

**§281.8 Reporting and accounting.**

The Treasury Department will maintain a system of central accounting and reporting for the purpose of providing information on foreign exchange operations to the President, the Congress, and the public. The Treasury Department will also prescribe rules to enhance consistency in reporting of foreign exchange operations by all agencies. Agencies shall furnish such reports and information as may be required for the administration of the provisions of this circular.

**§281.9 General provisions.**

(a) Nothing contained in this part shall be construed as having the effect of superseding or amending the provisions of any regulations issued or approved by the Secretary pursuant to the Act of December 23, 1944, as amended (67 Stat. 61).

(b) The Secretary may waive, withdraw, or amend at any time or from time to time any or all of the provisions of the regulations of this part.

(c) Implementing regulations within the framework of this circular will be issued by the Fiscal Assistant Secretary of the Treasury. All communications pertaining to the administration of the provisions of this part shall be directed to the Fiscal Assistant Secretary.

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

**Subpart A—Disbursing Official Offset**

Sec.

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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.

SOURCE: 62 FR 34179, June 25, 1997, unless otherwise noted.

**Subpart A—Disbursing Official Offset**

**§285.1 Collection of past-due support by administrative offset.**

(a) *Definitions.* For purposes of this section:

*Administrative 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.

*Debt* as used in this section is synonymous with the term past-due support.

*Disbursing official* includes an official who has authority to disburse public money pursuant to 31 U.S.C. 3321 or another Federal law.

*FMS* means the Financial Management Service, a bureau of the Department of the Treasury. FMS is the designee of the Secretary of the Treasury for all matters concerning this section, unless otherwise specified.

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

*Past-due support* means the amount of support 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.

*Past-due support being enforced by the State* means there has been an assignment of the support rights to the State or the State making the request for offset is providing services to individuals pursuant to 42 U.S.C. 654(5) (section 454(5) of the Social Security Act).

*State* means the several States of the United States. The term State also includes 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.

*Secretary* means the Secretary of the Treasury.

(b) *General rule.* FMS may enter into a reciprocal agreement with a State for the collection of past-due support being

enforced by the State by administrative offset from certain Federal payments. Upon notification of past-due support either directly from a State which has entered into such an agreement or from HHS, disbursing officials of FMS or any other disbursing official of the United States shall offset Federal payments which are subject to offset under this section, to collect past-due support. The amount offset, minus the offset fee, shall be forwarded to the State to be distributed in accordance with applicable laws and procedures.

(c) *Agreements.* FMS may enter into reciprocal agreements with States for disbursing officials of FMS and any other Federal disbursing official to offset certain Federal payments to collect past-due support being enforced by the State. The agreement shall contain any requirements which FMS considers appropriate to facilitate the offset and prevent duplicative efforts and shall require States to prescribe procedures governing the collection of past-due support by Federal administrative offset. For purposes of this section, reciprocal means of mutual benefit. An agreement between FMS and a State to collect past-due support by offsetting Federal payments will be considered of mutual benefit and it is not required that States conduct administrative offsets to collect debts owed to the Federal Government. States which have entered into an agreement with FMS pursuant to this section may thereafter request, in the manner prescribed herein, that an offset be performed. Such requests shall be made by the appropriate State disbursing official which, for purposes of this section, means an appropriate official of the State agency which administers or supervises the administration of the State plan under Title IV-D of the Social Security Act.

(d) *Notification to FMS of past-due support.* (1) States notifying FMS of past-due support must do so in the manner and format prescribed by FMS. States notifying HHS of past-due support must do so in the manner and format prescribed by HHS. HHS shall notify FMS of all past-due support referred to HHS by States for collection by administrative offset provided that the re-

quirements of paragraphs (d)(3) and (h) of this section have been met.

(2) When a State has knowledge that past-due support is being enforced by more than one State, the State notifying FMS or HHS of the past-due support must inform any other State involved in enforcing the past-due support when it refers the debt for offset and when it receives the offset amount.

(3) The notification of past-due support must be accompanied by a certification that the debt is past-due, legally enforceable, and that the State has complied with all the requirements as set forth in paragraph (h) of this section and with any requirements imposed by State law or procedure. For debts so certified, the Secretary may waive sections 552a (o) and (p) of Title 5, United States Code, where applicable, in accordance with the Secretary's authority under 31 U.S.C. 3716(f).

(4) FMS may reject a notification of past-due support which does not comply with the requirements of this section. The State will be notified of the rejection along with the reason for the rejection.

(e) *Minimum amount of past-due support.* FMS will reject a notification of past-due support where the past-due support owed is less than \$25.00. This amount may be adjusted from time to time by FMS to ensure that the cost of collection does not exceed the debt.

(f) *Limitations.* Debts properly submitted to FMS for administrative offset will remain subject to collection by administrative offset until withdrawn by the State provided the debt remains past-due and legally enforceable.

(g) *Notification of changes in status of debt.* The State notifying FMS or HHS of past-due support shall, in the manner and in the time frames provided by FMS or HHS, notify FMS or HHS of any deletion or decrease in the amount of a debt referred for collection by administrative offset. The State may notify FMS or HHS of any increases in the amount of a debt referred for collection by administrative offset provided the State has complied with the requirements of paragraph (h) of this section with regard to those amounts.

(h) *Advance notification of intent to collect by administrative offset.* (1) The State, or FMS or HHS on behalf of the

State, if the State requests and FMS or HHS agrees, shall send a written notification, at least 30 days in advance of referral of the debt for offset, to the individual owing past-due support, informing the individual that the State intends to refer the debt for collection by administrative offset against Federal payments. The notice must also inform the individual of:

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

(ii) The right to an administrative review by the State referring the debt or, upon the request of the individual, by the State with the order upon which the referral was based, of the determination of the State with respect to the debt and of the procedures and time frames established by the State for such reviews.

(2) Prior to referring a debt to FMS for collection by administrative offset, States must provide individuals with a reasonable opportunity to exercise the rights enumerated in paragraph (h)(1) of this section in accordance with procedures prescribed by the State.

(i) *Payments subject to offset.* Federal payments subject to offset under this section include all Federal payments except:

(1) Payments due to an individual under

(i) Title IV of the Higher Education Act of 1965;

(ii) The Social Security Act;

(iii) Part B of the Black Lung Benefits Act;

(iv) Any law administered by the Railroad Retirement Board;

(2) Payments which the Secretary determines are exempt from offset in accordance with paragraph (k) of this section;

(3) Payments from which collection of past-due support by administrative offset is expressly prohibited by law;

(4) Payments made under the Internal Revenue Code of 1986 (except that tax refund payments are subject to offset under separate authority); and

(5) Payments made under the tariff laws of the United States.

(j) *Special provisions applicable to Federal salary payments.* (1) Unless a lower maximum offset limitation is provided by applicable State law, the maximum part of a Federal salary payment per

pay period subject to offset to collect past-due support shall not exceed those amounts set forth at section 1673(b)(2) (A) and (B) of Title 15, United States Code, as follows:

(i) Fifty (50%) percent of the debtor's aggregate disposable earnings for any pay period, where the debtor asserts by affidavit, or by other acceptable evidence, that he/she is supporting a spouse and/or dependent child, other than the former spouse and/or child for whom support is being collected, except that an additional five (5%) percent will apply if it appears that such earnings are to enforce past-due support for a period which is twelve (12) weeks or more prior to the pay period to which the offset applies. A debtor shall be considered to be supporting a spouse and/or dependent child only if the debtor provides over half of the spouse's and/or dependent child's support.

(ii) Sixty (60%) percent of the debtor's aggregate disposable earnings for any pay period where the debtor fails to assert by affidavit or establish by other acceptable evidence that he/she is supporting a spouse and/or dependent child, other than a former spouse and/or child for whom support is being collected, except that an additional five (5%) percent will apply if it appears that such earnings are to enforce past-due support for a period which is twelve (12) weeks or more prior to the pay period to which the offset applies.

(2) The maximum allowable offset amount shall be reduced by the amount of any deductions in pay resulting from a garnishment order for support. Nothing in this rule is intended to alter rules applicable to processing garnishment orders for child support and/or alimony.

(3) Federal salary payments subject to offset for the collection of past-due support include current basic pay, special pay, incentive pay, retainer pay, overtime, or in the case of an employee not entitled to basic pay, other authorized pay. Aggregate disposable earnings for purposes of determining the maximum amounts which may be offset under paragraph (j)(1) of this section is Federal salary pay remaining after the deduction of:

(i) Any amount required by law to be withheld;

(ii) Amounts properly withheld for Federal, State or local income tax purposes;

(iii) Amounts deducted as health insurance premiums;

(iv) Amounts deducted as normal retirement contributions, not including amounts deducted for supplementary coverage; and

(v) Amounts deducted as normal life insurance premiums not including amounts deducted for supplementary coverage.

(4) At least 30 days in advance of offset, the disbursing official shall send written notice to the debtor of the maximum offset limitations described in paragraph (j)(1) of this section. The notice shall include a request that the debtor submit supporting affidavits or other documentation necessary to determine the applicable offset percentage limitation. The notice shall also inform the debtor of the percentage that will be deducted if he/she fails to submit the requested documentation.

(k) *Payments exempt from administrative offset to collect past-due support being enforced by a State.* The Secretary will exempt from administrative offset under this part payments made under means-tested programs when requested by the head of the Federal agency which administers the program. For purposes of this section, means-tested programs are programs for which eligibility is based on a determination that income and/or assets of the beneficiary are inadequate to provide the beneficiary with an adequate standard of living without program assistance. The Secretary may exempt from administrative offset under this section any other class or type of payment upon the written request of the head of the agency which authorizes the payments. In determining whether or not to grant such exemptions, the Secretary shall give due consideration to whether administrative offset would tend to interfere substantially with or defeat the purposes of the payment agency's program.

(l) *Fees.* A fee which FMS has determined to be sufficient to reimburse FMS for the full cost of the offset procedure, shall be deducted from each off-

set amount. FMS will notify the States, annually and in advance, of the amount of the fee to be charged for each offset.

(m) *Conducting the offset.* Disbursing officials of the Department of the Treasury, the Department of Defense, the United States Postal Service, or any other Government corporation, any disbursing official of the United States designated by the Secretary, or any disbursing official of an executive department or agency that disburses Federal payments shall offset payments subject to offset under this section to satisfy, in whole or part, a debt owed by the payee. Disbursing officials shall compare payment certification records with records of debts submitted to FMS for collection by administrative offset. A match will occur when the taxpayer identifying number and name control of a payment record are the same as the taxpayer identifying number and name control of a debt record. The taxpayer identifying number for an individual is the individual's social security number. 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 part, the debt. Any amounts not offset shall be paid to the payee. The amount that can be offset from a single payment is the lesser of the amount of the debt (including interest, penalties, and administrative costs); the amount of the payment; or the amount of the payment available for offset if a statute or regulation prohibits offset of the entire amount. Debts remain subject to collection by offset until paid in full.

(n) *Priorities.* When a payee owes more than one debt which has been referred to FMS for collection by administrative offset, any offset will be applied first to past-due support assigned to a State and will be applied to any other past-due support after any other reductions allowed by law.

(o) *Notification of offset.* Disbursing officials of FMS or any other disbursing official which conducts an offset will notify the payee in writing of the occurrence of the offset to satisfy past-due support. The notice shall inform the payee of the type and amount of

the payment that was offset; the identity of the State which requested the offset; and a contact point within the State that will handle concerns regarding the offset. Disbursing officials shall not be liable for failure to provide this notice.

(p) *Liability of disbursing officials and payment agencies.* Neither the disbursing official nor the agency authorizing the payment shall be liable for the amount of the administrative offset on the basis that the underlying obligation, represented by the payment before the administrative offset was taken, was not satisfied. Disbursing officials will notify the agency authorizing the payment that the offset has occurred so that the agency authorizing the payment may direct any inquiries concerning the offset to the appropriate State.

[62 FR 36210, July 7, 1997]

**§285.2 Offset of tax refund payments to collect past-due, legally enforceable nontax debt.**

(a) *Definitions.* For purposes of this section:

*Creditor agency* means a Federal agency owed a claim that seeks to collect that claim through tax refund offset.

*Debt* or *claim* refers to 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. For the purposes of this section, the terms "claim" and "debt" are synonymous and interchangeable and includes debt administered by a third party acting as an agent for the Federal Government.

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

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

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

*Tax refund offset* means withholding or reducing a tax refund payment by an amount necessary to satisfy a debt owed by the payee(s) of a tax refund payment.

*Tax refund payment* means any overpayment of Federal taxes to be refunded to the person making the overpayment after the IRS makes the appropriate credits as provided in 26 U.S.C. 6402(a) and 26 CFR 6402-3(a)(6)(i) for any liabilities for any tax on the part of the person who made the overpayment.

(b) *General rule.* (1) A Federal agency (as defined in 26 U.S.C. 6402(g)) that is owed by a person a past-due, legally enforceable nontax debt shall notify FMS of the amount of such debt for collection by tax refund offset. However, any agency subject to section 9 of the Act of May 18, 1933 (16 U.S.C. 831h) owed such a debt may, but is not required to, notify FMS of the amount of such debt for collection by tax refund offset.

(2) FMS will compare tax refund payment records, as certified by the IRS, with records of debts submitted to FMS. A match will occur when the taxpayer identifying number (as that term is used in 26 U.S.C. 6109) and name (or derivation of the name, known as a "name control") of a payment certification record are the same as the taxpayer identifying number and name control of a debtor record. When a match occurs and all other requirements for tax refund offset have been met, FMS will reduce the amount of any tax refund payment payable to a debtor by the amount of any past-due, legally enforceable debt owed by the debtor. Any amounts not offset will be paid to the payee(s) listed in the payment certification record.

(3) This section does not apply to any debt or claim arising under the Internal Revenue Code.

(4)(i) This section applies to Federal Old Age, Survivors and Disability Insurance (OASDI) overpayments provided the requirements of 31 U.S.C. 3720A(f)(1) and (2) are met with respect to such overpayments.

(ii) For purposes of this section, *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.*).

(5) A creditor agency is not precluded from using debt collection procedures, such as wage garnishment, to collect debts that have been submitted to FMS for purposes of offset under this part.

Such debt collection procedures may be used separately or in conjunction with offset collection procedures.

(c) *Regulations.* Prior to submitting debts to FMS for collection by tax refund offset, Federal agencies shall promulgate temporary or final regulations under 31 U.S.C. 3716 and 31 U.S.C. 3720A, governing the agencies' authority to collect debts by administrative offset, in general, and offset of tax refund payments, in particular.

(d) *Agency certification and referral of debt—(1) Past-due, legally enforceable debt eligible for tax refund offset.* For purposes of this section, when a Federal agency refers a past-due, legally enforceable debt to FMS for tax refund offset, the agency will certify to FMS that:

(i) The debt is past-due and legally enforceable in the amount submitted to FMS and that the agency will ensure that collections are properly credited to the debt;

(ii) Except in the case of a judgment debt or as otherwise allowed by law, the debt is referred for offset within ten years after the agency's right of action accrues;

(iii) The creditor agency has made reasonable efforts to obtain payment of the debt in that the agency has:

(A) Submitted the debt to FMS for collection by administrative offset and complied with the provisions of 31 U.S.C. 3716(a) and related regulations, to the extent that collection of the debt by administrative offset is not prohibited by statute;

(B) Notified, or has made a reasonable attempt to notify, the debtor that the debt is past-due, and unless repaid within 60 days after the date of the notice, will be referred to FMS for tax refund offset;

(C) Given the debtor at least 60 days to present evidence that all or part of the debt is not past-due or legally enforceable, considered any evidence presented by the debtor, and determined that the debt is past-due and legally enforceable; and

(D) Provided the debtor with an opportunity to make a written agreement to repay the amount of the debt;

(iv) The debt is at least \$25; and

(v) In the case of an OASDI overpayment—

(A) The individual is not currently entitled to monthly insurance benefits under title II of the Social Security Act (42 U.S.C. 401 *et seq.*);

(B) The notice describes conditions under which the Commissioner of Social Security is required to waive recovery of the overpayment, as provided under 42 U.S.C. 404(b); and

(C) If the debtor files a request for a waiver under 42 U.S.C. 404(b) within the 60-day notice period, the agency has considered the debtor's request.

(2) *Pre-offset notice and consideration of evidence for past-due, legally enforceable debt.* (i) For purposes of paragraph (d)(1)(iii)(B) of this section, a creditor agency has made a reasonable attempt to notify the debtor if the agency uses the current address information contained in the agency's records related to the debt. Agencies may, but are not required to, obtain address information from the IRS pursuant to 26 U.S.C. 6103(m)(2), (4), or (5).

(ii) For purposes of paragraph (d)(1)(iii)(C) of this section, if the evidence presented by the debtor is considered by an agent of the creditor agency, or other entities or persons acting on the agency's behalf, the debtor must be accorded at least 30 days from the date the agent or other entity or person determines that all or part of the debt is past-due and legally enforceable to request review by an officer or employee of the agency of any unresolved dispute. The agency must then notify the debtor of its decision.

(3) *Referral of past-due, legally enforceable debt.* A Federal agency will submit past-due, legally enforceable debt information for tax refund offset to FMS in the time and manner prescribed by FMS. For each debt, the creditor agency will include the following information:

(i) The name and taxpayer identifying number (as defined in 26 U.S.C. 6109) of the debtor who is responsible for the debt;

(ii) The amount of such past-due and legally enforceable debt;

(iii) The date on which the debt became past-due;

(iv) The designation of the Federal agency or subagency referring the debt; and

(v) In the case of an OASDI overpayment, a certification by the Commissioner of Social Security designating whether the amount payable to the agency is to be deposited in either the Federal Old-Age and Survivors Insurance Trust Fund or the Federal Disability Insurance Trust Fund, but not both.

(4) *Correcting and updating referral.* If, after referring a past-due, legally enforceable debt to FMS as provided in paragraph (d)(3) of this section, a creditor agency determines that an error has been made with respect to the information transmitted to FMS, or if an agency receives a payment or credits a payment to the account of a debtor referred to FMS for offset, or if the debt amount is otherwise incorrect, the agency shall promptly notify FMS and make the appropriate correction of the agency's records. Creditor agencies will provide certification as required under paragraph (d)(1) of this section for any increases to amounts owed.

(5) FMS may reject a certification which does not comply with the requirements of paragraph (d)(1) of this section. Upon notification of the rejection and the reason for the rejection, a creditor agency may resubmit the debt with a corrected certification.

(e) *Priorities for offset.* (1) A tax refund payment shall be reduced first by the amount of any past-due support assigned to a State under section 402(a)(26) or section 471(a)(17) of the Social Security Act (42 U.S.C. 602(a)(26) or 42 U.S.C. 671(a)(17)) which is to be offset under 26 U.S.C. 6402(c), 42 U.S.C. 664 and the regulations thereunder; second, by the amount of any past-due, legally enforceable debt owed to a Federal agency which is to be offset under 26 U.S.C. 6402(d), 31 U.S.C. 3720A and this section; and third, by the amount of any qualifying past-due support not assigned to a State which is to be offset under 26 U.S.C. 6402(c), 42 U.S.C. 664 and the regulations thereunder.

(2) If a debtor owes more than one past-due, legally enforceable debt to a Federal agency or agencies, the tax refund payment shall be credited against the debts in the order in which the debts accrued. A debt shall be considered to have accrued at the time at

which the agency determines that the debt became past due.

(3) Reduction of the tax refund payment pursuant to 26 U.S.C. 6402(a), (c), and (d) shall occur prior to crediting the overpayment to any future liability for an internal revenue tax. Any amount remaining after tax refund offset under 26 U.S.C. 6402 (a), (c), and (d) shall be refunded to the taxpayer, or applied to estimated tax, if elected by the taxpayer pursuant to IRS regulations.

(f) *Post-offset notice to the debtor, the creditor agency, and the IRS.* (1)(i) FMS will notify the payee(s) to whom the tax refund payment is due, in writing of:

(A) The amount and date of the offset to satisfy a past-due, legally enforceable nontax debt;

(B) The creditor agency to which this amount has been paid or credited; and

(C) A contact point within the creditor agency that will handle concerns or questions regarding the offset.

(ii) The notice in paragraph (f)(1)(i) of this section will also advise any non-debtor spouse who may have filed a joint tax return with the debtor of the steps which a non-debtor spouse may take in order to secure his or her proper share of the tax refund. See paragraph (g) of this section.

(2) FMS will advise each creditor agency of the names, mailing addresses, and identifying numbers of the debtors from whom amounts of past-due, legally enforceable debt were collected and of the amounts collected from each debtor for that agency. FMS will not advise the creditor agency of the source of payment from which such amounts were collected. If a payment from which an amount of past-due, legally enforceable debt is to be withheld is payable to two individual payees, FMS will notify the creditor agency and furnish the name and address of each payee to whom the payment was payable.

(3) At least weekly, FMS will notify the IRS of the names and taxpayer identifying numbers of the debtors from whom amounts of past-due, legally enforceable debt were collected and the amounts collected from each debtor.

(g) *Offset made with regard to a tax refund payment based upon joint return.* If the person filing a joint return with a debtor owing the past-due, legally enforceable debt takes appropriate action to secure his or her proper share of a tax refund from which an offset was made, the IRS will pay the person his or her share of the refund and request that FMS deduct that amount from amounts payable to the creditor agency. FMS and the creditor agency will adjust their debtor records accordingly.

(h) *Disposition of amounts collected.* FMS will transmit amounts collected for past-due, legally enforceable debts, less fees charged under paragraph (i) of this section, to the creditor agency's account. If an erroneous payment is made to any agency, FMS will notify the creditor agency that an erroneous payment has been made. The agency shall pay promptly to FMS an amount equal to the amount of the erroneous payment (without regard to whether any other amounts payable to such agency have been paid).

(i) *Fees.* The creditor agency will reimburse FMS and the IRS for the full cost of administering the tax refund offset program. FMS will deduct the fees from amounts collected prior to disposition and transmit a portion of the fees deducted to reimburse the IRS for its share of the cost of administering the tax refund offset program. To the extent allowed by law, creditor agencies may add the offset fees to the debt.

(j) *Review of tax refund offsets.* Any reduction of a taxpayer's refund made pursuant to 26 U.S.C. 6402(d) shall not be subject to review by any court of the United States or by the Secretary of the Treasury, FMS or IRS in an administrative proceeding. No action brought against the United States to recover the amount of this reduction shall be considered to be a suit for refund of tax. Any legal, equitable, or administrative action by any person seeking to recover the amount of the reduction of the overpayment must be taken against the Federal creditor agency to which the amount of the reduction was paid. Any action which is otherwise available with respect to recoveries of overpayments of benefits

under 42 U.S.C. 404 must be taken against the Commissioner of Social Security.

(k) *Access to and use of confidential tax information.* Access to and use of confidential tax information in connection with the tax refund offset program are restricted by 26 U.S.C. 6103. Generally, agencies will not receive confidential tax information from FMS. To the extent such information is received, agencies are subject to the safeguard, recordkeeping, and reporting requirements of 26 U.S.C. 6103(p)(4) and the regulations thereunder. The agency shall inform its officers and employees who access or use confidential tax information of the restrictions and penalties under the Internal Revenue Code for misuse of confidential tax information.

(l) *Effective date.* This section applies to tax refund payments payable under 26 U.S.C. 6402 after January 1, 1998.

#### § 285.7 Salary offset.

(a) *Purpose and scope.* (1) This section establishes procedures for the offset of Federal salary payments, through FMS' administrative offset program, to collect delinquent debts owed to the Federal Government. This process is known as salary offset. Rules issued by the Office of Personnel Management contain the requirements Federal agencies must follow prior to conducting salary offset and the procedures for requesting offsets directly from a paying agency. See 5 CFR 550.1101 through 550.1108.

(2) This section implements the requirement under 5 U.S.C. 5514(a)(1) that all Federal agencies, using a process known as centralized salary offset computer matching, identify Federal employees who owe delinquent nontax debt to the United States. Centralized salary offset computer matching is the computerized comparison of delinquent debt records with records of Federal employees. The purpose of centralized salary offset computer matching is to identify those debtors whose Federal salaries should be offset to collect delinquent debts owed to the Federal Government.

(3) This section specifies the delinquent debt records and Federal employee records that must be included in

the salary offset matching process. For purposes of this section, delinquent debt records consist of the debt information submitted to the Financial Management Service for purposes of administrative offset as required under 31 U.S.C. 3716(c)(6). Agencies that submit their debt to FMS for purposes of administrative offset are not required to submit duplicate information for purposes of centralized salary offset computer matching under 5 U.S.C. 5514 and this section.

(4) This section establishes an inter-agency consortium to implement centralized salary offset computer matching on a government-wide basis as required under 5 U.S.C. 5514(a)(1). Federal employee records consist of records of Federal salary payments disbursed by members of the consortium.

(5) The receipt of collections from salary offsets does not preclude a creditor agency from pursuing other debt collection remedies, including the offset of other Federal payments to satisfy delinquent nontax debt owed to the United States. A creditor agency should pursue, when deemed appropriate by such agency, such debt collection remedies separately or in conjunction with salary offset.

(b) *Definitions.* For purposes of this section:

*Administrative offset* means withholding funds payable by the United States to, or held by the United States for, a person to satisfy a debt owed by the payee.

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

*Centralized salary offset computer matching* means the computerized comparison of Federal employee records with delinquent debt records to identify Federal employees who owe such debts.

*Creditor agency* means any agency that is owed a debt.

*Debt* means any amount of money, funds, or property that has been determined by an appropriate official of the Federal government to be owed to the United States by a person, including debt administered by a third party act-

ing as an agent for the Federal Government. For purposes of this section, the term "debt" does not include debts arising under the Internal Revenue Code of 1986 (26 U.S.C.).

*Delinquent debt record* means information about a past-due, legally enforceable debt, submitted by a creditor agency to FMS for purposes of administrative offset (including salary offset) in accordance with the provisions of 31 U.S.C. 3716 and applicable regulations. Debt information includes the amount and type of debt and the debtor's name, address, and taxpayer identifying number.

*Disbursing official* means an officer or employee designated to disburse Federal salary payments. This section applies to all disbursing officials of Federal salary payments, including but not limited to, disbursing officials of the Department of the Treasury, the Department of Defense, the United States Postal Service, any government corporation, and any disbursing official of the United States designated by the Secretary.

*Disposable pay* has the same meaning as that term is defined in 5 CFR 550.1103.

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

*Federal employee records* means records of Federal salary payments that a paying agency has certified to a disbursing official for disbursement.

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

*Paying agency* means the agency that employs the Federal employee who owes the debt and authorizes the payment of his or her current pay. A paying agency also includes an agency that performs payroll services on behalf of the employing agency.

*Salary offset* means administrative offset to collect a debt owed by a Federal employee from the current pay account of the employee.

*Secretary* means the Secretary of the Treasury or his or her delegate.

*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 is the individual's social security number.

(c) *Establishment of the consortium.* As required by the provisions of 5 U.S.C. 5514(a)(1), by issuance of this section, the Secretary establishes an inter-agency consortium to implement centralized salary offset computer matching. The consortium initially includes all agencies that disburse Federal salary payments, including but not limited to, FMS, the Department of Defense, the United States Postal Service, government corporations, and agencies with Treasury-designated disbursing officials. The membership of the consortium may be changed at the discretion of the Secretary, and the Secretary will be responsible for the ongoing coordination of the activities of the consortium.

(d) *Creditor agency participation.* (1) As required under 5 U.S.C. 5514(a)(1), creditor agencies shall participate at least annually in centralized salary offset computer matching. To meet this requirement, creditor agencies shall notify FMS of all past-due, legally enforceable debts delinquent for more than 180 days for purposes of administrative offset, as required under 31 U.S.C. 3716(c)(6). Additionally, creditor agencies may notify FMS of past-due, legally enforceable debts delinquent for less than 180 days for purposes of administrative offset.

(2) Prior to submitting debts to FMS for purposes of administrative offset (including salary offset) and centralized salary offset computer matching, Federal agencies shall prescribe regulations in accordance with the requirements of 31 U.S.C. 3716 (administrative offset) and 5 U.S.C. 5514 (salary offset).

(3) Prior to submitting a debt to FMS for purposes of collection by administrative offset, including salary offset, creditor agencies shall provide written certification to FMS that:

(i) The debt is past-due and legally enforceable in the amount submitted to FMS and that the creditor agency will ensure that collections (other than

collections through offset) are properly credited to the debt;

(ii) Except in the case of a judgment debt or as otherwise allowed by law, the debt is referred for offset within ten years after the agency's right of action accrues;

(iii) The creditor agency has complied with the provisions of 31 U.S.C. 3716 (administrative offset) and related regulations including, but not limited to, the provisions requiring that the creditor agency provide the debtor with applicable notices and opportunities for a review of the debt; and

(iv) The creditor agency has complied with the provisions of 5 U.S.C. 5514 (salary offset) and related regulations including, but not limited to, the provisions requiring that the creditor agency provide the debtor with applicable notices and opportunities for a hearing.

(4) FMS may waive the certification requirement set forth in paragraph (d)(3)(iv) of this section as a prerequisite to submitting the debt to FMS. If FMS waives the certification requirement, before an offset occurs, the creditor agency shall provide the Federal employee with the notices and opportunities for a hearing as required by 5 U.S.C. 5514 and applicable regulations, and shall certify to FMS that the requirements of 5 U.S.C. 5514 and applicable regulations have been met.

(5) The creditor agency shall notify FMS immediately of any payments credited by the creditor agency to the debtor's account, other than credits for amounts collected by offset, after submission of the debt to FMS. The creditor agency also shall notify FMS immediately of any change in the status of the legal enforceability of the debt, for example, if the creditor agency receives notice that the debtor has filed for bankruptcy protection.

(e) *Centralized salary offset computer match.* (1) Delinquent debt records will be compared with Federal employee records maintained by members of the consortium or paying agencies. The records will be compared to identify Federal employees who owe delinquent debts for purposes of collecting the debt by administrative offset. A match will occur when the taxpayer identifying number and name of a Federal employee are the same as the taxpayer

identifying number and name of a debtor.

(2) As authorized by the provisions of 31 U.S.C. 3716(f), FMS, under a delegation of authority from the Secretary, has waived certain requirements of the Computer Matching and Privacy Protection Act of 1988, 5 U.S.C. 552a, as amended, for administrative offset, including salary offset, upon written certification by the head of the creditor agency that the requirements of 31 U.S.C. 3716(a) have been met. Specifically, FMS has waived the requirements for a computer matching agreement contained in 5 U.S.C. 552a(o) and for post-match notice and verification contained in 5 U.S.C. 552a(p). The creditor agency will provide certification in accordance with the provisions of paragraph (d)(3)(iii) of this section.

(f) *Salary offset.* When a match occurs and all other requirements for offset have been met, as required by the provisions of 31 U.S.C. 3716(c) the disbursing official shall offset the Federal employee's salary payment to satisfy, in whole or part, the debt owed by the employee. Alternatively, the paying agency, on behalf of the disbursing official, may deduct the amount of the offset from an employee's disposable pay before the employee's salary payment is certified to a disbursing official for disbursement.

(g) *Offset amount.* (1) The amount offset from a salary payment under this section shall be the lesser of:

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

(ii) An amount up to 15% of the debtor's disposable pay.

(2) Alternatively, the amount offset may be an amount agreed upon, in writing, by the debtor and the creditor agency.

(3) Offsets will continue until the debt, including any interest, penalties, and costs, is paid in full or otherwise resolved to the satisfaction of the creditor agency.

(h) *Priorities.* (1) A levy pursuant to the Internal Revenue Code of 1986 shall take precedence over other deductions under this section.

(2) When a salary payment may be reduced to collect more than one debt, amounts offset under this section will

be applied to a debt only after amounts offset have been applied to satisfy past due child support debts assigned to a State pursuant to 402(a)(26) or section 471(a)(17) of the Social Security Act.

(i) *Notice.* (1) Before offsetting a salary payment, the disbursing official, or the paying agency on behalf of the disbursing official, shall notify the Federal employee in writing of the date deductions from salary will commence and of the amount of such deductions.

(2)(i) When an offset occurs under this section, the disbursing official, or the paying agency on behalf of the disbursing official, shall notify the Federal employee in writing that an offset has occurred including:

(A) A description of the payment and the amount of offset taken;

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

(C) A contact point within the creditor agency that will handle concerns regarding the offset.

(ii) The information described in paragraphs (i)(2)(i)(B) and (i)(2)(i)(C) of this section does not need to be provided to the Federal employee when the offset occurs if such information was included in a prior notice from the disbursing official or paying agency.

(3) The disbursing official will advise each creditor agency of the names, mailing addresses, and taxpayer identifying numbers of the debtors from whom amounts of past-due, legally enforceable debt were collected and of the amounts collected from each debtor for that agency. The disbursing official will not advise the creditor agency of the source of payment from which such amounts were collected.

(j) *Fees.* Agencies that perform centralized salary offset computer matching services may charge a fee sufficient to cover the full cost for such services. In addition, FMS, or a paying agency acting on behalf of FMS, may charge a fee sufficient to cover the full cost of implementing the administrative offset program. FMS may deduct the fees from amounts collected by offset or may bill the creditor agencies. Fees charged for offset shall be based on actual administrative offsets completed.

(k) *Disposition of amounts collected.* The disbursing official conducting the offset will transmit amounts collected

for debts, less fees charged under paragraph (j) 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 (without regard to whether any other amounts payable to such agency have been paid). The disbursing official and the creditor agency shall adjust the debtor records appropriately.

[63 FR 23357, Apr. 28, 1998]

## Subpart B—Authorities Other Than Offset

### § 285.11 Administrative wage garnishment.

(a) *Purpose.* This section provides procedures for Federal agencies to collect money from a debtor's disposable pay by means of administrative wage garnishment to satisfy delinquent nontax debt owed to the United States.

(b) *Scope.* (1) This section applies to any Federal agency that administers a program that gives rise to a delinquent nontax debt owed to the United States and to any agency that pursues recovery of such debt.

(2) This section shall apply notwithstanding any provision of State law.

(3) Nothing in this section precludes the compromise of a debt or the suspension or termination of collection action in accordance with applicable law. See, for example, the Federal Claims Collection Standards (FCCS), 4 CFR parts 101–105.

(4) The receipt of payments pursuant to this section does not preclude a Federal agency from pursuing other debt collection remedies, including the offset of Federal payments to satisfy delinquent nontax debt owed to the United States. A Federal agency may pursue such debt collection remedies

separately or in conjunction with administrative wage garnishment.

(5) This section does not apply to the collection of delinquent nontax debt owed to the United States from the wages of Federal employees from their Federal employment. Federal pay is subject to the Federal salary offset procedures set forth in 5 U.S.C. 5514 and other applicable laws.

(6) Nothing in this section requires agencies to duplicate notices or administrative proceedings required by contract or other laws or regulations.

(c) *Definitions.* As used in this section the following definitions shall apply:

*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. For purposes of this section, agency means either the agency that administers the program that gave rise to the debt or the agency that pursues recovery of the debt.

*Business day* means Monday through Friday. For purposes of computation, the last day of the period will be included unless it is a Federal legal holiday.

*Certificate of service* means a certificate signed by an agency official indicating the nature of the document to which it pertains, the date of mailing of the document, and to whom the document is being sent.

*Day* means calendar day. For purposes of computation, the last day of the period will be included unless it is a Saturday, a Sunday, or a Federal legal holiday.

*Debt* or *claim* means any amount of money, funds or property that has been determined by an appropriate official of the Federal Government to be owed to the United States by an individual, including debt administered by a third party as an agent for the Federal Government. *Delinquent nontax debt* means any nontax debt that has not been paid by the date specified in the agency's initial written demand for payment, or applicable agreement, unless other satisfactory payment arrangements have been made. For purposes of this section, the terms "debt" and "claim" are synonymous and refer to delinquent nontax debt.

*Debtor* means an individual who owes a delinquent nontax debt to the United States.

*Disposable pay* means that part of the debtor's compensation (including, but not limited to, salary, bonuses, commissions, and vacation pay) from an employer remaining after the deduction of health insurance premiums and any amounts required by law to be withheld. For purposes of this section, "amounts required by law to be withheld" include amounts for deductions such as social security taxes and withholding taxes, but do not include any amount withheld pursuant to a court order.

*Employer* means a person or entity that employs the services of others and that pays their wages or salaries. The term employer includes, but is not limited to, State and local Governments, but does not include an agency of the Federal Government.

*Garnishment* means the process of withholding amounts from an employee's disposable pay and the paying of those amounts to a creditor in satisfaction of a withholding order.

*Withholding order* means any order for withholding or garnishment of pay issued by an agency, or judicial or administrative body. For purposes of this section, the terms "wage garnishment order" and "garnishment order" have the same meaning as "withholding order."

(d) *General rule.* Whenever an agency determines that a delinquent debt is owed by an individual, the agency may initiate proceedings administratively to garnish the wages of the delinquent debtor.

(e) *Notice requirements.* (1) At least 30 days before the initiation of garnishment proceedings, the agency shall mail, by first class mail, to the debtor's last known address a written notice informing the debtor of:

(i) The nature and amount of the debt;

(ii) The intention of the agency to initiate proceedings to collect the debt through deductions from pay until the debt and all accumulated interest, penalties and administrative costs are paid in full; and

(iii) An explanation of the debtor's rights, including those set forth in

paragraph (e)(2) of this section, and the time frame within which the debtor may exercise his or her rights.

(2) The debtor shall be afforded the opportunity:

(i) To inspect and copy agency records related to the debt;

(ii) To enter into a written repayment agreement with the agency under terms agreeable to the agency; and

(iii) For a hearing in accordance with paragraph (f) of this section concerning the existence or the amount of the debt or the terms of the proposed repayment schedule under the garnishment order. However, the debtor is not entitled to a hearing concerning the terms of the proposed repayment schedule if these terms have been established by written agreement under paragraph (e)(2)(ii) of this section.

(3) The agency will keep a copy of a certificate of service indicating the date of mailing of the notice. The certificate of service may be retained electronically so long as the manner of retention is sufficient for evidentiary purposes.

(f) *Hearing*—(1) *In general.* Agencies shall prescribe regulations for the conduct of administrative wage garnishment hearings consistent with this section or shall adopt this section without change by reference.

(2) *Request for hearing.* The agency shall provide a hearing, which at the agency's option may be oral or written, if the debtor submits a written request for a hearing concerning the existence or amount of the debt or the terms of the repayment schedule (for repayment schedules established other than by written agreement under paragraph (e)(2)(ii) of this section).

(3) *Type of hearing or review.* (i) For purposes of this section, whenever an agency is required to afford a debtor a hearing, the agency shall provide the debtor with a reasonable opportunity for an oral hearing when the agency determines that the issues in dispute cannot be resolved by review of the documentary evidence, for example, when the validity of the claim turns on the issue of credibility or veracity.

(ii) If the agency determines that an oral hearing is appropriate, the time

and location of the hearing shall be established by the agency. An oral hearing may, at the debtor's option, be conducted either in-person or by telephone conference. All travel expenses incurred by the debtor in connection with an in-person hearing will be borne by the debtor. All telephonic charges incurred during the hearing will be the responsibility of the agency.

(iii) In those cases when an oral hearing is not required by this section, an agency shall nevertheless accord the debtor a "paper hearing," that is, an agency will decide the issues in dispute based upon a review of the written record. The agency will establish a reasonable deadline for the submission of evidence.

(4) *Effect of timely request.* Subject to paragraph (f)(13) of this section, if the debtor's written request is received by the agency on or before the 15th business day following the mailing of the notice described in paragraph (e)(1) of this section, the agency shall not issue a withholding order under paragraph (g) of this section until the debtor has been provided the requested hearing and a decision in accordance with paragraphs (f)(10) and (f)(11) of this section has been rendered.

(5) *Failure to timely request a hearing.* If the debtor's written request is received by the agency after the 15th business day following the mailing of the notice described in paragraph (e)(1) of this section, the agency shall provide a hearing to the debtor. However, the agency will not delay issuance of a withholding order unless the agency determines that the delay in filing the request was caused by factors over which the debtor had no control, or the agency receives information that the agency believes justifies a delay or cancellation of the withholding order.

(6) *Hearing official.* A hearing official may be any qualified individual, as determined by the head of the agency, including an administrative law judge.

(7) *Procedure.* After the debtor requests a hearing, the hearing official shall notify the debtor of:

- (i) The date and time of a telephonic hearing;
- (ii) The date, time, and location of an in-person oral hearing; or

(iii) The deadline for the submission of evidence for a written hearing.

(8) *Burden of proof.* (i) The agency will have the burden of going forward to prove the existence or amount of the debt.

(ii) Thereafter, if the debtor disputes the existence or amount of the debt, the debtor must present by a preponderance of the evidence that no debt exists or that the amount of the debt is incorrect. In addition, the debtor may present evidence that the terms of the repayment schedule are unlawful, would cause a financial hardship to the debtor, or that collection of the debt may not be pursued due to operation of law.

(9) *Record.* The hearing official must maintain a summary record of any hearing provided under this section. A hearing is not required to be a formal evidentiary-type hearing, however, witnesses who testify in oral hearings will do so under oath or affirmation.

(10) *Date of decision.* The hearing official shall issue a written opinion stating his or her decision, as soon as practicable, but not later than sixty (60) days after the date on which the request for such hearing was received by the agency. If an agency is unable to provide the debtor with a hearing and render a decision within 60 days after the receipt of the request for such hearing:

(i) The agency may not issue a withholding order until the hearing is held and a decision rendered; or

(ii) If the agency had previously issued a withholding order to the debtor's employer, the agency must suspend the withholding order beginning on the 61st day after the receipt of the hearing request and continuing until a hearing is held and a decision is rendered.

(11) *Content of decision.* The written decision shall include:

- (i) A summary of the facts presented;
- (ii) The hearing official's findings, analysis and conclusions; and
- (iii) The terms of any repayment schedules, if applicable.

(12) *Final agency action.* The hearing official's decision will be the final agency action for the purposes of judicial review under the Administrative Procedure Act (5 U.S.C. 701 *et seq.*).

(13) *Failure to appear.* In the absence of good cause shown, a debtor who fails to appear at a hearing scheduled pursuant to paragraph (f)(4) of this section will be deemed as not having timely filed a request for a hearing.

(g) *Wage garnishment order.* (1) Unless the agency receives information that the agency believes justifies a delay or cancellation of the withholding order, the agency shall send, by first class mail, a withholding order to the debtor's employer within 30 days after the debtor fails to make a timely request for a hearing (i.e., within 15 business days after the mailing of the notice described in paragraph (e)(1) of this section), or, if a timely request for a hearing is made by the debtor, within 30 days after a final decision is made by the agency to proceed with garnishment.

(2) The withholding order sent to the employer under paragraph (g)(1) of this section shall be in a form prescribed by the Secretary of the Treasury on the agency's letterhead and signed by the head of the agency or his/her delegatee. The order shall contain only the information necessary for the employer to comply with the withholding order. Such information includes the debtor's name, address, and social security number, as well as instructions for withholding and information as to where payments should be sent.

(3) The agency will keep a copy of a certificate of service indicating the date of mailing of the order. The certificate of service may be retained electronically so long as the manner of retention is sufficient for evidentiary purposes.

(h) *Certification by employer.* Along with the withholding order, the agency shall send to the employer a certification in a form prescribed by the Secretary of the Treasury. The employer shall complete and return the certification within the time frame prescribed in the instructions to the form. The certification will address matters such as information about the debtor's employment status and disposable pay available for withholding.

(i) *Amounts withheld.* (1) After receipt of the garnishment order issued under this section, the employer shall deduct from all disposable pay paid to the ap-

plicable debtor during each pay period the amount of garnishment described in paragraph (i)(2) of this section.

(2)(i) Subject to the provisions of paragraphs (i)(3) and (i)(4) of this section, the amount of garnishment shall be the lesser of:

(A) The amount indicated on the garnishment order up to 15% of the debtor's disposable pay; or

(B) The amount set forth in 15 U.S.C. 1673(a)(2) (Restriction on Garnishment). The amount set forth at 15 U.S.C. 1673(a)(2) is the amount by which a debtor's disposable pay exceeds an amount equivalent to thirty times the minimum wage. *See* 29 CFR 870.10.

(3) When a debtor's pay is subject to withholding orders with priority the following shall apply:

(i) Unless otherwise provided by Federal law, withholding orders issued under this section shall be paid in the amounts set forth under paragraph (i)(2) of this section and shall have priority over other withholding orders which are served later in time. Notwithstanding the foregoing, withholding orders for family support shall have priority over withholding orders issued under this section.

(ii) If amounts are being withheld from a debtor's pay pursuant to a withholding order served on an employer before a withholding order issued pursuant to this section, or if a withholding order for family support is served on an employer at any time, the amounts withheld pursuant to the withholding order issued under this section shall be the lesser of:

(A) The amount calculated under paragraph (i)(2) of this section, or

(B) An amount equal to 25% of the debtor's disposable pay less the amount(s) withheld under the withholding order(s) with priority.

(iii) If a debtor owes more than one debt to an agency, the agency may issue multiple withholding orders provided that the total amount garnished from the debtor's pay for such orders does not exceed the amount set forth in paragraph (i)(2) of this section. For purposes of this paragraph (i)(3)(iii), the term *agency* refers to the agency that is owed the debt.

(4) An amount greater than that set forth in paragraphs (i)(2) and (i)(3) of

this section may be withheld upon the written consent of debtor.

(5) The employer shall promptly pay to the agency all amounts withheld in accordance with the withholding order issued pursuant to this section.

(6) An employer shall not be required to vary its normal pay and disbursement cycles in order to comply with the withholding order.

(7) Any assignment or allotment by an employee of his earnings shall be void to the extent it interferes with or prohibits execution of the withholding order issued under this section, except for any assignment or allotment made pursuant to a family support judgment or order.

(8) The employer shall withhold the appropriate amount from the debtor's wages for each pay period until the employer receives notification from the agency to discontinue wage withholding. The garnishment order shall indicate a reasonable period of time within which the employer is required to commence wage withholding.

(j) *Exclusions from garnishment.* The agency may not garnish the wages of a debtor who it knows has been involuntarily separated from employment until the debtor has been reemployed continuously for at least 12 months. The debtor has the burden of informing the agency of the circumstances surrounding an involuntary separation from employment.

(k) *Financial hardship.* (1) A debtor whose wages are subject to a wage withholding order under this section, may, at any time, request a review by the agency of the amount garnished, based on materially changed circumstances such as disability, divorce, or catastrophic illness which result in financial hardship.

(2) A debtor requesting a review under paragraph (k)(1) of this section shall submit the basis for claiming that the current amount of garnishment results in a financial hardship to the debtor, along with supporting documentation. Agencies shall consider any information submitted in accordance with procedures and standards established by the agency.

(3) If a financial hardship is found, the agency shall downwardly adjust, by an amount and for a period of time

agreeable to the agency, the amount garnished to reflect the debtor's financial condition. The agency will notify the employer of any adjustments to the amounts to be withheld.

(l) *Ending garnishment.* (1) Once the agency has fully recovered the amounts owed by the debtor, including interest, penalties, and administrative costs consistent with the FCCS, the agency shall send the debtor's employer notification to discontinue wage withholding.

(2) At least annually, an agency shall review its debtors' accounts to ensure that garnishment has been terminated for accounts that have been paid in full.

(m) *Actions prohibited by the employer.* An employer may not discharge, refuse to employ, or take disciplinary action against the debtor due to the issuance of a withholding order under this section.

(n) *Refunds.* (1) If a hearing official, at a hearing held pursuant to paragraph (f)(3) of this section, determines that a debt is not legally due and owing to the United States, the agency shall promptly refund any amount collected by means of administrative wage garnishment.

(2) Unless required by Federal law or contract, refunds under this section shall not bear interest.

(o) *Right of action.* The agency may sue any employer for any amount that the employer fails to withhold from wages owed and payable to an employee in accordance with paragraphs (g) and (i) of this section. However, a suit may not be filed before the termination of the collection action involving a particular debtor, unless earlier filing is necessary to avoid expiration of any applicable statute of limitations period. For purposes of this section, "termination of the collection action" occurs when the agency has terminated collection action in accordance with the FCCS or other applicable standards. In any event, termination of the collection action will have been deemed to occur if the agency has not received any payments to satisfy the debt from the particular debtor whose wages were subject to garnishment, in

whole or in part, for a period of one (1) year.

[63 FR 25139, May 6, 1998]

**§ 285.12 Transfer of debts to Treasury for debt collection.**

(a) *Definitions.* For purposes of this section:

*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.

*Creditor agency* means any Federal agency that is owed a debt.

*Debt* means any amount of money, funds or property that has been determined by an appropriate official of the Federal government to be owed to the United States by a person. As used in this rule, the term "debt" does not include debts arising under the Internal Revenue Code of 1986 or the tariff laws of the United States.

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

*Person* means an individual, corporation, partnership, association, organization, State or local government, or any other type of entity other than a Federal agency.

*Secretary* means the Secretary of the Treasury.

(b) *In general.* Cross-servicing means that FMS, a Federal agency, or a unit or subdivision within a Federal agency, under a designation by the Secretary of the Treasury, is taking appropriate debt collection action on behalf of one or more Federal agencies or unit or subdivision thereof. Agencies which provide such cross-servicing are known as debt collection centers.

(c) *Mandatory transfer of debts to FMS.* (1) Except as set forth in paragraph (d) of this section, a creditor agency shall transfer any debt that is more than 180 days delinquent to FMS for debt collection services. For accounting and reporting purposes, the debt remains on the books and records of the agency which transferred the debt.

(2) On behalf of the creditor agency, FMS will take appropriate action to collect or compromise the transferred debt, or to suspend or terminate collection action thereon, in accordance with

the statutory and regulatory requirements and authorities applicable to the debt and the action. Appropriate action to collect a debt may include referral to another debt collection center, a private collection contractor, or the Department of Justice for litigation. The creditor agency shall advise FMS, in writing, of any specific statutory or regulatory requirements pertaining to their debt and will agree, in writing, to a collection strategy which includes parameters for entering into compromise and repayments agreements with debtors.

(3) A debt is considered 180 days delinquent for purposes of this section if it is 180 days past due and is legally enforceable. A debt is legally enforceable if there has been a final agency determination that the debt, in the amount stated, is due and there are no legal bars to collection action. Where, for example, a debt is the subject of a pending administrative review process required by statute or regulation and collection action during the review process is prohibited, the debt is not considered legally enforceable for purposes of mandatory transfer to FMS and is not to be transferred even if the debt is more than 180 days past-due. Once there has been a final agency determination that the debt, in the amount stated, is due and there are no legal bars to collection action, however, any debt over 180 days delinquent must be immediately transferred to FMS. Nothing in this section is intended to impact the date of delinquency of a debt for other purposes such as for purposes of accruing interest and penalties.

(d) *Exceptions to mandatory transfer.* (1) A creditor agency is not required to transfer a debt to FMS pursuant to paragraph (c)(1) of this section only during such period of time that the debt:

(i) Is in litigation or foreclosure as described in paragraph (d)(2) of this section;

(ii) Is scheduled for sale as described in paragraph (d)(3) of this section;

(iii) Is at a private collection contractor if the debt has been referred to a private collection contractor in accordance with paragraph (e) of this section;

(iv) Is at a debt collection center if the debt has been referred to a Treasury-designated debt collection center in accordance with paragraph (f) of this section;

(v) Is being collected by internal offset as described in paragraph (d)(4) of this section; or

(vi) Is covered by an exemption granted by the Secretary as described in paragraph (d)(5) of this section.

(2)(i) A debt is in litigation if:

(A) The debt has been referred to the Attorney General for litigation by the creditor agency; or

(B) The debt is the subject of proceedings pending in a court of competent jurisdiction, including bankruptcy proceedings, whether initiated by the creditor agency, the debtor, or any other party.

(ii) A debt is in foreclosure if:

(A)(1) Collateral securing the debt is the subject of judicial foreclosure proceedings in a court of competent jurisdiction; or

(2) Notice has been issued that collateral securing the debt will be foreclosed upon, liquidated, sold, or otherwise transferred pursuant to applicable law in a nonjudicial proceeding; and

(B) The creditor agency anticipates that proceeds will be available from the liquidation of the collateral for application to the debt.

(3) A debt is scheduled for sale if:

(i) The debt will be disposed of under an asset sales program within one (1) year after becoming eligible for sale; or

(ii) The debt will be disposed of under an asset sales program and a schedule established by the creditor agency and approved by the Director of the Office of Management and Budget.

(4) A debt is being collected by internal offset if a creditor agency expects the debt to be collected in full within three (3) years from the date of delinquency through internal offset. "Internal offset" means withholding of funds payable by the creditor agency to the debtor to satisfy, in whole or part, the debt owed to the creditor agency by that debtor.

(5)(i) Upon the written request of the head of an agency, or as the Secretary may determine on his/her own initiative, the Secretary may exempt any class of debts from the application of

the requirement described in paragraph (c)(1) of this section. In determining whether to exempt a class of debts, the Secretary will determine whether exemption is in the best interests of the Government after considering the following factors:

(A) Whether an exemption is the best means to protect the government's financial interest, taking into consideration the number, dollar amount, age and collection rates of the debts for which exemption is requested;

(B) Whether the nature of the program under which the delinquencies have arisen is such that the transfer of such debts would interfere with program goals; and

(C) Whether an exemption would be consistent with the purposes of the Debt Collection Improvement Act of 1996 (DCIA), Pub. L. 104-134, 110 Stat. 1321-358 (April 26, 1996).

(ii) Requests for exemptions must clearly identify the class of debts for which an exemption is sought and must explain how application of the factors listed above to that class of debts warrants an exemption.

(e) *Schedule of private collection contractors.* FMS will maintain a schedule of private collection contractors eligible for referral of debts from FMS, other debt collection centers, and creditor agencies for collection action. An agency with debt which has not been transferred to FMS or referred to another debt collection center, for example, debt that is less than 180 days delinquent, may refer such debt to a private collection contractor listed on FMS' schedule of private collection contractors provided they do so in accordance with procedures established by FMS. Alternatively, an agency may refer debt that is less than 180 days delinquent to a private collection contractor pursuant to a contract between the creditor agency and the private collection contractor, as authorized by law.

(f) *Debt collection centers.* A debt collection center is a Federal agency or a unit or subagency within a Federal agency that has been designated by the Secretary of the Treasury to collect debt owed to the United States. FMS is a debt collection center. Debt collection centers will take action upon a

debt in accordance with the statutory or regulatory requirements and other authorities that apply to the debt or to the particular action being taken. Debt collection centers may, on behalf of the creditor agency, subject to the terms under which the debt collection center has been designated as such by the Secretary, take any action to collect, compromise, suspend or terminate collection action on debts in accordance with terms and conditions agreed upon in writing by the creditor agency and the debt collection center or FMS.

(g) *Administrative offset.* As described in paragraph (c) of this section, under the DCIA agencies are required to transfer all debts over 180 days delinquent to FMS for purposes of debt collection (i.e., cross-servicing). Agencies are also required, under the DCIA, to notify the Secretary of all debts over 180 days delinquent for purposes of administrative offset. Administrative offset is one type of collection tool used by FMS and Treasury-designated debt collection centers to collect debts transferred under this section. Thus, by transferring debt to FMS or to a Treasury-designated debt collection center under this section, Federal agencies will satisfy the requirement to notify the Secretary of debts for purposes of administrative offset and duplicate referrals are not required. A debt which is not transferred to FMS for purposes of debt collection, however, such as a debt which falls within one of the exempt categories listed in paragraph (d) of this section, nevertheless, may be subject to the DCIA requirement of notification to the Secretary for purposes of administrative offset.

(h) *Voluntary referral of debts less than 180 days delinquent.* A creditor agency

may refer any debt that is less than 180 days delinquent to FMS or, with the consent of FMS, to a Treasury-designated debt collection center for debt collection services.

(i) *Certification.* Before a debt may be transferred to FMS or another debt collection center, the head of the creditor agency or his or her delegatee must certify, in writing, that the debts being transferred are valid, legally enforceable, and that there are no legal bars to collection. Creditor agencies must also certify that they have complied with all prerequisites to a particular collection action under the laws, regulations or policies applicable to the agency unless the creditor agency has requested, and FMS has agreed, to do so on the creditor agency's behalf. The creditor agency shall notify FMS immediately of any change in the status of the legal enforceability of the debt, for example, if the creditor agency receives notice that the debtor has filed for bankruptcy protection.

(j) *Fees.* FMS and other debt collection centers may charge fees for debt collection services. Fees must be based on costs, however, fees paid to recover amounts owed may not exceed amounts collected. Nothing in this rule precludes a credit agency from agreeing to pay fees for debt collection services which are not based on amounts collected. FMS and debt collection centers are authorized to retain fees from amounts collected and may deposit and use such fees in accordance with 31 U.S.C. 3711(g). Fees charged by FMS and other debt collection centers may be added on to the debt as an administrative cost if authorized under 3717(e).

[63 FR 16356, Apr. 2, 1998]