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United States Senate

COMMITTEE ON THE JUDICIARY

WASHINGTON, DC 20510-6275

April 14, 2014

**VIA ELECTRONIC TRANSMISSION**

The Honorable Jack Lew  
Secretary  
U.S. Department of the Treasury  
1500 Pennsylvania Avenue, NW  
Washington, DC 20220

Dear Secretary Lew:

I was surprised to learn that the U.S. Department of the Treasury is collecting money from people to pay for debts that may not be in their name. According to the Washington Post, the government is intercepting tax refunds and other payments to individuals to offset debts without verifying that the debt was actually made in their names. In one case, a woman's tax return was used to offset a Social Security overpayment made to "someone" in her family, but "it's not sure who."<sup>1</sup> The Social Security Administration has apparently been unable to provide any details or documentation recording the overpayment.<sup>2</sup>

The Department of the Treasury collects delinquent debt for federal agencies through its Treasury Offset Program (TOP). Through TOP, the Treasury reduces or withholds certain payments to individuals who owe debts to the government. Treasury is limited both in which payments can be offset and how much of the payment can be offset. For instance, the Treasury can withhold 100 percent of a federal tax refund to offset debts, but only 15 percent of Social Security and other benefit payments.<sup>3</sup>

Before a creditor agency can refer a debt to the Treasury Offset Program, it must provide sufficient notice to the debtor. This notice requires a written notification of the nature and amount of the debt, the intention of the agency to collect the debt through administrative offset, and an explanation of the debtor's rights.<sup>4</sup> The debtor's rights include being allowed to inspect, copy, and review records of the debt, as well as an opportunity to discuss repayment options before the debt is referred for offset. However, the Washington Post reports that many people never received notice of their debt or their rights from the agency before it was sent to Treasury.

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<sup>1</sup> Washington Post, "Social Security, Treasury Target Taxpayers for Their Parents' Decades-Old Debts," April 10, 2014.

<sup>2</sup> *Id.*

<sup>3</sup> 26 U.S.C. 6402(d), 31 U.S.C. 3720A, 31 U.S.C. 3716.

<sup>4</sup> Department of the Treasury Bureau of Fiscal Service, "Treasury Offset Program," accessed April 11, 2014.

It appears that agencies are not properly notifying individuals or allowing them to inspect records of the debt they supposedly owe, which are violations of the law. However, there should also be checks and balances in place once the debt is referred to TOP. An agency is required to certify that a debt is owed through preparing a payment voucher. The voucher should list information about the debt and the tax identification number of the individual who owes the debt. A payment may only be offset if the information on the debt voucher matches the information on the payment.<sup>5</sup> It is unclear how the information could match if a debt was incurred under someone else's name, or if the agency referring the debt does not even know who incurred the debt.

According to reports, agencies are using a 2008 amendment to the Debt Collection Improvement Act to go after debts more than ten years old. The amendment eliminated a statute of limitations on the government's authority to collect delinquent debt.<sup>6</sup> However, it says nothing about allowing the government to offset payments from an individual to pay debts not in his or her name. It is unclear where the government has that authority.

Debts owed to the government should not be taken lightly, particularly at a time when the national debt is over \$17.5 trillion.<sup>7</sup> However, Congress has created a very rigorous system to ensure that debt collection is handled fairly and transparently. It appears that agencies are abusing this system.

In order to evaluate the government's actions to recover delinquent debt, I ask that you please provide the following information:

- 1) Does the government have the authority to collect payment from someone to offset a debt that is not in his or her name? If yes, please describe all circumstances in which the government has that authority and provide the statutory language granting that authority for each circumstance.
- 2) If a person dies with debt owed to the government, can the government collect that debt from others? If yes, please describe all circumstances in which the government has that authority and provide the statutory language granting that authority for each circumstance.
- 3) In the case of joint tax filings, does the government have the authority to offset one person's tax refund for a debt the other filer owes?
- 4) What information must a creditor agency provide to the Department of the Treasury to show that an individual owes the government a debt? Is this information verified by the Department of the Treasury?

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<sup>5</sup> Department of the Treasury Bureau of Fiscal Service, "Treasury Offset Program (TOP)," accessed April 11, 2014.

<sup>6</sup> P.L. 110-246, amendment to 31 U.S.C. 3716(e).

<sup>7</sup> TreasuryDirect, "The Debt to the Penny and Who Holds It," accessed April 11, 2014.

- 5) How does the Department of the Treasury verify that the creditor agency has provided sufficient due process notices to the debtor before referring the debt to TOP?
- 6) If an individual claims that due process was not given to inform him or her that a debt was owed, what recourse does the individual have?
- 7) If an individual's payment was withheld to offset a debt that is not in the individual's name, what recourse does the individual have?
- 8) To date, how much money has the Department of the Treasury collected from people for debts that are not in their name?
- 9) To date, how much money has the Department of the Treasury collected for debts in which the debtor is deceased?

Thank you for your cooperation and attention in this matter. I would appreciate a response by April 29, 2014. If you have any questions, please do not hesitate to contact Tegan Millspaw on my Judiciary Committee staff at (202) 224-5225.

Sincerely,



Charles E. Grassley  
Ranking Member  
Committee on the Judiciary