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## TREASURY OFFSET PROGRAM

**The Issue:** MARC members and other stakeholder are receiving notices from the Treasury Department that the government is deducting MSP payments from tax refunds otherwise payable by the government. Notices are often going to CFOs or tax departments unfamiliar with MSP issues. More importantly, neither the company nor Treasury can identify the MSP claims for which the deduction is made. In cases where the MSP claims can be identified, usually the company has had no notice of the claims at issue, either because they were never received, or were received by branch offices or closed facilities.

**The Background:** The Treasury Offset Program (TOP) was established under the Debt Collection Improvement Act of 1996 (DCIA) to maximize federal collections of debts. Under the DCIA, creditor federal agencies are required to report legally enforceable debts that have been past-due for 180 days. The law then allows the Treasury Department to offset a tax refund owed to the debtor and use that offset to pay the debt owed to the creditor agency. The TOP is administered by the Financial Management Service (FMS), a bureau of the Treasury Department.

There are three steps in the process of a creditor agency transferring a debt to the TOP. First, the creditor agency (in the case of MSP claims, HHS, or its contractor, the MSPRC) must notify the debtor of the debt and try to resolve the matter. Second, the creditor agency (HHS or its contractor the MSPRC) must notify the debtor that it intends to transfer the debt to the TOP. At this point the creditor agency must give the debtor the opportunity to pay the debt and to inspect agency records regarding the debt. Third, when submitting the debt to TOP, the creditor agency must certify that the debt is past-due and legally enforceable, and also that the creditor agency complied with all other legal requirements such as providing notice to the debtor.

It appears that most Responsible Plans are not receiving the requisite notices, or if notices are being sent they are going to outdated or incorrect addresses. The Treasury Department needs to reform the TOPS program and remedy the improper collection of MSP obligations through this effort.

**The MARC Solution:** MARC should engage with both CMS and Treasury to remedy the current flaws in the TOP program. At a minimum, both CMS (or its contractors) and Treasury should be required to provide sufficient notice to MARC members and others to contest or otherwise address MSP claims before the TOP program is applied.