

Appendix D

WHD's Response to Draft Report

U.S. Department of Labor

Wage and Hour Division
Washington, D.C. 20210



SEP 24 2012

MEMORANDUM FOR: ELLIOTT P. LEWIS
Assistant Inspector General

FROM: 
NANCY LEPORE
Deputy Administrator

SUBJECT: Response to the Office of the Inspector General's Draft Report:
WHD Lacked Effective Financial Management of Back Wage and
Civil Monetary Penalty Receivables
Report No. 22-12-013-04-420

The Wage and Hour Division (WHD) appreciates the opportunity to respond to the Assistant Inspector General's May 22, 2012, revised draft report titled "*WHD Lacked Effective Financial Management of Back Wage and Civil Monetary Penalty Receivables*." The report provides four recommendations. WHD's responses to these recommendations are provided below. In a separate attachment, we are providing clarification on specifics of the revised draft report.

Recommendation 1: Develop and implement policies and procedures to account and report on the status of back wage and CMP receivables.

Response: WHD agrees with the recommendation. To this end, WHD will address it, in part, by updating WHD's Financial Accounting and Support Team (FAS Team) procedures manual and expanding the Accounting and Financial Functions chapter that provides guidance for the preparation of the Treasury Report on Receivables and Debt Collection Activities (TROR). WHD anticipates completion of the updating of the FAST procedures manual by the end of the 2nd quarter, FY 2013. WHD will review other manuals and guidance documents to ensure that they are current and consistent.

Recommendation 2: Improve monitoring of the work performed by contractors to ensure accuracy and completeness.

Response: WHD agrees with the recommendation. WHD will establish procedures to ensure appropriate monitoring of all contractor support related to the TROR preparation.

Recommendation 3: Update the agency’s policies regarding segregation of duties over the initiation, review, and approval of write-off transactions.

Response: WHD agrees with the recommendation. The appropriate manuals will be updated and will include a discussion of exceptions to the existing requirement that three employees are needed to complete every write-off. WHD will review the current system applications to determine if changes are warranted in the fields that capture information related to automatic write-off.

Recommendation 4: Modify the user guides for the back wage and CMP systems to include the reports used in the TROR preparation process and their purpose.

WHD also agrees with this recommendation and will include information in its Back Wage Financial System, Civil Money Penalty application, and the Wage and Hour Investigator Support and Reporting Database user guides to explain the importance of the data entries for back wages and CMPs and how that data is used in the TROR preparation process.

Again, thank you for the opportunity to comment on this draft report.

Attachment

cc: Patricia Davidson
Deputy Administrator for Program
Operations

Janice E. Hendrix
Assistant Administrator for Planning, Performance
Evaluation and Communication

Barbara A. Brown
WHD Audit Liaison

Attachment

WHD Response to Report No. 22-12-013-04-420

The following provides WHD's clarification of the issues and concerns presented in the revised draft report.

The audit objective was to determine whether WHD had sufficient internal controls to ensure the completeness and accuracy of the receivable data reported to the Treasury's Financial Management System (FMS) in the TROR for back wages and CMPs. The TROR serves as a management report that informs Federal decision makers of the gross book value of the receivables owed to Federal agencies and the status of the Federal Government's debt portfolio. A debt has the meaning set forth in 31 U.S.C. § 3701 (b)(1), namely any amount of funds or property that has been determined by an appropriate official of the Federal Government to be due to the Government by a person, organization, or entity other than another Federal agency, and which the Federal Government is entitled to receive immediately. Back wages and CMPs become a debt if the person, organization, or entity fails to make payment after a final agency decision has been made and appeals are exhausted. WHD, as a matter of practice, pursues all available collection avenues; but if a debt is not paid within 180 days, WHD is required to send the outstanding sums to Treasury for collection.

According to the draft Audit Report, OIG concluded that WHD did not accurately report the amount of back wage and CMP receivables in its quarterly reports to Treasury and that WHD staff may have erroneously written off collectible receivables in the back wage and CMP systems and that these errors were not detected through supervisory review, reconciliations, or reporting. The audit focused on uncollected debt related to the TROR reporting function—which represents only a small portion of WHD's work—rather than on the agency's much larger program of collecting back wages and CMPs or assessing penalties. A clear understanding of the latter would be necessary to draw a broader conclusion about WHD's practices. Below are WHD's specific concerns with the report.

Report determination: WHD did not accurately report the amount of back wage and CMP receivables in its quarterly reports to Treasury. (Page 3)

The OIG indicated in its preliminary report that WHD did not accurately report the amount of back wage and CMP receivables in its quarterly reports to Treasury.

WHD Response

- WHD wants to make sure that the OIG report explains that references to back wage and CMP should include “systems.” The write-offs occur in the back wage and CMP systems and this information needs to be included when these reports are made.
- WHD also submits that the improvements between the 2010 and 2011 audits suggest that WHD’s internal control process to accumulate, review and report on the status of back wages and CMP receivables was effective when followed. The Auditors reviewed the 3rd Quarter TROR’s ending June 30, 2010, and identified problems with certain areas of the TROR on both the back wage and CMP submissions. WHD agrees that the review process was not properly followed, and took steps to bolster the implementation of its existing internal control process. The auditors further reviewed the 2nd Quarter TRORs ending March 31, 2011 and noted improvements.
- WHD acknowledges the errors made in the preparation of the TROR for the 3rd Quarter FY 2010, all while following its internal control process to accumulate, review and report on the status of back wages and CMP receivables for the 2nd Quarter FY 2011 submission of the TROR. WHD also took steps to ensure that the errors presented to the WHD through the Statement of Facts were addressed in submitting the 2nd Quarter FY 2011 TROR. Those steps proved successful in mitigating the number of errors initially cited. Specifically:
 - a) In comparing the Statement of Facts from February 17, 2011 with the revised Statement of Facts from August 5, 2011, the instances that WHD did not report the required number of back wage accounts receivables/debts on the TROR went from 78% in the 3rd Quarter FY 2010 TROR to less than 1% for the 2nd Quarter FY 2011 TROR in the category, *In Reporting Number of Receivables/Debts for Back Wage on TROR*.
 - b) Similarly, the revised Statement of Facts from August 8, 2011, also demonstrated improvement in the category, *In Reporting Number of Receivables/Debts for CMP on TROR*. In that case, the instances that WHD did not report the required number of CMP accounts receivables/debts on the TROR went from 59% in the 3rd Quarter FY 2010 TROR to 0% for the 2nd Quarter FY 2011 TROR.
 - c) In the category, *In Reporting Amount of Receivables/Debts for CMP on TROR*, the February 2011 Statement of Facts showed that there were 17% of instances in which WHD incorrectly entered the amount of CMP receivables/debts in Treasury’s FMS Debt Management Information System (DMIS) and 8% of instances in which WHD incorrectly reported the amount of CMP accounts receivables/debt reported by WHD on

the TROR. The August 2011 revised Statement of Facts indicates that for the 2nd Quarter FY 2011 TROR, the auditors noted no exception in reporting the required amount of CMP accounts receivables/debts on the TROR and entering CMP accounts receivables/debts in the Treasury DMIS.

- d) The February 2011 Statement of Facts showed that in the category, *In Reporting Amount of Receivables/ Debts for Back Wages on TROR*, there were 84% of instances where the amount reported did not agree with the supporting documentation and 16% of instances where WHD was unable to provide any supporting documentation. The August 2011 revised Statement of Facts demonstrates that WHD went from 84% of instances where the amount reported did not agree to the supporting documentation down to 18% for the 2nd Quarter FY 2011 TROR submission and went from 16% of instances where WHD was unable to provide any supporting documentation to less than 1 % for the 2nd Quarter FY 2011 TROR submission.
- Clearly, when WHD followed its internal control process to accumulate, review, and report on the status of back wages and CMP receivables there were far fewer errors. Although some errors continued to exist between what was reported and the supporting documentation, WHD has focused on correcting these errors for the 2nd and 4th Quarter FY 2011 TROR submissions. WHD has committed to ensuring that the 1st Quarter FY 2012 TROR submissions are complete, accurate, and contain all supporting documentation.

Errors in reporting on the status of receivables for back wages and CMPs to Treasury

In its draft report on page 4, the OIG indicated that WHD reported approximately \$13.3 million in net back wage receivables to Treasury. However, based upon the supporting documentation, the OIG stated that WHD should have reported approximately \$22.8 million, resulting in a net difference of \$9.5 million. Although WHD management officials stated they recognized the error in FY 2010 and attempted to address it in FY 2011, the error was not disclosed to us nor did WHD provide documentation to support their attempts to correct the error. In addition, the OIG noted discrepancies in WHD's reporting of the debt categories—delinquent rescheduled debt, non-delinquent rescheduled debt, and age classifications when compared to the supporting documentation. The Treasury's *FMS Instructional Workbook for Preparing the Treasury Report on Receivables and Debt Collection Activities* requires that the figures provided in the TROR to be reconcilable with the agency's financial statements. Although WHD officials stated that a portion of the described discrepancies could be accounted for by receipts, the OIG felt that WHD could not provide sufficient evidence to support this claim. Based on the errors identified by the OIG, the OIG maintained that WHD management could not ensure that the TROR reports on the status of back wage and CMP receivables were accurate or reliable. As such, the OIG maintained that any other official reports using the TROR data submitted by WHD and disseminated by Treasury's FMS to Congress, Office of Management and Budget, or the public would have contained inaccurate information.

WHD Response

- WHD believes that it has provided documentation for all the numbers that appear on the TROR worksheet report. The audit had indicated that the worksheet numbers could not be documented, but WHD has since shared this additional information with the OIG.
- WHD believes that the error in the net back wage receivables noted by the OIG was caused by an incorrect beginning fiscal year balance in the TROR, which is a number that cannot be modified and is carried over from the previous fiscal year. The supporting documentation referenced is the TROR draft document and worksheets. These documents contained the accurate information. Although DMIS allows for adjustments, the beginning fiscal year balance cannot be changed and carries from quarter to quarter. The difference in the net back wage receivable number is a reflection of the difference in the TROR carry-over balance at the beginning of FY 2011 and the carry-over balance in WHD's supporting documentation.
- WHD recognized this error in FY 2010 and attempted to address it in FY 2011. WHD believes that the error was disclosed to OIG and an explanation of why the error could not be corrected for FY 2011 was provided.
- WHD used supporting documentation to ensure that any appropriate adjustments were made so that the 4th Quarter FY 2011 TROR report properly reflected the net back wage receivables to Treasury. WHD has determined that the 1st Quarter FY 2012 TROR beginning fiscal year balance is accurate based on the 4th Quarter FY 2011 TROR report. The error has been addressed and corrected.
- WHD and OIG have the same concerns and do not want official reports using the TROR data submitted by WHD and disseminated by Treasury FMS to Congress, the Office of Management and Budget, or the public to contain inaccurate information.

Errors in accounting for write-offs of back wages and CMP**Treasury Write-offs**

Because WHD was unable to provide auditable data populations from its applications, the OIG auditors examined WHD's standard financial reports, which were used to accumulate the data on the status of back wage and CMP receivables. The OIG identified numerous accounting errors. For example, in Exhibit 2, the OIG identified errors in WHD's accounting for receivables written off. One CMP case included current period write-offs of \$775,738 and prior period write-offs of \$130,122, which was more than the \$142,078 total due. OIG indicated that WHD management stated that although this receivable had been written off, they subsequently received payments from the debtor. According to WHD management, each time a payment was received, Treasury required the amount written off to be reversed in order to apply the payment. After the payment was applied, the remaining amount due was written off to show the case as a zero balance. However, during the OIG review of Treasury guidance OIG noted no such requirement, but

rather found the requirement to be that an agency should establish accounting procedures to account for collections on written-off debts. The OIG indicated that, as a result of the accounting reversals WHD had made, the total amount written off related to this case and reported to Treasury on the TROR was overstated. The OIG also felt that a lack of segregation of duties allowed WHD employees to both review and approve amounts written off due from employers for back wage and CMP's. The OIG also indicated that WHD's inadequate policy guidance for the processing of receivable write-offs hampered its ability to determine whether write-offs had been properly authorized and recorded. As a result, the OIG feels that WHD is at risk that accounting errors may occur and go undetected.

WHD Response

- Treasury requires that, if an amount of receivable was already written-off, in order for a payment to be applied (*e.g.*, if Treasury collects a payment from an employer), the full written-off amount must be reversed in the applications in order to apply the payment received. This is a requirement of Treasury, not a WHD policy. Once the payment is applied, if it is not for the full payment of the outstanding receivable, the balance must be written-off again to bring the balance back to a zero balance. If Treasury makes multiple collections for an employer, this process has to occur for each payment.
- The case referenced in the report indicates current write-offs of \$775,738 and a prior write-off of \$130,122. The OIG indicated that this was more than the \$142,078 total due. This is also not accurate because the exhibit shows the \$777,165 as the current period reversal, not the written off amount as uncollectible. This case had an original CMP due of \$118,250. This amount was originally due in November 2000. WHD has been using Treasury's debt collection processes to collect whatever payments it could to pay down this CMP assessment. At the time the report was provided to OIG, the interest amount was \$10,682.96. This amount did not include penalty amounts and administrative fees. The \$142,078.10 total due on the exhibit is the original amount, interest, penalty, and administrative fees. Since the debt is more than 24 months old, the debt has to be written off per Treasury requirements. Payments of approximately \$236.80 per month have been coming in through Treasury's collections efforts since 2006. Some small payments came in prior to this date, but were not monthly. Each time a payment is received, the amount written-off has to be reversed in order to apply the payment, which is why the exhibit shows current period reversals of \$777,164.76. After the payment is applied, the amount remaining due has to be written off to show the case as having a zero balance which is also reflected on the exhibit. These are not cumulative write-off amounts as the report suggests and WHD is not writing off more than is actually due.
- The write-off transactions are required by Treasury when payments need to be applied to cases where the debt has been written-off and has a zero balance. These are not erroneous transactions. The report indicates that the transactions were permitted to occur because of a lack of controls within the CMP system that would prohibit users from initiating such transactions. OPAC payments are now completed automatically and forces the application to complete the reversals and write-offs to make sure the case reflects the payments and the

zero balance. Users are not involved in this automated payment process.

- WHD will review its accounting procedures that account for collection of written-off debt to make sure that total amount written off related to a case and reported to Treasury on the TROR's are accurate.

Segregation of duties

In addition, the OIG found that a lack of segregation of duties allowed WHD employees to both review and approve amounts written off due from employers for back wages and CMPs. In each of the five regional offices, the OIG identified write-offs that were both reviewed and approved by the same employee. Although the back wage and CMP systems user guides required every write-off to be completed by three separate people—one person each to initiate, review, and approve—these internal controls were not operating effectively to prevent such transactions from occurring. WHD management stated that there were some exceptions to the three individual write-off policy, such as write-offs of amounts that were less than \$20. However, these exceptions were not documented in WHD's policies or procedures. Regardless of such an exception, we identified write-offs greater than \$20 that were both reviewed and approved by the same employee.

The OIG also identified write-offs that were reviewed and approved by employees with generic user accounts such as "Former WH" or "BWFS." In each of the five regional offices, the OIG identified write-offs that were both reviewed and approved by generic user accounts. As such, users had the ability to review and approve erroneous entries and not be identified within the system. WHD management stated that these generic user accounts represented automatic write-offs generated by the system; no WHD staff made the write-offs. While we noted in the system user guides that once cases reached 24-months delinquent, they were automatically written off, we noted no evidence that these generic user accounts were associated with such transactions. Furthermore, because WHD could not provide auditable data for testing, the OIG were unable to determine whether these accounts were 24-months delinquent.

WHD's inadequate policy guidance for the processing of receivable write-offs hampered its ability to determine whether write-offs had been properly authorized and recorded. As a result, WHD is at risk that accounting errors may occur and go undetected.

WHD Response

- The existing applications clearly have segregation when it comes to the write-off policies. The applications require three individuals to complete a write-off. There are some exceptions, however, to this "three individual write-off policy," and the report focuses on some cases that fall into those exceptions. The exceptions are explained in greater detail in the following discussion.

- In both the Back Wage Financial System (BWFS) and CMP application user guides, clearly indicate that it is WHD policy that every write-off requires three people to complete, (BWFS 5.3 Write-Off Tab -page 70, CMP 3.7 Write-Off Tab -page 41). One person to enter a write-off and save it; one person to review or authorize the write-off; and one person to approve the write-off.
- The ability of a WHD employee to complete a write-off is strictly controlled by the applications' privilege levels. Up to four people per WHD Region have different levels of permissions for write-offs so that if someone is on leave or a detail, WHD can still complete a write-off. This information is covered by WHD security and permission information in the user manuals. The users that have these privileges are monitored and changed as necessary.
- This established policy, which is tracked through the system applications and documented through hard copy, assists in preventing erroneous write-offs.
- The write-off of the back wages and CMPs exists for those circumstances in which WHD has exhausted all avenues for collecting sums due and has turned the matter over to Treasury to pursue the collection of outstanding funds. If Treasury fails to collect, Treasury returns the debt to the agency for write-off. Write-off is mandatory for delinquent debt older than two years.
- Many of the write-offs completed by WHD are listed as "Currently Not Collectible" (CNC). After a debt is written off, the agency makes an assessment on whether cost effective collection efforts should continue. If not, then the debt should be classified as CNC. All available and appropriate collection tools are exhausted before WHD decides to terminate collection action.
- The applications clearly have segregation when it comes to the write-off policies. As indicated above, the applications require three individuals to complete a write-off. There are exceptions to the three individual write-off policy. If a payment comes to WHD's National Office through Treasury, the National Office Senior Financial Systems Analyst has the authority to reverse the write-off on that case in order to apply the funds. This must be done in order to apply the funds to the case.
- Another exception occurs when a case has an amount that needs to be written-off that is less than \$20.00. In this case, the applications allow for one person to enter, review, and approve the write-off. Treasury, itself, limits WHD from sending amounts less than \$20.00. Since the amount is *de minimis*, WHD established a policy that one person could complete this write-off. (WHD will update its BWFS and CMP manuals to reflect this policy.)
- Another exception to the three individual write-off policy occurs when a delinquent debt on a case has exceeded 23 months and the WHD Regions are advised via electronic notification that the case is coming up on the mandatory write-off limitation for delinquent debts. In that case, the Regional Operations managers are advised to complete the write-off in order to comply with the Treasury requirement. This could account for why the OIG identified write-offs greater than \$20 that were both reviewed and approved by the same employee.

This requirement is mandatory per OMB Circular A-129. If the write-off does not occur at the 24-month deadline, the application automatically writes off the delinquent debt to ensure that WHD is complying with OMB Circular A-129.

- The discussion regarding write-offs reviewed and authorized by users with generic account names admittedly has the appearance of allowing WHD staff to make erroneous entries and not be identified within the system. However, this is not the case. The automatic write-off function required a name to be placed in the sections of entered, reviewer, and approver by areas. In the BWFS application, the system places "BWFS BWFS" in those name areas and in the CMP application, it places "10000: Former WH Investigator" in the name area. These designations were automatically placed in those sections as part of the automatic write-off procedures and no WHD staff made the write-offs. The OIG was provided reports explaining that these generic user accounts represented automatic write-offs generated by the system; that no WHD staff made the write-offs. The reports would have provided the evidence that these generic user accounts were associated with such transactions. (WHD plans to include this process in the BWFS, CMP and FAS Team manuals and to review the automated programming in applications to determine if they can be modified to reflect the automated nature of the process.)
- Given this context, WHD management had control over write-offs for back wages and CMP's, and WHD staff did not erroneously write off collective receivables. There is no indication that following these write-off requirements results in workers not receiving back wages to which they are entitled. Likewise for CMPs, WHD has used all of its collection tools and is relying on Treasury to collect the debt due the government. WHD applications indicate when employers fail to pay back wages and/or CMPs, and this information is used in any future investigations of such employer. In the small percentage of WHD matters where back wages or CMPs were sent to Treasury for debt collection, WHD has performed all collection efforts on the back wages prior to doing so. WHD disagrees that inadequate policy guidance for the processing of receivable write-offs hampered its ability to determine whether write-offs had been properly authorized and recorded. WHD also disagrees that WHD is at risk that accounting errors may occur and go undetected. The write-offs were properly completed and it is management's position that the procedures are clear, but that the exceptions to the existing requirement that three employees are needed to complete every write-off be updated in the appropriate manuals. WHD does not agree that improper write-offs would go undetected.

Inadequate monitoring of contractors preparing the report on the status of back wage and CMP receivables.

The OIG report indicated that WHD relied entirely on contractors to report on the status of receivables for back wages and CMPs. The current contractor assumed this function in April 2010 from the preceding contractor who departed in February 2010. The contract accountant informed WHD that the TRORs were prepared by following the documentation of the preceding contractor and Treasury's *Instructional Workbook for Preparing the Treasury Report on Receivables and Debt Collection Activities*. Although the OIG noted that WHD reviewed the work of the contract accountant, the OIG determined that the review was inadequate. For

example, the OIG determined that WHD did not compare the data in the spreadsheets used by the contractor to report on the receivables status with data from the back wage, CMP, and Treasury's FMS systems to verify the data's accuracy and validity. Thus, the OIG concluded that these errors were allowed to be reported and went undetected by WHD staff.

Additionally, the OIG identified what it determined were inconsistencies in WHD's quarterly reporting on the status of back wage and CMP receivables. For example, back wages written off increased 388% in the 2nd quarter of FY 2011 and 443% in the 3rd quarter of FY 2010 when compared to the prior quarterly reporting. The OIG determined that WHD was unable to explain these significant fluctuations. Furthermore, WHD had reported the same balances on the TRORs in the 1st and 2nd quarter of FY 2010. Upon inquiry, WHD staff stated this one-time error occurred due to the transition of the TROR preparation process from the previous contractor to the new contractor and lack of internal resources.

The OIG determined that errors on the status of receivables were not detected through supervisory review. For example, the OIG determined that WHD reported "write-offs" – currently not collectible" using the totals from two separate reports. OIG determined that one of the reports incorporated data from the other report; by adding the two reports together, that WHD overstated the total amount of "write-offs – currently not collectible." Furthermore, neither report included the total amount of write-offs for the fiscal year-to-date, October 1, 2009 to June 30, 2010. Instead, the reports were for the period beginning January 1, 2010 to June 30, 2010.

The OIG stated that WHD accumulated the data on the status of receivables from reports generated from the back wage, CMP, and Treasury's FMS systems; however, the system user guides did not identify what information should be captured and how it should be used. Thus, data on the status of receivables was used and reported without WHD management having any knowledge of how that data was derived.

WHD Response

- WHD will establish procedures to ensure appropriate monitoring of all contractor support related to the TROR preparation.
- WHD has reviewed the completion and submission processes for the 3rd Quarter FY 2010 TROR reports and determined that the existing review processes were not properly followed and that the TROR reports were submitted without appropriate review. The review process was followed for the 2nd Quarter TROR reports for FY 2011, and WHD highlights that these reports showed significant improvements from the 3rd Quarter FY 2010 TROR reports.
- This information about WHD incorrectly reporting write-offs, categorized as CNC, by accumulating the total using two separate reports, was correct for the information used in 3rd Quarter FY 2010 TROR. The reports used and presented to OIG should have included

write-offs for the fiscal year-to-date and this was corrected for 2nd Quarter FY 2011 TRORs.

- It is true that the system user guides that the auditors reviewed did not contain a list of the reports that comprise the information being used to report on the status of receivables. The user guides reviewed by the auditors are primarily field operation manuals and completion of the TROR is a WHD National Office function. WHD has agreed, however, to update the guides to include this information.

Background (Page 17)

- According to the revised draft Audit Report (p. 17), in FY 2011 and 2010 WHD reported in the DOL financial report approximately \$12 million and \$8 million in civil money penalty (CMP) revenues, and \$99,000 and \$21 million in disbursements of fiduciary assets to beneficiaries for back wages, respectively. This statement follows the discussion of WHD's responsibility to report to the U.S. Treasury on the status of back wage and CMP receivables through the Treasury Report on Receivables and Debt Collection Activities (TROR). We are concerned that the juxtaposition of these two reports may convey an inaccurate impression given the fundamental differences in the reports.
- WHD must clarify that the reporting of the civil money penalty revenues are listed as ESA, and includes revenues of multiple agencies.
- WHD must clarify that \$99,000 is not an accurate figure for FY 2011 disbursements of fiduciary assets to beneficiaries for back wages. WHD FY 2011 disbursements of fiduciary assets to beneficiaries for back wages should reflect \$28 million.
- WHD collected and distributed over \$224 million in back wages in cases concluded in FY 2011 and over \$176 million in back wages in cases concluded in FY 2010. WHD collected over \$5.4 million in CMPs in cases that concluded in fiscal year 2011 and \$4.8 million in CMPs in cases that concluded in fiscal year 2010. The number of cases referred to Treasury for debt collection is a small percentage of the number of cases handled by WHD.