



U.S. Department of Education
Office of Inspector General

Federal Student Aid's Suspension of Involuntary Collection in Response to the Coronavirus Pandemic

June 15, 2021
ED-OIG/I20NY0010

ED OIG Oversight of Coronavirus Response Funds



NOTICE

Statements that managerial practices need improvements, as well as other conclusions and recommendations in this report, represent the opinions of the Office of Inspector General. The appropriate Department of Education officials will determine what corrective actions should be taken.

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**UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF INSPECTOR GENERAL**

Audit Services

June 15, 2021

TO: Richard Cordray
Chief Operating Officer
Federal Student Aid

FROM: Bryon Gordon /s/
Assistant Inspector General for Audit

SUBJECT: Final Inspection Report, "Federal Student Aid's Suspension of Involuntary Collection in Response to the Coronavirus Pandemic" Assignment Number ED-OIG/I20NY0010

Attached is the subject final inspection report that consolidates the results of our review of Federal Student Aid's Suspension of Involuntary Collection in Response to the Coronavirus Pandemic. We have provided an electronic copy to your audit liaison officers. We received your comments mostly agreeing with findings and recommendations in our draft report.

U.S. Department of Education policy requires that you develop a final corrective action plan within 30 days of the issuance of this report. The corrective action plan should set forth the specific action items and targeted completion dates necessary to implement final corrective actions on the findings and recommendations contained in this final inspection report. Corrective actions that your office proposes and implements will be monitored and tracked through the Department's Audit Accountability and Resolution Tracking System.

In accordance with the Inspector General Act of 1978, as amended, the Office of Inspector General is required to report to Congress twice a year on the audits that remain unresolved after 6 months from the date of issuance.

We appreciate your cooperation during this review. If you have any questions, please contact Myra Hamilton, Acting Regional Inspector General for Audit at (214) 661-9545 or Myra.Hamilton@ed.gov.

Attachment

DRAFT REPORT

Table of Contents

| | |
|---|----|
| Results in Brief | 5 |
| Introduction | 8 |
| Finding 1. FSA Took Quick Actions and Generally Achieved Positive Results in Suspending Most Involuntary Collections on Defaulted Department-Held Loans | 11 |
| Finding 2. FSA Took Quick Actions and Generally Achieved Positive Results in Refunding Most Payments Involuntarily Collected from Borrowers | 17 |
| Finding 3. FSA Did Not Obtain and Track the Results of Justice’s Suspending and Refunding of Payments Involuntarily Collected | 22 |
| Appendix A. Scope and Methodology..... | 26 |
| Appendix B. Acronyms and Abbreviations..... | 31 |
| Department Comments | 32 |

Results in Brief

What We Did

The objective of our review was to evaluate the results of Federal Student Aid's (FSA) process for suspending involuntary collection and refunding payments involuntarily collected on defaulted Department-held loans in response to the Coronavirus pandemic. We obtained and analyzed the information presented in this report through interviews, documentation requests from the U.S. Department of Education (Department) and FSA's contracted defaulted student loan servicer. The period for FSA to suspend involuntary collection was March 13, 2020, through September 30, 2021 (referred to as "suspension period"). Our review covered the results of FSA's process to suspend involuntary collection and refund payments involuntarily collected from March 13, 2020, through September 30, 2020. We performed our inspection from September 2020 through January 2021.

What We Found

FSA took quick action to implement processes that generally achieved positive results in suspending and refunding most involuntary collections on defaulted Department-held loans. Specifically, we found that FSA suspended administrative wage garnishments and the U.S. Department of Treasury (Treasury) offsets for over 96 percent of the borrowers that FSA collected payments for within 90 days of March 13, 2020, the start of the suspension period. However, as of October 23, 2020, we found that FSA continued to receive administrative wage garnishments for 1,930 borrowers.

We also found that FSA refunded most administrative wage garnishments and Treasury offsets collected from March 13, 2020, through September 30, 2020, and issued refunds for \$576.65 million (99 percent) of the \$582.48 million collected for the same period. FSA also refunded 1,063,984 of the 1,094,507 administrative wage garnishments and 221,436 of the 244,080 Treasury offsets within 60 days from the date the payments were received. However, we found that FSA did not reprocess refunds for \$21.25 million of the \$576.65 million FSA refunded that were subsequently returned to Treasury and did not refund \$5.83 million (1 percent) of the \$582.48 million wage garnishments and Treasury offsets collected.

Finally, we found that FSA did not develop procedures to obtain and track the U.S. Department of Justice's (Justice) progress on suspending involuntary collections and refunding payments involuntarily collected on defaulted Department-held loans from March 13, 2020, through September 30, 2020. Specifically, while FSA instructed Justice to suspend involuntary collections and refund payments collected, FSA did not track Justice's progress throughout the suspension period to determine whether

borrowers were granted the temporary borrower relief extended to defaulted borrowers in response to the Coronavirus pandemic.

Because FSA took quick action to implement processes that generally achieved positive results in suspending and refunding most involuntary collections on defaulted Department-held loans, we found that FSA granted temporary relief to most borrowers subject to involuntary collections in response to the Coronavirus pandemic. Nonetheless, FSA could improve its processes related to refunding involuntary collections from borrowers.

What We Recommend

We recommend that FSA's Chief Operating Officer determine appropriate actions to take regarding employers that continued to improperly withhold wages from borrowers, adopt best practices for proactively identifying payments eligible for refund, and develop and implement procedures to obtain and track Justice's progress on suspending and refunding payments involuntarily collected during the suspension period on Department-held loans.

FSA Comments and Our Response

We provided a draft of this inspection report to FSA for comment. We summarized FSA's comments at the end of each finding and provided the full text of the comments at the end of the report.

FSA Comments

FSA agreed with Finding 1 and Finding 2, but FSA did not explicitly agree or disagree with the recommendations. For Finding 1, FSA stated that it will temporarily reopen the administrative wage garnishment lockbox to identify employers that continued to send wage withholdings and will provide the OIG with the final list of noncompliant employers for additional action. For Finding 2, FSA stated that it will continue to improve its process to identify and review for refund all accounts that have had a previous refund cancellation and that now have a new address. FSA disagreed with Finding 3 and our recommendation. FSA stated that the collection activities that form the subject of this inspection are limited in the CARES Act to those that are performed by the Secretary of Education; and therefore, the finding and recommendation should be removed.

OIG Response

FSA's proposed action to the recommendation for Finding 1 is not fully responsive. Specifically, FSA's proposed action to provide the OIG the final list of noncompliant employers for additional action was not responsive to our recommendation because it

does not address additional actions that FSA can take to stop employers who unlawfully withhold wages from borrowers. FSA's proposed actions to the recommendation for Finding 2 are not fully responsive because they do not address all parts of the recommendation. Specifically, FSA did not address actions related to broken compromise payments and manually applied payments eligible for refunds after our review. In addition, for Finding 3, we disagreed with FSA's statement that the required suspension of involuntary collection applies only to collection actions exclusively performed by the Secretary of Education. FSA did not provide any new or additional evidence to support that these Department-held loans were not covered under the CARES Act; or that FSA did not have the responsibility to suspend involuntary collection activities on them. We added criteria from the Standards for Internal Control in the Federal Government to Finding 3 to show FSA's responsibility for tracking Justice's suspension activities. We did not make any other substantive changes to Finding 3 or the recommendation in response to FSA's comments. We also made minor technical and clarifying edits to Finding 3 and the scope and methodology section of the report based on the comments received.

Introduction

Background

On March 27, 2020, the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) was signed into law in response to the far-reaching public health and economic crisis caused by the Coronavirus pandemic. Section 3513 of the CARES Act, *Temporary Relief for Federal Student Loan Borrowers*, required the Secretary of Education (Secretary) to suspend all involuntary collections on defaulted loans the U.S. Department of Education (Department) owned under the William D. Ford Federal Direct Loan Program and the Federal Family Education Loan Program (referred to as “Department-held loans”) through September 30, 2020. Generally, borrowers in repayment are expected to make timely, regular payments on their loans. The purpose of the CARES Act was to provide emergency assistance for individuals affected by the Coronavirus pandemic.

Federal Student Aid (FSA) implemented several actions to provide relief to borrowers, including some prior to the enactment of the CARES Act. Specifically, on March 25, 2020, the Secretary announced that the Department directed FSA to suspend all involuntary collection activity on Department-held loans starting March 13, 2020, the day the President declared a national emergency in response to the Coronavirus pandemic. In response to the President’s August 8, 2020, memorandum on “Continued Student Loan Payment Relief During the COVID-19 Pandemic,” on August 21, 2020, the Secretary announced that the Department would continue to suspend all involuntary collection activity on Department-held loans until December 31, 2020. On December 4, 2020, the Secretary announced that FSA would continue to suspend all involuntary collection activity on Department-held loans until January 31, 2021. Finally, on January 21, 2021, the Acting Secretary announced that FSA will continue to suspend all involuntary collection activity on Department-held loans until September 30, 2021.

FSA’s Involuntary Collection Activities

FSA’s involuntary collection activities include administrative wage garnishment, the U.S. Department of Treasury (Treasury) offset, and referral to the U.S. Department of Justice (Justice) for debt collection. FSA has extrajudicial collection powers, including the authority to garnish borrowers’ wages without a court order following default on their student loans. FSA uses wage garnishment to collect money from a debtor’s disposable pay to satisfy a delinquent student loan debt. When a borrower’s delinquency qualifies for garnishment, FSA will issue a garnishment order directly to the borrower’s employer. Once issued, a garnishment order remains in effect until the Secretary rescinds the order or the debt, including interest, penalties, and collection costs, is paid in full.

FSA's contracted defaulted student loan servicer operates and maintains the Debt Management and Collection System. FSA uses the Debt Management and Collection System to manage its defaulted Department-held loan portfolio. The Debt Management and Collection System allows FSA to place accounts with private collection agencies which perform the actual collection activities. The Debt Management and Collection System tracks all debts, interest accruals, and payments at the loan level and associates defaulted loans to a specific borrower. The Debt Management and Collection System also receives data from other government agencies such as Treasury and Justice. In addition, FSA's defaulted student loan servicer operates FSA's customer service call center for defaulted borrowers and fulfillment center used for generating and mailing notices to borrowers and employers implementing garnishment orders.

FSA also participated in the Treasury Offset Program managed by the Treasury's Bureau of the Fiscal Service. The Treasury Offset Program is a fully automated, centralized offset program that intercepts Federal and State payments to collect delinquent debts owed to Federal and State agencies. FSA must notify Treasury of all nontax debts delinquent more than 120 days and certify that such debts qualify for collection by offset (i.e., the reduction or withholding of payment). Further, up to 100 percent of tax refunds may be offset. FSA must certify to Treasury that the debts it submitted for offset were valid and legally enforceable for purposes of the offset, including a certification that the debt was due, in the amount stated, with no legal bars to collection, and that FSA has met all due process requirements applicable to the debt. When submitting a debt for offset, FSA must also submit to Treasury the debtor's name, address, taxpayer identification number, and balance due on the debt. After the offset occurred, Treasury sent a notice to the debtor that the debtor's Federal payment had been offset. After that, the information about the offset was transmitted to FSA to ensure that payments would be properly applied to the debt balance.

In addition, FSA referred certain defaulted Department-held loans to Justice for debt collection. FSA contracts with private collection agencies to prepare litigation packages for borrowers with defaulted Department-held loans for which FSA has exhausted available collection tools. FSA's private collection agencies send the completed litigation packages to FSA's Litigation Support Group for approval and referral to Justice. FSA's Litigation Support Group reviews the litigation packages to determine whether the borrowers are eligible to be referred to Justice. Once FSA refers the loan to Justice, Justice has exclusive jurisdiction over the loan. However, the Department continues to own the debt.

FSA's Process for Suspending Involuntary Collections

FSA's former Chief Operating Officer held regular meetings with the Production Unit, which was responsible for assuring the quality and timeliness of documents coordinated

with FSA and the Department, to develop a plan to suspend involuntary collections. FSA's Deputy Chief Operating Officer for the Office of Student Experience and Aid Delivery was responsible for implementing the actions to suspend involuntary collections and for monitoring the results. The Applications and Borrower Systems Group within the Office of Student Experience and Aid Delivery was responsible for negotiating the contract modification with FSA's defaulted student loan servicer to support FSA's actions to suspend administrative wage garnishments. After FSA finalized the contract modification, FSA's defaulted student loan servicer began performing actions to suspend administrative wage garnishments, including contacting the approximately 115,000 employers that were actively garnishing wages. In addition, on March 20, 2020, FSA's former Chief Operating Officer issued a memorandum to Treasury requesting that it suspend Treasury offsets. For the loans referred to Justice, Justice is responsible for suspending involuntary collections on defaulted Department-held loan borrowers because Justice has exclusive jurisdiction over the loans once referred.

FSA's Process for Refunding Involuntary Collections

The Applications and Borrower Systems Group and the defaulted student loan servicer developed queries to manage the volume of payments FSA involuntarily collected during the suspension period that were eligible for refund. FSA's contractor initiated the refund process by running the query that automated the identification of eligible payments for refund processing each day and submitted requests for FSA's approval to issue the refunds. The Applications and Borrower Systems Group executed another query that validated the accuracy of borrower information against FSA's records to expedite the refund review process. In addition, the Applications and Borrower Systems Group staff reviewed the refund request and either approved it or returned the request to FSA's defaulted student loan servicer for correction.

Finding 1. FSA Took Quick Actions and Generally Achieved Positive Results in Suspending Most Involuntary Collections on Defaulted Department-Held Loans

FSA established a process that generally achieved positive results in suspending administrative wage garnishments and Treasury offsets for defaulted Department-held loan borrowers. Our evaluation of FSA's related processes found that FSA suspended administrative wage garnishments and Treasury offsets for over 96 percent of the borrowers that FSA collected payments for within 90 days of March 13, 2020, the start of the suspension period.¹ Nonetheless, as of October 23, 2020, FSA had not suspended all administrative wage garnishments collected on and after March 13, 2020, through September 30, 2020.

Administrative Wage Garnishment Suspended

FSA established a process to notify employers to suspend administrative wage garnishments. The Applications and Borrower Systems Group staff immediately took action to approve and issue a contract modification to FSA's defaulted student loan servicer to effectuate actions to suspend involuntary collections. FSA suspended administrative wage garnishments by notifying employers that all wage garnishment orders were cancelled. According to FSA's former Chief Operating Officer, by April 23, 2020, FSA notified 98 percent of employers to stop garnishing borrowers' wages.² Due to issues with invalid employer address and borrower's records associated with incorrect employers, the remaining 2 percent of employers were not notified until May 16, 2020. Additionally, FSA's former Chief Operating Officer stated that some employers were not responsive to FSA's notifications and continued to garnish the wages of some borrowers. Therefore, in early May 2020, FSA began issuing second notices to employers, instructed its defaulted student loan servicer to continue to call

¹ Our evaluation of the results of FSA's processes to suspend administrative wage garnishments and Treasury offsets, was based on measuring the date of the last payment for borrowers that continued to have payments collected on and after March 13, 2020, through September 30, 2020, and considering the dates of FSA's actions to suspend involuntary collections.

² This figure is reflected in Exhibit 1 of the Department's June 2, 2020, response to a class-action lawsuit filed in Federal district court on April 30, 2020, alleging that the Department failed to suspend wage garnishment in violation of the CARES Act. "Barber v. DeVos and U.S. Department of Education," Case No. 20-cv-01137 (D.D.C. April 30, 2020).

nonresponsive employers, and sent notices regarding the cancellation of wage garnishments to borrowers to provide to their employers who were not responsive. Further, in August 2020, the Secretary extended the temporary relief granted to borrowers in response to the President’s memorandum on “Continued Student Loan Payment Relief During the COVID-19 Pandemic,” and FSA issued an additional notice to employers requesting they not resume garnishing the wages of borrowers until FSA provides written directions to resume.³ The notification also included a link for employers to update their contact information.

We found that FSA’s actions resulted in the suspension of most administrative wage garnishments. From March 13, 2020, through September 30, 2020, FSA collected wage garnishments from employers for 392,600 borrowers. We found that wage garnishments were suspended for 294,225 of the 392,600 borrowers by April 23, 2020, when FSA notified most employers to stop garnishing wages.⁴ The number of borrowers that had their wages garnished continued to decrease as FSA implemented its ongoing notifications to employers to suspend wage garnishments. We found that FSA suspended wage garnishments for 377,603 borrowers by June 11, 2020, 90 days after the start of the suspension period. Table 1 summarizes the results of our evaluation of FSA’s process to suspend administrative wage garnishments from March 13, 2020, through September 30, 2020.

³ On January 21, 2021, the Acting Secretary announced that FSA will continue to suspend all involuntary collection activity on Department-held loans until September 30, 2021.

⁴ Our evaluation to determine when administrative wage garnishments were suspended was based on the last date the wage garnishments were received for borrowers from employers between March 13, 2020, through September 30, 2020.

Table 1. FSA’s Suspension of Administrative Wage Garnishments from March 13, 2020, through September 30, 2020

| Period of Last Wage Garnishment | Description of FSA’s Key Implementation Actions | Count of Borrowers with Suspended Garnishments |
|------------------------------------|--|--|
| March 13, 2020–April 23, 2020 | FSA issued notices to cancel wage garnishment and contacted most employers by April 23, 2020. | 294,225 |
| April 24, 2020–May 15, 2020 | FSA contacted nonresponsive employers. | 68,817 |
| May 16, 2020–June 11, 2020 | FSA continued ongoing actions to contact employers. | 14,561 |
| June 12, 2020–August 15, 2020 | FSA issued additional notices to employers not to resume wage garnishments on August 15, 2020. | 8,952 |
| August 16, 2020–September 30, 2020 | FSA issued ongoing notifications through September 30, 2020. | 4,115 |

FSA did not suspend administrative wage garnishments for all borrowers it collected payments from during March 13, 2020, through September 30, 2020. As of October 23, 2020, FSA continued to receive wage garnishments for 1,930 borrowers. FSA stated that it notified these borrowers’ employers that future wage garnishments would be returned because FSA closed the lockbox where wage garnishments were mailed. FSA also notified the borrowers that their employer was noncompliant with the cancellation of wage garnishment orders and wage garnishments collected were returned to their employer. After closure of the lockbox on October 30, 2020, FSA no longer has information as to which employers may be continuing to withhold wages despite cancellation of the garnishment orders.

Treasury Offsets Suspended

FSA established a process to suspend Treasury offsets. Specifically, on March 20, 2020, FSA issued a memorandum to Treasury, instructing Treasury to indefinitely suspend Treasury offsets. Further, in August 2020, FSA issued another memorandum instructing Treasury to suspend Treasury offsets through December 31, 2020. Finally, in December 2020, FSA instructed Treasury to suspend Treasury offsets through January 31, 2021, or until written directions to resume are provided.

We found that FSA’s actions resulted in the suspension of virtually all Treasury offsets quickly, and by the time the Treasury memorandum was issued on March 20, 2020, Treasury offsets from 140,933 of the 238,615 borrowers had been suspended. An

additional 97,221 of Treasury offsets were suspended by March 27, 2020, 7 days after FSA's memorandum to Treasury and 14 days after the start of the suspension period. The remaining 461 offsets were suspended by September 30, 2020. Table 2 summarizes the results of our evaluation of FSA's process to suspend Treasury offsets from March 13, 2020, to September 30, 2020.

Table 2. FSA's Suspension of Treasury Offsets from March 13, 2020, through September 30, 2020

| Period of Last Treasury Offset | Description of FSA's Key Implementation Actions | Count of Borrowers with Suspended Offsets |
|--------------------------------------|---|---|
| March 13, 2020– March 20, 2020 | FSA issued the memorandum to Treasury to cancel Treasury offsets on March 20, 2020. | 140,933 |
| March 21, 2020– March 27, 2020 | Treasury performed actions to suspend collection as of March 27, 2020, 7 days after FSA's issued the cancellation memorandum. | 97,221 |
| March 28, 2020– April 13, 2020 | Treasury's continued ongoing actions to suspend Treasury offsets as of April 13, 2020, 30 days after March 13, 2020. | 8 |
| April 14, 2020– June 11, 2020 | Treasury's continued ongoing actions to suspend Treasury offsets as of June 11, 2020, 90 days after March 13, 2020. | 435 |
| June 12, 2020– September 30, 2020 | Treasury's continued ongoing actions to suspend Treasury offsets through September 30, 2020. | 18 |

According to Section 3513(e) of the CARES Act, "[t]he Secretary shall suspend all involuntary collection related to [a Department-held] loan, including (1) a wage garnishment ... (2) a reduction of tax refund ... (3) a reduction of any other Federal benefit payment by administrative offset ... and ... (4) any other involuntary collection activity by the Secretary."

On March 25, 2020, the Secretary announced that FSA suspended all involuntary collection activity on Department-held loans from March 13, 2020, the day the President declared a national emergency in response to the Coronavirus pandemic. The Secretary's suspension of involuntary collections continued through September 30, 2020, because of Congress's enactment of the CARES Act. The Acting Secretary extended the suspension of involuntary collections until September 30, 2021.

FSA generally achieved positive results in suspending administrative wage garnishments and Treasury offsets because of its efforts to quickly establish and execute a process that suspended the involuntary collection activity. According to FSA's Deputy Chief Operating Officer, the process of suspending involuntary collections across FSA's portfolio was an unprecedented act in response to the Coronavirus pandemic. The Deputy Chief Operating Officer stated that FSA's management did not contemplate the need to simultaneously notify all employers garnishing wages of defaulted Department-held loan borrowers when it designed the Debt Management and Collection System and executed related contracts with its vendors. In late March 2020, FSA began contract modification negotiations with its defaulted student loan servicer to support FSA's actions to suspend administrative wage garnishments and Treasury offsets. According to the director of the Treasury Offset Program, Treasury promptly suspended its collection activity in response to FSA's notification. Further, because FSA monitored collections received from employers and Treasury on a weekly basis, it was able to promptly implement additional actions to ensure employer wage garnishments and Treasury involuntary collections were suspended, as needed. As a result of FSA's process to suspend administrative wage garnishments and Treasury offsets, FSA granted temporary relief to most borrowers in response to the Coronavirus pandemic.

FSA was unable to suspend all administrative wage garnishments because FSA did not always have updated records with current contact information for some employers and some employers did not respond to orders to stop garnishment. According to FSA's Deputy Chief Operating Officer, FSA's defaulted student loan servicer has attempted to contact nonresponsive employers through multiple mailed letters, periodic phone calls, and emails. However, despite these notices, some employers continued to garnish the wages for 1,930 borrowers as of October 23, 2020. When employers failed to suspend administrative wage garnishments, FSA issued a refund to the borrowers for the amounts collected.

Recommendation

We recommend that FSA's Chief Operating Officer determine if wage withholding has ceased for the 1,930 borrowers whose employers continued to withhold wages as of October 23, 2020, despite FSA's cancellation of the administrative wage garnishment orders. If wages continued to be withheld for these and any additional borrowers, determine what additional actions FSA can take regarding employers who unlawfully withhold wages from borrowers.

FSA Comments

FSA agreed with Finding 1. FSA did not explicitly agree or disagree with the recommendation. However, FSA stated that it will temporarily reopen the administrative wage garnishment lockbox to identify employers that continued to send

wage withholdings and provide the OIG with the final list of noncompliant employers for additional action.

OIG Response

FSA's proposed action to reopen the lockbox is responsive to our recommendation to take steps to identify employers that continued to withhold wages. However, FSA's proposed action to provide the OIG with the final list of noncompliant employers for additional action is not responsive to our recommendation. The OIG does not have authority to take direct action against employers who improperly withhold wages. Additional steps by FSA should enable it to obtain the information necessary for referrals to the appropriate administrative agencies with authority to take action against noncompliant employers.

Finding 2. FSA Took Quick Actions and Generally Achieved Positive Results in Refunding Most Payments Involuntarily Collected from Borrowers

Our evaluation of refunds of administrative wage garnishments and Treasury offsets found that FSA issued refunds for \$576.65 million (99 percent) of the \$582.48 million collected during the period March 13, 2020, through September 30, 2020. We also found that FSA refunded 1,063,984 (97 percent) of the total 1,094,507 administrative wage garnishment refunds issued and 221,436 (91 percent) of the total 244,080 Treasury offset refunds issued within 60 days from the date the payment was received. However, we found that FSA did not reprocess refunds for \$21.25 million of the \$576.65 million in refunds issued by FSA that were subsequently returned to Treasury and did not refund \$5.83 million (1 percent) of the \$582.48 million wage garnishments and Treasury offsets collected.

FSA established a process to refund payments collected from administrative wage garnishments and Treasury offsets. Specifically, FSA automated its process to identify, for refund processing, eligible administrative wage garnishments and Treasury offsets recorded in the Debt Management and Collection System. In addition, to expedite the refund review process, FSA's Applications and Borrower Systems Group executed another query that validates the accuracy of borrower information against FSA's records. According to FSA's Deputy Chief Operating Officer, by automating FSA's identification of eligible payments and its approval process, FSA reduced its refund processing timeframe from 4 to 5 weeks to 4 to 5 days from the date the payment was received to the date FSA issued the refund. FSA also monitored weekly the administrative wage garnishments and Treasury offsets collected to ensure the payments were refunded to borrowers.⁵

⁵ According to FSA's former Chief Operating Officer response to the class-action lawsuit "Barber v. DeVos," No.20-1137 (D.D.C. filed April 30, 2020).

Administrative Wage Garnishments Refunded

We found that FSA refunded about \$185.90 million (97 percent) of the \$191.26 million administrative wage garnishments collected from 392,600 borrowers from March 13, 2020, through September 30, 2020.⁶ We also found that of the 1,094,507 total wage garnishments FSA refunded, 1,063,984 (97 percent) were refunded within 60 days from when FSA collected the garnishment and 30,523 (3 percent) were refunded between 61 and 210 days. According to refund notifications FSA sent to borrowers owed a refund, FSA informed borrowers that their “refund will be mailed to you at your ... address on file within the next 30–60 days.” Table 3 below summarizes, in 30-day intervals, the results of FSA’s process to refund administrative wage garnishments from March 13, 2020.

Table 3. Results of FSA’s Process to Refund Administrative Wage Garnishments

| Days to Refund Issuance from the Date Payment was Received | Number of Borrowers | Number of Refunds | Refund Amount (In Millions) | Cumulative Percentage of Total Number of Refunds |
|--|---------------------|-------------------|-----------------------------|--|
| 0 to 30 Days | 207,625 | 472,627 | \$79.88 | 43.1 Percent |
| 31 to 60 Days | 324,365 | 591,357 | \$100.79 | 97.2 Percent |
| 61 to 90 Days | 10,903 | 14,157 | \$2.46 | 98.5 Percent |
| 91 to 120 Days | 4,945 | 8,819 | \$1.50 | 99.3 Percent |
| 121 to 150 Days | 3,230 | 5,041 | \$0.83 | 99.7 Percent |
| 151 to 180 Days | 1,038 | 1,601 | \$0.29 | 99.9 Percent |
| 181 to 210 Days | 574 | 905 | \$0.15 | 100 Percent |
| Total | - | 1,094,507 | \$185.90 | - |

Treasury Offsets Refunded

We found that FSA refunded about \$390.75 million (99 percent) of the \$391.22 million Treasury offsets collected from 238,295 borrowers from March 13, 2020, through

⁶ Our evaluation of administrative wage garnishments was based on the date of the last payment received between March 13, 2020, through September 30, 2020, according to the data recorded in FSA’s Debt Management and Collection System as of October 23, 2020, the date we extracted the data.

September 30, 2020. We also found that of the 244,080 total Treasury offsets FSA refunded, 221,436 (91 percent) were refunded within 60 days from the date the Treasury offset was received and 22,644 (9 percent) were refunded between 61 and 210 days of receipt.⁷ According to refund notifications FSA sent to borrowers owed a refund, FSA informed borrowers that their “refunds will be mailed to you at your ... address on file within the next 30–60 days.” Table 4 below summarizes, in 30-day intervals, the results of FSA’s process to refund Treasury offsets from March 13, 2020.

Table 4. Results of FSA’s Process to Refund Treasury Offsets

| Days to Refund Issuance from the Date Payment was Received | Number of Borrowers | Number of Refunds | Refund Amount (In Millions) | Cumulative Percentage of Total Number of Refunds |
|--|---------------------|-------------------|-----------------------------|--|
| 0 to 30 Days | 37,863 | 38,228 | \$41.30 | 15.7 Percent |
| 31 to 60 Days | 178,751 | 183,208 | \$314.14 | 90.7 Percent |
| 61 to 90 Days | 22,020 | 22,556 | \$35.15 | 99.9 Percent |
| 91 to 120 Days | 24 | 24 | \$0.05 | 99.9 Percent |
| 121 to 150 Days | 49 | 51 | \$0.09 | 99.9 Percent |
| 151 to 180 Days | 6 | 6 | \$0.01 | 99.9 Percent |
| 181 to 210 Days | 7 | 7 | \$0.01 | 100 Percent |
| Total | - | 244,080 | \$390.75 | - |

Administrative Wage Garnishments and Treasury Offsets Not Refunded

We also found that FSA did not refund all administrative wage garnishments and Treasury offsets collected from March 13, 2020, through September 30, 2020. Specifically, of the \$576.65 million of refunds issued, FSA’s process did not identify for additional refund processing \$21.25 million of payments, for 31,504 borrowers, issued

⁷ When evaluating the results of FSA’s process to refund Treasury offsets, we identified Treasury offsets that were received between March 13, 2020, and September 30, 2020, to determine the population of 244,080 Treasury offsets collected for our evaluation. This Treasury offset population excludes any payments Treasury received prior to, but processed after, March 13, 2020.

by FSA that were subsequently returned to Treasury. FSA designed the Debt Management and Collection System to post payments when refunds are returned to the Treasury. Treasury notifies FSA why refunds mailed to borrowers were returned—these reasons include invalid borrower address and torn check. In addition, of the \$582.48 million involuntarily collected, FSA’s process did not identify for refund processing \$5.83 million of payments, for 13,527 borrowers, collected by FSA and posted in the Debt Management and Collection System.

Section 3513(e) of the CARES Act provides that the Secretary shall suspend all involuntary collection related to a Department-held loan. On March 25, 2020, the Secretary announced that FSA suspended all involuntary collection activity on Department-held loans starting March 13, 2020. The Secretary’s suspension of involuntary collection will continue through September 30, 2021.

We found that FSA issued refunds for \$576.65 million in administrative wage garnishments and Treasury offsets collected between March 13, 2020, and September 30, 2020, because of its efforts to quickly establish and execute a process to refund these payments involuntarily collected. FSA also modified its refund processing procedures and performed weekly monitoring of the volume of refunds issued. As a result, FSA granted temporary relief to most defaulted borrowers in response to the Coronavirus pandemic.

However, we found that FSA did not refund 53,167 wage garnishments and Treasury offsets within 60 days from the date the payments were received for reasons that include FSA not having updated address and contact information for some borrowers to issue the refunds within 60 days.⁸ As a result, the temporary relief granted to these borrowers in response to the Coronavirus pandemic was delayed.

We also found that FSA did not reprocess refunds for \$21.25 million of the \$576.65 million in refunds subsequently returned to Treasury for reasons that include FSA not designing its automated refund query to identify payments returned to Treasury that would be eligible for refund processing upon receipt of updated borrower mailing addresses. FSA did not refund \$5.83 million of the \$582.48 million wage garnishments and Treasury offsets collected because FSA did not design its automated refund query to identify certain payments that were manually posted in the Debt Management and Collection System for reasons that include the reposting of payments to borrower loans

⁸ According to the promissory notes signed by borrowers as part of their applications to obtain Federal student loans from the Department, the borrowers were required to update their mailing address and contact information on file with FSA.

due to broken compromise agreements⁹ and the receipt of wage garnishments without sufficient information for FSA's defaulted student loan servicer to locate the borrowers' loans in the Debt Management and Collection System.

Recommendation

We recommend that FSA's Chief Operating Officer adopt the best practice of regularly querying its database to proactively identify payments reposted to borrowers' loans due to refunds returned to Treasury, broken compromise agreements, and payments that were manually posted in the Debt Management and Collection System to determine whether these payments are eligible for refund.

FSA Comments

FSA agreed with Finding 2. FSA did not explicitly agree or disagree with the recommendation. However, FSA stated that it will continue to improve the refund process by working with its defaulted student loan servicer to identify and review all refunds returned to Treasury that FSA received updated borrower address information for additional refund processing. For the payments received from broken compromise agreements and from manual payment applications in FSA's Debt Management and Collection System that FSA did not refund, FSA stated that it has already taken steps to refund payments to those borrowers identified in our review.

OIG Response

FSA's proposed actions are not fully responsive to our recommendation because the proposed actions do not address all parts of the recommendation. FSA's proposed actions address our recommendation related to refunds that FSA issued that were subsequently returned to the Treasury. FSA stated that it will continue to improve its refund process by working with its defaulted student loan servicer to identify and review for refund all accounts that have had a previous refund cancellation and that now have a new address. However, FSA did not propose action that, if implemented, would ensure that payments received from broken compromise agreements and from manual payment applications would be identified for refund processing for borrowers outside the scope of our review (i.e., after September 30, 2020).

⁹ Compromise agreements are agreements between FSA and borrowers to satisfy the amounts owned on defaulted Department-held loans for less than full value of the original loan within 90 days.

Finding 3. FSA Did Not Obtain and Track the Results of Justice's Suspending and Refunding of Payments Involuntarily Collected

We found that FSA did not develop procedures to obtain and track Justice's progress on suspending involuntary collections and refunding payments involuntarily collected on Department-held loans for the period March 13, 2020, through September 30, 2020, for borrowers FSA referred to Justice. FSA instructed Justice in four separate communications to suspend involuntary collections on Department-held loans on FSA's behalf through January 31, 2021. In June 2020, Justice informed FSA that it suspended collection activities on Department-held loans, except for court-ordered garnishments issued prior to March 13, 2020, and was in the process of refunding payments involuntarily collected. We requested but FSA could not provide the results of Justice's process for suspending involuntary collections and refunding payments involuntarily collected because the information FSA received from Justice recorded in the Debt Management and Collection System did not clearly indicate whether Justice implemented specific actions to grant borrowers temporary relief and whether the payments Justice collected from borrowers were voluntary or involuntary.

FSA did not have procedures in place to obtain and track Justice's progress on suspending involuntary collections and refunding payment involuntarily collected throughout the suspension period. In May 2020, FSA asked Justice about its "progress on implementing the CARES Act suspensions and refunding involuntary collections." In response to FSA's inquiry, Justice stated that it stopped Justice-initiated Treasury offsets and provided FSA a report detailing its collection activities during April 2020 on Department-held loans.

We requested but FSA could not provide complete information on the results of Justice's process for suspending involuntary collections and refunding payments involuntarily collected. Therefore, we requested and obtained some of the information directly from Justice. According to Justice's Acting Assistant Director, Audit Liaison Group, Justice collected payments for 2,753 borrowers from March 13, 2020, through September 30, 2020. For 624 of the 2,753 borrowers, Justice collected \$408,722 in Treasury offsets, of which \$299,611 was refunded. Justice did not suspend collection activity or refund payments for 752 borrowers because their payments were in connection with previously issued court-ordered garnishments. Further, Justice did not issue refunds to 1,377 borrowers because their payments were made voluntarily according to Justice's Acting Assistant Director. Table 5 on the following page summarizes the amount Justice refunded based on payments collected through Justice-initiated Treasury offsets and court-ordered garnishments.

Table 5. Justice’s Refund of Payments Collected from March 13, 2020, through September 30, 2020

| Referrals to Justice | Count of Borrowers | Total Amount Collected | Refunds and Reversals |
|----------------------------|--------------------|------------------------|-----------------------|
| Treasury Offsets | 624 | \$408,722 | \$299,611 |
| Court-Ordered Garnishments | 752 | \$763,105 | \$1,132 |
| Voluntary Payments | 1,377 | \$1,749,267 | - |
| Total | 2,753 | \$2,921,094 | - |

Section 3513(e) of the CARES Act provides that the Secretary shall suspend all involuntary collection related to a Department-held loan, which includes loans sent to Justice. On March 25, 2020, the Secretary announced the suspension of involuntary collection activity on Department-held loans starting March 13, 2020, that will continue through September 30, 2021.

The Government Accountability Office’s “Standards for Internal Control in the Federal Government” (issued September 2014) principle 10.01 states, “Management should design control activities to achieve objectives and respond to risks.” Further, principle 13.01 states, “Management should use quality information to achieve the entity’s objectives;” and principal 13.02 states, “Management designs a process that uses the entity’s objectives and related risks to identify the information requirements needed to achieve the objectives and address the risks.”

FSA did not develop procedures to obtain information about and to track Justice’s progress on suspending and refunding payments involuntarily collected on Department-held loans to determine whether temporary relief was granted to these borrowers because, according to FSA’s Deputy Chief Operating Officer, Justice is responsible for collection activities and has exclusive jurisdiction over the loan once it has been referred. In addition, FSA is prohibited from directly contacting these borrowers. According to information from Justice, it maintained and can provide FSA with specific details about Justice’s progress on suspending involuntary collections and refunding payments involuntarily collected. Therefore, obtaining information from Justice and tracking Justice’s progress assists FSA in achieving the goals of and compliance with the CARES Act. Because FSA did not obtain information on an ongoing basis from Justice, FSA did not know the extent to which Justice granted temporary relief in response to the Coronavirus pandemic to borrowers whose loans FSA referred to Justice for collection.

Recommendation

We recommend that FSA's Chief Operating Officer develop and implement procedures to obtain information about and track Justice's progress on suspending and refunding payments involuntarily collected during the suspension period on Department-held loans.

FSA Comments

FSA disagreed with the premise of Finding 3 and the recommendation, stating that the finding and recommendation should be removed. FSA stated that the "collection activities that form the subject of this [inspection] are limited in the [CARES] Act to those that are performed 'by the Secretary [of Education].'" FSA stated that once the Department places an account with Justice for collection, the Department no longer has direct authority over the account. FSA also stated that, pursuant to the Federal Claims Collection Standards, Justice is primarily responsible for ensuring compliance with any relevant statutory requirements like the CARES Act. FSA stated that its staff emailed guidance and issued official memoranda to Justice requesting that Justice provide the same relief that FSA provided to Department-held loans under the CARES Act. However, FSA stated that it does not have the authority to compel Justice's actions to suspend involuntary collections. FSA also stated that OIG did not cite an authority that requires the Department to track Justice's suspension activities or that requires Justice to cooperate with FSA's tracking.

OIG Response

We disagree that the required suspension of involuntary collection applies only to collection actions exclusively performed by the Secretary. The CARES Act provides that the suspension of payment and the suspension of involuntary collection extends to all loans "held by the Department." We disagree that the required suspension of involuntary collection applies only to collection actions exclusively performed "by the Secretary." That phrase appears in paragraph 4 of subsection 3513(e) of the CARES Act. Paragraphs 1, 2, and 3 of that subsection refer to specific involuntary collection actions that are initiated by the Secretary, but executed or completed by other agencies and parties. Although not fully performed by the Secretary, the requirement to suspend involuntary collection activities nevertheless extends to those actions. Similarly, the requirement of paragraph 4 to suspend "any other involuntary collection activity by the Secretary" is not limited to actions performed exclusively by the Department.

We acknowledged that the Federal Claims Collection Standards provide that Justice has exclusive authority over the loans once they have been referred. These standards also allow the Secretary to designate what collection actions should be pursued when a debt is referred, but the standards do not provide an explicit mechanism for the Secretary to

either modify the collection actions to be pursued or recall the debt once referred. Justice did suspend collection on many of the loans as requested by the Department, thereby acknowledging that the CARES Act suspension did apply.

The Federal Claims Collection Standards also require Justice to notify the Department in a timely manner of any payments it receives. FSA should continue to request reporting from Justice and follow up on any payments that may have been received contrary to the suspension of collection required by the CARES Act. We agree that the Department cannot compel action by another agency of the Executive Branch. The Secretary should work with Justice to extend the suspension of collection to include all loans held by the Department for which Justice has not suspended collection due to the level of effort needed to suspend collection on specific loans. If collection on those loans cannot practically be suspended, the Department can obtain the advice of Justice as to whether that collection meets the government's obligation to implement the provisions of the CARES Act. If the Department is unable to obtain the cooperation of Justice, it should report the limitations on its ability to fully implement and report on the suspension of collection required by the CARES Act.

We did not make any substantive changes to Finding 3 or the recommendation in response to FSA's comments. We added criteria from the Standards for Internal Control in the Federal Government to the finding to show FSA's responsibility for tracking suspension activities, including actions by Justice on loans held by the Department.

Appendix A. Scope and Methodology

We evaluated the results of FSA's process for suspending involuntary collections and refunding payments involuntarily collected on defaulted Department-held loans in response to the Coronavirus pandemic. We obtained and analyzed the information presented in this report through interviews, documentation requests from the Department, and data extracted from FSA's Debt Management and Collection System. Our review covered the results of FSA's process to suspend involuntary collections and refund payments involuntarily collected from March 13, 2020, through September 30, 2020. We performed our inspection from September 2020 through January 2021.

To answer our objective, we performed the following procedures.

1. Reviewed documentation related to the following:
 - a. FSA's notifications to suspend involuntary collections of administrative wage garnishments, Treasury offsets, and loans FSA referred to Justice for collection during the suspension period;
 - b. FSA's process for refunding payments involuntarily collected from borrowers during the suspension period including the determination of eligible payments for refunds processing and the development of the automated queries for identifying and approving refunds;
 - c. FSA's contract modification with its defaulted student loan servicer to support its actions on suspending involuntary collections and refunding payments involuntarily collected on defaulted Department-held loans;
 - d. FSA's memoranda issued to Treasury and Justice instructing the agencies to suspend involuntary collection; and
 - e. laws, regulations, press releases, and written correspondence related to FSA's process for suspending involuntary collections and refunding payments involuntarily collected on defaulted Department-held loans.
2. We interviewed the following people to gain an understanding of FSA's process for suspending involuntary collections and refunding payments involuntarily collected during the suspension period on defaulted Department-held loans from
 - a. FSA's Office of Student Experience and Aid Delivery, the Deputy Chief Operating Officer, Directors, and Supervisor;
 - b. FSA's Finance Directorate, Accounting Operations Division Chief;
 - c. FSA's Policy Implementation and Oversight Directorate, Acting Director;

- d. Maximus Federal Services, Inc., FSA's contracted defaulted student loan servicer;
 - e. the Department, Office of General Counsel, Division of Postsecondary Education, Attorney;
 - f. the Treasury, Bureau of Fiscal Service, Director of the Treasury Offset Program; and
 - g. Justice, Audit Liaison Group, Acting Assistant Director.
3. Performed data analysis on the population of payments FSA collected and the population of refunds FSA issued from March 13, 2020, through September 30, 2020, to evaluate the results of FSA's process for suspending involuntary collections and refunding payments involuntarily collected during the suspension period on defaulted Department-held loans.
 4. Performed limited testing on a sample of borrowers that had payments that were not refunded from March 13, 2020, through September 30, 2020.

We held an entrance meeting with FSA on September 21, 2020, and an exit meeting on January 26, 2021.

Data Analysis Methodology

To evaluate the results of FSA's process to suspend and refund involuntary collections, we queried FSA's Debt Management and Collection System to identify the population of administrative wage garnishments and Treasury offsets FSA collected from March 13, 2020, through September 30, 2020. We grouped the payments for each unique borrower and used the last date a payment was received to determine whether their administrative wage garnishments and Treasury offsets were suspended. FSA collected 1,374,548 administrative wage garnishments and Treasury offsets from March 13, 2020, through September 30, 2020. In addition, to evaluate the results of FSA's process to refund payments involuntarily collected, we queried FSA's Debt Management and Collection System to identify the population of administrative wage garnishments and Treasury offsets FSA refunded from March 13, 2020, through September 30, 2020. We grouped the refunds into 30-day intervals to determine whether administrative wage garnishments and Treasury offsets were refunded within 60 days from the date the payments were received. FSA refunded 1,338,669 administrative wage garnishment and Treasury offset payments from March 13, 2020, through September 30, 2020. Table 6 shows the number of administrative wage garnishments and Treasury offsets collected and refunded from March 13, 2020, through September 30, 2020.

Table 6. Population of Administrative Wage Garnishments and Treasury Offsets Suspended and Refunded from March 13, 2020, through September 30, 2020

| Involuntary Collection Activity | Number of Payments | Payment Amount | Number of Refunds | Refund Amount |
|---------------------------------|--------------------|----------------|-------------------|----------------------------|
| Administrative Wage Garnishment | 1,129,918 | \$191,263,865 | 1,094,589 | \$185,905,645 |
| Treasury Offset | 244,630 | \$391,222,482 | 244,080 | \$390,750,262 |
| Total | 1,374,548 | \$582,486,347 | 1,338,669 | \$576,655,907 ^a |

^a The \$576,655,907 includes \$21,249,196 in refunds that were subsequently returned to the Treasury.

We also evaluated whether FSA issued refunds for all payments involuntarily collected during the suspension period. We grouped the payments not refunded by each unique borrower and involuntary collection activity. FSA did not refund 92,607 administrative wage garnishments and Treasury offsets collected from March 13, 2020, through September 30, 2020. Table 7 and Table 8 show the number of administrative wage garnishments and Treasury offsets that FSA did not refund from March 13, 2020, through September 30, 2020.

Table 7. Population of Administrative Wage Garnishments and Treasury Offsets that FSA did not Reprocess Refunds Due to Refund Cancellations from March 13, 2020, through September 30, 2020

| Involuntary Collection Refunds | Number of Payments | Payment Amount |
|---------------------------------|--------------------|----------------|
| Administrative Wage Garnishment | 40,476 | \$5,755,861 |
| Treasury Offset | 16,252 | \$15,493,335 |
| Total | 56,728 | \$21,249,196 |

Table 8. Population of Administrative Wage Garnishments and Treasury Offsets that FSA did not Refund from March 13, 2020, through September 30, 2020

| Involuntary Collection Refunds | Number of Payments | Payment Amount |
|---------------------------------|--------------------|----------------|
| Administrative Wage Garnishment | 35,329 | \$5,358,220 |
| Treasury Offset | 550 | \$472,220 |
| Total | 35,879 | \$5,830,440 |

Use of Computer-Processed Data

We obtained computer-processed data related to administrative wage garnishments and Treasury offsets collected and refunds of payments involuntarily collected during the suspension period on defaulted Department-held loans. Specifically, we obtained data from FSA's Debt Management and Collection System for the period March 13, 2020, through September 30, 2020. FSA's Debt Management and Collection System is the system of record for defaulted student loans. To assess the reliability of the data, we performed electronic testing, reviewed existing information about the data and the system that produced them, and interviewed agency officials knowledgeable about the data. We concluded that this computer-processed data was sufficiently reliable for the purpose of our inspection.

We also obtained computer-processed data related to the results of Justice's process for suspending involuntary collections and refunding payments involuntarily collected during the suspension period on defaulted Department-held loans from March 13, 2020, through September 30, 2020. Justice's Consolidated Debt Collection System is the system of record for its debt management of defaulted Department-held loans. We obtained this data because FSA could not provide complete information on the results of efforts to suspend involuntary collection and refund payments involuntarily collected for borrowers referred to Justice. We used this data to present information on the progress reported by Justice in implementing the CARES Act suspensions and refunding involuntary collections. We noted in Finding 3 that the data presented was according to Justice officials. Given our use of the data, we did not verify the accuracy, completeness, and reliability of the data obtained from Justice's Consolidated Debt Collection System.

We conducted this inspection in accordance with the Council of the Inspectors General on Integrity and Efficiency's "Quality Standards for Inspection and Evaluation." Those standards require that we plan and perform the inspection to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions

based on our inspection objective. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our inspection objective.

Appendix B. Acronyms and Abbreviations

| | |
|------------|--|
| CARES Act | Coronavirus Aid, Relief, and Economic Security Act |
| Department | U.S. Department of Education |
| FSA | Federal Student Aid |
| Justice | U.S. Department of Justice |
| Secretary | Secretary of Education |
| Treasury | U.S. Department of Treasury |

Department Comments



April 23, 2021

TO: Ms. Myra Hamilton
Acting Regional Inspector General for Audit
U.S. Department of Education
Office of Inspector General

Mr. Jeffrey Nekrasz
Director Student Financial Assistance Advisory and Assistance
U.S. Department of Education
Office of Inspector General

FROM: Robin Minor *Robin S. Minor*
Acting Chief Operating Officer
Federal Student Aid

SUBJECT: Draft Report “Federal Student Aid’s Suspension of Involuntary Collection in Response to the Coronavirus Pandemic” Assignment Number” Control Number ED-OIG/ ED-OIG/I20NY0010

Dear Ms. Hamilton:

Thank you for the opportunity to review and comment on the statements and recommendations made in the Office of Inspector General (“OIG”) Draft Report, *Federal Student Aid’s Suspension of Involuntary Collection in Response to the Coronavirus Pandemic* (I20NY0010), dated March 23, 2021.

OIG presented three findings in the Draft Report, with three recommendations. Federal Student Aid’s (FSA) response to the findings and recommendations are below.

We agree with OIG’s findings that FSA took quick actions and generally achieved positive results in both stopping Treasury Offset (TOP) and Administrative Wage Garnishment (AWG), and in refunding payments received through those programs. We do not agree that the Draft Report’s finding that FSA was responsible for tracking the Department of Justice’s (“Justice” or “DOJ”) collection activities, presents a complete picture.

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Finding 1. FSA Took Quick Actions and Generally Achieved Positive Results in Suspending Most Involuntary Collections on Defaulted Department-Held Loans

FSA's Response: FSA agrees with the OIG's findings.

FSA did take quick actions and successfully suspended involuntary collections on most defaulted department-held loans. While FSA acknowledges as of September 30, 2020, that we continued to *receive* garnishment payments from a few employers, this was not due to a failure on FSA's part to take reasonable steps to suspend garnishment. Rather, the continued receipt of garnishment payments was the result of non-compliance by employers who ignored or even defied FSA's repeated efforts to get them to stop garnishing the wages of borrowers. The Department of Education ("the Department" or "ED") will continue to evaluate its authorities with respect to administrative wage garnishment to understand what improvements may be made, including improvements that would avoid employer non-compliance with pauses in garnishment.

Recommendation 1.1: We recommend that FSA's Acting Chief Operating Officer determine if wage withholding has ceased for the 1,930 borrowers whose employers continued to withhold wages as of October 23, 2020, despite FSA's cancellation of the administrative wage garnishment orders. If wages continued to be withheld for these and any additional borrowers, determine what additional actions FSA can take regarding employers who unlawfully withhold wages from borrowers.

FSA's Response to Recommendation 1.1: In order to determine if any employers continue to send wage withholdings in violation of the CARES Act, and in violation of FSA's written orders to suspend garnishment, FSA will temporarily re-open the AWG "lockbox" for a period of six weeks. This six-week period should allow for sufficient time to cycle through the various pay schedules that borrowers experience. Any AWG payments that are received from employers during this period will be analyzed. FSA will forward a final list of non-compliant employers to the Inspector General for additional action.

Finding 2. FSA Took Quick Actions and Generally Achieved Positive Results in Refunding Most Payments Involuntarily Collected from Borrowers

FSA's Response: FSA agrees with the OIG's findings.

FSA did take quick actions and successfully refunded most payments involuntarily collected from borrowers. While FSA acknowledges that as of September 30, 2020, a small proportion of borrowers had not yet received refunds for involuntarily collected payments, those refunds could not be issued because FSA did not have valid addresses to send the refunds for those borrowers. Throughout this period FSA has been actively attempting to update address and contact information for these borrowers.

The Improper Payments Improvement Act (IPIA) prevents FSA from knowingly sending refunds to borrowers whose address we know to be invalid. Additionally, an OIG report from 1997 found that

when FSA issued refunds to unverified addresses there was a high risk of improper payments. FSA strives to avoid improper payments by not issuing refunds to addresses that not only cannot be verified but indeed are known to be invalid. Our procedures, based on OIG's recommendation, require us to reach out to the borrower to validate the address before sending a refund.

FSA took several steps to locate good addresses when appropriate, including:

- Sending emails to borrowers notifying them of the refund owed and requesting an address
- Sending letters to the employer of borrowers who had been garnished requesting that they ask the borrower to provide an updated address in order to receive refunds owed
- Requesting addresses from Treasury for borrowers who had been offset

It is important to note that any payments that cannot be refunded have already been applied to the borrower's student loan debt, reducing the balance the borrower owes. If the borrower contacts FSA, FSA will refund the payments in question. OIG has not provided evidence that FSA has failed to update a borrower's address when provided information by the borrower.

Table 7 of the draft report states that FSA did not refund certain payments due to refund cancellations. FSA *did* issue refunds for these borrowers; the refunds were returned by Treasury because they were undeliverable.

Recommendation 2.1: We recommend that FSA's Acting Chief Operating Officer adopt the best practice of regularly querying its database to proactively identify payments reposted to borrowers' loans due to refunds returned to Treasury, broken compromise agreements, and payments that were manually posted in the Debt Management and Collection System to determine whether these payments are eligible for refund.

FSA's Response to Recommendation 2.1: As pointed out during the interview process conducted by the OIG, FSA already has, and has consistently implemented, a procedure for proactively identifying payments reposted to borrower accounts due to refunds returned to Treasury. Under this long-established process, FSA's default servicer, Maximus Federal Services, reviews every account on the file of returned refunds received from Treasury, and sends an address verification request to the borrower. If the borrower responds by telephone or by mail to that address verification request, the Maximus agent making the update initiates re-issuance of the refund. If, however, the USPS reports that our address verification letter was undeliverable, the Debt Management and Collections System is automatically updated to show that the borrower's address is invalid. Until the borrower provides a new address (the OIG's report acknowledges it is the borrower's responsibility to notify his or her loan holder of any change of address), FSA is unable to reissue the refund. FSA will continue to improve this process by working with our default servicer to identify and review for refund all accounts that have had a previous refund cancellation and that now have a new address.

With respect to the other two issues identified, FSA reported during the interview process conducted by OIG that we had already identified and taken steps to address the small number of payments that were not refunded because of issues related to broken compromises and manual payment applications.

The majority of the payments in question had been refunded long before OIG raised the issue. FSA's analysis of the 13,527 borrowers identified by OIG indicates that FSA had failed to issue a refund to only 528 of those borrowers at the time of OIG's finding. FSA also found that 95% of the borrowers identified by OIG have invalid addresses that prevent FSA from issuing a refund.

Finding 3. FSA Did Not Obtain and Track the Results of Justice's Suspending and Refunding of Payments Involuntarily Collected

FSA's Response: FSA disagrees with the premise of the OIG's finding that FSA is responsible for tracking collection activity performed by the Department of Justice (DOJ). FSA does not have the authority to direct for collection activity once an account has been referred to DOJ.

As stated in the OIG's report:

According to Section 3513(e) of the CARES Act, "[t]he Secretary shall suspend all involuntary collection related to [a Department-held] loan, including (1) a wage garnishment ... (2) a reduction of tax refund ... (3) a reduction of any other Federal benefit payment by administrative offset ... and ... (4) any other involuntary collection activity *by the Secretary*." [Emphasis added]

The collection activities that form the subject of this audit are limited in the Act to those that are performed "by the Secretary [of Education].".

Once Education places an account with DOJ for collection, Education no longer has direct authority over the account. Pursuant to the Debt Collection Improvement Act, 31 U.S.C. § 3711g (10), the Secretary of Treasury and DOJ adopted regulations at 31 CFR Part 900 (known as the Federal Claims Collection Standards (FCCS)). The FCCS provides that:

The Department of Justice has exclusive jurisdiction over the debts referred to it pursuant to this section. The referring agency shall immediately terminate the use of any administrative collection activities to collect a debt at the time of the referral of that debt to the Department of Justice. The agency should advise the Department of Justice of the collection activities which have been utilized to date, and their result. The referring agency shall refrain from having any contact with the debtor and shall direct all debtor inquiries concerning the debt to the Department of Justice. The referring agency shall immediately notify the Department of Justice of any payments credited by the agency to the debtor's account after referral of a debt under this section. The Department of Justice shall notify the referring agency, in a timely manner, of any payments it receives from the debtor. 31 U.S.C. § 904(1)(b). (Emphasis added)

Pursuant to this mandate, DOJ is primarily responsible for ensuring compliance with any relevant statutory requirements like the CARES Act.

In addition, even though DOJ notifies ED of payments received (as required under the FCCS cited above), any refunds of overpayments made to DOJ must generally be done by DOJ, not ED; this

process ensures that duplicate refunds are not made by the two agencies and ensures requirements of the Improper Payments Elimination and Recovery Improvement Act of 2012 (Pub. L. No. 112-248, 126 Stat. 2390 (2013)) are met.

The OIG report itself acknowledges these restrictions on page 5: “For the loans referred to Justice, Justice is responsible for suspending involuntary collections on defaulted Department-held loan borrowers because Justice has exclusive jurisdiction over the loans once referred.” In light of this, FSA recommends that OIG reconsider this finding.

Notwithstanding the provisions noted above, and Education’s lack of authority to oversee DOJ’s collection activities, or compel DOJ to suspend them, Education did submit a *request* to DOJ asking that the student loan relief be extended to ED accounts placed with DOJ pursuant to the CARES Act. FSA staff provided DOJ email guidance followed by official memoranda seeking that student loan accounts placed with DOJ for collection have the same relief measures as other accounts held by ED and that refunds of any voluntary or involuntary payment via TOP or garnishment received on or after March 13, 2020 should be done.

DOJ subsequently confirmed that they honored FSA’s request in a limited fashion by suspending new collection activities, including notifying borrowers that voluntary payments are not required during the suspension period. DOJ has advised FSA, though, that they did not attempt to cancel court-ordered judgments nor payments being made by a chapter 13 bankruptcy trustee. DOJ stated that doing so in either of those scenarios would require DOJ attorneys to make individual requests to the courts for each individual borrower and for the courts to review and rule on each borrower case individually.

Recommendation 3.1: We recommend that FSA’s Acting Chief Operating Officer develop and implement procedures to obtain information about and track Justice’s progress on suspending and refunding payments involuntarily collected during the suspension period on Department-held loans.

FSA’s Response to Recommendation 3.1:

Once Education places an account with DOJ for collection, DOJ has exclusive jurisdiction over collection activities on that account. Nowhere in the report does OIG cite any authority that requires Education to track the activities of DOJ or any other Federal agency, nor does OIG cite any authority that would empower Education to compel DOJ to cooperate in any such tracking. FSA’s position is that FSA tracked the involuntary collection activity taken by the Secretary of Education as required by the CARES Act. In light of the considerations noted above with regard to this finding, we ask that OIG reconsider and delete this recommendation.

Thank you for the opportunity to respond to the recommendations outlined in this OIG draft report. We appreciate the time and the effort OIG spent in auditing this issue, as well as the opportunity to comment.