

1381a, 1382, 1382a, 1382b, 1382c(f), 1382j, 1383, and 1383b); sec. 211, Public Law 93–66, 87 Stat. 154 (42 U.S.C. 1382 note).

6. In § 416.1202:

a. Revise the second sentence and remove the third sentence of paragraph (a);

b. Add new paragraphs (a)(1), (a)(2), and (a)(3); and

c. Revise paragraph (b)(1).

The additions and revisions read as follows:

**§ 416.1202 Deeming of resources.**

(a) \* \* \* In addition to the exclusions listed in § 416.1210, we also exclude the following items:

(1) Pension funds that the ineligible spouse may have. *Pension funds* are defined as funds held in individual retirement accounts (IRA), as described by the Internal Revenue Code, or in work-related pension plans (including such plans for self-employed persons, sometimes referred to as Keogh plans);

(2) For 9 months beginning with the month following the month of receipt, the unspent portion of any retroactive payment of special pay an ineligible spouse received from one of the uniformed services pursuant to 37 U.S.C. 310; and

(3) For 9 months beginning with the month following the month of receipt, the unspent portion of any retroactive payment of family separation allowance an ineligible spouse received from one of the uniformed services pursuant to 37 U.S.C. 427 as a result of deployment to or service in a combat zone (as defined in § 416.1160(d)).

(b) \* \* \*

(1) *General.* In the case of a child (as defined in § 416.1856) who is under age 18, we will deem to that child any resources, not otherwise excluded under this subpart, of his ineligible parent who is living in the same household with him (as described in § 416.1851). We also will deem to the child the resources of his ineligible stepparent. As used in this section, the term “parent” means the natural or adoptive parent of a child, and the term “stepparent” means the spouse (as defined in § 416.1806) of such natural or adoptive parent who is living in the same household with the child and parent. We will deem to a child the resources of his parent and stepparent whether or not those resources are available to him. We will deem to a child the resources of his parent and stepparent only to the extent that those resources exceed the resource limits described in § 416.1205. (If the child is living with only one parent, we apply the resource limit for an individual. If the child is living with both parents, or the child is living with

one parent and a stepparent, we apply the resource limit for an individual and spouse.) We will not deem to a child the resources of his parent or stepparent if the child is excepted from deeming under paragraph (b)(2) of this section. In addition to the exclusions listed in § 416.1210, we also exclude the following items:

(i) Pension funds of an ineligible parent (or stepparent). *Pension funds* are defined as funds held in IRAs, as described by the Internal Revenue Code, or in work-related pension plans (including such plans for self-employed persons, sometimes referred to as Keogh plans);

(ii) For 9 months beginning with the month following the month of receipt, the unspent portion of any retroactive payment of special pay an ineligible parent (or stepparent) received from one of the uniformed services pursuant to 37 U.S.C. 310; and

(iii) For 9 months beginning with the month following the month of receipt, the unspent portion of any retroactive payment of family separation allowance an ineligible parent (or stepparent) received from one of the uniformed services pursuant to 37 U.S.C. 427 as a result of deployment to or service in a combat zone (as defined in § 416.1160(d)).

\* \* \* \* \*

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**DEPARTMENT OF TREASURY**

**Fiscal Service**

**31 CFR Part 285**

**RIN 1510–AB20**

**Offset of Tax Refund Payments to Collect Past-Due, Legally Enforceable Nontax Debt**

**AGENCY:** Financial Management Service, Fiscal Service, Treasury.

**ACTION:** Notice of Proposed Rulemaking.

**SUMMARY:** The Department of the Treasury, Financial Management Service, is proposing to amend its regulation governing the offset of tax refund payments to collect nontax debts owed to the United States. We are proposing to remove the ten-year time limitation on the collection of debts by tax refund offset. This change will allow for the use of tax refund offset to collect nontax debts owed to the United States irrespective of the amount of time the debt has been outstanding.

**DATES:** Comments must be received by August 10, 2009.

**ADDRESSES:** The Financial Management Service (FMS) participates in the U.S. government’s eRulemaking Initiative by publishing rulemaking information on [www.regulations.gov](http://www.regulations.gov). [Regulations.gov](http://www.regulations.gov) offers the public the ability to comment on, search, and view publicly available rulemaking materials, including comments received on rules.

Comments on this rule, identified by docket FISCAL–FMS–2008–0003, should only be submitted using the following methods:

*Federal eRulemaking Portal:* [www.regulations.gov](http://www.regulations.gov). Follow the instructions on the Web site for submitting comments.

*Mail:* Tom Dungan, Debt Management Services, Financial Management Service, 401 14th Street SW., Washington, DC 20227.

The fax and e-mail methods of submitting comments on rules to FMS have been retired.

*Instructions:* All submissions received must include the agency name (“Financial Management Service”) and docket number FISCAL–FMS–2008–0003 for this rulemaking. In general, comments received will be published on [Regulations.gov](http://Regulations.gov) without change, including any business or personal information provided. Comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not enclose any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

You may also inspect and copy this proposed rule at: Treasury Department Library, Freedom of Information Act (FOIA) Collection, Room 1428, Main Treasury Building, 1500 Pennsylvania Avenue, NW., Washington, DC 20220. Before visiting, you must call (202) 622–0990 for an appointment.

**FOR FURTHER INFORMATION CONTACT:** Thomas Dungan, Policy Analyst, at (202) 874–6660, or Tricia Long, Senior Attorney, at (202) 874–6680.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

The Food, Conservation and Energy Act of 2008, Public Law 110–234, Section 14219, 22 Stat. 923 (2008) (“the Act”) amended the Debt Collection Act of 1982 (as amended by the Debt Collection Improvement Act of 1996) to remove a restriction on the collection of debt by offset of nontax payments. Prior to this change, nontax payments could be offset to collect debt only if the debt

was delinquent for a period of less than ten years. The amendment to the law allows for the collection of debt by offsetting nontax payments without any time limitation and applies to any debt outstanding on or after the date of the enactment of the Act.

Although this statutory change does not directly apply to the offset of tax refund payments, we are nevertheless proposing to amend this regulation to mirror the statutory change because the regulatory time limitation contained in this regulation was intended to create uniformity in the way non-judicial offsets were conducted. Because there was no logical reason why the ten-year limitation applicable to the offset of nontax payments should not apply to non-judicial offsets under other statutes which did not contain their own limitations period, this regulation applied a ten-year limitation on the collection of debt by tax refund offset. However, now that the ten-year limitation has been eliminated for the offset of nontax payments, the rationale for including a ten-year limitation in this rule no longer applies.

The proposed changes to this rule remove the limitations period by explicitly stating that no time limitation shall apply, and explain that by removing the time limitation, all debts, including debts that were ineligible for collection by offset prior to the removal of the limitations period, may now be collected by tax refund offset. Additionally, to avoid any undue hardship, we are proposing the addition of a notice requirement applicable to debts that were previously ineligible for collection by offset because they had been outstanding for more than ten years. For these debts, creditor agencies must certify to FMS that a notice of intent to offset was sent to the debtor after the debt became ten years delinquent. This notice of intent to offset is intended to alert the debtor that his debt may now be collected by offset and allows the debtor additional opportunities to dispute the debt, enter into a repayment agreement or otherwise avoid offset. This requirement will apply even in a case where notice was sent prior to the debt becoming ten years old. This requirement applies only with respect to debts that were previously ineligible for collection by offset because of the time limitation and does not apply to debts, such as Department of Education student loan debts, that could be collected by offset without regard to any time limitation prior to this regulatory change.

## II. Procedural Analyses

### *Request for Comment on Plain Language*

Executive Order 12866 requires each agency in the Executive branch to write regulations that are simple and easy to understand. We invite comment on how to make the proposed rule clearer. For example, you may wish to discuss: (1) Whether we have organized the material to suit your needs; (2) whether the requirements of the rules are clear; or (3) whether there is something else we could do to make these rules easier to understand.

### *Regulatory Planning and Review*

The proposed rule does not meet the criteria for a "significant regulatory action" as defined in Executive Order 12866. Therefore, the regulatory review procedures contained therein do not apply.

### *Regulatory Flexibility Act Analysis*

It is hereby certified that the proposed rule will not have a significant economic impact on a substantial number of small entities. This rule merely removes the ten-year time limitation on the collection of debts by tax refund offset. Moreover, the provisions contained in this proposed rule would primarily affect federal creditor agencies and impose no additional costs to small entities. Accordingly, a regulatory flexibility analysis under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) is not required.

### **List of Subjects in 31 CFR Part 285**

Administrative practice and procedure, Child support, Child welfare, Claims, Credits, Debts, Disability benefits, Federal employees, Garnishment of wages, Hearing and appeal procedures, Loan programs, Privacy, Railroad retirement, Railroad unemployment insurance, Salaries, Social Security benefits, Supplemental Security Income (SSI), Taxes, Veterans' benefits, Wages.

For the reasons set forth in the preamble, we propose to amend 31 CFR part 285 as follows:

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

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

**Authority:** 5 U.S.C. 5514; 26 U.S.C. 6402; 31 U.S.C. 321, 3701, 3711, 3716, 3719, 3720A, 3720B, 3720D; 42 U.S.C. 664; E.O. 13019, 61 FR 51763, 3 CFR, 1996 Comp., p. 216.

2. In § 285.2, remove paragraph (d)(1)(ii), redesignate paragraphs (d)(1)(iii) through (d)(1)(v) as paragraphs (d)(1)(ii) through (d)(1)(ii) through (d)(1)(iv) respectively, and add paragraph (d)(6) as follows:

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

\* \* \* \* \*

(d) \* \* \*

(6)(i) Creditor agencies may submit debts to FMS for collection by tax refund offset irrespective of the amount of time the debt has been outstanding. Accordingly, all nontax debts, including debts that were delinquent for ten years or longer prior to [INSERT DATE 30 DAYS AFTER PUBLICATION OF THE FINAL RULE IN THE FEDERAL REGISTER] may be collected by tax refund offset.

(ii) For debts outstanding more than ten years on or before [INSERT DATE 30 DAYS AFTER PUBLICATION OF THE FINAL RULE IN THE FEDERAL REGISTER], creditor agencies must certify to FMS that the notice of intent to offset described in paragraph (d)(1)(iii)(B) of this section was sent to the debtor after the debt became ten years delinquent. This requirement will apply even in a case where notice was also sent prior to the debt becoming ten years delinquent, but does not apply to any debt that could be collected by offset without regard to any time limitation prior to [INSERT DATE 30 DAYS AFTER PUBLICATION OF THE FINAL RULE IN THE FEDERAL REGISTER].

\* \* \* \* \*

Dated: May 29, 2009.

**Gary Grippo,**

*Acting Fiscal Assistant Secretary.*

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## **ENVIRONMENTAL PROTECTION AGENCY**

### **40 CFR Part 52**

**[EPA-R03-OAR-2009-0033; FRL-8916-8]**

### **Approval and Promulgation of Air Quality Implementation Plans; West Virginia; Clean Air Interstate Rule**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to approve a revision to the West Virginia State Implementation Plan (SIP). This revision addresses the requirements of