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OFFICE OF TEMPORARY AND DISABILITY ASSISTANCE
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Robert Doar
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Informational Letter

Section 1

Transmittal:	06-INF-20
To:	Local District Commissioners
Issuing Division/Office:	Division of Program Support and Quality Improvement Division of Employment and Transitional Supports
Date:	June 13, 2006
Subject:	Clarification of the Treasury Offset Program (TOP) Collection Process
Suggested Distribution:	Temporary Assistance Staff Food Stamp Benefits Staff Staff Development Coordinators Fiscal/Accounting Staff
Contact Person(s):	Program Questions: Food Stamp Bureau (518) 473-1469 Budget, Finance & Data Management (CAMS related questions) Regions 1-4 Carolyn Oleyourryk at 1-800-343-8859 Ext. 47549 E-mail: Carolyn.Oleyourryk@otda.state.ny.us Fax No.: (518) 486-6350 Region 5 Michael Borenstein at 631-854-9704 E-mail: Michael.Borenstein@otda.state.ny.us Fax No.: (212) 961-8244 Region 6 Marian Borenstein at 212-961-8250 E-mail: Marian.Borenstein@otda.state.ny.us Fax No.: (212) 961-8244 Audit & Quality Control (TOP processing questions) Larry Pittz (518) 486 -1076
Attachments:	TOP 60 Day Letter
Attachment Available On – Line:	<input checked="" type="checkbox"/>

Filing References

Previous ADMs/INFs	Releases Cancelled	Dept. Regs.	Soc. Serv. Law & Other Legal Ref.	Manual Ref.	Misc. Ref.
03 INF-15, 03 LCM-5		18 NYCRR 387.1, 387.17	7 CFR Parts 272 and 273, SSL Section	FSSB Chapter XV, CAMS Manual Chapter	

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Section 2

I. Purpose

The purpose of this release is to provide information to local districts now dealing with clients who are subject to collection under the reimplemented TOP procedures.

II. Background

The reimplementation of TOP, coupled with changes in locally administered collection activities, has resulted in situations requiring further clarification and definition. The information provided in this letter is almost entirely the result of local district inquiries, and is provided as a means of establishing procedures to handle the new situations. Information will be provided in a Q&A format. The following definitions may be helpful for the purposes of this letter:

- **Certified** - Claims defined as meeting collection standards and subject to intercept under TOP
- **Terminated** – An action that removes the claim from collectible debt status at the state or local level and leaves the claim information on CAMS. Terminated claims are not reported as district debt to USDA
- **Deleted** – Removed from collectible status and the debt is written off as in claims established in error or subject to court action.
- **Active Case** – A household that is currently in receipt of Food Stamp (FS) benefits
- **Refunded or Rebated** – Amounts repaid by local district due to TOP intercept will be fully reimbursed as a bottom line adjustment on the federal settlement notice. Further information can be found in the CAMS Manual (Chapter 7).
- **Intercept** – Automated involuntary collection of a FS debt from federal sources

III. Program Implications:

1. Q. Will cases subject to bankruptcy judgments be certified to TOP?
 - A. Any debt with a bankruptcy date in the Payer Record will not be certified to TOP. Although a valid debt may not be certifiable to TOP as the result of bankruptcy date, local districts still may be permitted to pursue the debt through other collection methods. Also, if a debt is discharged as the result of bankruptcy, it should be removed from CAMS by the district using the Bankruptcy Discharge code (T-31).
2. Q. If an intercept occurs on a debt and a client subsequently makes a payment on the same debt citing the TOP 60 Day Notice, can both payments be credited?
 - A. Yes, so long as the payments do not exceed the debt. If that is the case, the client should be contacted to determine if s/he wants the payment credited to another debt. Otherwise, if the debt in the TOP Notice is satisfied and the payment is a duplicate, it must be refunded. If the combined payment exceeds the debt, the excess is refunded by the local district. Clarification on individual case collection circumstances resulting from TOP activities is available from Audit and Quality Control (A&QC) at (518) 402-1560.
3. Q. If the client has overpaid the TOP-noticed claim and has other debts, even PA debts, can the payment be posted to them?

- A. Procedures for collection conducted pursuant to TOP differ from conventional methods. In the case of the TOP noticed claim, if the client agrees in writing to have the payment applied to other debts, it is permissible. Otherwise, the payment must be refunded to the client.
4. Q. May a client with an outstanding debt who has moved to another state and is once again in receipt of FS, be certified for TOP in New York?
- A. Audit and Quality Control (A&QC) will suspend TOP certification and track such cases. If the client contacts A&QC directly, A&QC will act on the information. However, in the event that the client contacts the former district of residence, the district should contact A&QC by phoning (518) 402 -1560 to initiate the suspension of TOP certification.
5. Q. If a client, after receiving a TOP 60 Day Notice, makes a payment to the local district or enters into and maintains a Repayment Agreement, will the TOP collection activities cease?
- A. A current payment on a FS debt will suspend TOP collection and any payment made on a FS debt within the 60 days will be presumed to be for the debt in the TOP notice. TOP collection would be suspended for 60 days but if no further payment is received, the claim is returned to certified status. However, payments posted to a PA debt will not impact the Food Stamp claim being pursued via the TOP process. It should be noted that while a district may offer a FS Repayment Agreement or a client may offer a payment on the debt, districts do not have to accept either an offer or a payment if they consider it to be unreasonable or simply an attempt to circumvent TOP.
6. Q. If a claim was established and the household has no responsible adult, how should collection be pursued?
- A. Closed case claims with no responsible adult are uncollectible and should be terminated by using the “No Responsible Adult” code (T-71).
7. Q. Clients who engage the services of a tax preparer and choose to obtain a loan secured against their refund (often characterized as a form of “expedited refund”) from the firm rather than wait for their refund, often find that their checks are on hold because of the intercept. To whom should they address inquiries about the balance of their refund account?
- A. Such questions should be answered by the Internal Revenue Service. However, if the client’s actual refund is intercepted, the amount will appear on the TOP report.
8. Q. In response to a TOP notice, a debtor contacts the local district to request a compromise as part of the Request for a Repayment Agreement. However, despite the fact that the claim has been inactive for years, the debt turns out to be the result of an Intentional Program Violation (IPV) that had a mandated payment schedule. Does the district, using compromise and repayment agreements, have the authority to alter the terms?
- A. IPV’s are subject to compromise, repayment agreements and even termination. Local districts have the discretionary authority to change terms in order to expedite collection

based on administrative considerations. Local districts also have the authority to deny offers that they consider to be unreasonable.

9. Q. When we review the TOP rebate reports we sometime see amounts to be refunded that are as small as \$.12, \$.52 and the like. What causes such small rebates and how are we to handle them administratively?

A. Usually, they are the result of small balances left inactive in FS EBT accounts for over 9 months. The system automatically expunges these balances, applies them to outstanding debts and informs the U.S. Treasury of the action. But sometimes, the information doesn't arrive soon enough to forestall the full intercept from happening, as well. If the client has other debt(s) and agrees to the action, these amounts may be posted to another debt. Otherwise, the rebate must be refunded by the district.

10. Q. A local district is contacted by a client who has received a 60 Day Letter and wants a fair hearing on the claim in question. What procedure should be followed?

A. Clients in this circumstance are entitled to an Administrative Review and should follow the procedures outlined in the letter. They have been afforded their Fair Hearing rights earlier in the process and are now handled by the review process. Local districts are advised to refer to the TOP 60 Day Letter (attached) in order to explain to the client what steps they may now take.

III. Forms Revisions - None

Issued By

Name: Russell Sykes

Title: Deputy Commissioner

Division/Office: Division of Employment and Transitional Supports

Issued By

Name: John Paolucci

Title: Deputy Commissioner

Division/Office: Division of Program Support & Quality Improvement

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Robert Doar
Commissioner

[Date]

[Name of Debtor]
[Address of Debtor]
[Address of Debtor]
[City, State, Zip of Debtor]

Re: Past Overpayment of Food Stamps
Account/Case No.: [Account No.]
Social Security No.: [Social Security No.]

Dear [Name of Debtor]:

The New York State Office of Temporary and Disability Assistance ("OTDA") has determined, based upon the records of your local social service district, that you owe OTDA for a past overpayment of food stamp benefits in the amount below.

Why Your Debt May Be Submitted to the Treasury Offset Program:

The records of your local social service district show that your household was previously sent notice(s) advising you about the claim(s) that make up your debt, including the right to a fair hearing on the claims(s). These records show that you owe a debt for the following food stamp overpayment:

Period of Overpayment: [Period(s) of Overpayment]
Balance Due Now: [Balance Now Due]
Reason for Overpayment: [Reason for Overpayment]

You have not paid the amount owed to OTDA. If you do not pay the debt now, enter into an installment plan to pay the debt and make payments required in the plan, or ask for a review as described below before 60 days from the date of this letter, OTDA will submit your debt to the U.S. Department of the Treasury ("Treasury") for collection through the Treasury Offset Program ("TOP"). If your debt is submitted to TOP, Treasury will take all or part of your eligible federal payments up to the amount of your debt. If your debt is submitted to TOP, Treasury may also add processing charges related to the offset of your debt.

Should You Ask for a Review?

Under certain circumstances we should not submit your debt to Treasury for offset under TOP. If any of the following apply, your debt should not be referred to TOP and you should request a review:

1. You are currently receiving food stamps;
2. We never sent you a notice about this debt with an opportunity to contest it at a fair hearing;
3. You are under an acceptable repayment agreement and are making agreed payments, your wages are being garnished to repay the debt, or you have already paid back all the debt;
4. You filed for bankruptcy and the automatic bankruptcy stay is in effect (if this applies, you should send us documents showing that bankruptcy is pending);

5. Your debt is currently in litigation;
6. Your debt is more than ten years old, unless it is covered by a court judgment;
7. Your debt is less than the minimum amount acceptable by Treasury, which is currently \$25.

If your debt is submitted to TOP, Treasury will take as much money as necessary to pay your debt out of federal payments that would otherwise be paid to you. This process is known as offset and is authorized by the Debt Collection Act of 1982, as amended by the Debt Collection Improvement Act of 1996, and applicable Food Stamp Program regulations. Once your debt is submitted to Treasury, it will remain in the system until it is paid in full or until it is no longer eligible for offset. For example, every year your tax refund may be taken until your debt is paid. This is your notice that such payments may be offset through TOP to pay your debt. You might not receive another notice prior to the offset of federal payments to pay your debt.

What Federal Payments May Be Taken?

Federal payments that may be taken to pay off your debt under TOP include:

- Your income tax refund, including any earned income tax credit payment you may be due (see Attachment A for additional information);
- Up to 15% of your federal salary pay, including military pay (see Attachment A for additional information, including how to request a waiver of this type of offset);
- Up to 25% of your federal retirement pay;
- Your military retirement pay;
- Your contractor/vendor payments;
- Other federal payments, including certain loans to you, that are not exempt from offset, and;
- Federal benefit payments such as Social Security (see Attachment A for additional information).

What Can You Do to Avoid Referral to TOP?

To avoid having your debt referred to Treasury for offset through TOP, you must do one of the following things by 60 days from the date of this letter:

- Pay your debt by sending a check or money order payable to [social services district] for the full amount that you owe in an envelope addressed to:

[payment address and phone no.]

Or

- Agree to a repayment plan by contacting the social services district named in the previous sentence and entering into an agreement acceptable to it and making the payments as required in the plan; or
- Request a review if you believe that you do not owe the debt, that the amount of the debt is incorrect, or that your debt should not be referred to TOP for one of the circumstances listed above.

How to Ask for a Review

If you want to request a review, you must send a letter within 60 days from the date of this notice, explaining the reasons why you believe your debt should not be submitted to TOP, together with copies of any documents or other evidence you have supporting your defense. Your letter should be addressed and sent to:

New York State OTDA
ATTN: TOP Appeals
Riverview Center
40 North Pearl Street
Albany, New York 12243

We will not submit your debt to TOP while it is under review and we will inform you of our decision about your debt in writing.

If you have any questions about this letter, want more information about your debt, or if you want to inspect and copy the records of your local social service district related to your debt, you may contact the social services district named above. However, simply contacting the social services district is not the same as making a written request for review as described above, and will not stop us from submitting your debt to Treasury for offset under TOP.

As stated above, once your debt has been submitted to TOP, it will remain in the system until it is paid in full or no longer is eligible for offset. If any of the circumstances numbered above apply to you in the future, you should contact us so that we may determine whether your debt should be removed from TOP. We may also seek to collect the balance of the debt through any other permissible collection methods.

If you make or provide any knowingly false or frivolous statements, representations, or evidence, you may be liable for penalties under the False Claims Act (31 U.S.C. § 3729-31), or other applicable statutes, and/or criminal penalties under (18 U.S.C. § 286, 287, 1001 and 1002), or other applicable statutes.

Attachment A

If you file a joint income tax return: If you file a joint income tax return and your spouse was not a member of the food stamp household at the time the over-payment occurred, you should contact the Internal Revenue Service before filing your return regarding the steps to take to protect the share of the income tax refund which may be payable to your spouse, who is not a delinquent debtor to the U. S. Government.

If you are a Federal employee:

Your current net disposable pay is subject to offset if you do not pay your debt or take other action described above. Under the TOP, Treasury will deduct up to 15% of your disposable net pay beginning in the pay period that your debt is submitted for Federal salary or wage offset and continuing every pay period until your debt plus fees, penalties, or other charges is paid in full.

When you are identified through TOP as receiving a federal salary or wage, you will be entitled to a hearing to dispute the existence or amount of the debt, or the amount of the payroll deduction. You will be provided information on where to file a written request for a hearing when you have been identified through TOP as receiving a federal salary or wage.

The timely filing of a petition for hearing will stay the commencement of offset proceedings for federal salary and wage offset; however, it will not stop offset of other types of federal payments. A final decision on the hearing (if one is requested) will be issued no later than 60 days after the filing of a petition requesting the hearing (unless extended by the hearing official).

As a federal employee, if you make or provide any knowingly false or frivolous statements, representations, or evidence, in addition to other penalties, you may be subject to disciplinary actions.