

Dated: November 12, 2002.

**James S. Carmichael,**

*Rear Admiral, U.S. Coast Guard, Commander,  
Seventh Coast Guard District.*

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### 45 CFR Part 31

RIN 0991-AB17

#### Tax Refund Offset

**AGENCY:** Department of Health and Human Services.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Department of Health and Human Services (HHS) proposes to amend its tax refund offset regulations to reflect (1) the tax refund offset provisions of the Deficit Reduction Act of 1984 as amended by the Debt Collection Improvement Act of 1996, codified at 31 U.S.C. 3720A, and (2) implementing regulations issued by the Department of the Treasury at 31 CFR 285.2. The proposed rule will amend the process by which HHS certifies and refers past-due debt to the Department of Treasury for tax refund offset to satisfy debt owed to the HHS.

**DATES:** Submit comments on or before February 3, 2003.

**ADDRESSES:** Send all comments concerning this proposed rule to: Katherine M. Drews, Deputy Associate General Counsel, Office of the General Counsel, General Law Division, Room 5362, 330 Independence Avenue, SW., Washington, DC 20201.

**FOR FURTHER INFORMATION CONTACT:** Katherine M. Drews, 202-619-0150.

**SUPPLEMENTARY INFORMATION:**

#### Background

This proposed regulation implements the tax refund offset provisions of the Deficit Reduction Act of 1984 as amended by the Debt Collection Act of 1996 (DCIA), codified at 31 U.S.C. 3720A, and the implementing regulations issued by the Department of the Treasury at 31 CFR 285.2. Within this framework, a Federal agency owed a past-due debt must notify the Secretary of the Treasury of such debt for collection by tax refund offset in accordance with regulations promulgated by the Secretary of the Treasury. The Financial Management Service (FMS), a bureau of the Department of the Treasury (Treasury), is responsible for promulgating the regulations implementing this and other

debt collection tools established by the DCIA. The Treasury Final Rule, as amended, is published at 31 CFR 285.2.

#### Basic Provisions

In accordance with the requirements of the DCIA and the implementing regulations issued by the Department of Treasury at 31 CER 285.2, the proposed regulation establishes the rules and procedures for certifying and referring a past-due debt to FMS for tax refund offset, correcting and updating referral information transmitted to FMS, and providing the debtor with written notice at least 60 days before the Department refers a debt to FMS. This written notice informs the debtor of the nature and amount of the debt, that the debt is past-due and legally enforceable, that the Department intends to enforce collection by referring the debt to the Department of Treasury for tax refund offset, and that the debtor has a right to inspect and copy Department records relating to the debt, enter into a repayment agreement, and request review and present evidence that all or part of the debt is not past-due or legally enforceable.

#### Rules and Procedures

Except for minor changes to make the provisions agency-specific, the proposed rule is substantially identical to the Treasury Final Rule. In accordance with the substantive and procedural requirements of the DCIA and the Treasury Final Rule, this proposed rule would establish HHS rules and procedures for:

1. Certifying and referring a past-due debt to FMS for tax refund offset.
2. Correcting and updating referral information transmitted to FMS.
3. Providing the debtor with written notice at least 60 days before referring a debt to FMS. This written notice must inform the debtor of the nature and amount of the debt, that the debt is past-due and legally enforceable, that the Department intends to enforce collection by referring the debt to the Department of Treasury for tax refund offset, and that the debtor has a right to inspect and copy Department records relating to the debt, enter into a repayment agreement, and request review and present evidence that all or part of the debt is not past-due or legally enforceable.

#### Economic Impact

We have examined the impact of this rule as required by Executive Order 12866 (September 1993, *Regulatory Planning and Review*), as amended by Executive Order 13258 (February 2002, *Amending Executive Order 12866 on*

*Regulatory Planning and Review*) and the Regulatory Flexibility Act (RFA) (September 19, 1980; Pub. L. 96-354), the Unfunded Mandated Reform Act of 1995 (Pub. L. 104-4), and Executive Order 13132 (August 1999, *Federalism*).

Executive Order 12866 (the Order), as amended by Executive Order 13258, directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize the benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects (\$100 million or more in 1 year). We have determined that the proposed rule is consistent with the principles set forth in the Order, and we find that the proposed rule would not have an effect on the economy that exceeds \$100 million in any one year. In addition, this rule is not a major rule as defined at U.S.C. 804(2). In accordance with the provisions of the Order, the rule was reviewed by the Office of Management and Budget.

It is hereby certified under the RFA that this proposed regulation, will not have a significant economic impact on a substantial number of small entities. This proposed rule applies only to individuals with past-due debts owed to the United States.

Section 202 of the Unfunded Mandates Reform Act of 1995 also requires that agencies assess anticipated costs and benefits before issuing any rule that may result in expenditure of in any 1 year by State, local, or tribal governments, in the aggregate, or by the private sector, of \$100 million. As noted above, we find that the proposed rule would not have an effect of this magnitude on the economy.

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has Federalism implications. We have reviewed the proposed rule under the threshold criterion of Executive Order 13132, *Federalism*, and have determined that this proposed rule would not have substantial direct impact on States, or on the distribution of power and responsibilities among the various levels of government. As there are no Federalism implications, a Federalism impact statement is not required.

For purposes of the Paperwork Reduction Act, 44 U.S.C. chapter 35, this proposed rule will impose no new reporting or record-keeping requirements on any member of the public.

#### List of Subjects in 45 CFR Part 31

Administrative practice and procedure, Taxes, Claims, and Debts.

For the reasons set forth in the preamble, 45 CFR Subtitle A Part 31 is proposed to be revised as follows:

### PART 31—REFERRAL OF DEBT TO IRS FOR TAX REFUND OFFSET

Sec.

- 31.1 Purpose and scope.
- 31.2 Definitions.
- 31.3 General rule.
- 31.4 Certification and referral of debt.
- 31.5 Notice.
- 31.6 Review of Departmental records.
- 31.7 Review of a determination that a debt is past-due and legally enforceable.

**Authority:** 31 U.S.C. 3720A, 31 C.F.R. 285.2, E.O. 12866, E.O. 13258.

#### § 31.1 Purpose and scope.

(a) *Purpose.* This part prescribes the Department's standards and procedures for submitting past-due, legally enforceable debts to the Department of the Treasury for collection by tax refund offset.

(b) *Authority.* These standards and procedures are authorized under tax refund offset provision of the Deficit Reduction Act of 1984, as amended by the Debt Collection Improvement Act of 1996, codified at 31 U.S.C. 3720A, and implementing regulations issued by the Department of the Treasury at 31 CFR 285.2.

(c) *Scope.* (1) This part applies to all Departmental Operating Divisions and Regional Offices that administer a program that gives rise to a past-due non-tax debt owed to the United States, and to all officers or employees of the Department authorized to collect such debt.

(2) Nothing in this part precludes the Department from pursuing other debt collection procedures, including administrative wage garnishment under part 32 of this title, to collect a debt that has been submitted to the Department of the Treasury under this part. The Department may use such debt collection procedures separately or in conjunction with the offset collection procedures of this part.

#### § 31.2 Definitions.

In this part, unless the context otherwise requires:

*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 claim.

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

*Debt* or *claim* means an amount of money, funds, or other property determined by an appropriate official of the Federal government to be owed to the United States from any individual, entity, organization, association, partnership, corporation, or State or local government or subdivision, except another Federal agency.

*Debtor* means an individual, organization, association, partnership, corporation, or State or local government or subdivision indebted to the Government, or the person or entity with legal responsibility for assuming the debtor's obligation.

*Department* means the Department of Health and Human Services, and each of its Operating Divisions and regional offices.

*Evidence of service* means information retained by the Department indicating the nature of the document to which it pertains, the date of mailing of the document, and the address and name of the debtor to whom it is being sent. A copy of the dated and signed written notice of intent to offset provided to the debtor pursuant to this part may be considered evidence of service for purposes of this regulation. Evidence of service may be retained electronically so long as the manner of retention is sufficient for evidentiary purposes.

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

*IRS* means the Internal Revenue Service, a bureau of the Department of the Treasury. *Legally enforceable* means that 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.

*Operating division* means each separate component within the Department of Health and Human Services, including, but not limited to, the Administration for Children and Families, the Administration on Aging, the Centers for Disease Control and Prevention, the Centers for Medicare & Medicaid Services, the Food and Drug Administration, the National Institutes of Health, and the Office of the Secretary.

*Past-due debt* means a debt which the debtor does not pay or otherwise resolve by the date specified in the initial demand for payment, or in an applicable written repayment agreement or other instrument, including a post-delinquency repayment agreement.

*Secretary* means the Secretary of the Department of Health and Human Services, or the Secretary's designee within any Operating Division or Regional Office.

*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.

*Tax refund offset* means withholding or reducing a tax refund payment by an amount necessary to satisfy a debt owed to the United States 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.

#### § 31.3 General rule.

(a) Any past-due, legally enforceable debt of at least \$25, or such other minimum amount as determined by the Secretary of the Treasury, shall be submitted to FMS for collection by tax refund offset.

(b) FMS will compare tax refund payment records, as certified by the IRS, with records of debts submitted by the Department under this part. A match will occur when the taxpayer identification number and name 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. Any amounts not offset will be paid to the payee(s) listed in the payment certification record.

#### § 31.4 Certification and referral of debt.

(a) *Certification.* The Secretary shall certify to FMS that:

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

(2) Except in the case of a judgment debt or as otherwise allowed by law, the debt is referred within ten (10) years after the Department's right of action accrues;

(3) The Department has made reasonable efforts to obtain payment of the debt, and has:

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

(ii) Notified, or made a reasonable attempt to notify, the debtor that the debt is past-due, and unless paid within 60 days of the date of the notice, the debt may be referred to Treasury for tax refund offset. For purposes of this regulation, the Department has made a reasonable attempt to notify the debtor if the agency uses the current address information contained in the Department's records related to the debt. If address validation is desired or necessary, the Department may obtain information from the IRS pursuant to 26 U.S.C. 6103 (m)(2)(4) or (5).

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

(iv) Provided the debtor with an opportunity to make a written agreement to repay the debt; and

(4) The debt is at least \$25.

(b) *Referral.* (1) The Secretary shall submit past-due, legally enforceable debt information for tax refund offset in the time and manner prescribed by the Department of the Treasury.

(2) For each debt referred under this part, the Secretary will include the following information:

(i) The name and taxpayer identifying number, as defined in 26 U.S.C. 6109, of the debtor 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; and

(iv) The designation of the Department referring the debt.

(c) *Correcting and updating referral.* (1) After referring a debt under this part, the Secretary shall promptly notify the Department of the Treasury if:

(i) An error was made with respect to information transmitted to the Department of Treasury;

(ii) The Department receives a payment or credits a payment to the account of a debtor referred for tax refund offset; or

(iii) The debt amount is otherwise incorrect.

(2) The Department shall provide the certification required under paragraph (a) of this section for any increases to amounts owed.

(d) *Rejection of certification.* If the Department of Treasury rejects a certification because it does not comply with the requirements of paragraph (a) this section, upon notification of the rejection and the reason(s) for rejection, the Secretary will resubmit the debt with a corrected certification.

#### § 31.5 Notice.

(a) *Requirements.* If not previously included in the initial demand letter provided under § 30.11, at least 60 days before referring a debt for tax refund offset, the Secretary shall mail, by first class mail to the debtor's last known address, written notice informing the debtor of:

(1) The nature and amount of the debt;

(2) The determination that the debt is past-due and legally enforceable, and unless paid within 60 days after the date of the notice, the Secretary intends to enforce collection by referring the debt to the Department of the Treasury for tax refund offset; and

(3) The debtor's rights to:

(i) Inspect and copy Department records relating to the debt;

(ii) Enter into written agreement to repay the amount of the debt;

(iii) Request review and present evidence that all or part of the debt is not past-due or not legally enforceable.

(b) The Secretary will retain evidence of service indicating the date of mailing of the notice. The notice may be retained electronically so long as the manner of retention is sufficient for evidentiary purposes.

#### § 31.6 Review of Departmental records.

(a) To inspect or copy Departmental records relating to the debt, the debtor must send a written request to the address designated in the notice described in § 31.5. The request must be received by the Department within 60 days from the date of the notice.

(b) In response to a timely request as described in paragraph (a) of this section, the designated Department official shall notify the debtor of the location and time when the debtor may inspect and copy such records. If the debtor is unable to personally inspect such records as the result of geographical or other constraints, the Department will arrange to send copies of the records to the debtor.

#### § 31.7 Review of a determination that a debt is past-due and legally enforceable.

(a) *Requesting a review.*

(1) If the debtor believes that all or part of the debt is not past-due or not legally enforceable, the debtor may request a review by the Department by sending a written request to the address provided in the notice. The written request must be received by the Department within 60 days from the date of the notice.

(2) The request for review must be signed by the debtor, state the amount disputed, and fully identify and explain the evidence that the debtor believes supports the debtor's position. The debtor must submit with the request any documents that the debtor wishes to be considered, or the debtor must state in the request that additional information will be submitted within the 60-day time period.

(3) Failure to timely request a review will be deemed an admission by the debtor that the debt is past-due and legally enforceable, and will result in a referral of the debt to the Department of the Treasury without further action.

(b) *Review.* Upon the timely submission of evidence by the debtor, the Department shall review the dispute and shall consider its records and any documentation and evidence submitted by the debtor. The Department shall make a determination based on the review of the written record, and shall send a written notice of its decision to the debtor. There is no administrative appeal of this decision.

(c) A debt that previously has been reviewed pursuant to this part, or that has been reduced to a judgment, will not be reconsidered under this part unless the evidence presented by the debtor disputes payments made or events occurring subsequent to the previous review or judgment.

Dated: August 23, 2002.

**Tommy G. Thompson,**

*Secretary.*

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