel stating that the note

was not “official” and that a signed memorandum on letterhead was necessary to proceed.<sup>5</sup> The Director of Personnel complied with this demand by preparing an one-paragraph memorandum which included the same names and amounts as the handwritten note.

No laws, regulations or directives require this type of memorandum to precipitate a voluntary payment of debt. According to the Chief of the Debt Management Branch of the U. S. Department of the Interior (Interior), all that is procedurally necessary to effectuate a voluntary payment of debt by payroll deduction is a signed statement from an employee specifying the payment terms and authorizing a deduction.

The Director OFB, during an OIG interview in May of 1999, acknowledged that this would be the minimum documentation necessary for receiving a voluntary payment of a debt. However, in October of 1998, she did not render this advice to the Director of Administration. Instead, she implied that additional procedural requirements were necessary. Additionally, during the May interview, the Director OFB claimed she did not know that the employees agreed to make voluntary payments. The credibility of this explanation is questionable based on the fact that an e-mail from the Director of Administration to the Director OFB clearly stated, “they are agreeing to pay the debt.”<sup>6</sup> The Director OFB responded, “This is not a simple matter. There are procedures for notifying employees of a debt in accordance with the [DCIA], 4 CFR, and 31 U.S.C.” The statutes cited by the Director OFB do not add any substantive requirements prior to accepting voluntary payments for a debt.

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***To obtain a voluntary payment of debt by payroll deduction all that is procedurally necessary is a signed statement from an employee specifying the payment terms and authorizing a deduction.***

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Instead of facilitating the voluntary payments of the employees, the Director OFB requested a “letter of

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<sup>5</sup> The Director OFB stated that “[t]his action was viewed as a circumvention of the Commission’s established procedures as outlined in 19 CFR. The action not only had the potential to jeopardize the fiduciary duties and responsibilities of the Director of Finance and Budget; but also, expose the Commission to a liability that could result in litigation.” Reviewing Official’s Determination to the Commission and Employees Regarding Debts Associated with the Car Pool Application Process dated February 3, 1999 [hereinafter Director OFB Determination]. The Director OFB could not adequately explain the basis for this finding.

<sup>6</sup> Additionally, the Director OFB stated she had no contacts with the employees. Thus, the employees did not contribute to her conclusion that this was an involuntary debt collection. However, in her written response to the draft of this report, the Director OFB stated, “[f]our of the five employees verbally informed the Director OFB that they had decided to dispute the debt prior to the issuance of the ‘letter of indebtedness.’” Also in her response, the Director OFB stated that it was necessary to take involuntary action because Commission representatives did not obtain the “minimum documentation” necessary for voluntary payments. Note under the Commission regulations, the Director OFB is delegated the responsibility to obtain the necessary documentation.

indebtedness” from the General Counsel (GC). Under DCIA or the Commission’s regulations, there is no such thing as a “letter of indebtedness.” One of two documents could be construed as a “letter of indebtedness.” These documents are “demand letters” and “Notices of Intent to Offset.”<sup>7</sup> The Director OFB stated that the “letter of indebtedness” was not meant to be a demand letter.<sup>8</sup> The Director OFB could not cite any authority that would have required issuance of a “letter of indebtedness” in order to receive voluntary payments.

## 2. Choosing an Offset

In contrast to the compromise authority discussed previously, the offset authority to collect a debt has prerequisites. Since offset is an involuntary method of collecting a debt, written notice advising the debtor of his or her rights must be given prior to effecting an offset.

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***The source of the funds the agency intends to offset dictates which offset procedure is used.***

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Salary offset<sup>9</sup> and administrative offset<sup>10</sup> are separate and distinct methods for collecting debts owed to the Commission. The two methods have many procedural similarities. Salary offset means “an administrative offset to collect a debt under 5 U.S.C. § 5514 by deduction(s) at one or more officially established pay intervals from the current pay account of an employee without his or her consent.”<sup>11</sup>

An administrative offset is generally used for debtors who are not current employees or where a debt is going to be deducted from some other payment the Government may owe the debtor, such as Civil Service Retirement Funds, Disability Funds, or Tax Refunds.

Thus, the source of the funds the agency intends to offset dictates which offset procedure is used. The

### **Salary Offset**

- Collect from current pay account
- Written notice: 19 requirements
- Voluntary repayment agreements
- Right to inspect records
- Oral or paper hearing
- Requested within 15 days
- Neutral hearing official

### **Administrative Offset**

- Collect from other source
- Written notice: 4 requirements
- Voluntary repayment agreements
- Right to inspect records
- Oral or paper hearing
- Requested within 30 days

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<sup>7</sup> In compromising debts under Federal Claims Collections Standards, an agency generally sends out a “demand letter” to inform the debtor of the basis of the debt, rights to seek review, standards for assessing interest, penalties and administrative costs and payment dates. Such a letter is not required and in these cases would have been unnecessary since the employees were made aware of the debt orally and at that time voluntarily agreed to pay the debt. “Notice of Intent to Offset” is discussed in the next section.

<sup>8</sup> The Director OFB meant to request a letter similar to ones drafted by the GC and signed by the Chairman in the past. The past example the Director OFB cited did not involve a voluntary payment of debt such as the debt in this situation. The previous letters were also written prior to the adoption of the current Commission regulations.

<sup>9</sup> 19 C.F.R. § 201.204.

<sup>10</sup> 19 C.F.R. § 201.206.

<sup>11</sup> 5 C.F.R. § 550.1103.

Commission would use a salary offset when an employee is on the Commission's payroll.

OIG review found that the Director OFB did not have a complete understanding of when a particular type of offset should be used, a fact evidenced by the collection of these debts. She stated that in practice, the type of offset used is generally determined by her office and the GC. In collecting these debts, the Director OFB thought the administrative offset procedure should be used.

### 3. Notice of Intent to Offset

Although both salary offset and the administrative offset regulations require a "Notice of Intent to Offset," the substance of the notices are different. The salary offset has 19 specific items that are to be incorporated in the notice, whereas the administrative offset notice has 4 general items. Under both regulations, the notice advises debtors of the right to a hearing or agency review of the determination of indebtedness. The salary offset regulations require that a request for a hearing must be made in writing within 15 days, while the administrative offset regulations require that a request must be made in 30 days. Additionally, the hearing official for a salary offset is an Administrative Law Judge or other neutral official, while the hearing official for an administrative offset is the Director OFB.

In response to the Director OFB's request for a "Letter of Indebtedness," the GC provided a memorandum that substantially complied with the requirements of the salary offset notice.<sup>12</sup> The memorandum included 18 of the substantive requirements of the salary offset regulations; the only requirement not included is a notice that payments made on debts subsequently found to be not owed or waived will be refunded.<sup>13</sup> The memorandum did not use the explicit language of the regulation in informing employees of their rights. The memorandum also deviated from the substantive requirements of the salary offset regulations by giving the employees 30 days instead of 15 days to request a hearing and to request to inspect records. According to the Assistant General Counsel, less formal language was used in recognition that legalese could have a tendency to scare off the employees who were at one time willing to make voluntary payments. A decision was made to be cautious and provide a longer period of time for the employees to exercise their rights.

The Director OFB reviewed and commented on a draft of the OGC "Letter of Indebtedness." She incorporated the "Letter of Indebtedness" into memorandum FB-V-40 which was issued as a separate memoranda addressed individually to each of the five employees. The subject line on these memoranda stated, "Repayment of Debt." With the issuance of these memoranda, the Commission initiated an involuntary offset under the Commission regulations. However, the GC stated that in drafting the memorandum, it "understood that the debtors had voluntarily agreed to pay their debts, and drafted the memorandum to satisfy the Director's concern for due process while not necessarily ending voluntary repayment, rather than to immediately institute an involuntary collection process."

Memorandum FB-V-40 did not specifically state the type of offset that would be used to collect the debt, but did describe how the debt would be collected by regular deductions to the employees' pay.

### 4. Mediation

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<sup>12</sup> The GC provided the Director OFB with a form letter that was also referred to as a "Letter of Indebtedness" as an attachment to GC-V-242.

<sup>13</sup> The OIG considers this a harmless omission because OIG assumes the Commission would repay the employees if the debts were subsequently found to be invalid.

Generally, mediation is a cost-saving process. However, when collecting debt by involuntary offset, mediation merely adds administrative costs. Thus, neither the salary offset nor the administrative offset regulations require or suggest using mediation. The regulations already institute the most efficient method for debt collection while maintaining debtor rights. During this debt collection, the Director OFB unnecessarily added administrative costs by using non-binding mediation.<sup>14</sup>

## 5. Hearing

Both the administrative offset and salary offset regulations permit a debtor to request an oral hearing. Under the offset regulations, a debtor is entitled to an oral hearing where either (1) the debtor is entitled to a waiver and the waiver determination rests on an issue of credibility or (2) the debtor requests reconsideration of the debt and “the Commission determines that the question of the indebtedness cannot be resolved by review of documentary evidence, for example when the validity of the debt turns on an issue of credibility or veracity.”<sup>15</sup>

Four of the employees made separate but identical written requests for hearings pursuant to the salary offset regulations. The Director OFB granted the employees’ request for an oral hearing under the administrative offset regulations.<sup>16</sup> Because of the confusion over whether this offset was a salary or administrative offset, the Director of Administration gave the employees a choice as to whether the hearing officer was a neutral hearing officer pursuant to the salary offset regulations or the Director OFB pursuant to the administrative offset regulations. He cited several reasons for doing so, including the lack of clarity in the notice, the conflicting provisions of the notice, avoidance of future litigation, and promotion of the interests of procedural fairness. The employees chose to have the Director OFB conduct the review.

The Director OFB incorrectly and unnecessarily afforded the employees the right to an oral hearing. In fact, at the oral hearing, the employees did not even testify and did not advance arguments that they did not receive the car pool benefits or that they were entitled to receive the benefits.<sup>17</sup> Most of the hearing was spent discussing content and timing of the written submissions. No factual information was presented at the hearing.

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<sup>14</sup> Several mediation sessions took place and were attended by the Director of Administration, two members of the Director of Administration’s staff, the four employees who requested hearings, union representatives and an Environmental Protection Agency mediator. According to the Director of Administration, he did not object to the mediation but later acknowledged that it accomplished nothing.

<sup>15</sup> 19 C.F.R. § 201.206. See also 19 C.F.R. § 201.204.

<sup>16</sup> Under these regulations, an oral hearing must be specifically requested, and “an explanation as to why the matter can not be resolved by documentary evidence alone, . . . and must fully identify and explain with reasonable specificity all the facts, evidence, and witnesses, if any, that the employee believes support his or her position.” If the regulations had been followed the employees’ written request did not satisfy these requirements of the salary offset regulations. Additionally, the salary offset hearing official would have made the determination as to the necessity of an oral hearing, not the Director OFB who only does so under an administrative offset.

<sup>17</sup> The Statement of Employees to Director OFB Regarding Alleged Car Pool Debt stated, “[t]he facts leading to Management’s allegation that violations occurred giving rise to these alleged debts are not at issue in this proceeding.”

## 6. Proper Use of Resources

Under the offset regulations, the hearing is not a formal evidentiary hearing. However, significant matters discussed at the hearing should be documented. For these hearings, the Director OFB requested that a court reporter produce a verbatim transcript. Additionally, upon making her determination regarding the debt, the Director OFB convened all of the parties for the sole reason of distributing her written determination. The Director OFB requested that this hearing, which lasted less than 5 minutes, be transcribed by a court reporter as well. The use of a court reporter was unnecessary and wasteful considering the content of the discussions, especially because the employees were not contesting facts.

## 7. Scope of Hearings

The proper scope of a debt hearing is: 1) whether factually the debtor is the correct party; 2) whether the debt was calculated properly; 3) whether the program the debt arose under prohibits the type of offset contemplated; and 4) whether proper procedures were followed to effectuate the offset.<sup>18</sup> A hearing officer's determination concerning the existence of debt or the amount of an indebtedness in an offset proceeding is made only for purposes of determining whether to allow an offset. The creditor agency remains legally responsible for administering the program in which the debt arose. Thus, a hearing officer's determination does not supersede the finding by the creditor agency that a debt is owed and does not affect the government's ability to recoup the indebtedness through alternative collection methods.

During the debt hearing, the employees conceded that they were the correct parties,<sup>19</sup> then raised the issue of proper calculation of debt.<sup>20</sup> The employees also advanced arguments that the collection of debt was improper under the program and arguments based on several equal protection grounds. The Director OFB partially embraced these arguments in her findings by stating that since collection of the debt was not within the penalties scope of the Car Pool Directive, the debt was invalid. She also found that although the Commission can seek restitution for amounts spent, it must do so from all 10 car pools that were investigated by OIG. Finally, she found that the collection action penalized select employees.

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<sup>18</sup> OIG notes that 2 and 4 can be easily remedied by the hearing official and that in the debt collection process, a missed procedural requirement could easily be remedied but not affect the ultimate overall outcome of the Commission's ability to initiate an offset. Additionally, since the Director OFB directs the debt collection process, any procedural irregularities are at least partly attributable to the Director OFB.

<sup>19</sup> Even though the employees did not challenge the findings that they were not entitled to the car pool subsidies, the Director OFB found in her determination that the debt was invalid.

<sup>20</sup> The determination written by the Director OFB after the hearing did not address the calculation of the amount. The Director OFB stated that because she could not calculate the debts in the same manner or in fact calculate any amount from the documents provided by the Commission, her determination did not address the debt calculation. However, the Director OFB found that the Commission could seek restitution, but did not comment on the amount of the restitution. The calculation of any debt could be challenged, but ultimately a debt that is calculated in error can be remedied.



During the hearing, the Director OFB addressed several issues that were beyond the scope of the hearing and addressed issues regarding parties that were not involved in the proceeding Equal protection arguments are not properly within the scope of debt collection hearings. Similarly, determining that collection actions penalize certain employees is beyond the scope of debt collection hearings. Furthermore, although the Director OFB may have found that under the scope of the program the debt was invalid, her determination as hearing officer does not supersede the Commission's ability to collect the debt. It is difficult to ascertain whether the Director OFB actually determined that the debt was invalid because her first finding that the debt was invalid under the scope of the Car Pool Directive is contradictory with her later assertion that the Commission may seek restitution for amounts spent.

**8. Collection of Debt**

As a result of the aforementioned contradictory opinion, the Director of Administration discounted the equal protection findings and instructed the Director OFB to collect the debts from the employees. The Director OFB then negotiated payment terms with each of the four employees obtaining signed statements to the amount of each payment to be deducted.

The payment amounts the Director OFB negotiated do not comply with Federal Claims Collection Standards.<sup>21</sup> Although the Director OFB could have involuntarily deducted up to 15% of disposable pay without the employees' consent, the Director OFB negotiated the following terms:<sup>22</sup>

<i>Employee</i>	<i>Total Debt</i>	<i>Negotiated Payment</i>	<i>Number of Pay Periods Till Payoff</i>	<i>Approximate Payoff Date</i>
1	\$483.60	<b>\$4.65</b>	104	April 2003
2	\$227.76	<b>\$2.19</b>	104	April 2003
3	\$711.36	<b>\$5.47</b>	130	April 2004
4	\$711.36	<b>\$9.12</b>	78	April 2002

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<sup>21</sup> 4 C.F.R. §§ 101.1 et seq.

<sup>22</sup> According to the Chief of the Debt Management Branch of the Department of the Interior, all that is procedurally necessary to effectuate an involuntary payment of debt by payroll deduction is a signed letter from the Commission clearly identifying the employee, total amount of debt, amount of deduction, and start date for the deduction.

A number of Federal Claims Collection Standards were violated in negotiating these payments:

- # Payments should be collected in lump sums or else financial statements should be obtained from debtors who represent that they are unable to pay lump sums;
- # Agencies should obtain legally enforceable written agreement which specifies all terms including debt acceleration provisions;
- # Size and frequency of installment payments should bear a reasonable relation to size of debt and ability to pay;
- # Installment payments should liquidate debt in less than 3 years; and
- # Payments less than \$50 should be accepted only if fully justified in terms of financial hardship.

The Director OFB stated that she was aware of the standards but also knew they were not binding; therefore, she chose to deviate from the standards. When the Director of Administration attempted to facilitate voluntary payment of these debts in September 1998, the Director OFB stated these standards were being violated, thereby implying that they were binding on the Commission. In explaining her reasons for setting these terms, the Director OFB stated that “the Commission agreed to have repayment terms at the rate determined by the employee. It was stated more than once to the Director OFB that it did not matter the amount of the repayment as long as payment was to be made.” Note this guidance was given when the payments were going to be made voluntarily.

Additionally, the Director OFB did not charge interest or administrative costs on collection of these debts. Both interest and/or administrative costs are permissible charges under DCIA. The Director OFB mistakenly advised the Director of Administration that interest and administrative costs can only be charged on delinquent debts. Under the DCIA, “agencies are authorized to assess interest and related charges on debts . . . to the extent authorized under the common law or other applicable statutory authority.”<sup>23</sup>

**Conclusion:**

***#1. The Director OFB should always try to obtain a written compromise with debtors prior to initiating formal offset procedures.***

***#2. The Director OFB should ask the GC to issue a demand letter in conformance with the Federal Claims Collection Standards in those cases where the debtors have indicated an unwillingness to compromise the debt or a situation has arisen where more formal communications to the debtors are necessary.***

***#3. The Director OFB, in future debt collection actions, should determine the proper offset procedure by deciding what debtor funds are available to satisfy the debts through offset. Where the Director OFB is unsure of which offset procedures to use, she should consult with the GC.***

***#4. The GC should prepare form Notices of Intent to Offset that conform with each of the Commission’s offset regulations. The Notices of Intent should specifically identify which type of offset the Commission intends to effectuate and should refer to the proper Commission regulations. The GC should advise the Director OFB on the proper use of the Notices.***

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<sup>23</sup> 4 C.F.R. § 102.13(i)(2).

*#5. The Director OFB should not use mediation in debt collection proceedings and should not deviate from the established procedures of the debt collection regulations.*

*#6. The Director OFB, in future debt collection actions, should apply the standards specified in the regulations in determining the sufficiency of a request for an oral hearing and whether to actually conduct an oral hearing.*

*#7. The Director OFB should refrain from using the court reporter for debt collection hearings and should simply document significant matters discussed according to the requirements of the regulations.*

*#8. The Director OFB should refrain from giving opinions on matters outside the scope of debt collection hearings and should only address matters referred to in the regulations.*

*#9. The Director OFB should follow the Federal Claims Collection Standards in collecting outstanding debts.*

## **B. Salary and Health Benefits Overpayment**

Salary adjustments are specifically exempted from salary offset and administrative offset procedural requirements. Salary adjustments are “adjustments of pay that are attributable to clerical or administrative errors or delays in processing pay documents that have occurred within the four pay periods preceding the adjustment and to any adjustment that amounts to \$50 or less.”<sup>24</sup> To collect these amounts, the Director OFB simply needs to “provide a clear and concise statement in the employee’s earnings statement advising the employee of the previous overpayment at the time the adjustment is made.”<sup>25</sup>

OIG found that 16 current and 21 former employees had incurred nearly \$7,000 in non-tax debt between January 1996 and October 1998.<sup>26</sup> About \$2,400 of this debt related to health insurance coverage. Employees are responsible for paying the agency’s share of health benefits when they are on unpaid leave status for 40 hours or more. The other \$4,600 related to salary overpayments mostly resulting from errors in compensatory time payments and hourly rates. However, in the case of one employee, salary overpayment was the result of the employee’s time and attendance fraud. The Department of the Interior, the Commission’s payroll service provider, sent notices to OFB during the pay period after the debt was incurred, but OFB took no steps to collect the amounts due. Thus, the employees received no notices regarding these debts. The Director OFB stated that collection was a low priority and the debts had to be researched before collection action was initiated. The latter statement is inaccurate, as indicated by the Commission regulations.<sup>27</sup>

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<sup>24</sup> 5 U.S.C. §5514(a)(3).

<sup>25</sup> 19 C.F.R. §201.205.

<sup>26</sup> See Appendix B.

<sup>27</sup> 19 C.F.R. §201.205. Because collection of the debts discussed in this memorandum would be untimely and were the result of administrative errors, in the interest of fairness, the Director OFB has agreed to waive these debts except in the case of one

## 1. Change in Procedure

In an attempt to facilitate the timely collection of salary adjustments in the future, the Director OFB “delegated” authority for waiver of salary adjustments to the Payroll Operations Division of the Department of the Interior (POD) (letter dated September 8, 1998). Generally, this authority allows the POD to notify Commission employees directly to either collect the salary adjustments or use waiver authority to waive the debt. According to the Director OFB, the letter was not reviewed by the GC.

OIG finds that authority “delegated” to POD by the Director OFB definitely implements more efficient procedures and the timely collection of salary adjustments. However, OIG questions the ability or the authority of the Director OFB to “delegate” powers to an individual outside the Commission or outside of her control.

***#10. The Director OFB should immediately obtain a voluntary payment for the salary overpayment from the employee who attempted to commit fraud or should initiate a salary offset if the employee refuses to voluntarily repay the salary overpayment.***

***#11. The GC should review the September 8, 1998 letter discussed herein to evaluate whether the Director OFB’s delegation of authority to the POD was proper. If it constitutes an improper delegation, the GC should suggest a proper method in which the procedures and authorities outlined in the Director OFB letter dated September 8, 1998 could be transferred to POD to retain the efficiencies of POD effectuating the salary adjustments.***

## III. RECORDING ACCOUNTS RECEIVABLE

Federal accounting policies are derived from the Statements on Federal Financial Accounting Standards (SFFAS). SFFAS No. 1, paragraph 41 addresses the recognition of receivables:

a receivable should be recognized when a federal entity establishes a claim to cash or other assets against other entities, either based on legal provisions, such as payment due date (e.g. taxes not received by the date they are due), or goods or services provided. If the exact amount is unknown, a reasonable estimate should be made.

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**“The proper recording of Accounts Receivable has been a recurring problem for the Commission.”**

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None of the debts associated with the car pool subsidies were recorded. The approximately \$7,000 in non-tax debt incurred by employees for health insurance coverage and salary overpayments were not recorded as receivables. Additionally, since 1988, there have been three Commission investigations that resulted in the assessment of civil penalties totaling \$4,250,000 against

respondents.<sup>28</sup> None of these penalties were recorded in a timely manner, and two were not recorded at all. No

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employee whose salary overpayment was the direct result of attempting to commit time and attendance fraud.

<sup>28</sup> Commission civil penalties are not considered debts subject to the specific requirements of the DCIA because DCIA specifically exempts debts under “the tariff laws of the United States.” 37 U.S.C. § 3701(d)(3). These debts are mentioned here to

debt was reported to the U.S. Treasury in FY 1997 or 1998.

Recently, OIG audited the Commission's FY 1998 and 1997 financial statements. Report No. IG-04-99 found that the Commission does not have adequate procedures to ensure that accounts receivable are recorded in a timely manner.

The report recommended that the Director of Administration establish procedures to ensure that information regarding civil penalties be provided to the Finance Division and that accounts receivable are recorded for amounts due to be collected. Thus, OIG makes no additional suggestions as to civil penalties. However, in regard to salary adjustments, even recognizing that these are small amounts, a proper accounting requires that the amounts due be recorded and reflected in the annual financial statements.

***#12. To minimize recording requirements, the Director OFB should ensure that the Finance Officer records amounts due in a supporting ledger throughout the fiscal year and makes a single entry to the general ledger at the fiscal year end.***

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illustrate that the lack of recording of debts is pervasive across many different types of debts. Appendix C provides an overview of these civil penalties.

**Chairman's Compromise Authority  
For Claims Under 100k**  
31 U.S.C. § 3711

**Federal Claims Collection Standards  
Demand for Payment**  
4 C.F.R. § 102.2

**Chairman's Compromise Authority  
Delegated to Director OFB**  
19 C.F.R. § 201.203(b)

**Chairman's Administrative  
Offset Authority**  
31 U.S.C. § 3716

1. Written Notice
2. Debtor rights to inspect records
3. Debtor right to agency review
4. Debtor right to make alternative agreement to repay

**Administrative Offset**  
19 C.F.R. § 201.206

**Administrative Offset  
Against Civil Service  
Retirement & Disability  
Fund**  
19 C.F.R. § 201.207

**Chairman's Salary  
Offset Authority**  
5 U.S.C. § 5514

1. Limited to 15% of disposable pay
2. 30-day written notice
3. Debtor right to inspect records
4. Debtor right to make alternative agreement to repay
5. Debtor right to hearing before neutral official if requested within 15 days of notice

**Salary Offset**  
19 C.F.R. § 201.204

**Salary Adjustments**  
19 C.F.R. § 201.205

**Chairman's Tax Refund  
Offset Authority**  
31 U.S.C. § 3720A

**Tax Refund Offset**  
19 C.F.R. § 201.208

**Chairman's Offset Authority  
Delegated to Director OFB**  
19 C.F.R. § 201.203(a)

## SALARY ADJUSTMENTS

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Active Employees	Description	Debts that Should be Waived	Salary	Health	Total
1.	Health Insurance Coverage	Y		\$68.30	
2.	Health Insurance Coverage	Y		\$185.17	
3.	Health Insurance Coverage	Y		\$150.85	
4.	Health Insurance Coverage	Y		\$21.46	
5.	Health Insurance Coverage	Y		\$108.66	
6.	Health Insurance Coverage	Y		\$131.19	
7.	Health Insurance Coverage	Y		\$44.11	
8.	Health Insurance Coverage	Y		\$208.14	
9.	Health Insurance Coverage	Y		\$223.20	
10.	Health Insurance Coverage	Y		\$113.16	
11.	Health Insurance Coverage	Y		\$155.07	
12.	Health Insurance Coverage	Y		\$17.88	
	<b>Salary Overpayment (Court Leave to LWOP)</b>	<b>N</b>	<b>\$837.84</b>		
13.	Salary Overpayment (Wrong hourly salary)	Y	\$140.53		
14.	Salary Overpayment (Paid for comp-time)	Y	\$17.47		
15.	Salary Overpayment (Paid for comp-time)	Y	\$681.51		
16.	Salary Overpayment (Wrong hourly salary)	Y	\$69.99		
	Subtotal		\$1,747.34	\$1,427.19	\$3,174.53
<b>Inactive Employees</b>					
1.	Health Insurance Coverage	Y		\$94.30	
2.	Health Insurance Coverage	Y		\$94.18	
3.	Health Insurance Coverage	Y		\$100.82	
4.	Health Insurance Coverage	Y		\$94.30	
5.	Health Insurance Coverage	Y		\$28.70	
6.	Health Insurance Coverage	Y		\$90.74	
7.	Health Insurance Coverage	Y		\$84.46	
8.	Health Insurance Coverage	Y		\$42.92	
9.	Health Insurance Coverage	Y		\$52.96	
10.	Health Insurance Coverage	Y		\$79.40	
11.	Health Insurance Coverage	Y		\$44.69	
12.	Health Insurance Coverage	Y		\$124.44	
13.	Health Insurance Coverage	Y		\$69.38	
14.	Salary Overpayment (Paid after termination date)	Y	\$60.87		
15.	Salary Overpayment (Paid after termination date)	Y	\$529.35		
16.	Salary Overpayment (Annual Leave to LWOP)	Y	\$92.75		
17.	Salary Overpayment (Wrong hourly salary)	Y	\$148.30		
18.	Salary Overpayment (Regular pay to LWOP)	Y	\$64.05		
19.	Salary Overpayment (Paid for comp-time)	Y	\$883.60		
20.	Salary Overpayment (Paid for comp-time)	Y	\$917.54		
21.	Salary Overpayment (Paid for comp-time)	Y	\$67.07		
	Subtotal		\$2,763.53	\$1,101.29	\$3,864.82
	Total				\$7,039.35

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**Appendix C**

**CIVIL PENALTIES**

The Commission is granted the authority to impose civil penalties under Section 337 (f)(2) of the Tariff Act of 1930 (19 U.S.C. § 1337), which states, “[a]ny person who violates an order issued by the Commission under paragraph (1) after it has become final shall forfeit and pay to the United States a civil penalty for each day on which an importation of articles, or their sale, occurs in violation of the orders of not more than the greater of \$100,000 or twice the domestic value of the articles entered or sold on such day in violation of the order.” Civil penalties are one remedy available to the Commission during enforcement proceedings. Enforcement proceedings are held when violation of an order is suspected. Since 1972, 419 investigations have been conducted and enforcement proceedings have been held in ten of them.

*Investigation No. 337-TA-372, Neodymium-Iron-Boron Magnet, Magnet Alloys and Articles Containing the Same*

The Commission assessed civil penalties of \$1,550,000 on September 26, 1997 against the respondents. The penalty was not recorded as a receivable in the Commission’s accounting system until May 1999 as part of the financial statement audit of FYs 1998 and 1997. The penalty was reported to Treasury in February 1999, the date that all federal agencies must report their FY 1998 adjusted trial balances.

The terms of the order did not stipulate how the respondent would pay the penalty, reportedly because the Commission knew the decision was going to be appealed. Since the Commission’s determination in September, 1997, no attempts were made to collect the penalty from the respondents were made as the respondents have consistently appealed the decision. The parties have ultimately reached an agreement and have jointly submitted a written agreement to the Commission, and the Commission has dismissed the original order imposing the penalty.

*Investigation No. 337-TA- 294, Carrier Materials Bearing Ink Composition To Be Used In A Dry Adhesive-Free Thermal Transfer Process and Signfaces Made By Such a Process*

The Commission assessed civil penalties of \$100,000 on May 7, 1992 against the respondent in an informal enforcement proceeding on the violation of a consent order. The terms of the order stipulated that the respondent would pay the penalty in eight quarterly installments of \$12,500. The order specified payment amounts, due dates, late charges and interest, and payment procedures. Two payments were received plus \$667.15 in interest, after which the respondent filed bankruptcy and made no further payments. No dividends resulted from the bankruptcy proceedings.

The penalty was not recorded as a receivable in the Commission’s accounting system, although it was disclosed in a footnote to the FY 1992 financial statements. The penalties collected were recorded.

*Investigation No. 337- TA- 276, Erasable Programmable Read Only Memories, Components Thereof, Products Containing Such Memories, and Processes for Making Such Memories.*

The Commission assessed civil penalties of \$2,600,000 against the respondent for violations of a cease and desist order on March 28, 1991. On May 11, 1992, the Commission vacated its order imposing a civil penalty based on a settlement between the plaintiff and the defendant.

The penalty was not recorded as a receivable in the Commission’s accounting system, nor was it disclosed in a footnote to the FY 1991 financial statements.