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

Within the federal government, the U.S. Department of the Treasury, through its Bureau of Fiscal Service (BFS), is primarily responsible for collecting delinquent debt owed to federal, and in some cases, state government agencies. The BFS has two programs for collecting such debt. They differ by the type of debt each program collects.

The Federal Payment Levy Program (FPLP) collects delinquent *federal tax debt* only. Under the program, 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*. Under the TOP, 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, most of the delinquent debt BFS collects is federal nontax and state tax and nontax debt. From FY2017 to FY2021, FPLP tax collections accounted for 7.5% of total delinquent federal and state debt collections through the TOP.

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), FY2017 to FY2021
(Millions of Dollars)

| Fiscal Year | FPLP | TOP: | | Total |
|-------------|-------|---------------------------|---------------------|-----------------|
| | | State Tax and Nontax Debt | Federal Nontax Debt | |
| FY2017 | \$683 | \$2,850 | \$3,724 | \$7,257 |
| FY2018 | \$679 | \$2,712 | \$3,805 | \$7,196 |
| FY2019 | \$802 | \$2,592 | \$5,949 | \$9,343 |
| FY2020 | \$507 | \$5,861 | \$4,041 | \$10,409 |
| FY2021 | \$262 | \$3,837 | \$674 | \$4,773 |

Source: U.S. Department of the Treasury, *U.S. Government Receivables and Debt Collection Activities of Federal Agencies, Fiscal Year 2021, Report to the Congress*, November 2022.

Both programs rely on the same BFS database of persons and companies with delinquent state and federal tax and nontax debt. Federal and state 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) as 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 allowed 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 authorized the IRS to collect delinquent taxes through the offset of certain federal payments to debtors. Before TRA97, the IRS was not permitted to establish such a process. The BFS and IRS have managed the program since it began in July 2000.

According to BFS’s FY2023 budget request, the 10-year cost of developing and operating the FPLP is \$220 million. The IRS reimburses the BFS for these services out of its appropriated funds. The Biden Administration has proposed allowing the BFS to cover its FPLP costs from FPLP collections; it argued that such a change would reduce administrative and overhead costs for the IRS and the BFS. It is unclear if Congress approved this change.

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 any specified limit:

- up to 15% of federal employee retirement annuities;
- 100% of federal payments to federal vendors;
- 100% 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 its database for delinquent debt. The BFS then searches a separate database for pending federal payments, looking 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.

If 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. More specifically, 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 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 payment levy. Social Security payments typically account for over 70% of the federal payments levied under the program. The amount of delinquent tax debt subject to FPLP levy in FY2019 totaled \$107.3 billion, but only 0.7% of that amount was paid through the program.

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 offsetting federal payments to pay off delinquent federal nontax debt and a variety of state tax and nontax 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 delinquent federal nontax debt, unpaid child support, or certain delinquent state tax and nontax debt. To be eligible for collection through the TOP, federal nontax debt generally must be delinquent for more than 120 days, legally enforceable, and referred to the TOP by a creditor agency or 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 delinquent debt to consumer or commercial credit bureaus; and garnishing the wages of a debtor. The BFS also has the option of collecting delinquent debt through the TOP or authorized 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. 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 has both delinquent federal tax and nontax debt, paying off the tax debt is a higher priority. Only after the tax debt has been paid in full can a federal payment be offset to collect someone's nontax debt.

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, the BFS compares its payment information with the information in its delinquent debtor database. If there is a match, the BFS offsets the payment, to the allowable extent, to collect 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 sends the amounts collected through offset to the creditor agencies, after subtracting its fee 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 TOP

A recurring issue with the FPLP has been whether to levy federal payments to low-income persons at risk of experiencing financial hardship. Responding to a study by 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. However, if a low-income taxpayer has an unfiled return indicator in his/her tax record, that individual is excluded from the filter and subject to the FPLP. The NTA has urged the IRS to eliminate this exclusion, but the IRS so far has indicated that it will not do so.

A recurring issue with the TOP has been offsetting the EITC to pay off delinquent federal student loan debt. The credit is refundable. Refunds received by EITC recipients who have defaulted on federal student loan payments are subject to offset under the TOP. Some argue that the EITC should be exempt from offset for low-income persons with federal student loan debt.

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