

**EXEMPTION OF
CLASSES OF FEDERAL PAYMENTS
FROM THE
TREASURY OFFSET PROGRAM**

Standards and Procedures

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**Department of the Treasury
Financial Management Service
Debt Management Services**

STANDARDS AND PROCEDURES
FOR EXEMPTION OF CLASSES OF PAYMENTS
FROM CENTRALIZED ADMINISTRATIVE OFFSET
UNDER THE DEBT COLLECTION IMPROVEMENT ACT OF 1996

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I - BACKGROUND

The Debt Collection Improvement Act of 1996 (DCIA), Pub. L. 104-134, 110 Stat. 1321, 1321-358 (Apr. 26, 1996), as codified at 31 U.S.C. § 3716(c), requires the Department of the Treasury (Treasury) and other disbursing officials to offset Federal payments to collect delinquent debts owed to the United States. In addition, the DCIA authorizes offset for the purpose of collecting delinquent debts owed to states, including past-due child support enforced by states. The offset of Federal payments by disbursing officials, a process known as “centralized administrative offset,” is conducted through the Financial Management Service’s (FMS’) Treasury Offset Program (TOP).

Certain Federal payments are statutorily exempt from offset. Other payments may be exempted from offset by the Secretary of the Treasury (Secretary) upon the request of the Federal agency which issues the payments. Upon the request of the head of an agency, the Secretary is required to exempt payments made under “means-tested programs,” and may exempt other classes of payments under standards prescribed by the Secretary. The DCIA requires that the standards “give due consideration to whether administrative offset would tend to interfere substantially with or defeat the purposes of the payment certifying agency’s program.” See 31 U.S.C. § 3716(c)(3)(B). This document explains how Federal agencies may submit exemption requests to the Secretary, and prescribes the standards under which the Secretary will evaluate and respond to such requests.

Effective as of the date issued, this document replaces and supersedes the “Standards For Exemption of Federal Payments into the Treasury Offset Program” issued in January 1997, as amended in April 1997 (the 1997 Standards). Any payment exemption decisions by the Secretary to grant or deny exemptions under the 1997 Standards shall remain in effect.

II - STATUTORY EXEMPTIONS

Federal payments are subject to offset under TOP unless exempted by Federal statute. Examples of statutorily exempt payments include payments certified by the Department of Education under a program administered by the Secretary of Education under Title IV of the Higher Education Act of 1965 [see 31 U.S.C. § 3716(c)(1)(C)], payments under the tariff laws of the United States [see 31 U.S.C. § 3701(d)(3)], and payments under the Department of Veterans Affairs pension and parents' dependency and indemnity compensation programs [see 38 U.S.C. § 5301(a)].

The head of a Federal agency should notify Treasury of any express statutory exemptions from offset applicable to its payments, so that FMS and the agency can make any necessary adjustments to the payment process to ensure such payments are not offset.

III - EXEMPTIONS BY THE SECRETARY

A. *Payments under means-tested programs.* The DCIA states: “The Secretary of the Treasury shall exempt from administrative offset under [31 U.S.C. 3716(c)] payments under means-tested programs when requested by the head of the respective agency.” Therefore, the Secretary will grant requests to exempt from offset payments made under means-tested programs.

For purposes of exempting payments from administrative offset, these standards define “*means-tested programs*” as those *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.* Examples include, but are not limited to, food stamp programs, supplemental security income programs, and temporary assistance to needy families programs.

B. *Payments under programs which are not means-tested.* Under 31 U.S.C. § 3716(c)(3)(B) the Secretary may exempt from offset payments under programs that are not means-tested upon the written request of the head of the payment certifying agency. An agency’s written request for exemption of payments under non-means-tested programs “must provide justification for the exemption under standards prescribed by the Secretary. Such standards shall give due consideration to whether administrative offset would tend to interfere substantially with or defeat the purposes of the payment certifying agency’s program.” See 31 U.S.C. § 3716(c)(3)(B).

C. *Standards.* In evaluating requests for exemption of payments under non-means-tested programs, the Secretary will apply the following standards. Examples are provided for illustrative purposes only.

1. Is the program purpose clearly articulated, and has the agency demonstrated that offset would interfere substantially with or defeat this purpose? The purpose(s) of a program may be set forth in the program’s authorizing statute, accompanying legislative history, or congressional reports and other congressional materials describing an agency’s mission. The agency must

demonstrate that offset would interfere substantially with or defeat the articulated purpose(s) based on the standards described below.

Example: The statute establishing the Abandoned Infants Program administered by the Department of Health and Human Services states that monies are appropriated “[f]or the purpose of enabling each State to provide, in appropriate cases, foster care and transitional independent living programs for [eligible] children . . . and adoption assistance for children with special needs . . .” See 42 U.S.C. § 670.

A program’s purpose(s) may be part of the agency’s general mission.

Example: With respect to assisted housing programs administered by the Department of Housing and Urban Development, the statute expressly states that “[i]t is the policy of the United States that our Nation should promote the goal of providing decent and affordable housing for all citizens through the efforts and encouragement of Federal, State, and local governments, and by the independent and collective actions of private citizens, organizations, and the private sector.” See 42 U.S.C. § 1437.

2. Are alternative financial resources available to payment recipients? If not, has the agency demonstrated that offset would interfere substantially with or defeat the program’s purpose because of the lack of alternative financial resources? The Secretary will consider whether alternative financial resources would be available to program beneficiaries if offset were to occur, and whether the program purpose(s) could be substantially achieved with such alternative resources.

Example: The Federal Emergency Management Agency awards money from the Cora Brown Fund for disaster-related needs that have not been or will not be met by governmental agencies or other disaster relief organizations. Therefore, if an offset of a payment made from the Cora Brown Fund were to occur, the program purpose of providing otherwise unavailable relief to disaster victims could not be achieved.

Lack of alternative financial resources does not necessarily require a showing of financial hardship.

Example: The National Vaccine Injury Compensation Program administered by the Secretary of Health and Human Services pays compensation for vaccine-related injuries only to the extent that compensation is not otherwise available.

The recipient's financial circumstances are not relevant to the recipient's eligibility for compensation.

3. Can payments be made to alternative payees to accomplish the program purpose? If not, has the agency demonstrated that offset would interfere substantially with or defeat the program's purpose because of the lack of alternative payees? The Secretary will consider whether the payment agency is able to achieve its program purpose(s) by directing payments to payees who do not owe delinquent debt (and therefore, whose payments would not be offset). The Secretary also will consider the cost-effectiveness and feasibility of directing payments to alternative payees and whether the need to find alternative payees would interfere substantially with or defeat the program's purpose.

Example: Under the Indian Self-Determination and Education Assistance Act, Indian tribes or tribal governments may assume responsibility for the administration of certain federal programs administered by the Department of Interior for the benefit of Indians. Federal funds are paid to the tribes for the operation of the assumed programs. Since only Indian tribes or tribal governments may assume responsibility for these programs, no alternative payee exists.

4. Are the proceeds received from the Government earmarked, by statute or regulation, for a specific purpose? If so, has the agency demonstrated that offset would interfere substantially with or defeat the program's purpose because the payment recipient would be unable to use the proceeds for the earmarked purpose? The Secretary will consider whether or not payments made under a particular program must be used by the recipient for a specific purpose and whether offset would interfere substantially with or defeat that purpose.

Example: The Department of Agriculture (USDA) makes payments under the Multi-Family Rental Assistance program to owners of rural rental or farm labor housing projects which are being financed by USDA Multi-Family Housing loans. These payments are made directly to the borrower (project owner) and must be used for project operations. Contrast this with recipients of Federal salary payments who can use the funds for whatever purpose they choose.

5. Is administrative offset cost-effective? The Secretary will consider whether the benefits of conducting administrative offset outweigh the costs. In considering this factor the Secretary will consider the volume and dollar amounts of the payments for which an exemption is sought.

Example: Payments under a small program are disbursed by a non-Treasury disbursing official. Based on the volume and dollar amount of

the payments, it is unlikely that collections that result from offset will exceed the system development costs necessary to offset the payments.

6. Is administrative offset administratively feasible? The Secretary will consider the administrative feasibility of conducting offsets.

Example: While payments made under the National School Lunch program include means-tested and non-means tested components within a single payment, the various components are not individually identified. Thus, it may not be administratively feasible to offset only the non-means-tested portion of a payment.

7. Will administrative offset interfere with an important national interest? The Secretary will consider whether offset would interfere substantially with or defeat an important national interest, such as national security, foreign relations, or law enforcement, and if so, whether that interest outweighs the U.S. Government's interest in collecting delinquent debts with regard to the payments at issue.

IV - DOCUMENTATION TO SUPPORT A REQUEST FOR EXEMPTION

A. *General rule.* The requesting agency must submit documentation which clearly supports the request for exemption. The requesting agency must provide:

1. A narrative statement which clearly identifies the class of payments for which an exemption is requested, the specific program purpose(s), and whether the agency believes the program is means-tested (as defined in this standard) or non-means-tested;
2. The total number and dollar amounts of payments in the class which are estimated to be disbursed in the current fiscal year;
3. Citations to the relevant statutes and regulations governing the program; and
4. Information described in paragraphs IV.B. or IV.C. below, as applicable to the class of payments for which exemption is requested.

B. *Means-tested programs.* Where the agency requests an exemption for a class of payments being made under a *means-tested program*, the agency's narrative described in the *General rule* (paragraph IV.A.) must clearly indicate that the program purpose is to provide an adequate standard of living to program beneficiaries. In addition, the agency must add to its narrative specific statements

identifying the beneficiaries of the program, the criteria used in the program to determine if the beneficiaries need program assistance, and citations to the specific statutes and regulations which identify the beneficiaries and form the basis for determining whether the beneficiaries' income and/or assets are inadequate to provide the beneficiary with an adequate standard of living without program assistance. In cases where the payments are not made directly to program beneficiaries, the narrative must include a description of how offset would affect program beneficiaries.

C. Non-means-tested programs. Where the agency requests an exemption for a class of payments being made under a program which is *not means-tested*, the agency's narrative described in the *General rule* (paragraph IV.A.) must also provide a detailed justification for the exemption under any and all applicable standards prescribed in paragraph III.C. above. If an agency's request is based in whole or in part on the standard described in paragraph III.C.7. (important national interest), the agency must provide detailed information describing the national interest at stake and must demonstrate that there are extraordinary circumstances justifying the exemption.

D. Request for additional information. After an initial review of an agency's request for exemption, Treasury officials may request additional information from the agency in order to analyze properly the exemption request.

V - REQUESTS FOR EXEMPTION

A. Informal discussions. If an agency believes an exemption for a specific class of payments may be warranted, agency officials should contact FMS, Debt Management Services (DMS), to discuss informally the need for an exemption and other options to meet the agency's concerns. The contact point at DMS for these informal discussions is:

Director, Business and Agency Liaison Division
Debt Management Services
Financial Management Service
401 14th Street, SW Room 446
Washington, DC 20227
Telephone: (202) 874-6660
FAX: (202) 874-7494

B. Request for exemption. If, after informal discussions with DMS, an agency determines that a formal request for exemption is appropriate, the request must be made in writing by the head of the agency, or, if appropriately delegated, by the Chief Financial Officer or other senior agency official of an equivalent level.

The request should be addressed to:

Fiscal Assistant Secretary
U.S. Department of the Treasury
1500 Pennsylvania Ave., NW
Washington, DC 20220

A copy of the request should be sent to:

Assistant Commissioner of Debt Management Services
Financial Management Service
401 14th St., SW, Room 446
Washington, DC 20227

C. Request processing and incomplete requests. FMS will review and evaluate promptly each exemption request based on these standards. If an incomplete request is received, FMS will promptly notify the submitting agency that the request is incomplete and describe the specific information which must be submitted to complete the application. If, after a reasonable period of time, the additional information to complete the request has not been received by FMS, the Commissioner, FMS, will notify the requesting official that the request is considered withdrawn. If the initial request submitted contains all required information, or the requesting agency timely submits additional information as requested by Treasury, FMS will conduct an analysis of the request and draft a recommended response.

D. Treasury's response. Treasury will provide a written response to the request within a reasonable time after submission of a completed request. Additional time may be needed to respond to requests to exempt multiple classes of payments. In responding to any request for exemption, the Secretary may grant the exemption(s) in whole or in part, or deny the exemption(s) in whole or in part, in accordance with the DCIA and these standards and procedures.