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least annually to determine if the account can be placed on an unfunded basis, and shall initiate appropriate action to accomplish the objective of minimizing the number of funded program accounts and the amounts therein. The resulting determinations and the status of actions undertaken shall be furnished in writing to the Treasury Department within 60 days from the date of this regulation and each time thereafter that there is a change of status of a particular account, or as requested by the Treasury Department. Exchange which becomes eligible for removal from a funded status either as a result of the foregoing determinations, or because of the expiration of the period of availability for restricted use under the terms of international agreements, or for other reasons, shall be released promptly by the program agency for transfer to a nonrestricted Treasury sales account.

[26 FR 10054, Oct. 26, 1961, as amended at 29 FR 11497, Aug. 11, 1964]

### § 281.8 Reporting and accounting.

The Treasury Department will maintain a system of central accounting and reporting for the purpose of providing information on foreign exchange operations to the President, the Congress, and the public. The Treasury Department will also prescribe rules to enhance consistency in reporting of foreign exchange operations by all agencies. Agencies shall furnish such reports and information as may be required for the administration of the provisions of this circular.

### § 281.9 General provisions.

(a) Nothing contained in this part shall be construed as having the effect of superseding or amending the provisions of any regulations issued or approved by the Secretary pursuant to the Act of December 23, 1944, as amended (67 Stat. 61).

(b) The Secretary may waive, withdraw, or amend at any time or from time to time any or all of the provisions of the regulations of this part.

(c) Implementing regulations within the framework of this circular will be issued by the Fiscal Assistant Secretary of the Treasury. All communications pertaining to the administration

of the provisions of this part shall be directed to the Fiscal Assistant Secretary.

## PART 285—DEBT COLLECTION AUTHORITIES UNDER THE DEBT COLLECTION IMPROVEMENT ACT OF 1996

### Subpart A—Disbursing Official Offset

Sec.

- 285.1 Collection of past-due support by administrative offset.
- 285.2 Offset of tax refund payments to collect past-due, legally enforceable nontax debt.
- 285.3 Offset of tax refund payments to collect past-due support.
- 285.4 Offset of Federal benefit payments to collect past-due, legally enforceable nontax debt.
- 285.5 Centralized offset of Federal payments to collect nontax debts owed to the United States.
- 285.6 Administrative offset under reciprocal agreements with states.
- 285.7 Salary offset.
- 285.8 Offset of tax refund payments to collect certain debts owed to States.

### Subpart B—Authorities Other Than Offset

- 285.11 Administrative wage garnishment.
- 285.12 Transfer of debts to Treasury for collection.
- 285.13 Barring delinquent debtors from obtaining Federal loans or loan insurance or guarantees.

AUTHORITY: 5 U.S.C. 5514; 26 U.S.C. 6402; 31 U.S.C. 321, 3701, 3711, 3716, 3719, 3720A, 3720B, 3720D; 42 U.S.C. 664; E.O. 13019, 61 FR 51763, 3 CFR, 1996 Comp., p. 216.

SOURCE: 62 FR 34179, June 25, 1997, unless otherwise noted.

### 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.

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

*FMS* means the Financial Management Service, a bureau of the Department of the Treasury. FMS 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.* FMS 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 FMS 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.* FMS may enter into reciprocal agreements with States for disbursing officials of FMS 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 FMS 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 FMS 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 FMS 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 FMS of past-due support.* (1) States notifying FMS of past-due support must do so in the manner and format prescribed by FMS. States notifying HHS of past-due support must do so in the manner and format prescribed by HHS. HHS shall notify FMS 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 FMS 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) FMS 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.* FMS 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 FMS to ensure that the cost of collection does not exceed the debt.

(f) *Limitations.* Debts properly submitted to FMS 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 FMS or HHS of past-due support shall, in the manner and in the time frames provided by FMS or HHS, notify FMS or HHS of deletions or decreases in the amount of a debt referred for collection by administrative offset. The State may notify FMS 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 FMS or HHS on behalf of the State, if the State requests and FMS 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 FMS 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

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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 FMS 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 FMS has determined to be sufficient to reimburse FMS for the full cost of the offset procedure, shall be deducted from each offset amount. FMS 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 FMS 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.* FMS will transmit amounts collected for debts, less fees charged under paragraph (1) of this section, to HHS or to the appropriate State. If FMS learns that an erroneous offset payment has been made to HHS or any State, FMS will notify HHS or the appropriate State that an erroneous offset payment has been made. FMS may deduct the amount of the erroneous offset payment from amounts payable to HHS or the State, as the case may be. Alternatively, upon FMS' request, the State shall return promptly to the affected payee or FMS 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 FMS any time

HHS or a State returns an erroneous offset payment to an affected payee. FMS 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 FMS 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 FMS 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 FMS or any other disbursing official, will provide such information to HHS to the extent such information is available from offset activities conducted by FMS 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

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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.

*FMS* means the Financial Management 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 FMS 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 FMS of the amount of such debt for collection by tax refund offset.

(2) FMS will compare tax refund payment records, as certified by the IRS, with records of debts submitted to FMS. 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, FMS 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 FMS 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 FMS 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

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enforceable debt to FMS for tax refund offset, the agency will certify to FMS that:

(i) The debt is past-due and legally enforceable in the amount submitted to FMS 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 FMS 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 FMS 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 FMS in the time and manner prescribed by FMS. 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 FMS 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 FMS, or if an agency receives a payment or credits a payment to the account of a debtor referred to FMS for offset, or if the debt amount is otherwise incorrect, the agency shall promptly notify FMS and make the appropriate correction of the agency's records. Creditor agencies will

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provide certification as required under paragraph (d)(1) of this section for any increases to amounts owed.

(5) FMS 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 FMS 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 FMS 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) FMS 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) FMS 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 col-

lected and of the amounts collected from each debtor for that agency. FMS 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, FMS will notify the creditor agency and furnish the name and address of each payee to whom the payment was payable.

(3) At least weekly, FMS 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 FMS deduct that amount from amounts payable to the creditor agency. FMS and the creditor agency will adjust their debtor records accordingly.

(g) *Disposition of amounts collected.* FMS 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, FMS will notify the creditor agency that an erroneous payment has been made. The agency shall pay promptly to FMS 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 FMS and the IRS for the full cost of administering the tax refund offset program. FMS 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, FMS 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 FMS. 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.

*FMS* means the Financial Management 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 FMS 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) FMS will compare tax refund payment records, as certified by the IRS, with records of debts submitted to FMS. 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

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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, FMS 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 FMS 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 FMS 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 FMS 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 FMS 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 FMS directly. If authorized by HHS rules, States may notify FMS directly of past-due support.

States notifying FMS directly of past-due support shall do so in the manner and format prescribed by FMS. 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. FMS 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 FMS or HHS, notify FMS or HHS of any deletion or net decrease in the amount of past-due support referred to FMS, or HHS as the case may be, for collection by tax refund offset. The State may notify FMS or HHS of any increases in the amount of the debt referred to FMS 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 FMS, 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) FMS 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) FMS 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 col-

lected 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, FMS will provide such information to each State that refers debts directly to FMS. FMS will inform HHS and each State that the payment source is a tax refund payment.

(3) At least weekly, FMS 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 FMS and HHS agree, but no less than annually, FMS 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 FMS and HHS may agree, FMS 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 FMS deduct that amount from amounts payable to HHS or the State, as the case may be. FMS and HHS, or the appropriate State, will adjust their debtor records accordingly.

(g) *Disposition of amounts collected.* FMS will transmit amounts collected for debts, less fees charged under paragraph (h) of this section, to HHS or to the appropriate State. If FMS learns that an erroneous offset payment is made to HHS or any State, FMS will notify HHS or the appropriate State that an erroneous offset payment has been made. FMS may deduct the

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amount of the erroneous offset payment from amounts payable to HHS or the State, as the case may be. Alternatively, upon FMS' request, the State shall return promptly to the affected taxpayer or FMS 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). HHS and States shall notify FMS any time HHS or a State returns an erroneous offset payment to an affected taxpayer. FMS and HHS, or the appropriate State, will adjust their debtor records accordingly.

(h) *Fees.* The State will pay a fee to FMS 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 FMS and HHS agree to be sufficient to reimburse FMS for the full cost of the offset procedure. FMS 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.

(i) *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, FMS 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.

(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(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).

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(k) *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]

### § 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 Financial Management Service (FMS), 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.

*FMS* means the Financial Management 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 FMS 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 FMS for collection by administrative offset.* Creditor agencies must notify FMS of all past-due, legally enforceable debt delinquent for more than 180 days for purposes of collection by administrative offset. Creditor agencies may notify

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FMS of all debt delinquent for less than 180 days for purposes of collection by administrative offset. Prior to such notification, creditor agencies must certify to FMS 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 writ-

ing 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 FMS 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]

### **§ 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 Financial Management Service (FMS) 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 FMS.

*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 prop-

erty 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 FMS 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

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United States designated by the Secretary of the Treasury to disburse public money.

*FMS* means the Financial Management Service, a bureau of the Department of the Treasury and its disbursing office. FMS 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 FMS 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 FMS 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 FMS of all legally enforceable debts over 180 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 180 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 FMS for collection by offset within 30 days of completing the review.

(2) *Discretionary notification of delinquent debts.* Creditor agencies may notify FMS of any debt that is less than 180 days delinquent, so long as the requirements of paragraph (d)(3) of this section are met.

(3) *Debt eligibility.* (i) A debt submitted to FMS 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 FMS 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 180 days delinquent eligible for the Treasury Offset Program. The procedures require that such report include the amount of debt over 180 days delinquent that the creditor agency has determined is not eligible for the Treas-

ury Offset Program and the reasons for such determination.

(v) Creditor agencies may submit nontax debts to FMS 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 FMS 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 FMS 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 FMS 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 FMS.

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

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(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 FMS may from time to time require in compliance with law, regulation or policy.

(7) *Updating certification.* After a debt has been submitted to FMS for purposes of collection by offset, the creditor agency shall provide, at least annually, in the manner and time frames required by FMS, written certification to FMS 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) *FMS instructions to creditor agencies.* Agencies will provide the certification in a form and manner prescribed by FMS. FMS will instruct agencies as to the form such written certifications will take and how certifications can be delivered to FMS, 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 FMS before such agency's disbursing officials offset to collect such claims. This paragraph (d)(9) does not apply to FMS 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 FMS, to reflect any amounts credited by the creditor agency to the debtor's account after submission of the debt to FMS (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 FMS 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 FMS 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 FMS if it has returned any monies to the debtor/payee.

(11) *Debts at FMS, a debt collection center, or the Department of Justice.* If a creditor agency has transferred a debt to FMS 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 FMS, the debt collection center, or the Department of Justice, as the case may be, is responsible for submitting the debt information to FMS 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 FMS 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 pay-

ments, 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

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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 FMS Web site. See [www.fms.treas.gov/debt](http://www.fms.treas.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 FMS and made available at its Web site. See [www.fms.treas.gov/debt](http://www.fms.treas.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 FMS, that a payment is a recurring payment.

(ii) Payment agencies shall also review the nature of payments the agency certifies and notify FMS 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 FMS 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, FMS 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 FMS 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 FMS 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.

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(h) *Notification to creditor and payment agencies.* (1) FMS 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 FMS and any other disbursing official conducting offsets. FMS 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 FMS all of the information necessary for FMS 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) FMS 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) FMS will transmit amounts collected for debts, less fees charged pursuant to paragraph (j) of this section, to the appropriate creditor agency or agencies. Alternatively, FMS may bill the creditor agency for any fees charged pursuant to paragraph (j) of this section.

(2) If FMS learns from a paying agency that a payment should not have been made, and thus not offset, FMS will notify the creditor agency. FMS may deduct the offset amount from future amounts payable to the creditor agency. Alternatively, upon FMS'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 FMS 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. FMS and the creditor agency shall adjust the debtor records appropriately.

(j) *Fees.* FMS 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. FMS may deduct the fees from amounts collected by offset or may bill the creditor agencies. FMS 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), FMS, 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, FMS 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 FMS 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]

### § 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 FMS 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 FMS 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.* FMS and other disbursing officials of the Federal Government will conduct administrative offset to collect past-due State debts certified to FMS, 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 FMS, acting on behalf of the Secretary. Upon notification of a delinquent State debt from a participating State to FMS, 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 FMS 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) FMS may enter into reciprocal agreements with States for administrative offset

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and State payment offset. The agreements shall contain any requirements which FMS 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 FMS 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 FMS has entered into a reciprocal agreement with a State pursuant to this section, FMS 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 FMS 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 FMS 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 FMS 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 FMS 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 FMS 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) FMS shall certify to a participating State that each debt FMS 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 FMS 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.* FMS 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 FMS has determined to be sufficient to reimburse FMS for the full cost of the offset procedure. FMS will notify the States and creditor agencies, annually and in advance, of the amount of the fee FMS 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 FMS'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

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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 Financial Management Service for purposes of administrative offset as required under 31 U.S.C. 3716(c)(6). Agencies that submit their debt to FMS 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 inter-agency 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 FMS 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.

*FMS* means the Financial Management 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 inter-agency consortium to implement centralized salary offset computer matching. The consortium initially includes all agencies that disburse Federal salary payments, including but not limited to, FMS, 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 FMS of all past-due, legally enforceable debts delinquent for more than 180 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 FMS of past-due, legally enforceable debts delinquent for less than 180 days for purposes of centralized offset.

(2) Prior to submitting debts to FMS for purposes of administrative offset (including salary offset) and centralized salary offset computer matching, Federal agencies shall prescribe regula-

tions 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 FMS for purposes of collection by administrative offset, including salary offset, creditor agencies shall provide written certification to FMS that:

(i) The debt is past-due and legally enforceable in the amount submitted to FMS 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 FMS. 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 FMS 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 FMS. The creditor agency also shall notify FMS 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 FMS 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 FMS 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), FMS, 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, FMS 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

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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, FMS, or a paying agency acting on behalf of FMS, may charge a fee sufficient to cover the full cost of implementing the administrative offset program. FMS 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]

### § 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.

*FMS* means the Financial Management 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) FMS 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) FMS will compare tax refund payment records, as certified by the IRS, with records of debts submitted to FMS. 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, FMS 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) FMS 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 FMS of debts in the manner and format prescribed by FMS. 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). FMS 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. FMS only will accept notification of past-due, legally enforceable State income tax obligations of \$25 or more or such higher amounts as determined by FMS. 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 FMS 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 FMS, notify FMS of any deletion or decrease in the amount of past-due, legally enforceable State income tax obligation or unemployment compensation debt referred to FMS for collection by tax refund offset. The State may notify FMS of any increases in the amount of the debt referred to FMS 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 FMS 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, FMS 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) FMS will advise States of the names, mailing addresses, and taxpayer identifying numbers of the debtors from whom amounts of State income

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tax obligations or unemployment compensation debts were collected, and of the amounts collected from each debtor through tax refund offset.

(4) At least weekly, FMS 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 FMS deduct that amount from future amounts payable to the State or that FMS otherwise obtain the funds back from the State. FMS, or the appropriate State, will adjust their debtor records accordingly.

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

(h) *Fees.* The State will pay a fee to FMS to cover the full cost of offsets taken. The fee will be established annually in such amount as FMS determines to be sufficient to reimburse

FMS for the full cost of the offset procedure. FMS 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 FMS 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, FMS 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]

### Subpart B—Authorities Other Than Offset

#### § 285.11 Administrative wage garnishment.

(a) *Purpose.* This section provides procedures for Federal agencies to collect money from a debtor's disposable pay by means of administrative wage garnishment to satisfy delinquent nontax debt owed to the United States.

(b) *Scope.* (1) This section applies to any Federal agency that administers a



program that gives rise to a delinquent nontax debt owed to the United States and to any agency that pursues recovery of such debt.

(2) This section shall apply notwithstanding any provision of State law.

(3) Nothing in this section precludes the compromise of a debt or the suspension or termination of collection action in accordance with applicable law. See, for example, the Federal Claims Collection Standards (FCCS), 31 CFR parts 900-904.

(4) The receipt of payments pursuant to this section does not preclude a Federal agency from pursuing other debt collection remedies, including the offset of Federal payments to satisfy delinquent nontax debt owed to the United States. A Federal agency may pursue such debt collection remedies separately or in conjunction with administrative wage garnishment.

(5) This section does not apply to the collection of delinquent nontax debt owed to the United States from the wages of Federal employees from their Federal employment. Federal pay is subject to the Federal salary offset procedures set forth in 5 U.S.C. 5514 and other applicable laws.

(6) Nothing in this section requires agencies to duplicate notices or administrative proceedings required by contract or other laws or regulations.

(c) *Definitions.* As used in this section the following definitions shall apply:

*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. For purposes of this section, agency means either the agency that administers the program that gave rise to the debt or the agency that pursues recovery of the debt.

*Business day* means Monday through Friday. For purposes of computation, the last day of the period will be included unless it is a Federal legal holiday.

*Day* means calendar day. For purposes of computation, the last day of the period will be included unless it is a Saturday, a Sunday, or a Federal legal holiday.

*Debt or claim* 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 an individual, including debt administered by a third party as an agent for the Federal Government.

*Debtor* means an individual who owes a delinquent nontax debt to the United States.

*Delinquent nontax debt* means any nontax debt that has not been paid by the date specified in the agency's initial written demand for payment, or applicable agreement, unless other satisfactory payment arrangements have been made. For purposes of this section, the terms "debt" and "claim" are synonymous and refer to delinquent nontax debt.

*Disposable pay* means that part of the debtor's compensation (including, but not limited to, salary, bonuses, commissions, and vacation pay) from an employer remaining after the deduction of health insurance premiums and any amounts required by law to be withheld. For purposes of this section, "amounts required by law to be withheld" include amounts for deductions such as social security taxes and withholding taxes, but do not include any amount withheld pursuant to a court order.

*Employer* means a person or entity that employs the services of others and that pays their wages or salaries. The term employer includes, but is not limited to, State and local Governments, but does not include an agency of the Federal Government.

*Evidence of service* means information retained by the agency indicating the nature of the document to which it pertains, the date of mailing of the document, and to whom the document is being sent. Evidence of service may be retained electronically so long as the manner of retention is sufficient for evidentiary purposes.

*Garnishment* means the process of withholding amounts from an employee's disposable pay and the paying of those amounts to a creditor in satisfaction of a withholding order.

*Withholding order* means any order for withholding or garnishment of pay issued by an agency, or judicial or administrative body. For purposes of this section, the terms "wage garnishment

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order” and “garnishment order” have the same meaning as “withholding order.”

(d) *General rule.* Whenever an agency determines that a delinquent debt is owed by an individual, the agency may initiate proceedings administratively to garnish the wages of the delinquent debtor.

(e) *Notice requirements.* (1) At least 30 days before the initiation of garnishment proceedings, the agency shall mail, by first class mail, to the debtor’s last known address a written notice informing the debtor of:

(i) The nature and amount of the debt;

(ii) The intention of the agency to initiate proceedings to collect the debt through deductions from pay until the debt and all accumulated interest, penalties and administrative costs are paid in full; and

(iii) An explanation of the debtor’s rights, including those set forth in paragraph (e)(2) of this section, and the time frame within which the debtor may exercise his or her rights.

(2) The debtor shall be afforded the opportunity:

(i) To inspect and copy agency records related to the debt;

(ii) To enter into a written repayment agreement with the agency under terms agreeable to the agency; and

(iii) For a hearing in accordance with paragraph (f) of this section concerning the existence or the amount of the debt or the terms of the proposed repayment schedule under the garnishment order. However, the debtor is not entitled to a hearing concerning the terms of the proposed repayment schedule if these terms have been established by written agreement under paragraph (e)(2)(ii) of this section.

(3) The agency will retain evidence of service indicating the date of mailing of the notice.

(f) *Hearing—(1) In general.* Agencies shall prescribe regulations for the conduct of administrative wage garnishment hearings consistent with this section or shall adopt this section without change by reference.

(2) *Request for hearing.* The agency shall provide a hearing, which at the agency’s option may be oral or written, if the debtor submits a written request

for a hearing concerning the existence or amount of the debt or the terms of the repayment schedule (for repayment schedules established other than by written agreement under paragraph (e)(2)(ii)) of this section.

(3) *Type of hearing or review.* (i) For purposes of this section, whenever an agency is required to afford a debtor a hearing, the agency shall provide the debtor with a reasonable opportunity for an oral hearing when the agency determines that the issues in dispute cannot be resolved by review of the documentary evidence, for example, when the validity of the claim turns on the issue of credibility or veracity.

(ii) If the agency determines that an oral hearing is appropriate, the time and location of the hearing shall be established by the agency. An oral hearing may, at the debtor’s option, be conducted either in-person or by telephone conference. All travel expenses incurred by the debtor in connection with an in-person hearing will be borne by the debtor. All telephonic charges incurred during the hearing will be the responsibility of the agency.

(iii) In those cases when an oral hearing is not required by this section, an agency shall nevertheless accord the debtor a “paper hearing,” that is, an agency will decide the issues in dispute based upon a review of the written record. The agency will establish a reasonable deadline for the submission of evidence.

(4) *Effect of timely request.* Subject to paragraph (f)(13) of this section, if the debtor’s written request is received by the agency on or before the 15th business day following the mailing of the notice described in paragraph (e)(1) of this section, the agency shall not issue a withholding order under paragraph (g) of this section until the debtor has been provided the requested hearing and a decision in accordance with paragraphs (f)(10) and (f)(11) of this section has been rendered.

(5) *Failure to timely request a hearing.* If the debtor’s written request is received by the agency after the 15th business day following the mailing of the notice described in paragraph (e)(1) of this section, the agency shall provide a hearing to the debtor. However, the agency will not delay issuance of a

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withholding order unless the agency determines that the delay in filing the request was caused by factors over which the debtor had no control, or the agency receives information that the agency believes justifies a delay or cancellation of the withholding order.

(6) *Hearing official.* A hearing official may be any qualified individual, as determined by the head of the agency, including an administrative law judge.

(7) *Procedure.* After the debtor requests a hearing, the hearing official shall notify the debtor of:

(i) The date and time of a telephonic hearing;

(ii) The date, time, and location of an in-person oral hearing; or

(iii) The deadline for the submission of evidence for a written hearing.

(8) *Burden of proof.* (i) The agency will have the burden of going forward to prove the existence or amount of the debt.

(ii) Thereafter, if the debtor disputes the existence or amount of the debt, the debtor must present by a preponderance of the evidence that no debt exists or that the amount of the debt is incorrect. In addition, the debtor may present evidence that the terms of the repayment schedule are unlawful, would cause a financial hardship to the debtor, or that collection of the debt may not be pursued due to operation of law.

(9) *Record.* The hearing official must maintain a summary record of any hearing provided under this section. A hearing is not required to be a formal evidentiary-type hearing, however, witnesses who testify in oral hearings will do so under oath or affirmation.

(10) *Date of decision.* The hearing official shall issue a written opinion stating his or her decision, as soon as practicable, but not later than sixty (60) days after the date on which the request for such hearing was received by the agency. If an agency is unable to provide the debtor with a hearing and render a decision within 60 days after the receipt of the request for such hearing:

(i) The agency may not issue a withholding order until the hearing is held and a decision rendered; or

(ii) If the agency had previously issued a withholding order to the debt-

or's employer, the agency must suspend the withholding order beginning on the 61st day after the receipt of the hearing request and continuing until a hearing is held and a decision is rendered.

(11) *Content of decision.* The written decision shall include:

(i) A summary of the facts presented;

(ii) The hearing official's findings, analysis and conclusions; and

(iii) The terms of any repayment schedules, if applicable.

(12) *Final agency action.* The hearing official's decision will be the final agency action for the purposes of judicial review under the Administrative Procedure Act (5 U.S.C. 701 et seq.).

(13) *Failure to appear.* In the absence of good cause shown, a debtor who fails to appear at a hearing scheduled pursuant to paragraph (f)(4) of this section will be deemed as not having timely filed a request for a hearing.

(g) *Wage garnishment order.* (1) Unless the agency receives information that the agency believes justifies a delay or cancellation of the withholding order, the agency should send, by first class mail, a withholding order to the debtor's employer:

(i) Within 30 days after the debtor fails to make a timely request for a hearing (i.e., within 15 business days after the mailing of the notice described in paragraph (e)(1) of this section), or,

(ii) If a timely request for a hearing is made by the debtor, within 30 days after a final decision is made by the agency to proceed with garnishment, or,

(iii) As soon as reasonably possible thereafter.

(2) The withholding order sent to the employer under paragraph (g)(1) of this section shall be in a form prescribed by the Secretary of the Treasury. The withholding order shall contain the signature of, or the image of the signature of, the head of the agency or his/her delegatee. The order shall contain only the information necessary for the employer to comply with the withholding order. Such information includes the debtor's name, address, and

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social security number, as well as instructions for withholding and information as to where payments should be sent.

(3) The agency will retain evidence of service indicating the date of mailing of the order.

(h) *Certification by employer.* Along with the withholding order, the agency shall send to the employer a certification in a form prescribed by the Secretary of the Treasury. The employer shall complete and return the certification to the agency within the time frame prescribed in the instructions to the form. The certification will address matters such as information about the debtor's employment status and disposable pay available for withholding.

(i) *Amounts withheld.* (1) After receipt of the garnishment order issued under this section, the employer shall deduct from all disposable pay paid to the applicable debtor during each pay period the amount of garnishment described in paragraph (i)(2) of this section.

(2)(i) Subject to the provisions of paragraphs (i)(3) and (i)(4) of this section, the amount of garnishment shall be the lesser of:

(A) The amount indicated on the garnishment order up to 15% of the debtor's disposable pay; or

(B) The amount set forth in 15 U.S.C. 1673(a)(2) (Restriction on Garnishment). The amount set forth at 15 U.S.C. 1673(a)(2) is the amount by which a debtor's disposable pay exceeds an amount equivalent to thirty times the minimum wage. See 29 CFR 870.10.

(3) When a debtor's pay is subject to withholding orders with priority the following shall apply:

(i) Unless otherwise provided by Federal law, withholding orders issued under this section shall be paid in the amounts set forth under paragraph (i)(2) of this section and shall have priority over other withholding orders which are served later in time. Notwithstanding the foregoing, withholding orders for family support shall have priority over withholding orders issued under this section.

(ii) If amounts are being withheld from a debtor's pay pursuant to a withholding order served on an employer before a withholding order issued pursuant to this section, or if a with-

holding order for family support is served on an employer at any time, the amounts withheld pursuant to the withholding order issued under this section shall be the lesser of:

(A) The amount calculated under paragraph (i)(2) of this section, or

(B) An amount equal to 25% of the debtor's disposable pay less the amount(s) withheld under the withholding order(s) with priority.

(iii) If a debtor owes more than one debt to an agency, the agency may issue multiple withholding orders provided that the total amount garnished from the debtor's pay for such orders does not exceed the amount set forth in paragraph (i)(2) of this section. For purposes of this paragraph (i)(3)(iii), the term *agency* refers to the agency that is owed the debt.

(4) An amount greater than that set forth in paragraphs (i)(2) and (i)(3) of this section may be withheld upon the written consent of debtor.

(5) The employer shall promptly pay to the agency all amounts withheld in accordance with the withholding order issued pursuant to this section.

(6) An employer shall not be required to vary its normal pay and disbursement cycles in order to comply with the withholding order.

(7) Any assignment or allotment by an employee of his earnings shall be void to the extent it interferes with or prohibits execution of the withholding order issued under this section, except for any assignment or allotment made pursuant to a family support judgment or order.

(8) The employer shall withhold the appropriate amount from the debtor's wages for each pay period until the employer receives notification from the agency to discontinue wage withholding. The garnishment order shall indicate a reasonable period of time within which the employer is required to commence wage withholding.

(j) *Exclusions from garnishment.* The agency may not garnish the wages of a debtor who it knows has been involuntarily separated from employment until the debtor has been reemployed continuously for at least 12 months. The debtor has the burden of informing

the agency of the circumstances surrounding an involuntary separation from employment.

(k) *Financial hardship.* (1) A debtor whose wages are subject to a wage withholding order under this section, may, at any time, request a review by the agency of the amount garnished, based on materially changed circumstances such as disability, divorce, or catastrophic illness which result in financial hardship.

(2) A debtor requesting a review under paragraph (k)(1) of this section shall submit the basis for claiming that the current amount of garnishment results in a financial hardship to the debtor, along with supporting documentation. Agencies shall consider any information submitted in accordance with procedures and standards established by the agency.

(3) If a financial hardship is found, the agency shall downwardly adjust, by an amount and for a period of time agreeable to the agency, the amount garnished to reflect the debtor's financial condition. The agency will notify the employer of any adjustments to the amounts to be withheld.

(1) *Ending garnishment.* (1) Once the agency has fully recovered the amounts owed by the debtor, including interest, penalties, and administrative costs consistent with the FCCS, the agency shall send the debtor's employer notification to discontinue wage withholding.

(2) At least annually, an agency shall review its debtors' accounts to ensure that garnishment has been terminated for accounts that have been paid in full.

(m) *Actions prohibited by the employer.* An employer may not discharge, refuse to employ, or take disciplinary action against the debtor due to the issuance of a withholding order under this section.

(n) *Refunds.* (1) If a hearing official, at a hearing held pursuant to paragraph (f)(3) of this section, determines that a debt is not legally due and owing to the United States, the agency shall promptly refund any amount collected by means of administrative wage garnishment.

(2) Unless required by Federal law or contract, refunds under this section shall not bear interest.

(o) *Right of action.* The agency may sue any employer for any amount that the employer fails to withhold from wages owed and payable to an employee in accordance with paragraphs (g) and (i) of this section. However, a suit may not be filed before the termination of the collection action involving a particular debtor, unless earlier filing is necessary to avoid expiration of any applicable statute of limitations period. For purposes of this section, "termination of the collection action" occurs when the agency has terminated collection action in accordance with the FCCS or other applicable standards. In any event, termination of the collection action will have been deemed to occur if the agency has not received any payments to satisfy the debt from the particular debtor whose wages were subject to garnishment, in whole or in part, for a period of one (1) year.

[63 FR 25139, May 6, 1998, as amended at 64 FR 22908, Apr. 28, 1999; 66 FR 51868, Oct. 11, 2001]

#### § 285.12 Transfer of debts to Treasury for collection.

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

*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.

*Creditor agency* means any Federal 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. As used in this section, the term "debt" does not include debts arising under the Internal Revenue Code of 1986.

*Debt collection center* means an agency or a unit or subagency within an agency that has been designated by the Secretary of the Treasury to collect debt owed to the United States. FMS is a debt collection center.

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*FMS* means the Financial Management Service, a bureau of the Department of the Treasury.

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

*Secretary* means the Secretary of the Treasury.

(b) *In general.* Cross-servicing means that FMS or another debt collection center is taking appropriate debt collection action on behalf of one or more Federal agencies or a unit or sub-agency thereof.

(c) *Mandatory transfer of debts to FMS.* (1) Except as set forth in paragraph (d) of this section, a creditor agency shall transfer any debt that is more than 180 days delinquent to FMS for debt collection services. For accounting and reporting purposes, the debt remains on the books and records of the agency which transferred the debt.

(2) On behalf of the creditor agency, FMS will take appropriate action to collect or compromise the transferred debt, or to suspend or terminate collection action thereon, in accordance with the statutory and regulatory requirements and authorities applicable to the debt and the action. Appropriate action to collect a debt may include referral to another debt collection center, a private collection contractor, or the Department of Justice for litigation. The creditor agency shall advise FMS, in writing, of any specific statutory or regulatory requirements pertaining to their debt and will agree, in writing, to a collection strategy which includes parameters for entering into compromise and repayments agreements with debtors.

(3)(i) A debt is considered 180 days delinquent for purposes of this section if it is 180 days past due and is legally enforceable. A debt is past-due if it 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 satisfactory payment arrangements have been made. A debt is legally enforceable if there has been a final agency determination that the debt, in the amount stated, is due and there are no

legal bars to collection action. Where, for example, a debt is the subject of a pending administrative review process required by statute or regulation and collection action during the review process is prohibited, the debt is not considered legally enforceable for purposes of mandatory transfer to FMS and is not to be transferred even if the debt is more than 180 days past-due.

(ii) When a final agency determination is made after an administrative appeal or review process, the creditor agency must transfer such debt to FMS, if more than 180 days delinquent, within 30 days after the date of the final decision.

(iii) Nothing in this section is intended to impact the date of delinquency of a debt for other purposes such as for purposes of accruing interest and penalties.

(4) Agencies are not required to transfer to FMS debts which are less than \$25 (including interest, penalties, and administrative costs), or such other amount as FMS may determine. Agencies may transfer debts less than \$25 to FMS if the creditor agency, in consultation with FMS, determines that transfer is important to ensure compliance with the agency's policies or programs. Agencies may combine individual debts of less than \$25 owed by the same debtor for purposes of meeting the \$25 threshold.

(d) *Exceptions to mandatory transfer.* (1) A creditor agency is not required to transfer a debt to FMS pursuant to paragraph (c)(1) of this section only during such period of time that the debt:

(i) Is in litigation or foreclosure as described in paragraph (d)(2) of this section;

(ii) Is scheduled for sale as described in paragraph (d)(3) of this section;

(iii) Is at a private collection contractor if the debt has been referred to a private collection contractor in accordance with paragraph (e) of this section;

(iv) Is at a debt collection center if the debt has been referred to a Treasury-designated debt collection center in accordance with paragraph (f) of this section;

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(v) Is being collected by internal offset as described in paragraph (d)(4) of this section; or

(vi) Is covered by an exemption granted by the Secretary as described in paragraph (d)(5) of this section.

(2)(i) A debt is in litigation if:

(A) The debt has been referred to the Attorney General for litigation by the creditor agency; or

(B) The debt is the subject of proceedings pending in a court of competent jurisdiction, including bankruptcy proceedings, whether initiated by the creditor agency, the debtor, or any other party.

(ii) A debt is in foreclosure if:

(A)(1) Collateral securing the debt is the subject of judicial foreclosure proceedings in a court of competent jurisdiction; or

(2) Notice has been issued that collateral securing the debt will be foreclosed upon, liquidated, sold, or otherwise transferred pursuant to applicable law in a nonjudicial proceeding; and

(B) The creditor agency anticipates that proceeds will be available from the liquidation of the collateral for application to the debt.

(3) A debt is scheduled for sale if:

(i) The debt will be disposed of under an asset sales program within one (1) year after becoming eligible for sale; or

(ii) The debt will be disposed of under an asset sales program and a schedule established by the creditor agency and approved by the Director of the Office of Management and Budget.

(4) A debt is being collected by internal offset if a creditor agency expects the debt to be collected in full within three (3) years from the date of delinquency through internal offset. A debt is being collected by internal offset if the creditor agency is withholding funds payable to the debtor by the creditor agency, or if the creditor agency has issued notice to the debtor of the creditor agency's intent to offset such funds.

(5)(i) Upon the written request of the head of an agency, or as the Secretary may determine on his/her own initiative, the Secretary may exempt any class of debts from the application of the requirement described in paragraph (c)(1) of this section. In determining whether to exempt a class of debts, the

Secretary will determine whether exemption is in the best interests of the Government after considering the following factors:

(A) Whether an exemption is the best means to protect the government's financial interest, taking into consideration the number, dollar amount, age and collection rates of the debts for which exemption is requested;

(B) Whether the nature of the program under which the delinquencies have arisen is such that the transfer of such debts would interfere with program goals; and

(C) Whether an exemption would be consistent with the purposes of the Debt Collection Improvement Act of 1996 (DCIA), Pub. L. 104-134, 110 Stat. 1321-358 (April 26, 1996).

(ii) Requests for exemptions must clearly identify the class of debts for which an exemption is sought and must explain how application of the factors listed above to that class of debts warrants an exemption.

(iii) Requests for exemption must be made by the head of the agency requesting the exemption, the Chief Financial Officer of the agency, or the Deputy Chief Financial Officer of the agency. For purposes of this section, the head of an agency does not include the head of a subordinate organization within a department or agency.

(6) In accordance with paragraph (d)(5)(i) of this section, debts being serviced and/or collected in accordance with applicable statutes and/or regulations by third parties, such as private lenders or guaranty agencies are exempt from the requirements in paragraph (c)(1) of this section.

(e) *Schedule of private collection contractors.* FMS will maintain a schedule of private collection contractors eligible for referral of debts from FMS, other debt collection centers, and creditor agencies for collection action. An agency with debt which has not been transferred to FMS or referred to another debt collection center, for example, debt that is less than 180 days delinquent, may refer such debt to a private collection contractor listed on FMS' schedule of private collection contractors provided they do so in accordance with procedures established by FMS. Alternatively, an agency may

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refer debt that is less than 180 days delinquent to a private collection contractor pursuant to a contract between the creditor agency and the private collection contractor, as authorized by law.

(f) *Debt collection centers.* A creditor agency may transfer debt that has not been transferred to FMS, such as debt less than 180 days delinquent, to a Treasury-designated debt collection center, with the consent of, and in accordance with procedures established by FMS. Debt collection centers will take action upon a debt in accordance with the statutory or regulatory requirements and other authorities that apply to the debt or to the particular action being taken. Debt collection centers may, on behalf of the creditor agency and subject to the terms under which the debt collection center has been designated as such by the Secretary, take any action to collect, compromise, suspend or terminate collection action on debts, in accordance with terms and conditions agreed upon in writing by the creditor agency and the debt collection center or FMS. Debt collection centers may charge fees for the debt collection services in accordance with the provisions of paragraph (j) of this section.

(g) *Administrative offset.* As described in paragraph (c) of this section, under the DCIA, agencies are required to transfer all debts over 180 days delinquent to FMS for purposes of debt collection (i.e., cross-servicing). Agencies are also required, under the DCIA, to notify the Secretary of all debts over 180 days delinquent for purposes of administrative offset. Administrative offset is one type of collection tool used by FMS and Treasury-designated debt collection centers to collect debts transferred under this section. Thus, by transferring debt to FMS or to a Treasury-designated debt collection center under this section, Federal agencies will satisfy the requirement to notify the Secretary of debts for purposes of administrative offset and duplicate referrals are not required. A debt which is not transferred to FMS for purposes of debt collection, however, such as a debt which falls within one of the exempt categories listed in paragraph (d) of this section, neverthe-

less may be subject to the DCIA requirement of notification to the Secretary for purposes of administrative offset.

(h) *Voluntary referral of debts less than 180 days delinquent.* A creditor agency may refer any debt that is less than 180 days delinquent to FMS or, with the consent of FMS, to a Treasury-designated debt collection center for debt collection services.

(i) *Certification.* Before a debt may be transferred to FMS or another debt collection center, the head of the creditor agency or his or her delegatee must certify, in writing, that the debts being transferred are valid, legally enforceable, and that there are no legal bars to collection. Creditor agencies must also certify that they have complied with all prerequisites to a particular collection action under the laws, regulations or policies applicable to the agency unless the creditor agency has requested, and FMS has agreed, to do so on the creditor agency's behalf. The creditor agency shall notify FMS 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.

(j) *Fees.* FMS and other debt collection centers (as defined in paragraph (a) of this section) may charge fees sufficient to cover the full cost of providing debt collection services authorized by this section. Fees paid to recover amounts owed may not exceed amounts collected. Nothing in this rule precludes a creditor agency from agreeing to pay fees for debt collection services which are not based on amounts collected. FMS and debt collection centers are authorized to retain fees from amounts collected and may deposit and use such fees in accordance with 31 U.S.C. 3711(g). Fees charged by FMS and other debt collection centers may be added to the debt as an administrative cost if authorized under 31 U.S.C. 3717(e).

[63 FR 16356, Apr. 2, 1998, as amended at 64 FR 22908, Apr. 28, 1999]



**§ 285.13 Barring delinquent debtors from obtaining Federal loans or loan insurance or guarantees.**

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

*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.

*Creditor agency* means any Federal 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 or an agency thereof by a person, including debt administered by a third party as an agent for the Federal Government.

*Federal financial assistance* or *financial assistance* means any Federal loan (other than a disaster loan), loan insurance, or loan guarantee.

*FMS* means the Financial Management Service, a bureau of the Department of the Treasury.

*Nontax debt* means any debt other than a debt under the Internal Revenue Code of 1986 (26 U.S.C. 1 et seq.).

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

*Secretary* means the Secretary of the Treasury.

(b) *Purpose and scope.* (1) This section prescribes standards for determining whether an outstanding nontax debt owed to the Federal Government is in delinquent status and whether such delinquency is resolved for the purpose of denying Federal financial assistance to a debtor. In addition, this section prescribes the circumstances under which the Secretary may exempt a class of debts from affecting a debtor's loan eligibility. This section also outlines the factors an agency should consider when determining whether waiver of the general rule in paragraph (c) of this section is appropriate.

(2) Additional guidance concerning debt collection and debt management is provided in "Managing Federal Receivables" and other FMS publications.

(3) Nothing in this section requires an agency to grant Federal financial assistance if denial otherwise is authorized by statute, regulation, or agency policies and procedures. For example, if an agency requires borrowers to have a satisfactory credit history, the agency may deny financial assistance even if a delinquent debt has been resolved.

(4) This section does not confer any new rights or benefits on persons seeking Federal financial assistance.

(5) This section applies to any person owing delinquent nontax debt and to any agency that administers a program that grants Federal financial assistance.

(c) *General rule.* (1) As required by the provisions of 31 U.S.C. 3720B, a person owing an outstanding nontax debt that is in delinquent status shall not be eligible for Federal financial assistance. This eligibility requirement applies to all persons seeking Federal financial assistance and owing an outstanding nontax debt in delinquent status, including, but not limited to, guarantors. This eligibility requirement applies to all Federal financial assistance even if creditworthiness or credit history is not otherwise a factor for eligibility purposes, e.g., student loans. A person may be eligible for Federal financial assistance only after the delinquency is resolved in accordance with this section. An agency may waive this eligibility requirement in accordance with paragraph (g) of this section.

(2) An agency from which a person seeks Federal financial assistance may determine, under standards issued by the agency, that a person is ineligible for Federal financial assistance under this section if:

(i) The person is controlled by a person owing an outstanding nontax debt that is in delinquent status (e.g., a corporation is controlled by an officer, director, or shareholder who owes a debt); or

(ii) The person controls a person owing an outstanding nontax debt that is in delinquent status (e.g., a corporation controls a wholly-owned or partially-owned subsidiary which owes a debt).

(3) A creditor agency may obtain information concerning whether or not a

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person seeking Federal financial assistance owes a delinquent debt from, among other sources, credit reports, information contained on credit applications, and the Department of Housing and Urban Development's Credit Alert Interactive Voice Response System (CAIVRS). For information about participating in the CAIVRS program, agencies should contact the Director of Information Resources Management, Policy and Management Division, Office of Information Technology, Department of Housing and Urban Development, 451 7th Street, S.W., Washington, DC 20410.

(d) *Delinquent status.* (1) Except as otherwise provided in paragraph (d)(2) of this section, a debt is in "delinquent status" for purposes of this section if the debt has not been paid within 90 days of the payment due date. The payment due date is the date specified in the creditor agency's initial written demand for payment or applicable agreement or instrument (including a post-delinquency repayment agreement).

(2) For purposes of this section, a debt is not in delinquent status if:

(i) The person seeking Federal financial assistance has been released by the creditor agency from any obligation to pay the debt, or there has been an adjudication or determination that such person does not owe or does not have to pay the debt;

(ii) The debtor is the subject of, or has been discharged in, a bankruptcy proceeding, and if applicable, the person seeking Federal financial assistance is current on any court authorized repayment plan; or

(iii) The existence of the debt or the agency's determination that the debt is delinquent is being challenged under an ongoing administrative appeal or contested judicial proceeding and the appeal was filed by the debtor in a timely manner. Unless otherwise prohibited, an agency may defer making a determination as to whether or not to extend credit until the appeal process is completed.

(3) Unless the provisions of paragraph (d)(2) apply, a debt is in delinquent status even if the creditor agency has suspended or terminated collection activity with respect to such debt. For ex-

ample, a delinquent nontax debt that has been written off the books of the creditor agency or reported to the Internal Revenue Service as discharged (i.e., canceled) is in delinquent status for purposes of this section.

(4) Nothing in this section defines the terms "delinquent" or "delinquent status" for any purposes other than those described in this section.

(e) *Delinquency resolution.* (1) For purposes of this section, a person's delinquent debt is resolved only if the person:

(i) Pays or otherwise satisfies the delinquent debt in full;

(ii) Pays the delinquent debt in part if the creditor agency accepts such part payment as a compromise in lieu of payment in full;

(iii) Cures the delinquency under terms acceptable to the creditor agency in that the person pays any overdue payments, plus all interest, penalties, late charges, and administrative charges assessed by the creditor agency as a result of the delinquency; or

(iv) Enters into a written repayment agreement with the creditor agency to pay the debt, in whole or in part, under terms and conditions acceptable to the creditor agency.

(2) Unless the provisions of paragraph (e)(1) of this section apply, a delinquent debt is not resolved even if the creditor agency has suspended or terminated collection activity with respect to such debt. For example, a delinquent nontax debt that has been written off the books of the creditor agency or reported to the Internal Revenue Service as discharged (i.e., canceled) would not be "resolved." If the provisions of paragraph (e)(1) of this section do apply, a delinquent debt is considered resolved. For example, if a portion of a debt has been written off after the person has paid the debt in part where the creditor agency accepts such part payment as a compromise in lieu of payment in full, the entire debt would be deemed "resolved" for purposes of this section in accordance with paragraph (e)(1)(i) of this section.

(f) *Exemptions by the Secretary.* (1) Upon the written request and recommendation of the head of the creditor agency to which a class of debts is owed, the Secretary may exempt any

class of debts from affecting a debtor's eligibility for Federal financial assistance based on the provisions of 31 U.S.C. 3720B and this section.

(2) The creditor agency recommending an exemption for a class of debts will provide the Secretary with information about:

(i) The nature of the program under which the delinquencies have arisen;

(ii) The number, dollar amount, and age of the debts in the program for which exemption is recommended;

(iii) The reasons why an exemption is justified, including why the granting of financial assistance to persons owing the type of debt for which exemption is requested would not be contrary to the Government's goal to reduce losses by requiring proper screening of potential borrowers; and,

(iv) Other information the Secretary deems necessary to consider the exemption request.

(3) The Secretary may exempt a class of debts if exemption is in the best interests of the Federal Government.

(g) *Waivers by the agency.* (1) The head of an agency from which a person seeks to obtain Federal financial assistance may waive the eligibility requirement described in paragraph (c) of this section. Waivers shall be granted only on a person by person basis. The head of the agency may delegate the waiver authority only to the Chief Financial Officer of the agency. The Chief Financial Officer may redelegate the authority only to the Deputy Chief Financial Officer of the agency.

(2) The authorized agency official should balance the following factors

when deciding whether to grant a waiver under paragraph (g)(1) of this section:

(i) Whether the denial of the financial assistance to the person would tend to interfere substantially with or defeat the purposes of the financial assistance program or otherwise would not be in the best interests of the Federal Government; and

(ii) Whether the agency's granting of the financial assistance to the person is contrary to the Government's goal to reduce losses from debt management activities by requiring proper screening of potential borrowers.

(3) When balancing the factors described in paragraph (d)(2) of this section, the authorized agency official should consider:

(i) The age, amount, and cause(s) of the delinquency and the likelihood that the person will resolve the delinquent debt; and

(ii) The amount of total debt, delinquent or otherwise, owed by the person and the person's credit history with respect to repayment of debt.

(4) Each agency shall retain a centralized record of the number and type of waivers granted under this section.

(h) *Effect of denial of Federal financial assistance.* Nothing contained in this section precludes a person who has been denied Federal financial assistance from obtaining such assistance after that person's delinquent debt has been resolved in accordance with paragraph (e)(1) of this section.

[63 FR 67756, Dec. 8, 1998]