

(e) When advising debtors of an intent to refer a debt to the Department of the Treasury for offset, the Board will also advise the debtors of all remedial actions available to defer or prevent the offset from taking place.

§ 1639.42 Notice requirements before tax refund offset.

(a) The Board must notify, or make a reasonable attempt to notify, the person:

(1) The amount of the debt and that the debt is past due; and

(2) Unless repaid within 60 days, the debt will be referred to the Department of the Treasury for offset against any refund of overpayment of tax.

(b) The Board will provide a mailing address for forwarding any written correspondence and a contact name and telephone number for any questions concerning the offset.

(c) The Board will give the individual debtor at least 60 days from the date of the notice to present evidence that all or part of the debt is not past due or legally enforceable. The Board will consider the evidence presented by the individual and will make a determination whether any amount of the debt is past due and legally enforceable. For purposes of this section, evidence that collection of the debt is affected by a bankruptcy proceeding involving the individual will bar referral of the debt to the Department of the Treasury.

(d) Notice given to a debtor under paragraphs (a), (b), and (c) of this section shall advise the debtor of how he or she may present evidence to the Board that all or part of the debt is not past due or legally enforceable. Such evidence may not be referred to, or considered by, individuals who are not officials, employees, or agents of the United States in making the determination required under paragraph (c) of this section. Unless such evidence is directly considered by an official or employee of the Board, and the determination required under paragraph (c) of this section has been made by an official or employee of the Board, any unresolved dispute with the debtor regarding whether all or part of the debt is past due or legally enforceable must be referred to the Board for ultimate administrative disposition, and the

Board must directly notify the debtor of its determination.

Subpart D—Administrative Offset

§ 1639.50 Applicability and scope.

(a) The regulations in this subpart apply to the collection of debts owed to the Board, or from a request for an offset received by the Board from a Federal agency. Administrative offset is authorized under section 5 of the Federal Claims Collection Act of 1966, as amended by the Debt Collection Act of 1982 (31 U.S.C. 3716). The regulations in this subpart are consistent with the Federal Claims Collection Standards on administrative offset issued jointly by the Department of Justice and the General Accounting Office as set forth in 4 CFR 102.3.

(b) The Executive Director, after attempting to collect a debt owed to the Board under section 3(a) of the Federal Claims Collection Act of 1966, as amended (31 U.S.C. 3711(a)), may collect the debt by administrative offset, subject to the following:

(1) The debt is certain in amount; and

(2) It is in the best interest of the Board to collect the debt by administrative offset because of the decreased costs of collection and acceleration in the payment of the debt.

(c) The Executive Director may initiate administrative offset with regard to debts owed by a person to a Federal agency, so long as the funds to be offset are not payable from net assets available for Thrift Savings Plan benefits. The head of the creditor agency, or his or her designee, must submit a written request for the offset with a certification that the debt exists and that the person has been afforded the necessary due process rights.

(d) The Executive Director may request another agency that holds funds payable to a Fund debtor to pay the funds to the Board in settlement of the debt. The Board will provide certification that:

(1) The debt exists; and

(2) The person has been afforded the necessary due process rights.

(e) If the six-year period for bringing action on a debt provided in 28 U.S.C. 2415 has expired, then administrative offset may be used to collect the debt

§ 1639.51

only if the costs of bringing such an action are likely to be less than the amount of the debt.

(f) No collection by administrative offset will be made on any debt that has been outstanding for more than 10 years unless facts material to the Board or a Federal agency's right to collect the debt were not known, and reasonably could not have been known, by the official or officials responsible for discovering and collecting the debt.

(g) The regulations in this subpart do not apply to:

(1) A case in which administrative offset of the type of debt involved is explicitly provided for or prohibited by another statute; or

(2) Debts owed to the Board by Federal agencies or by any State or local government.

§ 1639.51 Notice procedures.

Before collecting any debt through administrative offset, the Board will send a notice of intent to offset to the debtor by certified mail, return receipt requested, at the most current address that is available to the Board. The notice will provide:

(a) A description of the nature and amount of the debt and the intention of the Board to collect the debt through administrative offset;

(b) An opportunity to inspect and copy the records of the Board with respect to the debt;

(c) An opportunity for review within the Board of the determination of the Board with respect to the debt; and

(d) An opportunity to enter into a written agreement for repaying the amount of the debt.

§ 1639.52 Board review.

(a) A debtor may dispute the existence of the debt, the amount of debt, or the terms of repayment. A request to review a disputed debt must be submitted to the Board official who provided the notice of intent to offset within 30 calendar days of the debtor's receipt of the written notice described in § 1639.51.

(b) If the debtor requests an opportunity to inspect or copy the Board's records concerning the disputed claim, the Board will grant 10 business days for the review. The time period will be

5 CFR Ch. VI (1-1-07 Edition)

measured from the time the request for inspection is granted or from the time the debtor receives a copy of the records.

(c) Pending the resolution of a dispute by the debtor, transactions in any of the debtor's account(s) maintained in the Board may be temporarily suspended to the extent of the debt that is owed. Depending on the type of transaction, the suspension could preclude its payment, removal, or transfer, as well as prevent the payment of interest or discount due on the transaction. Should the dispute be resolved in the debtor's favor, the suspension will be immediately lifted.

(d) During the review period, interest, penalties, and administrative costs authorized by law will continue to accrue.

(e) If the debtor does not exercise the right to request a review within the time specified in this section or if, as a result of the review, it is determined that the debt is due and no written agreement is executed, then administrative offset will be ordered in accordance with the regulations in this subpart without further notice.

§ 1639.53 Written agreement for repayment.

A debtor who admits liability but elects not to have the debt collected by administrative offset will be afforded an opportunity to negotiate a written agreement for repaying the debt. If the financial condition of the debtor does not support the ability to pay in one lump sum, the Board may consider reasonable installments. No installment arrangement will be considered unless the debtor submits a financial statement, executed under penalty of perjury, reflecting the debtor's assets, liabilities, income, and expenses. The financial statement must be submitted within 10 business days of the Board's request for the statement. At the Board's option, a confess-judgment note or bond of indemnity with surety may be required for installment agreements. Notwithstanding the provisions of this section, any reduction or compromise of a claim will be governed by 31 U.S.C. 3711.