

Questions and Answers

Chancellor's Office Tax Offset Program (COTOP)

1. What is the Chancellor's Office Tax Offset Program (COTOP)?

This program is a method of collecting Accounts Receivables for colleges/districts owed by former students. Usually these persons are no longer enrolled and are not seeking college services (transcripts, etc.) and therefore there usually is no opportunity to collect. The district/college reviews the Accounts Receivables and only submits those debts that are permitted to be collected through COTOP (see Q 2 below). The college must send out a "due process" collection letter (the sample is displayed in Appendix C of the COTOP Contract Packet) informing the debtor that an offset will occur unless payment is made to the college or information is received showing the debt to be in error. The letter must be sent to the student's last known address at least 30 days before the debtor data is submitted to the Chancellor's Office. The college/district then loads a file formatted as required containing the data into the COTOP database. If/when the debtor responds by paying what is owed, the college/district staff can access the COTOP database and delete the record for offset or, if necessary, increase or decrease the amount owed. Deletions or revisions to the unpaid balances can be made throughout the calendar year as necessary.

Once a month, the district staff is informed to run their district Monthly Offset Report to see the collection totals for the month. The districts will receive 75% of the amount collected and payment will be received approximately 4-6 weeks after the Monthly Offset Report is generated. The checks will be sent by the State Controller's Office.

2. What type of student obligations can a district submit for tax offset?

Participating districts can submit the names of debtors who have failed to respond to requests for repayment of student financial aid and proper non-financial aid obligations and who have been notified that their account will be forwarded to the tax offset program for collection.

The district may submit the following types of student financial aid obligations considered to be in default status:

- (a) Individuals in default of their Perkins Loan Program (or National Direct Student Loan), Nursing, campus Emergency and Extended Opportunity Programs and Services (EOPS) loans.
- (b) Campus financial aid funds, Extended Opportunity Programs and Services Grants (EOPS), and the Board of Governors Enrollment Fee Waivers (BOGFW) for which the student was not eligible.
- (c) Other financial aid obligations which are in default and for which a promissory note has been signed.

The COTOP program was enhanced in 1991 by legislation (AB 3929, Jones) to permit the offset of specific non-financial aid obligations owed to the districts. Proper non-financial aid obligations eligible for offset will be limited to the following:

(d) Non-resident tuition; enrollment fees; library fines; library replacement material charges; parking fees; parking fines (**limited to those fines submitted within 3 years of being incurred**); residence hall rent contracts; cafeteria meal contracts; telephone bills; drop fees (**incurred prior to January 1992**); personal checks returned for non-sufficient funds (**limited to bookstore [if college owned] and other charges listed in this section only**); returned check service charges; child care charges; instructional equipment breakage/replacement charges; health fees; transcript fees; foreign student insurance charges; dental health center charges; community services fees; lost key charges; transportation charges/fees; audit fees; contract class charges; instructional material fee; damage to campus facilities/equipment charges; personal checks written to "Cash" returned for non-sufficient funds (including return check service charges); auto repair costs (including parts, lab fee, sales tax on parts), student representation fee, student center fee.

Only these approved debts can be submitted for tax offset. If a college/district has an amount of debt in a category not listed above, and it is significant enough on which to try to collect, the college/district must write to the Chancellor's Office and ask that it be included. The Chancellor's Office needs to obtain approval of the State Controller's Office before it can be offset. Consequently, approval will most likely not be given for the current processing year but could be obtained in time for the succeeding processing year.

3. Why can't colleges use the COTOP Program to collect federal funds that a student may owe?

Colleges can only use the COTOP Program to collect **college funds owed**. The offset program cannot be used to collect funds that may be owed to a separate entity, such as the federal government or if the campus bookstore was owned by an entity other than the college. For example, if a student received more Pell Grant than he was eligible for, the Pell Grant overpayment must be repaid to the federal government---regardless of the reason for the overpayment. Since these are federal funds owed, this type of debt should not be submitted for COTOP offset action.

However, if the college could not contact the student for repayment (or the student refused to repay), the college must repay the Pell Grant overpayment to USED **if** the overpayment was the result of a college error. Once this occurs, the debt then becomes a campus debt which the student now **owes to the college**, and this debt **can be submitted** to COTOP for collection. It can be submitted using Code F (Other Student Financial Aid Obligations).

If the Pell overpayment was the result of a student error, the college would attempt to get the student to repay. If unsuccessful, the college must report the student to the NSLDS and the USED's Debt Collection Service. This action will result in the student becoming ineligible for all Title IV financial aid at **any** college in the country until the amount owed is repaid. In this situation, **if** the college so chooses, the college can also repay the Pell Grant overpayment on behalf of the student and since this then becomes a campus debt, the amount owed can be submitted to COTOP for collection, again using Code F.

Again, only campus funds can be collected through the use of COTOP. If your campus bookstore is owned by a private entity, NSF check debts **CANNOT** be submitted for collection.

4. Are there any changes to the method of submitting the COTOP data?

No enhancements have been made to the method of submitting COTOP data this year. Colleges/districts will load their data into the COTOP web based database instead of the Chancellor's Office staff doing this. The accounts can either be compiled into an ASCII text file (as in previous years) and loaded by accessing the Account File Processes tab and then the Load New Accounts File screen or they can be individually entered and loaded into the database by accessing the Individual Account Processes tab, and then the Add New Account screen. If a college/district had a large number of accounts to include, it is easier to format a file and have it loaded within a couple of minutes than to individually key each account.

Modifications to delete or change the amounts of the accounts during the year can be made by keying the delete request or change the amount owed by accessing the Individual Account Processes tab, and then the Change Account or Delete Account screen. These steps would be followed if the account was being keyed individually. If there are a large number of records to delete or change, the college/district staff can format a file and access the Account File Processes tab and then the Load Delete Accounts File or Load Account Changes File. See Appendix A for file formatting requirements.

Data files to add new accounts or to delete or change accounts must be in an ASCII text file or the file will be rejected. Files cannot be accommodated in an Excel spreadsheet or in any other variation. See Appendix A for file formatting requirements to delete or revise records (or add new accounts during the limited time permitted). If the number of records to delete or revise the unpaid balance is small, these records may be handkeyed.

5. *What is the correct procedure to follow if an individual owes a district more than one type of liability?*

In the event that a debtor owes a district for more than one type of liability, **the total amount owed should be combined** and the type code listed as either a Code G (Two or more types of financial aid obligations), 98 (Two or more non-financial aid obligations), or 99 (Combination of financial aid/non-financial aid obligations).

For the multi-campus districts, it is very possible that one debtor may owe two or more campuses unpaid charges. As each campus reports their debtor data to the district office, each campus should have already combined any multiple debts owed to that campus. As district staff compiles debtor data from all participating campuses into one file, a computer program should be initiated to identify individuals with debts owed to multiple campuses within the district. **These debts must be combined** into one amount as discussed in the paragraph above. **A debtor's name and social security number can only be submitted once per district per year (however revisions to the account's unpaid balance may be submitted as needed).**

Districts may retain more specific information on their database or paper listing indicating the kinds of obligations owed, and in the case of multi-campus districts, to which campuses owed. Districts may also develop an internal policy on how the offset funds recovered would be distributed to repay multiple debts (see Question 18).

6. *What type of modifications can be made after the Chancellor's Office submits the data to Franchise Tax Board?*

The district may submit revisions to the unpaid balances and deletions to the accounts submitted for tax offset throughout the current processing year as needed. See Question 3 for instructions on how to initially load debtor data, delete accounts or make revisions to the unpaid balances of accounts previously loaded.

Districts may add students to the original data previously loaded. For effective offset results, this procedure must be limited through November 30, 2011 only. New data loaded after that date cannot be processed and will be rejected. This data will have to be held and reported in the next processing year.

7. *Is there a deadline by which deletion requests for the current year must be submitted?*

Yes. The Franchise Tax Board does impose a year-end deadline of September 30 of the calendar year, after which deletions or changes are not processed (this is for data that was submitted during the current processing year). This is to allow sufficient time to complete current year processing and prepare and load accounts for the upcoming processing year beginning in January. In order to meet FTB's deadline, the college must delete or revise the current year's account by September 30, if any deletions or changes are required. In December FTB will remove all accounts for the current year from their database and prepare to load accounts for the upcoming year.

8. *Does the participating district submit a deletion for an account which has been offset to a zero balance?*

No. An account will not be offset if the remaining balance is zero. If an account has been paid in full by an offset, the account balance should read zero on the Franchise Tax Board computer file and it will be reflected on the COTOP View Individual Account screen. It will not be subject to any future offsets unless it is revised by the district. Therefore, upon the district's processing of their COTOP Monthly Offset Report (see Question 17), if the account balance is reading zero, no further action is required by the district. If the account has been deleted by the district, no further offsets should be made by the Franchise Tax Board.

9. *Can a participating district submit accounts of individuals who have been submitted to a collection agency?*

Yes. However, these accounts in particular should be monitored by the district. When an account has been paid in full or partially through a collection agency, the district should delete or change the amount of the unpaid balance in the COTOP screens as soon as possible to avoid over-collection. In addition, we recommend that the district advise the collection agency that the account has also been submitted to the tax offset program and the district may want to notify the collection agency of the reduced unpaid balance if there was an offset. Be prepared for unhappy debtors who are offset when they have been making regular monthly payments to the collection agency as mutually agreed upon to repay their debt. Care should be taken to avoid this scenario if at all possible. If a debtor has been making timely payments through a collection agency, the district may want to consider not submitting this specific account to COTOP for collection also, however the decision is ultimately the district's.

10. *If a debtor's name was submitted on last year's offset data, will the district have to resubmit the debtor's name for the current processing year if an unpaid balance still exists?*

Yes. Each processing year, the participating district must submit the names of all individuals to be offset in the upcoming tax year. The account balance information is NOT "rolled over." At the beginning of each processing year, the Franchise Tax Board removes the current master file tape and replaces it with the new master file tape (Example: In December 2010, the Franchise Tax Board will remove the 2010 processing year file and replace it with the

2011 processing year file). Therefore, the district must re-submit those accounts for which offset is still appropriate. Of course, if an offset was made in the recent past, the district should be reporting a reduced debt balance than that submitted earlier, if a balance is still owed.

If your district is participating in COTOP for the current processing year, as you compile your debtor data for an upcoming processing year, it is strongly recommended that staff check each monthly offset report for offsets to see whether any debtor data about to be included in the *upcoming processing year* was offset at any point during the *current processing year* – (This includes a period from January to December). If a record was offset in full or partially, then the record should be adjusted in the file for the upcoming year either through deletion or the revision of the balance due. Attention to this detail will keep unnecessary offsets or over-collection from occurring. This, in turn, will help the district keep COTOP costs under control.

11. *What are the district's responsibilities in providing notification to the student prior to the tax offset?*

Prior to submitting an account to COTOP for tax offset, **the district must attempt to notify the individual** of pending action against his/her state tax refund, state lottery winnings or previously unclaimed state property. The district must send at least one notice to the last known address of the debtor, requesting that the debtor initiate repayment. The notice does not have to be sent by certified mail or other special handling; regular first-class postage is sufficient. The district should maintain a copy of the notification in its files, especially those notices returned as undeliverable, to verify due process was demonstrated in submitting the tax offset accounts. Unfortunately, access to citizen addresses from the Franchise Tax Board is considered confidential information and is therefore restricted and unable to be shared. Even if the address is several years old, the notice should still be sent. Sometimes relatives of the debtor may still be living at the address and may see that the notice is received by the debtor. If the college has a record of the debtor's email address, it may be wise to send the notification letter via this method also (please note that email notification MUST BE in addition to and not in place of notification via the US Postal Service). In an effort to receive payment without having to submit the account for tax offset, more than one notification letter may be sent if the college/district desires. Any debts paid directly to the college stimulated through the warning letter (and not collected through the offset process) are considered to be entirely college funds and DO NOT have to be shared with the Chancellor's Office.

Notification letters should be sent to debtors a minimum of 30 days prior to loading the data into the COTOP database. Note, accounts greater than \$25 require 3 attempted notifications, which must be 30 days apart. If the notice is returned due to bad address, record in place of sending 2 additional notices. This is to allow the debtor time to question the debt and/or pay the college before the tax offset process begins through Franchise Tax Board.

12. *How often are accounts modified (updated) by COTOP and Franchise Tax Board?*

To avoid unnecessary delay and unwanted offsets, modifications are processed by the Chancellor's Office staff on a daily basis during the peak tax return processing period (Jan through May). The modifications are electronically transmitted to the Franchise Tax Board every other day, throughout the peak processing period. During the busy months, the FTB loads the data to revise the master file as received. Depending upon the number of records in a file, there may be a business day lag before their system is completely updated. During the non-peak periods (June through December), the data MAY be electronically transmitted

to the Franchise Tax Board one to two times a week. During the non-peak periods, the FTB MAY load the data to revise the master file every other day.

Therefore, COTOP standard operating procedures would allow up to 3 work days (not including weekends) after the data was received by FTB before it would be expected to have FTB delete or revise the account balance. On those occasions when the secured electronic transmission process is not working (and that has happened in 2010), the data must be faxed by the Chancellor's Office to FTB and must then be handkeyed by FTB staff into their data base. On those occasions, it may take up to 5 work days during the peak processing period for FTB to delete or revise the account balance. For non-peak periods, it may take up to 7 work days.

During the early part of the peak tax processing period (January and February of each year), tax offsets occur quickly at FTB. **If possible, to avoid an offset from occurring, debtors paying their outstanding balances in the first 2 months of the year at the campus should be asked/informed to delay filing their income tax return for at least 7-10 days to allow time for the campus to key the modification into the data system and for the Chancellor's Office to process and forward the data to FTB.**

13. *How should hyphenated names be submitted to COTOP?*

Hyphens, apostrophes, periods or blank spaces **should not** be used if they are a part of the student's last name. For example, students with last names such as JONES-SMITH, O'BRIEN, BROWN JR. and MC BRIDE should be listed as JONESSMITH, OBRIEN BROWNJR and MCBRIDE. The same holds true for the first names...no hypens, apostrophes, periods or blank spaces are permitted.

14. *Can a participating district submit accounts of individuals who have filed for bankruptcy? (See Appendix A)*

Participating districts **should not** submit the accounts of individuals who have filed for bankruptcy to discharge the debt owed the district or are in litigation.

It is very important that when a district becomes aware of a bankruptcy petition being filed, (usually upon delivery of information addressed to the college from the bankruptcy court/official) a deletion transaction be submitted IMMEDIATELY into the COTOP database to delete the account from offset. If an offset occurs after the district has been notified, it is the responsibility of the district to issue a refund directly to the individual WITHOUT DELAY. If an offset occurs BEFORE the district is notified, it is assumed that it can stand since the district was not informed previous to the offset. A discussion with your district's attorney may be necessary if the debtor persists in asking to have the funds refunded.

If the Chancellor's Office is notified of a bankruptcy filing and sufficient information is available for staff to identify the person in the COTOP database, the COTOP staff will immediately delete the record from offset and forward the bankruptcy filing information to the district COTOP Coordinator. It will be the district's responsibility to determine whether to resubmit the debtor for the following year's offset program if the debt was not discharged.

15. *How are reimbursements made to individuals who were erroneously offset?*

Since the proceeds of the tax offset collections are mailed directly to the participating districts by the State Controller's Office, it is the districts' responsibility to make any necessary reimbursements due to error. **Individuals who demonstrate to the district that their accounts were paid in full or that their accounts were overcollected or offset in error,**

must be reimbursed by the district within 30 days from notification of offset by the Chancellor's Office. This notification includes posting of payments on the COTOP system page under the student's account activity. Districts must not wait until actual receipt of these funds from the Controller before processing refunds.

16. *Will there be an increase in the 25 percent (25%) administrative fee collected by the Chancellor's Office?*

No. The administrative fee will continue to remain at 25 percent (25%) for the upcoming processing year.

17. *What is the process for notifying participating districts of accounts offset?*

The Franchise Tax Board reports accounts offset to each participating state agency weekly during the peak tax months of January through May, and may report twice a month thereafter. The Chancellor's Office enters this information reported by social security number, name and amount offset into its database. As the data is received from FTB, the college or district staff may run its' own offset report at any time of the month. This report lists the name, social security number, initial debt amount submitted, the amount offset, and the remaining debt balance for each individual offset. It also includes the total amount that will be forwarded to the district as well as the total amount that was charged the district for the COTOP administrative fee (based upon the month's activity up to the date the report is run). Approximately two weeks after the end of each calendar month, depending upon the receipt of the month-end transfer letter from the FTB, the Chancellor's Office reconciles and verifies for accuracy the accounts offset during the previous month. The district COTOP Coordinator will receive an email notice from the Chancellor's Office COTOP Coordinator when the FTB monthly offset information has been reconciled and verified for accuracy. District staff will be informed that they then may run and print the "official" monthly offset report for their district. Reimbursement to the districts follows in four to six weeks, pending processing of the checks by the State Controller's Office.

18. *Will the district receive separate payments for financial aid offsets and non-financial aid offsets?*

Districts will receive one check from the State Controller's Office for 75 percent (75%) of the total amount offset. No distinction can be made to separate the proceeds of financial aid from non-financial aid offsets.

19. *How will the district know which accounts to reimburse if an individual owes more than one type of obligation?*

To prepare for the individuals who owe more than one type of obligation and/or owe a combination of financial aid and non-financial aid obligations, each district may want to develop an internal refund priority policy, listing the order in which specific accounts should be reimbursed.

20. *Are the statutes of limitations applicable regarding the collections of liabilities through COTOP? (See Appendix B)*

No. Regarding federal tax offset policy, the **Higher Education Technical Amendments of 1991** originally eliminated the statute of limitations on federal liabilities, with certain

exceptions. Although an expiration date was included as part of the provisions, it was rescinded and the provisions permanently extended by Congress during approval of the 1992 Reauthorization of the Higher Education Amendments. Refer to *Dear Colleague* letter (GEN 91-19) listed in the attached Appendix B for a fuller discussion of the subject.

Regarding the state tax offset policy, the Chancellor's Office General Counsel has determined that the statutes of limitations are not applicable to the COTOP program. Decisions of the federal courts have concluded that the statute of limitations is merely a procedural rule which cuts off the government's right to collect on debts through use of the judicial system. The expiration of the statute of limitations does not extinguish the underlying debt and it remains legally enforceable. Our interpretation is that COTOP obligations can continue to be offset legally even when the relevant statute of limitations has expired because the judicial system is not being used as a means of collection. The legislature has permitted state agencies to pursue collection through the tax offset system. Therefore, the COTOP program will accept long-standing debts owed to your district for offset. This applies equally to financial aid and non-financial aid liabilities. However, be forewarned that some debtors may challenge the offset action by the district. Documentation of the debt should be available (especially on old accounts) to support the district's decision to submit the account for offset. If documentation is not available on old accounts, the district may want to consider whether it is worthwhile to submit to COTOP for collection, or if the account was submitted and was offset, whether it is worthwhile to refund the amount offset if it appears that the debtor is going to pursue the matter with district officials in an attempt to recover the funds. Will the additional time and effort required to defend the offset be worthwhile based upon the amount offset? If not, it might be less work to just refund the amount offset. Although some debtors will vigorously challenge the offset, it doesn't happen often.

21. *Can districts recover from debtors the 25 percent (25%) administrative fee charged to the districts by the Chancellor's Office?*

Districts should consult their legal counsel for a determination of its permissibility. As a general rule, a debtor should have been notified of liability for collection costs before recovery of such costs is implemented. This obligation has likely been met for those debtors who owe financial aid debts and have signed promissory notes containing a clause that addresses liability for collection costs. However, a district that intends to assess debtors the COTOP fee should adopt and publish a policy to notify all debtors of the district's intent. Any such policy should be widely publicized such as in the college catalog and the schedule of classes, and could be posted in areas such as the Admissions/Registrar's Office, library, bookstore or other appropriate areas where it can be viewed by students.

Districts should be aware, the 25% administrative fee is calculated on *total amount offset*. In order to recoup 100% of the debt owed, districts who intend to collect the 25% amount from the students should use the following formula:

Total debt divided by .75 = amount submitted to COTOP

Eg. $\$100 \div .75 = \133.33

Colleges that have established campus email accounts may wish to want to consider sending an email to the general student population each semester (or once per year) informing the students that the college/district participates in the COTOP program (along with a brief explanation of what the program is) and will be charging the 25% administrative

fee if the account is sent to COTOP for collection. This can help keep the Accounts Receivable manageable.

Care should also be taken to avoid overcharging a collection fee. For example, if a student owes \$100 for an unpaid debt and your district decides to add the 25% collection fee, you would submit this record as owing \$133.33. If the offset is made in full, there is no problem. However, if the record is only partially offset, and the unpaid balance is resubmitted again the following year (with the 25% fee once again being added), that can be problematic. The total collection fee charged can be considered way off line. The district may want to develop a system to identify which records were originally charged the 25% fee and therefore not have additional collection fees charged in the future. Or, if your district feels this process is defensible, a quick conversation with your district's attorney may give you guidance.

22. What is the procedure if a debtor is submitted to the Chancellor's Office and then makes payment in full soon after October 1?

If a debtor makes payment in full, then the debtor must be removed from the FTB offset list or an offset may occur when funds are no longer due...necessitating a payment of a refund by the district to the debtor. If the debtor makes payment in full soon after the debtor data is loaded into the Chancellor's Office database, a district must delete the debtor from the upcoming year's offset database. The district should check to see if the debtor was also submitted for the current processing year too which was loaded into the Chancellor's Office database previously. If so, the record should be deleted from the that year also. This is necessary because by October 1, there are still 2.5 months remaining in the current processing year. It is quite possible that the debtor may be offset between October-December when in fact the debtor no longer owes the district any funds. If a deletion is not made and an offset occurs, the district will have to refund the offset amount to the debtor, and may be asked to refund the entire 100 percent (100%) of the amount offset, even though the district only received 75 percent (75%) of the offset amount due to the administrative fee charged by the Chancellor's Office.

23. Does the Chancellor's Office report the amounts owed by the debtors to any or all major credit reporting agencies?

No. The Chancellor's Office **does not** report any outstanding COTOP debts to any credit reporting agencies. Each year approximately 85,000 records are sent to the Chancellor's Office for inclusion in the COTOP offset program. This number far exceeds the capability of the existing Chancellor's Office COTOP staff to compile and report to any credit reporting agency. This question is often asked the Chancellor's Office staff by the debtors when they call and inquire regarding the reason for the offset. Chancellor's Office staff explains we do not notify credit reporting agencies and refers debtors to ask the specific district contact person whether the district performs such action. Although the vast majority of the districts also do not report these types of debts, a few do. If your district does not report these types of debts to credit reporting agencies (you should ask Business Office staff who may have responsibilities that perhaps could cause them to notify credit reporting agencies), you are safe to inform debtors that this information is not submitted to any credit reporting agency by your district or the Chancellor's Office.

24. If an offset occurs when it shouldn't have, how can a district apply to recover the 25% administrative fee that is kept by the Chancellor's Office?

The Chancellor's Office is only allowed to refund the 25% administrative fee if an error was made by FTB or Chancellor's Office COTOP staff. If an offset occurred due to an

error by district staff, unfortunately a refund of the 25% fee cannot be supported and thus will not be reimbursed.

If FTB failed to delete an account more than 10 days after the deletion was keyed and accepted by the COTOP database, that would constitute an error by FTB. District COTOP staff should initiate a request for refund by contacting Chancellor's Office COTOP staff via email or by telephone. At the conclusion of our review, we will notify district staff of the results. If it can be confirmed that a deletion did not occur when it should have and that the error was made by FTB or Chancellor's Office COTOP staff, we will refund the 25% fee, usually in the following month's COTOP disbursement. This action will be listed in the following month's COTOP Offset Report.

For a deletion to occur as requested, the data submitted on the Appendix form must **exactly** match the data originally submitted to FTB. This means the SSN and Control Name must be exact. Sometimes Control Names are different than originally reported to FTB usually due to marriage. If the SSN is keyed correctly, the name of the account matched to the SSN will be displayed. District staff will then have the opportunity to determine whether this is the same person. If so, proceed with keying the deletion. If the SSN is not keyed correctly, a deletion will not occur. If district staff chooses to bring up the record by selecting the name of the debtor from the debtor listing, please confirm that this is the record of the person that you want to delete or revise.

25. Can approved Accounts Receivable debts still be submitted if the college does not have a former student's Social Security Number?

Unfortunately, no. The basic data element available to make the offset program work is the SSN. The SSN drives the income tax process and the ability to offset an income tax return requires the correct SSN be submitted to Franchise Tax Board. Only if there is a match of the SSN and the first 4 letters of the debtor's last name will an income tax offset occur.

Some colleges are moving to not collect SSNs from students in the enrollment process. If SSNs are not obtained, the ability for a college/district to participate in the COTOP program will be eliminated since there will not be an ability for Franchise Tax Board to match a person's name to a tax return and refund.

26. Is there a minimum amount that can be submitted for collection?

Yes. Franchise Tax Board will only accept an amount owed of \$10 or more. If the college/district tries to load an amount less than \$10, the record will be rejected by the COTOP database. The record can be resubmitted if an error was made and instead of making a new file with new accounts or resubmissions and loading it, college/district staff may handkey the record(s) into the COTOP database if they wish. Handkeying is always an option if the number of records to be loaded is few if college/district staff prefers. Otherwise, if the number of records to be loaded is significant, it would probably be best to create a file and then load the file.

27. Can attempted notification be done via e-mail?

E-mail notification can be attempted as a supplement to inform the student, however the requirement is to send written notification to the last known address.

28. Why do the "Debt Amount" and the "Account Balance" have different values?

The *Debt Amount* will simply display whatever value is in the “*requested amount*” field in your submittal file. The *Account Balance* performs a calculation which subtracts any offset amounts from the *debt* amount, then displays the difference. Thus, changes to the *Debt Amount* should never be done to reflect an offset, and should always be added or subtracted to or from the original reported *Debt Amount*.

Appendix A

BANKRUPTCY/LITIGATION: Participating community college districts should not submit the accounts of individuals who have filed for bankruptcy or are in litigation. Individuals who have filed for protection under Chapter 13 of the U.S. Code should not be submitted if the district's debt is listed as a debt to be discharged. As a general rule, filing bankruptcy permits the borrower to obtain a discharge of financial obligations incurred before the date of the order for relief. However, under Chapter 7 bankruptcy filing, there are two specified conditions which allow a student to be exempted from discharge. Federal law (11 U.S.C. 523) provides for certain exceptions to this general rule.

Section 523 states:

- (a) A discharge under section 727, 1141, 1228(a), 1228(b), 1328(b) of this title does not discharge an individual debtor from any debt.
- 8. For an educational loan made, insured or guaranteed by a governmental unit, or made under any program funded in whole or in part by a governmental unit or a nonprofit institution, unless--
 - (a) such loan first became due before five years (exclusive of any applicable suspension of the repayment period) before the date of the filing of petition; or
 - (b) excepting such debt from discharge under this paragraph will impose an undue hardship on the debtor and the debtor's dependents.

The district COTOP Coordinator will be notified if any changes to Chapter 7/13 bankruptcy filing provisions occur (Note: Please update this guide when you are notified of any changes).

A district may become aware that a debtor filed for bankruptcy when the individual notifies the district upon receipt of a notification letter of pending offset action (due process letter). Occasionally, however, the Chancellor's Office COTOP program may receive notification from the court when a bankruptcy action is pending. In these cases, the Chancellor's Office COTOP staff submits a modification request for deletion to the Franchise Tax Board and notifies the district.

If a district becomes aware of a bankruptcy petition being filed, a modification request (Appendix D) should be submitted **IMMEDIATELY** to the Chancellor's Office to delete the account from offset. If an offset occurred after the district received the bankruptcy notification, it is the district's responsibility to issue the refund directly to the debtor **WITHOUT DELAY**.

Appendix B

STATUTE OF LIMITATIONS: In an opinion on the affect of the statute of limitations on COTOP collections, Chancellor's Office General Counsel noted that there was no law on the underlying question of whether statutes of limitations were applicable to the COTOP program. A review of case law concludes that recovery under the COTOP program should not be subject to the ordinary statute of limitations provisions related to civil litigation.

The General Counsel states:

"The COTOP program is authorized under Government Code Sections 12419.5 and 12419.7. A thorough review of the law confirms our earlier conclusion that there is no law on the question of whether collections under these specific provisions are subject to any limitations period.

However, it appears that there are at least two cases which raise this same issue in the context of the federal tax offset program authorized pursuant to 26 U.S.C. 6402(d). In Gerrard v. United States Office of Education, 656 F. Supp. 570 (N.D.CAL. 1987) the District Court of the Northern District of California held that the offset procedure remains available to the government, even though the six year statute of limitations for filing suits for money judgments may have expired, because the debt is still "legally enforceable." Essentially the same conclusion was reached by the Eight Circuit Court of Appeals in Thomas v. Bennett, 856 F.2d 1165 (8th Cir. 1988).

It should be noted, that the Ninth Circuit, which is the federal appellate court for California, has not ruled on this issue and that, in any event, these cases involve federal law and are not directly applicable to the state law question before us. However, the reasoning in Gerrard and Thomas is persuasive and may be equally compelling in this case. These courts concluded that the statute of limitations is merely a procedural rule which cuts off the government's right to collect on debts through use of the judicial system. The running of the statute of limitations does not, however, extinguish the underlying debt and it remains 'legally enforceable.' We believe that the same general principle would probably be applicable to collections under Government Code Sections 12419.5 and 12419.7.

Reasoning by analogy to the developing body of federal case law, we conclude that recovery under the COTOP program should not be subject to the ordinary statute of limitations for debt recovery."

In a *Dear Colleague letter* (GEN-91-19), Michael J. Farrell, then Deputy Assistant Secretary for Student Financial Assistance, U.S. Department of Education explained the provisions of the *Higher Education Technical Amendments of 1991* as they affect federal tax offset policy. The letter stated:

"The Higher Education Technical Amendments of 1991 (Public Law 102-26) was signed by the President on April 9, 1991. Section 3 of Pub. L. 102-26 eliminates any statute of limitations that has applied to enforcement actions to collect GSL and Perkins/National Direct Student Loans, or overpayments of grants or work assistance under Title IV of the Act. The amendment provides that a lawsuit may be commenced, a judgment enforced, or a garnishment or offset action taken by the Federal government, guarantee agencies, and institutions, to collect defaulted loans or overpayments regardless of any Federal or State statutes of limitation that might otherwise have applied to these collection actions.

The 10-year limitation period for tax refund offsets is also now inapplicable to these debts. The effect of the amendment is that so long as the debt is otherwise enforceable, collection may be made by offset regardless of when the debt was assigned to the Department or when it first became delinquent.

This provision clearly eliminates any Federal or State law limiting the period during which a judgment based on a Federal student aid debt may be enforced. A more difficult question arises with respect to a limitation on the effect of a judgment lien. The effect of the amendment will depend on whether the judgment law of a particular state provides that the judgment merges into the judgment lien. If state law does not provide that the judgment merges into the judgment lien, then the expiration of the judgment lien merely means that the lien must be revived. Procedures for this vary from state to state. If state law provides that the judgment merges into the lien, then where the lien expired prior to enactment of the amendment (April 9, 1991), the judgment has also expired and cannot be revived. However, if the lien was effective on April 9, 1991, then the new law preserves the judgment until it is satisfied or otherwise discharged.

Section 3 (c) of Pub. L. 102-26 expressly states that this new authority applies to pending cases and outstanding debts. The amendment therefore empowers the Federal government to collect debts time-barred under limitations provisions that previously applied. Although this resuscitative effect may appear to be an unusual action, the courts have clearly recognized that Congress has the power to revive a time-barred claim held by the Federal Government.

While the amendment generally revives the government's right to enforce debts that would have been time-barred under previously applicable statutes of limitation, this resuscitative effect does not

apply where there is a judgment dismissing a claim because the statute of limitations had expired. The claim on the debt merges into the judgment; the effect is to render the debt unenforceable. This effect is final. Subsequent changes in the law, such as the elimination of the statute of limitations, cannot revive the claim where it has been merged into a judgment of dismissal."

These developments in the federal offset program appear to confirm our interpretation that COTOP obligations can continue to be offset legally even when the relevant statute of limitations has expired. Although the provisions were due to expire on November 15, 1992, they were extended permanently by Congress during approval of the 1992 Reauthorization of the Higher Education Amendments.

The COTOP program will accept long-standing debts owed to your district for offset. This applies equally to financial aid and non-financial aid liabilities submitted for offset. However, be advised that some debtors may challenge the district as to whether funds are owed. **It is to the district's benefit to have documentation available to uphold the district's decision to seek payment through the offset process.**

Any questions on the statute of limitations provisions should be referred to your district's legal counsel.