

## § 285.4

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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 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 reim-

burse 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).

(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]

### **§ 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

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

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

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

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

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

*Delinquent* or *past-due* refers to the status of a debt and means a debt has not been paid by the date specified in