

## Federal Housing Enterprise Oversight

## § 1704.44

the debtor may have under any statute, regulation, or contract, except as otherwise provided by law or contract.

§§ 1704.34–1704.39 [Reserved]

### Subpart C—Administrative Offset

#### § 1704.40 Authority and scope.

OFHEO may collect a debt owed to the Federal Government from a person, organization, or other entity by administrative offset, pursuant to 31 U.S.C. 3716, where:

- (a) The debt is certain in amount;
- (b) Administrative offset is feasible, desirable, and not otherwise prohibited;
- (c) The applicable statute of limitations has not expired; and
- (d) Administrative offset is in the best interest of the Federal Government.

#### § 1704.41 Administrative offset prior to completion of procedures.

Prior to the completion of the procedures described in §1704.42, OFHEO may effect administrative offset if failure to offset would substantially prejudice its ability to collect the debt, and if the time before the payment is to be made does not reasonably permit completion of the procedures described in §1704.42. Such prior administrative offset shall be followed promptly by the completion of the procedures described in §1704.42.

[64 FR 34969, June 30, 1999. Redesignated and amended at 65 FR 81328, Dec. 26, 2000]

#### § 1704.42 Procedures.

Unless the procedures described in §1704.41 are used, prior to collecting any debt by administrative offset or referring such claim to another agency for collection through administrative offset, OFHEO shall provide the debtor with the following:

- (a) Written notification of the nature and amount of the debt, the intention of OFHEO to collect the debt through administrative offset, and a statement of the rights of the debtor under this section;
- (b) An opportunity to inspect and copy the records of OFHEO related to the debt that are not exempt from disclosure;

(c) An opportunity for review within OFHEO of the determination of indebtedness. Any request for review by the debtor shall be in writing and shall be submitted to OFHEO within 30 calendar days of the date of the notice of the offset. OFHEO may waive the time limits for requesting review for good cause shown by the debtor. OFHEO shall provide the debtor with a reasonable opportunity for an oral hearing when:

(1) An applicable statute authorizes or requires OFHEO to consider waiver of the indebtedness involved, the debtor requests waiver of the indebtedness, and the waiver determination turns on an issue of credibility or veracity; or

(2) The debtor requests reconsideration of the debt and OFHEO determines that the question of the indebtedness cannot be resolved by review of the documentary evidence, as for example, when the validity of the debt turns on an issue of credibility or veracity. Unless otherwise required by law, an oral hearing under this subpart C is not required to be a formal evidentiary hearing, although OFHEO shall document all significant matters discussed at the hearing. In those cases where an oral hearing is not required by this subpart C, OFHEO shall make its determination on the request for waiver or reconsideration based upon a review of the written record; and

(d) An opportunity to enter into a written agreement for the repayment of the amount of the claim at the discretion of OFHEO.

[64 FR 34969, June 30, 1999. Redesignated and amended at 65 FR 81328, Dec. 26, 2000]

#### § 1704.43 Interest.

OFHEO shall assess interest, penalties, and administrative costs on debts owed to the Federal Government, in accordance with 31 U.S.C. 3717 and the FCCS. OFHEO may also assess interest and related charges on debts that are not subject to 31 U.S.C. 3717 and the FCCS to the extent authorized under the common law or other applicable statutory authority.

#### § 1704.44 Refunds.

OFHEO shall refund promptly those amounts recovered by administrative

**§ 1704.45**

offset but later found not to be owed to the Federal Government.

**§ 1704.45 Requests for administrative offset to other Federal agencies.**

(a) OFHEO may request that a debt owed to OFHEO be collected by administrative offset against funds due and payable to a debtor by another agency.

(b) In requesting administrative offset, OFHEO, as creditor, shall certify in writing to the agency holding funds of the debtor:

- (1) That the debtor owes the debt;
- (2) The amount and basis of the debt; and
- (3) That OFHEO has complied with the requirements of its own administrative offset regulations and the applicable provisions of the FCCS with respect to providing the debtor with due process.

**§ 1704.46 Requests for administrative offset from other Federal agencies.**

(a) Any agency may request that funds due and payable to a debtor by OFHEO be administratively offset in order to collect a debt owed to such agency by the debtor.

(b) OFHEO shall initiate the requested administrative offset only upon:

- (1) Receipt of written certification from the creditor agency that:
  - (i) The debtor owes the debt, including the amount and basis of the debt;
  - (ii) The agency has prescribed regulations for the exercise of administrative offset; and
  - (iii) The agency has complied with its own administrative offset regulations and with the applicable provisions of the FCCS, including providing any required hearing or review.

(2) A determination by OFHEO that collection by administrative offset against funds payable by OFHEO would be in the best interest of the Federal Government as determined by the facts and circumstances of the particular case and that such administrative offset would not otherwise be contrary to law.

**12 CFR Ch. XVII (1-1-04 Edition)**

**§ 1704.47 Administrative offset against amounts payable from Civil Service Retirement and Disability Fund.**

(a) *Request for administrative offset.* Unless otherwise prohibited by law, OFHEO may request that monies that are due and payable to a debtor from the Civil Service Retirement and Disability Fund (Fund) be offset administratively in reasonable amounts in order to collect in one full payment or in a minimal number of payments debt owed to OFHEO by the debtor. Such requests shall be made to the appropriate officials of the Office of Personnel Management in accordance with such regulations as may be prescribed by the Director of the Office of Personnel Management.

(b) *Contents of certification.* When making a request for administrative offset under paragraph (a) of this section, OFHEO shall include a written certification that:

- (1) The debtor owes OFHEO a debt, including the amount of the debt;
- (2) OFHEO has complied with the applicable statutes, regulations, and procedures of the Office of Personnel Management; and
- (3) OFHEO has complied with the requirements of the FCCS, including any required hearing or review.

(c) If OFHEO decides to request administrative offset under paragraph (a) of this section, it shall make the request as soon as practicable after completion of the applicable procedures. This will satisfy any requirement that administrative offset be initiated prior to the expiration of the applicable statute of limitations. At such time as the debtor makes a claim for payments from the Fund, if at least one year has elapsed since the administrative offset request was originally made, the debtor shall be permitted to offer a satisfactory repayment plan in lieu of administrative offset if he or she establishes that changed financial circumstances would render the administrative offset unjust.

(d) If OFHEO collects part or all of the debt by other means before deductions are made or completed pursuant to paragraph (a) of this section, OFHEO shall act promptly to modify