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United States  
General Accounting Office  
Washington, D.C. 20548

Office of the General Counsel

B-257574.2

December 12, 1995

Anthony S. Latella  
Chief, Currency Reporting and  
Compliance Division  
Department of the Treasury  
Internal Revenue Service  
1300 John C. Lodge Drive  
Detroit, Michigan 48226-2458

Dear Mr. Latella:

This responds to your letter of July 21, 1995,<sup>1</sup> regarding the disposition of amounts deducted from the pay of a current IRS employee and erroneously contributed to the Civil Service Retirement System (CSRS) instead of the Federal Employees Retirement System (FERS).

We advised you in our letter of March 17, 1995, that the issues you have asked us to consider may be resolved by the Merit Systems Protection Board (MSPB) in several pending cases. Those cases have now been resolved, Lary v. OPM, 68 M.S.P.R. 206 (July 13, 1995); Jackson v. OPM, SF-0831-93-0511-B-2, unpublished, July 12, 1995. However, the Office of Personnel Management (OPM) has filed a petition for reconsideration in the Lary case with the United States Court of Appeals for the Federal Circuit on August 18, 1995. We have been advised by OPM that the court agreed on October 5 to consider the petition. Therefore, the matter is still pending.

You state that you do not see that a decision in the Lary case will have an impact on your request for a decision since the case presented in your letter of May 19, 1994, involves a current, not a former employee. Further, you say that the case you have presented does not involve a refund of CSRS or FERS retirement monies, as specified in the Lary case.

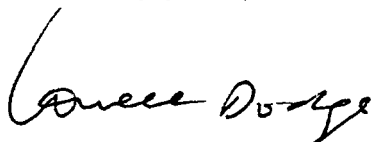
<sup>1</sup>Your reference: IS:N:D:C.

065380/155866

The OPM has furnished us with a copy of the brief it filed in the Federal Circuit in the Lary case, and we are of the opinion that the question you have asked as to the disposition of the CSRS funds erroneously paid to OPM is before the court. OPM has contested the holding in Lary that an attempt to collect the amount an employee owes for OASDI taxes is an attempt to collect a debt by administrative offset which is covered by the Debt Collection Act, 31 U.S.C. § 3716 (1988). OPM states that the MSPB decision necessarily implies that affected persons must be extended a proceeding in which the possibility exists that the employee, or former employee,<sup>2</sup> would be entitled to receive payment of the total monies paid into the fund. OPM also states that amounts in excess of the FERS or CSRS offset deductions should be treated solely as Social Security deductions. We realize that OPM's brief does not address the issue of the effect, if any, of the 3-year limitation period in the tax code to the application of the Social Security taxes. However, we believe that issue may also be addressed in the court's opinion.

Accordingly, we still find it advisable to defer action on your request until an opinion is rendered by the Federal Circuit Court.

Sincerely yours,

A handwritten signature in cursive script that reads "Lowell Dodge". The signature is written in dark ink and is positioned above the typed name.

Lowell Dodge  
Associate General Counsel

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<sup>2</sup>Note that the brief refers to both current and former employees.