

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

[63 FR 44988, Aug. 21, 1998]

§ 285.5 Offset of Federal payments to collect nontax debt owed to the United States.

(a) Scope. (1) This section governs the centralized offset of Federal payments to collect delinquent, nontax debts owed to Federal agencies in accordance with 31 U.S.C. 3716, 3720A and 26 U.S.C. 6402 and applicable regulations. The Department of the Treasury's Financial Management Service (FMS) administers centralized offset through the Treasury Offset Program. Offset occurs when the Federal government withholds part or all of a debtor's Federal payment to satisfy the debtor's delinquent debt owed to the government.

(2) Special rules apply to the collection of delinquent, nontax debts through the centralized offset of certain types of Federal payments, including tax refunds (31 CFR 285.2), Federal benefit payments (31 CFR 285.4), and Federal salary payments (31 CFR 285.7). While this rule applies to such payments, nothing in this rule is intended to contradict any provision of those more specific sections. To the extent any provision of this rule is inconsistent with a more specific provision of §§ 285.2, 285.4 or 285.7 of this part, the more specific provision shall apply.

(3) The receipt of collections pursuant to this section does not preclude a Federal agency from pursuing other debt collection remedies in conjunction with centralized offset. Nothing in this section precludes an agency from pursuing all available debt collection remedies simultaneously, provided that collections do not exceed the amount

of the debt, including any interest, penalties, and administrative costs.

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

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

Centralized offset means the offset of Federal payments through the Treasury Offset Program to collect debts which creditor agencies have certified pursuant to 31 U.S.C. 3716(c), 3720A(a) and applicable regulations. The term "centralized offset" includes the Treasury Offset Program's processing of offsets of Federal payments disbursed by disbursing officials other than FMS.

Creditor agency has the same meaning as found at 31 U.S.C. 3701(e)(1) and means any Federal agency that is owed a claim or debt that seeks to collect that claim or debt through offset of Federal payments.

Debt or *claim* has the meaning contained in 31 U.S.C. 3701(b) and means any amount of money, funds, or property that has been determined by an appropriate official of the Federal government to be owed to the United States by a person, organization, or entity, except another Federal agency. The terms "debt" and "claim" are synonymous and include debt administered by a third party acting as an agent for the Federal Government. For purposes of this section, the term "debt" does not include debts arising under the Internal Revenue Code of 1986 (26 U.S.C. 1 *et seq.*), the tariff laws of the United States, or the Social Security Act (42 U.S.C. 301 *et seq.*), except to the extent provided in sections 204(f) and 1631(b)(4) of such Act (42 U.S.C. 404(f) and 1383(b)(4)(A), respectively) and 31 U.S.C. 3716(c).

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

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

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

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the agency's initial written demand for payment, or applicable agreement or instrument (including a post-delinquency payment agreement), unless other payment arrangements satisfactory to the creditor agency have been made. Nothing in this section is intended to define whether a debt is delinquent or past-due for purposes other than offset under this section.

Delinquent debt record means information about a past-due, legally enforceable debt submitted by a creditor agency to FMS for purposes of offset in accordance with the provisions of this section. Information about a past-due, legally enforceable debt includes, but is not limited to, the amount of the debt and the debtor's name, address, and taxpayer identifying number.

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

FMS means the Financial Management Service, a bureau of the Department of the Treasury and its disbursing office. FMS is responsible for administering centralized offset.

Legally enforceable refers to a characteristic of a debt and means there has been a final agency determination that the debt, in the amount stated, is due, and there are no legal bars to collection by offset. Debts that are not legally enforceable for purposes of this section include, but are not limited to, debts subject to the automatic stay in bankruptcy proceedings or debts covered by a statute that prohibits collection of such debt by offset. For example, if a delinquent debt is the subject of a pending administrative review process required by statute or regulation, and if collection action during the review process is prohibited, the debt is not considered legally enforceable for purposes of this section. Nothing in this section is intended to define whether a debt is legally enforceable for purposes other than offset under this section.

Match means the taxpayer identifying number and name (or derivative thereof) of the payee on a payment record are the same as the taxpayer identifying number and name of the debtor on a delinquent debt record.

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.

Past-due has the same meaning as "delinquent", as defined above.

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

Payment agency means any agency that transmits payment requests, in the form of certified payment vouchers or other similar forms, to a disbursing official for disbursement.

Payment record means information contained on a payment request, in the form of a certified payment voucher or other similar form, that has been transmitted to a disbursing official for disbursement in accordance with the provisions of 31 U.S.C. 3325 and 3528 or other applicable law. For purposes of matching, "payment record" may include information extracted from a payment request. Such information could include, but is not limited to, the amount and type of payment and the payee's name, address, and taxpayer identifying number.

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

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

Representative payee means a person named as payee on the payment voucher certified by the payment agency who is acting on behalf of a person entitled to receive the benefit of all or part of the payment.

Secretary means the Secretary of the Treasury.

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 generally the individual's social security number.

(c) *General rule.* (1) Creditor agencies shall submit delinquent debts to FMS for purposes of offset in accordance with paragraph (d) of this section.

(2) Disbursing officials shall compare payment records with delinquent debt records submitted to FMS for collection by offset. 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 payee's debt to the extent allowed by law. The disbursing official shall pay any amounts not offset to the payee. *See* paragraphs (e), (f), (g), and (h) of this section.

(d) *Requirements for creditor agencies—*
(1) *Mandatory notification of delinquent debts.* As required by 31 U.S.C. 3716(c)(6), and in accordance with the provisions of this section, a creditor agency shall notify FMS of all legally enforceable debts over 180 days delinquent that are owed to the creditor agency. By complying with this requirement, creditor agencies will satisfy the requirement of 31 U.S.C. 3720A(a) to notify the Secretary of past due, legally enforceable debt for purposes of tax refund offset. If a debt which is over 180 days delinquent is considered not legally enforceable solely because it is under review as described in paragraph (d)(6)(ii)(C) of this section, the agency must submit the debt to FMS for collection by offset within 30 days of completing the review.

(2) *Discretionary notification of delinquent debts.* Creditor agencies may notify FMS of any debt that is less than 180 days delinquent, so long as the requirements of paragraph (d)(3) of this section are met.

(3) *Debt eligibility.* (i) A debt submitted to FMS for collection by centralized offset must be:

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

(B) Legally enforceable;

(C) Less than 10 years delinquent, unless the debt legally may be offset if more than 10 years delinquent;

(D) More than \$25, or such other amount as FMS may prescribe; and

(E) Not secured by collateral subject to a pending foreclosure action, unless the creditor agency certifies that offset will not affect the Government's rights to the secured collateral.

(ii) The creditor agency must certify that the debt is eligible for collection by offset, as required in paragraph (d)(6) of this section.

(iii) Debts owed by foreign sovereigns may be referred to Treasury Offset Program at the discretion of the creditor agency to the extent allowed by law, but are excluded from mandatory referral under paragraph (d)(1) of this section.

(iv) In accordance with 31 U.S.C. 3719 and the procedures promulgated thereunder, creditor agencies must report to Treasury the amount of debt over 180 days delinquent eligible for the Treasury Offset Program. The procedures require that such report include the amount of debt over 180 days delinquent that the creditor agency has determined is not eligible for the Treasury Offset Program and the reasons for such determination.

(4) *Creditor agency regulations.* Prior to submitting a debt to FMS for purposes of offset, Federal agencies shall prescribe regulations in accordance with the requirements of 31 U.S.C. 3716(b), 31 CFR 901.3(b)(4), 31 U.S.C. 3720A(a), and 31 CFR 285.2(c). Before submitting debts to FMS for purposes of offsetting Federal salary payments, creditor agencies must also publish regulations pursuant to 5 U.S.C. 5514, 31 CFR 285.7(d)(2), and 5 CFR 550.1104.

(5) *Delinquent debt information requirements.* For each debt submitted to FMS for offset, the creditor agency shall provide the following information:

(i) Name and taxpayer identifying number of the person who owes the debt;

(ii) Debtor's address last known to the creditor agency;

(iii) The amount of the debt (including, as applicable, interest, penalties and administrative costs) and the date on which the debt became delinquent;

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(iv) The contact within the creditor agency who will handle questions, concerns or communications regarding the debt;

(v) Written certification as required in paragraph (d)(6) of this section; and

(vi) Other information as may be requested by FMS.

(6) *Creditor agency certification.* At the time the creditor agency notifies FMS of a debt for purposes of collection by offset, the creditor agency shall provide, in the manner required by FMS, written certification to FMS that:

(i) The debt meets the requirements described in paragraph (d)(3)(i) of this section;

(ii) In compliance with 31 U.S.C. 3716, 3720A, 26 U.S.C. 6402, and applicable regulations, the creditor agency has made a reasonable attempt to provide each debtor with:

(A) Written notification, at least sixty days prior to submitting the debt and at the debtor's most current address known to the agency, of the nature and the amount of the debt, the intention of the creditor agency to collect the debt through offset, and an explanation of the rights of the debtor;

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

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

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

(E) In the case of Federal employees, an opportunity for a hearing prior to submitting the debt for Federal salary offset. *See* 5 U.S.C. 5514 and 5 CFR 550.1104. (*See* 31 CFR 285.7(d), which describes the authority to waive the salary offset certification as a prerequisite to referring the debt for other types of offsets.)

(iii) The creditor agency has complied with all statutes, regulations, and policies applicable to the creditor agency's assessment of interest, penalties and administrative costs (including, as applicable, 31 U.S.C. 3717), and that the creditor agency has provided a written notice to debtors explaining

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the creditor agency's requirements concerning any such charges assessed against those debtors;

(iv) The individual signing the certification has the delegated authority to execute the certification on behalf of the head of the creditor agency; and

(v) such additional information that FMS may from time to time require in compliance with law, regulation or policy.

(7) *Updating Certification.* After a debt has been submitted to FMS for purposes of collection by offset, the creditor agency shall provide, at least annually, in the manner and time frames required by FMS, written certification to FMS that:

(i) The debt continues to meet the requirements described in paragraph (d)(3) of this section; and

(ii) The creditor agency has properly credited all collections to the debt balance (other than collections received through centralized offset).

(8) *FMS instructions to creditor agencies.* Agencies will provide the certification in a form and manner prescribed by FMS. FMS will instruct agencies as to the form such written certifications will take and how certifications can be delivered to FMS, including, but not limited to, the use of electronic data transmission.

(9) *Agencies which are both creditor and disbursing officials.* A creditor agency that also designates disbursing officials pursuant to 31 U.S.C. 3321(c) is not required to certify debts arising out of its operations to FMS before such agency's disbursing officials offset to collect such claims. This paragraph (d)(9) does not apply to FMS when it submits debts which it is servicing pursuant to 31 U.S.C. 3711(g).

(10) *Correcting and updating debt information.* (i) When submitting debts for offset, the creditor agency must properly credit all collections, other than collections received from centralized offset.

(ii) The creditor agency shall update delinquent debt records, in the manner and time frames required by FMS, to reflect any amounts credited by the creditor agency to the debtor's account after submission of the debt to FMS (other than credits for amounts collected by centralized offset).

(iii) The creditor agency may update delinquent debt records to reflect any increases in the amount of the debt submitted to FMS for collection by offset provided that the creditor agency has complied with the requirements of paragraph (d)(6) of this section with regard to the increased amounts.

(iv) 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.

(v) The creditor agency shall notify FMS if it has returned any moneys to the debtor/payee because of an offset that should not have occurred, as described in paragraph (i)(2) of this section.

(11) *Debts at FMS, a debt collection center, or the Department of Justice.* If a creditor agency has transferred a debt to FMS or a Treasury-designated debt collection center pursuant to 31 U.S.C. 3711(g) and 31 CFR 285.12, or if a creditor agency has referred a debt to the Department of Justice for enforced collection, then FMS, the debt collection center, or the Department of Justice, as the case may be, is responsible for submitting the debt information to FMS to satisfy the creditor agency's obligations under 31 U.S.C. 3716(c)(6) and this section.

(12) *Certification of amount to be offset if different than maximum allowed by law.* Generally, the amount of an offset will be calculated as set forth in paragraph (f)(2) of this section. If the creditor agency certifies to FMS that the creditor agency has determined the offset amount allowed by law would result in financial hardship to the debtor and that a lesser offset amount (specified either in dollar amount or as a percentage of the payment) is reasonable and appropriate based on the debtor's financial circumstances, then the disbursing official shall offset such lesser amount specified by the creditor agency.

(13) *Duplication of notices not required.* Nothing in this section requires any creditor agency to duplicate any notice or opportunity for hearing or review provided to the debtor prior to offset.

(e) *Payments made by the United States—(1) Payments eligible for offset.*

Except as set forth in paragraph (e)(2) of this section, all Federal payments are eligible for offset under this section. Eligible Federal payments include, but are not limited to, Federal wage, salary, and retirement payments, vendor and expense reimbursement payments, certain benefit payments, travel advances and reimbursements, grants, fees, refunds, judgments (including those certified for payment pursuant to 31 U.S.C. 1304), tax refunds, and other payments made by Federal agencies.

(2) *Payments excluded from offset under this section.* This section does not apply to the following payments:

(i) Black Lung Part C benefit payments, or Railroad Retirement tier 2 payments;

(ii) Payments made under the tariff laws of the United States;

(iii) Veterans Affairs benefit payments to the extent such payments are exempt from offset pursuant to 38 U.S.C. 5301;

(iv) Payments made under any program administered by the Secretary of Education under title IV of the Higher Education Act of 1965 for which payments are certified by the Department of Education;

(v) Payments made under any other Federal law if offset is expressly prohibited by Federal statute;

(vi) Payments made under any program for which the Secretary has granted an exemption in accordance with the provisions of 31 U.S.C. 3716(c)(3)(B) and paragraph (e)(7) of this section; and

(vii) Federal loan payments other than travel advances.

(3) *Specific rules for certain payment types.* (i) Specific rules apply with respect to the offset of the following types of payments:

(A) Social Security benefit payments (excluding Supplemental Security Income payments), Black Lung (part B) payments, and Railroad Retirement (other than tier 2) payments to the extent such payments are subject to offset under 31 U.S.C. 3716(c)(3)(A) (see 31 CFR 285.4);

(B) Federal salary payments (see 31 CFR 285.7; 5 CFR 550.1101 through 550.1108); and

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(C) Tax refund payments (see 31 CFR 285.2).

(ii) This section governs the offset of such payments to the extent that this section is not inconsistent with the special rules that apply for a particular type of payment.

(4) *Payments made to joint payees.* If a payment is certified to more than one payee (i.e., joint payees), the entire payment (including a tax refund payment) will be subject to offset for a debt of either payee, unless otherwise prohibited by law or regulation. See 31 CFR 285.2(g) regarding offset of joint tax refunds and claims to return offset funds to the non-debtor, joint payee.

(5) *Payments made to representative payees.* If a payment is made to a person solely in that person's capacity as a representative payee for another person having the beneficial interest in a payment, the disbursing official shall offset that payment only to collect debts owed by the person having the beneficial interest in the payment. Payment agencies are responsible for identifying representative payees.

(6) *Assigned payments.* (i) If a person, including a Federal contractor, assigns the right to receive a Federal payment to a third party (the "assignee"), the assigned payment will be subject to offset to collect a delinquent debt owed by the assignee.

(ii) An assigned payment will also be subject to offset to collect delinquent debts owed by the assignor unless:

(A) In accordance with 41 U.S.C. 15(e)-(f), the payment has been properly assigned to a financial institution pursuant to a Federal contract, the contract contains provisions prohibiting the payment from being reduced or offset for debts owed by the contractor, and the debt arose independently of the contract; or

(B) pursuant to 31 U.S.C. 3727, the payment is being made to the assignee as settlement or satisfaction of a claim brought by the assignee against the creditor agency based upon the contract, and the debt of the contractor arises independently of the contract; or

(C) the debtor has properly assigned the right to such payments and the debt arose after the effective date of the assignment.

(7) *Payment agency requests for exemptions from centralized offset pursuant to 31 U.S.C. 3716(c)(3)(B)*—(i) *Means-tested payments.* The Secretary will exempt from centralized offset payments made under means-tested programs when requested by the head of the agency making such payments. For purposes of this section "means-tested programs" are those which base eligibility on a determination that the income and/or assets of the beneficiary are inadequate to provide the beneficiary with an adequate standard of living without program assistance.

(ii) *Payments made under programs which are not means-tested.* Upon written request from the payment agency, the Secretary may exempt classes of payments which are not means-tested. Payment agencies may request that the Secretary exempt 100% of each payment in a payment class or that the Secretary exempt a specific lesser percentage. The Secretary will consider such requests under standards prescribed by the Secretary and published on the FMS Web site. See www.fms.treas.gov/debt.

(iii) *Procedures for requesting exemptions.* The head of the payment agency must make a request for exemption in writing. The request must comply with the procedures published by FMS and made available at its Web site. See www.fms.treas.gov/debt.

(iv) *Exemptions apply to classes of payments.* The Secretary will only exempt classes of payments. Requests for exemption of individual payments will not be considered.

(8) *Payment agency responsibilities.* (i) Payment agencies shall prepare and submit payment vouchers in the manner prescribed by the disbursing official to ensure that all payments legally eligible for offset will be offset and all payments not eligible will not be offset. Payment agencies shall notify the disbursing agency, in the manner prescribed by FMS, that a payment is a recurring payment.

(ii) Payment agencies shall also review the nature of payments the agency certifies and notify FMS of any legal bars to centralized offset of payments.

(9) *Payment and disbursing officials have satisfied the obligation underlying*

the payment. When an offset occurs, the debtor has received payment in full for the underlying obligation represented by the payment. Pursuant to 31 U.S.C. 3716(c)(2)(A), neither the disbursing official nor the payment agency shall be liable for the amount of the offset on the basis that the underlying obligation was not satisfied. For example, if an agency certifies a payment to a Federal contractor for work completed or services provided, and that payment is offset to collect a delinquent debt that the contractor owes to another Federal agency, the contractor has been paid in full for its services. When the creditor agency credits the offset amount to the contractor's delinquent debt, the contractor has received full value for the services performed under the contract.

(f) *Offset—(1) When offset occurs.* When a match occurs and all other requirements for offset under 31 U.S.C. 3716(c), 3720A, and applicable regulations have been met, the disbursing official shall offset the payee's Federal payment to satisfy, in whole or part, the debt owed by the debtor. Offsets will continue until the debt, including any interest, penalties, and administrative costs, is paid in full or otherwise resolved to the satisfaction of the creditor agency.

(2) *Offset amount.* (i) Except as otherwise provided in 31 CFR 285.4(e) and 285.7(g) (addressing centralized offset of certain Federal benefit payments and salary payments, respectively), the disbursing official shall offset the lesser of:

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

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

(C) In the case of retirement annuity payments certified by the Office of Personnel Management, up to twenty-five percent of the amount of the payment as shown on the payment record.

(ii) Notwithstanding paragraph (f)(2)(i) of this section, if a creditor agency has specified another amount, either in dollars or as a percentage of the payment, pursuant to paragraph (d)(15) of this section, the disbursing official shall offset the amount specified by the creditor agency.

(3) *Priorities for collecting multiple debts owed by the payee.* (i) A levy pur-

suant to the Internal Revenue Code of 1986 shall take precedence over deductions under this section.

(ii) When a payment may be offset to collect more than one debt under this section, amounts offset will be applied:

(A) First, to satisfy any past due support debts assigned to a State pursuant to sections 402(a)(26) and 471(a)(17) of the Social Security Act (*see* 26 U.S.C. 6402(c) and sections 285.1 and 285.3 of this part);

(B) Second, to satisfy any debts owed to Federal agencies;

(C) Third, to satisfy any qualifying past-due support claims not assigned to a State (*see* 26 U.S.C. 6402(c) and sections 285.1 and 285.3 of this part); and

(D) Fourth, to any debts owed to States for debts other than past-due support (*see* § 285.8 of this part).

(iii) If a recurring payment is being offset to collect a debt when another debt owed by the payee with a higher priority is submitted to FMS, and if the amount that may be legally offset from such payment is insufficient to satisfy both debts, then collections for the first, lower-priority debt will be suspended or reduced until the debt with the higher priority is satisfied or is otherwise uncollectible.

(g) *Notices—(1) Warning notice by disbursing official to payee/debtor.* Before offsetting a recurring payment, the disbursing official, or FMS on behalf of the disbursing official, will notify the payee in writing when offsets will begin (which may be stated as a number of days or number of payments from the time of the notice) and the anticipated amount of such offset (which may be stated as a percentage of the payment). Such notice shall also provide the information contained in paragraph(g)(3) of this section.

(2) *No additional warning notice when collections are suspended and resumed.* As described in paragraph (f)(3)(iii) of this section, FMS may suspend or reduce the application of collections from a recurring payment for one debt when another debt, which is owed by the same debtor and has a higher legal priority, is submitted to FMS for collection. The disbursing official is not required to send additional warning notices when collections for the lower

priority debt resume; however, pursuant to paragraph (g)(3) of this section, each offset will be accompanied by an offset notice, which explains how the offset amounts were applied.

(3) *Offset notice.* When an offset occurs under this section, the disbursing official, or FMS on behalf of the disbursing official, shall notify the payee in writing that an offset has occurred including:

- (i) A description of the payment and the amount of offset taken;
- (ii) The identity of the creditor agency requesting the offset; and
- (iii) A contact point within the creditor agency who will handle concerns regarding the offset.

(h) *Notification to creditor and payment agencies.* (1) FMS will notify the creditor agency of all offsets made to collect the creditor agency's debts. Such notification shall include the complete name and taxpayer identifying number of each debtor/payee, the total amounts collected from each debtor/payee's payment, and the amount of any fees charged by FMS and any other disbursing official conducting offsets. FMS will not advise the creditor agency of the source of payment from which such amounts were collected.

(2) When a non-Treasury disbursing official conducts the offset, that disbursing official will transmit to FMS all of the information necessary for FMS to send notification under paragraph (h)(1) of this section, including the amount of any fees that the creditor agency is responsible for paying.

(3) FMS will make available to the payment agency the information contained in the notification of offset, so that the payment agency may direct any questions concerning the claim to the appropriate contact person in the creditor agency.

(i) *Disposition of amounts collected.* (1) FMS will transmit amounts collected for debts, less fees charged pursuant to paragraph (j) of this section, to the appropriate creditor agency or agencies. Alternatively, FMS may bill the creditor agency for any fees charged pursuant to paragraph (j) of this section.

(2) If FMS learns from a paying agency that a payment should not have been made, and thus not offset, FMS will notify the creditor agency. FMS

may deduct the offset amount from future amounts payable to the creditor agency. Alternatively, upon FMS's request, the creditor agency shall return promptly to the disbursing official an amount equal to the amount of the offset (without regard to whether any other amounts payable to such disbursing official have been paid).

(3) Generally, the disbursing official is not responsible for refunding money to debtors. The creditor agency shall notify FMS any time the creditor agency returns all or any part of an offset payment to an affected payee. FMS and the creditor agency shall adjust the debtor records appropriately.

(j) *Fees.* FMS may charge a fee sufficient to cover the full cost of implementing the centralized offset program, including the amount of any fees charged by other disbursing officials conducting an offset under this section. FMS may deduct the fees from amounts collected by offset or may bill the creditor agencies. FMS will charge fees only for actual offsets collected.

(k) *Waiver of certain provisions under the Computer Matching Privacy and Protection Act of 1988.* As authorized by 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, Pub. L. No. 100-503, as amended, for matches between delinquent debt records and payment records for offset purposes upon written certification by the head of the creditor agency that the requirements of 31 U.S.C. 3716(a) have been met. Specifically, for administrative offset of Federal payments other than tax refunds, 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) so long as the creditor agency provides certification to FMS in accordance with the provisions of paragraph (d)(6) of this section. Such waiver is not necessary for offset of Federal tax refunds, pursuant to 5 U.S.C. 552a(a)(8)(B). The Data Integrity Board of the Department of the Treasury shall review and include in reports under 5 U.S.C. 552a(u)(3)(D) a description of the matching activities conducted for centralized offset under

this section. No other Data Integrity Board is required to take any action under 5 U.S.C. 552a(u) concerning these computerized comparisons.

[67 FR 78942, Dec. 26, 2002]

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

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.