

**441—11.5 (234) Setoff against federal income tax refund or other federal payments, including, for example, federal employee wages.**

**11.5(1) Criteria for setoff.**

a. Debtors not participating in the food assistance program shall be subject to collection action through the treasury offset program (TOP) which includes, but is not limited to, federal salary offset and federal tax refund offset.

(1) Debtors shall be referred to TOP if they are delinquent in repaying their food assistance debt and there is a claim or combination of claims with an unpaid balance which exceeds \$25.

(2) No claim which is less than three months old or more than ten years old as of January 31 of the offset year shall be referred. EXCEPTION: Claims which have had a final judgment entered are not subject to the ten-year time limit.

(3) Debtors are delinquent in repaying their food assistance debt if:

1. A repayment agreement has not been signed and 120 days have elapsed since the due date of the demand letter as defined in 441—subrule 65.21(4) minus any days the claim was not subject to collection action because of an appeal.

2. A repayment agreement has been signed but the debtor has failed to make the agreed-upon payments and has failed to make up the missed payments. The debtor shall be referred to TOP when 120 days have elapsed since the first of the month following the month that the debtor failed to make the agreed-upon payment and has not subsequently made up the missed payment.

b. A claim against an individual will not be referred to TOP by the department of inspections and appeals (DIA) for debts when:

- (1) The debt is in suspended status due to an exception to policy or is in an appeal status, or
- (2) The debt is being recovered through benefit reduction.

**11.5(2) Setoff under TOP.** DIA shall, by December 1 of each year, submit a notification of liability for delinquent claims to the Department of the Treasury.

**11.5(3) Pre-setoff notice.** DIA shall mail Form 470-3488, Treasury Offset Program (TOP) 60-Day Notice, to a debtor identifying the amount the department intends to refer to TOP for offset.

**11.5(4) Offset fee.** For each offset that the Treasury Department effects against an individual referred to TOP, Treasury will charge the individual a fee.

**11.5(5) Appeal rights.** When an individual wishes to contest the delinquent status of a claim as identified by DIA, a written request shall be submitted to DIA within 60 days of the date of the pre-offset notice. When the request is received within the 60-day limit, a review shall be granted.

DIA shall determine if the claim is past due and legally enforceable and shall notify the individual in writing of the decision.

**11.5(6) Application of setoff.** DIA shall apply any setoff received as a result of this rule to the individual's food assistance debts.

Any amount remaining after the setoff shall be released back to the individual.