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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

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FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

5 CFR Part 1639

Claims Collection

AGENCY: Federal Retirement Thrift Investment Board.

ACTION: Interim rule with request for comments.

SUMMARY: The Federal Retirement Thrift Investment Board (Board) is issuing interim regulations to govern the collection of debts owed to the Board and to other Federal agencies. The regulations of this part are issued under section 3 of the Federal Claims Collection Act of 1966, Public Law 89-508, 80 Stat. 308; the Debt Collection Act of 1982, Public Law 97-365, 96 Stat. 1749; the Debt Collection Improvement Act of 1996, Public Law 104-134, 110 Stat. 1321; 31 U.S.C. 3720A; and in conformity with the Federal guidelines for agency debt collection issued by the Department of Justice and the General Accounting Office (4 CFR chapter II) and the guidelines of the Office of Personnel Management (5 CFR part 550, subpart K) on offsets against Federal employee salaries.

DATES: These regulations are effective on September 22, 1997. Written comments must be received on or before October 1, 1997.

ADDRESSES: Send comments to: John J. O'Meara, General Counsel, Federal Retirement Thrift Investment Board, 1250 H Street, NW, Washington, DC 20005; telefax number (202) 942-1676.

FOR FURTHER INFORMATION CONTACT: John J. O'Meara, telephone number (202) 942-1660.

SUPPLEMENTARY INFORMATION: These regulations describe a number of actions which the Board may take to collect debts owed to the Board. These actions are offsets against monies owed to the debtor by the Board or Federal agencies,

offsets against tax refunds owed to the debtor by the Internal Revenue Service, referral to a private collection contractor, and referral to the Department of Justice for the initiation of an action in a judicial proceeding against the debtor. These regulations also provide that the Board will enter into a cross-servicing agreement with the Department of the Treasury (Treasury) which is authorized under the Debt Collection Improvement Act of 1996, Public Law 104-134, 110 Stat. 1321, to take all of the above-listed actions to collect the debt for the Board. In addition, the Board may take action on behalf of a Federal agency to offset the debt owed to a creditor agency against the salary of a Board employee or against amounts the Board owes that are not included in net assets available for Thrift Savings Plan benefits. The Board anticipates that some of these procedures may change when revised Federal Claims Collection Standards are issued by the Department of Justice and Treasury later this year.

The Board does not receive an annual appropriation of funds from Congress. Instead, all funds under the control of the Board come from the Thrift Savings Fund, which it administers. For this reason, all debts that are collected under these regulations on behalf of the Board will be deposited in the Thrift Savings Fund rather than the General Fund of the Treasury.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

I certify that these regulations do not require additional reporting under the criteria of the Paperwork Reduction Act of 1980.

Waiver of Notice of Proposed Rulemaking and 30-Day Delay of Effective Date

Under 5 U.S.C. 553(b)(3)(B) and (d)(3), I find that good cause exists for waiving the general notice of proposed rulemaking and for making these regulations effective in less than 30 days. The Board wishes to have these procedures in effect at the earliest possible date in order to initiate debt collection action against persons who owe money to the Board.

Unfunded Mandates Reform Act of 1995

Pursuant to the Unfunded Mandates Reform Act of 1995, section 201, Public Law 104-4, 109 Stat. 48, 64, the effect of these regulations on State, local, and tribal governments and the private sector have been assessed. This regulation will not compel the expenditure in any one year of \$100 million or more by any State, local, and tribal governments in the aggregate or by the private sector. Therefore, a statement under section 202, 109 Stat. 48, 64-65, is not required.

Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A), the Board submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States before publication of this rule in today's **Federal Register**. This interim rule is not a major rule as defined at 5 U.S.C. 804(2).

List of Subjects in 5 CFR Part 1639

Administrative practice and procedure, Claims, Government employees, Income taxes, Wages.

Federal Retirement Thrift Investment Board.

Roger W. Mehle,
Executive Director.

Title 5 of the Code of Federal Regulations is amended by adding a new Part 1639 to Chapter VI to read as follows:

PART 1639—CLAIMS COLLECTION

Subpart A—Administrative Collection, Compromise, Termination, and Referral of Claims

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- 1639.1 Authority.
 - 1639.2 Application of other regulations; scope.
 - 1639.3 Application to other statutes.
 - 1639.4 Definitions.
 - 1639.5 Use of credit reporting agencies.
 - 1639.6 Contracting for collection services.
 - 1639.7 Initial notice to debtor.
 - 1639.8 Interest, penalty, and administrative costs.
 - 1639.9 Charges pending waiver or review.
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 - 1639.11 Cross-servicing agreement with the Department of the Treasury.

- 1639.12 Deposit of funds collected.
 1639.13 Antialienation of funds in Thrift Savings Plan participant accounts.

Subpart B—Salary Offset

- 1639.20 Applicability and scope.
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 1639.26 Special review.
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 1639.29 Refunds.
 1639.30 Non-waiver of rights by payments.

Subpart C—Tax Refund Offset

- 1639.40 Applicability and scope.
 1639.41 Procedures for tax refund offset.
 1639.42 Notice requirements before tax refund offset.

Subpart D—Administrative Offset

- 1639.50 Applicability and scope.
 1639.51 Notice procedures.
 1639.52 Board review.
 1639.53 Written agreement for repayment.
 1639.54 Requests for offset to Federal agencies.
 1639.55 Requests for offset from Federal agencies.
 1639.56 Expedited procedure.

Authority: 5 U.S.C. 8474; 31 U.S.C. 3711, 3716, 3720A.

Subpart A—Administrative Collection, Compromise, Termination, and Referral of Claims

§ 1639.1 Authority.

The regulations of this part are issued under 5 U.S.C. 8474 and 31 U.S.C. 3711, 3716, and 3720A, and in conformity with the Federal Claims Collection Standards, 4 CFR chapter II, prescribing standards for administrative collection, compromise, termination of agency collection action, and referral to the Department of Justice for litigation of civil claims by the Government for money or property, 4 CFR chapter II.

§ 1639.2 Application of other regulations; scope.

All provisions of the Federal Claims Collection Standards, 4 CFR chapter II, apply to the regulations of this part. This part supplements 4 CFR chapter II by the prescription of procedures and directives necessary and appropriate for operations of the Federal Retirement Thrift Investment Board. The Federal Claims Collection Standards and this part do not apply to any claim as to which there is an indication of fraud or misrepresentation, as described in 4 CFR 101.3, unless returned by the Department of Justice to the Board for handling.

§ 1639.3 Application to other statutes.

(a) The Executive Director may exercise his or her compromise authority for those debts not exceeding \$100,000, excluding interest, in conformity with the Federal Claims Collection Act of 1966, the Federal Claims Collection Standards issued thereunder, and this part, except where standards are established by other statutes or authorized regulations issued pursuant to them.

(b) The authority of the Executive Director of the Board to remit or mitigate a fine, penalty, or forfeiture will be exercised in accordance with the standards for remission or mitigation established in the governing statute. In the absence of such standards, the Federal Claims Collection Standards will be followed to the extent applicable.

§ 1639.4 Definitions.

As used in this part:

Administrative offset, as defined in 31 U.S.C. 3701(a)(1), means withholding funds payable by the United States (including funds payable to the United States on behalf of a State government) to, or held by the United States for, a person to satisfy a debt owed to the United States.

Agency means executive departments and agencies, the United States Postal Service, the Postal Rate Commission, the United States Senate, the United States House of Representatives, and any court, court administrative office, or instrumentality in the judicial or legislative branches of the Government, and Government corporations.

Board means the Federal Retirement Thrift Investment Board, which administers the Thrift Savings Plan and the Thrift Savings Fund.

Certification means a written debt claim form received from a creditor agency which requests the paying agency to offset the salary of an employee.

Creditor agency means an agency of the Federal Government to which the debt is owed.

Debt means money owed by an individual to the United States including a debt owed to the Thrift Savings Fund or to a Federal agency, but does not include a Thrift Savings Plan loan.

Delinquent debt means a debt that has not been paid within the time limit prescribed by the Board.

Disposable pay means that part of current basic pay, special pay, incentive pay, retirement pay, retainer pay, or, in the case of an employee not entitled to basic pay, other authorized pay remaining after the deduction of any

amount required by law to be withheld, excluding any garnishment under 5 CFR parts 581, 582. The Board will include the following deductions in determining disposable pay subject to salary offset:

- (1) Federal Social Security and Medicare taxes;
- (2) Federal, state, or local income taxes, but no more than would be the case if the employee claimed all dependents to which he or she is entitled and any additional amounts for which the employee presents evidence of a tax obligation supporting the additional withholding;
- (3) Health insurance premiums;
- (4) Normal retirement contributions as explained in 5 CFR 581.105(e);
- (5) Normal life insurance premiums, excluding optional life insurance premiums; and
- (6) Levies pursuant to the Internal Revenue Code, as defined in 5 U.S.C. 5514(d).

Employee means a current employee of an agency, including a current member of the Armed Forces or Reserve of the Armed Forces of the United States.

Executive Director means the Executive Director of the Federal Retirement Thrift Investment Board, or his or her designee.

Federal Claims Collection Standards means the standards published at 4 CFR chapter II.

Hearing official means an individual responsible for conducting any hearing with respect to the existence or amount of a debt claimed, and rendering a decision on the basis of the hearing.

Net Assets Available for Thrift Savings Plan Benefits means all funds owed to Thrift Savings Plan participants and beneficiaries.

Notice of intent to offset or notice of intent means a written notice from a creditor agency to an employee which alleges that the employee owes a debt to the creditor agency and which apprises the employee of certain administrative rights.

Notice of salary offset means a written notice from the paying agency to an employee informing the employee that it has received a certification from a creditor agency and intends to begin salary offset.

Participant means any person with an account in the Thrift Savings Plan, or who would have an account but for an employing agency error.

Paying agency means the agency of the Federal Government which employs the individual who owes a debt to the United States. In some cases, the Federal Retirement Thrift Investment Board may be both the creditor agency and the paying agency.

Payroll office means the payroll office in the paying agency which is primarily responsible for the payroll records and the coordination of pay matters with the appropriate personnel office with respect to an employee.

Person includes a natural person or persons, profit or non-profit corporation, partnership, association, trust, estate, consortium, State and local governments, or other entity that is capable of owing a debt to the United States Government; however, agencies of the United States, are excluded.

Private collection contractor means a private debt collector under contract with an agency to collect a non-tax debt owed to the United States.

Salary offset means an offset to collect a debt under 5 U.S.C. 5514 by deduction(s) at one or more officially established pay intervals from the current pay account of an employee, without his or her consent.

Tax refund offset means the reduction of a tax refund by the amount of a past-due legally enforceable debt owed to the Board or a Federal agency.

Thrift Savings Fund means the Fund described in 5 U.S.C. 8437.

Thrift Savings Plan means the Federal Retirement Thrift Savings Plan established by the Federal Employees' Retirement System Act of 1986, codified in pertinent part at 5 U.S.C. 8431 *et seq.*

Waiver means the cancellation, remission, forgiveness, or non-recovery of a debt allegedly owed by a person to the Board or a Federal agency as permitted or required by 5 U.S.C. 5584 or 8346(b), 10 U.S.C. 2774, 32 U.S.C. 716, or any other law.

§ 1639.5 Use of credit reporting agencies.

(a) The Board may report delinquent debts to appropriate credit reporting agencies by providing the following information:

- (1) A statement that the debt is valid and is overdue;
- (2) The name, address, taxpayer identification number, and any other information necessary to establish the identity of the debtor;
- (3) The amount, status, and history of the debt; and
- (4) The program or pertinent activity under which the debt arose.

(b) Before disclosing debt information to a credit reporting agency, the Board will:

- (1) Take reasonable action to locate the debtor if a current address is not available; and
- (2) If a current address is available, notify the debtor by certified mail, return receipt requested:
 - (i) That a designated Board official has reviewed the claim and has

determined that the claim is valid and over-due;

(ii) That within 60 days the Board intends to disclose to a credit reporting agency the information authorized for disclosure by this section; and

(iii) That the debtor can request an explanation of the claim, can dispute the information in the Board's records concerning the claim, and can file for an administrative review, waiver, or reconsideration of the claim, where applicable.

(c) At the time debt information is submitted to a credit reporting agency, the Board will provide a written statement to the reporting agency that all required actions have been taken. In addition, the Board will, thereafter, ensure that the credit reporting agency is promptly informed of any substantive change in the conditions or amount of the debt, and promptly verify or correct information relevant to the claim.

(d) If a debtor disputes the validity of the debt, the credit reporting agency will refer the matter to the appropriate Board official. The credit reporting agency will exclude the debt from its reports until the Board certifies in writing that the debt is valid.

§ 1639.6 Contracting for collection services.

The Board will use the services of a private collection contractor where it determines that such use is in the best interest of the Board. When the Board determines that there is a need to contract for collection services, it will—

- (a) Retain sole authority to:
 - (1) Resolve any dispute by the debtor regarding the validity of the debt;
 - (2) Compromise the debt;
 - (3) Suspend or terminate collection action;
 - (4) Refer the debt to the Department of Justice for litigation; and
 - (5) Take any other action under this part which does not result in full collection of the debt;

(b) Require the contractor to comply with the Privacy Act of 1974, as amended, to the extent specified in 5 U.S.C. 552a(m), with applicable Federal and State laws pertaining to debt collection practices (e.g., the Fair Debt Collection Practices Act (15 U.S.C. 1692 *et seq.*)), and with applicable regulations of the Board;

(c) Require the contractor to account accurately and fully for all amounts collected; and

(d) Require the contractor to provide to the Board, upon request, all data and reports contained in its files relating to its collection actions on a debt.

§ 1639.7 Initial notice to debtor.

(a) When the Executive Director determines that a debt is owed the Board, he will send a written notice to the debtor. The notice will inform the debtor of the following:

- (1) The amount, nature, and basis of the debt;
- (2) That payment is due immediately after receipt of the notice;
- (3) That the debt is considered delinquent if it is not paid within 30 days of the date the notice is mailed or hand-delivered;
- (4) That interest charges (except for State and local governments and Indian tribes), penalty charges, and administrative costs may be assessed against a delinquent debt;
- (5) Any rights available to the debtor to dispute the validity of the debt or to have recovery of the debt waived (citing the available review or waiver authority, the conditions for review or waiver, and the effects of the review or waiver request on the collection of the debt); and
- (6) The address, telephone number, and name of the Board official available to discuss the debt.

(b) The Board will respond promptly to communications from the debtor.

(c) Subsequent demand letters also will notify the debtor of any interest, penalty, or administrative costs which have been assessed and will advise the debtor that the debt may be referred to a credit reporting agency (see § 1639.5), a collection agency (see § 1639.6), the Department of Justice (see § 1639.10), or the Department of the Treasury (see § 1639.11), if it is not paid.

§ 1639.8 Interest, penalty, and administrative costs.

(a) *Interest.* The Board will assess interest on all delinquent debts unless prohibited by statute, regulation, or contract.

(1) Interest begins to accrue on all debts from the date the initial notice is mailed or hand-delivered to the debtor. The Board will not recover interest if the debt is paid within 30 days of the date of the initial notice. The Board will assess an annual rate of interest that is equal to the rate of the current value of funds to the United States Treasury (*i.e.*, the Treasury tax and loan account rate) as prescribed and published by the Secretary of the Treasury in the **Federal Register** and the Treasury Fiscal Requirements Manual Bulletins, unless a different rate is necessary to protect the interests of the Board. The Board will notify the debtor of the basis for its finding when a different rate is necessary to protect the Board's interests.

(2) The Executive Director may extend the 30-day period for payment where he determines that such action is in the best interest of the Board. A decision to extend or not to extend the payment period is final and is not subject to further review.

(b) *Penalty.* The Board will assess a penalty charge, not to exceed six percent a year, on any portion of a debt that is not paid within 90 days of the initial notice.

(c) *Administrative costs.* The Board will assess charges to cover administrative costs incurred as the result of the debtor's failure to pay a debt within 30 days of the date of the initial notice. Administrative costs include the additional costs incurred in processing and handling the debt because it became delinquent, such as costs incurred in obtaining a credit report, or in using a private collection contractor, or service fees charged by a Federal agency for collection activities undertaken on behalf of the Board.

(d) *Allocation of payments.* A partial payment by a debtor will be applied first to outstanding administrative costs, second to penalty assessments, third to accrued interest, and then to the outstanding debt principal.

(e) *Waiver.* (1) The Executive Director may (without regard to the amount of the debt) waive collection of all or part of accrued interest, penalty, or administrative costs, if he determines that collection of these charges would be against equity and good conscience or not in the best interest of the Board.

(2) A decision to waive interest, penalty charges, or administrative costs may be made at any time before a debt is paid. However, where these charges have been collected before the waiver decision, they will not be refunded. The Executive Director's decision to waive or not waive collection of these charges is final and is not subject to further review.

§ 1639.9 Charges pending waiver or review.

Interest, penalty charges, and administrative costs will continue to accrue on a debt during administrative appeal, either formal or informal, and during waiver consideration by the Board, unless specifically prohibited by a statute or a regulation.

§ 1639.10 Referrals to the Department of Justice.

The Executive Director will refer to the Department of Justice for litigation all claims on which aggressive collection actions have been taken but which could not be collected, compromised, suspended, or

terminated. Referrals will be made as early as possible, consistent with aggressive Board collection action, and within the period for bringing a timely suit against the debtor.

§ 1639.11 Cross-servicing agreement with the Department of the Treasury.

The Board will enter into a cross-servicing agreement with the Department of the Treasury which will authorize Treasury to take all of the debt collection actions described in this part. These debt collection services will be provided to the Board in accordance with 31 U.S.C. 3701 *et seq.*

§ 1639.12 Deposit of funds collected.

All funds owed to the Board and collected under this part will be deposited in the Thrift Savings Fund. Funds owed to other agencies and collected under this part will be credited to the account designated by the creditor agency for the receipt of the funds.

§ 1639.13 Antialienation of funds in Thrift Savings Plan participant accounts.

In accordance with 5 U.S.C. 8437, net assets available for Thrift Savings Plan benefits will not be used to satisfy a debt owed by a participant to an agency under the regulations of this part or under the debt collection regulations of any agency.

Subpart B—Salary Offset

§ 1639.20 Applicability and scope.

(a) The regulations in this subpart provide Board procedures for the collection by salary offset of a Federal employee's pay to satisfy certain debts owed to the Board or to Federal agencies.

(b) The regulations in this subpart apply to collections by the Executive Director, from:

(1) Federal employees who owe debts to the Board; and

(2) Employees of the Board who owe debts to Federal agencies.

(c) The regulations in this subpart do not apply to debts arising under the Internal Revenue Code of 1986, as amended (title 26, United States Code); the Social Security Act (42 U.S.C. 301 *et seq.*); the tariff laws of the United States; or to any case where collection of a debt by salary offset is explicitly provided for or prohibited by another statute (*e.g.*, travel advances in 5 U.S.C. 5705 and employee training expenses in 5 U.S.C. 4108).

(d) Nothing in the regulations in this subpart precludes the compromise, suspension, or termination of collection actions under the standards implementing the Federal Claims

Collection Act (31 U.S.C. 3711 *et seq.*, 4 CFR Parts 101–105, 38 CFR 1.900–1.994).

(e) A levy pursuant to the Internal Revenue Code takes precedence over a salary offset under this subpart, as provided in 5 U.S.C. 5514(d).

(f) This subpart does not apply to any adjustment to pay arising out of an employee's election of coverage or a change in coverage under a Federal benefits program requiring periodic deductions from pay, if the amount to be recovered was accumulated over four pay periods or less.

§ 1639.21 Waiver requests.

The regulations in this subpart do not preclude an employee from requesting waiver of an overpayment under 5 U.S.C. 5584 or 8346(b), 10 U.S.C. 2774, 32 U.S.C. 716, or under other statutory provisions pertaining to the particular debts being collected.

§ 1639.22 Notice requirements before offset.

Deductions under the authority of 5 U.S.C. 5514 may be made if, a minimum of 30 calendar days before salary offset is initiated, the Board provides the employee with written notice that he or she owes a debt to the Board. This notice of intent to offset an employee's salary will be hand-delivered or sent by certified mail to the most current address that is available to the Board. The notice provided under this section will state:

(a) That the Board has reviewed the records relating to the claim and has determined that a debt is owed, the amount of the debt, and the facts giving rise to the debt;

(b) The Board's intention to collect the debt by deducting money from the employee's current disposable pay account until the debt, and all accumulated interest, penalties, and administrative costs, is paid in full;

(c) The amount, frequency, approximate beginning date, and duration of the intended deductions;

(d) An explanation of the Board's policy concerning interest, penalties, and administrative costs, including a statement that such assessments must be made unless excused in accordance with the Federal Claims Collection Standards, 4 CFR chapter II;

(e) The employee's right to inspect and copy all records pertaining to the debt claimed or to receive copies of those records if personal inspection is impractical;

(f) The right to a hearing conducted by an administrative law judge or other impartial hearing official (*i.e.*, a hearing official not under the supervision or

control of the Executive Director), with respect to the existence and amount of the debt claimed or the repayment schedule (*i.e.*, the percentage of disposable pay to be deducted each pay period), so long as a request is filed by the employee as prescribed in § 1639.23;

(g) If not previously provided, the opportunity (under terms agreeable to the Board) to establish a schedule for the voluntary repayment of the debt or to enter into a written agreement to establish a schedule for repayment of the debt in lieu of offset. The agreement must be in writing and signed by both the employee and the Executive Director;

(h) The name, address, and telephone number of an officer or employee of the Board who may be contacted concerning procedures for requesting a hearing;

(i) The method and time period for requesting a hearing;

(j) That the timely filing of a request for a hearing on or before the 15th calendar day following receipt of the notice of intent will stay the commencement of collection proceedings;

(k) The name and address of the officer or employee of the Board to whom the request for a hearing should be sent;

(l) That the Board will initiate certification procedures to implement a salary offset, as appropriate, (which may not exceed 15 percent of the employee's disposable pay) not less than 30 days from the date the employee receives the notice of debt, unless the employee files a timely request for a hearing;

(m) That a final decision on the hearing (if one is requested) will be issued at the earliest practical date, but not later than 60 days after the filing of the petition requesting the hearing, unless the employee requests and the hearing official grants a delay in the proceedings;

(n) That any knowingly false or frivolous statements, representations, or evidence may subject the employee to:

(1) Disciplinary procedures appropriate under 5 U.S.C. chapter 75, 5 CFR part 752, or any other applicable statute or regulations;

(2) Penalties under the False Claims Act, 31 U.S.C. 3729-3733, or any other applicable statutory authority; and

(3) Criminal penalties under 18 U.S.C. 286, 287, 1001, and 102, or any other applicable statutory authority;

(o) Any other rights and remedies available to the employee under statutes or regulations governing the program for which the collection is being made;

(p) That unless there are applicable contractual or statutory provisions to the contrary, amounts paid on or

deducted for the debt which are later waived or found not owed will be promptly refunded to the employee; and

(q) That proceedings with respect to the debt are governed by 5 U.S.C. 5514.

§ 1639.23 Hearing.

(a) *Request for hearing.* Except as provided in paragraph (b) of this section, an employee who desires a hearing concerning the existence or amount of the debt or the proposed offset schedule must send such a request to the Board office designated in the notice of intent. See § 1639.22(k).

(1) The request for hearing must be signed by the employee and fully identify and explain with reasonable specificity all the facts, evidence, and witnesses, if any, that support his or her position.

(2) The request for hearing must be received by the designated office on or before the 15th calendar day following the employee's receipt of the notice. Timely filing will stay the commencement of collection procedures.

(3) The employee must also specify whether an oral or written hearing is requested. If an oral hearing is desired, the request should explain why the matter cannot be resolved by review of the documentary evidence alone.

(b) *Failure to timely submit.* (1) If the employee files a request for a hearing after the expiration of the 15th calendar day period provided for in paragraph (a) of this section, the Board will accept the request if the employee can show that the delay was the result of circumstances beyond his or her control or because of a failure to receive notice of the filing deadline (unless the employee had actual notice of the filing deadline).

(2) An employee waives the right to a hearing, and will have his or her disposable pay offset in accordance with the Board's offset schedule, if the employee:

(i) Fails to file a request for a hearing and the failure is not excused; or

(ii) Fails to appear at an oral hearing of which he or she was notified and the hearing official does not determine that failure to appear was due to circumstances beyond the employee's control.

(c) *Representation at the hearing.* The creditor agency may be represented by legal counsel. The employee may represent himself or herself or may be represented by an individual of his or her choice and at his or her own expense.

(d) *Review of Board records related to the debt.* (1) In accordance with § 1639.22(e), an employee who intends

to inspect or copy Board records related to the debt must send a letter to the official designated in the notice of intent to offset stating his or her intention. The letter must be received within 15 calendar days after the employee's receipt of the notice.

(2) In response to a timely request submitted by the debtor, the designated official will notify the employee of the location and time when the employee may inspect and copy records related to the debt.

(3) If personal inspection is impractical, arrangements will be made to send copies of those records to the employee.

(e) *Hearing official.* The Board may request an administrative law judge to conduct the hearing or the Board may obtain a hearing official who is not under the supervision or control of the Executive Director.

(f) *Procedure.* (1) *General.* After the employee requests a hearing, the hearing official will notify the employee of the form of the hearing to be provided. If the hearing will be oral, the notice will set forth the date, time, and location of the hearing. If the hearing will be written, the employee will be notified that he or she should submit arguments in writing to the hearing official by a specified date after which the record will be closed. This date will give the employee reasonable time to submit documentation.

(2) *Oral hearing.* An employee who requests an oral hearing will be provided an oral hearing, if the hearing official determines that the matter cannot be resolved by review of documentary evidence alone (*e.g.*, when an issue of credibility is involved). The hearing is not an adversarial adjudication and need not take the form of an evidentiary hearing. Witnesses who testify in oral hearings will do so under oath or affirmation. Oral hearings may take the form of, but are not limited to:

(i) Informal conferences with the hearing official, in which the employee and agency representative will be given full opportunity to present evidence, witnesses, and argument;

(ii) Informal meetings with an interview of the employee; or

(iii) Formal written submissions, with an opportunity for oral presentation.

(3) *Record determination.* If the hearing official determines that an oral hearing is not necessary, he or she will make the determination based upon a review of the available written record.

(4) *Record.* The hearing official must maintain a summary record of any hearing provided by this subpart.

(g) *Date of decision.* The hearing official will issue a written decision, based upon documentary evidence and information developed at the hearing, as soon as practical after the hearing, but not later than 60 days after the date on which the petition was received by the creditor agency, unless the employee requests a delay in the proceedings. In that case, the 60 day decision period will be extended by the number of days by which the hearing was postponed.

(h) *Content of decision.* The written decision will include:

(1) A statement of the facts presented to support the origin, nature, and amount of the debt;

(2) The hearing official's findings, analysis, and conclusions; and

(3) The terms of any repayment schedules, if applicable.

(i) *Failure to appear.* (1) In the absence of good cause shown (e.g., excused illness), an employee who fails to appear at a hearing will be deemed, for the purpose of this subpart, to admit the existence and amount of the debt as described in the notice of intent.

(2) If the representative of the creditor agency fails to appear, the hearing official will proceed with the hearing as scheduled, and make his or her determination based upon the oral testimony presented by the representative(s) of the employee and the documentary documentation submitted by both parties.

(3) At the request of both parties, the hearing official will schedule a new hearing date. Both parties will be given reasonable notice of the time and place of this new hearing.

§ 1639.24 Certification.

(a) The Board will provide a certification to the paying agency in all cases in which:

(1) The hearing official determines that a debt exists;

(2) The employee admits the existence and amount of the debt by failing to request a hearing; or

(3) The employee admits the existence of the debt by failing to appear at a hearing.

(b) The certification must be in writing and must include:

(1) A statement that the employee owes the debt;

(2) The amount and basis of the debt;

(3) The date the Board's right to collect the debt first accrued;

(4) A statement that the Board's regulations have been approved by the Office of Personnel Management under 5 CFR part 550, subpart K;

(5) The amount and date of the collection, if only a one-time offset is required;

(6) If the collection is to be made in installments, the number of installments to be collected, the amount of each installment, and the date of the first installment, if a date other than the next officially established pay period is required; and

(7) Information regarding the completion of procedures required by 5 U.S.C. 5514, including the dates of notices and hearings provided to the employee, or, if applicable, the employee's signed consent to salary offset or a signed statement acknowledging receipt of required procedures.

§ 1639.25 Voluntary repayment agreements as alternative to salary offset.

(a) In response to a notice of intent to offset against an employee's salary to recover a debt owed to the Board, an employee may propose to the Board that he or she be allowed to repay the debt through direct payments as an alternative to salary offset. Any employee who wishes to repay a debt without salary offset must submit in writing a proposed agreement to repay the debt. The proposal must admit the existence of the debt and set forth a proposed repayment schedule. The employee's proposal must be received by the official designated in the notice of intent within 15 calendar days after the employee received the notice.

(b) In response to a timely proposal by the debtor, the Executive Director will notify the employee whether the employee's proposed written agreement for repayment is acceptable. It is within the Executive Director's discretion to accept a repayment agreement instead of proceeding by salary offset.

(c) If the Executive Director decides that the proposed repayment agreement is unacceptable, the employee will have 15 days from the date he or she received notice of the decision to file a petition for a hearing.

(d) If the Executive Director decides that the proposed repayment agreement is acceptable, the alternative arrangement must be in writing and signed by both the employee and the Executive Director.

§ 1639.26 Special review.

(a) An employee subject to salary offset or a voluntary repayment agreement in connection with a debt owed to the Board may, at any time, request that the Board conduct a special review of the amount of the salary offset or voluntary payment, based on materially changed circumstances, such as catastrophic illness, divorce, death, or disability.

(b) To assist the Board in determining whether an offset would prevent the employee from meeting essential subsistence expenses (costs incurred for food, housing, clothing, transportation, and medical care), the employee will submit a detailed statement and supporting documents for the employee, his or her spouse, and dependents, indicating:

(1) Income from all sources;

(2) Assets;

(3) Liabilities;

(4) Number of dependents;

(5) Expenses for food, housing, clothing, and transportation;

(6) Medical expenses; and

(7) Exceptional expenses, if any.

(c) If the employee requests a special review under this section, the employee must file an alternative proposed salary offset or payment schedule and a statement, with supporting documents, showing why the current salary offset or payments result in an extreme financial hardship to the employee.

(d) The Executive Director will evaluate the statement and supporting documents, and determine whether the original offset or repayment schedule imposes an extreme financial hardship on the employee. The Executive Director will notify the employee in writing of his determination, including, if appropriate, a revised offset or payment schedule.

(e) If the special review results in a revised offset or repayment schedule, the Board will provide a new certification to the paying agency.

§ 1639.27 Procedures for salary offset.

(a) The Board will coordinate salary deductions under this subpart.

(b) The Board's payroll office will determine the amount of an employee's disposable pay and will implement the salary offset.

(c) Deductions will begin within three official pay periods following receipt by the Board's payroll office of certification for the creditor agency.

(d) Types of collection—

(1) *Lump-sum offset.* If the amount of the debt is equal to or less than 15 percent of disposable pay, the debt generally will be collected through one lump-sum offset.

(2) *Installment deductions.*

Installment deductions will be made over a period not greater than the anticipated period of employment. The size and frequency of installment deductions will bear a reasonable relation to the size of the debt and the employee's ability to pay. However, the amount deducted from any period will not exceed 15 percent of the disposable pay from which the deduction is made

unless the employee has agreed in writing to the deduction of a greater amount.

(3) *Deductions from final check.* A deduction exceeding the 15 percent disposable pay limitation may be made from any final salary payment under 31 U.S.C. 3716 and the Federal Claims Collection Standards, 4 CFR chapter II, in order to liquidate the debt, whether the employee is being separated voluntarily or involuntarily.

(4) *Deductions from other sources.* If an employee subject to salary offset is separated from the Board, and the balance of the debt cannot be liquidated by offset of the final salary check, the Board may offset any later payments of any kind against the balance of the debt, as allowed by 31 U.S.C. 3716 and the Federal Claims Collection Standards, 4 CFR chapter II.

(e) *Multiple debts.* In instances where two or more creditor agencies are seeking salary offsets, or where two or more debts are owed to a single creditor agency, the Board's payroll office may, at its discretion, determine whether one or more debts should be offset simultaneously within the 15 percent limitation.

(f) *Precedence of debts owed to the Board.* For Board employees, debts owed to the Board generally take precedence over debts owed to other agencies. In the event that a debt to the Board is certified while an employee is subject to a salary offset to repay another agency, the Board may decide whether to have the first debt repaid in full before collecting the claim or whether changes should be made in the salary deduction being sent to the other agency. If debts owed the Board can be collected in one pay period, the Board payroll office may suspend the salary offset to the other agency for that pay period in order to liquidate the debt to the Board. When an employee owes two or more debts, the best interests of the Board will be the primary consideration in the payroll office's determination of the order in which the debts should be collected.

§ 1639.28 Coordinating salary offset with other agencies.

(a) *Responsibility of the Board as the creditor agency.* (1) The Board will coordinate debt collections with other agencies and will, as appropriate:

(i) Arrange for a hearing or special review upon proper petitioning by the debtor; and

(ii) Prescribe, upon consultation with the General Counsel, the additional practices and procedures that may be necessary to carry out the intent of this subpart.

(2) The Board will ensure:

(i) That each notice of intent to offset is consistent with the requirements of § 1639.22;

(ii) That each certification of debt that is sent to a paying agency is consistent with the requirements of § 1639.24; and

(iii) That hearings are properly scheduled.

(3) Requesting recovery from current paying agency. Upon completion of the procedures established in these regulations and pursuant to 5 U.S.C. 5514, the Board will provide the paying agency with a certification as provided in § 1639.24.

(4) If the employee is in the process of separating and has not received a final salary check or other final payment(s) from the paying agency, the Board must submit a debt claim to the paying agency for collection under 31 U.S.C. 3716. The paying agency must certify the total amount of its collection on the debt and notify the employee and the Board. If the paying agency's collection does not fully satisfy the debt, and the paying agency is aware that the debtor is entitled to payments from the Civil Service Retirement and Disability Fund or other similar payments that may be due the debtor employee from other Federal Government sources, the paying agency will provide written notice of the outstanding debt to the agency responsible for making the other payments to the debtor employee. The written notice will state that the employee owes a debt, the amount of the debt, and that the provisions of this section have been fully complied with. The Board must submit a properly certified claim to the agency responsible for making the payments before the collection can be made.

(5) *Separated employee.* If the employee is already separated and all payments due from his or her former paying agency have been paid, the Board may request, unless otherwise prohibited, that money due and payable to the employee from the Civil Service Retirement and Disability Fund (5 CFR part 831, subpart R, or 5 CFR part 845, subpart D) or other similar funds, be administratively offset to collect the debt.

(6) *Employee transfer.* When an employee transfers from one paying agency to another paying agency, the Board will not repeat the due process procedures described in 5 U.S.C. 5514 and this subpart to resume the collection. The Board will submit a properly certified claim to the new paying agency and will subsequently review the debt to make sure the collection is resumed by the new paying agency.

(b) *Responsibility of the Board as the paying agency.* (1) *Complete claim.* When the Board receives a certified claim from a creditor agency, deductions should be scheduled to begin within three officially established pay intervals. Before deductions can begin, the employee will receive a written notice from the Board including:

(i) A statement that the Board has received a certified debt claim from the creditor agency;

(ii) The amount of the debt claim;

(iii) The date salary offset deductions will begin, and

(iv) The amount of such deductions.

(2) *Incomplete claim.* When the Board receives an incomplete certification of debt from a creditor agency, the Board will return the debt claim with a notice that procedures under 5 U.S.C. 5514 and 5 CFR part 550, subpart K, must be followed and a properly certified debt claim received before action will be taken to collect from the employee's current pay account.

(3) *Review.* The Board is not authorized to review the merits of the creditor agency's determination with respect to the amount or validity of the debt certified by the creditor agency.

(4) *Employees who transfer from one paying agency to another.* If, after the creditor agency has submitted the debt claim to the Board, the employee transfers from the Board to a different paying agency before the debt is collected in full, the Board will certify the total amount collected on the debt and notify the employee and the creditor agency in writing. The notification to the creditor agency will include information on the employee's transfer.

§ 1639.29 Refunds.

(a) If the Board is the creditor agency, it will promptly refund any amount deducted under the authority of 5 U.S.C. 5514, when:

(1) The debt is waived or all or part of the funds deducted are otherwise found not to be owed; or

(2) An administrative or judicial order directs the Board to make a refund.

(b) Unless required or permitted by law or contract, refunds under this section will not bear interest.

§ 1639.30 Non-waiver of rights by payments.

An employee's involuntary payment of all or any portion of a debt being collected under this subpart must not be construed as a waiver of any rights which the employee may have under 5 U.S.C. 5514 or any other provisions of a written contract or law, unless there are statutory or contractual provisions to the contrary.

Subpart C—Tax Refund Offset**§ 1639.40 Applicability and scope.**

(a) The regulations in this subpart implement 31 U.S.C. 3720A which authorizes the Department of the Treasury to reduce a tax refund by the amount of a past-due legally enforceable debt owed to a Federal agency.

(b) For purposes of this section, a past-due legally enforceable debt referable to the Department of the Treasury is a debt that is owed to the Board; and:

- (1) Is at least \$25.00 dollars;
- (2) Except in the case of a judgment debt, has been delinquent for at least three months and will not have been delinquent more than 10 years at the time the offset is made;
- (3) Cannot be currently collected under the salary offset provisions of 5 U.S.C. 5514;
- (4) Is ineligible for administrative offset under 31 U.S.C. 3716(a) by reason of 31 U.S.C. 3716(c)(2) or cannot be collected by administrative offset under 31 U.S.C. 3716(a) by the Board against amounts payable to the debtor by the Board;
- (5) With respect to which the Board has given the debtor at least 60 days to present evidence that all or part of the debt is not past due or legally enforceable, has considered evidence presented by the debtor, and has determined that an amount of the debt is past due and legally enforceable;
- (6) Which has been disclosed by the Board to a credit reporting agency as authorized by 31 U.S.C. 3711(e), unless the credit reporting agency would be prohibited from reporting information concerning the debt by reason of 15 U.S.C. 1681c;
- (7) With respect to which the Board has notified or has made a reasonable attempt to notify the debtor that:
 - (i) The debt is past due, and
 - (ii) Unless repaid within 60 days thereafter, the debt will be referred to the Department of the Treasury for offset against any overpayment of tax; and
- (8) All other requirements of 31 U.S.C. 3720A and the Department of Treasury regulations relating to the eligibility of a debt for tax return offset have been satisfied.

§ 1639.41 Procedures for tax refund offset.

(a) The Board will be the point of contact with the Department of the Treasury for administrative matters regarding the offset program.

(b) The Board will ensure that the procedures prescribed by the Department of the Treasury are followed in developing information about past-due debts and submitting the debts to the IRS.

(c) The Board will submit a notification of a taxpayer's liability for past-due legally enforceable debt to the Department of the Treasury which will contain:

- (1) The name and taxpayer identifying number (as defined in section 6109 of the Internal Revenue Code, 26 U.S.C. 6109) of the person who is responsible for the debt;
- (2) The dollar amount of the past-due and legally enforceable debt;
- (3) The date on which the original debt became past due;
- (4) A statement certifying that, with respect to each debt reported, all of the requirements of eligibility of the debt for referral for the refund offset have been satisfied. See § 1639.40(b).

(d) The Board shall promptly notify the Department of the Treasury to correct Board data submitted when it:

- (1) Determines that an error has been made with respect to a debt that has been referred;
- (2) Receives or credits a payment on the debt; or
- (3) Receives notice that the person owing the debt has filed for bankruptcy under Title 11 of the United States Code or has been adjudicated bankrupt and the debt has been discharged.

(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 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 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.

§ 1639.54 Requests for offset to Federal agencies.

The Executive Director may request that funds due and payable to a debtor by another Federal agency be paid to the Board in payment of a debt owed to the Board by that debtor. In requesting administrative offset, the Board, as

creditor, will certify in writing to the Federal agency holding funds of the debtor:

- (a) That the debtor owes the debt;
- (b) The amount and basis of the debt; and

(c) That the Board has complied with the requirements of 31 U.S.C. 3716, its own administrative offset regulations in this subpart, and the applicable provisions of 4 CFR part 102 with respect to providing the debtor with due process.

§ 1639.55 Requests for offset from Federal agencies.

Any Federal agency may request that funds due and payable to its debtor by the Board be administratively offset in order to collect a debt owed to that agency by the debtor, so long as the funds are not payable from net assets available for Thrift Savings Plan benefits. The Board will initiate the requested offset only:

(a) Upon receipt of written certification from the creditor agency stating:

- (1) That the debtor owes the debt;
- (2) The amount and basis of the debt;

(3) That the agency has prescribed regulations for the exercise of administrative offset; and

(4) That the agency has complied with its own administrative offset regulations and with the applicable provisions of 4 CFR part 102, including providing any required hearing or review; and

(b) Upon a determination by the Board that collection by offset against funds payable by the Board would be in the best interest of the United States as determined by the facts and circumstances of the particular case, and that such an offset would not otherwise be contrary to law.

§ 1639.56 Expedited procedure.

The Board may effect an administrative offset against a payment to be made to the debtor before completion of the procedures required by §§ 1639.51 and 1639.52 if failure to take the offset would substantially jeopardize the Board's ability to collect the debt and the time before the payment is to be made does not reasonably permit the completion of those procedures. An expedited offset will be promptly followed by the completion of those procedures. Amounts recovered by offset, but later found not to be owed to the Board, will be promptly refunded.

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