

Office of the Secretary, HUD

§ 17.152

are certain in amount, past due and legally enforceable, and which are eligible for tax refund or Federal payment offset under regulations issued by the Secretary of the Treasury.

(c) The Secretary will report debts to the Department of the Treasury for the purpose of using the offset procedures described in §§17.150 through 17.161. Debts of less than \$100.00, exclusive of interest and other charges, will not be reported.

(d) If not legally enforceable because of lapse of statute of limitations but otherwise valid, the debt will be reported to the IRS as a cancelled debt on Form 1099C. (Form 1099C is an information return which Government agencies file with the IRS and the Department of the Treasury to report forgiven debt, and the forgiven amount is considered income to the taxpayer.) (See §17.159.)

[67 FR 47435, July 18, 2002]

§ 17.151 Notice requirements before offset.

A request for deduction from a Federal payment will be made only after the Secretary makes a determination that an amount is owed and past due and provides the debtor with 65 calendar days written notice. This Notice of Intent will state:

(a) The nature and amount of the debt;

(b) That unless the debt is repaid within 65 days from the date of the Notice, the Secretary intends to collect the debt by requesting the Department of Treasury to reduce any amounts payable to the debtor by an amount equal to the amount of the debt and all accumulated interest and other charges;

(c) That the debtor has a right to obtain review within the Department of the Secretary's initial determination that the debt is past due and legally enforceable (see §17.152);

(d) That the debtor has a right to inspect and copy departmental records related to the debt as determined by the Secretary and will be informed as to where and when the inspection and copying can be done after the Department receives notice from the debtor

that inspection and copying are requested. (See §17.155.)

[51 FR 39750, Oct. 31, 1986, as amended at 67 FR 47435, July 18, 2002]

§ 17.152 Review within the Department of a determination that an amount is past-due and legally enforceable.

(a) *Notification by debtor.* A debtor who receives a Notice of Intent has the right to present evidence that all or part of the debt is not past-due or not legally enforceable. The debtor should send a copy of the Notice of Intent with a letter notifying the HUD Board of Contract Appeals within 25 calendar days from the date of the Department's Notice of Intent that he or she intends to present evidence. (See §17.161(a) for address of the Board.) Failure to give this advance notice will not jeopardize the debtor's right to present evidence within the 65 days provided for in paragraph (b) of this section. If the HUD Board of Contract Appeals has additional procedures governing the review process, a copy of the procedures will be mailed to the debtor after his request for review is received and docketed by the Board.

(b) *Submission of evidence.* The debtor may submit evidence showing that all or part of the debt is not past-due or not legally enforceable along with the notification requested by paragraph (a) of this section, but in any event the evidence must be submitted to the Board of Contract Appeals within 65 calendar days from the date of the Department's Notice of Intent. Failure to submit evidence within 65 calendar days will result in a dismissal of the request for review by the HUD Board of Contract Appeals.

(c) *Review of the record.* After a timely submission of evidence by the debtor, an Administrative Judge from the HUD Board of Contract Appeals will review the evidence submitted by the Department which shows that all or part of the debt is past-due and legally enforceable. (Administrative Judges are appointed in accordance with 41 U.S.C. 607(b)(1)). The Administrative Judge shall make a determination based upon a review of the written record, except that the Administrative Judge may

§ 17.153

order an oral hearing if he or she finds that:

(1) An applicable statute authorizes or requires the Secretary to consider waiver of the indebtedness and the waiver determination turns on credibility or veracity; or

(2) The question of indebtedness cannot be resolved by review of the documentary evidence.

(d) *Previous decision by Board of Contract Appeals.* The debtor is not entitled to a review of the Department's intent to offset it, in a previous year the HUD Board of Contract Appeals has issued a decision on the merits that the debt is past-due and legally enforceable, *except* when the debt has become legally unenforceable since the issuance of that decision, or the debtor can submit newly discovered material evidence that the debt is presently not legally enforceable.

§ 17.153 Determination of the Administrative Judge.

(a) Following the hearing or the review of the record, the Administrative Judge shall issue a written decision which includes the supporting rationale for the decision. The decision of the Administrative Judge concerning whether a debt or part of a debt is past-due and legally enforceable is the final agency decision with respect to the past-due status and enforceability of the debt.

(b) Copies of the Administrative Judge's decision will be distributed to the General Counsel of the Department, the Department's Office of Finance and Accounting, the debtor, and the debtor's attorney or other representative, if any.

(c) If the Administrative Judge's decision affirms that all or part of the debt is past due and legally enforceable, the Secretary will notify the Department of the Treasury after the Administrative Judge's determination has been issued under paragraph (a) of this section and a copy of the determination is received by the Department's Chief Financial Officer. No referral will be made to the IRS or the Department of the Treasury if review of the debt by the Administrative Judge reverses the

24 CFR Subtitle A (4-1-03 Edition)

initial decision that the debt is past due and legally enforceable.

[51 FR 39750, Oct. 31, 1986, as amended at 67 FR 47435, July 18, 2002]

§ 17.154 Postponements, withdrawals and extensions of time.

(a) *Postponements and withdrawals.* The Secretary may, for good cause, postpone or withdraw referral of the debt to the Department of Treasury. (For example, a delay in the mail between the debtor and the Secretary could normally warrant a postponement; a mathematical error or computer malfunction could be the reason for a withdrawal.)

(b) *Extensions of time.* At the discretion of the Administrative Judge, time limitations required in these procedures may be extended in appropriate circumstances for good cause shown.

[51 FR 39750, Oct. 31, 1986, as amended at 67 FR 47435, July 18, 2002]

§ 17.155 Review of departmental records related to the debt.

(a) *Notification by debtor.* A debtor who intends to inspect or copy departmental records related to the debt as determined by the Secretary must send a letter to the Title I Representative stating his or her intention. The letter must be received by the Title I Representative within 25 calendar days from the date of the Department's Notice of Intent.

(b) *Department's response.* In response to timely notification by the debtor as described in paragraph (a) of this section, the Title I Representative will notify the debtor of the location and time when the debtor may inspect or copy departmental records related to the debt.

§ 17.156 Stay of offset.

If the debtor timely notifies the Secretary that he or she is exercising a right described in §17.152(a) and timely submits evidence in accordance with §17.152(b), any notice to the IRS or the Department of the Treasury will be stayed until the issuance of a written decision by the Administrative Judge which determines that a debt or part of