

§ 5.37

for installment agreements. Notwithstanding the provisions of this section, any reduction or compromise of a claim will be governed by 4 CFR part 103 and 31 CFR 5.3.

§ 5.37 Administrative offset.

(a) If the debtor does not exercise the right to request a review within the time specified in § 5.35 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 shall be ordered in accordance with these regulations without further notice.

(b) *Requests for offset to other Federal agencies.* The Secretary or his or her designee may request that funds due and payable to a debtor by another Federal agency be administratively offset in order to collect a debt owed to the Department by that debtor. In requesting administrative offset, the Department, as creditor, will certify in writing to the Federal agency holding funds of the debtor:

- (1) That the debtor owes the debt;
- (2) The amount and basis of the debt; and
- (3) That the agency has complied with the requirements of 31 U.S.C. 3716, its own administrative offset regulations and the applicable provisions of 4 CFR part 102 with respect to providing the debtor with due process.

(c) *Requests for offset from other Federal agencies.* Any Federal agency may request that funds due and payable to its debtor by the Department be administratively offset in order to collect a debt owed to such Federal agency by the debtor. The Department shall initiate the requested offset only upon:

- (1) Receipt of written certification from the creditor agency:
 - (i) That the debtor owes the debt;
 - (ii) The amount and basis of the debt;
 - (iii) That the agency has prescribed regulations for the exercise of administrative offset; and
 - (iv) 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.
- (2) A determination by the Department that collection by offset against funds payable by the Department

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would be in the best interest of the United States as determined by the facts and circumstances of the particular case, and that such offset would not otherwise be contrary to law.

§ 5.38 Jeopardy procedure.

The Department may effect an administrative offset against a payment to be made to the debtor prior to the completion of the procedures required by §§ 5.34 and 5.34 of this part if failure to take the offset would substantially jeopardize the Department'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. Such prior offset shall be promptly followed by the completion of those procedures. Amounts recovered by offset but later found not to be owed to the Department shall be promptly refunded.

PART 6—APPLICATIONS FOR AWARDS UNDER THE EQUAL ACCESS TO JUSTICE ACT

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AUTHORITY: Sec. 203(a)(1), Pub. L. 96-481, 94 Stat. 2325 (5 U.S.C. 504(c)(1)).

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