



Treasury Financial Manual

Chapter 6100

CENTRALIZED OFFSET OF ASSIGNED PAYMENTS

This Treasury Financial Manual (TFM) chapter explains how the Treasury Offset Program (TOP) works with regard to the offset of assigned payments.

Section 6110—Background

The Department of Treasury, Bureau of the Fiscal Service (Fiscal Service) serves as the primary disbursing office for the federal government. Fiscal Service also operates TOP to collect delinquent federal and state debts by offsetting or levying payments made to delinquent debtors.

A frequent scenario involving assigned payments is the award of attorney's fees under the Equal Access to Justice Act (EAJA), where the "prevailing party" (i.e., the PEP) wants to assign an EAJA award to his or her attorney, 28 U.S.C. § 2412. In such cases, the agency may recognize the assignment only if the prevailing party does not owe any debts that could be collected through offset of the EAJA payment. The Supreme Court unanimously held in *Astrue v. Ratliff*, 560 U.S. 586 (2010), that the EAJA term "prevailing party" refers to a claimant and not the claimant's attorney, and thus the offset of an EAJA award to collect a claimant's debt to the government is proper.

Section 6120—Scope

The provisions of this TFM chapter describe how centralized administrative offset (i.e., TOP) works with regard to payments that have been assigned by the party that the United States is legally required to pay (i.e., the party entitled to payment, or PEP).

Section 6130—Definitions

The following terms are defined for the purposes of this TFM chapter:

Agency or Federal Agency—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.

Debt—Has the same definition as set forth in 31 U.S.C. § 3701(b). Debt includes any amount of money, funds, or property that has been determined by an agency official of the federal government to be owed to the United States by a person. As used in this TFM chapter, debt does not include a debt arising under the Internal Revenue Code of 1986.

PEP or party entitled to payment—The person legally entitled to a payment.

Person—An individual, corporation, partnership, association, organization, state or local government, or any other type of entity, other than a federal agency.

Section 6140—Treasury Offset Program Operations

6140.10—What is TOP?

TOP is a fully automated system that manages, in accordance with various federal laws, the collection of delinquent federal and state debts by intercepting payments disbursed by federal and state agencies.

Federal and state agencies to which debts are owed (referred to as “creditor agencies”) submit information about delinquent debts to TOP. Debts referred to TOP include federal tax and nontax debts, child support debts, and other debts owed to states.

6140.20—Relevant Legal Authorities

Relevant legal authorities include: 5 U.S.C. § 5514; 26 U.S.C. §§ 6331(h), § 6402; 31 U.S.C. §§ 3716, 3720A, and 3727; and implementing regulations at 31 CFR Part 285, Subpart A.

6140.30—How are Payments Offset?

Federal agencies that make payments (referred to as “payment agencies”) prepare and certify payment vouchers to federal disbursing officials (including those at Fiscal Service, the Department of Defense, the U.S. Postal Service, and other federal entities), who then disburse payments, 31 U.S.C. § 3325; see also 31 U.S.C. § 3716(c)(1)(A). The payment voucher contains information about the payment, including information about the person entitled to receive payment. Prior to disbursing a payment, TOP compares the payment information with debtor information in the TOP database. If there is a match between a person who owes a debt that has been referred to TOP and the person to whom a payment is owed, the disbursing official offsets that payment, in whole or in part, to satisfy the debt. Amounts collected are then transmitted to the appropriate creditor agency or agencies.

The offset of state payments works somewhat differently: States that participate in the State Reciprocal Program receive extracts of federal nontax debt records from TOP. Before making a payment, a state will compare its payment information with the debtor information in the extract. The state will then offset the payment, in whole or in part, to satisfy the debt. It will then transmit amounts collected to Fiscal Service, which will in turn, transmit the amounts to the appropriate creditor agency or agencies.

6140.40—How are Assigned Payments Treated?

Generally, assigned payments are legally subject to offset for debts of both the assignor (i.e., the PEP) and the assignee (i.e., the person to whom the payment was assigned). A request by a PEP to make the payment to a third party is typically referred to as an “assignment.” To be valid, the “transfer” or “assignment” of a claim against the United States, including the assignment of an attorney’s fees award, must meet the requirements of applicable law, including the Anti-Assignment Act, 31 U.S.C. § 3727, and the laws that apply to TOP. If the requirements are not satisfied, the assignment, as a practical matter, is not valid as to the United States.

Operationally, a payment agency generally must make a payment to the assignor, unless the payment

agency confirms that the assignor does not owe any debts in TOP, in which case the payment may be made to the assignee.

6140.50—How Often Can Creditor Agencies Refer Debts to TOP, and How Does This Impact Payment Agencies' Authority to Recognize Assignments?

Creditor agencies can refer debts to TOP (or update information on debts previously referred) seven days a week, 24 hours a day. Because TOP can be updated at almost any moment, any information obtained from TOP is only accurate as of the time that the inquiry is made. As such, in the situation where the payment agency would like to determine whether it may recognize an assignment of a payment, it is imperative that the payment agency determine the existence of a debt that may be subject to offset no later than 30 days prior to the date of disbursement. This protects the United States' interest in collecting delinquent debt owed to federal and state agencies.

Where the disbursement involves EAJA attorney's fees, for example, checking for debts when the plaintiff files a petition for an award of fees, before the government responds to the petition, or at any time before the court issues its order, will be premature because any debt incurred by the plaintiff before a payment is disbursed is subject to offset. Treasury properly pays EAJA attorney's fees directly to attorneys only in cases where "the plaintiff does not owe a debt to the Government and assigns the right to receive the fees to the attorney." See *Ratliff*, 560 U.S. at 597. As such, a court may not require the government to waive its right of offset by ordering it to recognize an agreement between the plaintiff and attorney regarding the payment of attorney's fees.

Section 6150—Disclosure of TOP Information

6150.10—Legal Authorities

TOP information is protected from unauthorized disclosure, including by the Privacy Act of 1974 and by section 6103 of the Internal Revenue Code.

The Privacy Act permits disclosure of information in several instances. For example, disclosure of whether a debt has been referred to TOP is generally not precluded by the Privacy Act if: (a) the debt is owed by a non-individual; (b) an individual requests the information about him or herself; (c) an individual provides written authorization for disclosure of his or her information to a third party; or (d) disclosure is authorized by a routine use published in a "systems of records" notice (SORN). Routine uses must be consistent with the purpose for which the data was collected and not prohibited by other law. Fiscal Service's SORN relating to TOP records has several routine uses that are consistent with the purpose for which Fiscal Service maintains such records: to collect debt. See Treasury/FMS .014--Debt Collection Operations System, 77 Fed. Reg. 8947 (2012).

Both information about tax debts and information about the offset of federal tax refund payments is protected by section 6103 of the Internal Revenue Code. The restrictions of section 6103 apply to both individuals and non-individuals.

6150.20—Authorized Disclosures of TOP Information

Whether Fiscal Service can disclose information from the TOP database depends on the requestor, the type of information being requested, and the justification for permitting disclosure.

6150.20a—Debtor Request

An individual can request information about his or her own debts by contacting the federal or state agency to which the debt is owed. If unsure of whether or to whom they owe a debt, debtors may contact Fiscal Service by calling the TOP Interactive Voice Response (IVR) system at 800-304-3107, or by mail at Department of the Treasury, Bureau of the Fiscal Service, P.O. Box 1686, Birmingham, AL 35201-1686. In response to a debtor's request for his or her own information, the IVR will disclose the existence of a federal nontax or state debt that is currently subject to collection through TOP, the creditor agency name, and contact information for the creditor agency.

6150.20b—Authorized Third Party

An individual may authorize Fiscal Service to disclose information about his or her debts to any third party. Authorized third parties may also obtain information through the TOP IVR at 800-304-3107, or by mail at Department of the Treasury, Bureau of the Fiscal Service, P.O. Box 1686, Birmingham, AL 35201-1686.

6150.20c—Authorized by Routine Use

Fiscal Service may disclose certain information to the Department of Justice or another federal agency when requested in connection with a legal proceeding, or when needed to facilitate the collection of a debt through offset.

Section 6160—Guidance for Payment Agencies Regarding Assigned Payments

6160.10—Requirement to Determine Whether Debts Exist

Before recognizing the request of a PEP to make payment directly to a third party, the payment agency must determine that recognizing the assignment will not negatively impact the government's ability to collect a debt. Nothing in this guidance requires the payment agency to recognize an assignment, even if the PEP does not owe any delinquent debts.

In practical terms, this requires that the payment agency determine that the PEP does not owe any debts that are currently subject to collection through TOP.

6160.20—How to Determine Whether Debts Exist

To make such a determination, the payment agency may request that Fiscal Service disclose whether the PEP owes any debts that have been referred to TOP. Because the payment agency does not have a need to know the debt balance, delinquency date, creditor agency, and other information regarding the debt, Fiscal Service will generally not disclose additional information. To the extent a payment agency needs additional information, it can make a written case for why additional information regarding the debt at issue should be disclosed under the Privacy Act and other applicable law. Fiscal Service will review such requests to determine whether such additional disclosure is permissible.

6160.30—No Split Disbursements

As the disbursing office, Fiscal Service performs an essentially ministerial task by paying the person the payment agency directs it to pay. However, because Fiscal Service is generally not authorized to disclose the amount of debt to the payment agency, the payment agency cannot direct Fiscal Service how to split the funds if there is debt. In addition, Fiscal Service is not operationally capable of making split disbursements.

Contacts

Direct inquiries concerning this TFM chapter to:

Department of the Treasury
Bureau of the Fiscal Service
Debt Management Services
3201 Pennsy Drive, Building E
Landover, MD 20785
Telephone: 202-874-6810
Email: debt-tfm@fiscal.treasury.gov

Federal agencies and states with questions, should contact TOP at federaloffsets@fiscal.treasury.gov or stateoffsets@fiscal.treasury.gov.