

October 20, 2011

Final Rule: recovery of delinquent Debts-Treasury Offset Program Enhancements,
76 FR 65107

SSA published today its final rule (attached) removing the 10-year limitation to collect Title II, Title XVI, and Title VIII overpayments from the federal offset. Additionally, State tax refunds are now also subject to the treasury offset program.

Effective November 21, 2011, the Treasury Department will be able to offset federal and state tax refunds to recoup the overpayments no matter how old.

There are no procedural changes to the TOP. As was the case under the old rules, prior to the reduction of Federal and State income tax refunds, SSA will send notice of intent to the overpaid person that must state: the amount of the overpayment, and the intent to garnish federal and state income tax refunds within 60 calendar days from the date of the notice. To prevent tax refunds offset the overpaid individual has the following options: 1) repay the overpayment in full; 2) provide evidence to SSA that the overpayment is not past due or legally enforceable; or 3) file a waiver.

Background

We are making final the rule for recovery of delinquent debts that we proposed in a Notice of Proposed Rule Making (NPRM) published in the **Federal Register** on March 2, 2011 (76 FR 11402). The preamble to the NPRM discussed the changes from the current rules and our reasons for proposing those changes. To the extent that we are adopting the proposed rule as published, we are not repeating that information here. Interested readers may refer to the preamble to the NPRM.¹

Changes to Our Regulations

We are changing our regulations to conform to Treasury's regulations. In addition to collecting non-tax debts beyond the original 10-year statute of limitations, we will collect delinquent overpayments under titles II, VIII, and XVI by offset of various State payments, including State tax refunds. Debt Collection Improvement Act (DCIA) of 1996, Public Law 104-134, 110 Stat. 1321-358 *et seq.* (April 26, 1996); 31 U.S.C. 3716; 31 CFR 285.6.

Therefore, we are changing Title 20 §§ 404.520, 404.521, 408.940, 408.941, 416.580, 416.581, and 422.310. Under these sections, we notify the overpaid person and refer overpayments to Treasury for tax refund and administrative offset.

Public Comments on the NPRM

In the NPRM, we provided the public a 60-day comment period, which ended on May 2, 2011. We received two public comments from individuals. Since the comments were long, we have summarized and paraphrased them. We are responding to the significant issues raised by the commenters that were within the scope of this rule.

Comment: One commenter wanted to make sure that our regulations are written with understandable language.

Response: We are committed to writing our documents clearly and welcome feedback if the public does not believe that our documents are clear.

Comment: Another commenter agreed with our proposed rule and suggested that individuals be given ample notice before monies are reclaimed and that individuals be thoroughly informed before entering into a contract that might fall under this rule.

Response: Before referring a person for offset under these sections, we will give him or her at least 60 days prior notice in accordance with §§ 404.521, 408.941, 416.581, and 422.310.

SOCIAL SECURITY ADMINISTRATION

20 CFR Parts 404, 408, 416, and 422

[Docket No. SSA-2010-0010]

RIN 0960-AH19

**Recovery of Delinquent Debts—
Treasury Offset Program
Enhancements**

AGENCY: Social Security Administration.
ACTION: Final rule.

SUMMARY: We are amending our Tax Refund Offset (TRO) and Administrative Offset regulations. We are conforming our regulations to those of the Department of the Treasury (Treasury) for the following reasons: Treasury removed the 10-year limitation to collect delinquent debts owed the United States by reducing eligible Federal payments, and more States are participating in reciprocal agreements with Treasury to offset State payments, including tax refunds to reduce or extinguish a federally owed debt. These changes will allow us to collect additional Federal debt.

DATES: These rules are effective November 21, 2011.

FOR FURTHER INFORMATION CONTACT: Jennifer C. Pendleton, Office of Payment and Recovery Policy, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235-6401, (410) 965-5652. For information on amendments to 20 CFR Part 408, please contact: Benjamin Franco, Office of International Programs, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235-6401, (410) 965-7342. For information on eligibility or filing for benefits, call our national toll-free number, 1-800-772-1213 or TTY 1-800-325-0778, or visit our Internet site, Social Security Online, at <http://www.socialsecurity.gov>.

SUPPLEMENTARY INFORMATION:

¹ The NPRM is available at <http://www.regulations.gov/#!documentDetail;D=SSA-2010-0010-0001>.

Regulatory Procedures

Executive Order 12866 as Supplemented by Executive Order 13563

We consulted with the Office of Management and Budget (OMB) and determined that this final rule meets the criteria for a significant regulatory action under Executive Order 12866 as supplemented by Executive Order 13563. Thus, OMB reviewed the final rule.

Regulatory Flexibility Act

We certify that this final rule will not have a significant economic impact on a substantial number of small entities because it applies to individuals only. Thus, a regulatory flexibility analysis is not required under the Regulatory Flexibility Act, as amended.

Paperwork Reduction Act

This rule does not create any new or affect any existing collections and does not require OMB approval under the Paperwork Reduction Act.

List of Subjects

20 CFR Part 404

Administrative practice and procedure, Blind, Disability benefits, Income taxes, Old-Age, Survivors, and Disability Insurance, Reporting and recordkeeping requirements, Social Security.

20 CFR Part 408

Administrative practice and procedure; Aged; Reporting and recordkeeping requirements; Social Security; Supplemental Security Income (SSI); Veterans.

20 CFR Part 416

Administrative practice and procedure, Reporting and recordkeeping requirements, Supplemental Security Income (SSI).

20 CFR Part 422

Administrative practice and procedure, Organization and functions (Government agencies), Reporting and recordkeeping requirements, Social Security.

Michael J. Astrue,
Commissioner of Social Security.

For the reasons set out in the preamble, we are amending 20 CFR chapter III, parts 404, 408, 416, and 422 as set forth below:

PART 404—FEDERAL OLD-AGE, SURVIVORS AND DISABILITY INSURANCE (1950—)

Subpart F—[Amended]

■ 1. The authority citation for subpart F of part 404 is revised to read as follows:

Authority: Secs. 204, 205(a), 702(a)(5), and 1147 of the Social Security Act (42 U.S.C. 404, 405(a), 902(a)(5), and 1320b–17); 31 U.S.C. 3716; 31 U.S.C. 3720A.

■ 2. Amend § 404.520(b) in the second sentence by removing the word “individuals” and adding in its place the word “persons” and by revising the third sentence to read as follows:

§ 404.520 Referral of overpayments to the Department of the Treasury for tax refund offset—General.

* * * * *

(b) * * * We will refer overpayments to the Department of the Treasury for offset against Federal tax refunds regardless of the length of time the debts have been outstanding.

■ 3. Amend § 404.521 by revising the section heading, introductory text, and paragraphs (a) and (b), and in paragraph (e) by removing the word “individual” in two places and adding in its place “person”.

§ 404.521 Notice to overpaid persons.

Before we request the collection of an overpayment by reduction of Federal and State income tax refunds, we will send a written notice of intent to the overpaid person. In our notice of intent to collect an overpayment through tax refund offset, we will state:

(a) The amount of the overpayment; and

(b) That we will collect the overpayment by requesting that the Department of the Treasury reduce any amounts payable to the overpaid person as refunds of Federal and State income taxes by an amount equal to the amount of the overpayment unless, within 60 calendar days from the date of our notice, the overpaid person:

(1) Repays the overpayment in full; or

(2) Provides evidence to us at the address given in our notice that the overpayment is not past due or legally enforceable; or

(3) Asks us to waive collection of the overpayment under section 204(b) of the Act.

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PART 408—SPECIAL BENEFITS FOR CERTAIN WORLD WAR II VETERANS

Subpart I—[Amended]

■ 4. The authority citation for subpart I of part 408 is revised to read as follows:

Authority: Secs. 702(a)(5), 808, and 1147 of the Social Security Act (42 U.S.C. 902(a)(5), 1008, and 1320b–17); 31 U.S.C. 3716; 31 U.S.C. 3720A.

■ 5. In § 408.940(b) revise the third sentence to read as follows:

§ 408.940 When will we refer an SVB overpayment to the Department of the Treasury for tax refund offset?

* * * * *

(b) * * * We refer overpayments to the Department of the Treasury for offset against Federal tax refunds regardless of the amount of time the debts have been outstanding.

■ 6. In § 408.941 revise the introductory text, and paragraphs (a) and (b) to read as follows:

§ 408.941 Will we notify you before we refer an SVB overpayment for tax refund offset?

Before we request that an overpayment be collected by reduction of Federal and State income tax refunds, we will send a written notice of our action to the overpaid person. In our notice of intent to collect an overpayment through tax refund offset, we will state:

(a) The amount of the overpayment; and

(b) That we will collect the overpayment by requesting that the Department of the Treasury reduce any amounts payable to the overpaid person as refunds of Federal and State income taxes by an amount equal to the amount of the overpayment unless, within 60 calendar days from the date of our notice, the overpaid person:

(1) Repays the overpayment in full; or

(2) Provides evidence to us at the address given in our notice that the overpayment is not past due or legally enforceable; or

(3) Asks us to waive collection of the overpayment under section 204(b) of the Act.

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PART 416—SUPPLEMENTAL SECURITY INCOME FOR THE AGED, BLIND, AND DISABLED

Subpart E—[Amended]

■ 7. The authority citation for subpart E of part 416 is amended to read as follows:

Authority: Secs. 702(a)(5), 1147, 1601, 1602, 1611(c) and (e), and 1631(a)–(d) and (g) of the Social Security Act (42 U.S.C. 902(a)(5), 1320b–17, 1381, 1381a, 1382(c) and (e), and 1383(a)–(d) and (g)); 31 U.S.C. 3716; 31 U.S.C. 3720A.

■ 8. Amend § 416.580(b) by removing the word “individuals” in the second

sentence and adding in its place "persons" and by revising the last sentence to read as follows:

§ 416.580 Referral of overpayments to the Department of the Treasury for tax refund offset—General.

* * * * *

(b) * * * We refer overpayments to the Department of the Treasury for offset against Federal tax refunds regardless of the amount of time the debts have been outstanding.

■ 9. Amend § 416.581 by revising the section heading, the introductory text, and paragraphs (a) and (b), and in paragraph (e), by removing the word "individual" in two places and adding in its place "person".

§ 416.581 Notice to overpaid person.

We will make a request for collection by reduction of Federal and State income tax refunds only after we determine that a person owes an overpayment that is past due and provide the overpaid person with written notice. Our notice of intent to collect an overpayment through tax refund offset will state:

(a) The amount of the overpayment; and

(b) That we will collect the overpayment by requesting that the Department of the Treasury reduce any amounts payable to the overpaid person as refunds of Federal and State income taxes by an amount equal to the amount of the overpayment unless, within 60 calendar days from the date of our notice, the overpaid person:

- (1) Repays the overpayment in full; or
- (2) Provides evidence to us at the address given in our notice that the overpayment is not past due or legally enforceable; or
- (3) Asks us to waive collection of the overpayment under section 204(b) of the Act.

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PART 422—ORGANIZATION AND PROCEDURES

Subpart D—[Amended]

■ 10. The authority citation for subpart D of part 422 continues to read as follows:

Authority: Secs. 204(f), 205(a), 702(a)(5), and 1631(b) of the Social Security Act (42 U.S.C. 404(f), 405(a), 902(a)(5), and 1383(b)); 5 U.S.C. 5514; 31 U.S.C. 3711(e); 31 U.S.C. 3716.

■ 11. In § 422.310 revise paragraphs (a)(1) and (b) to read as follows:

§ 422.310 Collection of overdue debts by administrative offset.

(a) *Referral to the Department of the Treasury for offset.* (1) We recover overdue debts by offsetting Federal and State payments due the debtor through the Treasury Offset Program (TOP). TOP is a Government-wide delinquent debt matching and payment offset process operated by the Department of the Treasury, whereby debts owed to the Federal Government are collected by offsetting them against Federal and State payments owed the debtor. Federal payments owed the debtor include current "disposable pay," defined in 5 CFR 550.1103, owed by the Federal Government to a debtor who is an employee of the Federal Government. Deducting from such disposable pay to collect an overdue debt owed by the employee is called "Federal salary offset" in this subpart.

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(b) *Debts we refer.* We refer for administrative offset all qualifying debts that meet or exceed the threshold amounts used by the Department of the Treasury for collection from State and Federal payments, including Federal salaries.

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