

(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