

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 De-

partment 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 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

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

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§ 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

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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 a debt is past-due and legally enforceable.

[67 FR 47435, July 18, 2002]

§ 17.157 Application of offset funds: Single debt.

If the debtor does not timely notify the Secretary that he or she is exercising a right described in § 17.152, the Secretary will notify the Department of the Treasury of the debt no earlier than 65 calendar days from the date of the Department's Notice of Intent, and will request that the amount of the debt be offset against any amount payable by the Department of the Treasury as a Federal payment. Normally, recovered funds will be applied first to costs of collection, then to any special charges provided for in HUD regulations or contracts, then to interest and finally, to the principal owed by the debtor.

[67 FR 47435, July 18, 2002]

§ 17.158 Application of offset funds: Multiple debts.

The Secretary will use the procedures set out in § 17.157 for the offset of multiple debts. However, when collecting on multiple debts the Secretary will apply the recovered amounts against the debts in the order in which the debts accrued.

§ 17.159 Application of offset funds: Federal payment is insufficient to cover amount of debt.

If an offset of a Federal payment is insufficient to satisfy a debt, the Secretary will continue the certification to the Department of the Treasury to collect further on the debt. If, in the following year, the debt has become legally unenforceable because of the lapse of the statute of limitations, the debt will be reported to the IRS as a cancelled debt in accordance with § 17.150(d).

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