



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

August 13, 2020

MEMORANDUM

SUBJECT: Response to the Office of Inspector General Audit Report, Report No. 20-P-0194, "EPA's Office of the Chief Financial Officer Lacks Authority to Make Decisions on Employee-Debt Waiver Requests," dated June 15, 2020

FROM: (for) David A. Bloom, Deputy Chief Financial Officer
Office of the Chief Financial Officer

(for) Matthew Z. Leopold, General Counsel
Office of General Counsel

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TO: Sean W. O'Donnell, Inspector General
Office of Inspector General

Thank you for the opportunity to respond to the issues and recommendations in the subject audit report. The following is a summary of the U.S. Environmental Protection Agency's overall position, along with its position on each of the report's recommendations.

AGENCY'S OVERALL POSITION

The EPA concurs with the OIG's recommendations, appreciates the OIG's acceptance of our corrective action to Recommendation 3, and has taken corrective action to address the three unresolved recommendations as described in this memorandum.

BACKGROUND ON RECOMMENDATION 4

In its final audit report, the OIG contends that the Office of the Chief Financial Officer essentially terminated some of the employee debts in question when the OCFO compromised the debt balances to zero. Regardless of whether the OIG views the OCFO's decisions on these employee debts as compromises or terminations, the Office of General Counsel maintains that the OCFO at all times possessed the requisite authority to render those decisions. At the time the OCFO issued the employee debt decisions in question, the OCFO continued to retain the properly delegated authority to compromise or terminate employee debts at or below \$20,000. All 14 of the employee debts in question fell below this dollar threshold. The previous response provided determination on the 15th waiver request.

Despite the OGC's position that the OCFO issued valid decisions that compromised or effectively terminated these employee debts, on August 3, 2020, the Acting Claims Officer in OGC provided the following waiver decision for the 14 debts in question:

Section 5584 of Title 5, United States Code, authorizes waiver in whole or in part of a claim against a federal employee arising out of an erroneous payment of expenses or allowances if the collection of that payment would be against equity and good conscience and not in the best interests of the United States. Furthermore, it has been consistently held that when an employee is or should have been aware of an overpayment of salary when it occurs, he is not entitled to relief under this provision of law. Matter of: John J. Kafka – Waiver of Overpayment of Salary, B-201819, July 24, 1981. If he accepts such an overpayment, he should make provision for its repayment. *Id.* (citing James T. Harrod, B-195889, February 14, 1980).

While actual or constructive knowledge of an overpayment would normally support a finding that an employee should be obligated to refund such amount to the agency, knowledge or lack thereof is not the sole determinant of whether waiver is appropriate. See Matter of: William B. Flaherty – Waiver of Overpayment of Post Differential, B-189677, March 28, 1978. Indeed, the United States Comptroller General has made it clear that waiver of collection of a debt under the provisions of 5 U.S.C. 5584 is an equitable remedy. Matter of: Billy W. McDonald, *et al.* – Years of Service Credits – Annual Leave – Waiver, B-249410, B-249410.3, August 28, 1995. In applying this equity standard, the Comptroller General has held waiver appropriate when a government employee, relying on the apparent authority and knowledge of an agency expert, has spent travel advances that were erroneously authorized. See Matter of: Sherry C. Boutwell – Waiver- Erroneous Travel Advance, B-237169, March 23, 1990; see Matter of Mary F. Lopez – Erroneous Travel Advance, B-236856, December 15, 1989; see Matter of: Major Kenneth M. Dieter, B-226842, June 28, 1988; see also Matter of: Robert L. Zerr – Request for Waiver of Salary Overpayment, B-184182, July 22, 1976 (waiver requester’s acceptance of regulatory interpretation by an agency personnel specialist as evidence of good faith). Using the same rationale contained in other Comptroller General cases, I have approved waiver requests where the employee has relied on the expertise of agency personnel in the context of retirement benefits coding and assignment of premium pay. See B-211345 (July 21, 1983) & B-184182 (July 22, 1976) (supporting these waiver approvals).

The 14 agency employees in question were issued decisions from the Director of the Financial Services Division in the agency’s OCFO compromising their debts. I see no reason why these employees would question the validity of those decisions. Rather, it is reasonable for them to rely on those decisions and conclude that they are no longer obligated to set aside or refund any erroneous overpayment amounts. I do not find it equitable to reinstitute these debts against government employees several years after those decisions were issued. Consistent with the line of Comptroller General cases cited above and my prior waiver approval decisions, I find it equitable to grant waivers to all 14 of the agency employees in question at this time based on their reasonable reliance on the debt compromise and/or termination decisions issued by the agency several years ago. The waiver requests for all 14 agency employees in question are hereby granted.

AGENCY’S RESPONSE TO AUDIT RECOMMENDATIONS

Agreements

No.	Recommendation	Assigned to:	High-Level Corrective Action(s)	Estimated Completion Date
1	Update policies and procedures to require requests for employee-debt waivers to be	OCFO	Available on the OCFO Financial Policies intranet page, OCFO updated RMDS 2540-9-	Completed 5/22/20

	submitted to the agency claims officer for review under 5 U.S.C. § 5584 and EPA Order 3155.1, <i>Waiver of Claims for Overpayments</i> .		P1, Billings and Collections. The update includes the Office of General Counsel's re-delegation of limited authority to the CFO to terminate debt and requires submitting employee's debt waivers to the Claims Officer in OGC for review.	
2	Require EPA Finance Center directors to stop any reviews of employee-debt waiver requests in accordance with Resource Management Directive System 2540-09-P2, <i>Non-Federal Delinquent Debt</i> , and forward any such requests to the agency claims officer for processing.	OCFO	The Finance Centers have stopped all review of employee-debt waiver requests and are forwarding all such requests to OGC's Claims Officer.	Completed 4/08/20
4	Direct the agency claims officer to review and render employee-debt waiver decisions on the 15 employee-debt waiver requests in accordance with 5 U.S.C. § 5584. Take steps to recover any funds due to the agency if appropriate.	OGC	Although the OGC's position is that OCFO issued valid decisions that compromised or effectively terminated 14 employee debts, the Acting Claims Officer has reviewed the remaining 14 employee-debt waiver requests and granted the requests for all 14 agency employees. As a separate matter, the Acting Claims Officer decided one claim on February 12, 2020 as part of the agency's response to the draft report.	Completed 8/03/20

CONTACT INFORMATION

If you have any questions regarding this response, please contact the OCFO Audit Follow-up Coordinator, Andrew LeBlanc, at leblanc.andrew@epa.gov or (202) 564-1761 or the OGC Audit Follow-up Coordinator, Shan Anderson, at anderson.shanquenetta@epa.gov or (202) 564-8778.

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