

DEPARTMENT OF THE TREASURY**Fiscal Service****31 CFR Part 285**

RIN 1510-AA74

Offset of Federal Benefit Payments To Collect Past-due, Legally Enforceable Nontax Debt**AGENCY:** Financial Management Service, Fiscal Service, Treasury.**ACTION:** Interim rule with request for comments.

SUMMARY: The Debt Collection Improvement Act of 1996 requires the Federal Government to withhold or reduce certain Federal payments to satisfy delinquent nontax debts owed to the United States by the payee. This process is known as "administrative offset." This interim rule establishes the rules governing the administrative offset of Federal benefit payments issued under the Social Security Act (other than Supplemental Security Income), part B of the Black Lung Benefits Act, and any law administered by the Railroad Retirement Board (other than tier 2 benefit payments). This rule affects individuals who receive these types of benefit payments and who owe delinquent nontax debts to the Federal Government.

DATES: *Effective:* August 21, 1998. Comments must be received on or before September 21, 1998.

ADDRESSES: All comments should be addressed to Gerry Isenberg, Financial Program Specialist, Debt Management Services, Financial Management Service, 401 14th Street SW, Room 151, Washington, D.C. 20227. A copy of this interim rule is being made available for downloading from the Financial Management Service web site at the following address: <http://www.fms.treas.gov/debt/dms.html>.

FOR FURTHER INFORMATION CONTACT: Gerry Isenberg, Financial Program Specialist, at (202) 874-6660; Ellen Neubauer or Ronda Kent, Senior Attorneys, at (202) 874-6680.

SUPPLEMENTARY INFORMATION:**Background**

A major purpose of the Debt Collection Improvement Act of 1996 (DCIA), Pub. L. 104-134, 110 Stat. 1321-358 *et seq.* (April 26, 1996), is to increase the collection of delinquent nontax debts owed to the Federal Government. Among other things, the DCIA established a centralized process for withholding or reducing eligible Federal payments, including certain

benefit payments, to pay the payee's delinquent debt owed to the United States. This process is known as "administrative offset."

The Financial Management Service (FMS), a bureau of the Department of the Treasury (Treasury), disburses more than 850 million Federal payments annually, including Federal benefit payments on behalf of agencies such as the Social Security Administration, the Railroad Retirement Board, and the Department of Veterans Affairs. As the Treasury disbursing agency, FMS is responsible for the implementation of centralized administrative offset of Federal payments for the collection of delinquent nontax debt. To meet this responsibility, FMS has established the Treasury Offset Program.

The Treasury Offset Program works as follows. FMS maintains a delinquent debtor database. The database includes delinquent debtor information submitted and updated by Federal agencies either owed debts (creditor agencies) or collecting debts on behalf of other Federal agencies. Before a Federal payment is disbursed to a payee, FMS compares the payee information with debtor information in FMS' delinquent debtor database. If the payee's name and taxpayer identifying number (TIN) match the name and TIN of a debtor, the payment is offset, in whole or in part, to satisfy the debt, to the extent legally allowed.

FMS transmits amounts collected through offset to the appropriate agencies owed the delinquent debt after deducting a fee charged to cover the cost of the offset program. FMS' authority to charge fees is found at 31 U.S.C. 3716(c)(4). Under 31 U.S.C. 3717(e), the agencies which are owed the delinquent debt may add the fees to the debt as part of the administrative cost, if not otherwise prohibited by law. Information about a delinquent debt remains in the debtor database and offsets of eligible Federal benefit and other payments will continue until debt collection activity for the debt is terminated because of full payment, compromise, write-off or other reasons justifying termination. In centralizing offset through the Treasury Offset Program, FMS will consolidate and simplify offset procedures for the Federal Government.

This interim rule governs only the administrative offset of Federal benefit payments issued under the Social Security Act (other than Supplemental Security Income (SSI)); part B of the Black Lung Benefits Act (governing claims for benefits filed before December 31, 1973); and any law administered by the Railroad Retirement

Board (other than tier 2 benefit payments, i.e., the portion of the railroad retirement annuity based exclusively on railroad service) for the collection of delinquent nontax debt owed to the Federal Government. Other rules and procedures reflect requirements for other types of payments or debts, as well as the general rules applicable to collection of debts by offset. FMS has promulgated and will promulgate other rules governing the centralized offset of Federal payments (other than Federal benefit payments) for the collection of debts owed to Federal agencies, for the collection of debts owed to States, and for the collection of past-due child support. FMS anticipates that Part 285 of this title will contain all of the provisions relating to the centralized offset of Federal payments for the collection of debts owed to the Federal Government and to State governments, including past-due child support.

FMS developed this interim rule in consultation with the Social Security Administration, the Railroad Retirement Board, the Department of Labor, the Department of Veterans Affairs, the Office of Management and Budget, and other affected agencies, and acknowledges their constructive assistance.

Phased Implementation

Under the DCIA, Federal benefit payments issued under the Social Security Act (other than SSI); part B of the Black Lung Benefits Act; and any law administered by the Railroad Retirement Board (other than tier 2 benefit payments), hereinafter referred to as "covered benefit payments," may be offset to collect delinquent debt owed to the United States subject to certain limitations. First, the DCIA provides for a threshold level of covered benefit payments which a debtor must receive before an offset may occur. Under the DCIA, only those amounts of covered benefit payments which a debtor receives in excess of \$9,000 per year (or \$750 per month) may be offset. Second, the DCIA requires a reduction in this threshold amount by the amount of benefit payments a debtor receives which are not subject to offset. Benefit payments not subject to offset include without limitation, SSI payments and benefit payments paid under any law administered by the Secretary of Veterans Affairs; part C of the Black Lung Benefits Act; any law administered by the Railroad Retirement Board that such Board determines to be tier 2 benefits; and any other law under which Federal benefit payments are

made if such payments are exempt from offset.

FMS intends to implement the offset of covered benefit payments in two phases. During phase I and as described in this rule, FMS will offset only those monthly covered benefit payments which individually exceed the \$750 threshold. During phase II, FMS will offset all covered benefit payments, provided the total amount received by the debtor exceeds the threshold amount. The DCIA requirement that the amount offset be increased for individuals who also receive benefit payments not subject to offset will be implemented during phase II. Calculating the maximum allowable offset amount for debtors who receive more than one type of benefit payment is operationally complex. FMS therefore has adopted a phased approach to allow for some offsets to begin (i.e., offsets of monthly covered benefit payments which exceed \$750), while FMS continues to work out the complexities of fully implementing the DCIA's benefit offset provisions. This approach will allow for the orderly implementation of benefit offset ensuring that more complex offsets are accomplished in an efficient and cost-effective manner. Prior to implementation of phase II, FMS will amend this rule to include the procedures applicable to phase II.

Section Analysis

(a) Scope

Paragraph (a) explains that the rules contained in this regulation apply only to the offset of certain Federal benefit payments, i.e., benefit payments payable to individuals under the Social Security Act (other than SSI payments); part B of the Black Lung Benefits Act; and any law administered by the Railroad Retirement Board (other than payments that such Board determines to be tier 2 benefits).

This paragraph also explains that FMS and/or the agency that authorizes a payment, are not liable for amounts offset on the basis that the underlying obligation, that is, the amount of the payment before the offset was taken, was not satisfied. For example, where an individual is "due" a Social Security payment of \$900, the obligation to pay \$900 to that individual is met even though a portion of that payment was offset and thus not actually received by the individual.

(b) Definitions

The term "covered benefit payments" is used throughout the rule to describe those benefit payments which are

subject to the provisions of this rule. Covered benefit payments means all Federal benefit payments payable to an individual under the Social Security Act (other than SSI payments); part B of the Black Lung Benefits Act; and any law administered by the Railroad Retirement Board (other than payments that such Board determines to be tier 2 benefits). The amount of the covered benefit payment payable to a debtor for purposes of this rule will be the amount after reduction or deduction required under the laws authorizing the program. For example, if the amount of a debtor's \$450 monthly Social Security payment is reduced by a \$45 monthly Medicare insurance premium, the amount of \$405 will be used in calculating the amount available for offset. Reductions to recover benefit overpayments are likewise excluded from the covered benefit payment when calculating amounts available for offset.

It is important to note that there are other Federal benefit payments which may be subject to offset under 31 U.S.C. 3716 but are not covered by this rule, such as Office of Personnel Management retirement payments.

"Monthly covered benefit payments" are defined as covered benefit payments which are payable to a payee on a recurring basis at monthly intervals and are expected to continue for at least 12 months.

The term "payee" as defined in the rule refers to a person who is entitled to receive the benefit of all or part of a payment. FMS recognizes that many Federal benefit payments are made to third parties, sometimes known as representative payees, acting on behalf of the person entitled to receive the benefit of all or part of the payment (the beneficiary). Under these circumstances, an offset will not occur unless the name and TIN of the beneficiary match the name and TIN of the debtor. For example, if X owes a debt and receives a Social Security retirement payment on his/her own behalf, the Social Security retirement payment could be offset to satisfy the debt. If, however, X receives a Social Security retirement payment as the representative payee of Y, the payment could not be offset to satisfy X's debt. In this case the offset could occur only if Y, the beneficiary, is the debtor. FMS is working with payment agencies to insure that the names and TINs of beneficiaries are identified.

(c) Administrative Offset, Generally

Paragraph (c) explains how the administrative offset program works generally and explains that covered benefit payments are among the types of

payments which are offset to collect debts owed to the United States.

(d) Submission of Debts to FMS for Collection by Administrative Offset

Paragraph (d) states the DCIA requirement that creditor agencies must notify FMS of all past-due, legally enforceable debt delinquent for more than 180 days for purposes of collection by administrative offset. Additionally, this paragraph provides that creditor agencies may notify FMS of debts delinquent for less than 180 days for purposes of administrative offset. Before submitting a delinquent debt to FMS for collection by offset, creditor agencies are responsible for notifying debtors that their debt is delinquent and that the agency intends to collect the debt by offset. The DCIA and this rule do not change pre-offset due process and other requirements under 31 U.S.C. 3716(a) and agency specific laws and regulations. By written notice, the creditor agency must inform debtors of the opportunity to review applicable agency records and to seek a review of the determination of the debt. Upon receipt of the notice, the debtor may provide evidence to the creditor agency that collection of the debt by administrative offset would result in a financial hardship and make alternate arrangements, acceptable to the creditor agency, to repay the debt. This section provides that the creditor agency must certify to FMS that the requirements of 31 U.S.C. 3716(a) and applicable agency-specific laws and regulations related to offset have been met.

(e) Offset Amount

As described in paragraph (e)(1), the amount offset from a monthly covered benefit payment will be the lesser of: (i) the amount of the debt; (ii) an amount equal to 15% of the monthly covered benefit payment; or, (iii) the amount, if any, by which the monthly covered benefit payment exceeds \$750.

15% Limitation. When the DCIA was enacted, members of Congress expressed concern that regulations developed by Treasury contain safeguards to separate those debtors who cannot repay their debts from those who refuse to pay. Federal benefit recipients, particularly Social Security benefit recipients, may be dependent upon their Federal benefits for a substantial part of their income. See House Conference Report No. 104-537 on H.R. 3019, Balanced Budget Down Payment Act, II (April 25, 1996); Senate Report No. 104-330 on H.R. 3756, Treasury, Postal Service, and General Government Appropriation Bill 1997 (July 23, 1996); Conference Report accompanying the 1997 Appropriations

Act, Congressional Record, September 28, 1996, H12005. Recognizing the dependence recipients may have on their Federal benefits, this rule limits the maximum amount that will be offset from an individual's covered benefit payment to 15% of the payment.

\$750 Threshold. Under the DCIA, only those covered benefit payments which exceed an annual threshold amount of \$9,000 are subject to offset. The DCIA provides that the \$9,000 annual threshold may be prorated when applied to monthly benefit payments. Thus the threshold amount for monthly benefit payments is \$750.

Paragraph (e)(2) explains that a debtor is not entitled to a refund of amounts offset if monthly benefit payments are reduced, terminated, suspended or otherwise not actually received for a period of 12 months.

Paragraph (e)(3) contains the following examples to illustrate how the amount offset will be determined for offsets which occur during phase I:

Example (i): A debtor receives monthly Social Security benefits of \$850. The amount offset is the lesser of \$127.50 (15% of \$850) or \$100 (the amount by which \$850 exceeds \$750). In this example, the amount offset is \$100 (assuming the debt is \$100 or more).

Example (ii): A debtor receives monthly Social Security benefits of \$1250. The amount offset is the lesser of \$187.50 (15% of \$1250) or \$500 (the amount by which \$1250 exceeds \$750). In this example, the amount offset is \$187.50 (assuming the debt is \$187.50 or more).

Example (iii): A debtor receives monthly Social Security payments of \$650. No amount will be offset because \$650 is less than \$750.

(f) Notification of Offset

Paragraph (f) explains that before FMS begins to offset a debtor's monthly covered benefit payments, although not required by the DCIA to do so, FMS intends to notify the debtor of the anticipated offset, the name of the creditor agency to which any amounts offset will be paid, and a contact within that creditor agency who will handle questions regarding the delinquent debt.

As required by the DCIA, when FMS offsets a payment, FMS will notify the debtor of the amount and date of the offset, the creditor agency to which the amount offset was paid, and a contact within the creditor agency who will handle concerns or questions regarding the delinquent debt which triggered the offset. See 31 U.S.C. 3716(c)(7). Typically, this notice will be provided no later than the date the debtor is

otherwise scheduled to receive the payment, or as soon as practical thereafter. Non-receipt by the debtor of the notices referenced in paragraph (f) of this section does not impair the legality of the offset.

(g) Fees

Paragraph (g) describes the authority under the DCIA, codified at 31 U.S.C. 3716(c)(4), for FMS to charge a fee for the full cost of conducting offsets. Under 31 U.S.C. 3717(e) the agencies which are owed the delinquent debt may add this fee to the debt as part of the administrative cost of collection unless otherwise prohibited under 31 U.S.C. 3717(g).

(h) Disposition of Amounts Collected

Paragraph (h) describes how amounts collected from covered benefit payments will be transmitted to creditor agencies.

Regulatory Analyses

This interim rule is not a significant regulatory action as defined in Executive Order 12866. Because no notice of proposed rulemaking is required for this interim rule, the provisions of the Regulatory Flexibility Act do not apply.

Special Analyses

FMS is promulgating this interim rule without opportunity for prior public comment pursuant to the Administrative Procedure Act, 5 U.S.C. 553 (the "APA"), because FMS has determined, for the following reasons, that a comment period would be unnecessary, impracticable and contrary to the public interest. The DCIA provision authorizing the offset of covered benefit payments to collect delinquent debt owed to the United States was effective on August 26, 1996. A comment period is unnecessary because this interim rule does not change the ongoing offset process under the Treasury Offset Program, but rather provides guidance for creditor agencies and disbursing officials to facilitate the addition of covered benefit payments into the Treasury Offset Program. Under this interim rule, creditor agencies are required to provide to the debtor the same pre-offset notice, opportunities, and rights to dispute the debt and seek waiver as currently required under 31 U.S.C. 3716 and implementing regulations. Since this interim rule provides critical guidance needed to facilitate the offset of benefit payments to collect delinquent debt owed to the United States, FMS believes that it is in the public interest to issue this interim rule without opportunity for prior public comment.

The public is invited to submit comments on the interim rule which will be taken into account before a final rule is issued.

FMS has determined that good cause exists to make this interim rule effective upon publication without providing the 30 day period between publication and the effective date contemplated by 5 U.S.C. 553(d). The purpose of a delayed effective date is to afford persons affected by a rule a reasonable time to prepare for compliance. However, in this case, as required by the DCIA, agencies already participate in the Treasury Offset Program. Inasmuch as this interim rule provides important guidance that is expected to facilitate implementation of the authority contained in the law, and effective as of August 26, 1996, FMS believes that good cause exists to make the rule effective upon publication.

List of Subjects in 31 CFR Part 285

Administrative practice and procedures, Black lung benefits, Claims, Debts, Disability benefits, Railroad retirement, Railroad unemployment insurance, Social Security benefits, Supplemental Security Income (SSI), Veterans benefits.

Authority and Issuance

For the reasons set forth in the preamble, 31 CFR Part 285 is amended as follows:

PART 285—DEBT COLLECTION AUTHORITIES UNDER THE DEBT COLLECTION IMPROVEMENT ACT OF 1996

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

Authority: 26 U.S.C. 6402; 31 U.S.C. 321, 3701, 3711, 3716, 3720A, 3720D; E.O. 13019; 3 CFR, 1996 Comp., p. 216.

2. Section 285.4 is added to Part 285, Subpart A, to read as follows:

§ 285.4 Offset of Federal benefit payments to collect past-due, legally enforceable nontax debt.

(a) *Scope.* (1) This section sets forth special rules applicable to the offset of Federal benefit payments payable to an individual under the Social Security Act (other than Supplemental Security Income (SSI) payments), part B of the Black Lung Benefits Act, or any law administered by the Railroad Retirement Board (other than payments that such Board determines to be tier 2 benefits) to collect delinquent nontax debt owed to the United States.

(2) As used in this section, benefit payments "due to" an individual, "payable to" an individual, and/or

benefit payments "received by" an individual, refer to those benefit payments expected to be paid to an individual before any amounts are offset to satisfy the payee's delinquent debt owed to the United States. Nothing in these phrases, similar phrases, or this section is intended to imply or confer any new or additional rights or benefits on an individual with respect to his or her entitlement to benefit payments. The Financial Management Service (FMS), the Social Security Administration, the Railroad Retirement Board, and other payment agencies are not liable for the amount offset from an individual's benefit payment on the basis that the underlying obligation, represented by the payment before the offset was taken, was not satisfied. See 31 U.S.C. 3716(c)(2)(A).

(b) *Definitions.* As used in this section:

Administrative offset or *offset* means withholding funds payable by the United States (including funds payable by the United States on behalf of a State government) to, or held by the United States for, a person to satisfy a debt.

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

Covered benefit payment means a Federal benefit payment payable to an individual under the Social Security Act (other than SSI payments), part B of the Black Lung Benefits Act, or any law administered by the Railroad Retirement Board (other than payments that such Board determines to be tier 2 benefits). The amount of the covered benefit payment payable to a debtor for purposes of this section will be the amount after reduction or deduction required under the laws authorizing the program. Reductions to recover benefit overpayments are excluded from the covered benefit payment when calculating amounts available for offset.

Creditor agency means a Federal agency owed a debt that seeks to collect that debt through administrative offset.

Debt or *claim* means an amount of money, funds, or property which has been determined by an agency official to be due the United States from any person, organization, or entity except another Federal agency. Debt or claim does not include a debt or claim arising under the Internal Revenue Code of 1986 or the tariff laws of the United States.

Debtor means a person who owes a debt. The term "person" includes any individual, organization or entity, except another Federal agency.

Disbursing official means an official who has authority to disburse public money pursuant to 31 U.S.C. 3321 or another law, including an official of the Department of the Treasury, the Department of Defense, the United States Postal Service, or any other government corporation, or any official of the United States designated by the Secretary of the Treasury to disburse public money.

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

Monthly covered benefit payment means a covered benefit payment payable to a payee on a recurring basis at monthly intervals that is not expressly limited in duration, at the time the first payment is made, to a period of less than 12 months.

Payee means a person who is due a payment from a disbursing official. For purposes of this section, a "payee" is a person who is entitled to the benefit of all or part of a payment from a disbursing official.

Taxpayer identifying number means the identifying number described under section 6109 of the Internal Revenue Code of 1986 (26 U.S.C. 6109). For an individual, the taxpayer identifying number generally is the individual's social security number.

(c) *Administrative offset, generally.* Disbursing officials shall offset payments to satisfy, in whole or in part, debts owed by the payee. Disbursing officials shall compare payment records with records of debts submitted to FMS for collection by administrative offset. A match will occur when the taxpayer identifying number and name of the payee (as defined in paragraph (b) of this section) on a payment record are the same as the taxpayer identifying number and name of the debtor on a debt record. When a match occurs and all other requirements for offset have been met, the disbursing official shall offset the payment to satisfy, in whole or in part, the debt. Any amounts not offset shall be paid to the payee.

Covered benefit payments, i.e., payments made to individuals under the Social Security Act (other than Supplemental Security Income (SSI) payments), part B of the Black Lung Benefits Act, or any law administered by the Railroad Retirement Board (RRB) (other than tier 2 benefit payments) are among the types of payments which may be offset to collect debts owed to the United States. Offset of covered benefit payments are subject to the limitations contained in this section. Offsets of covered benefit payments will occur only if the name and taxpayer identifying number of the person who is

entitled to the benefit of all or a part of the payment matches the name and taxpayer identifying number of the debtor.

(d) *Submission of debts to FMS for collection by administrative offset.* Creditor agencies must notify FMS of all past-due, legally enforceable debt delinquent for more than 180 days for purposes of collection by administrative offset. Creditor agencies may notify FMS of all debt delinquent for less than 180 days for purposes of collection by administrative offset. Prior to such notification, creditor agencies must certify to FMS that the debt is past-due, legally enforceable, and that the creditor agency has provided the debtor with notice and an opportunity for a review in accordance with the provisions of 31 U.S.C. 3716(a) and other applicable law.

(e) *Offset amount.* (1) The amount offset from a monthly covered benefit payment shall be the lesser of:

(i) The amount of the debt, including any interest, penalties and administrative costs;

(ii) An amount equal to 15% of the monthly covered benefit payment; or

(iii) The amount, if any, by which the monthly covered benefit payment exceeds \$750.

(2) A debtor shall not receive a refund of any amounts offset if the debtor's monthly covered benefit payments are reduced, suspended, terminated, or otherwise not received for a period of 12 months.

(3) *Examples.* (i) A debtor receives monthly Social Security benefits of \$850. The amount offset is the lesser of \$127.50 (15% of \$850) or \$100 (the amount by which \$850 exceeds \$750). In this example, the amount offset is \$100 (assuming the debt is \$100 or more).

(ii) A debtor receives monthly Social Security benefits of \$1250. The amount offset is the lesser of \$187.50 (15% of \$1250) or \$500 (the amount by which \$1250 exceeds \$750). In this example, the amount offset is \$187.50 (assuming the debt is \$187.50 or more).

(iii) A debtor receives monthly Social Security payments of \$650. No amount will be offset because \$650 is less than \$750.

(f) *Notification of offset.* (1) Before offsetting a covered benefit payment, the disbursing official will notify the payee in writing of the date offset will commence. The notice shall inform the payee of the type of payment that will be offset; the identity of the creditor agency which requested the offset; and a contact point within the creditor agency that will handle concerns regarding the offset.

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

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

(g) *Fees.* A fee which FMS has determined to be sufficient to cover the full cost of the offset procedure, shall be deducted from each offset amount.

Creditor agencies may add this fee to the debt if not otherwise prohibited by law.

(h) *Disposition of amounts collected.*

The disbursing official conducting the offset will transmit amounts collected for debts, less fees charged under paragraph (g) of this section, to the appropriate creditor agency. If an erroneous offset payment is made to a creditor agency, the disbursing official will notify the creditor agency that an erroneous offset payment has been made. The disbursing official may

deduct the amount of the erroneous offset payment from future amounts payable to the creditor agency. Alternatively, upon the disbursing official's request, the creditor agency shall return promptly to the disbursing official or the affected payee an amount equal to the amount of the erroneous payment. The disbursing official and the creditor agency shall adjust the debtor records appropriately.

Dated: August 13, 1998.

Richard L. Gregg,

Commissioner.

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