

§ 89.39

- (i) Is owed to the United States;
- (ii) Is at least \$25.00;
- (iii) Except in the case of a judgment debt, has been delinquent for at least three months but has not been delinquent for more than ten years at the time the offset is made;
- (iv) Cannot be currently collected pursuant to the salary offset provisions of 5 U.S.C. 5514(a)(1);
- (v) 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 Department against amounts payable to or on behalf of the debtor by or on behalf of the Department;
- (vi) Has been disclosed by the Department to a consumer reporting agency as authorized by 31 U.S.C. 3711(f), unless a consumer reporting agency would be prohibited from using such information by 15 U.S.C. 1681c, or unless the amount of the debt does not exceed \$100.00; and

(2) A debt for which the Department has:

- (i) Notified or has made reasonable attempt to notify the taxpayer that the debt is past-due and, that the debt, unless repaid within 60 days thereafter, will be referred to the IRS for offset against any overpayment of tax;
- (ii) Given the debtor at least 60 days from the date of notification to present information that all or part of the debt is not past-due or legally enforceable, has considered information presented by such debtor, and has determined that an amount of debt is past-due and legally enforceable;

§ 89.39 Administrative charges.

In accordance with 4 CFR 102.13, all administrative charges incurred in connection with the referral of the debt to the IRS shall be added to the debt and thus increase the amount of the offset.

§ 89.41 Notice requirement before offset.

A request for offset from an IRS tax refund will be made only after the Department has made a determination that an amount is owed and past-due and provides the debtor with 60 days written notice. The Department's no-

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tice of intention to collect by IRS tax refund offset (Notice of Intent) includes:

- (a) The amount of the debt;
- (b) That unless the debt is repaid within 60 days from the date of the Department's Notice of Intent, the Department will refer the debt to the IRS for offset against any amount due the debtor as a tax refund;
- (c) That the debtor has a right to present information that all or part of the debt is not past-due or legally enforceable; and
- (d) A mailing address for forwarding any written correspondence and a contact name and telephone number for any questions.

§ 89.43 Review within the Department.

(a) *Notification by debtor.* A debtor who receives a Notice of Intent may present, for 60 days from the date of the Notice of Intent, information that all or part of the debt is not past-due or legally enforceable. (However, this does not extend the regulatory period for submitting written statements or for requesting an administrative hearing on the merits of an alleged violation, nor does it extend the period to appeal an assessed civil penalty.) To comply with this procedure, the debtor must:

- (1) Send a written request for a review of the information to the address provided in the notice.
- (2) State in the request the amount disputed and the reasons why the debtor believes that the debt is not past-due or legally enforceable.
- (3) Include in the request any documents which the debtor wishes to be considered or state that additional information will be submitted within the remainder of the 60 day period.

(b) *Submission of information.* The debtor may submit information showing that all or part of the debt is not past-due or not legally enforceable along with the notification required by paragraph (a) of this section. Failure to submit the information within the remainder of the 60 day period will be interpreted as there is no additional information for consideration.

(c) *Review of the information.* The Department considers all available information related to the issue of whether