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**Internal Controls over Backpay Disbursements**

Report No. OIG-AMR-82-19-03

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## **APPENDICES**

- A. Memorandum from the Associate General Counsel, Division of Operations-Management, Response to the Office of the Inspector General, Notice of Findings and Recommendations, Reference, OIG-AMR-82, dated September 16, 2019
- B. Memorandum from the Chief Financial Officer, Response to Office of the Inspector General, Notice of Findings and Recommendations, Reference, OIG-AMR-82, dated September 17, 2019

## **EXECUTIVE SUMMARY**

We previously performed an audit to determine whether the Agency disbursed through an electronic funds transfer payments from the U.S. Treasury account to any individuals who were not discriminatees in the case for which backpay was collected. During that audit, we observed various discrepancies in the backpay process. As a result of those discrepancies, we determined it was appropriate to initiate an audit to review the internal controls in the backpay process.

The objective of this audit was to determine whether internal controls in the backpay process are designed and implemented to ensure appropriate management of the backpay process, including accurate and timely disbursements.

We generally found that the backpay internal controls in the Regional Offices were not always being followed. For example, we determined that information supporting the backpay calculations was not always obtained in the initial investigation or maintained in the case file and that supervisory reviews were not catching these instances. We also observed instances when Division of Operations-Management approval was not obtained for settlements of less than 80 percent of backpay due. We also determined that backpay data in the NxGen case management system was not accurate or reliable. We did, however, determine that Regional Offices were maintaining suitable documentation of backpay payments and we found documentation in the case files that respondents complied with the terms of the settlement agreements. We made three recommendations to the Division of Operations-Management for corrective action.

In the Office of the Chief Financial Officer, we found that for backpay payments in the second and third quarters of Fiscal Year 2018, payment records did not always include all of the required documentation and that some payments were processed without documentation of supervisory review. We determined that for Fiscal Year 2017, there were 16 disbursements that were cancelled and backpay funds had not again been disbursed, and 5 disbursements were cancelled and the funds were returned to the respondent. We found that the Finance Branch had not implemented or developed a process to screen backpay payments for known fraud indicators and that it was not reconciling backpay records. We also found, however, that backpay information in the Backpay Management System was accurate and reliable. We made five recommendations to the Office of the Chief Financial Officer for corrective action.

The Associate to the General Counsel, Division of Operations-Management, and the Chief Financial Officer submitted comments on the draft report. They each stated that they concurred with their respective recommendations. The comments are attached as appendices to the report.

## **BACKGROUND**

The National Labor Relations Board (NLRB or Agency) is authorized by the National Labor Relations Act to remedy unfair labor practices. Backpay is a remedy for a monetary loss to an individual called a “discriminatee” that results from an unfair labor practice. Backpay can include, among other things, lost wages, expenses related to lost wages, lost benefits, reimbursement of union dues, and interest on the amount of backpay owed. A charged party who owes backpay is generally referred to as a “respondent.”

Respondents may pay backpay by paying the amount owed directly to the discriminatee and providing proof of payment to the Regional Office; by providing the Regional Office with a check made out to a discriminatee that is then delivered to the discriminatee by the Regional Office; or by depositing the amount of backpay owed into a U.S. Department of Treasury (U.S. Treasury) account, the funds of which are then disbursed by the NLRB to the individual discriminatees.

We previously performed an audit to determine whether the Agency disbursed through an electronic funds transfer payments from the U.S. Treasury account to any individuals who were not discriminatees in the case for which backpay was collected. During that audit, we observed various discrepancies in the backpay process. As a result of those discrepancies, we determined it was appropriate to initiate an audit to review the internal controls in the backpay process.

## **OBJECTIVE, SCOPE AND METHODOLOGY**

The objective of this audit was to determine whether internal controls in the backpay process are designed and implemented to ensure appropriate management of the backpay process, including accurate and timely disbursements.

With the exception of auditing compliance with Memorandum ICG 18-03, *Procedures for Ensuring Reliability of Settlement Documents and Checklist for Processing Backpay Distribution Requests through the Finance Branch*, dated December 28, 2017, the scope of the audit was cases involving backpay in Fiscal Year (FY) 2017. For testing

compliance with Memorandum ICG 18-03, our scope was the second and third quarters of FY 2018.

We reviewed laws, regulations, and Agency policies related to backpay disbursements. To obtain an understanding of NLRB procedures related to the processing of backpay disbursements, we interviewed NLRB personnel at the Headquarters and in the Regional Offices. We reviewed supporting documentation in the case files from NLRB case processing system known as NxGen, backpay files in the Finance Branch, and the Backpay Management System (BMS) to determine compliance with NLRB internal controls related to the processing of backpay disbursements.

We obtained an extraction of data for all backpay cases closed in FY 2017 from NxGen. We then selected a statistically valid random sample of disbursements to determine whether the database was accurate and reliable. Using generally accepted sampling criteria, a 90 percent confidence rate resulted in a sample size of 77 disbursements. The 90 percent confidence level is consistent with Government Accountability Office (GAO) guidance and our expected deviation rate. For substantive testing of compliance with internal controls, we selected a random sample cases with an amount of backpay paid that was \$5,000 or more. Using generally accepted sampling criteria, a 90 percent confidence rate resulted in a sample size of 76 disbursements. The results of our test can be projected to the population of backpay cases.

We obtained the database of backpay disbursements from BMS. We selected a statistically valid random sample of disbursements to determine whether the database was accurate and reliable. Using generally accepted sampling criteria, a 90 percent confidence rate resulted in a sample size of 78 disbursements. Because the random sample of cases did not include enough cases to test the accuracy and reliability of data for bank account and routing numbers, to test those data elements we selected a separate random sample of those data elements. Using generally accepted sampling criteria, a 90 percent confidence rate resulted in a sample size of 58 for bank account and routing numbers. We selected a statistically valid random sample to determine the accuracy and reliability of the deposit data. Using generally accepted sampling criteria, a 90 percent confidence rate resulted in a sample of 59 deposits. The results of our tests

can be projected to the population of backpay disbursements.

For our testing related to compliance with the requirements of Memorandum ICG 18-03, we reviewed all of the backpay disbursements in the second and third quarters of FY 2018. For our testing of the internal controls related to cancelled disbursements and fraud screening, we reviewed all of the disbursements occurring in FY 2017. Because we could not obtain a statistically random sample of cases settled for less than 80 percent of the backpay due, we used a judgmental sample.

We conducted this performance audit in accordance with generally accepted government auditing standards during the period from January 2018 through August 2019. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

## **BACKPAY IN THE REGIONAL OFFICES**

### **Data Accuracy and Reliability**

The NLRB uses NxGen to record data related to case processing. For purposes of this audit, we are required to determine whether the NxGen data that is related to our testing is accurate and reliable. The data fields that we determined were related to our testing were Date Filed; Date Closed; Disposition Date; 100% Backpay Calculated; and Amount Paid by Company.

To determine the accuracy of data of NxGen data, we selected a random sample of 77 closed cases from FY 2017. We then compared the NxGen data from the randomly selected cases to the documentation in the electronic NxGen case files. For this testing, we used a tolerable error rate of 10 percent, which is consistent with GAO guidance.

As a result of our testing, we determined that the data in the five fields was not accurate and therefore was unreliable:

	<b>Matched Documents</b>	<b>%</b>	<b>Matched Amount Agreed to - No Documentation this Amount was Paid</b>	<b>%</b>	<b>Lacks Documentation</b>	<b>%</b>	<b>Did Not Match</b>	<b>%</b>
<b>Date Filed</b>	64	83.12%	N/A		1	1.30%	12	15.58%
<b>Date Closed</b>	59	76.62%			4	5.19%	14	18.18%
<b>Disposition Date</b>	62	80.52%			4	5.19%	11	14.29%
<b>100% Backpay Calculated</b>	52	67.53%			5	6.49%	20	25.97%
<b>Amount Paid by Company</b>	29	37.66%	30	38.96%	4	5.19%	14	18.18%

We also observed the following:

- Although the date closed was accurate for only 59 records, or 76.62 percent, the fiscal year of the date closed was correct for 76 records, or 98.7 percent and therefore we could rely upon the date to randomly selected cases by fiscal year for our substantive testing;
- In 10 cases, the “100% Backpay Calculated” and/or “Amount Paid by Company” fields were inaccurate because one of the components of backpay, such as expenses, excess taxes owed, or interest, was not included in the number that was entered in NxGen; and
- Of the 12 records with inaccuracies in the “Date Filed” field, 8 cases had dates that were for related cases or amended charges.

During the Exit Conference, Management expressed a concern regarding the Date Filed field errors for the related cases and amended charges. Based upon that concern, we reviewed the testing of the NxGen data. For our data accuracy testing, the data was extracted from the NxGen system by staff in the Office of the Chief Information Officer. After reviewing our testing, we determined that our findings are accurate based upon the extracted NxGen data that was provided to the OIG. We then compared the extracted data to the “screen” information that a NxGen user would find if they accessed each case individually in the NxGen system. With that comparison, we determined that the screen data for the Date Filed was different from the extracted data for



seven of the eight cases. We then compared the Date Filed screen data to the case file records and found errors in two of the eight cases.

Because of the unreliability of the NxGen data, except for selecting cases by closed fiscal year, we did not rely the NxGen data for our substantive testing of compliance with NLRB casehandling procedures.

*Recommendation*

1. We recommend that the Division of Operations-Management (Operations-Management) develop and implement a system of controls to address NxGen data accuracy and reliability.

**Compliance with Casehandling Procedures**

*Determination of Backpay and Supervisory Review*

The Casehandling Manual states that all information that is in the possession of the Charging Party and/or discriminatee regarding backpay should be obtained as part of the initial investigation. To test this requirement, we excluded from our review cases involving non-Board settlements agreed to shortly after the charge was filed; cases involving grievances or arbitrations; and cases where the backpay was not related to a termination or wage reduction. From our review of the affidavits and documentation in the NxGen case file, the Agency often failed to obtain all information needed to calculate backpay in its initial investigation:

<b>Obtained Information to Calculate Backpay in Initial Investigation</b>							
Yes		No		Partial		Not Tested	
45	59.21%	9	11.84%	4	5.26%	18	23.68%

Memorandum OM 12-74, Follow up to OM 11-61 Financial Remedies and Other Settlement Terms Audit OIG-AMR-63, dated August 21, 2012, requires that supervisors verify that the remedy obtained in the case is accurately recorded in NxGen. To assist with this verification process, a “Remedy Calculations Reviewed” checkbox was added to NxGen.

In eight cases we found that there was no supporting documentation for the figures used in the backpay

calculation. For example, we observed backpay calculations where there was no documentation for amount of weekly gross backpay, the number of hours used in calculations, or the wage rate used in calculations. In others, we found that the backpay calculation listed the number of hours worked and/or the wage rate, but there were no other files that supported the figures used.

We also observed that:

- In three cases, we observed that the 100% Backpay Calculated amount in NxGen was \$0, and the supporting documentation did not specify why this amount was \$0;
- In three cases, NxGen indicated that the Remedy Calculations were reviewed, even though there was a discrepancy between the Remedy Calculated document and the 100% Backpay Calculated amount listed in NxGen; and
- In three cases, the “Remedy Calculations Reviewed” section was not completed.

Given this lack of supporting documentation and the discrepancies, it is not apparent that the supervisory review is being conducted as intended.

### *Method of Distribution of Backpay*

The Agency’s Casehandling Manual sets out the requirements for maintaining documentation of backpay payments. When the Regional Office delivers backpay and interest checks personally or by mail, the checks are to be provided to the each discriminatee with a letter that includes a receipt for the discriminatee to sign, date, and return to the Regional Office acknowledging receipt of the checks. When the respondent distributes payments directly to discriminatees, the respondent is required to provide the Regional Office with receipts or other suitable evidence of payment.

For our testing, we determined that 40 of the 76 cases in the random sample of cases had a non-Board settlement or arbitration decision that was not subject to the Agency’s

backpay payment documentation requirements. For the 36 remaining cases we found the following:

- For the six cases where the respondent paid the discriminatee directly, we found suitable evidence of payment in NxGen case file;
- For 26 cases, the Regions distributed checks provided by the respondent:
  - For 25 of the 26 cases, we found documentation of copies of the backpay checks, transmittal letters, and documents reflecting the amount to be paid. For those cases we observed the following:
    - The one case that did not have the recommended documentation had 17 installment payments. The missing documentation was for the 11<sup>th</sup> installment payment; however, we did find documents in the NxGen case file stating that scanned files had been uploaded to a network drive; and
    - Also, for one case that had the payment documentation, the documentation was misfiled in another case against the same respondent;
  - We observed that the check amounts matched the amounts that discriminatees were owed in 24 of the 26 cases;
- There were two cases where both the respondent and the Regional Office distributed checks. In those cases, there was suitable evidence of payment;
- There was one case where the respondent provided the Agency with checks for some discriminatees and other discriminatees where paid via U.S. Treasury. In this case, the recommended documentation was in NxGen; and
- There was one case where the respondent improperly withheld taxes from checks for the interest portion of backpay. The documentation provided by the respondent showed only a partial correction of the payment error.

## *Settlement Agreement Terms*

There were 25 settlement agreements in our random sample. For those agreements we looked for documentation in the case file of compliance with the terms related to the payment of backpay:

- There were 12 cases with settlement agreements that included a requirement that a backpay allocation report be provided to the Regional Office. For one case, we did not find documentation in NxGen that the report was submitted; and
- There were three cases with a settlement agreement that contained terms that required the respondent to not withhold taxes of more than 25 percent. We found documentation in the case files that that the respondent complied with this term in all three cases.

We also observed that none of the nine settlement agreements that involved the collection of backpay for multiple discriminatees had a provision that addressed the disposition of backpay funds remaining after each of the located discriminatees were paid.

## *Deceased Discriminatees*

The Casehandling Manual states that backpay due a deceased discriminatee should be paid to the legal administrator of the estate or to any person authorized to receive such payments under applicable state law. Before disbursing backpay due the estate of a deceased discriminatee to any individual, the Compliance Officer should obtain a copy of the deceased discriminatee's death certificate and either a copy of the court document appointing the individual as administrator/executor of the estate or, in the event no administrator or executor was appointed, Standard Form 1055, Claim Against the United States for Amounts Due in the Case of a Deceased Creditor, completed by the deceased discriminatee's heir. The Finance Branch also requires the Social Security Number of the beneficiary.

If backpay is paid in the same year the discriminatee died, Social Security and Medicare taxes must be withheld and

reported only as Social Security and Medicare wages on the W-2. If payment is made after the year of death, no W-2 should be completed and no withholdings should be taken.

There was only one case in our sample that had a deceased discriminatee. For that case, the Regional Office received two checks for the discriminatee in December 2016: one for taxable income with the taxes withheld and the other for nontaxable income. In January 2017, the Regional Office received documentation that the discriminatee died in January 2016. The Regional Office returned the checks to the respondent with a request that they be reissued to the NLRB and that the amount should be the post-tax net amount. On August 31, 2017, U.S Treasury issued a check for the disbursement of the backpay funds to the discriminatee's heirs.

Based on our review, we determined that the Regional Office obtained proper documentation regarding the discriminatee's death and the heir's entitlement to the backpay funds. We also determined that the Regional Office provided the heir with the wrong form and not the Standard Form 1055, Claim Against the United States for Amounts Due in the Case of a Deceased Creditor, and that the Regional Office did not follow the Casehandling Manual procedures because it requested the net pay rather than the gross pay when the backpay disbursement was in a year after the discriminatee's death.

#### *Settlements Less than 80 Percent*

In our random sample, none of the cases were settled for less than 80 percent of the calculated backpay. Therefore, to test this control, we used the universe of FY 2017 cases in which there was a settlement and then calculated the percentage of the Backpay paid to the amount listed in NxGen as the 100 Percent Backpay Calculated. Our rationale was that while we determined that the NxGen data was unreliable, if the percentage of the amounts entered NxGen was less than 80 percent, it was probable that Operations-Management approval was needed.

There were 27 cases with settlement agreements where the calculated percentage of the backpay paid was less than 80 percent. Of those cases, 19 were not applicable for this testing because of issues such as rounding to 80 percent;

incorrect amounts were entered in to the amount paid data field; bankruptcy; or discriminatees that could not be located. For the remaining eight cases, two cases did not have the appropriate approval from Operations-Management.

Because our testing was not of a statistically random sample the results of this testing could not be projected to the population. Nevertheless, given the errors in data and that a quarter of the cases we found did not have proper approval, it is likely that this control is not operating as intended.

*Backpay Check Log*

The Casehandling Manual stated that Regional Offices should have a system in place to record the receipt of backpay checks that it receives on behalf of discriminatees. The system should record the number of checks and the total amount of monies received in formal compliance cases, cases involving informal settlements, and non-Board adjustments. This requirement was implemented in response to the Accountability of Tax Dollars Act of 2002 and has not changed since 2010.

When reviewing the case files, we did not observe a standardized system that recorded the checks received on behalf of the discriminatees. We did, however, observe that the Regional Offices were placing scanned copies of the checks in the case files. We then contacted the Compliance Officers for the 17 Regional Offices that had cases in our sample and asked if they maintain a separate check log that met the Casehandling Manual requirements:

<b>Does the Regional Office maintain any log of checks separate from what is in the case file?</b>	
Yes – Log	7
Yes – Partial	2 (Yes for the Regional Office and No for the Subregional or Resident Office)
Yes – Safe	2 (Yes for checks put in the Regional Office safe)
No Log	6

For the Regional Offices that did not maintain a check log, we also asked if the Regional Office considered the scanned copies of the checks in the case file to meet the Casehandling Manual’s system requirement. The Regional Offices that responded stating that the case file should meet that

requirement based their response upon the fact the NxGen system also maintains the amount of backpay received in the NxGen's Remedies section.

### *Recommendations*

We recommend that Operations-Management:

2. Provide training to Regional Office personnel who are involved in the backpay process on the requirements of the internal controls related to backpay payments.
3. Update the internal controls related to documenting the receipt of discriminatee backpay checks to leverage the current practices and capabilities of NxGen.

## **BACKPAY IN FINANCE BRANCH**

### **Data Accuracy and Reliability**

The NLRB uses BMS to record deposits and process backpay disbursements requests. As with NxGen, for purposes of this audit, we are required to determine whether the BMS data that is related to our testing is accurate and reliable. The data fields that we determined were related to our testing were case number, case name, payment method, taxpayer identification (ID) number, name, address, city, state, ZIP Code, net payment amount. We also tested the disbursement amounts, which were derived from multiple data fields.

To determine the accuracy of the BMS data other than the bank account and routing numbers, we selected a random sample of 78 disbursements that were processed in FY 2017. We then compared the BMS data for the randomly selected cases to the supporting documentation. For this testing, we used a tolerable error rate of 10 percent, which is consistent with GAO guidance. As a result of our testing, we determined that the data for the case number and case name were all without errors. The following data field had errors or lacked documentation:

Data Field	Field Matches Documentation		Lacks Documentation
	Yes	No	
Payment Method	73	0	5
	93.59%	0.00%	6.41%
Taxpayer ID Number	75	2	1
	96.15%	2.56%	1.28%
Name	77	1	0
	98.72%	1.28%	0.00%
Address	76	1	1
	97.44%	1.28%	1.28%
City	76	0	2
	97.44%	0.00%	2.56%
State	76	0	2
	97.44%	0.00%	2.56%
ZIP Code	75	1	2
	96.15%	1.28%	2.56%
Net Amount	61	0	17
	78.21%	0.00%	21.79%
Disbursement Amount	77	0	1
	98.72%	0.00%	1.28%

Based upon this testing, we determined that, with the exception of the data for the Net Amount field, because the error rates were less than 10 percent, the BMS data was accurate.

For the bank account and routing number data, because the random sample did not contain bank account data for each record, we selected a statistically random sample of records with data in the bank account data fields. Given the size of the universe of records with that data, the random sample contained 58 records. For the bank account number, we determined that there were two records that did not match the case records and that there were no errors for the bank routing numbers. The errors for the account number appeared to be typographical in that they were each missing a digit. Based on this testing, we determined that the bank account and routing number data were accurate.

For deposit data fields, we obtained a random sample of deposits received during FY 2017. The statistically random sample contained 59 records. We then tested the case and amount data fields. For the case data field, we found no errors. For the amount data field, we found one error and one entry that lacked supporting documentation. Based on



this testing, we determined that the deposit case and amount data were accurate.

To determine reliability, we obtained documentation from the BMS interface showing that an audit trail was maintained for changes in case data, disbursement requests, and schedules. We also determined that the data field for discriminatee data and check amount could not be edited. Based on this information, we determined that the BMS data was also reliable.

## **Processing Disbursement Requests**

### *Documentation of Valid Discriminatees*

On December 28, 2017, the Agency issued Memorandum ICG 18-03. That memorandum created a set of internal controls for the preparing and approval of backpay disbursement requests. The internal controls require that the Compliance Officer include documentation that the individuals in the disbursement request are entitled to receive the backpay funds and that the Regional supervisors and managers review the documentation when approving and forwarding the backpay disbursement requests to the Finance Branch.

There were 45 disbursement requests in BMS that were created and processed through the Finance Branch in second and third quarters of FY 2018. We tested the entire universe of 45 disbursement requests. We found that 7 of the 45 disbursement requests, or 15.56 percent, in BMS lacked a signed informal settlement or Compliance Agreement, Board order, court judgment or any other documentation that was used to determine who was entitled to backpay and other categories:

- One disbursement request lacked any documentation to determine who was entitled to backpay and other categories in BMS;
- Two disbursement requests were reoccurring installment payments that began before the requirement was initiated that included a signed informal settlement agreement, but the agreement did not contain information about who was entitled to backpay funds and there was no other

documentation in BMS that indicated how payees were determined; and

- Four disbursement requests were for installment payments that began before the requirement was initiated and lacked any signed settlement agreement or other documentation to determine who was entitled to backpay and other categories.

### *Segregation of Duties*

Memorandum ICG 18-03 also created a system of internal controls that included the segregation of duties for processing backpay disbursement requests. Based upon our testing, we determined that there was a segregation of duties with regard to the submission of each of the 45 backpay disbursement requests by the Regional Offices and the processing of the requests by the Finance Branch. We found no instances where the Regional Office processed a disbursement request or where the Finance Branch initiated a disbursement without a request from a Regional Office.

### *Supervisory Review*

Memorandum ICG 18-03 requires that the Operations-Management review and confirm that the name, address, social security number, and banking information on the distribution spreadsheet in BMS matches the information provided on each of the discriminatee's OCFO Recipient Information Form. Operations-Management's review is initiated when it is notified by BMS that a request has been submitted. If no errors are found, Operations-Management will approve the distribution request and the request will be forwarded to the Finance Branch for processing. Documentation of the review was to be completed within BMS by the Operations-Management official selecting "approve" in the BMS workflow.

When testing this control, we found that 9 of the 45 disbursement requests did not have documentation of the review. A Finance Branch official explained "older" and "installment" disbursement requests were reviewed by the Finance Branch. When we conducted a further review of the disbursement requests without documentation of Operations-Management's review, we found that four were

for installment payments in cases that predated the review requirement and that five involved payments that were a return of funds to the respondent, contained at least one new discriminatee, or was the first disbursement request in a case involving installment payments.

### *Required Disbursement Forms*

Memorandum ICG 16-04 requires that disbursement requests include a completed Recipient Information Form or other written documentation for each discriminatee who is a payee of backpay disbursed by the U.S. Treasury.

For the 45 disbursement requests that we tested, we expected to find 295 unique Recipient Information Forms or other written documentation that provides the same information as the Recipient Information Form in BMS. Our review of the documentation in BMS found the following:

- Forms were missing for 28 of the 295 discriminatees, or 9.49 percent. Each instance of a missing form related to installment payments that had been ongoing prior to the issuance of ICG 16-04. According to a Finance Branch official, for disbursements that were part of ongoing installment payments prior to the issuance of ICG 16-04, the Finance Branch would only receive a new Recipient Information Form if there had been a change in the discriminatee's information. We found, however, that there is no exception in ICG 18-03 for cases with installment payment that had been ongoing on prior to November 2015.

There were 9 disbursement requests that were for installment payments that began after the issuance of ICG 16-04; each of those disbursement requests had Recipient Information Forms.

- We found forms for 267 discriminatees. From our review of those forms, we determined that 7, or 2.62 percent, did not have appropriate supporting documentation:
  - For 3 forms, deposit slips were provided as support for bank data rather than a voided check or other document issued by the financial institution;

- On one form, the discriminatee provided a voided check that did not show the payee's name;
- On one form, the discriminatee provided a direct deposit slip that included handwritten bank account data, instead of a voided check or other document issued by the financial institution;
- In one instance, there was an apparent data entry error in the ZIP code; and
- In one instance, the address in BMS matched the check provided by the discriminatee, but it did not match the address listed on the Recipient Information Form. There is no documentation from the discriminatee that the address on the check was the correct address.

### *Cancelled Disbursements*

We analyzed each of the disbursements that were cancelled in FY 2017 to determine if the disbursement was reissued in a timely manner and if the reissued disbursement was processed with a new Finance Branch Disbursement Form.

The Casehandling Manual states that the Finance Branch will notify the Regional Office when it receives notification from the U.S. Treasury that the check was not cashed within 1 year from the date it was issued. The Finance Branch will also notify the Regional Office when it receives a check that was returned because of an improper address. Upon such notification, the Regional Office should promptly investigate the problem and provide the Finance Branch a correct address as soon as possible.

The results of our testing to determine the amount of time from the Agency receiving notice of a cancellation or a returned check to the request to reissue the disbursement is shown in the table below:

<b>Time</b>	<b>Number of Disbursements</b>
0-15 Days	2
16-30 Days	3
31-60 Days	11
61-120 Days	1
121+ Days	3
Not Reissued – Funds Remain in Account	16
Not Reissued to Discriminatees – Funds Returned to Respondent	5

For the reissuance of disbursements that took more than 60 days, we also determined the length of time it took for the Finance Branch to notify the Regional Office:

- For one case with two disbursements to the same individual, the Regional Office was notified 259 days after the Finance Branch was notified that the direct deposit disbursement was cancelled; and
- For two remaining cases, the Finance Branch notified the Regional Office 13 days after it was notified that the direct deposit disbursement was cancelled.

Of the 21 disbursements that were not reissued:

- For 13 disbursements that were checks returned to the Agency because they could not be delivered to the address listed on the envelope, we found no documentation that any further action was taken. The U.S. Treasury later cancelled these checks because they had not been negotiated within 1 year. The funds from these disbursements were not reissued to the discriminatees, redistributed to other discriminatees in the case, or returned to the respondent;
- Three disbursements were electronic funds transfers that were cancelled and were not reissued; and
- Five disbursements were cancelled by the U.S. Treasury because the checks were not negotiated in the allotted time. The funds from the disbursements were later returned to the respondent.

Based upon this analysis, we determined that Agency did not reissue cancelled disbursements in a timely manner.

Memorandum ICG 16-04 states that a Finance Branch Disbursement Form, with the signature page, is required with each disbursement request, but case documentation does not need to be resubmitted for the reissuance of a disbursement if the changes are supported by appropriate documentation. All 20 cancelled disbursements that were reissued included new Disbursement Request Forms.

### *Recommendations*

We recommend that the Chief Financial Officer:

4. Develop a process to ensure that the Operations-Management review is conducted prior to processing a disbursement request.
5. Develop a process to promptly notify a Regional Office when a backpay payment is cancelled and obtain instructions on the disposition of the returned funds.

### **Detection of Fraudulent Backpay Disbursement Requests**

A Compliance Officer was convicted of wire fraud for diverting backpay funds to his bank that was used by the NLRB to make his biweekly direct deposit payroll payments. The theft of backpay funds occurred over a 5-year period and was discovered in October 2015.

On September 14, 2016, OIG staff met with Office of the Chief Financial Officer (OCFO) and Office of the Chief Information Officer (OCIO) staff to discuss internal controls that could be incorporated in BMS to test for specific fraud indicators. During the meeting, the OIG identified the fraud indicators that it used during the investigation. The OIG also discussed that funds were diverted to an employee's bank account used by the NLRB for payroll. The OCFO staff member explained that the OCFO would work to develop an internal control to detect fraudulent backpay payments and incorporate the control as part of the regular backpay payment process.

As part of our testing of the internal controls for the current audit, we reviewed all 144 disbursement requests processed

in FY 2017 after the scanning procedures were put in place to determine if Finance scans had been performed. We found that the Finance Branch did not run scans for 67 (46.53 percent) of the backpay disbursement requests processed in FY 2017 after the scanning procedures were put in place. We also found that there were no documented procedures for conducting fraud scans.

GAO's *Standards for Internal Control in the Federal Government*, dated September 2014, state that management should consider the potential for fraud when identifying, analyzing, and responding to risks including fraudulent financial reporting, misappropriation of assets and corruption. Also, management responds to fraud risks through the same risk response process performed for all analyzed risks, but when fraud has been detected, the risk assessment process may need to be revised. GAO's standards also state that internal control and all transactions and other significant events need to be clearly documented, and the documentation should be readily available for examination. The documentation should appear in management directives, administrative policies, or operating manuals and may be in paper or electronic form. All documentation and records should be properly managed and maintained.

During the audit fieldwork, we provided this finding to management in a Notice of Findings and Recommendations.

### *Recommendations*

We recommend that the Finance Branch:

6. Develop, document, and implement procedures for performing Finance scans on all backpay disbursements.
7. Conduct periodic reviews of backpay disbursements to ensure that all backpay disbursements, prior to being finalized through the U.S. Treasury, were scanned for known fraud indicators.

### **Deposit Fund**

To maintain accountability, agencies must establish separate deposit fund accounts to hold non-Government monies for individual statutory authorizations or programs. The backpay payments to the Agency are held in a deposit fund.

Each agency should review its deposit fund accounts periodically, but at least quarterly, and should take whatever corrective action may be indicated. At a minimum, these reviews should determine whether all monies held in a deposit fund account are consistent with the title of, and legal authority for, the account and that the account has a positive balance. Where problems are identified, agencies should process appropriate adjustments for inconsistencies and institute corrective procedures to ensure use of the appropriate accounts.

As part of the audit testing, we requested documentation of the reconciliations for the backpay deposit fund. The Agency was unable to provide suitable documentation. The Agency did provide documentation that it reviewed the backpay balances in its financial system and BMS, but there was no explanation for variances between the two systems.

*Recommendation*

8. We recommend that the OCFO create and implement a process to reconcile the backpay deposit fund account to its financial system and BMS.



## **APPENDIX A**

**UNITED STATES GOVERNMENT**  
**National Labor Relations Board**  
**Memorandum**



**Memorandum**

September 16, 2019

**TO:** David P. Berry, Inspector General

**FROM:** Beth Tursell, Associate to the General Counsel  
Division of Operations-Management

**SUBJECT:** Response to Office of the Inspector General, Notice of Findings and Recommendations, Reference, OIG-AMR-82

**Purpose:** The purpose of this document is to provide a response to the National Labor Relations Board (NLRB), Office of the Inspector (OIG), to the Internal Controls over Backpay Disbursements Audit, Reference No. OIG-AMR-82. The Division of Operations-Management (Operations) has reviewed the Recommendations and provides responses to each recommendation.

**Recommendation Number 1:** Develop and implement a system of controls to address NxGen data accuracy and reliability.

**Response to Recommendation Number 1:** Operations will issue guidance reminding the Field of the importance of ensuring the data entries in NxGen are consistent with the information in the file.

**Recommendation Number 2:** Provide training to Regional Office personnel who are involved in the backpay process on the requirements of the internal controls related to backpay payments.

**Response to Recommendation Number 2:** Operations will issue the following guidance reminding the Field that all necessary documents supporting the method of distribution of backpay are uploaded in NxGen and that all settlement agreement terms are complied with and backpay owed to deceased discriminatees is handled properly. The guidance will also include a reminder to supervisors of the importance of verifying the remedy obtained in the case is accurately recorded in NxGen.

With regards to settlements less than 80 percent, the General Counsel will be revising how these settlements will be handled. Once revised, Operations will issue the appropriate guidance.

**Recommendation Number 3:** Update the internal controls related to documenting the receipt of discriminatee backpay checks to leverage the current practices and capabilities of NxGen.

**Response to Recommendation Number 3:** Operations will issue guidance notifying Regions that they no longer need to maintain a check log as long as copies of checks received are uploaded in NxGen.

## **APPENDIX B**



UNITED STATES NATIONAL LABOR RELATIONS BOARD  
OFFICE OF THE CHIEF FINANCIAL OFFICER

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September 17, 2019

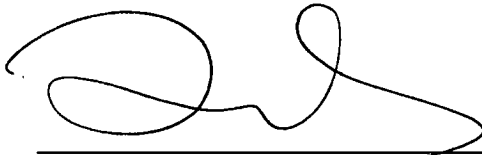
TO: David P. Berry, Inspector General

FROM: Isabel Luengo McConnell, Chief Financial Officer

SUBJECT: Response to Office of the Inspector General, Notice of Findings and Recommendations, Reference, OIG-AMR-82

- 1. Purpose:** The purpose of this document is to provide a response to the National Labor Relations Board (NLRB), Office of the Inspector (OIG), to the Internal Controls over Backpay Disbursements Audit, Reference No. OIG-AMR-82. The Office of the Chief Financial Officer (OCFO) has reviewed the Recommendations and provides responses to each recommendation.
- 2. Recommendation Number 4:** Develop a process to ensure that the Operations-Management review is conducted prior to processing a disbursement request.
- 3. Response to Recommendation Number 4:** The OCFO concurs with the recommendation. As of December 28, 2017, and with the issuance of ICG 18-03, Operations implemented the 100 percent check to ensure a review is conducted prior to the processing of a disbursement request. Operations notifies Finance that the 100 percent check has been completed and the notification is uploaded into Backpay Management System (BMS). The OCFO will develop and document a process that confirms that the Operations-Management review is conducted.
- 4. Recommendation Number 5:** Develop a process to promptly notify a Regional Office when a backpay payment is cancelled and obtain instructions on the disposition of the returned funds.
- 5. Response to Recommendation Number 5:** The OCFO concurs with the recommendation. The OCFO will develop and document a process that promptly notifies Regional Offices when a backpay payment is cancelled. Additionally, the OCFO will provide procedures and instructions, when applicable, on the disposition of the returned funds.
- 6. Recommendation Number 6:** Develop, document, and implement procedures for performing Finance scans on all backpay disbursements.
- 7. Response to Recommendation Number 6:** The OCFO concurs with the recommendation. As of September 3, 2019, the OCFO developed a new scheduled task in BMS requiring the automatic scans performed in BMS. OCFO will work with OCIO on documenting this process.

8. **Recommendation Number 7:** Conduct periodic reviews of backpay disbursements to ensure that all backpay disbursements, prior to being finalized through the U.S. Treasury, were scanned for known fraud indicators.
9. **Response to Recommendation Number 7:** The OCFO concurs with the recommendation. The OCFO will implement procedures, on a monthly basis, to review and ensure finance scans are processed prior to payment certification.
10. **Recommendation Number 8:** Create and implement a process to reconcile the backpay deposit fund account to the financial system and BMS.
11. **Response to Recommendation Number 8:** The OCFO concurs with the recommendation. As of April 30, 2019, the OCFO implemented a reconciliation between BMS and NLRB financial system. The OCFO will document this process with instructions and procedures.

  
9/18/19  
Isabel Luengo McConnell, Chief Financial Officer