

**SOCIAL SECURITY ADMINISTRATION****20 CFR Parts 404, 408, 416, and 422**

[Docket No. SSA-2010-0010]

RIN 0960-AH19

**Recovery of Delinquent Debts—  
Treasury Offset Program  
Enhancements****AGENCY:** Social Security Administration.**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** We propose to amend our Tax Refund Offset (TRO) and Administrative Offset regulations. We are conforming our regulations to those of the Department of the Treasury (Treasury) for the following reasons: (1) Treasury removed the 10-year limitation to collect delinquent debts owed the United States by reducing eligible Federal payments, and (2) more States are participating in reciprocal agreements with Treasury to offset State payments, including tax refunds to reduce or extinguish a federally owed debt.

The potential exists to increase collection of Federal debts for two reasons: (1) We are authorized to collect debts indefinitely by offsetting eligible Federal payments through the Treasury Offset Program (TOP), and (2) States that have reciprocal agreements with Treasury are authorized to offset payments to reduce or extinguish debts owed to the Federal agencies.

**DATES:** To ensure that your comments are considered, we must receive them no later than May 2, 2011.

**ADDRESSES:** You may submit comments by any one of three methods—Internet, fax, or mail. Do not submit the same comments multiple times or by more than one method. Regardless of which method you choose, please state that your comments refer to Docket No. SSA-2010-0010 so that we may associate your comments with the correct regulation.

**Caution:** You should be careful to include in your comments only information that you wish to make publicly available. We strongly urge you not to include in your comments any personal information, such as Social Security numbers or medical information.

1. *Internet:* We strongly recommend that you submit your comments via the Internet. Please visit the Federal eRulemaking portal at <http://www.regulations.gov>. Use the Search function to find docket number SSA-2010-0010. The system will issue a tracking number to confirm your submission. You will not be able to

view your comment immediately because we must post each comment manually. It may take up to a week for your comment to be viewable.

2. *Fax:* Fax comments to (410) 966-2830.

3. *Mail:* Mail your comments to the Office of Regulations, Social Security Administration, 107 Altmeyer Building, 6401 Security Boulevard, Baltimore, Maryland 21235-6401.

Comments are available for public viewing on the Federal eRulemaking portal at <http://www.regulations.gov> or in person, during regular business hours, by arranging with the contact person identified below.

**FOR FURTHER INFORMATION CONTACT:**

Jennifer C. Pendleton, Office of Payment and Recovery Policy, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235-6401, (410) 965-5652. For information on amendments to 20 CFR part 408, please contact: Benjamin Franco, Office of International Programs, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235-6401, (410) 965-7342. For information on eligibility or filing for benefits, call our national toll-free number, 1-800-772-1213 or TTY 1-800-325-0778, or visit our Internet site, Social Security Online, at <http://www.socialsecurity.gov>.

**SUPPLEMENTARY INFORMATION:****Electronic Version**

The electronic file of this document is available on the date of publication in the **Federal Register** at <http://www.gpoaccess.gov/fr/index.html>.

**Background**

Due to increases in delinquent non-tax debt owed the United States, the Debt Collection Improvement Act (DCIA) of 1996 was enacted. Public Law 104-134, 110 Stat. 1321-358 *et seq.* (April 26, 1996).

The DCIA requires Federal agencies to refer delinquent non-tax debts to the Treasury's Financial Management Services (FMS) to collect non-tax payments. The DCIA authorizes Federal disbursing officials to withhold or reduce eligible Federal payments to a payee for a delinquent debt owed by that payee to the United States. This process is known as "administrative offset."

FMS uses the TOP process to collect these delinquent debts. TOP's delinquent debt matching and payment offset system results in an administrative offset. Currently, to collect debts owed to us, TOP uses the following types of administrative offset:

a. Tax Refund Offset (TRO). TOP reduces or withholds Federal income

tax refunds to recover delinquent titles II, VIII, and XVI debts.

b. Other administrative offset. TOP reduces or withholds payments other than tax refunds, such as Federal travel and expense reimbursements, to collect unrecoverable titles II and XVI debts. (The use of other administrative offset is covered under regulations separate from TRO.)

TOP identifies debtors and matches them against recipients of Federal and State payments. These Federal and State payments are then used to reduce the delinquent debt.

**Existing Department of the Treasury Regulations**

The Treasury's Fiscal Service published an interim rule with request for comments on January 11, 2007. 72 FR 1283. In part, this interim rule describes the requirements that apply to offset of certain Federal non-tax payments to collect delinquent debts owed to the States based on reciprocal agreements between Treasury and participating States. Social Security, Special Veterans Benefits, and Supplemental Security Income benefits are excluded from offset to satisfy a State debt. 31 CFR 285.6(g)(1)(ii). The interim rule also provides for offset of State payments to collect certain delinquent Federal non-tax debts.

Additionally, FMS launched a pilot program in Maryland and New Jersey. This pilot program evaluated if the benefits of the offset program outweighed its costs. FMS gathered information gained from this pilot program, as well as comments received on the interim rule, before issuing a final rule. On November 3, 2009, Treasury's Fiscal Service published a final rule stating that it would proceed with the reciprocal offset program with the States. 74 FR 56719. It intends to expand this reciprocal program between Treasury and the States. This expansion started with New York on January 20, 2010.

On June 11, 2009, Treasury's Fiscal Service simultaneously published an NPRM and an interim final rule to remove the 10-year limitation to collect outstanding non-tax debts by offset. 74 FR 27730, 27707. This change allows for collection of these debts without regard to any time limitation. To avoid undue hardship, Treasury added a requirement that debtors with debts outstanding more than 10 years on or before June 11, 2009 be notified of the intent to offset and of all applicable due process rights. This notification gives the debtor an opportunity to dispute the debt, enter into a repayment agreement, or possibly avoid offset.

On December 23, 2009, Treasury's Fiscal Service published a final rule adopting the interim rule. No comments were received on the interim rule. 74 FR 68149. On December 28, 2009, it also published a final rule based on the NPRM cited above. Two comments were received on the NPRM but no changes were made to that proposed rule, and it was also adopted. 74 FR 68537.

Treasury's Fiscal Service published an amendment to correct the date for offsetting tax refund payments to collect past-due non-tax debt as of December 28, 2009. Non-tax debt, including delinquent debts of 10 years or longer prior to December 28, 2009 will be collected by tax refund offset.

### Changes to Our Regulations

We propose to change our regulations to conform to the Treasury regulations. In addition to collecting non-tax debts beyond the original 10-year statute of limitations, we will now collect delinquent titles II, VIII, and XVI overpayments by offset of various State payments, including State tax refunds. DCIA of 1996, 31 U.S.C. 3716; 31 CFR 285.6.

Therefore, we propose changes to §§ 404.520, 404.521, 408.940, 408.941, 416.580, 416.581, and 422.310. Under these sections, we notify the overpaid person and refer overpayments to Treasury for tax refund and administrative offset.

### Clarity of These Rules

Executive Order 12866 as supplemented by Executive Order 13563 requires us to write all rules in plain language. In addition to your substantive comments on this proposed rule, we invite your comments on how to make rules easier to understand.

For example:

- Would more, but shorter, sections be better?
- Are the requirements in the rule clearly stated?
- Have we organized the material to suit your needs?
- Could we improve clarity by adding tables, lists, or diagrams?
- What else could we do to make the rule easier to understand?
- Does the rule contain technical language or jargon that is not clear?
- Would a different format make the rule easier to understand, e.g. grouping and order of sections, use of headings, paragraphing?

### When will we start to use this rule?

We will not use this rule until we evaluate public comments and publish a final rule in the **Federal Register**. Any final rule we issue includes an effective

date. We will continue to use our current rule until that date. If we publish a final rule, we will include a summary of those relevant comments we received along with responses and an explanation of how we will apply the new rule.

### Regulatory Procedures

*Executive Order 12866 as Supplemented by Executive Order 13563*

We consulted with the Office of Management and Budget (OMB) and determined that this proposed rule meets the criteria for a significant regulatory action under Executive Order 12866 as supplemented by Executive Order 13563. Thus, OMB reviewed the proposed rule.

### Regulatory Flexibility Act

We certify that this proposed rule will not have a significant economic impact on a substantial number of small entities because it applies to individuals only. Thus, a regulatory flexibility analysis is not required under the Regulatory Flexibility Act, as amended.

### Paperwork Reduction Act

This rule does not create any new or affect any existing collections and does not require Office of Management and Budget approval under the Paperwork Reduction Act.

### List of Subjects

#### 20 CFR Part 404

Administrative practice and procedure, Blind, Disability benefits, Income taxes, Old-Age, Survivors, and Disability Insurance, Reporting and recordkeeping requirements, Social Security.

#### 20 CFR Part 408

Administrative practice and procedure; Aged; Reporting and recordkeeping requirements; Social Security; Supplemental Security Income (SSI); Veterans.

#### 20 CFR Part 416

Administrative practice and procedure, Reporting and recordkeeping requirements, Supplemental Security Income (SSI).

#### 20 CFR Part 422

Administrative practice and procedure, Organization and functions (Government agencies), Reporting and

recordkeeping requirements, Social Security.

**Michael J. Astrue,**

*Commissioner of Social Security.*

For the reasons set out in the preamble, we propose to amend 20 CFR chapter III, parts 404, 408, 416, and 422 as set forth below:

## **PART 404—FEDERAL OLD-AGE, SURVIVORS AND DISABILITY INSURANCE (1950— )**

### **Subpart F—[Amended]**

1. The authority citation for subpart F of part 404 is revised to read as follows:

**Authority:** Secs. 204, 205(a), 702(a)(5), and 1147 of the Social Security Act (42 U.S.C. 404, 405(a), 902(a)(5), and 1320b-17); 31 U.S.C. 3716; 31 U.S.C. 3720A.

2. Amend § 404.520(b) by removing the word “individuals” and adding in its place the word “persons” in the second sentence, and by revising the third sentence to read as follows:

#### **§ 404.520 Referral of overpayments to the Department of the Treasury for tax refund offset—General.**

\* \* \* \* \*

(b) \* \* \* We refer overpayments to the Department of the Treasury for offset against Federal tax refunds regardless of the amount of time the debts have been outstanding.

3. Amend § 404.521 by revising the section heading, introductory text, and paragraphs (a) and (b) to read as follows:

#### **§ 404.521 Notice to overpaid persons.**

Before we request that an overpayment be collected by reduction of Federal and State income tax refunds, we will send a written notice of our action to the overpaid person. In our notice of intent to collect an overpayment through tax refund offset, we will state:

(a) The amount of the overpayment; and

(b) That we will collect the overpayment by requesting that the Department of the Treasury reduce any amounts payable to the overpaid person as refunds of Federal and State income taxes by an amount equal to the amount of the overpayment unless, within 60 calendar days from the date of our notice, the overpaid person:

(1) Repays the overpayment in full;

(2) Sends evidence to us at the address given in our notice that

(i) The overpayment is not past due; or

(ii) The overpayment is not legally enforceable; or

(3) Asks us to waive collection of the overpayment under section 204(b) of the Act.

\* \* \* \* \*

**PART 408—SPECIAL BENEFITS FOR CERTAIN WORLD WAR II VETERANS**

**Subpart I—[Amended]**

4. The authority citation for subpart I of part 408 is revised to read as follows:

**Authority:** Secs. 702(a)(5), 808, and 1147 of the Social Security Act (42 U.S.C. 902(a)(5), 1008, and 1320b–17); 31 U.S.C. 3716, 3720A.

5. Amend § 408.940(b) by revising the third sentence to read as follows:

**§ 408.940 When will we refer an SVB overpayment to the Department of the Treasury for tax refund offset?**

\* \* \* \* \*

(b) \* \* \* We refer overpayments to the Department of the Treasury for offset against Federal tax refunds regardless of the amount of time the debts have been outstanding.

6. Amend § 408.941 by revising the introductory text, and paragraphs (a) and (b) to read as follows:

**§ 408.941 Will we notify you before we refer an SVB overpayment for tax refund offset?**

Before we request that an overpayment be collected by reduction of Federal and State income tax refunds, we will send a written notice of our action to the overpaid person. In our notice of intent to collect an overpayment through tax refund offset, we will state:

(a) The amount of the overpayment; and

(b) That we will collect the overpayment by requesting that the Department of the Treasury reduce any amounts payable to the overpaid person as refunds of Federal and State income taxes by an amount equal to the amount of the overpayment unless, within 60 calendar days from the date of our notice, the overpaid person:

- (1) Repays the overpayment in full;
- (2) Sends evidence to us at the address given in our notice that
  - (i) The overpayment is not past due; or
  - (ii) The overpayment is not legally enforceable, or

(3) Asks us to waive collection of the overpayment under section 204(b) of the Act.

\* \* \* \* \*

**PART 416—SUPPLEMENTAL SECURITY INCOME FOR THE AGED, BLIND, AND DISABLED**

**Subpart E—[Amended]**

7. The authority citation for subpart E of part 416 is continues to read as follows:

**Authority:** Secs. 702(a)(5), 1147, 1601, 1602, 1611(c) and (e), and 1631(a)–(d) and (g) of the Social Security Act (42 U.S.C. 902(a)(5), 1320b–17, 1381, 1381a, 1382(c) and (e), and 1383(a)–(d) and (g)); 31 U.S.C. 3716; 31 U.S.C. 3720A.

8. Amend § 416.580(b) by removing the word “individuals” in the second sentence and adding in its place “persons” and by revising the last sentence to read as follows:

**§ 416.580 Referral of overpayments to the Department of the Treasury for tax refund offset—General.**

\* \* \* \* \*

(b) \* \* \* We refer overpayments to the Department of the Treasury for offset against Federal tax refunds regardless of the amount of time the debts have been outstanding.

9. Amend § 416.581 by revising the section heading, the introductory text, and paragraphs (a) and (b), and in paragraph (e) by removing the word “individual” in two places and adding in its place “person”.

**§ 416.581 Notice to overpaid person.**

We will make a request for collection by reduction of Federal and State income tax refunds only after we determine that a person owes an overpayment that is past due and provide the overpaid person with written notice. Our notice of intent to collect an overpayment through tax refund offset will state:

(a) The amount of the overpayment; and

(b) That we will seek collection of the overpayment by requesting that the Department of the Treasury reduce any amounts payable to the overpaid person as refunds of Federal and State income taxes by an amount equal to the amount of the overpayment unless, within 60 calendar days from the date of our notice, the overpaid person:

- (1) Repays the overpayment in full;
- (2) Sends evidence to us at the address given in our notice that
  - (i) The overpayment is not past due; or
  - (ii) The overpayment is not legally enforceable; or

(3) Asks us to waive collection of the overpayment under section 204(b) of the Act.

\* \* \* \* \*

**PART 422—ORGANIZATION AND PROCEDURES**

**Subpart D—[Amended]**

10. The authority citation for subpart D of part 422 continues to read as follows:

**Authority:** Secs. 204(f), 205(a), 702(a)(5), and 1631(b) of the Social Security Act (42 U.S.C. 404(f), 405(a), 902(a)(5), and 1383(b)); 5 U.S.C. 5514; 31 U.S.C. 3711(e); 31 U.S.C. 3716.

11. Amend § 422.310 by revising paragraphs (a)(1) and (b) to read as follows:

**§ 422.310 Collection of overdue debts by administrative offset.**

(a) *Referral to the Department of the Treasury for offset.* (1) We recover overdue debts by offsetting Federal and State payments due the debtor through the Treasury Offset Program (TOP). TOP is a Government-wide delinquent debt matching and payment offset process operated by the Department of the Treasury, whereby debts owed to the Federal Government are collected by offsetting them against Federal and State payments owed the debtor. Federal payments owed the debtor include current “disposable pay,” defined in 5 CFR 550.1103, owed by the Federal Government to a debtor who is an employee of the Federal Government. Deducting from such disposable pay to collect an overdue debt owed by the employee is called “Federal salary offset” in this subpart.

\* \* \* \* \*

(b) *Debts we refer.* We refer for administrative offset all qualifying debts that meet or exceed the threshold amounts used by the Department of the Treasury for collection from State and Federal payments, including Federal salaries.

\* \* \* \* \*

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**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 281**

[EPA–R10–UST–2011–0097; FRL–9274–8]

**Oregon: Tentative Approval of State Underground Storage Tank Program**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** The State of Oregon has applied for final approval of its Underground Storage Tank (UST)