

# **Formal Objection and Grievance**

## **Regarding Deregulatory Revisions to the Treasury Offset Program**

**Docket No. FISCAL-2023-0004**

**Agency: Bureau of the Fiscal Service, U.S. Department of the Treasury**

**Public Comment Deadline: February 23**

### **I. Introduction and Standing**

**I submit this public comment as a concerned member of the public to formally object to the proposed revisions to the Treasury Offset Program (“TOP”). Although framed as administrative “modernization,” the proposed rule functions as a substantive deregulation of enforcement safeguards, weakening notice, contestability, and transparency in a coercive federal debt-collection regime. The Treasury Offset Program directly authorizes the federal government to seize tax refunds, Social Security benefits,**

and other federal payments without contemporaneous judicial oversight. As such, TOP is constrained by constitutional due-process requirements, governing debt-collection statutes, and the Administrative Procedure Act (“APA”). Any revision that reduces procedural protections triggers heightened legal scrutiny.

## II. Statutory Framework Governing the Treasury Offset Program

TOP is primarily authorized by the Debt Collection Improvement Act of 1996, codified at 31 U.S.C. § 3716, which permits administrative offsets only subject to explicit procedural protections, including:

advance notice to the debtor,  
opportunity to inspect records,  
opportunity to contest the debt, and  
review within the agency.

**See 31 U.S.C. § 3716(a), (c).**

**Congress did not authorize TOP as a frictionless automation system. It authorized a conditional enforcement mechanism, explicitly tethered to notice, contestability, and accountability requirements. Any regulatory revision that diminishes these safeguards exceeds the statutory design.**

### **III. Deregulatory Effect Disguised as “Modernization”**

**The proposed rule reduces administrative burdens on agencies while shifting risk and harm onto affected individuals.**

**Revisions that compress timelines, expand automated offsets, or relax inter-agency verification requirements do not merely “streamline” operations – they increase the probability of erroneous deprivation.**

**Efficiency alone is not a lawful**

justification where constitutional or statutory rights are implicated. Agencies may not trade individual protections for bureaucratic convenience. See *Whitman v. Am. Trucking Ass'ns*, 531 U.S. 457, 468 (2001) (agencies possess no authority beyond that granted by Congress).

#### IV. Fifth Amendment Due-Process Violations

Administrative offsets deprive individuals of protected property interests. When such deprivation occurs without prior judicial process, procedural safeguards must be robust.

The Supreme Court has made clear that due process requires balancing: the private interest affected, the risk of erroneous deprivation, and the government's interest, including administrative burden.

*Mathews v. Eldridge*, 424 U.S. 319, 335

(1976).

Offsets against tax refunds, disability payments, or subsistence benefits implicate core survival interests, placing them at the highest end of due-process protection. See *Goldberg v. Kelly*, 397 U.S. 254, 264 (1970) (termination of subsistence benefits requires heightened procedural protections).

Reducing notice clarity, contestability, or review mechanisms in TOP directly conflicts with this constitutional framework.

## V. Disproportionate Impact and Heightened Risk of Error

TOP offsets disproportionately affect: low-income taxpayers, Social Security and disability recipients, student-loan borrowers, and individuals subject to inter-agency data mismatches.

The Supreme Court has repeatedly recognized that automated or bureaucratic decision-making systems increase error risk, particularly when individuals lack meaningful opportunity to challenge adverse action. See *Cleveland Bd. of Educ. v. Loudermill*, 470 U.S. 532, 543 (1985) (pre-deprivation process required where post-deprivation remedies are inadequate).

In a system where offsets may occur before meaningful review, reducing safeguards is legally indefensible.

## VI. Administrative Procedure Act Deficiencies

The proposed rule is vulnerable under the APA for multiple independent reasons.

### A. Arbitrary and Capricious Action

An agency acts arbitrarily and capriciously when it:

fails to consider important aspects of the

problem,  
offers explanations contrary to evidence,  
or  
treats significant policy changes as trivial.  
**Motor Vehicle Mfrs. Ass'n v. State Farm,**  
**463 U.S. 29, 43 (1983).**

Here, Treasury fails to adequately assess:  
increased error rates,  
reliance interests of affected populations,  
and  
constitutional implications of reduced  
procedural safeguards.

#### **B. Failure to Address Reliance Interests**

When an agency changes policy, it must  
account for legitimate reliance interests.  
**Dep't of Homeland Sec. v. Regents of the**  
**Univ. of Cal., 140 S. Ct. 1891, 1913 (2020).**  
Millions of individuals structure their  
financial lives around the expectation that  
federal offsets will be preceded by clear  
notice and meaningful opportunity to

contest. Treasury's proposal fails to address these reliance interests.

### **C. Excess of Statutory Authority**

Agency action exceeding statutory authorization is unlawful. 5 U.S.C. § 706(2) (C).

Nothing in 31 U.S.C. § 3716 authorizes Treasury to dilute notice, review, or contestability protections under the guise of modernization.

## **VII. Transparency and Accountability**

### **Failures**

The proposed revisions further obscure: which agencies initiate offsets, how disputes are resolved, error-correction rates, and auditability of determinations.

Opacity in an enforcement system that directly seizes property is incompatible with democratic accountability and undermines public confidence in federal

**financial administration.**

## **VIII. Requested Action**

**I respectfully request that the Bureau of the Fiscal Service:**

**Withdraw the proposed rule in its current form;**

**Conduct a full constitutional and due-process impact analysis;**

**Preserve or strengthen notice, contest, and review protections;**

**Re-propose only after addressing APA, statutory, and constitutional deficiencies.**

## **IX. Preservation of Objections**

**This comment is submitted for inclusion in the administrative record and to preserve all objections for purposes of judicial review. Nothing herein shall be construed as a waiver of any legal or equitable rights.**