



Legal Opinion L-2001-09
July 18, 2001

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TO : Thomas M. McCarthy
Debt Recovery Manager

FROM : Steven A. Bartholow
General Counsel

SUBJECT : Overpayment Recovery Issue – Assessment of Interest

This is in response to your request for a legal opinion with respect to a recommendation made in a draft audit report prepared by the Office of Inspector General (OIG). The OIG questions the practice of the Debt Recovery Division (DRD) regarding the assessment of interest in the case of an overpayment. Specifically, DRD currently assesses interest on the outstanding balance of an overpayment from the date that a debtor is notified that his/her request for waiver is denied. If the debtor files a timely appeal of DRD's denial of waiver of recovery with the Bureau of Hearings and Appeals, DRD removes any interest assessed from the denial date. The OIG recommends that DRD change this practice and not assess interest until the expiration of the 60-day period for requesting an appeal of the denial decision regardless of whether or not an appeal is filed with Hearings and Appeals.

The draft audit report notes that section 200.7(b)(2) of the Board's regulations provides that:

. . . interest shall accrue from the date that a denial of waiver of recovery is mailed or hand-delivered to the debtor or, if waiver has not been requested, upon the expiration of the time within which to request waiver .

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For the reasons explained below, it is our opinion that DRD's current practice is correct. Section 200.7 of the Board's regulations provides for the assessment or waiver of interest, penalties, and administrative costs with respect to collection of certain debts. Section 200.7(g)(1) provides that the Board shall waive the collection of interest under certain circumstances, including, when, in any case where a decision with respect to waiver of recovery of an overpayment must be made:

- B. The debt is paid within thirty days after the date on which notice was mailed to the debtor that his or her request for waiver of recovery has been wholly or partially denied if the debtor requested waiver of recovery within the prescribed time limit; however, regardless of when the debt is paid, no interest may be charged for any period prior to the end of the period within which the debtor may request waiver of recovery or, if such request is made, for any period prior to the date on which notice was mailed to the debtor that his or her request for waiver of recovery has been wholly or partially denied. 20 CFR 200.7(g)(1)(ii)(B).

The first portion of section 200.7(g)(1)(ii)(B) quoted above makes it clear that the Board's regulations that prohibit assessing interest prior to the expiration of the period to request waiver of recovery pertain only to the initial period for requesting waiver. Once that period has expired, interest accrues. Specifically, when a debtor exercises her/his right to request waiver of recovery upon receipt of a notice of overpayment, no interest is charged until a decision is issued.