

Report on
Improper Deferred Compensation Payments
at
Okaloosa County
Tax Collector Office



Prepared by
Okaloosa Citizens
Alliance

Final Report

December 1, 2009

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Okaloosa Citizens Alliance
(www.oca1787.org)

December 1, 2009

To: The Citizens of Okaloosa County
Okaloosa County Constitutional Officers and Other Elected Officials
Appropriate Government Oversight Agencies

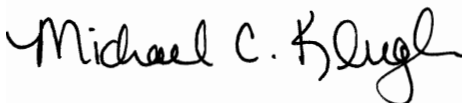
The Okaloosa Citizens Alliance, Incorporated (herein "OCA") is a diverse, non-partisan, non-profit organization dedicated to the education of citizens on issues relating to taxes and spending and committed to the promotion of maximum efficiency and effectiveness of government. Earlier this year, we pledged to conduct in-depth examinations on issues in Okaloosa County in the Great State of Florida. Specifically, we planned to focus on issues such as mismanagement and malfeasance, conflicts of interest, improper use of County resources (which include budgeting, hiring, firing, pay bonuses, benefits, etc.) and other areas of interest in all constitutional offices.

Due to the bonus "kickback" scheme in the Okaloosa County Sheriff Office and unexpected disclosure of over \$1 million of bonus compensation in the Okaloosa County Tax Collector office, OCA Board of Directors became concerned about the budget approval process of both agencies and how the Board of County Commissioners (BCC) interfaced with or coordinated on the other constitutional officers' budgets. It appeared that most of the constitutional officers were willing to work closely with Okaloosa County BCC in the budget review process. Okaloosa County Tax Collector appeared reluctant to do so. A couple of questionable public disclosures in the Bay Beacon and Northwest Florida Daily News raised concerns about the management and oversight at the Tax Collector's office. OCA requested that a series of reviews be conducted into the Tax Collector's operations; particularly in the personal services area.

We have completed the review of one aspect of the compensation objectives; specifically, the 457b Deferred Compensation Payments for Health Insurance Opt-Out Employees. Three members of OCA, Michael J. Barnes, David Parisot and Bobbye Wicke, conducted the review and submitted a report for OCA Board of Directors approval. The report was reviewed, discussed and approved for release at the OCA Board meeting held on December 1, 2009.

The intent of this report is to educate the citizens on matters of public interest and to provide elected public officials and appropriate oversight agencies with our findings and recommendations. For questions, I may be reached at mklugh@oca1787.org.

Respectfully,



Michael C. Klugh
Board President

Executive Summary

Background. In Florida, there are 67 County Tax Collectors that perform a variety of local and state agency services for residents and non-residents in Florida. Tax Collectors in Florida are constitutional officers duly elected by registered voters in their counties of residence. Tax Collectors deal with a variety of duties and responsibilities and provide public services that allow them to exercise valuable leadership roles in government. They direct, plan, organize, budget, set and implement policies which affect not only their local government, but also reach the state level as well.

As a result of the Okaloosa County Sheriff's scandal and disclosure of over \$1 million of bonus compensation paid to county employees in the Okaloosa County Tax Collector's office, public scrutiny and open dialogue ignited between the citizens and all constitutional officers. Due to public scrutiny of the County's 2010 budget, serious public concerns were raised about the management and oversight at the Tax Collector's office— particularly in the personal services area. The personal services area of the OCTC budget covers salaries, tax withholdings, life and health insurance, retirement programs, worker's compensation, unemployment compensation, etc. In reviewing OCTC's 2010 and prior year's budgets, it was noted that the 457b deferred compensation program and health insurance plan required further review.

Objectives. Our objective was to evaluate the 457b Deferred Compensation Payments to Insurance Opt-Out Employees of the Okaloosa County Tax Collector Office. Specifically, we reviewed the Federal and State requirements of the 457b deferred compensation program, researched the methods how deferred compensation program is managed in Okaloosa County and other tax collector offices, and identified any potential violations.

Results. We concluded that Okaloosa County Tax Collector (OCTC): (1) May have improperly made employer contributions to employees 457b deferred compensation accounts and (2) Did not adhere to the requirements in formally adopting, establishing and maintaining a deferred compensation program as mandated by Federal law and the State's "*Government Employees Deferred Compensation Plan Act.*"

As a result, OCTC may have inappropriately paid over \$460,000 dollars in a six-year period to County employees who "opted out" of the County-provided health insurance benefit. In addition, it appears current and former OCTC employees may have incurred potential federal tax implications or consequences for the past tax years. It also appears OCTC does not possess an eligible 457b Deferred Compensation Plan to satisfy or meet the Internal Revenue Code and the state statutes.

We determined that all constitutional officers within Okaloosa County and the School District provided and paid all or portions of the health insurance. Except for the Property Appraiser, all remaining constitutional officers in Okaloosa County provided some form of payment to employees who "opt out" of health insurance. We found that Okaloosa County Tax Collector was the only constitutional officer who authorizes employees who "opt out" of health insurance to apply the premium amount to a 457b Deferred Compensation Plan, which may have violated Federal and Florida laws.

In surveying similar and neighboring Tax Collector offices, we found that all Tax Collectors in the nine surveyed counties provided government paid health insurance to their employees. Saint Johns County was the only county surveyed that did not offer family coverage. Hernando was the only county surveyed that makes payments to employees who “opt out” of County paid health insurance program. We determined that none of the nine counties surveyed allowed any employees to “opt out” of the County paid health insurance plan and apply the monetary benefits to a 457b deferred compensation plan.

Recommendations for:

1. Internal Revenue Service (U.S. Department of Treasury):
 - a. Determine whether Okaloosa County Tax Collector legally established and maintained a 457b Deferred Compensation Plan by using employees “opt out” health insurance premiums.
 - b. Determine whether Okaloosa County Tax Collector and its employees incurred Federal Income Tax Withholding and Federal Insurance Contribution Act (FICA) liabilities or penalties for potential misuse of any 457b Deferred Compensation Plans.

2. Florida Attorney General:
 - a. In conjunction the Florida Chief Financial Officer (CFO):
 - (1) Determine whether the Okaloosa County Tax Collector violated state statutes for paying government provided health insurance premiums to a 457b Deferred Compensation Plan for employees who opted out the County’s health insurance program.
 - (2) If a violation occurred, determine whether the over \$460,000 paid to employees can be returned to the Okaloosa County general fund.
 - b. Revisit or reassess Attorney General Opinion (AGO) 2008-09 to determine if the opinion provided on “Municipal Home Rule Powers Act” as it relates to payment of money directly to a 457b deferred compensation plan in lieu of the employees “opt out” insurance premium payment does not violate Federal law.

3. Florida Chief Financial Officer (CFO):
 - a. In conjunction with the Florida Attorney General:
 - (1) Determine whether the Okaloosa County Tax Collector violated state statutes for paying government provided health insurance premiums to a 457b Deferred Compensation Plan for employees who opted out the County’s health insurance program.
 - (2) If a violation occurred, determine whether the over \$460,000 paid to employees can be returned to the Okaloosa County general fund.
 - b. Determine whether Okaloosa County Tax Collector and its employees incurred FICA and Florida Retirement System (FRS) liability or penalty for potential misuse of any 457b Deferred Compensation Plans.

4. Board of County Commissioners
 - a. Request Okaloosa County Tax Collector’s 457b Deferred Compensation Plans used in lieu of employees “opt out” health insurance premiums be audited during the 2009 Comprehensive Annual Financial Report.

- b. Ensure future Okaloosa County Tax Collector's budgets do not include any 457b Deferred Compensation Plans funded by employees "opt out" health insurance premiums.
5. Okaloosa County Tax Collector:
- a. Comply with Florida Department of Revenue guidance and immediately cease funding 457b Deferred Compensation Plans using employees "opt out" health insurance premiums.
 - b. Comply with all Federal and State 457b Deferred Compensation Plans requirements.
 - c. Return all government funds which have been paid since 1999 to fund health insurance "opt out" deferred compensation plan for his employees to the Okaloosa County general fund.

Improper Deferred Compensation Payments By the Okaloosa County Tax Collector

Findings

Okaloosa County Tax Collector (herein "OCTC") may have improperly made employer contributions to employees 457b deferred compensation accounts. As a result, OCTC may have inappropriately paid over \$460,000 dollars in a six-year period to County employees who opted out of the County-provided health insurance benefit. These funds could have been put to better public use. In addition, current and former employees may have incurred potential federal tax implications or consequences for past tax years.

In addition, the OCTC may not have adhered to the requirements in formally adopting, establishing and maintaining a 457b deferred compensation program as mandated by Federal law and the State's "*Government Employees Deferred Compensation Plan Act*." As a result, it appears that OCTC did not possess an eligible 457b Deferred Compensation Plan for participating employees to satisfy or meet the Internal Revenue Code and the state statutes.

Introduction

In Florida, there are 67 County Tax Collectors that perform a variety of local and state agency services for residents and non-residents in Florida. Tax Collectors in Florida are independent constitutional officers duly elected by registered voters in their counties of residence. Tax Collectors deal with a variety of duties and responsibilities and provide a myriad of important public services that allow them to exercise leadership roles in government. They direct, plan, organize, budget, set and implement policies which affect not only their local government, but also reach the state level as well.

Due to the bonus "kickback" scheme in Okaloosa County Sheriff Office, it was subsequently disclosed that OCTC had awarded over \$1 million dollars in bonus compensation in a five year period to its county employees.¹ Although Florida Department of Law Enforcement (FDLE) very briefly noted that OCTC provided bonuses to its employees in a February 2007 investigative report,² the information was not disclosed in the annual budgets nor made public until the Sheriff was arrested by Federal authorities in January 2009.

The Okaloosa County Sheriff's scandal and the enormous bonus compensation awarded to county employees by OCTC ignited public scrutiny and open dialogue between the citizens and all constitutional officers. While the Sheriff Office underwent Federal and State investigations, serious public concerns were raised about the management and oversight at the Tax Collector's office; particularly in the personal

¹ Del Lessard, Bay Beacon Staff Writer, "Tax-Office Bonuses Top \$1 Million Over Five Years," April 1, 2009

² Florida Department of Law Enforcement Investigative Report No. EI-14-0083 on Christin "Chris" Hughes, Okaloosa County Tax Collector, February 20, 2009

services section of the OCTC budget. The personal services section includes salaries, employment taxes, life and health insurance, retirement programs, worker's compensation, unemployment compensation, etc. In reviewing OCTC's 2010 and prior year's budgets, it was noted that the 457b deferred compensation program and health insurance plan required further review.

Difference Between 457b Deferred Compensation and Health Insurance

The 457b Deferred Compensation (herein Deferred Compensation) and Health Insurance Plans are two government managed programs that are offered to Federal, State, County, and municipal employees. For the purposes of this report, we will focus on both of these programs administered by OCTC.

The primary purpose of deferred compensation is to allow employees to build up a pool of money to supplement their retirement income. The funds can be converted to income when employees retire or leave employment and will add to the benefits employees are expecting to receive from the Florida Retirement System (FRS) and the Social Security Administration (SSA). The deferred compensation program is a participant directed investment program, which is administered in accordance with Internal Revenue Code section 457(b).³ The 457b Deferred Compensation Plan is a tax deferred "employee contribution" investment program available to County employees. The National Association of Counties (NACo) fulfills all regulatory, operational, administrative and fiduciary responsibilities on behalf of Okaloosa County employees and elected officials.⁴ NACo receives a fee from Nationwide in exchange for its sponsorship which is a common practice in the public sector market. In 2008, NACo received \$7,400,000 from Nationwide.⁵

A group health plan means an employee welfare benefit plan to the extent that the plan provides for medical care (including items and services paid for as medical care) to employees or their dependents (as defined under the terms of the plan) directly or through insurance, reimbursement, or otherwise. Generally, gross income of an employee does not include employer-provided coverage under an accident or health plan.⁶

Generally, Okaloosa County employees and elected officials enjoy the benefits of having life, long-term disability, employee assistance, dental, and health insurance plans provided and funded by the constitutional officers, which include the OCTC.⁷ These benefits are commonly referred to as a "cafeteria plan."⁸ The health insurance plan is the only benefit in OCTC that permits employees to "opt out" of the plan and receive the monetary benefit to contribute into a 457b Deferred Compensation Plan.

³ 26 USC 457(b)

⁴ Okaloosa County Board of County Commissioners (BCC) Resolution No. 87-38, May 5, 1987

⁵ National Association of Counties (NACo) Disclosure Document regarding NACo and Nationwide partnership, March 11, 2008

⁶ 26 USC 106(a)

⁷ §112.08(2)a, Florida Statutes (Fla.Stat.)

⁸ 26 USC 125(d)(1)(B)

'Opt Out' County Health Insurance for 457b Deferred Compensation

OCTC's 457b Deferred Compensation Program for employees who "opted out" of the County health insurance benefit started in 1999. As protected by public records exemptions, the records of current and former employees participating in the deferred compensation program were not examined or disclosed during this review.⁹ In reviewing the financial data for the past six years, it was revealed that OCTC may have improperly made employer contributions to employees deferred compensation accounts. The deferred compensation financial data prior to 2003 were unavailable for review.¹⁰ At Table 1, the Tax Collector authorized over \$460,000 into the deferred compensation plan from health care insurance premium of employees who opted out of the government paid plan. Furthermore, in his annual budgets to Florida Department of Revenue (DoR),¹¹ the OCTC reported these deferred compensation payments to his employees who opted out of the health insurance program in Object Code 23 (Life & Health Insurance) rather than in Object Code 16 (Special Pay) or as employee compensation.¹² In OCTC budgets, the appearance was given that these payments of \$463,219 for a six year period were actually for health insurance premiums rather than the funds being paid to selected employees.

Table 1
Opt Out Health Insurance Premium to
457b Deferred Compensation Contributions

Fiscal Year	Monetary Contributions
2003	\$ 54,688
2004	\$ 63,247
2005	\$ 62,048
2007	\$ 79,264
2008	\$106,022
2009	\$ 97,950
Total	\$463,219

Source: OCTC Office, October 23, 2009

OCTC contends that the Florida Statutes permits county constitutional officers to provide health insurance benefits to its employees. Specifically, the Tax Collector cites that every local governmental unit is authorized to provide and pay out of its available funds for all or part of the premium for life, health, accident, hospitalization, legal expense, or annuity insurance, or all or any kinds of such insurance, for the employees of the local governmental unit and for health, accident, hospitalization, and legal expense insurance for the dependents of such employees upon a group insurance plan and, to that end, to enter into contracts with insurance companies.¹³

OCTC further contends its employees are provided paid health care insurance benefits. Further, the OCTC's policy permits employees already covered by health

⁹ §112.215(7), Fla.Stat.

¹⁰ Pension Funds Records from 1999 to 2002 were unavailable per Deborah Dickerson, OCTC Office

¹¹ §195.087(2), Fla.Stat. and Chapter 12D-11, Florida Administrative Code

¹² 2009-10 Florida Tax Collector's Instruction Workbook

¹³ Christin "Chris" Hughes' eMail, August 6, 2009 at 08:53 am.

insurance “opt out” of the health insurance plan and deposit these insurance premiums dollars in OCTC’s Deferred Compensation Plan.¹⁴ In examining the Federal or State laws, it appears there is no statutory authority that permits OCTC to make deferred compensation payments in lieu of health insurance. As a result, OCTC may have inappropriately paid over \$460,000 dollars to County employees who opted out of the County-provided health insurance benefit, which were funds that could be put to better public use e.g. emergency services, health department shortfalls, storm water runoff projects, road repairs, etc. In addition, possible tax implications or consequences to current and former employees for the current and previous tax years may exist. In response to a public records request, OCTC stated that they have not contributed to Florida Retirement System (FRS) and Federal Insurance Contribution Act (FICA) on these deferred compensation payments as required by §112.215(6)(b), Fla.Stat.¹⁵

In finding two, it appears that OCTC did not adhere to the requirements in formally adopting, establishing and maintaining a deferred compensation program as mandated by Federal law and the State’s “*Government Employees Deferred Compensation Plan Act.*” OCTC contends that Florida Statutes permit county constitutional officers to provide deferred compensation plan and health insurance coverage for its employees. Specifically, OCTC contends that a deferred compensation plan permits any employee to defer all or any portion of the employee’s otherwise payable compensation to be withheld and invested for payment to the employee at a later date. The deferrals, or contributions, are allocated to the plan’s investment choices of the employee’s instruction. Neither the contributions nor any investment earnings are subject to Federal and (in most cases) state income taxes. Taxes become payable when the deferred income plus any earnings are distributed to the employees—generally at retirement, or separation from service. OCTC’s employees are currently contributing to one of two deferred compensation plans; specifically, the Hartford 457b Deferred Compensation Plan (Hartford) or Nationwide Retirement Solutions (Nationwide).

Under Okaloosa County Board of County Commissioners (BCC) Resolution 87-38, NACo establishes the Master Deferred Compensation Program for County employees and elected officials. It appears that OCTC was unaware his 457 Deferred Compensation Program fell under the resolution and that OCTC office was covered under NACo Master Deferred Compensation Program. By default, one of OCTC’s deferred compensation plans; specifically, Nationwide, may be administered by NACo. Under the NACo program, Nationwide was chosen exclusively as the deferred compensation provider. Counties and their employees are free to choose Nationwide or any other provider for their deferred compensation program.¹⁶ It appears that a different deferred compensation program would require a different plan other than NACo’s master plan. Hence, OCTC does not possess a master deferred compensation plan that covers the Hartford (if not Nationwide as well).

A 457b deferred compensation plan must be written and maintained in accordance with the requirement in 26 CFR 1.457-4 through 1.457-10. It must contain all the materiel terms and conditions for benefits under the plan. The plan may contain

¹⁴ Ibid and Okaloosa County Tax Collector Regulation #170, “Attendance and Leave Policy”

¹⁵ Deborah Dickeson’s email on October 22, 2009, Subject: Public Records Request – Deferred Compensation

¹⁶ Ibid., NACo Disclosure Document regarding NACo and Nationwide partnership, March 11, 2008

certain optional features or provisions as long as it meets the relevant requirements in the CFR. It appears OCTC disregarded establishing a written 457b deferred compensation plan for Hartford (and possibly Nationwide) and disguised all employees “opt out” payments by using Object Code 23 in his budget submissions to Florida Department of Revenue. As a result, it appears OCTC does not possess an eligible Deferred Compensation Plan for employees to meet or satisfy the Internal Revenue Code and the state statutes.

Federal Law, Internal Revenue Code and State Statutes Potentially Violated

In reviewing Federal laws, Internal Revenue Service (IRS) codes and State Statutes, it appears that OCTC did not adhere to the requirements to formally establish, execute and maintain an eligible deferred compensation program. In reviewing the Federal law and Internal Revenue Service (IRS) codes, it was noted that OCTC, an eligible employer,¹⁷ must establish and maintain an “eligible deferred compensation plan.”¹⁸ In addition, OCTC must administer a deferred compensation plan in a manner which is consistent with the Federal requirements for State and local governments. It was noted in 26 USC 457 (Deferred Compensation Plans for State and Local Governments and Tax-Exempt Organizations) that the amounts of compensation deferred under an eligible deferred compensation plan, and the income attributable to the amounts so deferred, shall be includible in gross income the taxable year in which such compensation or other income was earned. In our analysis of gross income, an employer-provided coverage under an accident or health plan generally is not included in the gross income of the participant.¹⁹ It appears OCTC uses the Okaloosa County BCC approved benefits or cafeteria plan.²⁰

Under a cafeteria plan, OCTC cannot use any portion of employee “opt out” health insurance premiums to participate in or contribute to a deferred compensation plan. Specifically, 26 USC 125(d)(2)(A) states that *the term “cafeteria plan” does not include any plan which provides for deferred compensation.* In certain scenarios, it was noted premiums provided by employer-paid health insurance to employees cannot be excluded from the gross income and may be required to pay employment taxes.²¹ In other words, the health insurance reimbursed by the employer and paid to the employees are included in the gross income and are subjected to employment taxes e.g. Federal Income Tax Withheld (FITW), FICA, etc. Furthermore, unqualified deferred compensation contributions are also subjected to FRS contributions.²² Hence, it appears OCTC contributions to a deferred compensation plan must come from includible compensation of the employees. Therefore, it appears the County-paid “opt out” health care insurance premium reimbursements to employees do not meet the Federal and State law requirements.

¹⁷ 26 USC 457(b)

¹⁸ Ibid., (e)(1)(A)

¹⁹ 26 USC 106 and 42 Code of Federal Regulation (CFR) 146

²⁰ Okaloosa County BCC Resolution No. 94-03, January 11, 1994

²¹ IRS Revenue Rule 2002-3, Subject: Section 106 – Contribution by Employer to Accident and Health Plans

²² §112.215(6)(b), Fla.Stat.

As mandated by the State’s “Government Employees Deferred Compensation Plan Act,”²³ it appears OCTC failed to formally approve and document the adoption and establishment of the deferred compensation plan. After repeated requests, OCTC did not produce any documentation constituting approval, adoption and establishment of a deferred compensation program used for paying for health insurance premium to ‘opt-out’ employees to participate in Hartford. Based on available records, it appears that OCTC Deferred Compensation Plan for Hartford has been in effect for at least six years, and we are unable to determine what formal agreement has been established to satisfy Federal and State requirements.²⁴ Like the NACo and Nationwide partnership, it was unclear if Okaloosa County Tax Collector receives a fee from Hartford in exchange for its sponsorship. To complicate matters, OCTC used employees’ “opt out” insurance premium to participate or contribute in a deferred compensation plan, which may be prohibited by Federal law.²⁵

OCTC cites Florida Attorney General Opinion (AGO) 2008-09²⁶ as the legal authority for authorizing him to make deferred compensation payments in lieu of health insurance. In AGO 2008-09, it was noted that the state statutes do not address the payment of money directly to the officers or employees in lieu of the premium payment, should the employees otherwise have insurance coverage. However, the AGO discussed the context of the “Municipal Home Rule Powers Act,”²⁷ which provides that municipalities “*may exercise any power for municipal purposes, except when expressly prohibited by law.*” In essence, it appears the Home Rule Powers Act allows municipalities to do any act not inconsistent with general or special law. Based on 26 USC 125(d)(2)(A), it appears that the AGO opinion allowing for the payment of money directly to a 457b Deferred Compensation Plan in lieu of the premium payment under the “Municipal Home Rule Powers Act” may be a potential Federal law violation.

On August 17, 2009, Florida DoR informed OCTC that he did not possess home rule authority and that AGO 2008-09 was not applicable to authorize him to make deferred compensation payments in lieu of health insurance.²⁸ To challenge Florida DoR ruling, OCTC retained legal counsel to help substantiate his claims²⁹ and did not indicate that he was taking any actions to resolve the matter. Before the 2008 AGO Opinion, it was unclear what legal authority OCTC used in 1999 to implement the 457b deferred compensation plan in lieu of employees “opt out” health insurance.

In OCTC Regulation #170, “Attendance and Leave Policy,” the Tax Collector authorized employees to opt out of the employer paid health insurance coverage and use the premiums to participate in OCTC’s Deferred Compensation Plan. Due to potential public records exemptions,³⁰ it is unclear if the health premiums paid to the

²³ §112.215, Fla.Stat.

²⁴ 26 USC 457 and 112.215, Fla.Stat.

²⁵ 26 USC 125(d)(2)(A)

²⁶ Florida Attorney General Opinion 2008-09, February 26, 2008, “Municipalities, compensation in lieu of group insurance”

²⁷ §166.021(1), Fla.Stat.

²⁸ Florida Department of Revenue letter, August 17, 2009 regarding Okaloosa County Tax Collector’s Deferred Compensation Policy

²⁹ Michael K. Grogan of Allen, Norton and Blue, Professional Association, August 31, 2009 acknowledges OCTC is not a municipality for Home Rule purposes, but contends AGO 2008-09 is applicable to OCTC; citing §112.08(a)2, §112.215, and §215.425, Fla.Stat. as its legal basis

³⁰ §119.071, Fla.Stat.

employees are included or excluded in gross income of the participant's compensation. For clarity, OCTC Regulation #170 does not take precedent over Federal laws and State statutes.

Practice of Other Constitutional Officers, Local School District and Tax Collectors

We also determined that the other constitutional officers within Okaloosa County (Appendix A), the local school district, and other similar tax collector offices in the State (Appendix B) offer County-paid health insurance to their employees and in some cases, to their families. It was noted that the other constitutional officers within Okaloosa County, the local school district, and other similar tax collectors offices in the State do not use any portion of an employee "opt out" health insurance premium to participate in or contribute to a deferred compensation plan.

Financial Audits Oversight

Since OCTC implemented the 457b Deferred Compensation Program in lieu of health care insurance benefit in 1999, it appears none of the Okaloosa County Comprehensive Annual Financial Reports (CAFR) has noted any internal control or material weaknesses.

In reviewing the portion of the Okaloosa County CAFR that dealt with OCTC, it appears the auditors did not detect or review any part of the financial transactions dealing with OCTC deferred compensation plan and the employee "opt out" health insurance contributions to it. If a review had been conducted, it appears reasonable that internal control or material weaknesses should have been identified in the financial audits over the past ten years.

Conclusion

Public scrutiny of the constitutional officers in Okaloosa County was incited by the "kick-back" bonus scandal in the Okaloosa County Sheriff Office and the over \$1 million compensation bonuses given by OCTC. The open public discussion resulted in a growing public interest in how County tax dollars are being budgeted and spent.

While Okaloosa County Sheriff Office was ongoing Federal and State investigations, the personal services portion of OCTC's budget became an area of concern. After reviewing OCTC's 457b Deferred Compensation Program, it appears OCTC may have made improper contributions to it. In addition, it appears the OCTC may not have adhered to the legal requirements in formally adopting, establishing and maintaining a deferred compensation program as mandated by Federal and State laws.

We are now providing this review as a matter of public interest.

Recommendations for:

1. Internal Revenue Service (U.S. Department of Treasury):
 - a. Determine whether Okaloosa County Tax Collector legally established and maintained a 457b Deferred Compensation Plan by using employees “opt out” health insurance premiums.
 - b. Determine whether Okaloosa County Tax Collector and its employees incurred Federal Income Tax Withholding and Federal Insurance Contribution Act (FICA) liabilities or penalties for potential misuse of any 457b Deferred Compensation Plans.

2. Florida Attorney General:
 - a. In conjunction the Florida Chief Financial Officer (CFO):
 - (1) Determine whether the Okaloosa County Tax Collector violated state statutes for paying government provided health insurance premiums to a 457b Deferred Compensation Plan for employees who opted out the County’s health insurance program.
 - (2) If a violation occurred, determine whether the over \$460,000 paid to employees can be returned to the Okaloosa County general fund.
 - b. Revisit or reassess Attorney General Opinion (AGO) 2008-09 to determine if the opinion provided on “Municipal Home Rule Powers Act” as it relates to payment of money directly to a 457b deferred compensation plan in lieu of the employees “opt out” insurance premium payment does not violate Federal law.

3. Florida Chief Financial Officer (CFO):
 - a. In conjunction with the Florida Attorney General:
 - (1) Determine whether the Okaloosa County Tax Collector violated state statutes for paying government provided health insurance premiums to a 457b Deferred Compensation Plan for employees who opted out the County’s health insurance program.
 - (2) If a violation occurred, determine whether the over \$460,000 paid to employees can be returned to the Okaloosa County general fund.
 - b. Determine whether Okaloosa County Tax Collector and its employees incurred FICA and Florida Retirement System (FRS) liability or penalty for potential misuse of any 457b Deferred Compensation Plans.

4. Board of County Commissioners
 - a. Request Okaloosa County Tax Collector’s 457b Deferred Compensation Plans used in lieu of employees “opt out” health insurance premiums be audited during the 2009 Comprehensive Annual Financial Report.
 - b. Ensure future Okaloosa County Tax Collector’s budgets do not include any 457b Deferred Compensation Plans funded by employees “opt out” health insurance premiums.

5. Okaloosa County Tax Collector:
 - a. Comply with Florida Department of Revenue guidance and immediately cease funding 457b Deferred Compensation Plans using employees “opt out” health insurance premiums.
 - b. Comply with all Federal and State 457b Deferred Compensation Plans requirements.
 - c. Return all government funds, which have been paid since 1999 to fund health insurance “opt out” deferred compensation plan for his employees to the Okaloosa County general fund.

Appendix A

Other Constitutional Officers and School District Management of Related Matter

Overview: We briefly examined the other five constitutional offices and the school district within Okaloosa County as it related to the deferred compensation payments in lieu of health insurance. The other constitutional offices examined are Board of County Commissioners (BCC), Clerk of the Courts, Property Appraiser, the Supervisor of Elections (SoE) and the Sheriff Office (OCSO).

Deferred Compensation Plan

We determined that none of the remaining constitutional offices nor the school district in Okaloosa County allowed any eligible employees to “opt out” of the County paid health insurance plan and apply the monetary benefits to a deferred compensation plan.

Health Insurance Benefits at Other Constitutional Officers and School District

We found that all five constitutional offices and the school district in Table 2 provide government paid health insurance. The BCC and the SoE are the only two constitutional offices that use the same benefit packages. In terms of providing health insurance, the Okaloosa County BCC offers basic and extended coverage plans. In the basic coverage, the employees pay \$40.00 of \$648.34 monthly premium—94% paid by the taxpayer. The employee pays for \$60.00 of \$648.34 for the extended coverage plan—91% paid by the taxpayer.

The BCC does not generally pay for family coverage. If an employee “opts out” of the County health insurance program, then BCC pays a \$50 monthly stipend to the employee. Again, BCC’s health insurance and ‘opt out’ stipends hold true with the employees of the SoE since BCC administers the SoE benefit packages.

The Clerk of Courts’ group premium is currently \$648.34 per month. The Clerk of Courts offers a stipend to any individual that opts out of our office healthcare plan and that amount is \$37.50 paid bi-weekly but only twenty-four times per year. In addition, any employee that is currently enrolled with the Association and Society Insurance Corp supplement gets a stipend twenty-four times per year. There are three tiers involved in this process—tier one is \$37.50 for single, \$74.50 for single plus one, and \$100.00 for family supplemental coverage.

The Okaloosa County Property Appraiser pays the total premium for those who elect the **individual coverage**, and pays **nothing** to those who decline the coverage. Any employee electing family coverage in the Property Appraiser Office must have the difference of the cost in the individual and family coverage withheld from their paycheck.

**Table 2
Other Okaloosa County Constitutional Officers and School District
Health Insurance Benefits**

Benefits	BCC	Clerk of Courts	Property Appraiser	Supervisor of Elections	OCSO	School District
Use all or some of Board of County Commissioners' health insurance benefit	Yes	Yes	Yes	Yes	No	No
Provides and pays all or portions of the health insurance premium for eligible employees	Yes	Yes	Yes	Yes	Yes	Yes
Provides and pays portions for Family Coverage	No ³¹	Yes ³²	No	No	Yes	Yes
Makes payments to employees who "opt out" of County paid health insurance benefit	Yes	Yes	No	Yes	Yes	Yes
Pays payment to an employee who "opts out" of County health insurance benefit	\$50.00 monthly	Varies from \$75.00 to \$200.00 monthly	N/A	\$50.00 monthly	\$500 annually	\$11.70 monthly

The Okaloosa County Sheriff's Office pays all of the employees' health insurance at \$639.00 per month and contributes about 83% of \$1,765 monthly for the family coverage. If the employee elects to opt-out, the OCSO puts \$500 in a Health Reimbursement Arrangement (HRA)³³ account. Since October 1, 2005, the OCSO has deposited approximately \$115,000 into the HRA account for employees who opted out the Sheriff's Office healthcare plan.

Okaloosa County School District pays the eligible employees' full health insurance premium at the single rate of \$467.79 monthly, and pays \$561.34 per month towards family coverage. The family coverage is assessed annually. If employees possess other medical coverage, the school district does make payments to employees who "opt out" of the health insurance plan. Specifically, eligible employees who 'opt out' of the

³¹ Except for the County Administrator due to his employment contract

³² Provides family coverage as a supplement. However, Clerk of Courts provides stipend for employees who "opt out" of health insurance coverage. This stipend is provided in a three-tier supplement based on single or family coverage.

³³ A health reimbursement arrangement (HRA) is employer-established benefit plans. These may be offered in conjunction with other employer-provided health benefits. Employers have complete flexibility to offer various combinations of benefits in designing their plan. You do not have to be covered under any other health care plan to participate. Employees are reimbursed tax free for qualified medical expenses up to a maximum dollar amount for a coverage period. (Source: IRS Publication 969 Online)

health insurance plan may select the option to enroll in long-term disability plan at the school district's expense.

In summary, the Okaloosa County SoE is the only constitutional officer who uses the same or is included in the BCC health insurance program. All the constitutional officers provide and pay for all or portions of the employees' health insurance premiums. OCSO and the School District are the only two county agencies in this appendix that provide or pay for family coverage. Okaloosa County Property Appraiser is the only constitutional officer who does not provide any monetary benefits to employees who "opt out" of the health insurance plan.

Appendix B

Other Tax Collectors Management Of Related Matter

Overview: We briefly examined nine other Tax Collector Offices with an emphasis on deferred compensation payments in lieu of health insurance. The nine counties were Bay, Citrus, Escambia, Hernando, Indian River, Martin, Santa Rosa, Saint Johns and Walton.

All nine tax collectors surveyed were non-chartered County governments. Seven of the nine tax collectors surveyed consisted of counties who possessed a population (+/- 42,000 people) similar to Okaloosa County. The remaining two counties, Escambia and Walton, were neighboring counties whose populations were outside our targeted population scope.

Deferred Compensation Plan

We determined that none of the nine counties surveyed allowed any eligible employees to “opt out” of the County paid health insurance plan and apply the monetary benefits into a deferred compensation plan.

Health Insurance Benefits at Other Tax Collector’s Offices

In examining Tax Collector offices with a similar population to Okaloosa County, we found that Tax Collectors in seven counties in Table 3 provide government paid health insurance. Only one of seven surveyed tax collectors made payments to employees who “opt out” of the health insurance plan.

In terms of providing health insurance, the Bay County Tax Collector pays for 75% of the single or family coverage. Citrus County Tax Collector pays 71% of the health insurance and the employees pay 29% of the cost. In addition, Citrus County Tax Collector pays 47% of the family coverage. Hernando was the only county examined that makes payments to employees who “opt out” of County paid health insurance program.

**Table 3
Other County Tax Collectors
Health Insurance Benefits**

Tax Collector	Bay	Citrus	Hernando	Indian River	Martin	Santa Rosa	Saint Johns
Offered or Included in Board of County Commissioners Health Insurance benefit package	Yes	No	Yes	Yes	Yes	Yes	Yes
Provides and pays all or portions of County health insurance premium for eligible employees	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Provides and pays portions for Family Coverage	Yes	Yes	Yes	Yes	Yes	Yes	No
Makes payments to employees who "opt out" of County paid health insurance benefit	No	No	Yes	No	No	No	No

According to the Hernando Tax Collector, all eligible employees are required to have health insurance, short and long-term disability insurance, dental insurance and at least minimum life insurance. If the employee chooses to not take part in the employer paid health insurance, they must provide documentation that they have other health coverage and the 'opt out' health insurance reimbursement may be applied towards other Hernando County benefit programs e.g. increase life insurance, short-term and long-term care insurance, dental, etc.

In Indian River County, the Tax Collector pays 100% of the premium for single coverage. If an employee has family coverage, then Indian River Tax Collector pays 78% of the coverage which includes the employee. Martin County Tax Collector pays 75% of cost and the price varies per person as the county is self insured. The employee may choose between a single or family coverage. In Santa Rosa County, the Tax Collector pays 100% of single coverage and 75% of the family. Saint Johns County's regular full time employees, who have completed their introductory period, are eligible to participate in the health insurance plan and the Tax Collector pays the eligible employee's premium only. The employee is responsible for payment of any dependent or family coverage.

In our neighboring non-chartered government counties in Table 5, specifically, Escambia and Walton counties,³⁴ Tax Collector employees are provided County funded health insurance. In Escambia County, the Tax Collector pays a portion of the health insurance premiums for the employees and their families. The portion is based on single or family coverage coupled with smoker or non-smoker rate. In contrast, Walton County Tax Collector pays the full premium amount for "Individual" coverage of employees. For Walton County employees who have been continuously employed with the office for 1 year, the Tax Collector provides for 1/2 of the premium for "Family"

³⁴ Escambia County's population is 295,426 ranks #18 in Florida counties and #206 in U.S. counties. The population of Walton County is 52,270 ranks #42 in Florida counties and #923 in U.S. counties. (Source: www.municipia.com)

Coverage. Escambia and Walton counties do not make payments to employees who “opt out” of the County paid health insurance program.

**Table 5
Neighboring Counties Tax Collectors
Health Insurance Benefits**

Tax Collector	Escambia	Walton
Offered or Included in Board of County Commissioners Health Insurance benefit package	Yes	Yes
Provides and pays all or portions of County health insurance premium for eligible employees	Yes	Yes
Provides and pays portions of Family Coverage	Yes	Yes
Makes payments to employees who “opt out” of County paid health insurance benefit	No	No
Pays monthly payment to an employee	N/A	N/A

In summary, we found that all Tax Collectors in the nine targeted counties provided government paid health insurance to their employees, and eight tax collectors did not make payments to employees who “opt out” of the health insurance plan. Hernando was the only county surveyed that makes some payments to employees who “opt out” of County paid health insurance program. Eight of the nine targeted counties provided and paid for portions of the family coverage. Saint Johns County was the only county examined that did not offer family coverage.

Appendix C Sources

- 26 U.S. Code (USC), Subtitle A, Chapter 1, Income Tax
- 42 USC, Chapter 6A, Public Health Service (also known as the Public Health Service Act)
- Title 26 Code of Federal Regulation (CFR) Chapter 1, Part 1, Contributions by employer to accident and health plans
- 45 CFR Part 146, Requirements for the Group Health Insurance Market
- Internal Revenue Code (IRC) section 457
- Internal Revenue Ruling 1961-16, January 1, 1961 on 26 USC 106 and 26 CFR 1.106-1
- Internal Revenue Ruling 2002-3, Health Insurance Premium, page 316, December 21, 2001
- Internal Revenue Bulletin No. 2002-3, January 22, 2002 relating Health Insurance Premium
- Florida Constitution, Article II (General Provisions), Section 8 (Ethics in Government)
- Ibid. Article VIII (Local Government), Section 1 (Counties)
- Florida Statutes, Title X (Public Officers, Employees and Records), Chapter 112 (Public Officers and Employees: General Provisions), Part III (Code of Ethics of Public Officers and Employees)
- Ibid. Title X (Public Records), Chapter 119
- Ibid. Title XI (County Organization and Intergovernmental Relations), Chapter 129 (County Annual Budget)
- Ibid. Title XII (Municipalities), Chapter 166 (Municipalities)
- Ibid. Title XIV (Taxation and Finance), Chapter 195 (Property Assessment Administration and Finance)
- Ibid. Chapter 215 (Financial Matters: General Provisions)
- Florida Administrative Code, Chapter 12D-11 (Budget)

- Florida Attorney General Opinion (AGO) 2008-09, February 26, 2008, Municipalities, Compensation in Lieu of Group Insurance
- Florida Department of Law Enforcement Investigative Report (EI-14-0083) on Christin “Chris” Hughes, Okaloosa County Tax Collector, February 20, 2007
- 2009-2010 Florida Tax Collector’s Instruction Workbook
- Okaloosa County Resolution No. 87-38, adopted on May 5, 1987
- Okaloosa County Tax Collector Regulation No. 170, Attendance and Leave Policy and Amendments
- National Association of Counties (NACo), www.naco.org
- Bay Beacon News
- Northwest Florida Daily News
- Muncipedia.com

Appendix D – Acronyms

§	Symbol denotes “Section” of a law, statutes or regulations
AGO	Attorney General Opinion (Florida)
BCC	Board of County Commissioners (Okaloosa County)
CAFR	Comprehensive Annual Financial Reports (Okaloosa County)
CFR	Code of Federal Regulations
CFO	Chief Financial Officer (Florida)
DoR	Department of Revenue (Florida)
FDLE	Florida Department of Law Enforcement
Fla.Stat.	Florida Statutes
FICA	Federal Insurance Contribution Act
FITW	Federal Income Tax Withholding/Withheld
FRS	Florida Retirement System
Hartford	Hartford Retirement Plan Solutions
HRA	Health Reimbursement Arrangement
IRS	Internal Revenue Service
NACo	National Association of Counties
Nationwide	Nationwide Retirement Plan Solutions
OCA	Okaloosa Citizens Alliance
OCSO	Okaloosa County Sheriff Office
OCTC	Okaloosa County Tax Collector
SSA	Social Security Administration
SoE	Supervisor of Elections (Okaloosa County)
USC	U.S. Code

Appendix E – Report Distribution

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