



DEPARTMENT OF THE TREASURY

Office of the Secretary

31 CFR Part 5

Fiscal Service

31 CFR Parts 256 and 285

[DOCKET NO. FISCAL-2023-0004]

RIN 1530-AA17

Debt Collection Authorities under the Debt Collection Improvement Act of 1996

AGENCY: Bureau of the Fiscal Service, Fiscal Service, Treasury.

ACTION: Notice of proposed rulemaking with request for comment.

SUMMARY: The Department of the Treasury (“Treasury”), Bureau of the Fiscal Service (“Fiscal Service”), proposes to revise its existing regulations regarding the Treasury Offset Program (“TOP”) for several reasons, including to: restore statutory flexibility that was unnecessarily restricted; implement new authorities; eliminate repetitive and unnecessary language; reword certain provisions for clarity, consistent with the requirements of the Plain Writing Act of 2010 and Executive Order 12866; and better organize the regulations for easier comprehension.

DATES: Comments must be received by [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Fiscal Service participates in the U.S. Government’s eRulemaking Initiative by publishing rulemaking information on www.regulations.gov.

Regulations.gov offers the public the ability to comment on, search, and view publicly available rulemaking materials, including comments received on rules.

[Instructions for comment submission:](#)

Comments on this rule, identified by docket FISCAL-2023-0004, may be submitted using the Federal eRulemaking Portal: www.regulations.gov. Follow the instructions on the website for submitting comments. Should you wish to mail a paper comment in lieu of an electronic comment, it should be sent via regular or express mail to: Director, TOP Division, Disbursing and Debt Management, Bureau of the Fiscal Service, Landover Warehouse, 3201 Pennsy Drive, Landover, MD 20785.

All submissions received must include the agency name (“Bureau of the Fiscal Service”) and docket number (“FISCAL-2023-0004”) for this rulemaking. In general, comments will be published on Regulations.gov without change, including any business or personal information provided. Comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not enclose any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

FOR FURTHER INFORMATION CONTACT: Director, TOP Division, Disbursing and Debt Management, Bureau of the Fiscal Service at (202) 874-6810.

SUPPLEMENTARY INFORMATION:

I. Background

Legal Authorities. The Debt Collection Improvement Act of 1996 (“DCIA”), Public Law 104-134, 110 Stat. 1321-358 *et seq.* (April 26, 1996), among other things, authorized Federal disbursing officials to withhold eligible Federal payments to pay the payee’s delinquent nontax debt owed to the United States. *See* 31 U.S.C. 3716(c). The DCIA also provided that Federal nontax payments may be offset to collect delinquent debts owed to States, including past-due support, and that payments made by States may be offset to collect delinquent debts owed to the United States. *See* 31 U.S.C. 3716(h). In addition, the DCIA requires Federal agencies to identify Federal employees who owe delinquent nontax debts to the United States. *See* 5 U.S.C. 5514(a)(1). Further, Federal

tax refund payments may be offset to collect nontax debt owed to the United States and debts owed to States, including past-due support. *See* 26 U.S.C. 6402, 31 U.S.C. 3720A, and 42 U.S.C. 664. The Supporting America’s Children and Families Act, Public Law 118-258 (Jan. 4, 2025), also permits the offset of tax refund payments to collect past-due support owed to certain Federally recognized Tribes. *See* 26 U.S.C. 6402(c) and 42 U.S.C. 664.

Treasury Offset Program. Fiscal Service administers a centralized offset program, known as the Treasury Offset Program, or TOP, through which it exercises these legal authorities. In general, TOP works as follows:

- (1) Creditor agencies submit information about delinquent debts to Fiscal Service, which maintains the information in its delinquent debtor database. The information submitted includes the name and taxpayer identifying number (“TIN”) of the debtor.
- (2) Payment agencies prepare and certify payments to Fiscal Service and disbursing officials at other Federal agencies. Each payment record contains information about the payment, including the name and TIN of the person entitled to payment. The disbursing official examines the payment records to determine if they meet the requirements for disbursement. If so, the disbursing official then disburses the payments in accordance with the payment agencies’ instructions, subject to any eligible offset or levy.
- (3) Before an eligible Federal payment is disbursed, Fiscal Service compares information about persons who are entitled to Federal payments against a database of persons who owe delinquent debts. When a match occurs and all the prerequisites for offset have been met, the payment is offset to satisfy the debt, to the extent legally allowed. Fiscal Service also has agreements with certain States, whereby it collects nontax debts owed to the United States through the offset of certain payments disbursed by those States.
- (4) Fiscal Service transmits amounts collected through offset to the appropriate creditor agencies after deducting fees,

which Fiscal Service charges the creditor agencies to cover the cost of operating the offset program.

Re-write of Existing Regulations. Fiscal Service promulgated 31 CFR part 285, subpart A (the “existing TOP regulations”) to implement the administrative offset of payments pursuant to the authorities listed above. The several sections within the existing TOP regulations were promulgated (and revised) at different times. Fiscal Service proposes to revise the existing TOP regulations for several reasons, including to: (1) restore statutory flexibility that was unnecessarily restricted; (2) implement new authorities; (3) eliminate repetitive and unnecessary language; (4) reword certain provisions for clarity, consistent with the requirements of the Plain Writing Act of 2010 and Executive Order 12866 (Sept. 1993); and (5) better organize the regulations for easier comprehension.

II. Section Analysis

This section describes, section-by-section, the reasoning for the proposed revision (the “proposed rule”) of the existing TOP regulations. To the extent a proposed provision is substantively consistent with the existing TOP regulations, this section does not repeat the reasoning for the provision as such explanations are described in Federal Register entries for prior rulemakings. To the extent a proposed provision is substantively consistent with the existing TOP regulations, we have described them as being “consistent” with the existing TOP regulations, even if wording changes were required due to the reorganization of subpart A or if changes were made for clarity or consistency.

Redesignation of subpart B and its included sections

To accommodate the reorganization of subpart A, the sections of subpart B require redesignation. Sections 285.11 through 285.13 are proposed to be redesignated as §§ 285.111 through 285.113, respectively. No changes to the content of subpart B are proposed.

Section 285.1 – Definitions

The existing TOP regulations contain separate definition sections for each type of offset; certain terms are defined in more than one definition section, at times using slightly different definitions. The definitions in the new definitions section would apply to all types of offset. This will ensure consistency and clarity and avoid unnecessary repetition. The definitions used in this section would apply to 31 CFR part 285, subpart A only. For example, whether a debt is “legally enforceable” for purposes of centralized offset has no bearing on whether the debt is legally enforceable for purposes of placing a lien on the debtor’s property or for some other debt collection purpose.

Address. This term is used but not defined in the existing TOP regulations. The proposed definition clarifies that due process notices and offset notices can be sent via first class mail, email, text message, or other reasonable means. Agencies should determine that the method used for delivering information to an address is consistent with relevant law and security policies. With regard to due process notices, agencies should also determine that the address used to send notice is reasonably calculated to reach the debtor. This definition’s broad view of the term “address” does not require an agency to use non-traditional means of mail.

Centralized offset. The proposed definition is consistent with the existing TOP regulations. It refers to offsets conducted to collect debts that have been referred to TOP and includes TOP’s processing of offsets of Federal payments (whether disbursed by Fiscal Service or by another disbursing official) and State payments. This term excludes offsets conducted by the payment agency prior to disbursement (e.g., internal offsets conducted by the payment agency before the payment agency certifies the payment for disbursement).

Covered benefit payment. This term is similar to the term in the existing TOP regulations. However, some concepts that were included in the definition for “covered benefit payment” have now been moved to more logical places within the proposed rule.

Creditor agency. The proposed definition includes Federal agencies and States that seek to collect debts through TOP. The term also includes Indian Tribes and Tribal organizations that receive funding under section 455(f) of the Social Security Act (“Tribal IV-D agencies”) in the context of tax refund offset to collect past-due support. The term also includes agencies acting on behalf of the creditor agency. For example, where there is a requirement that the creditor agency take some action, such as providing notice or informing Fiscal Service as to changes in the status of a debt previously referred to TOP, such actions may be taken on behalf of the creditor agency (including, for example, through Fiscal Service’s Cross-Servicing program).

Days delinquent. This term is not defined in the existing TOP regulations. The proposed definition clarifies when Federal agencies must refer their debts to TOP (i.e., by when the debt is over 120 days delinquent) and is consistent with the requirements of 31 U.S.C. 3716(c)(6)(A). For administrative (i.e., non-loan) debts, for example, the delinquency clock generally begins running from the date of the initial demand for payment. The fact that a debt is in a delinquent status does not necessarily mean that there are immediate adverse consequences (e.g., late charges) to the debtor. For administrative debts, there is typically a 30-day grace period from the date of initial demand for payment (i.e., day one of delinquency to day 30 of delinquency) before there are adverse consequences due to delinquency (*see* 31 CFR 901.2(b)(3)). For loan debts to be re-paid in installments pursuant to a promissory note, each missed payment generally constitutes a delinquent debt, until all amounts owed are accelerated into a single debt.

Debt. The proposed definition is generally consistent with the existing TOP regulations, but also now distinguishes between “Federal debt” and “State debt.” It also adds past-due support owed to a Tribal IV-D agency.

Debt record. The proposed definition encompasses the terms “record of debt,” “debt record,” “debtor record,” “delinquent debtor record,” and “delinquent debt record,” as used in the existing TOP regulations.

Debtor. The proposed definition harmonizes the definition of “debtor” across the different types of offset. Depending on the type of offset involved, a debtor can be a person who owes a debt to a Federal agency, a State, or a Tribal IV-D agency.

Delinquent or past-due. The proposed definition is consistent with the existing TOP regulations. However, this definition clarifies that not all payment arrangements avoid or cure delinquency. For example, a debt’s delinquent status is generally not altered by a due date in a post-delinquency payment agreement. A post-delinquency payment agreement should only restart the clock on delinquency if the agreement explicitly cures the delinquency. Many post-delinquency payment agreements used by Fiscal Service in its Cross-Servicing program (*see* 31 CFR 285.12, proposed to be redesignated as 31 CFR 285.112), for example, are not meant to cure delinquency, but are meant to provide relief from certain types of collection actions. Also see the definition of “Days delinquent.” As another example, an administrative debt generally is delinquent as of the date of the agency’s initial demand for payment, even if the agency provides a thirty-day grace period in which to pay the debt. However, the agency generally may take no adverse action to collect the debt (such as through TOP) until after the grace period. If the debt is not paid by the end of the grace period, it will generally be deemed to have been delinquent as of the date of the agency’s initial demand for payment.

Disbursing official. The proposed definition is consistent with the existing TOP regulations.

Disposable pay. The proposed definition is consistent with the existing TOP regulations.

Federal agency. The proposed definition is intended to distinguish between Federal agencies, States, and Tribal IV-D agencies. The existing TOP regulations use the term

“agency,” which can be ambiguous when talking about Federal agencies, State agencies, and Tribal IV-D agencies.

Federal benefit payment. This term is not defined in the existing TOP regulations. The proposed definition is intended to distinguish between amounts a debtor may receive under “Federal benefit programs cited under clause (i) within a 12-month period” and “all Federal benefit payments made during such 12-month period.” See 31 U.S.C. 3716(c)(3)(ii).

Federal debt or Federal nontax debt. The proposed definition is consistent with the existing TOP regulations.

Federal employee. The proposed definition is consistent with the existing TOP regulations.

Federally recognized Tribe. This term is not used or defined in the existing TOP regulations. The existing TOP regulations use the term “Indian tribe.” This definition is added for clarity.

Federal nontax payment. This term is not defined in the existing TOP regulations. The proposed definition is intended to more clearly distinguish between types of payments.

Federal payment. This term is used but not defined in the existing TOP regulations. The proposed definition is consistent with the statutory text and current operational practice. The term “administrative offset” is defined by statute as “withholding funds payable by the United States . . . to, or held by the United States for, a person to satisfy a claim.” 31 U.S.C. 3701(a)(1). Agencies are permitted to collect their debts by “administrative offset.” 31 U.S.C. 3716(a). And, disbursing officials are required to offset “the amount of a payment which a payment certifying agency has certified to the disbursing official for disbursement.” 31 U.S.C. 3716(c)(1)(A).

Given the language of the applicable statutes, Fiscal Service has consistently taken the position that any payment that is certified to a disbursing official is subject to

administrative offset, unless the payment is otherwise exempt from offset. The proposed definition makes clear that the source of funds for a payment, such as whether the payment is made from public funds or funds held in trust, has no bearing on whether the payment is a “Federal payment.”

The proposed definition also makes clear that the term “Federal payment” includes any payment made by the United States through an escrow agent or other person with the responsibility to hold and/or further disburse the funds to a person.

Federal payment offset. This term is not defined in the existing TOP regulations. The proposed definition is intended to more clearly distinguish between types of offset.

Fiscal Service. The proposed definition is consistent with the existing TOP regulations.

HHS. The proposed definition is consistent with the existing TOP regulations.

Internal Revenue Code. This term is not defined in the existing TOP regulations. It is added for clarity.

IRS. The proposed definition is consistent with the existing TOP regulations.

Legally enforceable. The proposed definition is consistent with the existing TOP regulations.

Lump-sum benefit payment. This term is not defined in the existing TOP regulations.

The proposed definition reflects a substantive change regarding the offset of benefit payments that are paid as a lump sum. Under the proposed rule, offset of one-time payments of benefits that have accrued over a period of more than one month can be offset by no more than 15% and must leave a minimum floor (*see* proposed § 285.30(c)(2)(viii)). The existing TOP regulations do not clearly address how the \$9,000 floor (required by 31 U.S.C. 3716(c)(3)(A)(ii)) should be applied for lump-sum benefit payments and how it should be prorated. The proposed rule explains how the floor should be calculated.

Because the statute, in establishing the offset floor, refers to the amount that a debtor may “receive” under the specified Federal benefit programs within a 12-month period, Fiscal Service determined that the floor for a lump-sum benefit payment should generally be the lesser of: (1) \$9,000; or (2) an amount equal to \$750 times the number of months’ worth of benefits represented by the lump-sum benefit payment. While the floor should generally be the lower amount of those two calculations, Fiscal Service may select the first option when it lacks sufficient information to calculate the second option or when it is more administratively feasible to do so.

The calculation of the floor can be further complicated in the event the person entitled to payment was receiving other amounts as Federal benefit payments; in such circumstances, Fiscal Service can reduce the floor by those other amounts, if it determines that it is administratively feasible and otherwise appropriate to do so.

The following examples demonstrate how this calculation would work:

Example #1: If a debtor is being paid a lump-sum benefit payment of \$10,000, representing 13 months of accrued benefit payments, and was not receiving any other Federal benefit payments, the offset floor would be \$9,000, calculated as the lesser of: (1) \$9,000; or (2) \$750 times 13 (i.e., \$9,750). Because taking an offset of 15% of the \$10,000 payment (i.e., \$1,500) would reduce the payment below the lump-sum benefit payment floor (i.e., \$10,000 minus \$1,500 is less than \$9,000), the offset would be \$1,000 (i.e., \$10,000 minus \$9,000).

Example #2: If a debtor is being paid a lump-sum benefit payment of \$6,000, representing 3 months of accrued benefit payments, and was not receiving any other Federal benefit payments, the offset floor would be \$2,250, calculated as the lesser of: (1) \$9,000; or (2) \$750 times 3 (i.e., \$2,250). Because taking an offset of 15% of the payment (i.e., \$900) would not reduce the payment below the lump-sum benefit payment floor (i.e., \$6,000 minus \$900 is more than \$2,250), the offset amount would be \$900.

Example #3: If a debtor is being paid a lump-sum benefit payment of \$10,000, representing an unknown number of months of accrued benefit payments, and had received \$8,000 of OPM annuity payments over the past 12 months, the lump-sum benefit payment floor would be \$1,000, calculated as the lesser of: (1) \$9,000; or (2) \$750 times 12 minus \$8,000 (i.e., \$1,000). Because taking an offset of 15% of the payment (i.e., \$1,500) would not reduce the payment below the lump-sum benefit payment floor (i.e., \$10,000 minus \$1,000 is more than \$1,000), the offset amount would be \$1,500.

Lump-sum benefit payment floor. This term is not defined in the existing TOP regulations. See the proposed definition for “lump-sum benefit payment” for an explanation.

Match. The existing regulations describe their treatment of what constitutes a match between a payment record and a debt record. This treatment could differ depending on the type of offset being conducted. For example, current section 285.1, which governs the offset of Federal nontax payments for the collection of past-due support, requires that the TIN of a payment record be the “same” as the TIN of a debt record. Current section 285.5, which governs offset of Federal payments to collect Federal nontax debts, implies that a derivative of the TIN can be used to determine whether the TIN on the payment and debt records are the “same.”

The proposed definition defines the term “match” for offset purposes in a manner that restores statutory flexibility for disbursing officials in determining when the person entitled to payment on a payment record is the same person as the debtor on a debt record. The proposed definition would allow disbursing officials to determine whether there is a match by using information *derived* from the payment and debt records, which would not necessarily require an *exact* match on the name or TIN. The relevant statutory provisions do not require that the name (or name control) and TIN be exact matches on

the debt record and the payment record. A person entitled to payment and the debtor may be the same person in circumstances where the name and TIN are not exact matches (for example, because either the debt record or payment record contains a transcription or other human input error). This definition would allow (but not require) disbursing officials to use an algorithm to correct for such errors on names and TINs in a manner that results in more accurate matches. It would also allow disbursing officials to use information (other than the name and TIN) from the payment and debt records to determine whether the payee and debtor are the same person. This more flexible definition of “match” will enable disbursing officials to more closely comply with their requirements under the offset statutes.

Means-tested program. This term’s definition is embedded into the text of current sections 285.1(k) and 285.5(e)(7)(i), rather than in the definition sections for sections 285.1 and 285.5. The proposed definition is added for clarity.

Monthly benefit payment. This term is not defined in the existing TOP regulations. The proposed definition for “monthly benefit payment” is consistent with the term “monthly covered benefit payment,” as used in the existing TOP regulations.

OASDI overpayment. The proposed definition is consistent with the existing TOP regulations.

Offset. The proposed definition is consistent with the existing TOP regulations but uses the more precise term of “PEP” rather than “payee.”

Participating SRP State. This term is not defined in the existing TOP regulations. It is consistent with the term “participating State,” as used in the existing TOP regulations.

Past-due support. The proposed definition expands the definition to include debts owed to Tribal IV-D agencies, to implement the new authority to collect child support debts from the Supporting America’s Children and Families Act, codified in relevant part at 26 U.S.C. § 6402(c), and is otherwise consistent with existing TOP regulations.

Payee. The proposed definition clarifies the difference between the terms “payee” and “person entitled to payment” or “PEP.” While the payee and the PEP are generally the same person, there may be some circumstances where they are different people. For example, a nursing home might serve as the representative payee for a beneficiary that is entitled to benefit payments. Or, an attorney representing an individual who has a claim against the United States might receive payment to her attorney trust account as a payee, while her client is the “person entitled to payment.”

Payment. This proposed definition is added for clarity.

Payment agency. The proposed definition incorporates the definition for this term in the existing TOP regulations and adds a sentence that covers States making payments in the context of offsets under reciprocal agreements. It is intended to broadly cover agencies making payments, whether such agencies disburse payments on their own or through another agency. In the context of Federal payments, the function of the payment agency and the disbursing official are often, though not always, segregated. The payment agency, through a certifying officer, is generally responsible for determining that the payment is permitted by law, that funds have been appropriated for the payment, that the name, address, and dollar amount are correct, whether the payment is subject to offset, and that the payment is not a duplicate payment. The disbursing official, on the other hand, disburses payments properly certified by a payment agency’s certifying officer and/or withholds all or part of the payment to satisfy a delinquent debt.

Payment record. The proposed definition incorporates the definition for this term in the existing TOP regulations and adds a sentence that covers States making payments in the context of offsets under reciprocal agreements.

PEP or person entitled to payment. This term is not used or defined in the existing TOP regulations; the existing regulations use the phrase “person entitled to receive the benefit

of all or part of the payment.” The proposed definition was added to distinguish between the terms “payee” and “person entitled to payment.”

Person. The proposed definition is consistent with the existing TOP regulations.

Reciprocal agreement. The proposed definition is consistent with the existing TOP regulations.

Recurring payment. The proposed definition is consistent with the existing TOP regulations.

Salary offset. The proposed definition is consistent with the existing TOP regulations.

Salary payment agency. This term is used in the existing TOP regulations but is not defined. The proposed definition is added for clarity.

Secretary. The proposed definition is consistent with the existing TOP regulations.

Separate guidance. This term is not used or defined in the existing TOP regulations.

Fiscal Service may issue more detailed guidance on certain aspects of this rule. Such guidance may include instructions to agencies on how to comply with the rules set forth in the proposed rule (e.g., how to submit a debt to the TOP system) or specify how Fiscal Service or an agency may exercise discretion within the bounds permitted by the proposed rule (e.g., the dollar threshold for referrals of debt to TOP, which may be changed based on costs of collection; or time periods on agency action, which may be changed based on operational capabilities).

State. The proposed definition is consistent with the existing TOP regulations.

State debt. The proposed definition is consistent with the existing TOP regulations, except that it excludes debts owed by Federally recognized Tribes. With regard to the State Reciprocal Program, Fiscal Service determined that certain debts should be excluded from collection through Federal payment offset. In the existing TOP regulations, debts that are excluded from the definition of “State debt” include debts owed to a State by the United States, a foreign sovereign, another State, or local

governments within a State. The rationale for these exclusions is that TOP is not an appropriate tool for resolving issues of indebtedness between a State and local government, a State and a State, or a State and a foreign government. This rationale applies equally to issues of indebtedness between States and Federally recognized Tribes. Federally recognized Tribes possess certain inherent rights of self-government. As a result of this Tribal sovereignty, these Tribes have a special relationship with the United States. The proposed definition would codify the current operational practice to exclude debts owed by Federally recognized Tribes from the types of debts that a State may collect under a reciprocal agreement. This rule would not change or affect any other rights or remedies States may have to collect debts owed to them by Federally recognized Tribes outside of TOP. While States may not collect debts owed to them by Federally recognized Tribes through TOP, Federal agencies may collect debts owed by Federally recognized Tribes through TOP.

State income tax obligation. The proposed definition is consistent with the definition used in the existing TOP regulations.

State payment. This term is used but not defined in the existing TOP regulations. The proposed definition is added for clarity.

State payment offset. The proposed definition is consistent with the definition used in the existing TOP regulations.

State reciprocal program. This term is not used or defined in the existing TOP regulations. The proposed definition is added for clarity.

Tax refund offset. The proposed definition is consistent with the existing TOP regulations.

Tax refund payment. The proposed definition is consistent with the existing TOP regulations.

Taxpayer identifying number or TIN. The proposed definition is consistent with the existing TOP regulations. For individuals, the TIN is generally (but not always) the individual's social security number. TINs also include employer identification numbers and individual taxpayer identification numbers issued by the IRS.

Treasury Offset Program or TOP. This term is used but not defined in the existing TOP regulations. The proposed definition is added for clarity.

Tribal IV-D agency. This term is not used or defined in the existing TOP regulations. It is added to implement the new authority to collect child support debts from the Supporting America's Children and Families Act, codified in relevant part at 26 U.S.C. § 6402(c). The term refers to Indian Tribes and Tribal organizations that receive funding under section 455(f) of Title IV, Part D, of the Social Security Act.

Unemployment compensation debt. The proposed definition is consistent with the existing TOP regulations.

Section 285.2 – General Provisions

The existing TOP regulations repeat certain general rules for each type of offset, at times using slightly different language to describe the same requirements. This proposed section would consolidate general offset rules into a single section that would apply to all types of offset under TOP. This will improve consistency and clarity and avoid unnecessary repetition. To the extent specific rules are required for a specific type of offset, those rules will be spelled out in a separate section for each type of offset.

(a) *Scope.* Proposed paragraph (a) describes the scope of this subpart, which governs the centralized offset of Federal payments and State payments to collect delinquent debts owed to the United States or a State. This subpart does not apply to administrative offsets that occur outside of TOP (known as “non-centralized offsets”). Non-centralized

offsets are governed by other law, including but not limited to common law, the Federal Claims Collection Standards (*see* 31 CFR 901.3(c)), and agency-specific regulations.

Laws governing garnishments and levies do not apply to offsets under this subpart.

Offsets are not garnishments or levies. An offset occurs when the United States or a State withholds money owed to a person to satisfy a claim owed by that same person to the United States or a State. Garnishment is a process whereby a creditor attaches wages or other property belonging to a debtor which is in the possession of a third party (for example, *see* 31 U.S.C. 3720D). A levy is the means by which the Internal Revenue Service or other tax collecting authority seizes the delinquent taxpayer's property. *See* 26 U.S.C. 6331.

This subpart applies only to Federal payments and State payments (as those terms are defined) made to or on behalf of a PEP. See the definitions for "PEP" and "payee." It generally does not apply to downstream PEPs and payees. For example, in the context of purchases made by Federal agencies using a government credit card, the vendor is paid by the financial institution that issues the credit card, and the United States pays the financial institution. Absent an agreement between the financial institution and the United States requiring the payment from the financial institution to be offset for debts owed by the vendor, the payment by the financial institution to the vendor is not subject to offset under this subpart. On the other hand, the payment from the United States to the financial institution is subject to offset for debts owed by the financial institution. When determining whether to use a government purchase card, agencies must determine whether the use of the purchase card is an appropriate payment mechanism. *See* proposed section 285.2(e)(2)(iii).

Lastly, the pursuit or receipt of collections pursuant to this subpart does not preclude a creditor agency from pursuing all other available debt collection remedies simultaneously.

(b) *General rules for Federal agencies.* Proposed paragraph (b) is consistent with the existing TOP regulations. Proposed paragraph (b)(1)(iii) clarifies that agencies must complete the 60-day notification process prior to the debt becoming 121 days delinquent, so that the agency can complete the due process prerequisites and refer the debt to TOP by the statutory deadline.

(c) *General rule for States and Tribal IV-D agencies.* Proposed paragraph (c) is consistent with the existing TOP regulations. It also incorporates Tribal IV-D agencies to implement the new authority in the Supporting America's Children and Families Act.

(d) *Requirements for all creditor agencies.* Proposed paragraph (d) is generally consistent with the existing TOP regulations. However, notable clarifications and/or changes are as follows:

- Proposed paragraph (d)(1)(i)(C) modifies the debt eligibility requirements to remove the reference to a \$25 minimum threshold. Under both the existing TOP regulations and the proposed rule, Fiscal Service is permitted to establish a dollar threshold for referred debts. Fiscal Service may adjust this threshold as appropriate in separate guidance. In establishing this threshold, Fiscal Service may consider, among other things, the cost of conducting an offset.
- Proposed paragraph (d)(1)(i)(D) explains the circumstances in which a debt is not eligible for referral when referral would interfere with a Federal agency's ability to preserve its rights to collateral and when referral would interfere with the United States' interest in enforcing antitrust laws or protecting its interests when it becomes aware of the possibility of fraud, false claim, or misrepresentation with regard to the debt.
- Proposed paragraph (d)(1)(ii) sets forth the due process prerequisites with which the creditor agency must comply. As required by statute, these due process

prerequisites include the requirement to provide the debtor with the opportunity to review the creditor agency's determination regarding the debt.

- Proposed paragraph (d)(3) describes the facts to which creditor agencies must certify upon referral of a debt to TOP. Creditor agencies can (and generally do) provide the written certification electronically.
- Proposed paragraph (d)(4) adds language that more explicitly addresses creditor agencies' obligations to correct and update data on debts subject to collection in TOP. This obligation is provided for under the existing TOP regulations, but the added language will remind agencies of the importance of maintaining accurate and up-to-date information. This will reduce the risk of improper collections and will assist Fiscal Service in delivering offset notices to the correct addresses. This paragraph makes clear that creditor agencies may make updates to increase the debt balance when they have complied with other prerequisites; this, however, does not permit creditor agencies to aggregate more than one debt into a single debt record, unless otherwise permitted by Fiscal Service.

(e) *Federal payments*. Proposed paragraph (e) is generally consistent with the existing TOP regulations. However, notable clarifications and/or changes are as follows:

- Proposed paragraph (e)(2)(i) explicitly addresses the requirement to identify the PEP or PEPs, as is current operational practice. The existing TOP regulations reflect this requirement, but do not distinguish between "payee" and "PEP." When paying more than one PEP, the proposed paragraph also requires payment agencies to determine whether the payment is owed jointly to the PEPs or if it must be allocated among the PEPs. These requirements help ensure that payments are matched for PEPs, rather than payees who might not be PEPs. This paragraph also permits agencies to make a payment to a person other than the PEP if the payment agency determined that the PEP does not owe a debt.

- Proposed paragraph (e)(2)(iii) addresses the mechanisms through which payment may be made. Each year, the Federal government disburses billions of payments. Most of these payments are automatically matched against the TOP database during the disbursement process. A small portion of these payments are disbursed in a manner that, due to current operational restraints, do not allow the payment to be automatically matched with debts in TOP. The proposed rule explicitly addresses the requirement that payment agencies work with Fiscal Service to identify and employ alternative processes to avoid missed offset collections when payment mechanisms do not allow for automated matching in TOP.

For example, payments for purchases made using a government credit card are not automatically matched against the TOP database because, in such a scenario, the PEP, i.e., the vendor, is actually being paid by the financial institution issuing the credit card, and not a Federal agency. Similarly, payments made by class administrators who are responsible for disbursing payments to PEPs do not automatically match against TOP.

Before using a payment mechanism that does not allow for automated matching in TOP, a Federal agency should determine whether a PEP owes a delinquent debt that has been referred to TOP. Fiscal Service can assist agencies with making this determination. If no such debt is owed, then this provision would not preclude the Federal agency from proceeding with making the payment through that mechanism. However, if such a debt is owed, then the payment agency must make the payment in a manner that will permit the payment to be offset.

(f) *Procedures for centralized offset.* Proposed paragraph (f) is generally consistent with the existing TOP regulations. However, notable clarifications and/or changes are as follows:

- Proposed paragraph (f)(1) describes the requirement for a disbursing official to take an offset. There must be a match between the debtor (from the debt record) and the PEP (from the payment record). See the definition for “match.” For operational reasons, this match may take place several days before the date of the offset. For example, some payment agencies submit batch payment records to Fiscal Service. To properly process these records, Fiscal Service may need to receive those batch records and conduct the matching process prior to the date on which the payment will be disbursed in accordance with the payment agency’s instructions.
- Proposed paragraphs (f)(2) and (4) describe related, but different concepts. Paragraph (f)(2) describes circumstances where the PEP directs delivery of the payment to a different person but does not assign the legal ownership of the payment to that person. For example, a nursing home might serve as the representative payee for an elderly person who is entitled to social security benefit payments. In this case, the elderly person did not assign her legal ownership of the benefit payments to her nursing home but directed the payments to be paid to the nursing home and administered by the nursing home for her benefit, because she is unable to manage her own finances. As such, the benefit payments would be subject to offset for debts owed by the elderly person, but not for debts owed by the nursing home.
- Proposed paragraph (f)(4) describes assigned payments. The proposed paragraph is intended to simplify and clarify how TOP treats assigned payments.
 - A request by a PEP to legally transfer to a third party the right to a payment is typically referred to as an “assignment.” To be valid as to the United States, the “transfer” or “assignment” of a claim against the United States must meet the requirements of applicable law, including the Anti-

Assignment Act, 31 U.S.C. 3727, and the laws that apply to TOP. If the requirements are not satisfied, the assignment is not valid as to the United States for purposes of this rule.

- Nothing in this proposed rule would require Fiscal Service (absent instructions from a payment agency), a payment agency, or a creditor agency to recognize an assignment.
- In general, assigned payments are legally subject to offset for debts of both the assignor (i.e., the original PEP) and the assignee (i.e., the person to whom the payment was assigned, also a PEP).
- In general, disbursing officials should offset the payment first for debts owed by the assignor and then, if anything is left, for debts owed by the assignee. Under current operations, a payment agency generally must issue a payment to the assignor, unless the payment agency confirms that the assignor does not owe any debts in TOP, in which case the payment agency may make the payment to the assignee (assuming the payment agency had authority to recognize the assignment). Fiscal Service provides specific rules to payment agencies regarding how to issue payments in the context of assigned payments in separate guidance.
- A frequent scenario involving assigned payments is the award of attorneys' fees under the Equal Access to Justice Act (EAJA), where the "prevailing party" (i.e., the PEP) wants to assign an EAJA award to their attorney, 28 U.S.C. 2412. In such cases, the agency may recognize the assignment only if the prevailing party does not owe any debts that could be collected through offset of the EAJA payment. The Supreme Court unanimously held in *Astrue v. Ratliff*, 560 U.S. 586 (2010), that the EAJA term "prevailing party" refers to a claimant and not the claimant's

attorney, and thus the offset of an EAJA award to collect a claimant's debt to the government is proper. If the prevailing party does not owe any debts, the payment agency could recognize the assignment to the attorney, and the payment would be subject to offset for debts owed by the attorney (i.e., the new PEP).

- Proposed paragraph (f)(3) explains that payments that are jointly owed to more than one PEP (such as a joint tax refund payment) are subject to offset for the debts owed by any PEP.
- Proposed paragraph (f)(5), among other things, more clearly addresses the amount to be offset when a payment being disbursed is subject to partial exemption and the payment has been subject to an internal offset prior to payment certification and submission of the payment instructions to the disbursing official. For example, payment agencies might conduct their own internal offset prior to certifying the payment to Fiscal Service for offset, but Fiscal Service may lack knowledge of whether an internal offset has occurred prior to payment certification or, if so, how much of the payment was offset. Because Fiscal Service has decided, as a policy matter, that it would like to have the flexibility to calculate the percentage that may be offset of a partially exempt payment by accounting for prior offsets when it knows that a prior offset has taken place, Fiscal Service has determined that a disbursing official may either: (1) not offset the payment if the disbursing official knows that the payment agency has already taken an offset from the payment, or (2) if the disbursing official has sufficient information about the prior offset, calculate the additional amount by which the payment may be offset. Additionally, Fiscal Service would have the flexibility to disregard any prior offset conducted by the payment agency. For example, if Fiscal Service is disbursing a covered benefit payment certified by the Social

Security Administration (SSA), and it knows that SSA already offset the payment, but does not know by how much the payment was offset, the Fiscal Service disbursing official could bypass offset for that payment; alternatively, if SSA informed Fiscal Service that the payment that it is certifying for disbursement for \$1,950 was originally \$2,000 (i.e., it took a \$50 internal offset), Fiscal Service could take another \$250 (because $\$250 + \50 is 15% of the original payment amount). However, the disbursing official may also choose to disregard any prior offset when calculating the appropriate offset amount. For example, if the original payment amount was \$2,000, but SSA certified a payment in the amount of \$1,950, the Fiscal Service disbursing official could offset \$292.50 (i.e., 15% of \$1,950). Fiscal Service also notes that, when calculating the offset amount, the disbursing official must disregard any prior levy on that payment. For example, if a covered benefit payment, certified in the amount of \$2,000, was levied by 15% for a Federal tax debt through TOP, a disbursing official must offset that payment by another 15% for a nontax debt in TOP. In such a scenario, after levy and offset, the payment amount that would be disbursed to the payee would be \$1,400 (with \$300 going to the IRS and another \$300 going to the other agency). The proposed paragraph is consistent with the last paragraph in 31 U.S.C.

3716(c)(3)(A)(ii).

- Proposed paragraph (f)(6) describes the priority scheme for how a payment must be applied when the person entitled to the payment owes multiple debts. While this subpart does not apply to the way in which Fiscal Service levies payments for the purpose of collecting Federal tax debts, the proposed paragraph acknowledges that such levies take priority over the collection of debts through offset under this subpart. Within each category, Fiscal Service will generally give priority to older debts first. In some circumstances, for operational reasons, Fiscal Service may

alter this intra-category priority. For example, if a Federal agency refers to TOP a Federal nontax debt, and Fiscal Service starts collecting that debt through salary offset, Fiscal Service may continue collecting that debt through salary offset, even if another Federal agency later refers an older Federal nontax debt that is also eligible for collection through salary offset.

(g) *Notification of offset to debtor.* Proposed paragraph (g) contains the following notable clarifications and/or changes:

- Proposed paragraph (g) would revise the requirement in the existing TOP regulations that a warning notice be sent to the debtor prior to commencing offset of recurring payments, and would go beyond what is required by statute, which does not require any warning notice but does, in the case of periodic benefit payments, require notice be sent on or before the date of the offset. *See* 31 U.S.C. 3716(c)(7)(B). The proposed rule would generally require that a disbursing official (or Fiscal Service on behalf of the disbursing official) send a warning notice to a debtor before commencing offset of monthly benefit payments. This requirement would not apply to any other recurring payments or one-time payments. The requirement would also not apply when it is administratively infeasible for the disbursing official (or Fiscal Service on behalf of the disbursing official) to send the letter, such as when a current address is unavailable or when a system glitch results in the failure of such letters to be sent. Fiscal Service will generally send warning notices before offsetting recurring payments, but notes that it is statutorily obligated to conduct offset and that its failure to send a notice does not change this obligation or impair any future offset taken.
- Proposed paragraph (g) also clarifies the address to which this notice can be sent.

- The term “payee” is used by 31 U.S.C. 3716, but section 3716’s use of this term conflates the concepts of “payee” and “PEP” (see the proposed definitions of these terms).
- Consistent with Congress’ intent to provide notification of the offset to the affected person, the proposed rule clarifies that this notice can be sent either to the payee or the PEP, depending on the address available.
 - If the disbursing official has an address only for the payee, the disbursing official may send the notice to the payee, even if the payee is a different person than the PEP.
 - Similarly, if the disbursing official has an address only for the PEP, the disbursing official may send the notice to the PEP, even if the PEP is a different person than the payee.
 - If the disbursing official has an address for both the payee and the PEP, the disbursing official may determine which address to use, regardless of whether the payee and the PEP are the same person. Under current operational practice, which is subject to change, Fiscal Service generally sends the notice to the payee, rather than the debtor/PEP, since the address for the payee would be obtained from the payment record which generally would have been submitted to Fiscal Service more recently than the debt record. If the payment record does not include an address for the payee, the disbursing official generally will use the address on the debt record. Fiscal Service’s current operational practice generally assumes that the more current information is likely better information. However, the proposed rule would give Fiscal Service the flexibility to change its current operational approach.

- Proposed paragraph (g) also makes clear that the failure of a disbursing official to send a notice (or the failure of a payee or PEP to receive such a notice) does not impair the validity of the offset. There may be circumstances where the address(es) provided on the payment record and the debt record are incorrect or outdated. In other circumstances, the addresses may be missing from those records. Such circumstances make it difficult, if not impossible, for the disbursing official to deliver a notice of offset. The disbursing official, however, is still under a statutory requirement to offset certain payments. Thus, the inability to send a notice to a valid address does not preclude offset.

(h) *Notification of offset to creditor and payment agencies.* Proposed paragraph (h) is consistent with the existing TOP regulations.

(i) *Disposition of amounts collected.* Proposed paragraph (i) is consistent with the existing TOP regulations. However, proposed paragraph (i)(2) addresses the status of an offset when the payment that was offset was made in error. Except as specified in § 285.42(e), addressing tax refund offset to collect past-due support, there is no time limitation on when a payment agency may request a payment reversal.

(j) *Fees.* Proposed paragraph (j) restores statutory flexibility to Fiscal Service's fee-charging authority. The existing TOP regulations do not address Fiscal Service's fee-charging authority consistently. Some provisions in the existing regulations require Fiscal Service to charge creditor agencies for the full cost for certain types of offset, even though the applicable statutes permit Fiscal Service to charge "up to" full cost. Where the statute permits Fiscal Service to charge up to full cost, the proposed rule would allow Fiscal Service to charge anywhere between \$0 and full cost. Statutes permitting Fiscal Service to charge between \$0 and full cost include: 26 U.S.C. 6402(e) (offset of tax refund payments to collect State income tax obligations); 26 U.S.C. 6402(f) (offset of tax refund payments to collect unemployment compensation debt); and 31 U.S.C. 3716(c)(4)

(offset of Federal nontax payments and State payments). Statutes that require Fiscal Service to charge full cost include: 42 U.S.C. 664(b) (offset of tax refund payments to collect past-due support obligations); and 31 U.S.C. 3720A(d) (offset of tax refund payments to collect Federal nontax debts).

(k) *Social Security Numbers*. Proposed paragraph (k) is consistent with the existing TOP regulations and addresses the restrictions imposed by the Social Security Number Fraud Prevention Act of 2017, Public Law No. 115-59.

Section 285.30 – Offset of Federal Nontax Payments and State Payments

This section consolidates the rules that apply generally to the offset of Federal nontax payments and State payments.

(a) *Scope*. Proposed paragraph (a) describes the scope of this and its related sections (i.e. §§ 285.30, 285.31, 285.32, 285.33, and 285.34), which govern offset of Federal nontax payments and State payments. It also describes that the scope of sections 285.30 through 285.34 do not apply to Federal debts or Federal payments arising under the tariff laws of the United States or the Social Security Act, except to the extent provided under sections 204(f) and 1631(b)(4) of such Act and 31 U.S.C. 3716(c). This limitation is required due to the language of 31 U.S.C. 3701(d), which states that 31 U.S.C. 3711(e) and 3716–3719 “do not apply to a claim or debt under, or to an amount payable under—(1) the Internal Revenue Code of 1986 (26 U.S.C. 1 et seq.), (2) the Social Security Act (42 U.S.C. 301 et seq.), except to the extent provided under sections 204(f) and 1631(b)(4) of such Act and section 3716(c) of this title, or (3) the tariff laws of the United States.” The definition of “Federal debt” excludes debts arising under the Internal Revenue Code, and the definition of “Federal nontax payment” excludes payments arising under the Internal Revenue Code. The provision excluding Federal debts or Federal payments arising under the Social Security Act except to the extent provided under sections 204(f) and

1631(b)(4) of such Act and 31 U.S.C. 3716(c) means that, among other things, Federal debts and Federal payments arising under the Social Security Act are subject to TOP as long as they are carried out in accordance with the applicable requirements provided for in the cross-referenced statutory provisions.

(b) *General rule.* Proposed paragraph (b) describes the payments generally subject to offset.

(c) *Exemptions of Federal nontax payments from centralized offset.* Proposed paragraph (c) describes Fiscal Service's authority to exempt payments from offset under TOP. It also lists the Federal payments that are exempt from offset under TOP.

- Proposed paragraph (c)(1) explains how Federal payment agencies may request that a class of payments be exempted from offset under TOP. It describes Fiscal Service's authority to grant and withdraw payment exemptions.
- Proposed paragraph (c)(2) lists certain payment types that are exempt by statute and by the existing TOP regulations. It also lists payment types that Fiscal Service proposes to exempt through this proposed rule, including the following:
 - Proposed paragraph (c)(2)(viii) describes the treatment of lump-sum benefit payments. See the proposed definition for "lump-sum benefit payment."
 - Proposed paragraph (c)(2)(ix) describes Fiscal Service's authority to establish minimum thresholds for the referral of debt. This assists Fiscal Service in recognizing that, in certain circumstances, the costs of an offset warrant exemption from offset. For example, in some cases, a payment amount may be so small that the only amount that could be collected from the payment is the cost of an offset or less; offset in such a scenario would not be warranted. *See* 31 CFR 903.3(a)(3).

- Proposed paragraphs (c)(2)(x) and (xi) describe that payments are exempted from offset through TOP when they are for: (1) attorneys' fees and litigation costs for class counsel made under prevailing party fee-shifting statutes to satisfy court judgments or settlements in actions certified as class actions pursuant to Federal Rule of Civil Procedure 23(b)(2) when the members of the class are not ascertainable; or (2) attorneys' fees and litigation costs for class counsel and administrative costs for distributing settlements made under prevailing party fee-shifting statutes to satisfy settlements in actions certified as class actions pursuant to Federal Rule of Civil Procedure 23(b)(3). In both these situations, the person legally entitled to a fee or cost payment is the prevailing party (i.e., each member of the class), not the class counsel or class administrator. As such, absent exemption, fee and cost payments awarded under these class actions would be allocated among the various class members and would be subject to offset for the debts of those class members, rather than for the debts of the class counsel or class administrator.
- In actions certified as class actions pursuant to Federal Rule of Civil Procedure 23(b)(2), offset may not be administratively feasible. Rule 23(b)(2) allows a person to sue on behalf of a class of litigants a person who has taken or refused to take action with respect to the class where injunctive or declaratory relief is sought as final relief. An incidental claim for monetary relief may also be included, such as where the substantive law under which the class is suing provides for attorneys' fees to be paid to the prevailing party (i.e., every member of the class). However, in some situations, it would be impractical – and sometimes impossible – to identify all of the persons who fall within a Rule 23(b)(2) class (i.e., the

persons whose debts would be properly offset in the absence of an exemption from offset). As such, an exemption from offset for these situations is warranted.

- In actions certified as class actions pursuant to Federal Rule of Civil Procedure 23(b)(3), the Department of Justice has informed Fiscal Service that offsetting these payments for the debts of the class members risks adversely affecting the Government's ability to settle these cases on the most favorable terms to the United States and interferes with its plenary authority over litigation. The Department of Justice further noted that offset would further complicate negotiation dynamics that are already highly charged and challenging. For example, the Department of Justice stated that class counsel might attempt to negotiate higher settlement amounts to ensure that their fees would not be reduced by the offsets for the debts of class members. Because offset of these types of payments runs the substantial risk of interfering with the Government's ability to effectively represent the interests of the United States in litigation, exemption is appropriate.
- Proposed paragraph (c)(2)(xii) describes that payments are exempted from offset through TOP when offset is impractical, as determined by Fiscal Service in separate guidance. Such guidance may address, for example, situations in which the payment agency is unable to obtain a TIN for the PEP. Payment agencies are required to include a TIN on their certified payment vouchers (see the proposed definition for "payment record" and 31 U.S.C. 3325(d)). Disbursing officials are responsible for examining certified payment vouchers to determine whether such vouchers are in the proper form. 31 U.S.C. 3325(a)(2)(A). And, TOP's matching process

requires TIN information to be on the payment record for an offset to take place. If a TIN is missing from a payment voucher, there is the potential for a missed offset. However, there are some circumstances where obtaining a TIN on a required payment is impossible or impractical. Some of the barriers to collecting and providing TINs include, for example:

- payments to foreign persons who do not have TINs;
 - payments under a witness protection program, for undercover operations, or to informants where collection of the TIN information may interfere with the Government's efforts to protect a person's identity or otherwise have a detrimental effect on a law enforcement operation, military operation, national security, or emergency relief effort; and
 - payments made by a payment agency that does not have the legal authority to require a PEP to submit a TIN and in which the agency cannot independently obtain a TIN through reasonable efforts.
- There are certain statutes that explicitly exempt payments from "offset" or "setoff." *See, e.g.*, 31 U.S.C. 3701(d), 3716(c)(1)(C); 47 U.S.C. 309(j)(8)(C)(ii). Proposed paragraph (c)(2)(xiii) explicitly states that such payments are exempt from offset under this subpart. Other statutes exempt the payment from levies, garnishments, and other legal process; these statutes do not affect an agency's authority to conduct offsets.
 - Proposed paragraph (c)(2)(xiv) exempts classes of payments for which the Secretary has granted an exemption.

(d) Certification of amount to be offset if different than maximum allowed by law.

Proposed paragraph (d) describes the authority of a creditor agency to reduce the amount by which a payment is offset if it determines the reduction is necessary given the debtor's

financial situation. This applies to the offset of State payments and Federal nontax payments; it does not apply to the offset of tax refund payments.

Section 285.31 – Offset of Covered Benefit Payments to Collect Federal Nontax

Debts

(a) *Scope*. Proposed paragraph (a) describes the scope of this section, which governs the offset of covered benefit payments. This section does not govern the offset of lump-sum benefit payments. *See* proposed § 285.30(c)(2)(viii).

(b) *General Rule*. Proposed paragraph (b) states the general rule that Federal agencies collect their delinquent debt through the offset of covered benefit payments.

(c) *Offset amount*. Proposed paragraph (c)(1) describes the limitation on the amount by which a monthly benefit payment may be offset. It restates the limitations that are specified in the existing TOP regulations. Proposed paragraph (c)(2) would permit, but not require, disbursing officials to aggregate the amount of Federal benefit payments received by a PEP within a 12-month period (or within the prior month, on a prorated basis). This more closely aligns with 31 U.S.C. 3716(c)(3)(A)(ii).

Section 285.32 – Offset of Federal Salary Payments to Collect Federal Nontax Debts

(a) *Scope*. Proposed paragraph (a) describes the scope of this section, which governs salary offset. This section does not apply to the offset of final lump-sum payments of Federal salary, which are subject to 100% offset and are not subject to the additional procedures required for salary offset.

(b) *General Rule*. Proposed paragraph (b) restates the general rule that, like other types of offset, Federal agencies must refer certain debts to TOP for collection through salary offset. Because of the additional and generally more costly due process requirements for salary offset (as compared with other types of offset), Fiscal Service has determined that

salary offset only be required for debts over a certain amount, as Fiscal Service may prescribe in separate guidance. Creditor agencies would be permitted, but not required, to conduct salary offset for lower dollar debts, subject to minimums that Fiscal Service may establish. If a creditor agency has complied with all the prerequisites for collecting a debt through offset except for the prerequisites regarding the offset of salary payments, it may refer the debt to TOP for offset against all payments other than salary payments; if salary offset is required, the creditor agency must work toward completing the prerequisites for salary offset after such a referral.

(c) *Additional due process.* Proposed paragraph (c) describes the requirement that the creditor agency make a reasonable attempt to provide a debtor with the opportunity for a hearing prior to attempting to collect the debt through salary offset. This is consistent with the existing TOP regulations.

(d) *Procedures for salary offset.* Proposed paragraph (d) sets forth the procedures for salary offset. These procedures are consistent with the existing TOP regulations.

In the existing TOP regulations, there is a provision regarding the establishment of an interagency consortium. The establishment and maintenance of this consortium is required by 5 U.S.C. 5514(a)(1). While Fiscal Service maintains this consortium, it determined that there was no need to address this in regulations. This proposed rule, therefore, proposes to eliminate that provision. While the proposed rule would eliminate this provision, Fiscal Service notes that the consortium will continue to exist.

Section 285.33 – Offset of Federal Nontax Payments to Collect Past-Due Support

The introductory text clarifies that HHS, acting on behalf of a State, is the creditor agency for purposes of this section.

(a) *Scope.* Proposed paragraph (a) describes the scope of this section, which governs the offset of Federal nontax payments to collect past-due support that is referred to TOP by

HHS. It does not govern the offset of Federal nontax payments to collect past-due support that is referred to TOP directly by a State.

(b) *General Rule*. Proposed paragraph (b) describes that disbursing officials will collect past-due support through offset of Federal nontax payments, in accordance with the provisions of this subpart.

For purposes of this section, there is no requirement that States conduct offset to collect Federal debts. By referring a debt to TOP (or to HHS for the purpose of referring to TOP), the State agrees to the terms of this regulation, which constitutes the reciprocal agreement required by 31 U.S.C. 3716(h)(1)(B).

(c) *Due process*. Proposed paragraph (c) explains that the due process described in proposed § 285.2(d)(1)(ii) must be provided, but that the notice described in that section need only be sent a minimum of 30 days prior to referring the debt to TOP (as opposed to 60 days).

(d) *Coordination*. Proposed paragraph (d) requires HHS and States to coordinate to ensure that the same debt is not referred to TOP twice.

(e) *Payments not subject to offset*. Proposed paragraph (e) lists the types of Federal payments that may not be offset to collect past-due support under this section. As with offset of Federal nontax payments to collect other types of debt, payments can be partially or fully exempt. However, unlike the collection of other types of debt, covered benefit payments may not be offset through TOP to collect past-due support. Offset of tax refund payments for past due support is covered by § 285.42.

(f) *Special provisions applicable to Federal salary payments*. Proposed paragraph (f) describes the way in which Federal salary payments may be offset to collect past-due support. It describes the amount by which Federal salary payments may be offset and the due process requirements.

Section 285.34 – Offset under Reciprocal Agreements with States

(a) *Scope*. Proposed paragraph (a) describes the scope of this section, which governs offsets under the State Reciprocal Program, which is a program within TOP through which certain Federal debts and State debts are collected under the terms of reciprocal agreements through the offset of State payments and Federal nontax payments.

(b) *General Rule*. Proposed paragraph (b) states that Fiscal Service and disbursing officials and participating SRP States will comply with the terms of the applicable reciprocal agreement.

(c) *Reciprocal agreements*. Proposed paragraph (c) describes what terms must be in a reciprocal agreement. Neither Fiscal Service nor a State is required to enter into a reciprocal agreement.

(d) *Offsetting Federal payments to collect State debt*. Proposed paragraph (d) describes the requirement that States certify that their debts meet certain prerequisites prior to referring the debts to TOP. It also describes the types of Federal payments that are exempt from offset under the State Reciprocal Program.

(e) *Offsetting State payments to collect Federal debt*. Proposed paragraph (e) describes the requirement that a creditor agency must certify its Federal debt for it to be collected under the State Reciprocal Program.

(f) *Fees*. Proposed paragraph (f) describes that Fiscal Service may charge participating SRP States a fee for the cost of offsetting a Federal payment to collect a State debt. The amount of that fee may be anywhere between \$0 and the full cost of applying the offset procedure. While Fiscal Service may charge a participating SRP State a fee, the participating SRP State may not charge Fiscal Service or the creditor agency a fee.

Section 285.40 – Offset of Tax Refund Payments to Collect Federal Nontax Debts, State Debts, and Debts Owed to Tribal IV-D Agencies

This section consolidates the rules that apply generally to the offset of tax refund payments.

(a) *Scope*. Proposed paragraph (a) describes the scope of this and its related sections (i.e. §§ 285.40, 285.41, 285.42, and 285.43), which govern the offset of tax refund payments through TOP.

(b) *General Rule*. Proposed paragraph (b) describes the general rule that tax refund payments are subject to collection for Federal debts, for certain State debts, and for certain debts owed to Tribal IV-D agencies.

(c) *Reasonable efforts*. Proposed paragraph (c) describes the requirement that a creditor agency must make a reasonable effort to collect the debt prior to attempting to collect the debt through tax refund offset. Sending a demand letter and complying with statutory and regulatory prerequisites is an example of making reasonable efforts to collect.

(d) *Notification of offset to the debtor*. Proposed paragraph (d) describes the requirement to send the person or persons entitled to the tax refund payment a notice that the offset has occurred.

Section 285.41 – Offset of Tax Refund Payments to Collect Federal Nontax Debts

The introductory text clarifies the definition for the term “match,” when used as noun, as applied to this section. The definition is essentially the same as the definition provided in section 285.1, except that it requires the use of a name control and a TIN (or derivatives thereof). The definition for “match” in section 285.1, does not necessarily require the use of a name (or name control) and a TIN, though TOP does make use of those data points currently and anticipates doing so in the foreseeable future. The definition for “match” in the introductory text of § 285.41, on the other hand, does require the use of name control and TIN, though an exact match on those data fields is not required. *See* 31 U.S.C. 3720A(h)(3) (describing a “match” in the context of the

offset of tax refund payments to collect Federal nontax debt). Note, the term “name control” is a term used by the IRS and generally refers to a sequence of characters derived from the name of a taxpayer.

(a) *Scope*. Proposed paragraph (a) describes the scope of this section, which governs tax refund offset to collect Federal debts through TOP.

(b) *General Rule*. Proposed paragraph (b) states that Federal agencies generally must collect Federal debts over 120 days delinquent by referring them to TOP for tax refund offset.

(c) *OASDI overpayment*. Proposed paragraph (c) describes the additional requirements to collecting an OASDI overpayment through tax refund offset.

(d) Proposed paragraph (d) recognizes that, unlike many other types of offset that permit Fiscal Service to charge anywhere from \$0 per offset up to the full cost of offset (*see* proposed § 285.2(j)), Fiscal Service must charge Federal agencies for the full cost of applying the offset procedure in the context of tax refund offset to collect Federal nontax debts. *See* 31 U.S.C. 3720A(d).

Section 285.42 – Offset of Tax Refund Payments to Collect Past-Due Support

(a) *Scope*. Proposed paragraph (a) describes the scope of this section, which governs tax refund offset to collect past-due support through TOP.

(b) *General Rule*. Proposed paragraph (b) describes the circumstances under which HHS, a State, or a Tribal IV-D agency may refer past-due support to TOP.

(c) *Referral of past-due support to TOP*. Proposed paragraph (c) explains the circumstances under which HHS may submit past-due support to TOP. It also permits States and Tribal IV-D agencies to refer past-due support to TOP, but only if authorized by HHS rules.

(d) *Additional due process.* Proposed paragraph (d) describes the additional due process requirements for past-due support that is being enforced by more than one State or Tribal IV-D agency.

(e) *Time limitation on reversals.* Proposed paragraph (e) addresses the time limitation imposed on IRS for reversing an improper tax refund payment. This time limitation was imposed on December 30, 2015, through an interim final rule (80 FR 81463). The comments received pursuant to that interim final rule will be addressed along with comments to this proposed rule.

(f) *Fees.* Proposed paragraph (f) recognizes that, unlike many other types of offset that permit Fiscal Service to charge anywhere from \$0 per offset up to the full cost of offset (*see* proposed § 285.2(j)), Fiscal Service must charge States and Tribal IV-D agencies for the full cost of applying the offset procedure in the context of tax refund offset to collect past-due support. *See* 42 U.S.C. 664(b). If the full cost of an offset exceeds the statutory maximum (currently \$25), Fiscal Service will charge the statutory maximum.

Section 285.43 – Offset of Tax Refund Payments to Collect State Income Tax and Unemployment Compensation Debts

There are no additional definitions unique to this section.

(a) *Scope.* Proposed paragraph (a) describes the scope of this section, which governs tax refund offset to collect State income tax obligations and unemployment compensation debts.

(b) *General Rules.* Proposed paragraph (b) states that States may (but are not required to) refer to TOP State income tax obligations and unemployment compensation debts. If States refer such debts, Fiscal Service will collect those debts through offset, subject to the provisions of the proposed rule.

(c) *Additional due process.* Proposed paragraph (c) explains the due process requirements (beyond those required under the proposed § 285.2(d)(1)(ii)) for collecting State income tax obligations and unemployment compensation debts through tax refund offset.

Fiscal Service invites commenters' views on all aspects of the proposed rule, including whether the proposed rule is appropriately tailored and clear.

III. Procedural Analyses

Federalism

This proposed rule has been reviewed under Executive Order 13132, Federalism. This proposed rule would not have substantial direct effects on States, on the relationship between the national government and the States, or on distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 13132, it is determined that this proposed rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

Paperwork Reduction Act

The Paperwork Reduction Act does not apply because this proposed rule would not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

Regulatory Flexibility Act Analysis

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), it is hereby certified that the proposed rule would not have a significant economic impact on a substantial number of small entities because this rule only impacts persons who receive payments from Federal agencies or States and who are delinquent on debts owed to Federal agencies, States, or Tribal IV-D agencies. Accordingly, an initial regulatory flexibility analysis

under the Regulatory Flexibility Act is not required. Fiscal Service seeks comment on whether the certification made herein should be reconsidered and, if so, on what basis.

Regulatory Planning and Review

This proposed rule is not a significant rule for purposes of Executive Order 12866 and has not been reviewed by the Office of Management and Budget. This rule is anticipated to be designated a deregulatory action for purposes of Executive Order 14192.

Unfunded Mandates Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1532 (Unfunded Mandates Act), requires that the agency prepare a budgetary impact statement before promulgating any rule likely to result in a Federal mandate that may result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year. If a budgetary impact statement is required, section 205 of the Unfunded Mandates Act also requires the agency to identify and consider a reasonable number of regulatory alternatives before promulgating the rule. We have determined that this rule would not result in expenditures by State, local, and Tribal governments, or by the private sector, of \$100 million or more in any one year. Accordingly, we have not prepared a budgetary impact statement or specifically addressed any regulatory alternatives.

List of Subjects

31 CFR Part 5

Claims, Government employees, Income taxes, Wages.

31 CFR Part 256

Claims.

31 CFR Part 285

Administrative practice and procedure, Black lung benefits, Child support, Child welfare, Claims, Credit, Disability benefits, Garnishment of wages, Government employees,

Income taxes, Loan programs, Privacy, Railroad retirement, Railroad unemployment insurance, Social Security, Supplemental Security Income, Taxes, Unemployment compensation, Veteran, Wages.

For the reasons set forth in the preamble, Treasury proposes to amend 31 CFR part 5 and Fiscal Service proposes to amend 31 CFR parts 256 and 285 as follows:

PART 5—TREASURY DEBT COLLECTION

1. The authority citation for part 5 continues to read as follows:

Authority: 5 U.S.C. 5514; 26 U.S.C. 6402; 31 U.S.C. 321, 3701, 3711, 3716, 3717, 3718, 3720A, 3720B, 3720D.

§§ 5.1, 5.4, 5.9, 5.11, 5.13, 5.17, 5.20 [Amended]

2. In the table below, for each section indicated in the left column, remove the reference indicated in the middle column from wherever it appears in the section, and add the reference indicated in the right column:

Section	Remove	Add
5.1	285.11	285.111
5.1	285.2(a)	285.1
5.4	285.13	285.113
5.9	285.12	285.112
5.9	285.12(b)(2)	285.112(b)(2)
5.9	285.12(i)	285.112(i)
5.9	285.12(g)	285.112(g)
5.11	285.2	285.40
5.11	285.2(d)	285.40(c)
5.13	285.11	285.111

5.13	285.11(f)	285.111(f)
5.13	285.11(f)(4)	285.111(f)(4)
5.13	285.11(f)(5)	285.111(f)(5)
5.17	285.13	285.113
5.20	285.2	285.40

**PART 256—OBTAINING PAYMENTS FROM THE JUDGMENT FUND AND
UNDER PRIVATE RELIEF BILLS**

3. The authority citation for part 256 continues to read as follows:

Authority: 31 U.S.C. 1304, 3728; 41 U.S.C. 612; 5 U.S.C. 2301 note.

§ 256.21 [Amended]

4. Amend § 256.21 by removing “285.5” and adding in its place “part 285, subpart A,”.

**PART 285 – DEBT COLLECTION AUTHORITIES UNDER THE DEBT
COLLECTION IMPROVEMENT ACT OF 1996**

5. The authority citation for part 285 continues to read as follows:

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.

§§ 285.11 through 285.13 [Redesignated as §§ 285.111 through 285.113]

6. Redesignate §§ 285.11 through 285.13 within subpart B as §§ 285.111 through 285.113, respectively.

7. Revise subpart A to read as follows:

Subpart A -Disbursing Official Offset

Sec.

285.1 – Definitions.

285.2 – General provisions.

285.30 – Offset of Federal nontax payments and State payments.

285.31 – Offset of covered benefit payments to collect Federal nontax debts.

285.32 – Offset of Federal salary payments to collect Federal nontax debts.

285.33 – Offset of Federal nontax payments to collect past-due support.

285.34 – Offset under reciprocal agreements with States.

285.40 – Offset of tax refund payments to collect Federal nontax debts, State debts, and debts owed to Tribal IV-D agencies.

285.41 – Offset of tax refund payments to collect Federal nontax debts.

285.42 – Offset of tax refund payments to collect past-due support.

285.43 – Offset of tax refund payments to collect State income tax and unemployment compensation debts.

Subpart A - Disbursing Official Offset

§ 285.1 Definitions,

As used in this subpart, unless otherwise specified, the following definitions will apply:

Address means physical street address, post office box number, electronic address (including electronic mail and telephone numbers capable of receiving text messages or similar alerts), or other reasonable address through which written notice can be delivered to a debtor or payee. For the purposes of § 285.43(b)(2)(i), the term “address” is limited to a physical street address or post office box.

Centralized offset means offset conducted through TOP.

Covered benefit payment means a Federal payment payable to an individual under the Social Security Act (42 U.S.C. 301 et seq.), 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).

Creditor agency means any Federal agency that is owed a debt that seeks to collect that debt through offset of Federal or State payments. For purposes of §§ 285.2, 285.30, 285.33, 285.34, 285.40, 285.42, and 285.43, the term “creditor agency” also includes any State that is owed a debt that seeks to collect the debt through offset of Federal payments. For purpose of § 285.42, the term “creditor agency” also includes Tribal IV-D agencies.

Days delinquent refers to the number of days that a debt has been in a delinquent status. For administrative debts (e.g., debts arising from fines, penalties, and overpayments), the first day of delinquency generally is the date of the creditor agency’s initial written demand for payment. For debts that arise from the extension of credit through direct loans, loan guarantees, or insurance, the date of delinquency generally is the due date specified in the applicable agreement or instrument.

Debt means Federal debt, State debt, and/or past-due support owed to a Tribal IV-D agency. For purposes of §§ 285.31, 285.32, and 285.41, the term “debt” means Federal debt. For purposes of §§ 285.2, 285.30, 285.34, and 285.40, the term “debt” means either a Federal debt, a State debt, or a debt owed to a Tribal IV-D agency. For the purposes of § 285.42, the term “debt” means State debt or past-due support owed to a Tribal IV-D agency. For the purposes of §§ 285.33 and 285.43, the term “debt” means State debt.

Debt record means information about a debt in TOP, including, but not limited to, the amount of the debt and the debtor’s name, address, and taxpayer identifying number.

Debtor means a person who owes a debt.

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 creditor agency’s initial written demand for payment or applicable agreement or instrument, unless other payment arrangements satisfactory to

the creditor agency have been made and such payment arrangements cure the delinquency.

Disbursing official, in the context of the offset of a Federal payment, means an official who has authority to disburse money pursuant to Title 31, Subtitle III, Chapter 33, Subchapter II of the United States Code or another Federal law and, in the context of the offset of a State payment, means the participating SRP State.

Disposable pay means that part of current basic pay, special pay, incentive pay, retired pay, retainer pay, or in the case of an employee not entitled to basic pay, other authorized pay remaining after the deduction of any amount required by law to be withheld (other than deductions to execute garnishment orders in accordance with parts 581 and 582 of this chapter). Among the legally required deductions that must be applied first to determine disposable pay are levies pursuant to the Internal Revenue Code (title 26, United States Code) and deductions described in § 581.105(b) through (f) of this chapter. *See* 5 CFR 550.1103.

Federal agency means a department, agency, subagency, court, court administrative office, or instrumentality in the executive, judicial, or legislative branch of the Federal Government, including government corporations.

Federal benefit payment is a payment made under a Federal entitlement program or for an annuity, including, but not limited to, payments for Social Security, Supplemental Security Income, Black Lung, Civil Service Retirement, Railroad Retirement annuity and Railroad Unemployment and Sickness benefits, Department of Veterans Affairs Compensation and Pension, and Worker's Compensation.

Federal debt or *Federal nontax debt* has the meaning contained in 31 U.S.C. 3701(b)(1), except that it excludes debts arising under the Internal Revenue Code. The term "Federal debt" includes debt administered by a third party acting as an agent for the

Federal Government. The term “Federal debt” also includes interest, penalties, and administrative costs that have been assessed on the principal amount of the debt.

Federal employee means a current employee of a Federal agency, including a current member of the Armed Forces or a Reserve of the Armed Forces, an employee of the United States Postal Service, and any seasonal or temporary employee.

Federally recognized Tribe means an entity listed on the Department of the Interior’s list under the Federally Recognized Indian Tribe List Act of 1994, which the Secretary of the Interior currently acknowledges as an Indian Tribe and with which the United States maintains a government-to-government relationship.

Federal nontax payment is a Federal payment other than an amount payable under the Internal Revenue Code.

Federal payment is any payment certified by a payment agency to a disbursing official on a voucher or other similar form in accordance with Title 31, Subtitle III, Chapter 33, Subchapter II of the United States Code or other Federal disbursement authority. The term “Federal payment” also includes any payment made by the United States through an escrow agent or other person with the responsibility to hold and/or further disburse the funds to a person. Types of Federal payments include, but are not limited to, wage, salary, retirement, vendor, expense reimbursement, benefit, travel advances, travel reimbursement, grant, fee, refund (including a tax refund payment), judgment (including those certified for payment pursuant to 31 U.S.C. 1304 or 3728), return of funds held by the United States for a person, and any other payment type made by the United States (including payments made by the United States on behalf of a State government) to a person.

Federal payment offset means, in the context of offset under a reciprocal agreement, offset of a Federal payment to collect a State debt.

Fiscal Service means the Bureau of the Fiscal Service, a bureau of the Department of the Treasury.

HHS means the Department of Health and Human Services, Office of Child Support Enforcement.

Internal Revenue Code means the Internal Revenue Code of 1986, as amended.

IRS means the Internal Revenue Service, a bureau of the Department of the Treasury.

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. A debt would not be legally enforceable, for example, if the debt is:

- (1) Subject to the automatic stay in bankruptcy proceedings;
- (2) The subject of a pending administrative review required by a statute or regulation that prohibits collection action during the review process; or
- (3) Governed by a statute that precludes collection through offset.

Lump-sum benefit payment is a covered benefit payment and refers to a one-time payment made in lieu of recurring payments (or a portion of such payments) that would otherwise be paid over a period of time.

Lump-sum benefit payment floor is calculated, in Fiscal Service's discretion and depending on the information available, as one of the following:

- (1) \$9,000;
- (2) \$750 times the number of months to which the lump-sum benefit payment relates;
- (3) \$750 times the number of months to which the lump-sum benefit payment relates minus any other amounts the PEP received as Federal benefit payments during those months; or

(4) \$9,000 minus any other amounts the PEP received as Federal benefit payments within a 12-month period.

Match, when used as a noun, means that the person entitled to payment on a payment record is the same person as the debtor on a debt record, as determined by Fiscal Service using information derived from the payment record and the debt record. When used as a verb, the term “match” means to conduct the process that results in a match.

Means-tested program refers to a program that bases eligibility on a determination that the income and/or assets of the PEP are inadequate to provide the PEP with an adequate standard of living without program assistance.

Monthly benefit payment is a Federal payment and means a covered benefit payment payable on a recurring basis at monthly intervals.

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.*) (*Federal Old Age, Survivors and Disability Insurance*).

Offset means withholding funds payable by the United States (including funds payable by the United States on behalf of a State government) or a State to, or held by the United States or a State for, a PEP to collect a debt owed by the PEP.

Participating SRP State means a State that has entered into a reciprocal agreement.

Past-due support means the amount of a delinquency, 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” also includes any past-due support being enforced by a State, including but not limited to amounts a State is enforcing pursuant to a cooperative agreement with an Indian Tribe or Tribal organization that receives funding

under section 455(f) of the Social Security Act. For purposes of § 285.42, past-due support also means the amount of a delinquency, determined under a court order or an order of an administrative procedure established under Tribal 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.

Payee means any person identified on the payment record as the recipient of the payment. Typically, the payee and PEP are the same person.

Payment means a Federal payment or a State payment.

Payment agency means, with regard to a Federal payment, any Federal agency that transmits payment requests, in the form of certified payment vouchers or other similar forms, to a disbursing official for disbursement. For § 285.34, the term “payment agency” also includes, with regard to a State payment, a participating SRP State.

Payment record, for purposes of Federal payments, 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 the purposes of State payments, the term “payment record” means information in a State’s records regarding a State payment eligible for offset under a reciprocal agreement.

PEP or *person entitled to payment* means the person legally entitled to the payment.

Person means an individual, corporation, partnership, association, organization, State or local government, Federally recognized Tribe, or any other type of entity other than the United States or a Federal agency.

Reciprocal agreement means a written agreement between Fiscal Service and a State, entered into pursuant to 31 U.S.C. 3716(h), that provides for Federal payment offset and State payment offset.

Recurring payment means a payment to an individual that is expected to be payable at regular intervals, at least four times annually, except that the term “recurring payment” does not include payments made pursuant to a Federal contract, grant, or cooperative agreement.

Salary offset means the collection of a debt through offset of disposable pay.

Salary payment agency means the agency that employs the Federal employee who owes the debt and authorizes the payment of their pay. A salary payment agency also includes any Federal agency that performs payroll services on behalf of the employing agency.

Secretary means the Secretary of the Treasury.

Separate guidance refers to guidance that Fiscal Service may issue regarding the operation of TOP, which may include a chapter in the Treasury Financial Manual, *Federal Register* documents, technical bulletins, rules of behavior, requirements documents, or other similar guidance.

State means each of 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. The term “State” includes agencies of the State.

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, including debt administered by a third party acting as an agent for the State. State debt also includes past-due support. For the purposes of “State debt,” a “person” does not include a foreign sovereign, a Federally recognized Tribe, another State, or any local government within a State.

State income tax obligation is a type of State debt and means “past-due, legally enforceable State income tax obligation,” as defined by 26 U.S.C. 6402(e)(5), and

includes any local income tax administered by the chief tax administration agency of the State.

State payment means an amount payable by a State to a person, as specified in a reciprocal agreement.

State payment offset means offset of a State payment to collect a Federal debt.

State Reciprocal Program or *SRP* refers to the program under which debts are collected pursuant to a reciprocal agreement.

Tax refund offset means offset of a tax refund payment to collect a debt.

Tax refund payment includes any overpayment of Federal taxes to be refunded to the person(s) making the overpayment after the IRS makes the appropriate credits as provided in 26 U.S.C. 6402(a) for any Federal tax liabilities on the part of the person(s) who made the overpayment.

Taxpayer identifying number means the identifying number described under section 6109 of the Internal Revenue Code.

Treasury Offset Program or *TOP* refers to the program administered by Fiscal Service through which Fiscal Service and other disbursing officials conduct offsets.

Tribal IV-D agency means an Indian Tribe or Tribal organization that receives funding under section 455(f) of the Social Security Act.

Unemployment compensation debt is a type of State debt and means “covered unemployment compensation debt,” as defined in 26 U.S.C. 6402(f)(4).

§ 285.2 General provisions.

(a) *Scope.* (1) This subpart governs the centralized offset of Federal payments and State payments to collect delinquent debts owed to the United States, a State, or a Tribal IV-D agency in accordance with 31 U.S.C. 3716 and 3720A, 5 U.S.C. 5514, 26 U.S.C. 6402, and 42 U.S.C. 664.

(2) This section sets forth the general rules applicable to centralized offset. Specific rules for each type of offset are set forth in §§ 285.30 through 285.34 and 285.40 through 285.43. To the extent there is a conflict between the general rules and the specific rules, the specific rules apply.

(3) The receipt of collections pursuant to this subpart does not preclude a creditor agency from pursuing other debt collection remedies in conjunction with centralized offset.

(b) *General rules for Federal agencies—(1) Mandatory referral of delinquent debts.* Federal agencies must refer debts to TOP for offset against all payment types subject to offset through TOP in accordance with this subpart.

(i) The requirement in this paragraph (b)(1) applies to any debt over 120 days delinquent, other than debts owed by foreign sovereigns or debts that fail to meet the requirements of paragraph (d)(1)(i) of this section.

(ii) If a debt that is over 120 days delinquent is not legally enforceable solely because it is under review as described in paragraph (d)(1)(ii)(C) of this section, the Federal agency must refer the debt to TOP within 30 days after completing its review.

(iii) Federal agencies must send the 60-day notice required in section (d)(1)(ii) at least 60 days prior to the debt becoming 121 days delinquent.

(2) *Discretionary referral of delinquent debts.* Federal agencies may refer to TOP a debt that is owed by a foreign sovereign or is less than 121 days delinquent.

(3) *Federal agency regulations.* Before referring a debt to TOP, Federal agencies must prescribe regulations in accordance with the requirements of 31 U.S.C. 3716(b) and 31 U.S.C. 3720A(a). Before referring debts to TOP for salary offset, Federal agencies must also prescribe regulations pursuant to 5 U.S.C. 5514(b) and 5 CFR 550.1104.

(c) *General rule for States and Tribal IV-D agencies.* States and Tribal IV-D agencies may refer delinquent debts to TOP in accordance with this subpart.

(d) *Requirements for all creditor agencies—(1) Referral prerequisites.* (i) A debt referred to TOP must be:

(A) Past-due in the amount stated by the creditor agency;

(B) Legally enforceable;

(C) More than the dollar threshold established by Fiscal Service in separate guidance; and

(D) To the extent it is a Federal debt:

(1) Not secured by collateral subject to a pending foreclosure action, unless the creditor agency determines that offset will not adversely affect the creditor agency's rights to the secured collateral or the creditor agency has determined it may relinquish rights to such collateral;

(2) Not based in whole or in part on conduct in violation of the antitrust laws; and

(3) Not appearing to arise from or involve fraud, a false claim, or a misrepresentation, except to the extent permitted by the Department of Justice or if the provisions of 31 CFR 900.3 do not apply.

(ii) The creditor agency must have made a reasonable attempt to provide each debtor with:

(A) Written notification, at least 60 days before referring the debt to TOP, to the debtor's address last known to the creditor agency, identifying:

(1) The nature and the amount of the debt;

(2) The intention of the creditor agency to collect the debt through the offset of Federal and State payments; and

(3) The debtor's rights and how the debtor may exercise those rights;

(B) An opportunity to inspect and copy the records of the creditor agency pertaining to the debt;

(C) An opportunity for a review within the creditor agency of the determination of indebtedness, including an opportunity to present evidence that all or part of the debt is not past-due or legally enforceable; and

(D) An opportunity to enter into a written repayment agreement with the creditor agency.

(2) *Delinquent debt information requirements.* For each debt referred to TOP, the creditor agency must provide to Fiscal Service the following:

(i) The name and taxpayer identifying number of the debtor;

(ii) The debtor's address last known to the creditor agency, if known;

(iii) The amount of the debt;

(iv) The date on which the debt became delinquent;

(v) Contact information for an individual or office within the creditor agency who will handle questions, concerns or communications regarding the debt;

(vi) Written certification as required in paragraph (d)(3) of this section; and

(vii) Any other information requested by Fiscal Service.

(3) *Creditor agency certification.* At the time the creditor agency refers a debt to TOP, the creditor agency must provide, in the manner required by Fiscal Service, written certification that:

(i) The debt meets the requirements described in paragraph (d)(1)(i) of this section;

(ii) The creditor agency has satisfied all the requirements described in paragraph (d)(1)(ii) of this section;

(iii) The creditor agency has complied with all statutes, regulations, policies, and contract provisions applicable to the creditor agency's assessment of interest, penalties, and administrative costs, and has provided written notice to each debtor explaining the creditor agency's obligations to accrue and assess any such charges;

(iv) The creditor agency has satisfied any other requirements applicable to the collection of the debt through offset as set forth in this subpart;

(v) The creditor agency has satisfied such other requirements as Fiscal Service may impose; and

(vi) The individual making the certification has the delegated authority to do so on behalf of the head of the creditor agency.

(4) *Correcting and updating debt information.* (i) After a debt has been referred to TOP, the creditor agency must provide, at least annually, in the manner and timeframes required by Fiscal Service, written certification that the debt continues to be legally enforceable and that all the information in the debt record, including the amount of the debt, is correct.

(ii) On an ongoing basis, the creditor agency must update:

(A) The amount of the debt in the debt record to reflect any collections the creditor agency receives outside of TOP;

(B) Address information for the debtor; and

(C) Any other information on the debt record.

(iii) The creditor agency may update debt records to reflect any increases in the amount of the debt referred to TOP so long as the creditor agency has complied with the requirements of paragraph (d)(1)(ii) of this section with regard to the increased amounts.

Creditor agencies may not update a debt record to add an amount associated with a separate debt, unless otherwise permitted by Fiscal Service.

(iv) The creditor agency must notify Fiscal Service immediately of any change in the legal enforceability of the debt, including notice that the debtor has filed for bankruptcy protection.

(5) *Duplication not required.* Nothing in this subpart requires any creditor agency to duplicate any notice or opportunity for hearing or review before referral of the debt to TOP.

(e) *Federal payments*—(1) *Payments eligible for centralized offset.* All Federal nontax payments, except as set forth in § 285.30(c)(2), and all tax refund payments, except as exempted by statute, are eligible for centralized offset.

(2) *Payment agency responsibilities*—(i) *Determination of PEP or PEPs.* (A) Unless the payment agency determines (in a time and manner specified by Fiscal Service in separate guidance) that the PEP does not owe a debt that has been referred to TOP:

(1) The payment agency must identify the PEP on the payment record, and

(2) the payment agency must submit a separate payment voucher for each PEP, unless a payment is owed jointly to more than one PEP.

(B) If the payment agency determines that the PEP does not owe a debt that has been referred to TOP, these regulations do not prohibit the payment agency from making the payment to a different person from the PEP, if otherwise appropriate.

(ii) *Payment vouchers.* Payment agencies must prepare, submit, and certify payment vouchers in the manner prescribed by the disbursing official, including for the purpose of ensuring that all eligible payments will be subject to centralized offset for debts owed by PEPs and that all ineligible payments will not be subject to centralized offset.

(iii) *Payment mechanism.* In general, unless a payment is exempt from offset, a payment agency must ensure its payment is disbursed through a payment mechanism that will automatically match with debts that have been referred to TOP. This may limit the circumstances in which an agency may use a credit card to make a payment. To the extent a payment agency disburses its payments through a payment mechanism that does not automatically match with debts that have been referred to TOP, or to the extent the payment agency makes a payment to a third party who subsequently disburses the money to the PEPs, the payment agency must work with Fiscal Service to match the payments through a manual process.

(3) *Payment agencies 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 may be held liable for the amount of the offset on the basis that the underlying obligation was not satisfied.

(f) *Procedures for centralized offset—(1) Disbursing official requirement.* When a match occurs and all other requirements for centralized offset have been met, the disbursing official will offset a payment to satisfy, in whole or part, any debt owed by the PEP.

(2) *Payments offset for debts owed by PEPs.* If a payment is made to a payee that is not a PEP with respect to that payment and if the payment agency properly identifies the PEP and payee in the payment record, the disbursing official will offset that payment only to collect debts owed by the PEP.

(3) *Payments made jointly to more than one PEP.* If more than one person is jointly entitled to a payment (i.e., there is more than one PEP for a payment), the entire payment will be subject to offset for a debt of any PEP, unless otherwise prohibited by law. If a tax refund payment is offset, any non-debtor PEP filing a joint return with a

debtor may secure their proper share of a tax refund payment from which an offset was made by filing a Form 8379, *Injured Spouse Allocation*, or successor form, with the IRS. IRS will then pay the non-debtor PEP their share of the refund and request that Fiscal Service deduct that amount from amounts payable to the creditor agency. Fiscal Service and the creditor agency will adjust their debt records accordingly. A successful injured spouse claim does not mean that the initial tax refund payment was erroneous or otherwise not due to the taxpayer.

(4) *Assigned payments.* Unless prohibited by Federal statute, if a person (an “assignor”) assigns the right to receive a Federal payment to a third party (an “assignee”), the assigned payment will be subject to centralized offset to collect any delinquent debt owed by either the assignee or the assignor.

(5) *Offset amount.* The disbursing official will offset the lesser of:

(i) The amount of the payment as shown on the payment record;

(ii) The amount of the debt;

(iii) The amount specified by a creditor agency, pursuant to § 285.30(d); or

(iv) In the case of a payment that is partially exempted under § 285.30(c), at the disbursing official’s option:

(A) The amount of the un-exempted portion of the payment, calculated based on the amount of the payment as shown on the payment record;

(B) The amount specified in paragraph (f)(5)(iv)(A) of this section less any reduction taken by the payment agency through internal offset; or

(C) If the amount specified in paragraph (f)(5)(iv)(B) of this section cannot be calculated, \$0.

(6) *Priority of offsets.* (i) A levy pursuant to the Internal Revenue Code takes precedence over offsets under this subpart.

(ii) When a debtor owes more than one debt referred under this subpart, amounts offset will be applied:

(A) First, to satisfy any past-due support;

(B) Second, to satisfy any Federal debts; and

(C) Third, to any State debts other than past-due support.

(iii) To the extent a debtor owes more than one debt in one of the categories specified in paragraph (f)(6)(ii) of this section, amounts offset will be applied first against older debts or as otherwise determined by Fiscal Service in separate guidance.

(g) *Notification of offset to debtor—(1) Warning Letter.* Before offsetting a recurring payment, the disbursing official (or Fiscal Service on behalf of the disbursing official) may, but is not required, to notify either the payee or the PEP (depending on what address information is available) in writing of when offsets are expected to begin and any other such information that the disbursing official (or Fiscal Service on behalf of the disbursing official) deems appropriate. With regard to monthly benefit payments, when administratively feasible, the disbursing official (or Fiscal Service on behalf of the disbursing official) will notify either the payee or the PEP (depending on what address information is available) in writing of when offsets are expected to begin and any other such information that the disbursing official (or Fiscal Service on behalf of the disbursing official) deems appropriate. The disbursing official (or Fiscal Service on behalf of the disbursing official) will determine in its discretion whether sending this notice is administratively feasible and may consider factors such as whether it has an accurate address to which to send such a letter and whether systems are functioning as expected. If the offset of a stream of monthly benefit payment is suspended or reduced for any reason, the disbursing official (or Fiscal Service on behalf of the disbursing official) need

not send any additional notice. Failure to send a warning notice will not affect the validity of any offset.

(2) *Post-Offset Notification Letter*. When an offset occurs under this subpart, the disbursing official (or Fiscal Service on behalf of the disbursing official) will notify either the payee or the PEP (depending on what address information is available) in writing of the offset. Failure to send an offset notice will not affect the validity of any offset. The offset notice will include:

(i) A description of the payment, the amount of the offset, and the date on which the offset occurred;

(ii) The purpose of the offset (e.g., to satisfy past-due support, Federal debt, State income tax obligation, or unemployment compensation debt, or other State debt);

(iii) The identity of the creditor agency requesting the offset; and

(iv) Contact information for an individual or office within the creditor agency who will handle concerns regarding the offset.

(h) *Notification of offset to creditor and payment agencies*—(1) *Notification to creditor agencies*. Fiscal Service will notify the creditor agency of all offsets made to collect the creditor agency's debts. This notification will include identifying information for each debtor, the total amounts collected from each debtor's payment with regard to the creditor agency's debts, and the amount of any fees charged to the creditor agency by Fiscal Service and any other disbursing official conducting offsets. Except as provided in paragraph (h)(2) of this section or in separate guidance, Fiscal Service and other disbursing officials generally will not advise the creditor agency of the source of payment from which the offset amounts were collected.

(2) *Notification to HHS*. Upon request from HHS, Fiscal Service and other disbursing officials will share with HHS information contained in the payment records of

persons who owe past-due support if that information would assist in the collection of such debts.

(3) *Notification to Fiscal Service.* When a non-Treasury disbursing official conducts an offset, that disbursing official will transmit to Fiscal Service all of the information necessary for Fiscal Service to send the notification under paragraphs (g) and (h) of this section, including the amount of any fees that the creditor agency is responsible for paying.

(4) *Notification to payment agencies.* Fiscal Service will make available to the payment agency the information contained in the offset notice so the payment agency may direct any questions about the offset to the appropriate contact point in the creditor agency.

(i) *Disposition of amounts collected—(1) Transmission of amounts collected.* Fiscal Service will transmit amounts collected through centralized offset, less fees charged pursuant to paragraph (j) of this section, to the appropriate creditor agency or agencies. Alternatively, Fiscal Service may transmit all amounts collected through centralized offset and then separately bill the creditor agency or agencies for any fees charged pursuant to paragraph (j) of this section.

(2) *Payment errors.* If a payment agency discovers that a payment that was offset (either in whole or in part) should not have been made and determines that the payment should be reversed, the payment agency must promptly reverse the amount of the payment that is available for reversal. Fiscal Service will notify the creditor agency of the reversal and, in Fiscal Service's discretion, will either:

(i) Deduct the portion of the reversed payment that was offset from future amounts payable to the creditor agency; or

(ii) Require the creditor agency to return promptly to the disbursing official an amount equal to the portion of the reversed payment that was offset.

(3) *Refunds*. In the event that a refund of an offset is appropriate, the disbursing official is generally not responsible for refunding the amount of the offset. The creditor agency must make any appropriate refunds and must notify Fiscal Service if it refunds all or any part of an offset taken through TOP.

(4) *Records*. If any payment (or portion thereof) that was offset is reversed or if any amount of an offset is refunded, Fiscal Service and the creditor agency will adjust their records accordingly.

(j) *Fees*. Unless otherwise provided by statute, Fiscal Service may charge creditor agencies fees sufficient to cover up to the full cost of implementing the offset procedures described in this subpart.

(k) *Social Security numbers*. Fiscal Service will ensure that an individual's social security number will not be visible on the outside of any package it sends by mail. In addition, Fiscal Service generally will redact or partially redact social security numbers in documents it sends by mail; however, to administer TOP, Fiscal Service (and other disbursing officials) may need to include social security numbers in mailed documents, including, for example:

(1) In interoffice and interagency communications;

(2) In notices, including notices to the PEP or payee that an offset has or will occur, when the social security number is (or is embedded in) a creditor agency's account number, debt identification number, or debtor identification number;

(3) In response to a request of a debtor or a debtor's representative for records of Fiscal Service's offset activities; and

(4) When required by law.

§ 285.30 Offset of Federal nontax payments and State payments.

(a) *Scope.* This section and §§ 285.31 through 285.34 set forth rules applicable to the offset of Federal nontax and State payments. This section and §§ 285.31 through 285.34 do not apply to Federal debts or Federal payments arising under:

(1) the tariff laws of the United States; or

(2) the Social Security Act, except to the extent provided under sections 204(f) and 1631(b)(4) of such Act and 31 U.S.C. 3716(c).

(b) *General rule.* Except as set forth in paragraph (c)(2) of this section, all Federal nontax payments are eligible for centralized offset for the collection of Federal debts and, to the extent permitted under §§ 285.33 and 285.34, for State debts. State payments are eligible for centralized offset for the collection of Federal debts to the extent permitted under § 285.34.

(c) *Exemptions of Federal nontax payments from centralized offset—(1) Agency requests for exemptions.* To request an exemption of a Federal nontax payment from centralized offset pursuant to 31 U.S.C. 3716(c)(3)(B), the head of a payment agency must make a request for an exemption in writing and in compliance with the procedures established by Fiscal Service in separate guidance. Fiscal Service may only exempt classes of payments from centralized offset and will not consider requests to exempt classes of debt from centralized offset. Fiscal Service may withdraw a previously granted exemption if it determines that the exemption is no longer warranted.

(i) *Means-tested program payments.* Fiscal Service will exempt from centralized offset classes of payments made under means-tested programs upon the request of the payment agency.

(ii) *Payments made under programs that are not means-tested.* Fiscal Service may exempt from centralized offset classes of payments that are not made under means-tested

programs upon the request of the payment agency. Payment agencies may request that Fiscal Service exempt 100% or a specific lesser percentage or amount of each payment in a payment class. Fiscal Service will consider such requests under standards it prescribes in separate guidance. Such standards will give due consideration to whether offset would tend to interfere substantially with or defeat the purpose of the payment agency's program.

(2) *Exempted payments.* The following payments are exempt from centralized offset:

- (i) Black Lung Part C benefit payments;
- (ii) Railroad Retirement tier 2 payments;
- (iii) Payments made under the tariff laws of the United States;
- (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) Federal loan payments (other than travel advances);
- (vi) 75% of the amount of the payment as shown on the payment record of any payment of retirement annuity certified by the Office of Personnel Management;
- (vii) 85% of the amount of a payment as shown on the payment record of a covered benefit payment;
- (viii) In the case of a lump-sum benefit payment, the greater of:
 - (A) the amount specified in paragraph (c)(2)(vii) of this section; and
 - (B) the lump-sum benefit payment floor;
- (ix) Any payment that is below the threshold established by Fiscal Service under § 285.2(d)(1)(i)(C);
- (x) Any payment for attorneys' fees and/or litigation costs for class counsel made under prevailing party fee-shifting statutes to satisfy court judgments or settlements in

actions certified as class actions pursuant to Federal Rule of Civil Procedure 23(b)(2)

when the members of the class are not ascertainable;

(xi) Any payment for attorneys' fees and/or litigation costs for class counsel and administrative costs for distributing settlements made under prevailing party fee-shifting statutes to satisfy settlements in actions certified as class actions pursuant to Federal Rule of Civil Procedure 23(b)(3);

(xii) Any payment type for which offset is impracticable, as determined by Fiscal Service in separate guidance;

(xiii) Any other payments for which an exemption is explicitly provided for by Federal statute; and

(xiv) Any other payments for which an exemption has been granted in accordance with 31 U.S.C. 3716(c)(3)(B).

(d) *Certification of amount to be offset if different than maximum allowed by law.*
If the creditor agency determines and certifies to Fiscal Service that the maximum amount allowed by law to be offset from Federal nontax payments 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 will offset such lesser amount specified by the creditor agency.

§ 285.31 Offset of covered benefit payments to collect Federal nontax debts.

(a) *Scope.* This section sets forth special rules applicable to the offset of covered benefit payments, other than lump-sum benefit payments, to collect delinquent Federal debts through TOP.

(b) *General rule.* To the extent required by § 285.2(b)(1), Federal agencies must refer delinquent debts to TOP for collection through the offset of monthly benefit payments.

(c) *Offset amount.* (1) The amount offset from a monthly benefit payment will be the lesser of:

- (i) The amount of the debt;
- (ii) An amount equal to 15% of the monthly benefit payment; or
- (iii) The amount, if any, by which the monthly benefit payment exceeds \$750.

(2) The disbursing official may disregard the offset limitation specified in paragraph (c)(1)(iii) of this section if the PEP has received either:

- (i) An amount equal to at least \$9,000 in Federal benefit payments within the prior 12 months; or
- (ii) An amount equal to at least \$750 in Federal benefit payments within the prior month.

§ 285.32 Offset of Federal salary payments to collect Federal nontax debts.

(a) *Scope.* (1) This section sets forth special rules applicable to salary offset to collect delinquent Federal debts through TOP.

(2) This section does not govern offset of final salary payments or lump-sum payments made to employees who have left a Federal agency's employ.

(b) *General rule.* To the extent required by § 285.2(b)(1), Federal agencies must refer debts to TOP for collection through salary offset. The requirement to collect debts through salary offset applies only with regard to debts over a threshold that Fiscal Service may establish in separate guidance.

(c) *Additional due process.* In addition to the requirements of § 285.2(d)(1)(ii), the creditor agency must have made a reasonable attempt to provide each debtor with an opportunity for a hearing, in accordance with 5 U.S.C. 5514 and agency regulations issued in accordance with 5 CFR 550.1104.

(d) *Procedures for salary offset.* (1) Each salary payment agency will compare debt records with records of Federal salary payments that it will disburse or certify to a disbursing official for disbursement. When a match occurs and all other requirements for salary offset have been met:

(i) The disbursing official will offset the Federal employee's salary payment to satisfy, in whole or part, the debt owed by the Federal employee; or

(ii) The salary payment agency, on behalf of the disbursing official, will deduct the offset amount from a Federal employee's disposable pay before it certifies the Federal employee's salary payment to a disbursing official for disbursement.

(2) *Offset amount.* (i) The amount offset from a salary payment under this section will be the lesser of:

(A) The amount of the debt;

(B) An amount equal to 15% of the debtor's disposable pay. The salary payment agency will use such records as it deems necessary to accurately calculate the debtor's disposable pay; or

(C) The amount determined under § 285.30(d).

(ii) Alternatively, the amount offset may be an amount greater than the amount specified in paragraph (d)(2)(i) of this section if agreed upon, in writing, by the debtor and the creditor agency.

§ 285.33 Offset of Federal nontax payments to collect past-due support.

As used in this section, HHS, acting on behalf of a State, is the creditor agency.

(a) *Scope.* This section sets forth special rules applicable to the offset of Federal nontax payments to collect past-due support through TOP. This section applies only to the referral of past-due support by HHS. For referral of past-due support directly by a State that has entered into a reciprocal agreement with Fiscal Service, see § 285.34.

(b) *General rule.* A disbursing official will offset any Federal nontax payment subject to offset under this subpart to collect past-due support.

(c) *Due process.* Either the State to which the past-due support is owed or HHS must provide the due process specified by § 285.2(d)(1)(ii), except that the notice referred to in that section may be sent 30 days prior to referral of the past-due support to TOP.

(d) *Coordination.* HHS and the States will coordinate to ensure that there are no duplicative referrals of past-due support to TOP.

(e) *Payments not subject to offset.* The following Federal payments are not eligible for offset under this section:

- (1) Payments exempted from offset under § 285.30(c)(2);
- (2) Covered benefit payments; and
- (3) Tax refund payments.

(f) *Special provisions applicable to Federal salary payments—(1) Offset amount.*
(i) Unless a lower maximum offset limitation is provided by applicable State law, the maximum part of a Federal salary payment subject to offset to collect past-due support may not exceed those amounts set forth in 15 U.S.C. 1673(b)(2)(A) and (B). If a lower maximum offset limitation is provided by applicable State law, the creditor agency must advise Fiscal Service of the lower maximum offset limitation.

(ii) *Garnishment for support.* The maximum allowable offset amount must be reduced by the amount of any deductions in pay resulting from a garnishment order for support. Nothing in this section will alter any rules applicable to processing garnishment orders for child support or alimony.

(2) *Pre-offset notice.* At least 30 days before offset, the disbursing official will send written notice to the debtor:

(i) Requesting that the debtor submit documentation that the disbursing official determines is needed to determine the applicable offset limitation under 15 U.S.C. 1673(b)(2)(A) and (B); and

(ii) Providing the amount (by percentage or otherwise) that will be deducted if the debtor fails to submit the requested documentation.

§ 285.34 Offset under reciprocal agreements with States.

(a) *Scope.* This section sets forth the special rules applicable to offset of Federal nontax payments and State payments to collect debt under reciprocal agreements with participating SRP States.

(b) *General rule.* In accordance with the terms of any applicable reciprocal agreement and this section, Fiscal Service and other disbursing officials will conduct Federal payment offset to collect delinquent State debts, and participating SRP States will conduct State payment offset to collect delinquent Federal debts.

(c) *Reciprocal agreements.* (1) Fiscal Service and a State may enter into a reciprocal agreement.

(2) A reciprocal agreement must:

(i) Set forth all of the State's requirements associated with State payment offset, including requirements of State law and any prohibitions on offsetting joint payments in accordance with § 285.2(f)(3);

(ii) Require the State to prescribe procedures to govern the collection of delinquent State debts;

(iii) Require that the State notify the payee or PEP of the State payment offset, providing the information required by § 285.2(g);

(iv) Set forth the types of Federal payments that will be subject to offset to collect the State's debts;

(v) Set forth the types of State payments that will be subject to offset to collect Federal debts;

(vi) Not impose any due process requirements on the collection of Federal debts beyond what is already required by this subpart; and

(vii) Contain any other requirements that Fiscal Service considers appropriate.

(d) *Offsetting Federal payments to collect State debt*—(1) *Certification of State debt.* At the time a participating SRP State refers a debt to TOP for collection by Federal payment offset under this section, the State must provide, in the manner required by Fiscal Service, written certification that:

(i) The debt meets the requirements described in § 285.2(d)(1);

(ii) The State has complied with all Federal and State statutes, regulations, policies, and contract provisions applicable to the collection of the debt through offset under this subpart;

(iii) The individual making the certification has the delegated authority to make the certification on behalf of the State;

(iv) With regard to past-due support, the State is authorized by HHS rules to refer the past-due support directly to TOP; and

(v) The State has met such other requirements as Fiscal Service may from time to time impose.

(2) *Federal payments exempt from offset under this section.* The following Federal payments are not eligible for offset under this section:

(i) Payments exempted from offset under § 285.30(c)(2);

(ii) Covered benefit payments; and

(iii) Tax refund payments.

(e) *Offsetting State payments to collect Federal debt.* Fiscal Service will refer a Federal debt to a participating SRP State only if Fiscal Service has received a certification from the creditor agency that the prerequisites specified in § 285.2(b) have been satisfied.

(f) *Fees.* Fiscal Service may charge creditor agencies fees sufficient to cover up to the full cost of implementing Federal payment offset and State payment offset. A

participating SRP State may not charge any Federal agency a fee for its cost of implementing offset under this section.

§ 285.40 Offset of tax refund payments to collect Federal nontax debts, State debts, and debts owed to Tribal IV-D agencies.

(a) *Scope.* This section and §§ 285.41 through 285.43 set forth rules applicable to the offset of tax refund payments through TOP.

(b) *General rule.* All tax refund payments are eligible for centralized offset for the collection of Federal debts and, to the extent permitted under §§ 285.42 and 285.43, for State debts, and to the extent permitted under § 285.42, for past-due support owed to Tribal IV-D agencies.

(c) *Reasonable efforts.* Before referring a debt to TOP for collection by tax refund offset, the creditor agency must make reasonable efforts to collect the debt. The requirement to make reasonable efforts can be satisfied by making written demand for payment from the debtor and complying with any other prerequisites established by the creditor agency.

(d) *Notification of offset to the debtor.* When a tax refund offset occurs, Fiscal Service will notify the debtor PEP and, if applicable, any non-debtor PEP. In addition to the requirements of § 285.2(g), this notice will also include information regarding the steps any non-debtor PEP who may have filed a joint return with the debtor may take to secure their proper share of the tax refund. Failure to send an offset notice will not affect the validity of any offset.

§ 285.41 Offset of tax refund payments to collect Federal nontax debts.

With respect to the term “match,” as applied to this section, the Fiscal Service will use information to determine that the person entitled to payment on a payment record is the same person as the debtor on a debt record, including name control, taxpayer identifying number, and other necessary identifiers, if any.

(a) *Scope.* This section sets forth special rules applicable to the offset of tax refund payments to collect delinquent Federal debts through TOP.

(b) *General rule.* To the extent required by § 285.2(b)(1), Federal agencies must refer debts to TOP for collection through offset of tax refund payments, except that any agency subject to section 9 of the Act of May 18, 1933 (16 U.S.C. 831h) may, but is not required to, refer delinquent debts to TOP for collection through offset of tax refund payments.

(c) *OASDI overpayments.* Prior to referring a debt that resulted from an OASDI payment to an individual to TOP, the Social Security Administration must:

(1) Determine that the individual is not currently entitled to monthly insurance benefits under title II of the Social Security Act;

(2) In addition to the notice described in § 285.2(d)(1)(ii)(A), notify the debtor of the conditions under which the Social Security Administration is required to waive recovery of an overpayment, as provided under section 204(b) of the Social Security Act; and

(3) If the waiver referred to in paragraph (c)(2) of this section is requested within the 60-day period referred to in § 285.2(d)(1)(ii)(A), render a decision on the waiver request under section 204(b) of the Social Security Act.

(d) *Fees.* Fiscal Service will charge creditor agencies a fee to reimburse it for the full cost of applying the offset procedure.

§ 285.42 Offset of tax refund payments to collect past-due support.

As used in this section, the terms “debt” and “past-due support” are synonymous.

(a) *Scope.* This section sets forth special rules applicable to the offset of tax refund payments to collect past-due support through TOP.

(b) *General rule.* In accordance with this section, HHS, a State, or a Tribal IV-D agency may refer past-due support to TOP, if either:

(1) There has been an assignment of the support obligation to the State or Tribal IV-D agency; or

(2) The State or Tribal IV-D agency is providing support collection services under 42 U.S.C. 654(4) or 45 CFR part 309 and the amount of the past-due support is not less than \$500.00.

(c) *Referral of past-due support to TOP—(1) By HHS.* (i) A State or Tribal IV-D agency notifying HHS of past-due support must:

(A) Do so in the manner and format prescribed by HHS; and

(B) Certify that it has complied with the requirements in paragraph (d) of this section and with any of other requirements under State or Tribal law applicable to the offset of Federal tax refund payments to collect past-due support.

(ii) HHS will refer to TOP the past-due support about which it received notice under paragraph (c)(1)(i) of this section.

(iii) When HHS has knowledge that the debt is being enforced by a State or Tribal IV-D agency, HHS will inform any such State or Tribal IV-D agency when it receives any collections through offset under this subpart.

(2) *By States or Tribal IV-D agencies.* (i) If authorized by HHS rules, a State or Tribal IV-D agency may refer past-due support directly to TOP. Otherwise, the State or

Tribal IV-D agency must notify HHS of past-due support in accordance with the provisions of paragraph (c)(1) of this section.

(ii) A State or Tribal IV-D agency referring past-due support directly to TOP must:

(A) Do so in the manner and format prescribed by Fiscal Service in separate guidance; and

(B) Certify that it has complied with all requirements of this subpart and applicable State or Tribal law.

(iii) When a State or Tribal IV-D agency has knowledge that the debt is being enforced by more than one State or Tribal IV-D agency, the State or Tribal IV-D agency referring the debt to TOP must inform any such other State or Tribal IV-D agency when it receives any collections through offset under this subpart.

(d) *Additional due process.* The State or Tribal IV-D agency, or HHS if the State or Tribal IV-D agency requests and HHS agrees, must provide the due process specified by § 285.2(d)(1)(ii). In cases when a debt is being enforced by more than one State or Tribal IV-D agency, the written notification to the debtor must also advise the debtor of their opportunities to request a review with the State or Tribal IV-D agency enforcing collection or the State or Tribal IV-D agency issuing the support order as prescribed by the provisions of 42 U.S.C. 664(a)(3), 45 CFR 303.72(e), and 45 CFR part 309.

(e) *Time limitation on reversals.* Notwithstanding § 285.2(i)(2), Fiscal Service will not reverse the offset of a tax refund payment that was erroneous or otherwise not due to the taxpayer if:

(1) IRS notifies Fiscal Service that a tax refund payment that was offset was erroneous or otherwise not due to the taxpayer;

(2) The date of IRS's notification to Fiscal Service under paragraph (e)(1) of this section is more than six months after the date the tax refund payment was offset (i.e., the tax refund payment date); and

(3) The State or Tribal IV-D agency has already forwarded the funds collected through the offset as required or authorized by 42 U.S.C. 657 or 45 CFR 309.115.

(f) *Fees*. Fiscal Service will charge States and Tribal IV-D agencies a fee to reimburse it for the full cost of applying the offset procedure. To the extent full costs exceed the amount specified by 42 U.S.C. 664(b)(2)(B), Fiscal Service will charge a fee equal to the amount specified by 42 U.S.C. 664(b)(2)(B).

§ 285.43 Offset of tax refund payments to collect State income tax and unemployment compensation debts.

As used in this section, the term “debt” means a State income tax obligation or unemployment compensation debt.

(a) *Scope.* This section sets forth special rules applicable to the offset of tax refund payments to collect State income tax obligations and unemployment compensation debts.

(b) *General rules.* (1) States may refer to TOP State income tax obligations and unemployment compensation debts.

(2) Fiscal Service will offset tax refund payments in accordance with this subpart to collect:

(i) State income tax obligations, but only 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; and

(ii) Unemployment compensation debts.

(c) *Additional due process.* In addition to the requirements of § 285.2(d)(1)(ii), a State must:

(1) With respect to an unemployment compensation debt described by 26 U.S.C. 6402(f)(4)(A), provide the debtor an opportunity to dispute the State’s determination that the debt resulted from fraud or the debtor’s failure to report earnings; and

(2) With respect to State income tax obligations:

(i) Send the notice referred to in § 285.2(d)(1)(ii) by certified mail, return receipt requested; and

(ii) Where the debtor claims that they are immune from State taxation by reason of being an enrolled member of a Federally recognized Tribe who lives on a reservation and derives all of their income from that reservation, have procedures that include a *de novo* review on the merits, unless such claims have been previously adjudicated by a court of competent jurisdiction.

Gary Grippo

Acting Fiscal Assistant Secretary

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