

May 20, 1997
L-97-24

TO : Tom McCarthy
Chief, Debt Recovery Division

FROM : Steven A. Bartholow
Deputy General Counsel

SUBJECT : Implementation of Section 6(B)(4) of Basic Board Order I

This is in reply to your memorandum of April 21, 1997, wherein you request advice as to the implementation of Section 6(B)(4) of Basic Board Order I under the circumstances set forth below.

Section 6(B)(4) reads as follows:

All bureau and office heads shall:

* * * * *

4. Pursue recovery of debts incurred under the Acts administered by the Board concurrent with investigations by the OIG; however, upon notice from the OIG that the case has been submitted to the Department of Justice for criminal prosecution, recovery shall be ceased.

The effect of this section of BBO I is to balance the agency's obligation to collect outstanding debt in a timely and efficient manner against the interest of the Department of Justice in prosecuting cases referred to it by the OIG. In general, section 6(B)(4) of BBO I is consistent with the Federal Claims Collection Standard at 4 CFR 105.1(d), which provides:

Once a claim has been referred to the GAO or the Department of Justice pursuant to this section, the referring agency shall refrain from having any contact with the debtor and shall direct the debtor to the GAO or the Department of Justice, as appropriate, when questions concerning the claim are raised by the debtor. GAO or the Department of Justice, as appropriate, shall be immediately notified by the referring agency of any payments which are received from the debtor subsequent to referral of a claim under this section.

Accordingly, in the circumstances you have raised below, the guiding principle in each case should be whether the agency's action involves contact with the debtor or otherwise interferes

with efforts by the Department of Justice in developing and prosecuting the case.

(1) "Can voluntary payments be accepted from a debtor (in response to a notice, according to terms of a payment agreement, etc.) after the OIG notifies us that a case has been submitted to the DOJ for criminal prosecution?"

The agency may apply the payment toward the outstanding debt, but should promptly notify the OIG, as the agency's liaison with DOJ in criminal cases, of the amount of the payment received.

If the debtor had previously entered into a voluntary payment plan with the agency and is making timely payments as required under the agreement, DOJ should be notified of the status of the payment plan so that it may advise the agency on whether to suspend the agreement.

The agency should cease issuing dunning notices, however, following referral to DOJ, and should avoid entering into new voluntary payment plans or renegotiating pre-existing voluntary payment plans, following referral of the claim to DOJ. In the event that a debtor defaults on a voluntary payment plan while the case has been referred to DOJ, and DOJ has not yet advised the OIG whether the agency should suspend the voluntary payment plan, the agency should forego collection efforts on the missed payment or payments, but may resume collection activity upon notification that DOJ has declined the case.

(2) "Can recovery of a debt by benefit offset continue after the OIG notifies us that a case has been submitted to the DOJ for criminal prosecution?"

If the debtor has exhausted his or her administrative rights to review and appeal, and benefit offset was initiated prior to the referral of the claim to DOJ, DOJ should be notified, through the OIG, that the debtor is in pay status and that the debt is currently being recovered through administrative offset. DOJ may then advise the agency whether to suspend administrative offset.

(3) "Does the Debt Collection Improvement Act of 1996 require us to refer delinquent debts, submitted to DOJ for criminal prosecution, to the Department of Treasury for administrative offset and/or cross-servicing?"

The Debt Collection Improvement Act of 1996 (DCIA) amended 31 U.S.C. ' 3716 to require that agencies notify the Department of Treasury of all nontax debts delinquent over 180 days for the purpose of administrative offset. Our contacts at Treasury have advised, however, that the Treasury Offset Program prefers that agencies refrain from referring debts that meet this criteria to Treasury once they have been referred to the Department of Justice for prosecution. Rather, Treasury will develop an arrangement with DOJ, whereby DOJ will refer delinquent debts submitted for prosecution to Treasury, as appropriate. In the event that DOJ declines prosecution, the agency's obligation to refer the delinquent debt to Treasury is renewed.

The DCIA amended 31 U.S.C. ' 3711 by adding subsection (g)(1) to require the referral of all nontax debts or claims which have been delinquent 180 days to the Department of Treasury for

cross-servicing, with an exception for debts which are "in litigation or foreclosure." Again, our contacts with the Department of Treasury have advised the agency not to submit debts for cross-servicing, once a case has been referred to DOJ.

- (4) **"Can payment of a debt through a collection program (private collection agency, IRS tax refund offset, Federal salary offset, Treasury offset or cross-servicing, etc.) be accepted after the OIG notifies us that a case has been submitted to DOJ for criminal prosecution?"**

Such payment may be accepted, provided the Office of Inspector General, as the agency's liaison with DOJ, is notified promptly of the amount of the payment. In the case of the Treasury Offset Program and eventually the IRS Offset Program, the decision to apply the payment to the debt will already have been made by the Department of Treasury, which diverts Federal payments for automatic offset against the debt, using a computerized database of debtors.

- (5) **"Should a case be withdrawn from a collection program (private collection agency, IRS tax refund offset, Federal salary offset, Treasury offset or cross-servicing, etc.) after the OIG notifies us that a case has been submitted to the DOJ for criminal prosecution?"**

Cases which have been submitted to a private collection agency, Treasury cross-servicing, and the Federal salary offset program should be withdrawn by the agency immediately upon notice from the OIG that the case has been referred to DOJ.

With respect to those cases which have been submitted to the IRS tax refund offset program and/or the Treasury Offset Program, the agency should notify the OIG, as the agency's liaison with DOJ, that the debt has previously been submitted to those programs. DOJ may then withdraw the debt or advise the agency to withdraw the debt.

- (6) **"Should the RRB proceed to make determinations on reconsideration and waiver requests, and appeals of those decisions, after the OIG notifies us that a case has been submitted to the DOJ for criminal prosecution?"**

The agency should immediately suspend the administrative appeals process once the OIG advises that a case has been submitted to DOJ for criminal prosecution, but may resume the administrative appeals process should DOJ decline the case for prosecution.

cc: Inspector General
General Counsel
Director of Programs