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Overview of the Treasury Department's Federal Payment Levy and Treasury Offset Programs

The U.S. Department of the Treasury, through the Bureau of Fiscal Service (BFS), has two programs for collecting delinquent debt owed by individuals, businesses, and other entities to federal and state government agencies. They differ mainly by the type of debt each program collects.

The Federal Payment Levy Program (FPLP) collects delinquent *federal tax debt* only. In this case, the BFS collaborates with the Internal Revenue Service (IRS) to collect this debt by placing a continuous levy on eligible federal payments to delinquent taxpayers.

The Treasury Offset Program (TOP) collects a *variety of state tax and nontax debt and federal nontax debt*. In this case, the BFS collaborates with federal and state government agencies to collect delinquent debt (including past-due child support) by offsetting certain federal payments to delinquent individuals. Federal nontax debt consists of direct loans, defaulted guaranteed loans, administrative debt (e.g., salary and benefit overpayments), and unpaid fines and penalties.

As **Table 1** shows, the TOP collects over nine times the amount of delinquent debt collected by the FPLP.

Table 1. Amount of Delinquent Federal and State Tax and Nontax Debt Collected Through the Federal Payment Levy Program (FPLP) and the Treasury Offset Program (TOP), FY2015 to FY2018
(Millions of Dollars)

Fiscal Year	FPLP	TOP: State Tax and Nontax Debt	TOP: Federal Nontax Debt	Total
FY2015	$724	$3,063	$3,252	**$7,039**
FY2016	$692	$2,927	$3,525	**$7,144**
FY2017	$683	$2,850	$3,724	**$7,257**
FY2018	$679	$2,712	$3,805	**$7,196**

Source: U.S. Department of the Treasury, *U.S. Government Receivables and Debt Collection Activities of Federal Agencies, Fiscal Year 2018 Report to the Congress*, August 2019.

Both programs rely on the same BFS database of persons and companies with delinquent state and federal tax and nontax debt. Federal and state agencies that collect such debt or are owed delinquent debt (making them creditor agencies) provide and update the information stored in the database.

Origin and Operation of the FPLP

The Federal Payment Levy Program was established by the Taxpayer Relief Act of 1997 (TRA97, P.L. 105-34) in Section 6331(h) of the Internal Revenue Code (IRC). Congress intended the FPLP to improve the collection of delinquent federal taxes in two ways. First, the program allows the IRS to share with the BFS the taxpayer information needed to set up a continuous levy for specific taxpayer accounts. Second, IRC Section 6331(h) authorizes the IRS to activate a levy (or offset) on certain federal payments to delinquent taxpayers. Before TRA97 was enacted, the IRS was not permitted to establish an automatic process for offsetting federal payments to tax debtholders. The BFS and IRS have jointly managed the program since it began in July 2000.

The FPLP facilitates the collection of delinquent federal taxes by levying designated federal payments disbursed by BFS to businesses and individuals holding such debt. A levy remains in place until all delinquent taxes are paid in full, including penalties and accrued interest.

Current law allows the following payments to be levied under the FPLP up to the specified limits:

- up to 15% of federal employee retirement annuities;
- up to the full amount of federal payments to federal vendors;
- up to the full amount of federal employee travel advances or reimbursements;
- up to 15% of Social Security Old Age and Survivor benefits and Railroad Retirement benefits, excluding disability and supplemental security income payments; and
- up to 15% of some federal salaries.

These limits mean, for example, that for someone who receives a monthly Social Security retirement benefit of $1,000, no more than $150 could be levied through the FPLP to pay a delinquent federal tax debt.

To initiate a levy, the IRS sends an electronic file with tax debt information to the BFS, which then adds it to the database for delinquent debt. The BFS then searches a separate database of pending federal payments for a match between the name and taxpayer identification number (TIN) of the delinquent taxpayer and the name and TIN of persons scheduled to receive federal payments.

When a match is found, the BFS notifies the IRS, which in turn notifies that person of its intent to levy qualified federal payments until his or her tax debt is paid in full. If the person does not reply within 30 days, the IRS may authorize the BFS to initiate a continuous levy of those payments. The levy remains in effect until the delinquent taxes are fully paid, or the person makes an arrangement with the IRS to settle her or his tax debt.

When a payment is levied, the BFS sends a letter to the taxpayer explaining which payment was reduced and by how much, and advising the individual to contact the IRS to come to an agreement on paying off the debt.

Some federal tax debt cannot be collected through the FPLP. For example, the IRS cannot levy the assets of persons who are in bankruptcy proceedings, who applied for tax relief as an innocent or injured spouse, who entered into an alternative payment agreement with the IRS (e.g., offer-in-compromise), or who suffered specified hardships (e.g., residing in a federally declared disaster area). Largely because of these limitations, 56% of the delinquent individual federal tax debt was exempt from the FPLP in April 2020; the remaining 44% totaled $134.2 billion.

The amount collected through continuous levy each year is a small fraction of the total amount of delinquent tax debt in taxpayer accounts subject to active payment levy. This suggests that it can take a long time to pay off such debt, especially in cases where less than the full amount of eligible payments can be levied. Social Security payments, only 15% of which can be levied through the FPLP, accounted for 72% of the federal payments levied in the first six months of FY2020. The amount of delinquent individual and business tax debt subject to FPLP levy in FY2019 totaled $107.3 billion, while tax debt paid through the program was $801.5 million (or 0.7% of the total.).

Origin and Operation of the TOP

The Treasury Offset Program was enacted as part of the Debt Collection Improvement Act of 1996 (DCIA, P.L. 104-134). The act authorized the Treasury Department to create a centralized mechanism for reducing federal payments to pay off delinquent federal nontax debt and a variety of state debts, under IRC Sections 6402(d), 6402(e), and 3716.

Under the TOP, the BFS is allowed to offset a variety of federal payments to recover someone's delinquent federal nontax debt, unpaid child support, or certain delinquent state tax and nontax debt. To be eligible for collection through offset, federal nontax debt generally must be delinquent for more than 120 days, legally enforceable, and referred to the TOP directly by a creditor agency or indirectly through the BFS's Cross-Servicing Program (CSP), Treasury-designated debt collection centers, or the Department of Justice.

For debts referred to the CSP, the BFS attempts to collect them through a variety of actions. These include sending demand letters and trying to establish phone contact with a debtor; reporting debt to consumer or commercial credit bureaus; and garnishing the wages of a debtor. The BFS also has the option of referring delinquent debt to TOP or private debt collectors.

In general, the federal payments eligible for levy under the FPLP are also eligible for offset through the TOP. The same percentage limits apply in both cases. In addition, up to 100% of federal income tax refunds may be offset, including refunds from refundable tax credits like the earned income tax credit (EITC). Like the FPLP, certain federal payments cannot be offset through the TOP. If someone's federal payments are subject to offset under the TOP and to levy under the FPLP at the same time, paying off the tax debt is a higher priority. Only after the tax debt has been paid in full can a payment be offset under the TOP.

The process of offsetting a federal payment through the TOP is similar to levying a federal payment under the FPLP. Creditor agencies (federal and state) submit information about delinquent debts to the BFS. Before it disburses an eligible payment, BFS compares the payment information with information in its delinquent debtor database. If there is a match, the BFS offsets the payment, in whole or in part, to satisfy the debt.

In the case of federal nontax debt, the BFS notifies the debtor, the creditor agency, and the paying agency when an offset is performed. The BFS transmits amounts collected through offset to the creditor agencies, after deducting the fees it charges for conducting the offset. Federal nontax debt cannot be referred to TOP if a debtor has filed for bankruptcy or has applied for tax relief as an innocent or injured spouse.

Policy Issues Raised by the FPLP and the TOP

Both programs have raised concern about their impact on low-income individuals.

In the case of the FPLP, one recurring issue has been whether to levy federal payments to low-income persons. The main concern is that imposing a continuous levy on payments to these individuals would lead to or exacerbate financial hardship. Responding to pressure from the National Taxpayer Advocate (NTA), the IRS placed a low-income filter (LIF) on the FPLP in January 2011 to prevent low-income persons from having their federal payments levied. Nonetheless, the eligibility requirements for the filter do not exempt all low-income persons from the FPLP.

In the case of the TOP, a contentious issue has been offsetting the EITC to pay federal student loan debt of borrowers who have defaulted on their loan payments. The credit is refundable and the largest federal antipoverty program that offers cash benefits. Refunds received by EITC recipients who have defaulted on federal student loan payments are subject to offset under the TOP. Some have called for exempting the EITC from offset because of its financial benefits for low-income student loan borrowers.

Gary Guenther, Analyst in Public Finance

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