

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

RIN 1510-AA63

Offset of Tax Refund Payments To Collect Past-Due Support**AGENCY:** Financial Management Service, Fiscal Service, Treasury.**ACTION:** Final rule.

SUMMARY: Federal law authorizes the Federal tax refund of a taxpayer who owes past-due support to be reduced, or offset, by the amounts owed by the taxpayer. Past-due support includes delinquent child support or other obligations for the support of a child. The funds offset from a taxpayer's tax refund are forwarded to the State enforcing the collection of the past-due support. Effective January 1, 1999, the Department of the Treasury will conduct the tax refund offset program as part of the centralized offset program, known as the Treasury Offset Program, operated by the Financial Management Service (FMS), a bureau of the Department of the Treasury. This final rule establishes tax refund offset procedures that supersede the procedures governing the tax refund offset program established by the Internal Revenue Service (IRS) and applicable to the collection of past-due support (codified at 26 CFR 301.6402-5). Differences between this rule and the IRS rule reflect requirements necessitated by the inclusion of the tax refund offset program as a part of the Treasury Offset Program.

EFFECTIVE DATE: December 30, 1998.

FOR FURTHER INFORMATION CONTACT: Gerry Isenberg, Financial Program Specialist, at (202) 874-6660; or Ronda Kent or Ellen Neubauer, Senior Attorneys, at (202) 874-6680. A copy of this rule is being made available for downloading from the Financial Management Service web site at the following address: <http://www.fms.treas.gov/debt>.

SUPPLEMENTARY INFORMATION:**Background***General*

Under 26 U.S.C. 6402(c) and 42 U.S.C. 664, Federal tax payments may be withheld or reduced to collect past-due support on behalf of States. This process is known as "offset" or "tax refund offset." The Internal Revenue Service (IRS) has been collecting past-due support for States by tax refund offset since 1982. "Past-due support" means

the amount of support, determined under a court order, or an order of an administrative process 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.

The Debt Collection Improvement Act of 1996 (DCIA), Pub. L. 104-134, 110 Stat. 1321, 1358 (1996), established a centralized process for offsetting eligible nontax Federal payments to collect delinquent debt owed to the United States. In addition, the DCIA authorized offset of such payments to collect past-due support being enforced by States, as well as other debts owed to States.

The Financial Management Service (FMS), the disbursing agency of the Department of the Treasury (Treasury), is responsible for the implementation of centralized offset in accordance with the provisions of the DCIA. To meet this responsibility, FMS established the "Treasury Offset Program." To improve the efficiency of Treasury's collection of debts, including past-due support, operation of the tax refund offset program will be included as part of the Treasury Offset Program effective January 1, 1999. The provisions and legislative history of the DCIA clarified that FMS may conduct tax refund offsets to collect past-due support (see §§ 31001(v)(2) of the DCIA, codified at 42 U.S.C. 664(a); 142 Cong. Rec., 104th Cong. 2d Sess., H4087, H4090 (Apr. 25, 1996)).

On August 4, 1998, FMS issued a notice of proposed rulemaking (NPRM) (63 FR 41688, August 4, 1998) proposing changes to the tax refund offset procedures for the collection of past-due support after January 1, 1999. For tax refund payments after January 1, 1999, the revised procedures, as finalized in this rule, supersede the procedures governing the tax refund offset program established by the IRS and applicable to the collection of past-due support (codified at 26 CFR 301.6402-5).

This rule governs only the offset of one type of payment, tax refunds, to pay one type of delinquent debt, past-due support. FMS has promulgated separate rules and procedures governing other types of offset, such as tax refund offset for the collection of debts owed to the Federal Government (31 CFR 285.2, 63 FR 46139, August 28, 1998) and the offset of nontax Federal payments for the collection of past-due child support (31 CFR 285.1, 63 FR 46141, August 28, 1998). See also, Offset of Federal Benefit Payments (31 CFR 285.4, 63 FR 44985, August 21, 1998) and Salary Offset (31 CFR 285.7, 63 FR 23354, April 28, 1998). FMS will promulgate other rules

governing offset of nontax Federal payments for the collection of debts (other than child support) owed to Federal agencies and States. FMS anticipates that Part 285 of this title ultimately will contain all of the provisions relating to centralized offset by disbursing officials for the collection of debts owed to the Federal Government and to State governments, including past-due child support being enforced by States.

The Treasury Offset Program

The Treasury Offset Program currently works as follows. FMS maintains a delinquent debtor database. The database contains delinquent debtor information submitted and updated by Federal agencies owed debts, and by States collecting debts including any past-due support being enforced by States. Before a Federal payment is disbursed to a payee, FMS compares the payee information with debtor information in the delinquent debtor database operated by FMS. If the payee's name and taxpayer identifying number (TIN) match the name and TIN of a debtor, the payment is offset, in whole or part, to satisfy the debt, to the extent allowed by law. Since FMS issues different payment types daily, the collection of past-due support can be satisfied by the offset of a variety of Federal payment types including, but not limited to, vendor, salary, and retirement payments, as well as tax refund payments.

FMS transmits amounts collected to the appropriate agencies or States owed the delinquent debt after deducting a fee charged to cover the cost of the offset program. Information about a delinquent debt or past-due support obligation remains in the debtor database for offset as long as the debt remains past-due and legally collectible by offset, or until debt collection activity for the debt is terminated because of full payment, compromise, write-off or other reasons justifying termination or removal of the debt from the database.

Offset of Tax Refund Payments To Collect Past-Due Child Support Under the Treasury Offset Program

This rule establishes tax refund offset procedures that supersede the procedures governing the tax refund offset program established by the IRS and applicable to the collection of past-due support (codified at 26 CFR 301.6402-5). Tax refund payments issued after January 1, 1999, will be offset to collect past-due support as part of the Treasury Offset Program in accordance with the requirements of 26

U.S.C. 6402(c) and 42 U.S.C. 664. Procedures for processing claims by non-debtor spouses and for rejecting a taxpayer's election to apply his or her refund to future tax liabilities remain governed by IRS rules. In addition, nothing in this rule changes the pre-offset procedures established by the Department of Health and Human Services (HHS) rules implementing 42 U.S.C. 664. See 45 CFR 303.72. HHS issued guidance to all States on July 6, 1998, concerning the procedures for States to submit past-due support debts for offset purposes, including procedures pertaining to the debt certification process. See Office of Child Support Enforcement (OCSE) Action Transmittal No. OCSE-AT-98-17 (OCSE's AT-98-17).

The preamble to the NPRM explained the proposed process of offsetting tax refund payments to collect past-due support under the Treasury Offset Program, as well as the differences between the proposed procedures and the IRS procedures. The NPRM also contained a section-by-section analysis of the proposed rule. (See 63 FR 41688-41691)

FMS developed this final rule in consultation with the IRS and HHS and appreciates their assistance. As required by 42 U.S.C. 664(b)(1), HHS has approved this final rule.

Comments to the NPRM

In response to the NPRM, FMS received comments from seven (7) State child support enforcement agencies which are discussed below.

General Comments

In response to a commenter's request that the regulation clarify that States cannot submit debts directly to FMS for tax refund offset purposes unless authorized by HHS rules, § 285.3(c)(3) has been revised in the final rule by adding the following first sentence: "States must notify HHS of past-due support in accordance with the provisions of paragraph (c)(2) of this section unless HHS rules authorize notification to FMS directly." Though this rule provides States with the flexibility to refer past-due support debts directly to FMS, current HHS rules governing programs under Chapter 7, Subchapter IV, Part D, of title 42 of the U.S. Code (Title IV-D of the Social Security Act), require States to report past-due support debts to HHS for tax refund offset purposes. This rule does not supersede existing HHS rules; it merely provides flexibility should HHS decide to amend its rules in the future to allow States to refer past-due support debts directly to FMS. States will be

notified if HHS amends its rules to allow direct submission to FMS. At that time, as suggested by one commenter, HHS and FMS will work with States to review any impact direct submission may have on the States.

Another commenter asked whether FMS would require States to use administrative offset if HHS rules allowed States to submit debts directly to FMS. FMS has no plans to implement such a requirement. In response to another commenter's question regarding submission of debts to FMS, FMS will allow States to increase balances on debts and to submit debts on an ongoing basis throughout the year for debts submitted through HHS or directly to FMS.

Section 285.3(a)—Definitions

State. The public was specifically invited to comment on the impact of including or excluding legal subdivisions of States in the definition of State. Based on two comments received and discussions with HHS regarding current procedures for county reporting, FMS determined that the definition of State in the NPRM would not create an impediment to the collection of past-due support. Counties seeking to participate in the offset program may do so by reporting through the State's IV-D program. Therefore, the definition of "State" was not changed to include legal subdivisions.

The public also was invited to comment about whether tribal governments operating child support enforcement programs should be treated in the same manner as States for purposes of this rule. One commenter noted that treating tribal governments operating child support enforcement programs in the same manner as States is consistent with the definition of State as defined in section 101, paragraph (19) of the Uniform Interstate Family Support Act. For the time being, it is anticipated that States will continue to submit past-due support debts to the tax refund offset program pursuant to cooperative agreements with tribal governments. Therefore, the final rule has not been changed. OCSE is in consultation with the tribes and States and will formulate policy on this issue as it becomes appropriate. OCSE will keep the public advised.

Section 285.3(c)—Notification of Past-Due Support

One commenter questioned why the minimum debt referral amount in § 285.3(c)(1) was different for debts assigned to a State (\$25) than for debts not assigned to a State (\$500). Federal law prohibits the use of tax refund offset

for non-assigned past-due support debts less than \$500. See 42 U.S.C.

664(b)(2)(A). There is no similar statutory minimum dollar threshold for past-due support debts assigned to a State. Another State questioned whether the \$25 minimum for assigned debts would create confusion since HHS rules currently set a minimum threshold of \$150. FMS has set minimum thresholds as low as possible in order to maximize the collection of past-due support debts through offset. Until States are authorized by HHS to submit debts in Title IV-D cases at a lower threshold, the current minimum threshold set by HHS is applicable. Section 285.3(c)(1)(i)(A) has been revised to allow referral of assigned debts not less than \$25, or such higher amount as HHS rules may allow, whichever is greater.

FMS received several comments related to the advance notice requirements described in paragraphs (c)(4) and (c)(5) of § 285.3. HHS rules (see 45 CFR 303.72(e) and OCSE's AT-98-17) describe the requirements pertaining to providing advance notice to the debtors of the State's intent to submit a debt for offset. Since HHS rules govern advance notice requirements, the final rule does not incorporate one commenter's suggestion that the regulation be revised to clarify that a one-time notice to a debtor, rather than an annual notice, is sufficient in all cases. HHS' rules allow States to determine specifically how frequently advance notice will be provided. Additionally, OCSE's AT-98-17 indicates that because the amount of the debt may exceed the amount originally indicated in the notice, States are encouraged to send periodic notices, especially where there are significant increases in the amount of the debt. In response to other comments, the first sentence of § 285.3(c)(4) in the final rule has been changed to clarify that, as authorized by 45 CFR 303.72(e), HHS may send advance notice to the debtor on behalf of a State. Currently, FMS has no plans to send advance notices to debtors on behalf of a State.

With respect to the collection of past-due support enforced by multiple States as described in § 285.3(c)(6), one commenter suggested that FMS and/or HHS inform States via reports when multiple States are enforcing the same debt. When a debt is being enforced by multiple States, the rule requires notification to the other enforcing State only if a State has knowledge of such multiple enforcement. HHS and FMS will work with States to resolve multiple enforcement issues as they arise. Although at this time there are no plans for providing systematic

notification to States to alert them to multiple enforcement issues, HHS and FMS will review whether such notification is desirable.

Section 285.3(d)—Priorities for Offset

The public was invited to comment on how a tax refund payment should be applied to a taxpayer's multiple debts within the same category. Two commenters suggested that any refund be applied proportionately to the taxpayer's multiple public assistance debts owed to two or more States, using the total past-due amount as 100%. Another commenter requested that the debts be paid in the order in which they were submitted for offset. OCSE's AT-98-17 indicates that OCSE and FMS have agreed to continue preexisting processing procedures during the transition of the tax refund offset program from IRS to FMS, thus processing and giving priority on a first-in-first-processed basis. In the future, recommendations for alternate processing procedures will be reviewed by OCSE and FMS.

The final rule has been changed to reflect recently enacted legislation (Pub. L. 105-206, July 22, 1998) authorizing Treasury to offset tax refunds to collect delinquent State income tax obligations. Section 285.3(d) has been changed to reflect the provisions of the new law under which such State income tax obligations will be paid from a taxpayer's tax refund only after the tax refund has been applied to satisfy the taxpayer's delinquent child support obligations and debts owed to the Federal Government. See 26 U.S.C. 6402(e).

Section 285.3(e)—Post-Offset Notice

One commenter suggested that § 285.3(e)(2) include a reporting period regarding FMS' offset report to HHS or the States. As in the NPRM, the final rule does not include a reporting period because FMS will establish mutually agreed upon periods with HHS or affected States.

With respect to § 285.3(e)(4), the commenter questioned whether FMS' report to HHS regarding States' participation in offset (submissions of debts and offset collections) would include cases submitted to FMS directly and those submitted through HHS. Pursuant to the provisions of § 285.3(e)(4), the details and requirements of such reports will be developed by HHS and FMS but will not be included in the rule. It is anticipated that reports will include information about cases submitted to FMS directly and through HHS. Contrary to the commenter's concern, if,

for some reason, the reporting period is limited to annually, the provisions of this regulation allowing States to submit cases on an ongoing, rather than annual, basis will not be affected.

Section 285.3(h)—Fees

The final rule does not incorporate a commenter's suggestion that § 285.3(h) specify a time frame within which States would be notified of fee changes prior to any change. FMS will work with HHS and States to ensure that States have sufficient advance notification of any fee changes.

Another commenter recommended that the fee structure be identified in the regulation and remain at a level that will allow for the offset program to be successful. Under 42 U.S.C. 664, Treasury is authorized to charge fees to recover the full cost of applying the offset procedure. This rule requires that the fee be established annually in such amount as FMS and HHS agree. The fee will be no more than \$25 per case submitted per year. FMS will work with HHS to ensure that States are provided with information concerning the fee structure, and that the amount of the fee does not negatively impact the success of the program.

Regulatory Analyses

This final rule is not a significant regulatory action as defined in Executive Order 12866. It is hereby certified that this rule will not have a significant economic impact on a substantial number of small entities. The basis for this certification is that this rule impacts only individuals who receive tax refunds and who owe past-due support. Therefore, a regulatory flexibility analysis is not required.

FMS has determined that this rule may affect family well-being. It is hereby certified that this rule has been assessed in accordance with Section 654 of the Treasury Department Appropriations Act, 1999, enacted as part of the Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999 (Pub. L. 105-277). This rule will not have a negative impact on family well-being because it strengthens the financial well-being of families by assisting in the collection of past-due child support.

Special Analysis

FMS has determined that good cause exists to make this final rule effective upon publication without providing the 30 day period between publication and the effective date contemplated by 5 U.S.C. 553(d). The purpose of a delayed effective date is to afford persons affected by a rule a reasonable time to

prepare for compliance. However, in this case, Treasury has been collecting past-due support for States by tax refund offset since 1982. Procedures affecting States submitting delinquent child support obligations for collection and persons owing delinquent child support obligations remain substantially unchanged. Effective January 1, 1999, the tax refund offset program will be part of the centralized offset program operated by FMS. This final rule provides important guidance that is expected to facilitate States' participation in the tax refund offset program. Therefore, FMS believes that good cause exists to make the rule effective upon publication.

List of Subjects in 31 CFR Part 285

Administrative practice and procedure, Child support, Child welfare, Claims, Debts, Privacy, Taxes.

Authority and Issuance

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

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

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

Authority: 26 U.S.C. 6402; 31 U.S.C. 321, 3701, 3711, 3716, 3720A, 3720B, 3720D; 42 U.S.C. 664; E.O. 13019; 3 CFR, 1996 Comp., p. 216.

2. Section 285.3 is added to subpart A to read as follows:

§ 285.3 Offset of tax refund payments to collect past-due support.

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

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

Debtor as used in this section means a person who owes past-due support.

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

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

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

Past-due support means the amount of support, determined under a court order, or an order of an administrative process 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, as defined in 42 U.S.C. 664(c).

Qualified child means a child:

- (i) Who is a minor, or
- (ii) Who, while a minor, was determined to be disabled under subchapters II or XVI, Chapter 7, Title 42, United States Code, and for whom an order of support is in force.

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.

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 Federal tax on the part of the person who made the overpayment.

(b) *General rule.* (1) Past-due support will be collected by tax refund offset upon notification to FMS in accordance with 26 U.S.C. 6402(c), 42 U.S.C. 664 and this section. Collection by offset under 26 U.S.C. 6402(c) is a collection procedure separate from the collection procedures provided by 26 U.S.C. 6305 and 26 CFR 301.6305-1, relating to the assessment and collection of certain child and spousal support liabilities. Tax refund offset may be used separately or in conjunction with the collection procedures provided in 26 U.S.C. 6305, as well as other collection procedures.

(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 of a payment certification record are the same as the taxpayer identifying number and name of a delinquent 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 support debt owed by the debtor. Any amounts not offset will be paid to the payee(s) listed in the payment certification record.

(c) *Notification of past-due support.*

(1) *Past-due support eligible for tax refund offset.* Past-due support qualifies for tax refund offset if:

- (i)(A) There has been an assignment of the support obligation to a State and the amount of past-due support is not less

than \$25.00, or such higher amount as HHS rules may allow, whichever is greater; or

(B) A State agency is providing support collection services under 42 U.S.C. 654(4), the amount of past-due support is not less than \$500.00, and the past-due support is owed to or on behalf of a qualified child (or a qualified child and the parent with whom the child is living if the same support order includes support for the child and the parent); and

(ii) A notification of liability for past-due support has been received by FMS as prescribed by paragraphs (c)(2) or (c)(3) of this section.

(2) *Notification of liability for past-due support and transmission of information to FMS by HHS.* States notifying HHS of past-due support shall do so in the manner and format prescribed by HHS. The notification of liability shall be accompanied by a certification that the State has complied with the requirements contained in paragraph (c)(4) of this section and with any requirements applicable to the offset of Federal tax refunds to collect past-due support imposed by State law or procedures. HHS shall consolidate and transmit to FMS the information contained in the notifications of liability for past-due support submitted by the States provided that the State has certified that the requirements of paragraph (c)(4) of this section have been met.

(3) *Notification of liability for past-due support transmitted directly to FMS by States.* States must notify HHS of past-due support in accordance with the provisions of paragraph (c)(2) of this section unless HHS rules authorize notification to FMS directly. If authorized by HHS rules, States may notify FMS directly of past-due support. States notifying FMS directly of past-due support shall do so in the manner and format prescribed by FMS. The notification of liability shall be accompanied by a certification that the State has complied with the requirements contained in paragraph (c)(4) of this section and with any requirements applicable to the offset of Federal tax refunds to collect past-due support imposed by State law or procedures. FMS may reject a notification of past-due support which does not comply with the requirements of this section. Upon notification of the rejection and the reason for rejection, the State may resubmit a corrected notification.

(4) *Advance notification to debtor of intent to collect by tax refund offset.* The State, or HHS if the State requests and HHS agrees, is required to provide a

written notification to the debtor, pursuant to the provisions of 42 U.S.C. 664(a)(3) and 45 CFR 303.72(e), informing the debtor that the State intends to refer the debt for collection by tax refund offset. The notice also shall:

(i) Instruct the debtor of the steps which may be taken to contest the State's determination that past-due support is owed or the amount of the past-due support;

(ii) Advise any non-debtor who may file 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; and

(iii) In cases when a debt is being enforced by more than one State, advise the debtor of his or her opportunities to request a review with the State enforcing collection or the State issuing the support order as prescribed by the provisions of 45 CFR 303.72(g).

(5) *Correcting and updating notification.* The State shall, in the manner and in the time frames provided by FMS or HHS, notify FMS or HHS of any deletion or net decrease in the amount of past-due support referred to FMS, or HHS as the case may be, for collection by tax refund offset. The State may notify FMS or HHS of any increases in the amount of the debt referred to FMS for collection by tax refund offset provided that the State has complied with the requirements of paragraph (c)(4) of this section with regard to those debts.

(6) *Collection of past-due support enforced by multiple States.* When a State has knowledge that the debt is being enforced by more than one State, the State notifying FMS, or HHS as the case may be, of the debt shall inform any such other State involved in enforcing the debt when it receives the offset amount.

(d) *Priorities for offset.* (1) As provided in 26 U.S.C. 6402 as amended, a tax refund payment shall be reduced in the following order of priority:

(i) First by the amount of any past-due support assigned to a State (welfare cases) which is to be offset under 26 U.S.C. 6402(c), 42 U.S.C. 664 and this section;

(ii) 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 § 285.2 of this part;

(iii) Third, by the amount of any qualifying past-due support not assigned to a State (non-welfare cases) which is to be offset under 26 U.S.C. 6402(c), 42 U.S.C. 664 and this section; and

(iv) Fourth, by the amount of any past-due, legally enforceable State income tax obligation which is to be offset under 26 U.S.C. 6402(e).

(2) Reduction of the tax refund payment pursuant to 26 U.S.C. 6402(a), (c), (d), and (e) 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), (d), and (e) shall be refunded to the taxpayer, or applied to estimated tax, if elected by the taxpayer pursuant to IRS regulations.

(e) *Post-offset notice.* (1) (i) FMS shall notify the debtor in writing of:

(A) The amount and date of the offset to satisfy past-due support;

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

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

(ii) The notice in paragraph (e)(1)(i) of this section also will advise any non-debtor 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 (f) of this section.

(2) FMS will advise HHS of the names, mailing addresses, and identifying numbers of the debtors from whom amounts of past-due support were collected, of the amounts collected from each debtor through tax refund offset, the names of any non-debtor spouses who may have filed a joint return with the debtor, and of the State on whose behalf each collection was made. Alternatively, FMS will provide such information to each State that refers debts directly to FMS. FMS will inform HHS and each State that the payment source is a tax refund payment.

(3) At least weekly, FMS will notify the IRS of the names and taxpayer identifying numbers of the debtors from whom amounts owed for past-due support were collected from tax refund

offsets and the amounts collected from each debtor.

(4) At such time and in such manner as FMS and HHS agree, but no less than annually, FMS will advise HHS of the States which have furnished notices of past-due support, the number of cases in each State with respect to which such notices have been furnished, the amount of past-due support sought to be collected by each State, and the amount of such tax refund offset collections actually made in the case of each State. As FMS and HHS may agree, FMS may provide additional offset-related information about States which have furnished notices of past-due support.

(f) *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 support 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 HHS or the State, as the case may be. FMS and HHS, or the appropriate State, will adjust their debtor records accordingly.

(g) *Disposition of amounts collected.* FMS will transmit amounts collected for debts, less fees charged under paragraph (h) of this section, to HHS or to the appropriate State. If FMS learns that an erroneous offset payment is made to HHS or any State, FMS will notify HHS or the appropriate State that an erroneous offset payment has been made. FMS may deduct the amount of the erroneous offset payment from amounts payable to HHS or the State, as the case may be. Alternatively, upon FMS' request, the State shall return promptly to the affected taxpayer or FMS an amount equal to the amount of the erroneous payment (unless the State previously has paid such amounts, or any portion of such amounts, to the affected taxpayer). HHS and States shall notify FMS any time HHS or a State returns an erroneous offset payment to

an affected taxpayer. FMS and HHS, or the appropriate State, will adjust their debtor records accordingly.

(h) *Fees.* The State will pay a fee to FMS for the full cost of administering the tax refund offset program. The fee (not to exceed \$25 per case submitted) will be established annually in such amount as FMS and HHS agree to be sufficient to reimburse FMS for the full cost of the offset procedure. 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. Fees will be charged only for actual tax refund offsets completed.

(i) *Review of tax refund offsets.* In accordance with 26 U.S.C. 6402(f), any reduction of a taxpayer's refund made pursuant to 26 U.S.C. 6402(c), (d), or (e) 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.

(j) *Access to and use of confidential tax information.* Access to and use of confidential tax information in connection with the tax refund offset program is permitted to the extent necessary in establishing appropriate agency records, locating any person with respect to whom a reduction under 26 U.S.C. 6402(c) is sought for purposes of collecting the debt, and in the defense of any litigation or administrative procedure ensuing from a reduction made under section 6402(c).

(k) *Effective date.* This section applies to tax refund payments payable under 26 U.S.C. 6402 after January 1, 1999.

Dated: December 16, 1998.

Richard L. Gregg,
Commissioner.

[FR Doc. 98-34431 Filed 12-30-98; 8:45 am]

BILLING CODE 4810-35-P