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the debt is not past due or legally enforceable, has considered evidence, if any, presented by such debtor, and has determined that an amount of such debt is past due and legally enforceable.

[54 FR 397, Jan. 6, 1989, as amended at 60 FR 66073, Dec. 21, 1995]

§ 366.3 Reasonable attempt to notify.

In order to constitute a reasonable attempt to notify the debtor the Board must have used a mailing address for the debtor obtained from the Internal Revenue Service pursuant to section 6103 (m)(2) or (m)(4) of the Internal Revenue Code within a period of one year preceding the attempt to notify the debtor, whether or not the Board has used any other address maintained by the Board for the debtor.

§ 366.4 Notification to debtor.

The notification provided by the Board to the debtor will inform the debtor how he or she may present evidence to the Board that all or part of the debt is not past due or legally enforceable.

§ 366.5 Consideration of evidence.

Evidence submitted by the debtor will be considered only by officials or employees of the Board and a determination that an amount of such debt is past-due and legally enforceable will be made only by such officials or employees.

§ 366.6 Change in notification to Internal Revenue Service.

If, after submitting to the Internal Revenue Service notification of liability for a debt, the Board:

(a) Determines that an error has been made with respect to the information contained in the notification,

(b) Receives a payment or credits a payment to the account of the debtor named in the notification that reduces the amount of the debt referred to the Internal Revenue Service for offset, or

(c) Receives notification that the debtor has filed for bankruptcy under title 11 of the United States Code or has been adjudicated bankrupt and the debt has been discharged, the Board will promptly notify the Internal Revenue Service. However, the Board will

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make no notification to the Internal Revenue Service to increase the amount of a debt owed by a debtor named in the Board's original notification to the Internal Revenue Service. If the amount of a debt is reduced after referral by the Board and offset by the Internal Revenue Service, the Board will refund to the debtor any excess amount and will promptly notify the Internal Revenue Service of any refund made by the Board.

[54 FR 397, Jan. 6, 1989, as amended at 60 FR 66073, Dec. 21, 1995]

PART 367—RECOVERY OF DEBTS OWED TO THE UNITED STATES GOVERNMENT BY ADMINISTRATIVE OFFSET

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367.5 Notification to debtor.

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AUTHORITY: 45 U.S.C. 231f(b)(5); 31 U.S.C. 3716.

SOURCE: 56 FR 46375, Sept. 12, 1991, unless otherwise noted.

§ 367.1 Purpose and scope.

The regulations in this part establish procedures to implement the Debt Collection Act of 1982 (Pub. L. 97-365), as amended by the Debt Collection Improvement Act of 1996 (Pub. L. 104-134), 31 U.S.C. 3716. The statute authorizes the Board to collect a claim arising under an agency program by means of administrative offset, and requires the Board to refer nontax debts over 180 days delinquent to the Department of Treasury for administrative offset (the "Treasury Offset Program"). No claim may be collected by such means if outstanding for more than 10 years after the Board's right to collection of the debt first accrued, unless facts material to the Government's right to collect the debt were not known and could not reasonably have been known by the official or officials of the government

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who were charged with the responsibility to discover and collect such debts. This part specifies the agency procedures that will be followed by the Board for referral and collection by administrative offset.

[62 FR 19220, Apr. 21, 1997]

§ 367.2 Past-due legally enforceable debt.

A past-due legally enforceable debt which may be referred to another governmental agency for administrative offset is a debt:

(a) Which arose under any statute administered by the Board or under any contract; and with respect to debts referred to the Department of Treasury, is a nontax debt;

(b) Which is an obligation of a debtor who is a natural person or a business;

(c) Which, except in the case of a judgment debt, has been delinquent at least three months but not more than ten years at the time the offset is made;

(d) Which is at least \$25.00;

(e) With respect to which the rights described in part 260 or 320 of this chapter or the applicable law regarding reconsideration, waiver, and appeal, if applicable, have been exhausted;

(f) With respect to which:

(1) The Board's records do not contain evidence that the debtor (or, if an individual, his or her spouse) has filed for bankruptcy under title 11 of the United States Code; or

(2) The Board can clearly establish at the time of the referral that the automatic stay under section 362 of the Bankruptcy Code has been lifted or is no longer in effect with respect to the debtor (or, if an individual, his or her spouse) and the debt was not discharged in the bankruptcy proceeding; or

(3) The Board's records do not contain evidence that foreclosure is pending on collateral securing the debt.

(g) Which cannot currently be collected pursuant to the salary offset provisions of 5 U.S.C. 5514(a)(1);

(h) Which cannot currently be collected by administrative offset under § 255.6 or § 340.6 of this chapter against amounts payable to the debtor under any statute administered by the Board;

(i) With respect to which the Board has notified, or has made a reasonable attempt to notify, the debtor that the debt is past due, and that unless the debtor repays the debt within 60 days, the debt will be referred to any other agency of the United States government for offset against any money owed the debtor by that agency; and

(j) With respect to which the Board has given the debtor at least 60 days from the date of the notification required in paragraph (i) of this section to present evidence that all or part of the debt is not past due or legally enforceable, has considered evidence, if any, presented by the debtor, and has determined that the amount of such debt is past due and legally enforceable; and

(k) Which has not been referred to the Department of Justice or which is not otherwise in litigation with the Board.

[56 FR 46375, Sept. 12, 1991, as amended at 60 FR 66073, Dec. 21, 1995; 62 FR 19220, Apr. 21, 1997]

§ 367.3 Board responsibilities.

(a) The Board may delegate to an employee or employees the responsibility for collecting any claims owed the Board by means of administrative offset, except that all nontax debts over 180 days delinquent shall be referred to the Department of Treasury for administrative offset through the Treasury Offset Program as required by 31 U.S.C. 3716;

(b) Except for mandatory referral of claims to the Department of Treasury or as otherwise directed by the Secretary of Treasury, before collecting a claim by means of administrative offset, the Board must ensure that administrative offset is feasible, allowable, and appropriate, and must notify the debtor of the Board's policies for collecting a claim by means of administrative offset.

(c) Except for mandatory referral of claims to the Department of Treasury or as otherwise directed by the Secretary of Treasury, whether collection by administrative offset is feasible is a determination to be made on a case-by-case basis, in the exercise of its sound discretion. The Board shall consider not only whether administrative offset