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Title 31 - Money and Finance: Treasury
Subtitle B - Regulations Relating to Money and Finance
Chapter II - Fiscal Service, Department of the Treasury
Subchapter A - Bureau of the Fiscal Service
Part 285 - Debt Collection Authorities Under the Debt Collection Improvement Act of 1996

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EDITORIAL NOTE ON SUBCHAPTER A OF CHAPTER II

Editorial Note: Nomenclature changes to subchapter A appear at 78 FR 60697, Oct. 2, 2013.

Subpart A - Disbursing Official Offset

§ 285.1 Collection of past-due support by administrative offset.

(a) ***Definitions.*** For purposes of this section:

Administrative offset means withholding funds payable by the United States (including funds payable by the United States on behalf of a State government) to, or held by the United States for, a person to satisfy a debt.

Debt as used in this section is synonymous with the term past-due support.

Disbursing official includes an official who has authority to disburse public money pursuant to 31 U.S.C. 3321 or another Federal law.

Fiscal Service means the Bureau of the Fiscal Service, a bureau of the Department of the Treasury. Fiscal Service is the designee of the Secretary of the Treasury for all matters concerning this section, unless otherwise specified.

HHS means the Department of Health and Human Services, Office of Child Support Enforcement.

Past-due support means the amount of support determined under a court order, or an order of an administrative procedure established under State law, for support and maintenance of a child, or of a child and the parent with whom the child is living, which has not been paid. The term child as used in this definition is not limited to minor children.

Past-due support being enforced by the State means there has been an assignment of the support rights to the State, or the State making the request for offset is providing services to individuals pursuant to 42 U.S.C. 654(5) (section 454(5) of the Social Security Act), or the State is enforcing support pursuant to a cooperative agreement with or by an Indian tribal government.

State means the several States of the United States. The term State also includes the District of Columbia, American Samoa, Guam, the United States Virgin Islands, the Commonwealth of the Northern Mariana Islands, and the Commonwealth of Puerto Rico.

Secretary means the Secretary of the Treasury.

(b) ***General rule.*** Fiscal Service may enter into a reciprocal agreement with a State for the collection of past-due support being enforced by the State by administrative offset from certain Federal payments. Upon notification of past-due support either directly from a State which has entered into such an agreement or from HHS, disbursing officials of Fiscal Service or any other disbursing official of the United States shall offset Federal payments which are subject to offset under this section, to collect past-due support. The amount offset, minus the offset fee, shall be forwarded to the State to be distributed in accordance with applicable laws and procedures.

(c) ***Agreements.*** Fiscal Service may enter into reciprocal agreements with States for disbursing officials of Fiscal Service and any other Federal disbursing official to offset certain Federal payments to collect past-due support being enforced by the State. The agreement shall contain any requirements which Fiscal Service considers appropriate to facilitate the offset and prevent duplicative efforts and shall require States to prescribe procedures governing the collection of past-due support by Federal administrative offset. For purposes of this section, reciprocal means of mutual benefit. An agreement between Fiscal Service and a State to collect past-due support by offsetting Federal payments will be considered of mutual benefit and it is not required that States conduct administrative offsets to collect debts owed to the Federal Government. States which have entered into an agreement with Fiscal Service pursuant to this section

may thereafter request, in the manner prescribed herein, that an offset be performed. Such requests shall be made by the appropriate State disbursing official which, for purposes of this section, means an appropriate official of the State agency which administers or supervises the administration of the State plan under Title IV-D of the Social Security Act.

(d) ***Notification to Fiscal Service of past-due support.***

(1) States notifying Fiscal Service of past-due support must do so in the manner and format prescribed by Fiscal Service. States notifying HHS of past-due support must do so in the manner and format prescribed by HHS. HHS shall notify Fiscal Service of all past-due support referred to HHS by States for collection by administrative offset provided that the requirements of paragraphs (d)(3) and (h) of this section have been met.

(2) When a State has knowledge that past-due support is being enforced by more than one State, the State notifying Fiscal Service or HHS of the past-due support must inform any other State involved in enforcing the past-due support when it refers the debt for offset and when it receives the offset amount.

(3) The notification of past-due support must be accompanied by a certification that the debt is past-due, legally enforceable, and that the State has complied with all the requirements as set forth in paragraph (h) of this section and with any requirements imposed by State law or procedure. For debts so certified, the Secretary may waive sections 552a (o) and (p) of Title 5, United States Code, where applicable, in accordance with the Secretary's authority under 31 U.S.C. 3716(f).

(4) Fiscal Service may reject a notification of past-due support which does not comply with the requirements of this section. The State will be notified of the rejection along with the reason for the rejection.

(e) ***Minimum amount of past-due support.*** Fiscal Service will reject a notification of past-due support where the past-due support owed is less than $25.00. This amount may be adjusted from time to time by Fiscal Service to ensure that the cost of collection does not exceed the debt.

(f) ***Limitations.*** Debts properly submitted to Fiscal Service for administrative offset will remain subject to collection by administrative offset until withdrawn by the State provided the debt remains past-due and legally enforceable.

(g) ***Notification of changes in status of debt.*** The State notifying Fiscal Service or HHS of past-due support shall, in the manner and in the time frames provided by Fiscal Service or HHS, notify Fiscal Service or HHS of deletions or decreases in the amount of a debt referred for collection by administrative offset. The State may notify Fiscal Service or HHS of any increases in the amount of a debt referred for collection by administrative offset provided the State has complied with the requirements of paragraph (h) of this section with regard to those amounts.

(h) ***Advance notification of intent to collect by administrative offset.***

(1) The State, or Fiscal Service or HHS on behalf of the State, if the State requests and Fiscal Service or HHS agrees, shall send a written notification, at least 30 days in advance of referral of the debt for offset, to the individual owing past-due support, informing the individual that the State intends to refer the debt for collection by administrative offset against Federal payments. The notice must also inform the individual of:

(i) The nature and amount of the debt; and

(ii) The right to an administrative review by the State referring the debt or, upon the request of the individual, by the State with the order upon which the referral was based, of the determination of the State with respect to the debt and of the procedures and time frames established by the State for such reviews.

(2) Prior to referring a debt to Fiscal Service for collection by administrative offset, States must provide individuals with a reasonable opportunity to exercise the rights enumerated in paragraph (h)(1) of this section in accordance with procedures prescribed by the State.

(i) ***Payments subject to offset.*** Federal payments subject to offset under this section include all Federal payments except:

(1) Payments due to an individual under

(i) Title IV of the Higher Education Act of 1965;

(ii) The Social Security Act;

(iii) Part B of the Black Lung Benefits Act;

(iv) Any law administered by the Railroad Retirement Board;

(2) Payments which the Secretary determines are exempt from offset in accordance with paragraph (k) of this section;

(3) Payments from which collection of past-due support by administrative offset is expressly prohibited by law;

(4) Payments made under the Internal Revenue Code of 1986 (except that tax refund payments are subject to offset under separate authority); and

(5) Payments made under the tariff laws of the United States.

(j) ***Special provisions applicable to Federal salary payments.***

(1) Unless a lower maximum offset limitation is provided by applicable State law, the maximum part of a Federal salary payment per pay period subject to offset to collect past-due support shall not exceed those amounts set forth at section 1673(b)(2) (A) and (B) of Title 15, United States Code, as follows:

(i) Fifty (50%) percent of the debtor's aggregate disposable earnings for any pay period, where the debtor asserts by affidavit, or by other acceptable evidence, that he/she is supporting a spouse and/or dependent child, other than the former spouse and/or child for whom support is being collected, except that an additional five (5%) percent will apply if it appears that such earnings are to enforce past-due support for a period which is twelve (12) weeks or more prior to the pay period to which the offset applies. A debtor shall be considered to be supporting a spouse and/or dependent child only if the debtor provides over half of the spouse's and/or dependent child's support.

(ii) Sixty (60%) percent of the debtor's aggregate disposable earnings for any pay period where the debtor fails to assert by affidavit or establish by other acceptable evidence that he/she is supporting a spouse and/or dependent child, other than a former spouse and/or child for whom support is being collected, except that an additional five (5%) percent will apply if it appears that such earnings are to enforce past-due support for a period which is twelve (12) weeks or more prior to the pay period to which the offset applies.

(2) The maximum allowable offset amount shall be reduced by the amount of any deductions in pay resulting from a garnishment order for support. Nothing in this rule is intended to alter rules applicable to processing garnishment orders for child support and/or alimony.

(3) Federal salary payments subject to offset for the collection of past-due support include current basic pay, special pay, incentive pay, retainer pay, overtime, or in the case of an employee not entitled to basic pay, other authorized pay. Aggregate disposable earnings for purposes of determining the maximum amounts which may be offset under paragraph (j)(1) of this section is Federal salary pay remaining after the deduction of:

(i) Any amount required by law to be withheld;

(ii) Amounts properly withheld for Federal, State or local income tax purposes;

(iii) Amounts deducted as health insurance premiums;

(iv) Amounts deducted as normal retirement contributions, not including amounts deducted for supplementary coverage; and

(v) Amounts deducted as normal life insurance premiums not including amounts deducted for supplementary coverage.

(4) At least 30 days in advance of offset, the disbursing official shall send written notice to the debtor of the maximum offset limitations described in paragraph (j)(1) of this section. The notice shall include a request that the debtor submit supporting affidavits or other documentation necessary to determine the applicable offset percentage limitation. The notice shall also inform the debtor of the percentage that will be deducted if he/she fails to submit the requested documentation.

(5) At the time the past-due support debt is submitted for offset, the State shall advise Fiscal Service or HHS if the maximum amount of a Federal salary payment that may be offset is less than the amount described under this paragraph.

(k) ***Payments exempt from administrative offset to collect past-due support being enforced by a State.*** The Secretary will exempt from administrative offset under this part payments made under means-tested programs when requested by the head of the Federal agency which administers the program. For purposes of this section, means-tested programs are programs for which eligibility is based on a determination that income and/or assets of the beneficiary are inadequate to provide the beneficiary with an adequate standard of living without program assistance. The Secretary may exempt from administrative offset under this section any other class or type of payment upon the written request of the head of the agency which authorizes the payments. In determining whether or not to grant such exemptions, the Secretary shall give due consideration to whether administrative offset would tend to interfere substantially with or defeat the purposes of the payment agency's program.

(l) ***Fees.*** A fee which Fiscal Service has determined to be sufficient to reimburse Fiscal Service for the full cost of the offset procedure, shall be deducted from each offset amount. Fiscal Service will notify the States, annually and in advance, of the amount of the fee to be charged for each offset.

(m) ***Offsetting payments*** -

(1) ***Conducting the offset.*** Disbursing officials of the Department of the Treasury, the Department of Defense, the United States Postal Service, or any other Government corporation, any disbursing official of the United States designated by the Secretary, or any disbursing official of an executive department or agency that disburses Federal payments shall offset payments subject to offset under this section to satisfy, in whole or part, a debt owed by the payee. Disbursing officials shall compare payment certification records with records of debts submitted to Fiscal Service for collection by administrative offset. A match will occur when the taxpayer identifying number and name control of a payment record are the same as the taxpayer identifying number and name control of a debt record. The taxpayer identifying number for an individual is the individual's social security number. When a match occurs and all other requirements for offset have been met, the disbursing official shall offset the payment to satisfy, in whole or part, the debt. Any amounts not offset shall be paid to the payee. The amount that can be offset from a single payment is the lesser of the amount of the debt (including interest, penalties, and administrative costs); the amount of the payment; or the amount of the payment available for offset if a statute or regulation prohibits offset of the entire amount. Debts remain subject to collection by offset until paid in full.

(2) ***Disposition of amounts collected.*** Fiscal Service will transmit amounts collected for debts, less fees charged under paragraph (l) of this section, to HHS or to the appropriate State. If Fiscal Service learns that an erroneous offset payment has been made to HHS or any State, Fiscal Service will notify HHS or the appropriate State that an erroneous offset payment has been made. Fiscal Service

may deduct the amount of the erroneous offset payment from amounts payable to HHS or the State, as the case may be. Alternatively, upon Fiscal Service' request, the State shall return promptly to the affected payee or Fiscal Service an amount equal to the amount of the erroneous payment (unless the State previously has paid such amounts, or any portion of such amounts, to the affected payee). HHS and States shall notify Fiscal Service any time HHS or a State returns an erroneous offset payment to an affected payee. Fiscal Service and HHS, or the appropriate State, will adjust their debtor records accordingly.

(n) ***Administrative offset priorities.***

(1) A levy pursuant to the Internal Revenue Code of 1986 shall take precedence over deductions under this section.

(2) Offsets will be applied first to past-due support being enforced by the State before any other offsets under this part.

(o) ***Notification of offset.***

(1) Disbursing officials of Fiscal Service or any other disbursing official which conducts an offset will notify the payee in writing of the occurrence of the offset to satisfy past-due support. The notice shall inform the payee of the type and amount of the payment that was offset; the identity of the State which requested the offset; and a contact point within the State that will handle concerns regarding the offset. Disbursing officials shall not be liable for failure to provide this notice.

(2) Disbursing officials of Fiscal Service or any other disbursing official which conducts an offset under this section will share with HHS, upon request by the Secretary of HHS, information contained in payment certification records of persons who are delinquent in child support obligations that would assist in the collection of such debts. When no offset is conducted, disbursing officials of Fiscal Service or any other disbursing official, will provide such information to HHS to the extent such information is available from offset activities conducted by Fiscal Service and other disbursing officials.

(p) ***Liability of disbursing officials and payment agencies.*** Neither the disbursing official nor the agency authorizing the payment shall be liable for the amount of the administrative offset on the basis that the underlying obligation, represented by the payment before the administrative offset was taken, was not satisfied. Disbursing officials will notify the agency authorizing the payment that the offset has occurred so that the agency authorizing the payment may direct any inquiries concerning the offset to the appropriate State.

[62 FR 36210, July 7, 1997, as amended at 63 FR 46145, Aug. 28, 1998; 74 FR 27433, June 10, 2009]

§ 285.2 Offset of tax refund payments to collect past-due, legally enforceable nontax debt.

(a) ***Definitions.*** For purposes of this section:

Creditor agency means a Federal agency owed a claim that seeks to collect that claim through tax refund offset.

Debt or *claim* refers to an amount of money, funds, or property which has been determined by an agency official to be due the United States from any person, organization, or entity, except another Federal agency. For the purposes of this section, the terms “claim” and “debt” are synonymous and interchangeable and includes debt administered by a third party acting as an agent for the Federal Government.

Debtor means a person who owes a debt or claim. The term “person” includes any individual, organization or entity, except another Federal agency.

Fiscal Service means the Bureau of the Fiscal Service, a bureau of the Department of the Treasury.

IRS means the Internal Revenue Service, a bureau of the Department of the Treasury.

Tax refund offset means withholding or reducing a tax refund payment by an amount necessary to satisfy a debt owed by the payee(s) of a tax refund payment.

Tax refund payment means any overpayment of Federal taxes to be refunded to the person making the overpayment after the IRS makes the appropriate credits as provided in 26 U.S.C. 6402(a) and 26 CFR 6402-3(a)(6)(i) for any liabilities for any tax on the part of the person who made the overpayment.

(b) ***General rule.***

(1) A Federal agency (as defined in 26 U.S.C. 6402(g)) that is owed by a person a past-due, legally enforceable nontax debt shall notify Fiscal Service of the amount of such debt for collection by tax refund offset. However, any agency subject to section 9 of the Act of May 18, 1933 (16 U.S.C. 831h) owed such a debt may, but is not required to, notify Fiscal Service of the amount of such debt for collection by tax refund offset.

(2) Fiscal Service will compare tax refund payment records, as certified by the IRS, with records of debts submitted to Fiscal Service. A match will occur when the taxpayer identifying number (as that term is used in 26 U.S.C. 6109) and name (or derivation of the name, known as a “name control”) of a payment certification record are the same as the taxpayer identifying number and name control of a debtor record. When a match occurs and all other requirements for tax refund offset have been met, Fiscal Service will reduce the amount of any tax refund payment payable to a debtor by the amount of any past-due, legally enforceable debt owed by the debtor. Any amounts not offset will be paid to the payee(s) listed in the payment certification record.

(3) This section does not apply to any debt or claim arising under the Internal Revenue Code.

(4)

(i) This section applies to Federal Old Age, Survivors and Disability Insurance (OASDI) overpayments provided the requirements of 31 U.S.C. 3720A(f)(1) and (2) are met with respect to such overpayments.

(ii) For purposes of this section, *OASDI overpayment* means any overpayment of benefits made to an individual under title II of the Social Security Act (42 U.S.C. 401 *et seq.*).

(5) A creditor agency is not precluded from using debt collection procedures, such as wage garnishment, to collect debts that have been submitted to Fiscal Service for purposes of offset under this part. Such debt collection procedures may be used separately or in conjunction with offset collection procedures.

(c) ***Regulations.*** Prior to submitting debts to Fiscal Service for collection by tax refund offset, Federal agencies shall promulgate temporary or final regulations under 31 U.S.C. 3716 and 31 U.S.C. 3720A, governing the agencies' authority to collect debts by administrative offset, in general, and offset of tax refund payments, in particular.

(d) ***Agency certification and referral of debt*** -

(1) ***Past-due, legally enforceable debt eligible for tax refund offset.*** For purposes of this section, when a Federal agency refers a past-due, legally enforceable debt to Fiscal Service for tax refund offset, the agency will certify to Fiscal Service that:

(i) The debt is past-due and legally enforceable in the amount submitted to Fiscal Service and that the agency will ensure that collections are properly credited to the debt;

(ii) The creditor agency has made reasonable efforts to obtain payment of the debt in that the agency has:

(A) Submitted the debt to Fiscal Service for collection by administrative offset and complied with the provisions of 31 U.S.C. 3716(a) and related regulations, to the extent that collection of the debt by administrative offset is not prohibited by statute;

(B) Notified, or has made a reasonable attempt to notify, the debtor that the debt is past-due, and unless repaid within 60 days after the date of the notice, will be referred to Fiscal Service for tax refund offset;

(C) Given the debtor at least 60 days to present evidence that all or part of the debt is not past-due or legally enforceable, considered any evidence presented by the debtor, and determined that the debt is past-due and legally enforceable; and

(D) Provided the debtor with an opportunity to make a written agreement to repay the amount of the debt;

(iii) The debt is at least $25; and

(iv) In the case of an OASDI overpayment -

(A) The individual is not currently entitled to monthly insurance benefits under title II of the Social Security Act (42 U.S.C. 401 *et seq.*);

(B) The notice describes conditions under which the Commissioner of Social Security is required to waive recovery of the overpayment, as provided under 42 U.S.C. 404(b); and

(C) If the debtor files a request for a waiver under 42 U.S.C. 404(b) within the 60-day notice period, the agency has considered the debtor's request.

(2) ***Pre-offset notice and consideration of evidence for past-due, legally enforceable debt.***

(i) For purposes of paragraph (d)(1)(iii)(B) of this section, a creditor agency has made a reasonable attempt to notify the debtor if the agency uses the current address information contained in the agency's records related to the debt. Agencies may, but are not required to, obtain address information from the IRS pursuant to 26 U.S.C. 6103(m)(2), (4), or (5).

(ii) For purposes of paragraph (d)(1)(iii)(C) of this section, if the evidence presented by the debtor is considered by an agent of the creditor agency, or other entities or persons acting on the agency's behalf, the debtor must be accorded at least 30 days from the date the agent or other entity or person determines that all or part of the debt is past-due and legally enforceable to request review by an officer or employee of the agency of any unresolved dispute. The agency must then notify the debtor of its decision.

(3) ***Referral of past-due, legally enforceable debt.*** A Federal agency will submit past-due, legally enforceable debt information for tax refund offset to Fiscal Service in the time and manner prescribed by Fiscal Service. For each debt, the creditor agency will include the following information:

(i) The name and taxpayer identifying number (as defined in 26 U.S.C. 6109) of the debtor who is responsible for the debt;

(ii) The amount of such past-due and legally enforceable debt;

(iii) The date on which the debt became past-due;

(iv) The designation of the Federal agency or subagency referring the debt; and

(v) In the case of an OASDI overpayment, a certification by the Commissioner of Social Security designating whether the amount payable to the agency is to be deposited in either the Federal Old-Age and Survivors Insurance Trust Fund or the Federal Disability Insurance Trust Fund, but not both.

(4) ***Correcting and updating referral.*** If, after referring a past-due, legally enforceable debt to Fiscal Service as provided in paragraph (d)(3) of this section, a creditor agency determines that an error has been made with respect to the information transmitted to Fiscal Service, or if an agency receives a payment or credits a payment to the account of a debtor referred to Fiscal Service for offset, or if the debt amount is otherwise incorrect, the agency shall promptly notify Fiscal Service and make the appropriate correction of the agency's records. Creditor agencies will provide certification as required under paragraph (d)(1) of this section for any increases to amounts owed.

(5) Fiscal Service may reject a certification which does not comply with the requirements of paragraph (d)(1) of this section. Upon notification of the rejection and the reason for the rejection, a creditor agency may resubmit the debt with a corrected certification.

(6)

(i) Creditor agencies may submit debts to Fiscal Service for collection by tax refund offset irrespective of the amount of time the debt has been outstanding. Accordingly, all nontax debts, including debts that were delinquent for ten years or longer prior to December 28, 2009 may be collected by tax refund offset.

(ii) For debts outstanding more than ten years on or before December 28, 2009, creditor agencies must certify to Fiscal Service that the notice of intent to offset described in paragraph (d)(1)(ii)(B) of this section was sent to the debtor after the debt became ten years delinquent. This requirement will apply even in a case where notice was also sent prior to the debt becoming ten years delinquent, but does not apply to any debt that could be collected by offset without regard to any time limitation prior to December 28, 2009.

(e) ***Post-offset notice to the debtor, the creditor agency, and the IRS.***

(1)

(i) Fiscal Service will notify the payee(s) to whom the tax refund payment is due, in writing of:

(A) The amount and date of the offset to satisfy a past-due, legally enforceable nontax debt;

(B) The creditor agency to which this amount has been paid or credited; and

(C) A contact point within the creditor agency that will handle concerns or questions regarding the offset.

(ii) The notice in paragraph (e)(1)(i) of this section will also advise any non-debtor spouse who may have filed a joint tax return with the debtor of the steps which a non-debtor spouse may take in order to secure his or her proper share of the tax refund. See paragraph (f) of this section.

(2) Fiscal Service will advise each creditor agency of the names, mailing addresses, and identifying numbers of the debtors from whom amounts of past-due, legally enforceable debt were collected and of the amounts collected from each debtor for that agency. Fiscal Service will not advise the creditor agency of the source of payment from which such amounts were collected. If a payment from which an amount of past-due, legally enforceable debt is to be withheld is payable to two individual payees, Fiscal Service will notify the creditor agency and furnish the name and address of each payee to whom the payment was payable.

(3) At least weekly, Fiscal Service will notify the IRS of the names and taxpayer identifying numbers of the debtors from whom amounts of past-due, legally enforceable debt were collected and the amounts collected from each debtor.

(f) ***Offset made with regard to a tax refund payment based upon joint return.*** If the person filing a joint return with a debtor owing the past-due, legally enforceable debt takes appropriate action to secure his or her proper share of a tax refund from which an offset was made, the IRS will pay the person his or her share of the refund and request that Fiscal Service deduct that amount from amounts payable to the creditor agency. Fiscal Service and the creditor agency will adjust their debtor records accordingly.

(g) ***Disposition of amounts collected.*** Fiscal Service will transmit amounts collected for past-due, legally enforceable debts, less fees charged under paragraph (h) of this section, to the creditor agency's account. If an erroneous payment is made to any agency, Fiscal Service will notify the creditor agency that an erroneous payment has been made. The agency shall pay promptly to Fiscal Service an amount equal to the amount of the erroneous payment (without regard to whether any other amounts payable to such agency have been paid).

(h) ***Fees.*** The creditor agency will reimburse Fiscal Service and the IRS for the full cost of administering the tax refund offset program. Fiscal Service will deduct the fees from amounts collected prior to disposition and transmit a portion of the fees deducted to reimburse the IRS for its share of the cost of administering the tax refund offset program. To the extent allowed by law, creditor agencies may add the offset fees to the debt.

(i) ***Review of tax refund offsets.*** Any reduction of a taxpayer's refund made pursuant to 26 U.S.C. 6402(d) shall not be subject to review by any court of the United States or by the Secretary of the Treasury, Fiscal Service or IRS in an administrative proceeding. No action brought against the United States to recover the amount of this reduction shall be considered to be a suit for refund of tax. Any legal, equitable, or administrative action by any person seeking to recover the amount of the reduction of the overpayment must be taken against the Federal creditor agency to which the amount of the reduction was paid. Any action which is otherwise available with respect to recoveries of overpayments of benefits under 42 U.S.C. 404 must be taken against the Commissioner of Social Security.

(j) ***Access to and use of confidential tax information.*** Access to and use of confidential tax information in connection with the tax refund offset program are restricted by 26 U.S.C. 6103. Generally, agencies will not receive confidential tax information from Fiscal Service. To the extent such information is received, agencies are subject to the safeguard, recordkeeping, and reporting requirements of 26 U.S.C. 6103(p)(4) and the regulations thereunder. The agency shall inform its officers and employees who access or use confidential tax information of the restrictions and penalties under the Internal Revenue Code for misuse of confidential tax information.

(k) ***Effective date.*** This section applies to tax refund payments payable under 26 U.S.C. 6402 after January 1, 1998.

[62 FR 34179, June 25, 1997, as amended at 74 FR 27433, June 10, 2009; 74 FR 68538, Dec. 28, 2009; 75 FR 746, Jan. 4, 2010]

§ 285.3 Offset of tax refund payments to collect past-due support.

(a) ***Definitions.*** For purposes of this section:

Debt as used in this section is synonymous with the term past-due support unless otherwise indicated.

Debtor as used in this section means a person who owes past-due support.

Fiscal Service means the Bureau of the Fiscal Service, a bureau of the Department of the Treasury.

HHS means the Department of Health and Human Services, Office of Child Support Enforcement.

IRS means the Internal Revenue Service, a bureau of the Department of the Treasury.

Past-due support means the amount of support, determined under a court order, or an order of an administrative process established under State law, for support and maintenance of a child, or of a child and the parent with whom the child is living, which has not been paid, as defined in 42 U.S.C. 664(c).

State means the several States of the United States. The term "State" also includes the District of Columbia, American Samoa, Guam, the United States Virgin Islands, the Commonwealth of the Northern Mariana Islands, and the Commonwealth of Puerto Rico.

Tax refund offset means withholding or reducing a tax refund payment by an amount necessary to satisfy a debt owed by the payee(s) of a tax refund payment.

Tax refund payment means any overpayment of Federal taxes to be refunded to the person making the overpayment after the IRS makes the appropriate credits as provided in 26 U.S.C. 6402(a) and 26 CFR 6402-3(a)(6)(i) for any liabilities for any Federal tax on the part of the person who made the overpayment.

(b) ***General rule.***

(1) Past-due support will be collected by tax refund offset upon notification to Fiscal Service in accordance with 26 U.S.C. 6402(c), 42 U.S.C. 664 and this section. Collection by offset under 26 U.S.C. 6402(c) is a collection procedure separate from the collection procedures provided by 26 U.S.C. 6305 and 26 CFR 301.6305-1, relating to the assessment and collection of certain child and spousal support liabilities. Tax refund offset may be used separately or in conjunction with the collection procedures provided in 26 U.S.C. 6305, as well as other collection procedures.

(2) Fiscal Service will compare tax refund payment records, as certified by the IRS, with records of debts submitted to Fiscal Service. A match will occur when the taxpayer identifying number (as that term is used in 26 U.S.C. 6109) and name of a payment certification record are the same as the taxpayer identifying number and name of a delinquent debtor record. When a match occurs and all other requirements for tax refund offset have been met, Fiscal Service will reduce the amount of any tax refund payment payable to a debtor by the amount of any past-due support debt owed by the debtor. Any amounts not offset will be paid to the payee(s) listed in the payment certification record.

(c) ***Notification of past-due support*** -

(1) ***Past-due support eligible for tax refund offset.*** Past-due support qualifies for tax refund offset if:

(i)

(A) There has been an assignment of the support obligation to a State and the amount of past-due support is not less than $25.00, or such higher amount as HHS rules may allow, whichever is greater; or

(B) A State agency is providing support collection services under 42 U.S.C. 654(4) and the amount of the past-due support is not less than $500.00; and

(ii) A notification of liability for past-due support has been received by Fiscal Service as prescribed by paragraphs (c)(2) or (c)(3) of this section.

(2) ***Notification of liability for past-due support and transmission of information to Fiscal Service by HHS.*** States notifying HHS of past-due support shall do so in the manner and format prescribed by HHS. The notification of liability shall be accompanied by a certification that the State has complied with the requirements contained in paragraph (c)(4) of this section and with any requirements applicable to the offset of Federal tax refunds to collect past-due support imposed by State law or procedures. HHS shall consolidate and transmit to Fiscal Service the information contained in the notifications of liability for past-due support submitted by the States provided that the State has certified that the requirements of paragraph (c)(4) of this section have been met.

(3) ***Notification of liability for past-due support transmitted directly to Fiscal Service by States.*** States must notify HHS of past-due support in accordance with the provisions of paragraph (c)(2) of this section unless HHS rules authorize notification to Fiscal Service directly. If authorized by HHS rules, States may notify Fiscal Service directly of past-due support. States notifying Fiscal Service directly of past-due support shall do so in the manner and format prescribed by Fiscal Service. The notification of liability shall be accompanied by a certification that the State has complied with the requirements contained in paragraph (c)(4) of this section and with any requirements applicable to the offset of Federal tax refunds to collect past-due support imposed by State law or procedures. Fiscal Service may reject a notification of past-due support which does not comply with the requirements of this section. Upon notification of the rejection and the reason for rejection, the State may resubmit a corrected notification.

(4) ***Advance notification to debtor of intent to collect by tax refund offset.*** The State, or HHS if the State requests and HHS agrees, is required to provide a written notification to the debtor, pursuant to the provisions of 42 U.S.C. 664(a)(3) and 45 CFR 303.72(e), informing the debtor that the State intends to refer the debt for collection by tax refund offset. The notice also shall:

(i) Instruct the debtor of the steps which may be taken to contest the State's determination that past-due support is owed or the amount of the past-due support;

(ii) Advise any non-debtor who may file a joint tax return with the debtor of the steps which a non-debtor spouse may take in order to secure his or her proper share of the tax refund; and

(iii) In cases when a debt is being enforced by more than one State, advise the debtor of his or her opportunities to request a review with the State enforcing collection or the State issuing the support order as prescribed by the provisions of 45 CFR 303.72(g).

(5) ***Correcting and updating notification.*** The State shall, in the manner and in the time frames provided by Fiscal Service or HHS, notify Fiscal Service or HHS of any deletion or net decrease in the amount of past-due support referred to Fiscal Service, or HHS as the case may be, for collection by tax refund offset. The State may notify Fiscal Service or HHS of any increases in the amount of the debt referred to Fiscal Service for collection by tax refund offset provided that the State has complied with the requirements of paragraph (c)(4) of this section with regard to those debts.

(6) ***Collection of past-due support enforced by multiple States.*** When a State has knowledge that the debt is being enforced by more than one State, the State notifying Fiscal Service, or HHS as the case may be, of the debt shall inform any such other State involved in enforcing the debt when it receives the offset amount.

(d) ***Priorities for offset.***

(1) As provided in 26 U.S.C. 6402, a tax refund payment shall be reduced in the following order of priority:

(i) First, by the amount of any past-due support which is to be offset under 26 U.S.C. 6402(c) and 42 U.S.C. 464;

(ii) Second, by the amount of any past-due, legally enforceable debt owed to a Federal agency which is to be offset under 26 U.S.C. 6402(d), 31 U.S.C. 3720A and § 285.2 of this part; and

(iii) Third, by the amount of any past-due, legally enforceable debt owed to States (other than past-due support) which is to be offset under 26 U.S.C. 6402(e) or 26 U.S.C. 6402(f).

(2) Reduction of the tax refund payment pursuant to 26 U.S.C. 6402(a), (c), (d), and (e) shall occur prior to crediting the overpayment to any future liability for an internal revenue tax. Any amount remaining after tax refund offset under 26 U.S.C. 6402(a), (c), (d), and (e) shall be refunded to the taxpayer, or applied to estimated tax, if elected by the taxpayer pursuant to IRS regulations.

(e) ***Post-offset notice.***

(1)

(i) Fiscal Service shall notify the debtor in writing of:

(A) The amount and date of the offset to satisfy past-due support;

(B) The State to which this amount has been paid or credited; and

(C) A contact point within the State that will handle concerns or questions regarding the offset.

(ii) The notice in paragraph (e)(1)(i) of this section also will advise any non-debtor who may have filed a joint tax return with the debtor of the steps which a non-debtor spouse may take in order to secure his or her proper share of the tax refund. See paragraph (f) of this section.

(2) Fiscal Service will advise HHS of the names, mailing addresses, and identifying numbers of the debtors from whom amounts of past-due support were collected, of the amounts collected from each debtor through tax refund offset, the names of any non-debtor spouses who may have filed a joint return with the debtor, and of the State on whose behalf each collection was made. Alternatively, Fiscal Service will provide such information to each State that refers debts directly to Fiscal Service. Fiscal Service will inform HHS and each State that the payment source is a tax refund payment.

(3) At least weekly, Fiscal Service will notify the IRS of the names and taxpayer identifying numbers of the debtors from whom amounts owed for past-due support were collected from tax refund offsets and the amounts collected from each debtor.

(4) At such time and in such manner as Fiscal Service and HHS agree, but no less than annually, Fiscal Service will advise HHS of the States which have furnished notices of past-due support, the number of cases in each State with respect to which such notices have been furnished, the amount of past-due support sought to be collected by each State, and the amount of such tax refund offset collections actually made in the case of each State. As Fiscal Service and HHS may agree, Fiscal Service may provide additional offset-related information about States which have furnished notices of past-due support.

(f) ***Offset made with regard to a tax refund payment based upon joint return.*** If the person filing a joint return with a debtor owing the past-due support takes appropriate action to secure his or her proper share of a tax refund from which an offset was made, the IRS will pay the person his or her share of the refund and request that Fiscal Service deduct that amount from amounts payable to HHS or the State, as the case may be. Fiscal Service and HHS, or the appropriate State, will adjust their debtor records accordingly.

(g) ***Disposition of amounts collected.*** Fiscal Service will transmit amounts collected for debts, less fees charged under paragraph (i) of this section, to HHS or to the appropriate State. If IRS notifies Fiscal Service that a tax refund payment that was offset was erroneous or otherwise not due to the taxpayer, Fiscal Service will notify HHS or the appropriate State that the tax refund payment was not eligible for offset. Subject to paragraph (h) of this section, Fiscal Service may deduct the amount of the erroneous offset funds from amounts payable to HHS or the State, as the case may be; or, upon Fiscal Service's request, the State shall return promptly to the affected taxpayer or Fiscal Service an amount equal to the amount of the erroneous funds (unless the State previously has forwarded such amounts, or any portion of such amounts, to the affected taxpayer). HHS and States shall notify Fiscal Service any time HHS or a State returns an erroneous offset payment to an affected taxpayer. Fiscal Service and HHS, or the appropriate State, will adjust their debtor records accordingly.

(h) ***Time limitation.*** If IRS notifies Fiscal Service on or after January 1, 2016, that a tax refund payment that was offset was erroneous or otherwise not due to the taxpayer, Fiscal Service shall not deduct the amount of the erroneous offset funds from amounts due to HHS or the State, or otherwise demand return of the offset funds from the State pursuant to paragraph (g) of this section, if the date of IRS's notification to Fiscal Service in paragraph (g) is more than six months after the date the tax refund was offset (*i.e.,* the tax refund payment date); and the State has already forwarded the funds as required or authorized by 42 U.S.C. 657. This paragraph does not apply to paragraph (f) of this section.

(i) ***Fees.*** The State will pay a fee to Fiscal Service for the full cost of administering the tax refund offset program. The fee (not to exceed $25 per case submitted) will be established annually in such amount as Fiscal Service and HHS agree to be sufficient to reimburse Fiscal Service for the full cost of the offset procedure. Fiscal Service will deduct the fees from amounts collected prior to disposition and transmit a portion of the fees deducted to reimburse the IRS for its share of the cost of administering the tax refund offset program. Fees will be charged only for actual tax refund offsets completed.

(j) ***Review of tax refund offsets.*** In accordance with 26 U.S.C. 6402(f), any reduction of a taxpayer's refund made pursuant to 26 U.S.C. 6402(c), (d), or (e) shall not be subject to review by any court of the United States or by the Secretary of the Treasury, Fiscal Service or IRS in an administrative proceeding. No action brought against the United States to recover the amount of this reduction shall be considered to be a suit for refund of tax.

(k) ***Access to and use of confidential tax information.*** Access to and use of confidential tax information in connection with the tax refund offset program is permitted to the extent necessary in establishing appropriate agency records, locating any person with respect to whom a reduction under 26 U.S.C. 6402(c) is sought for purposes of collecting the debt, and in the defense of any litigation or administrative procedure ensuing from a reduction made under section 6402(c).

(l) ***Effective date.*** This section applies to tax refund payments payable under 26 U.S.C. 6402 after January 1, 1999.

[63 FR 72094, Dec. 30, 1998, as amended at 72 FR 59480, Oct. 22, 2007; 74 FR 27433, June 10, 2009; 80 FR 81465, Dec. 30, 2015]

§ 285.4 Offset of Federal benefit payments to collect past-due, legally enforceable nontax debt.

(a) ***Scope.***

(1) This section sets forth special rules applicable to the offset of Federal benefit payments payable to an individual under the Social Security Act (other than Supplemental Security Income (SSI) payments), part B of the Black Lung Benefits Act, or any law administered by the Railroad Retirement Board (other than payments that such Board determines to be tier 2 benefits) to collect delinquent nontax debt owed to the United States.

(2) As used in this section, benefit payments “due to” an individual, “payable to” an individual, and/or benefit payments “received by” an individual, refer to those benefit payments expected to be paid to an individual before any amounts are offset to satisfy the payee's delinquent debt owed to the United States. Nothing in these phrases, similar phrases, or this section is intended to imply or confer any new or additional rights or benefits on an individual with respect to his or her entitlement to benefit payments. The Bureau of the Fiscal Service (Fiscal Service), the Social Security Administration, the Railroad Retirement Board, and other payment agencies are not liable for the amount offset from an individual's benefit payment on the basis that the underlying obligation, represented by the payment before the offset was taken, was not satisfied. See 31 U.S.C. 3716(c)(2)(A).

(b) ***Definitions.*** As used in this section:

Administrative offset or *offset* means withholding funds payable by the United States (including funds payable by the United States on behalf of a State government) to, or held by the United States for, a person to satisfy a debt.

Agency or *Federal agency* means a department, agency, court, court administrative office, or instrumentality in the executive, judicial, or legislative branch of the Federal Government, including government corporations.

Covered benefit payment means a Federal benefit payment payable to an individual under the Social Security Act (other than SSI payments), part B of the Black Lung Benefits Act, or any law administered by the Railroad Retirement Board (other than payments that such Board determines to be tier 2 benefits). The amount of the covered benefit payment payable to a debtor for purposes of this section will be the amount after reduction or deduction required under the laws authorizing the program. Reductions to recover benefit overpayments are excluded from the covered benefit payment when calculating amounts available for offset.

Creditor agency means a Federal agency owed a debt that seeks to collect that debt through administrative offset.

Debt or *claim* means an amount of money, funds, or property which has been determined by an agency official to be due the United States from any person, organization, or entity except another Federal agency. Debt or claim does not include a debt or claim arising under the Internal Revenue Code of 1986 or the tariff laws of the United States.

Debtor means a person who owes a debt. The term "person" includes any individual, organization or entity, except another Federal agency.

Disbursing official means an official who has authority to disburse public money pursuant to 31 U.S.C. 3321 or another law, including an official of the Department of the Treasury, the Department of Defense, the United States Postal Service, or any other government corporation, or any official of the United States designated by the Secretary of the Treasury to disburse public money.

Fiscal Service means the Bureau of the Fiscal Service, a bureau of the Department of the Treasury.

Monthly covered benefit payment means a covered benefit payment payable to a payee on a recurring basis at monthly intervals that is not expressly limited in duration, at the time the first payment is made, to a period of less than 12 months.

Payee means a person who is due a payment from a disbursing official. For purposes of this section, a "payee" is a person who is entitled to the benefit of all or part of a payment from a disbursing official.

Taxpayer identifying number means the identifying number described under section 6109 of the Internal Revenue Code of 1986 (26 U.S.C. 6109). For an individual, the taxpayer identifying number generally is the individual's social security number.

(c) ***Administrative offset, generally.*** Disbursing officials shall offset payments to satisfy, in whole or in part, debts owed by the payee. Disbursing officials shall compare payment records with records of debts submitted to Fiscal Service for collection by administrative offset. A match will occur when the taxpayer identifying number and name of the payee (as defined in paragraph (b) of this section) on a payment record are the same as the taxpayer identifying number and name of the debtor on a debt record. When a match occurs and all other requirements for offset have been met, the disbursing official shall offset the payment to satisfy, in whole or in part, the debt. Any amounts not offset shall be paid to the payee. Covered benefit payments, i.e., payments made to individuals under the Social Security Act (other than Supplemental Security Income (SSI) payments), part B of the Black Lung Benefits Act, or any law administered by the Railroad Retirement Board (RRB) (other than tier 2 benefit payments) are among the types of payments which may be offset to collect debts owed to the United States. Offset of covered benefit payments are subject to the limitations contained in this section. Offsets of covered benefit payments will occur only if the name and taxpayer identifying number of the person who is entitled to the benefit of all or a part of the payment matches the name and taxpayer identifying number of the debtor.

(d) ***Submission of debts to Fiscal Service for collection by administrative offset.*** Creditor agencies must notify Fiscal Service of all past-due, legally enforceable debt delinquent for more than 120 days for purposes of collection by administrative offset. Creditor agencies may notify Fiscal Service of all debt delinquent for less than 120 days for purposes of collection by administrative offset. Prior to such notification, creditor agencies must certify to Fiscal Service that the debt is past-due, legally enforceable, and that the creditor agency has provided the debtor with notice and an opportunity for a review in accordance with the provisions of 31 U.S.C. 3716(a) and other applicable law.

(e) ***Offset amount.***

(1) The amount offset from a monthly covered benefit payment shall be the lesser of:

(i) The amount of the debt, including any interest, penalties and administrative costs;

(ii) An amount equal to 15% of the monthly covered benefit payment; or

(iii) The amount, if any, by which the monthly covered benefit payment exceeds $750.

(2) A debtor shall not receive a refund of any amounts offset if the debtor's monthly covered benefit payments are reduced, suspended, terminated, or otherwise not received for a period of 12 months.

(3) ***Examples.***

(i) A debtor receives monthly Social Security benefits of $850. The amount offset is the lesser of $127.50 (15% of $850) or $100 (the amount by which $850 exceeds $750). In this example, the amount offset is $100 (assuming the debt is $100 or more).

(ii) A debtor receives monthly Social Security benefits of $1250. The amount offset is the lesser of $187.50 (15% of $1250) or $500 (the amount by which $1250 exceeds $750). In this example, the amount offset is $187.50 (assuming the debt is $187.50 or more).

(iii) A debtor receives monthly Social Security payments of $650. No amount will be offset because $650 is less than $750.

(f) ***Notification of offset.***

(1) Before offsetting a covered benefit payment, the disbursing official will notify the payee in writing of the date offset will commence. The notice shall inform the payee of the type of payment that will be offset; the identity of the creditor agency which requested the offset; and a contact point within the creditor agency that will handle concerns regarding the offset.

(2) The disbursing official conducting the offset will notify the payee in writing of the occurrence of the offset to satisfy, in whole or in part, a delinquent debt owed to the United States. The notice shall inform the payee of the type and amount of the payment that was offset; the identity of the creditor agency which requested the offset; and a contact point within the creditor agency that will handle concerns regarding the offset.

(3) Non-receipt by the debtor of the notices described in paragraphs (f)(1) and (f)(2) of this section shall not impair the legality of the administrative offset.

(g) ***Fees.*** A fee which Fiscal Service has determined to be sufficient to cover the full cost of the offset procedure, shall be deducted from each offset amount. Creditor agencies may add this fee to the debt if not otherwise prohibited by law.

(h) ***Disposition of amounts collected.*** The disbursing official conducting the offset will transmit amounts collected for debts, less fees charged under paragraph (g) of this section, to the appropriate creditor agency. If an erroneous offset payment is made to a creditor agency, the disbursing official will notify the creditor agency that an erroneous offset payment has been made. The disbursing official may deduct the amount of the erroneous offset payment from future amounts payable to the creditor agency. Alternatively, upon the disbursing official's request, the creditor agency shall return promptly to the disbursing official or the affected payee an amount equal to the amount of the erroneous payment. The disbursing official and the creditor agency shall adjust the debtor records appropriately.

[63 FR 44988, Aug. 21, 1998, as amended at 81 FR 1319, Jan. 12, 2016]

§ 285.5 Centralized offset of Federal payments to collect nontax debts owed to the United States.

(a) ***Scope.***

(1) This section governs the centralized offset of Federal payments to collect delinquent, nontax debts owed to Federal agencies in accordance with 31 U.S.C. 3716, 3720A and 26 U.S.C. 6402 and applicable regulations. The Department of the Treasury's Bureau of the Fiscal Service (Fiscal Service) administers centralized offset through the Treasury Offset Program. Offset occurs when the Federal government withholds part or all of a debtor's Federal payment to satisfy the debtor's delinquent debt owed to the government.

(2) Special rules apply to the collection of delinquent, nontax debts through the centralized offset of certain types of Federal payments, including tax refunds (31 CFR 285.2), Federal benefit payments (31 CFR 285.4), and Federal salary payments (31 CFR 285.7). While this rule applies to such payments, nothing in this rule is intended to contradict any provision of those more specific sections. To the extent any provision of this rule is inconsistent with a more specific provision of § 285.2, § 285.4 or § 285.7 of this part, the more specific provision shall apply.

(3) The receipt of collections pursuant to this section does not preclude a Federal agency from pursuing other debt collection remedies in conjunction with centralized offset. Nothing in this section precludes an agency from pursuing all available debt collection remedies simultaneously, provided that collections do not exceed the amount of the debt, including any interest, penalties, and administrative costs.

(b) ***Definitions.*** As used in this section:

Agency or *Federal agency* means a department, agency or subagency, court, court administrative office, or instrumentality in the executive, judicial, or legislative branch of the Federal Government, including government corporations.

Centralized offset means the offset of Federal payments through the Treasury Offset Program to collect debts which creditor agencies have certified pursuant to 31 U.S.C. 3716(c), 3720A(a) and applicable regulations. The term “centralized offset” includes the Treasury Offset Program's processing of offsets of Federal payments disbursed by disbursing officials other than Fiscal Service.

Creditor agency has the same meaning as found at 31 U.S.C. 3701(e)(1) and means any Federal agency that is owed a claim or debt that seeks to collect that claim or debt through offset of Federal payments.

Debt or *claim* has the meaning contained in 31 U.S.C. 3701(b) and means any amount of money, funds, or property that has been determined by an appropriate official of the Federal government to be owed to the United States by a person, organization, or entity, except another Federal agency. The terms “debt” and “claim” are synonymous and include debt administered by a third party acting as an agent for the Federal Government. For purposes of this section, the term “debt” does not include debts arising under the Internal Revenue Code of 1986 (26 U.S.C. 1 *et seq.*), the tariff laws of the United States, or the Social Security Act (42 U.S.C. 301 *et seq.*), except to the extent provided in sections 204(f) and 1631(b)(4) of such Act (42 U.S.C. 404(f) and 1383(b)(4)(A), respectively) and 31 U.S.C. 3716(c).

Debt collection center means a Federal agency or a unit or subagency within a Federal agency that has been designated by the Secretary to collect debt owed to the United States.

Debtor means a person who owes a debt to the United States.

Delinquent or *past-due* refers to the status of a debt and means a debt has not been paid by the date specified in the agency's initial written demand for payment, or applicable agreement or instrument (including a post-delinquency payment agreement), unless other payment arrangements satisfactory to the creditor agency have been made. Nothing in this section is intended to define whether a debt is delinquent or past-due for purposes other than offset under this section.

Delinquent debt record means information about a past-due, legally enforceable debt submitted by a creditor agency to Fiscal Service for purposes of offset in accordance with the provisions of this section. Information about a past-due, legally enforceable debt includes, but is not limited to, the amount of the debt and the debtor's name, address, and taxpayer identifying number.

Disbursing official means an official who has authority to disburse public money pursuant to 31 U.S.C. 3321 or another law, including an official of the Department of the Treasury, the Department of Defense, the United States Postal Service, or any other government corporation, or any official of the United States designated by the Secretary of the Treasury to disburse public money.

Fiscal Service means the Bureau of the Fiscal Service, a bureau of the Department of the Treasury and its disbursing office. Fiscal Service is responsible for administering centralized offset.

Legally enforceable refers to a characteristic of a debt and means there has been a final agency determination that the debt, in the amount stated, is due, and there are no legal bars to collection by offset. Debts that are not legally enforceable for purposes of this section include, but are not limited to, debts subject to the automatic stay in bankruptcy proceedings or debts covered by a statute

that prohibits collection of such debt by offset. For example, if a delinquent debt is the subject of a pending administrative review process required by statute or regulation, and if collection action during the review process is prohibited, the debt is not considered legally enforceable for purposes of this section. Nothing in this section is intended to define whether a debt is legally enforceable for purposes other than offset under this section.

Match means the taxpayer identifying number and name (or derivative thereof) of the payee on a payment record are the same as the taxpayer identifying number and name of the debtor on a delinquent debt record.

Offset means withholding funds payable by the United States to, or held by the United States for, a person to satisfy a debt owed by the payee.

Past-due has the same meaning as “delinquent”, as defined above.

Payee means a person who is due a payment from a disbursing official as certified by the payment agency. For purposes of this section, a “payee” is a person who is entitled to the benefit of all or part of a payment from a disbursing official.

Payment agency means any agency that transmits payment requests, in the form of certified payment vouchers or other similar forms, to a disbursing official for disbursement.

Payment record means information contained on a payment request, in the form of a certified payment voucher or other similar form, that has been transmitted to a disbursing official for disbursement in accordance with the provisions of 31 U.S.C. 3325 and 3528 or other applicable law. For purposes of matching, “payment record” may include information extracted from a payment request. Such information could include, but is not limited to, the amount and type of payment and the payee's name, address, and taxpayer identifying number.

Person means an individual, corporation, partnership, association, organization, State or local government, or any other type of entity other than a Federal agency.

Recurring payment means a payment to an individual that is expected to be payable to a payee at regular intervals, at least four times annually. The term “recurring payment” does not include payments made pursuant to a Federal contract, grant or cooperative agreement.

Representative payee means a person named as payee on the payment voucher certified by the payment agency who is acting on behalf of a person entitled to receive the benefit of all or part of the payment.

Secretary means the Secretary of the Treasury.

Taxpayer identifying number means the identifying number described under section 6109 of the Internal Revenue Code of 1986 (26 U.S.C. 6109). For an individual, the taxpayer identifying number is generally the individual's social security number.

(c) ***General rule.***

(1) Creditor agencies shall submit delinquent debts to Fiscal Service for purposes of offset in accordance with paragraph (d) of this section.

(2) Disbursing officials shall compare payment records with delinquent debt records submitted to Fiscal Service for collection by offset. When a match occurs, and all other requirements for offset have been met, the disbursing official shall offset the payment to satisfy, in whole or part, the payee's debt to the extent allowed by law. The disbursing official shall pay any amounts not offset to the payee. See paragraphs (e), (f), (g), and (h) of this section.

(d) ***Requirements for creditor agencies*** -

(1) ***Mandatory notification of delinquent debts.*** As required by 31 U.S.C. 3716(c)(6), and in accordance with the provisions of this section, a creditor agency shall notify Fiscal Service of all legally enforceable debts over 120 days delinquent that are owed to the creditor agency. By complying with this requirement, creditor agencies will satisfy the requirement of 31 U.S.C. 3720A(a) to notify the Secretary of past due, legally enforceable debt for purposes of tax refund offset. If a debt which is over 120 days delinquent is considered not legally enforceable solely because it is under review as described in paragraph (d)(6)(ii)(C) of this section, the agency must submit the debt to Fiscal Service for collection by offset within 30 days of completing the review.

(2) ***Discretionary notification of delinquent debts.*** Creditor agencies may notify Fiscal Service of any debt that is less than 120 days delinquent, so long as the requirements of paragraph (d)(3) of this section are met.

(3) ***Debt eligibility.***

(i) A debt submitted to Fiscal Service for collection by centralized offset must be:

(A) Past-due in the amount stated by the creditor agency;

(B) Legally enforceable;

(C) More than $25, or such other amount as Fiscal Service may prescribe; and

(D) Not secured by collateral subject to a pending foreclosure action, unless the creditor agency certifies that offset will not affect the Government's rights to the secured collateral.

(ii) The creditor agency must certify that the debt is eligible for collection by offset, as required in paragraph (d)(6) of this section.

(iii) Debts owed by foreign sovereigns may be referred to Treasury Offset Program at the discretion of the creditor agency to the extent allowed by law, but are excluded from mandatory referral under paragraph (d)(1) of this section.

(iv) In accordance with 31 U.S.C. 3719 and the procedures promulgated thereunder, creditor agencies must report to Treasury the amount of debt over 120 days delinquent eligible for the Treasury Offset Program. The procedures require that such report include the amount of debt over 120 days delinquent that the creditor agency has determined is not eligible for the Treasury Offset Program and the reasons for such determination.

(v) Creditor agencies may submit nontax debts to Fiscal Service for collection by centralized offset irrespective of the amount of time the debt has been outstanding. Accordingly, all nontax debts, including debts that were outstanding for ten years or longer prior to June 11, 2009 may be collected by centralized offset.

(4) ***Creditor agency regulations.*** Prior to submitting a debt to Fiscal Service for purposes of offset, Federal agencies shall prescribe regulations in accordance with the requirements of 31 U.S.C. 3716(b), 31 CFR 901.3(b)(4), 31 U.S.C. 3720A(a), and 31 CFR 285.2(c). Before submitting debts to Fiscal Service for purposes of offsetting Federal salary payments, creditor agencies must also publish regulations pursuant to 5 U.S.C. 5514, 31 CFR 285.7(d)(2), and 5 CFR 550.1104.

(5) ***Delinquent debt information requirements.*** For each debt submitted to Fiscal Service for offset, the creditor agency shall provide the following information:

(i) Name and taxpayer identifying number of the person who owes the debt;

(ii) Debtor's address last known to the creditor agency;

(iii) The amount of the debt (including, as applicable, interest, penalties and administrative costs) and the date on which the debt became delinquent;

(iv) The address and telephone number of the contact point within the creditor agency who will handle questions, concerns or communications regarding the debt;

(v) Written certification as required in paragraph (d)(6) of this section; and

(vi) Other information as may be requested by Fiscal Service.

(6) ***Creditor agency certification.*** At the time the creditor agency notifies Fiscal Service of a debt for purposes of collection by offset, the creditor agency shall provide, in the manner required by Fiscal Service, written certification to Fiscal Service that:

(i) The debt meets the requirements described in paragraph (d)(3)(i) of this section;

(ii) In compliance with 31 U.S.C. 3716, 3720A, 26 U.S.C. 6402, and applicable regulations, the creditor agency has made a reasonable attempt to provide each debtor with:

(A) Written notification, at least sixty days prior to submitting the debt and at the debtor's most current address known to the agency, of the nature and the amount of the debt, the intention of the creditor agency to collect the debt through offset, and an explanation of the rights of the debtor;

(B) An opportunity to inspect and copy the records of the creditor agency with respect to the debt;

(C) An opportunity for a review within the creditor agency of the determination of indebtedness, including the opportunity to present evidence that all or part of the debt is not past-due or legally enforceable;

(D) An opportunity to enter into a written repayment agreement with the creditor agency; and

(E) In the case of Federal employees, an opportunity for a hearing prior to submitting the debt for Federal salary offset. See 5 U.S.C. 5514 and 5 CFR 550.1104. (See 31 CFR 285.7(d), which describes the authority to waive the salary offset certification as a prerequisite to referring the debt for other types of offsets.)

(iii) For debts outstanding more than ten years on or before June 11, 2009, the notice of intent to offset described in paragraph (d)(6)(ii)(A) of this section was sent to the debtor after the debt was outstanding for more than ten years, and that the debtor was afforded the rights described in paragraphs (d)(6)(ii)(B) through (E). This requirement will apply even in a case where notice was also sent prior to the debt being outstanding for ten years but does not apply to any debt that could be collected by offset without regard to any time limitation prior to June 11, 2009.

(iv) The creditor agency has complied with all statutes, regulations, and policies applicable to the creditor agency's assessment of interest, penalties and administrative costs (including, as applicable, 31 U.S.C. 3717), and that the creditor agency has provided a written notice to debtors explaining the creditor agency's requirements concerning any such charges assessed against those debtors;

(v) The individual signing the certification has the delegated authority to execute the certification on behalf of the head of the creditor agency; and

(vi) Such additional information that Fiscal Service may from time to time require in compliance with law, regulation or policy.

(7) ***Updating certification.*** After a debt has been submitted to Fiscal Service for purposes of collection by offset, the creditor agency shall provide, at least annually, in the manner and time frames required by Fiscal Service, written certification to Fiscal Service that:

(i) The debt continues to meet the requirements described in paragraph (d)(3) of this section; and

(ii) The creditor agency has properly credited all collections to the debt balance (other than collections received through centralized offset).

(8) ***Fiscal Service instructions to creditor agencies.*** Agencies will provide the certification in a form and manner prescribed by Fiscal Service. Fiscal Service will instruct agencies as to the form such written certifications will take and how certifications can be delivered to Fiscal Service, including, but not limited to, the use of electronic data transmission.

(9) ***Agencies which are both creditor and disbursing officials.*** A creditor agency that also designates disbursing officials pursuant to 31 U.S.C. 3321(c) is not required to certify debts arising out of its operations to Fiscal Service before such agency's disbursing officials offset to collect such claims. This paragraph (d)(9) does not apply to Fiscal Service when it submits debts which it is servicing pursuant to 31 U.S.C. 3711(g).

(10) ***Correcting and updating debt information.***

(i) When submitting debts for offset, the creditor agency must properly credit all collections, other than collections received from centralized offset.

(ii) The creditor agency shall update delinquent debt records, in the manner and time frames required by Fiscal Service, to reflect any amounts credited by the creditor agency to the debtor's account after submission of the debt to Fiscal Service (other than credits for amounts collected by centralized offset).

(iii) The creditor agency may update delinquent debt records to reflect any increases in the amount of the debt submitted to Fiscal Service for collection by offset provided that the creditor agency has complied with the requirements of paragraph (d)(6) of this section with regard to the increased amounts.

(iv) The creditor agency shall notify Fiscal Service immediately of any change in the status of the legal enforceability of the debt - for example, if the creditor agency receives notice that the debtor has filed for bankruptcy protection.

(v) The creditor agency shall notify Fiscal Service if it has returned any monies to the debtor/payee.

(11) ***Debts at Fiscal Service, a debt collection center, or the Department of Justice.*** If a creditor agency has transferred a debt to Fiscal Service or a Treasury-designated debt collection center pursuant to 31 U.S.C. 3711(g) and 31 CFR 285.12, or if a creditor agency has referred a debt to the Department of Justice for enforced collection, then Fiscal Service, the debt collection center, or the Department of Justice, as the case may be, is responsible for submitting the debt information to Fiscal Service to satisfy the creditor agency's obligations under 31 U.S.C. 3716(c)(6) and this section.

(12) ***Certification of amount to be offset if different than maximum allowed by law.*** Generally, the amount of an offset will be calculated as set forth in paragraph (f)(2) of this section. If the creditor agency certifies to Fiscal Service that the creditor agency has determined the offset amount allowed by law would result in financial hardship to the debtor and that a lesser offset amount (specified either in dollar amount or as a percentage of the payment) is reasonable and appropriate based on the debtor's financial circumstances, then the disbursing official shall offset such lesser amount specified by the creditor agency.

(13) ***Duplication of notices not required.*** Nothing in this section requires any creditor agency to duplicate any notice or opportunity for hearing or review provided to the debtor prior to offset.

(e) ***Payments made by the United States*** -

(1) ***Payments eligible for offset.*** Except as set forth in paragraph (e)(2) of this section, all Federal payments are eligible for offset under this section. Eligible Federal payments include, but are not limited to, Federal wage, salary, and retirement payments, vendor and expense reimbursement payments, certain benefit payments, travel advances and reimbursements, grants, fees, refunds, judgments (including those certified for payment pursuant to 31 U.S.C. 1304), tax refunds, and other payments made by Federal agencies.

(2) ***Payments excluded from offset under this section.*** This section does not apply to the following payments:

(i) Black Lung Part C benefit payments, or Railroad Retirement tier 2 payments;

(ii) Payments made under the tariff laws of the United States;

(iii) Veterans Affairs benefit payments to the extent such payments are exempt from offset pursuant to 38 U.S.C. 5301;

(iv) Payments made under any program administered by the Secretary of Education under title IV of the Higher Education Act of 1965 for which payments are certified by the Department of Education;

(v) Payments made under any other Federal law if offset is expressly prohibited by Federal statute;

(vi) Payments made under any program for which the Secretary has granted an exemption in accordance with the provisions of 31 U.S.C. 3716(c)(3)(B) and paragraph (e)(7) of this section; and

(vii) Federal loan payments other than travel advances.

(3) ***Specific rules for certain payment types.***

(i) Specific rules apply with respect to the offset of the following types of payments:

(A) Social Security benefit payments (excluding Supplemental Security Income payments), Black Lung (part B) payments, and Railroad Retirement (other than tier 2) payments to the extent such payments are subject to offset under 31 U.S.C. 3716(c)(3)(A) (see 31 CFR 285.4);

(B) Federal salary payments (see 31 CFR 285.7; 5 CFR 550.1101 through 550.1108); and

(C) Tax refund payments (see 31 CFR 285.2).

(ii) This section governs the offset of such payments to the extent that this section is not inconsistent with the special rules that apply for a particular type of payment.

(4) ***Payments made to joint payees.*** If a payment is certified to more than one payee (*i.e.* , joint payees), the entire payment (including a tax refund payment) will be subject to offset for a debt of either payee, unless otherwise prohibited by law or regulation. See 31 CFR 285.2(g) regarding offset of joint tax refunds and claims to return offset funds to the non-debtor, joint payee.

(5) ***Payments made to representative payees.*** If a payment is made to a person solely in that person's capacity as a representative payee for another person having the beneficial interest in a payment, the disbursing official shall offset that payment only to collect debts owed by the person having the beneficial interest in the payment. Payment agencies are responsible for identifying representative payees.

(6) ***Assigned payments.***

(i) If a person, including a Federal contractor, assigns the right to receive a Federal payment to a third party (the "assignee"), the assigned payment will be subject to offset to collect a delinquent debt owed by the assignee.

(ii) An assigned payment will also be subject to offset to collect delinquent debts owed by the assignor unless:

(A) In accordance with 41 U.S.C. 15(e)-(f), the payment has been properly assigned to a financial institution pursuant to a Federal contract, the contract contains provisions prohibiting the payment from being reduced or offset for debts owed by the contractor, and the debt arose independently of the contract; or

(B) pursuant to 31 U.S.C. 3727, the payment is being made to the assignee as settlement or satisfaction of a claim brought by the assignee against the creditor agency based upon the contract, and the debt of the contractor arises independently of the contract; or

(C) the debtor has properly assigned the right to such payments and the debt arose after the effective date of the assignment.

(7) ***Payment agency requests for exemptions from centralized offset pursuant to 31 U.S.C. 3716(c)(3)(B)*** -

(i) ***Means-tested payments.*** The Secretary will exempt from centralized offset payments made under means-tested programs when requested by the head of the agency making such payments. For purposes of this section "means-tested programs" are those which base eligibility on a determination that the income and/or assets of the beneficiary are inadequate to provide the beneficiary with an adequate standard of living without program assistance.

(ii) ***Payments made under programs which are not means-tested.*** Upon written request from the payment agency, the Secretary may exempt classes of payments which are not means-tested. Payment agencies may request that the Secretary exempt 100% of each payment in a payment class or that the Secretary exempt a specific lesser percentage. The Secretary will consider such requests under standards prescribed by the Secretary and published on the Fiscal Service Web site. *See www.fiscal.treasury.gov/debt.*

(iii) ***Procedures for requesting exemptions.*** The head of the payment agency must make a request for exemption in writing. The request must comply with the procedures published by Fiscal Service and made available at its Web site. *See www.fiscal.treasury.gov/debt.*

(iv) ***Exemptions apply to classes of payments.*** The Secretary will only exempt classes of payments. Requests for exemption of individual payments will not be considered.

(8) ***Payment agency responsibilities.***

(i) Payment agencies shall prepare and submit payment vouchers in the manner prescribed by the disbursing official to ensure that all payments legally eligible for offset will be offset and all payments not eligible will not be offset. Payment agencies shall notify the disbursing agency, in the manner prescribed by Fiscal Service, that a payment is a recurring payment.

(ii) Payment agencies shall also review the nature of payments the agency certifies and notify Fiscal Service of any legal bars to centralized offset of payments.

(9) ***Payment and disbursing officials have satisfied the obligation underlying the payment.*** When an offset occurs, the debtor has received payment in full for the underlying obligation represented by the payment. Pursuant to 31 U.S.C. 3716(c)(2)(A), neither the disbursing official nor the payment agency shall be liable for the amount of the offset on the basis that the underlying obligation was not satisfied. For example, if an agency certifies a payment to a Federal contractor for work completed or services provided, and that payment is offset to collect a delinquent debt that the contractor owes to another Federal agency, the contractor has been paid in full for its services. When the creditor agency credits the offset amount to the contractor's delinquent debt, the contractor has received full value for the services performed under the contract.

(f) ***Offset*** -

(1) ***When offset occurs.*** When a match occurs and all other requirements for offset under 31 U.S.C. 3716(c), 3720A, and applicable regulations have been met, the disbursing official shall offset the payee's Federal payment to satisfy, in whole or part, the debt owed by the debtor. Offsets will continue until the debt, including any interest, penalties, and administrative costs, is paid in full or otherwise resolved to the satisfaction of the creditor agency.

(2) ***Offset amount.***

(i) Except as otherwise provided in 31 CFR 285.4(e) and 285.7(g) (addressing centralized offset of certain Federal benefit payments and salary payments, respectively), the disbursing official shall offset the lesser of:

(A) The amount of the payment as shown on the payment record; or

(B) The amount of the debt, including any interest, penalties and administrative costs; or

(C) In the case of retirement annuity payments certified by the Office of Personnel Management, up to twenty-five percent of the amount of the payment as shown on the payment record.

(ii) Notwithstanding paragraph (f)(2)(i) of this section, if a creditor agency has specified another amount, either in dollars or as a percentage of the payment, pursuant to paragraph (d)(15) of this section, the disbursing official shall offset the amount specified by the creditor agency.

(3) ***Priorities for collecting multiple debts owed by the payee.***

(i) A levy pursuant to the Internal Revenue Code of 1986 shall take precedence over deductions under this section.

(ii) When a payment may be offset to collect more than one debt, amounts offset will be applied:

(A) First, to satisfy any past-due support that that the State is collecting under section 464 of the Social Security Act (see 285.1 and 285.3 of this part);

(B) Second, to satisfy any debts owed to Federal agencies, as described in this § 285.5; and

(C) Third, to any debts owed to States for debts other than past-due support (see §§ 285.6 and 285.8 of this part).

(g) ***Notices*** -

(1) ***Warning notice by disbursing official to payee/debtor.*** Before offsetting a recurring payment, the disbursing official, or Fiscal Service on behalf of the disbursing official, will notify the payee in writing when offsets will begin (which may be stated as a number of days or number of payments from the time of the notice) and the anticipated amount of such offset (which may be stated as a percentage of the payment). Such notice shall also provide the information contained in paragraph (g)(3) of this section. Failure to send such notice does not affect the validity of the offset.

(2) ***No additional warning notice when collections are suspended and resumed.*** As described in paragraph (f)(3)(iii) of this section, Fiscal Service may suspend or reduce the application of collections from a recurring payment for one debt when another debt, which is owed by the same debtor and has a higher legal priority, is submitted to Fiscal Service for collection. The disbursing official is not required to send additional warning notices when collections for the lower priority debt resume; however, pursuant to paragraph (g)(3) of this section, each offset will be accompanied by an offset notice, which explains how the offset amounts were applied.

(3) ***Offset notice.*** When an offset occurs under this section, the disbursing official, or Fiscal Service on behalf of the disbursing official, shall notify the payee in writing that an offset has occurred including:

(i) A description of the payment and the amount of offset taken;

(ii) The identity of the creditor agency requesting the offset; and

(iii) The address and telephone number of the contact point within the creditor agency who will handle concerns regarding the offset.

(h) ***Notification to creditor and payment agencies.***

(1) Fiscal Service will notify the creditor agency of all offsets made to collect the creditor agency's debts. Such notification shall include the complete name and taxpayer identifying number of each debtor/payee, the total amounts collected from each debtor/payee's payment, and the amount of any fees charged by Fiscal Service and any other disbursing official conducting offsets. Fiscal Service will not advise the creditor agency of the source of payment from which such amounts were collected.

(2) When a non-Treasury disbursing official conducts the offset, that disbursing official will transmit to Fiscal Service all of the information necessary for Fiscal Service to send notification under paragraph (h)(1) of this section, including the amount of any fees that the creditor agency is responsible for paying.

(3) Fiscal Service will make available to the payment agency the information contained in the notification of offset, so that the payment agency may direct any questions concerning the claim to the appropriate contact person in the creditor agency.

(i) ***Disposition of amounts collected.***

(1) Fiscal Service will transmit amounts collected for debts, less fees charged pursuant to paragraph (j) of this section, to the appropriate creditor agency or agencies. Alternatively, Fiscal Service may bill the creditor agency for any fees charged pursuant to paragraph (j) of this section.

(2) If Fiscal Service learns from a paying agency that a payment should not have been made, and thus not offset, Fiscal Service will notify the creditor agency. Fiscal Service may deduct the offset amount from future amounts payable to the creditor agency. Alternatively, upon Fiscal Service's request, the creditor agency shall return promptly to the disbursing official an amount equal to the amount of the offset (without regard to whether any other amounts payable to such disbursing official have been paid).

(3) Generally, the disbursing official is not responsible for refunding money to debtors. The creditor agency shall notify Fiscal Service any time the creditor agency returns all or any part of an offset payment to an affected payee. See paragraph (d)(10)(v) of this section. Fiscal Service and the creditor agency shall adjust the debtor records appropriately.

(j) ***Fees.*** Fiscal Service may charge a fee sufficient to cover the full cost of implementing the centralized offset program, including the amount of any fees charged by other disbursing officials conducting an offset under this section. Fiscal Service may deduct the fees from amounts collected by offset or may bill the creditor agencies. Fiscal Service will charge fees only for actual offsets collected.

(k) ***Waiver of certain provisions under the Computer Matching Privacy and Protection Act of 1988.*** As authorized by 31 U.S.C. 3716(f), Fiscal Service, under a delegation of authority from the Secretary, has waived certain requirements of the Computer Matching and Privacy Protection Act of 1988, Pub. L. No. 100-503, as amended, for matches between delinquent debt records and payment records for offset purposes upon written certification by the head of the creditor agency that the requirements of 31 U.S.C. 3716(a) have been met. Specifically, for administrative offset of Federal payments other than tax refunds, Fiscal Service has waived the requirements for a computer matching agreement contained in 5 U.S.C. 552a(o) and for post-match notice and verification contained in 5 U.S.C. 552a(p) so long as the creditor agency provides certification to Fiscal Service in accordance with the provisions of paragraph (d)(6) of this section. Such waiver is not necessary for offset of Federal tax refunds, pursuant to 5 U.S.C. 552a(a)(8)(B). The Data Integrity Board of the Department of the Treasury shall review and include in reports under 5 U.S.C. 552a(u)(3)(D) a description of the matching activities conducted for centralized offset under this section. No other Data Integrity Board is required to take any action under 5 U.S.C. 552a(u) concerning these computerized comparisons.

[67 FR 78942, Dec. 26, 2002, as amended at 70 FR 7135, Jan. 21, 2005; 74 FR 27433, June 10, 2009; 74 FR 27708, June 11, 2009; 81 FR 1319, Jan. 12, 2016]

§ 285.6 Administrative offset under reciprocal agreements with states.

(a) ***Scope.***

(1) This section sets forth the rules that apply to the administrative offset of Federal nontax payments to collect delinquent debts owed to States. As set forth in 31 U.S.C. 3716(h), States may participate in administrative offset so long as they meet certain requirements, including entering into reciprocal agreements with the Secretary of the Treasury. Such reciprocal agreements may contain any requirements that the Secretary considers appropriate to facilitate offset. Participation in offset under this section is voluntary for both Fiscal Service and the States. This section prescribes the minimum requirements for such reciprocal agreements, including provisions applicable to the offset of State payments, pursuant to State law, to collect delinquent Federal debts. Such offsets are defined in this section as "State payment offsets."

(2) This section does not apply to the offset of Federal salary payments, Federal tax refunds (see 31 CFR 285.8), or the collection of past-due support debts (see 31 CFR 285.1 and 285.3).

(b) ***Definitions.***

(1) Unless otherwise defined in paragraph § 285.5(b) of this subpart.

(2) For purposes of this section:

Administrative offset has the meaning set forth in 31 U.S.C. 3701(a) and means withholding funds payable by the United States to, or held by the United States for, a person to satisfy a debt owed by the payee. The term *debt* in this definition means a State debt.

Debtor means a person who owes a debt to the United States or a State.

Federal debt means any amount of money, funds or property that has been determined by an appropriate official of the Federal government to be owed to the United States by a person, organization, or entity, except another Federal agency. The term includes debt administered by a third party acting as an agent for the Federal Government. For purposes of this section, the term "Federal debt" does not include debts arising under the Internal Revenue Code of 1986 (26 U.S.C. 1 *et seq.*), the tariff laws of the United States, or the Social Security Act (42 U.S.C. 301 *et seq.*), except to the extent provided in sections 204(f) and 1631(b)(4) of such Act (42 U.S.C. 404(f) and 1383(b)(4)(A), respectively) and 31 U.S.C. 3716(c).

Offset means withholding funds payable to a person to satisfy a debt owed by the payee.

Participating State means a State that has entered into a reciprocal agreement under this section.

Reciprocal agreement means a written agreement between Fiscal Service and a State, entered into pursuant to 31 U.S.C. 3716(h), which provides for administrative offset and State payment offset.

State has the meaning set forth in 31 U.S.C. 3701(b)(2) and includes the several states of the United States, the District of Columbia, American Samoa, Guam, the United States Virgin Islands, the Commonwealth of the Northern Mariana Islands, and the Commonwealth of Puerto Rico.

State debt means any amount of money, funds or property that has been determined by an appropriate State official to be owed to that State by a person, organization, or entity, except the United States, a foreign sovereign, or another State (including local governments within a State). For purposes of this rule, the term includes debt administered by a third party acting as an agent for the State.

State payment offset means withholding funds payable by a State to, or held by a State for, a person to satisfy a debt owed by the payee to the United States.

(c) ***General rule.*** Fiscal Service and other disbursing officials of the Federal Government will conduct administrative offset to collect past-due State debts certified to Fiscal Service, and participating States will conduct State payment offset to collect delinquent Federal debts in accordance with the terms of reciprocal agreements entered into between the States and Fiscal Service, acting on behalf of the Secretary. Upon notification of a delinquent State debt from a participating State to Fiscal Service, disbursing officials of the United States shall offset the Federal payments specified in the reciprocal agreement to collect the State debt. The amount offset, minus an offset fee, shall be forwarded to the State to be distributed in accordance with applicable laws and procedures. Upon notification of a delinquent Federal debt from Fiscal Service to a participating State, authorized officials of the participating State shall conduct State payment offset as specified in the applicable reciprocal agreement to collect the Federal debt.

(d) ***Reciprocal agreements.***

(1) Fiscal Service may enter into reciprocal agreements with States for administrative offset and State payment offset. The agreements shall contain any requirements which Fiscal Service considers appropriate to facilitate the offset and prevent duplicative efforts, and shall require States to prescribe procedures governing the collection of delinquent State debts which are substantially similar to requirements imposed on Federal agencies pursuant to 31 U.S.C. 3716(b). States may prescribe such procedures through legislation or regulations, as deemed appropriate by State officials. States which have entered into a reciprocal agreement with Fiscal Service pursuant to this section may thereafter request, in the manner prescribed in the reciprocal agreement, that administrative offsets be performed. Such requests shall be made by the appropriate State disbursing official, which, for purposes of this section, means an appropriate official of the State agency that is responsible for collecting the State debt. Reciprocal agreements must be signed by a State official authorized to enter into such agreements.

(2) Once Fiscal Service has entered into a reciprocal agreement with a State pursuant to this section, Fiscal Service may request that the State perform State payment offsets to collect delinquent Federal debts in accordance with the terms of the reciprocal agreement.

(3) A duly executed reciprocal agreement is required before a State may request an administrative offset pursuant to 31 U.S.C. 3716(h).

(e) ***Requirements for submitting State debts for administrative offset*** -

(1) ***Debt eligibility.*** A State debt submitted to Fiscal Service for collection by administrative offset must meet the debt eligibility requirements of 31 CFR 285.5(d)(3)(i).

(2) ***Certification.*** At the time a participating State notifies Fiscal Service of a State debt for purposes of collection by administrative offset under this section, the State shall comply with the certification requirements set forth in paragraph 31 CFR 285.5(d)(6) with the following two exceptions:

(i) Paragraph (d)(6)(ii)(E) - Federal salary offset; and

(ii) Paragraph (d)(6)(iii) - Federal requirements for the assessment of interest and penalties to Federal debts. Additionally, with respect to paragraph (d)(6)(ii) of § 285.5, States shall only be required to certify that they have complied with the requirements of 31 U.S.C. 3716 (not 31 U.S.C. 3720A or 26 U.S.C. 6402) and this section 285.6. States shall also certify that they have complied with any requirements imposed by State law or procedure that may be applicable to administrative offset.

(f) ***State debts submitted to Fiscal Service for tax refund offset.*** A State shall be deemed to have complied with the requirements of paragraph (e)(2) of this section with respect to any State debt that the State certified to Treasury for collection pursuant to § 285.8 of this part.

(g) ***Federal Payments subject to administrative offset under this section.***

(1) The Federal payments that will be offset to collect a participating State's debts shall be set forth in the reciprocal agreement. Federal payments that are excluded from administrative offset under this section include:

(i) Any payments described in 31 CFR 285.5(e)(2) “Payments excluded from offset”;

(ii) Payments due to an individual under the Social Security Act;

(iii) Payments due an individual pursuant to part B of the Black Lung Benefits Act;

(iv) Payments due an individual pursuant to any law administered by the Railroad Retirement Board;

(v) Federal tax refunds; and

(vi) Federal salary payments.

(h) ***Conducting the administrative offset.***

(1) Disbursing officials shall conduct administrative offset under this section in the same manner as set forth in 31 CFR 285.5(f) through (i).

(2) When a payee owes more than one delinquent State debt which has been referred to Fiscal Service for collection, amounts will be applied to delinquent State debts under this section after any amounts offset pursuant to any other section of this subpart A and any amounts levied pursuant 26 U.S.C. 6331.

(i) ***Liability of disbursing officials and payment agencies.*** Neither the Federal disbursing official nor the agency authorizing the Federal payment shall be liable to a debtor for the amount of the administrative offset on the basis that the underlying obligation, represented by the payment before the administrative offset was taken, was not satisfied.

(j) ***Notification to a State of Federal debt.***

(1) A State may set forth in the reciprocal agreement the requirements for Fiscal Service to follow when submitting a Federal debt for collection by State payment offset. Such agreements shall set forth all requirements contained in State law for the State payment offset. Such requirements, however, may not exceed the requirements for collecting Federal debts by administrative offset as set forth in § 285.5(d) of this subpart.

(2) Fiscal Service shall certify to a participating State that each debt Fiscal Service submits for State payment offset has been certified by the Federal creditor agency to be delinquent, valid, and legally enforceable in the amount stated, and that the Federal creditor agency owed the debt has complied with the requirements of 31 U.S.C. 3716(a) prior to submitting the debt for offset.

(k) ***Conducting State payment offset.***

(1) An official of a participating State shall conduct State payment offset pursuant to the laws and regulations of the participating State; provided that:

(i) If a payment is owed jointly to more than one payee, the entire payment shall be offset for a debt of either payee, unless otherwise prohibited by law or regulation; and

(ii) If a payment is made to a person solely in that person's capacity as a representative payee for another person having the beneficial interest in the payment, the disbursing official shall offset that payment only to collect debts owed by the person having the beneficial interest in the payment.

(2) Any prohibitions on offsetting a joint payment described in paragraph (k)(1)(i) of this section shall be set forth in the reciprocal agreement.

(3) An official of the participating State shall notify the payee of the State payment offset. The reciprocal agreement may contain detailed guidance and procedures regarding sending such notice, but shall, at a minimum require that the notice inform the payee of:

(i) The type and amount of the payment that was offset;

(ii) The identity of the Federal agency that requested the offset; and

(iii) A contact point within the Federal agency that will handle concerns regarding the offset.

(l) ***Limitations.*** A debt properly submitted to Fiscal Service or the State for administrative offset or State payment offset shall remain subject to collection until withdrawn by the entity that submitted the debt for collection, provided the debt remains past-due and legally enforceable for purposes of administrative offset or State payment offset, as applicable. A debt which has been reduced to a judgment shall remain legally enforceable for purposes of administrative offset and State payment offset for as long as the judgment remains enforceable against the debtor.

(m) ***Fees.*** Fiscal Service shall deduct a fee from each administrative offset and State payment offset amount before transferring the balance of the offset funds to the State or Federal agency owed the debt. Pursuant to 31 U.S.C. 3716(c)(4), the fee will be in an amount that Fiscal Service has determined to be sufficient to reimburse Fiscal Service for the full cost of the offset procedure. Fiscal Service will notify the States and creditor agencies, annually and in advance, of the amount of the fee Fiscal Service will charge for each offset.

[72 FR 1286, Jan. 11, 2007, as amended at 74 FR 56721, Nov. 3, 2009]

§ 285.7 Salary offset.

(a) ***Purpose and scope.***

(1) This section establishes Fiscal Service's procedures for the centralized offset of Federal salary payments to collect delinquent nontax debts owed to the United States. This process is known as centralized salary offset. Rules issued by the Office of Personnel Management contain the requirements Federal agencies must follow prior to conducting centralized or non-centralized salary offset and the procedures for requesting offsets directly from a paying agency, rather than through TOP. See 5 CFR 550.1101 through 550.1108.

(2) This section implements the requirement under 5 U.S.C. 5514(a)(1) that all Federal agencies, using a process known as centralized salary offset computer matching, identify Federal employees who owe delinquent nontax debt to the United States. Centralized salary offset computer matching is the computerized comparison of delinquent debt records with records of Federal employees. The purpose of centralized salary offset computer matching is to identify those debtors whose Federal salaries should be offset to collect delinquent debts owed to the Federal Government.

(3) This section specifies the delinquent debt records and Federal employee records that must be included in the salary offset matching process. For purposes of this section, delinquent debt records consist of the debt information submitted to the Bureau of the Fiscal Service for purposes of administrative offset as required under 31 U.S.C. 3716(c)(6). Agencies that submit their debt to Fiscal Service for purposes of administrative offset are not required to submit duplicate information for purposes of centralized salary offset computer matching under 5 U.S.C. 5514 and this section.

(4) This section establishes an interagency consortium to implement centralized salary offset computer matching on a government-wide basis as required under 5 U.S.C. 5514(a)(1).

(5) The receipt of collections from salary offsets does not preclude a creditor agency from pursuing other debt collection remedies, including the offset of other Federal payments to satisfy delinquent nontax debt owed to the United States. A creditor agency should pursue, when deemed appropriate by such agency, such debt collection remedies separately or in conjunction with salary offset.

(6) This section does not govern the centralized offset of final salary payments or lump-sum payments made to employees who have left an agency's employ. The centralized offset of such payments is governed by § 285.5 of this part.

(b) ***Definitions.*** For purposes of this section:

Administrative offset means withholding funds payable by the United States to, or held by the United States for, a person to satisfy a debt owed by the payee.

Agency means a department, agency or subagency, court, court administrative office, or instrumentality in the executive, judicial, or legislative branch of the Federal government, including government corporations.

Centralized salary offset computer matching means the computerized comparison of Federal employee records with delinquent debt records to identify Federal employees who owe such debts.

Creditor agency means any agency that is owed a debt.

Debt means any amount of money, funds, or property that has been determined by an appropriate official of the Federal government to be owed to the United States by a person, including debt administered by a third party acting as an agent for the Federal Government. For purposes of this section, the term “debt” does not include debts arising under the Internal Revenue Code of 1986 (26 U.S.C.).

Delinquent debt record means information about a past-due, legally enforceable debt, submitted by a creditor agency to Fiscal Service for purposes of administrative offset (including salary offset) in accordance with the provisions of 31 U.S.C. 3716 and applicable regulations. Debt information includes the amount and type of debt and the debtor's name, address, and taxpayer identifying number.

Disbursing official means an officer or employee designated to disburse Federal salary payments. This section applies to all disbursing officials of Federal salary payments, including but not limited to, disbursing officials of the Department of the Treasury, the Department of Defense, the United States Postal Service, any government corporation, and any disbursing official of the United States designated by the Secretary.

Disposable pay has the same meaning as that term is defined in 5 CFR 550.1103.

Federal employee means a current employee of an agency, including a current member of the Armed Forces or a Reserve of the Armed Forces (Reserves), employees of the United States Postal Service, and seasonal and temporary employees.

Federal employee records means records of Federal salary payments that a paying agency has certified to a disbursing official for disbursement.

Fiscal Service means the Bureau of the Fiscal Service, a bureau of the Department of the Treasury.

Paying agency means the agency that employs the Federal employee who owes the debt and authorizes the payment of his or her current pay. A paying agency also includes an agency that performs payroll services on behalf of the employing agency.

Salary offset means administrative offset to collect a debt owed by a Federal employee from the current pay account of the employee.

Secretary means the Secretary of the Treasury or his or her delegate.

Taxpayer identifying number means the identifying number described under section 6109 of the Internal Revenue Code of 1986 (26 U.S.C. 6109). For an individual, the taxpayer identifying number is the individual's social security number.

(c) ***Establishment of the consortium.*** As required by the provisions of 5 U.S.C. 5514(a)(1), by issuance of this section, the Secretary establishes an interagency consortium to implement centralized salary offset computer matching. The consortium initially includes all agencies that disburse Federal salary payments, including but not limited to, Fiscal Service, the Department of Defense, the United States Postal Service, government corporations, and agencies with Treasury-designated disbursing officials. The membership of the consortium may be changed at the discretion of the Secretary, and the Secretary will be responsible for the ongoing coordination of the activities of the consortium.

(d) ***Creditor agency participation.***

(1) As required under 5 U.S.C. 5514(a)(1), creditor agencies shall participate at least annually in centralized salary offset computer matching. By notifying Fiscal Service of all past-due, legally enforceable debts delinquent for more than 120 days for purposes of 31 U.S.C. 3716(c)(6), creditor agencies shall have met the requirement set forth in 5 U.S.C. 5514(a)(1). Additionally, creditor agencies may notify Fiscal Service of past-due, legally enforceable debts delinquent for less than 120 days for purposes of centralized offset.

(2) Prior to submitting debts to Fiscal Service for purposes of administrative offset (including salary offset) and centralized salary offset computer matching, Federal agencies shall prescribe regulations in accordance with the requirements of 31 U.S.C. 3716 (administrative offset) and 5 U.S.C. 5514 (salary offset).

(3) Prior to submitting a debt to Fiscal Service for purposes of collection by administrative offset, including salary offset, creditor agencies shall provide written certification to Fiscal Service that:

(i) The debt is past-due and legally enforceable in the amount submitted to Fiscal Service and that the creditor agency will ensure that collections (other than collections through offset) are properly credited to the debt;

(ii) The creditor agency has complied with the provisions of 31 U.S.C. 3716 (administrative offset) and related regulations including, but not limited to, the provisions requiring that the creditor agency provide the debtor with applicable notices and opportunities for a review of the debt; and

(iii) The creditor agency has complied with the provisions of 5 U.S.C. 5514 (salary offset) and related regulations including, but not limited to, the provisions requiring that the creditor agency provide the debtor with applicable notices and opportunities for a hearing.

(4) The creditor agency is not required to submit the certification set forth in paragraph (d)(3)(iii) of this section prior to submitting a debt to Fiscal Service. However, if the creditor agency does not provide such certification initially, the creditor agency shall provide the Federal employee with the notices and opportunity for a hearing, as required by 5 U.S.C. 5514 and applicable regulations, and shall make the necessary certification before the disbursing official offsets a salary payment pursuant to this section. A creditor agency may submit a debt without the requirement set forth in paragraph (d)(3)(iii) of this section, only if the creditor agency intends to complete the certification after complying with the provisions of 5 U.S.C. 5514 and applicable regulations.

(5) The creditor agency shall notify Fiscal Service immediately of any payments credited by the creditor agency to the debtor's account, other than credits for amounts collected by offset, after submission of the debt to Fiscal Service. The creditor agency also shall notify Fiscal Service immediately of any change in the status of the legal enforceability of the debt, for example, if the creditor agency receives notice that the debtor has filed for bankruptcy protection.

(6) Creditor agencies may submit nontax debts to Fiscal Service for collection by centralized salary offset irrespective of the amount of time the debt has been outstanding. Accordingly, all nontax debts, including debts that were outstanding for ten years or longer prior to June 11, 2009, may be collected by centralized salary offset.

(7) For debts that were outstanding more than ten years on or before June 11, 2009, creditor agencies must certify to Fiscal Service that the notice described in paragraph (d)(3)(ii) of this section was sent to the debtor after the debt was outstanding for ten years. This requirement will apply even in a case where notice was also sent prior to the debt being outstanding for ten years but does not apply to any debt that could be collected by offset without regard to any time limitation prior to June 11, 2009.

(e) ***Centralized salary offset computer match.***

(1) Delinquent debt records will be compared with Federal employee records maintained by members of the consortium or paying agencies. The records will be compared to identify Federal employees who owe delinquent debts for purposes of collecting the debt by administrative offset. A match will occur when the taxpayer identifying number and name of a Federal employee are the same as the taxpayer identifying number and name of a debtor.

(2) As authorized by the provisions of 31 U.S.C. 3716(f), Fiscal Service, under a delegation of authority from the Secretary, has waived certain requirements of the Computer Matching and Privacy Protection Act of 1988, 5 U.S.C. 552a, as amended, for administrative offset, including salary offset, upon written certification by the head of the creditor agency that the requirements of 31 U.S.C. 3716(a) have been met. Specifically, Fiscal Service has waived the requirements for a computer matching agreement contained in 5 U.S.C. 552a(o) and for post-match notice and verification contained in 5 U.S.C. 552a(p). The creditor agency will provide certification in accordance with the provisions of paragraph (d)(3)(iii) of this section.

(f) ***Salary offset.*** When a match occurs and all other requirements for offset have been met, as required by the provisions of 31 U.S.C. 3716(c) the disbursing official shall offset the Federal employee's salary payment to satisfy, in whole or part, the debt owed by the employee. Alternatively, the paying agency, on behalf of the disbursing official, may deduct the amount of the offset from an employee's disposable pay before the employee's salary payment is certified to a disbursing official for disbursement. The salary paying agency shall use such records as it deems necessary to accurately calculate disposable pay in accordance with 5 CFR 550.1103.

(g) ***Offset amount.***

(1) The amount offset from a salary payment under this section shall be the lesser of:

(i) The amount of the debt, including any interest, penalties and administrative costs; or

(ii) An amount up to 15% of the debtor's disposable pay.

(2) Alternatively, the amount offset may be an amount agreed upon, in writing, by the debtor and the creditor agency.

(3) Offsets will continue until the debt, including any interest, penalties, and costs, is paid in full or otherwise resolved to the satisfaction of the creditor agency.

(h) ***Priorities.***

(1) A levy pursuant to the Internal Revenue Code of 1986 shall take precedence over other deductions under this section.

(2) When a salary payment may be reduced to collect more than one debt, amounts offset under this section will be applied to a debt only after amounts have been applied to satisfy past-due support debts being collected by the State pursuant to Section 464 of the Social Security Act.

(i) ***Notice.***

(1) Before offsetting a salary payment, the disbursing official, or the paying agency on behalf of the disbursing official, shall notify the Federal employee in writing of the date deductions from salary will commence and of the amount of such deductions.

(2)

(i) When an offset occurs under this section, the disbursing official, or the paying agency on behalf of the disbursing official, shall notify the Federal employee in writing that an offset has occurred including:

(A) A description of the payment and the amount of offset taken;

(B) The identity of the creditor agency requesting the offset; and,

(C) A contact point within the creditor agency that will handle concerns regarding the offset.

(ii) The information described in paragraphs (i)(2)(i)(B) and (i)(2)(i)(C) of this section does not need to be provided to the Federal employee when the offset occurs if such information was included in a prior notice from the disbursing official or paying agency.

(3) The disbursing official will advise each creditor agency of the names, mailing addresses, and taxpayer identifying numbers of the debtors from whom amounts of past-due, legally enforceable debt were collected and of the amounts collected from each debtor for that agency. The disbursing official will not advise the creditor agency of the source of payment from which such amounts were collected.

(j) ***Fees.*** Agencies that perform centralized salary offset computer matching services may charge a fee sufficient to cover the full cost for such services. In addition, Fiscal Service, or a paying agency acting on behalf of Fiscal Service, may charge a fee sufficient to cover the full cost of implementing the administrative offset program. Fiscal Service may deduct the fees from amounts collected by offset or may bill the creditor agencies. Fees charged for offset shall be based on actual administrative offsets completed.

(k) ***Disposition of amounts collected.*** The disbursing official conducting the offset will transmit amounts collected for debts, less fees charged under paragraph (j) of this section, to the appropriate creditor agency. If an erroneous offset payment is made to a creditor agency, the disbursing official will notify the creditor agency that an erroneous offset payment has been made. The disbursing official may deduct the amount of the erroneous offset payment from future amounts payable to the creditor agency. Alternatively, upon the disbursing official's request, the creditor agency shall return promptly to the disbursing official or the affected payee an amount equal to the amount of the erroneous payment (without regard to whether any other amounts payable to such agency have been paid). The disbursing official and the creditor agency shall adjust the debtor records appropriately.

[63 FR 23357, Apr. 28, 1998, as amended at 70 FR 22789, May 3, 2005; 74 FR 27433, June 10, 2009; 74 FR 27708, June 11, 2009; 81 FR 1319, Jan. 12, 2016]

§ 285.8 Offset of tax refund payments to collect certain debts owed to States.

(a) ***Definitions.*** For purposes of this section:

Debt means past-due, legally enforceable State income tax obligation or unemployment compensation debt unless otherwise indicated.

Debtor means a person who owes a debt.

Fiscal Service means the Bureau of the Fiscal Service, a bureau of the Department of the Treasury.

IRS means the Internal Revenue Service, a bureau of the Department of the Treasury.

Past-due, legally enforceable State income tax obligation means a debt which resulted from:

(1) A judgment rendered by a court of competent jurisdiction which has determined an amount of State income tax to be due,

(2) A determination after an administrative hearing which has determined an amount of state income tax to be due and which is no longer subject to judicial review, or

(3) A State income tax assessment (including self-assessments) which has become final in accordance with State law but not collected and which has not been delinquent for more than 10 years.

State means the several States of the United States. The term “State” also includes the District of Columbia, American Samoa, Guam, the United States Virgin Islands, the Commonwealth of the Northern Mariana Islands, and the Commonwealth of Puerto Rico.

State income tax obligation means State income tax obligations as determined under State law. For purposes of this section, State income tax obligation includes any local income tax administered by the chief tax administration agency of the State.

Tax refund offset means withholding or reducing a tax refund overpayment by an amount necessary to satisfy a debt owed by the payee(s).

Tax refund payment means any overpayment of Federal taxes to be refunded to the person making the overpayment after the IRS makes the appropriate credits as provided in 26 U.S.C. 6402(a) and 26 CFR 6402-3(a)(6)(i) for any liabilities for any Federal tax on the part of the person who made the overpayment.

Unemployment compensation debt has the same meaning as the term “covered unemployment debt” as defined in 26 U.S.C. 6402(f)(4), and means -

(1) A past-due debt for erroneous payment of unemployment compensation due to fraud or the person's failure to report earnings which has become final under the law of a State certified by the Secretary of Labor pursuant to 26 U.S.C. 3304 and which remains uncollected;

(2) Contributions due to the unemployment fund of a State for which the State has determined the person to be liable and which remain uncollected; and

(3) Any penalties and interest assessed on such debt.

(b) ***General rule.***

(1) Fiscal Service will offset tax refunds to collect debt under this section in accordance with 26 U.S.C. 6402(e) and (f) and this section.

(2) Fiscal Service will compare tax refund payment records, as certified by the IRS, with records of debts submitted to Fiscal Service. A match will occur when the taxpayer identifying number (as that term is used in 26 U.S.C. 6109) and name on a payment certification record are the same as the taxpayer identifying number and name (or derivative of the name) on a delinquent debt record. When a match occurs and all other requirements for tax refund offset have been met, Fiscal Service will reduce the amount of any tax refund payment payable to a debtor by the amount of any past-due, legally enforceable State income tax obligation or unemployment compensation debt owed by the debtor. Any amounts not offset will be paid to the payee(s) listed in the payment certification record.

(3) Fiscal Service will only offset a tax refund payment for a State income tax obligation if the address shown on the Federal tax return for the taxable year of the overpayment is an address within the State seeking the offset.

(c) ***Notification of past-due, legally enforceable State income tax obligations or unemployment compensation debts*** -

(1) ***Notification.*** States shall notify Fiscal Service of debts in the manner and format prescribed by Fiscal Service. The notification of liability must be accompanied by a certification that the debt is past due and legally enforceable and that the State has complied with the requirements contained in paragraph (c)(3) of this section and with all Federal or State requirements applicable to the collection of debts under this section. With respect to State income tax obligations only, the certification must specifically state that none of the debts submitted for collection by offset are debts owed by an individual who has claimed immunity from State taxation by reason of being an enrolled member of an Indian tribe who lives on a reservation and derives all of his or her income from that reservation unless such claim has been adjudicated de novo on its merits in accordance with paragraph (c)(3). Fiscal Service may reject a notification that does not comply with the requirements of this section. Upon notification of the rejection and the reason for rejection, the State may resubmit a corrected notification.

(2) Minimum amount of past-due, legally enforceable State income tax obligations that may be submitted. Fiscal Service only will accept notification of past-due, legally enforceable State income tax obligations of $25 or more or such higher amounts as determined by Fiscal Service. States will be notified annually of any changes in the minimum debt amount.

(3)

(i) ***Advance notification to the debtor of the State's intent to collect by Federal tax refund offset.*** The State is required to provide a written notification to the debtor informing the debtor that the State intends to refer the debt for collection by tax refund offset. The notice must give the debtor at least 60 days to present evidence, in accordance with procedures established by the State, that all or part of the debt is not past due or not legally enforceable, or, in the case of a covered unemployment compensation debt, the debt is not due to fraud or the debtor's failure to report earnings. In the case of a State income tax obligation, the notice must be sent certified mail, return receipt requested.

(ii) ***Determination.*** The State must, in accordance with procedures established by the State, consider any evidence presented by a debtor in response to the notice described in paragraph (c)(3)(i) of this section and determine whether an amount of such debt is past due and legally enforceable and, in the case of a covered unemployment compensation debt, the debt is due to fraud or the debtor's failure to report earnings. With respect to State income tax obligations only, where the debtor claims that he or she is immune from State taxation by reason of being an enrolled member of an Indian tribe who lives on a reservation and derives all of his or her income from that reservation, State procedures shall include de novo review on the merits, unless such claims have been previously adjudicated by a court of competent jurisdiction. States shall, upon request from the Secretary of the Treasury, make such procedures available to the Secretary of the Treasury for review.

(iii) ***Reasonable efforts.*** Prior to submitting a debt to Fiscal Service for collection by tax refund offset the State must make reasonable efforts to collect the debt. Reasonable efforts include making written demand on the debtor for payment and complying with any other prerequisites to offset established by the State.

(4) ***Correcting and updating notification.*** The State shall, in the manner and in the time frames provided by Fiscal Service, notify Fiscal Service of any deletion or decrease in the amount of past-due, legally enforceable State income tax obligation or unemployment compensation debt referred to Fiscal Service for collection by tax refund offset. The State may notify Fiscal Service of any increases in the amount of the debt referred to Fiscal Service for collection by tax refund offset provided that the State has complied with the requirements of paragraph (c)(3) of this section with regard to those debts.

(d) ***Priorities for offset.***

(1) As provided in 26 U.S.C. 6402, a tax refund payment shall be reduced first by the amount of any past-due support being enforced under section 464 of the Social Security Act which is to be offset under 26 U.S.C. 6402(c); second by the amount of any past-due, legally enforceable debt owed to a Federal agency which is to be offset under 26 U.S.C. 6402(d); and third by any past-due, legally enforceable debt owed to a State (other than past-due support) which is to be offset under 26 U.S.C. 6402(e) or 26 U.S.C. 6402(f).

(2) Reduction of the tax refund payment pursuant to 26 U.S.C. 6402(a), (c), (d), (e) and (f) shall occur prior to crediting the overpayment to any future liability for an internal revenue tax. Any amount remaining after tax refund offset under 26 U.S.C. 6402(a), (c), (d), (e) and (f) shall be refunded to the taxpayer, or applied to estimated tax, if elected by the taxpayer pursuant to IRS regulations.

(3) If Fiscal Service receives notice from a State of more than one debt subject to this section that is owed by a debtor to the State, any overpayment by the debtor shall be applied against such debts in the order in which such debts accrued.

(e) ***Post-offset notice.***

(1) When an offset occurs, Fiscal Service shall notify the debtor in writing of:

(i) The amount and date of the offset and that the purpose of the offset was to satisfy a past-due, legally enforceable State income tax obligation or unemployment compensation debt;

(ii) The State to which this amount has been paid or credited; and

(iii) A contact point within the State that will handle concerns or questions regarding the offset.

(2) The notice in paragraph (e)(1) of this section also will advise any non-debtor spouse who may have filed a joint return with the debtor of the steps which the non-debtor spouse may take in order to secure his or her proper share of the tax refund. See paragraph (f) of this section.

(3) Fiscal Service will advise States of the names, mailing addresses, and taxpayer identifying numbers of the debtors from whom amounts of State income tax obligations or unemployment compensation debts were collected, and of the amounts collected from each debtor through tax refund offset.

(4) At least weekly, Fiscal Service will notify the IRS of the names and taxpayer identifying numbers of the debtors from whom amounts owed for past-due, legally enforceable State income tax obligations or unemployment compensation debts were collected from tax refund offsets and the amounts collected from each debtor.

(f) ***Offset made with regard to a tax refund payment based upon joint return.*** If the person filing a joint return with a debtor owing the past-due, legally enforceable State income tax obligation or unemployment compensation debt takes appropriate action to secure his or her proper share of a tax refund from which an offset was made, the IRS will pay the person his or her share of the refund and request that Fiscal Service deduct that amount from future amounts payable to the State or that Fiscal Service otherwise obtain the funds back from the State. Fiscal Service, or the appropriate State, will adjust their debtor records accordingly.

(g) ***Disposition of amounts collected.*** Fiscal Service will transmit amounts collected for debts, less fees charged under paragraph (h) of this section, to the appropriate State. If Fiscal Service learns that an erroneous offset payment is made to any State, Fiscal Service will notify the appropriate State that an erroneous offset payment has been made. Fiscal Service may deduct the amount of the erroneous offset payment from future amounts payable to the State. Alternatively, upon Fiscal Service' request, the State shall return promptly to the affected taxpayer or Fiscal Service an amount equal to the amount of the erroneous payment (unless the State previously has paid such amounts, or any portion of such amounts, to the affected taxpayer). States shall notify Fiscal Service any time a State returns an erroneous offset payment to an affected taxpayer. Fiscal Service, or the appropriate State, will adjust their debtor records accordingly.

(h) ***Fees.*** The State will pay a fee to Fiscal Service to cover the full cost of offsets taken. The fee will be established annually in such amount as Fiscal Service determines to be sufficient to reimburse Fiscal Service for the full cost of the offset procedure. Fiscal Service will deduct the fees from amounts collected prior to disposition and transmit a portion of the fees deducted to reimburse the IRS for its share of the cost of administering the tax refund offset program for purposes of collecting past-due, legally enforceable State income tax obligations or unemployment compensation debts reported to Fiscal Service by the States. Fees will be charged only for actual tax refund offsets completed.

(i) ***Review of tax refund offsets.*** In accordance with 26 U.S.C. 6402(g), any reduction of a taxpayer's refund made pursuant to 26 U.S.C. 6402(e) or (f) shall not be subject to review by any court of the United States or by the Secretary of the Treasury, Fiscal Service or IRS in an administrative proceeding. No action brought against the United States to recover the amount of this reduction shall be considered to be a suit for refund of tax. This subsection does not preclude any legal, equitable, or administrative action against the State to which the amount of such reduction was paid.

(j) ***Access to and use of confidential tax information.*** Access to and use of confidential tax information in connection with the tax refund offset program is permitted to the extent necessary in establishing appropriate agency records, locating any person with respect to whom a reduction under 26 U.S.C. 6402(e) or (f) is sought for purposes of collecting the debt, and in the defense of any litigation or administrative procedure ensuing from a reduction made under section 6402(e) or (f).

[64 FR 71231, Dec. 20, 1999, as amended at 74 FR 27433, June 10, 2009; 76 FR 5071, Jan. 28, 2011]