§ 102.175

A reasonable attempt to notify the debtor that:

(1) The debt is past-due;

(2) Unless the debt is repaid or a satisfactory repayment agreement is estabished within 60 days thereafter, the debt will be referred to IRS for offset from any overpayment of tax remaining after taxpayer liabilities of greater priority have been satisfied; and

(3) The debtor will have a minimum of 60 days from the date of notification to present evidence that all or part of the debt is not past due or legally enforceable, and the Agency will consider this evidence in a review of its determination that the debt is past due and legally enforceable. The debtor will be advised where and to whom evidence is to be submitted.

(c) The Agency will make a reasonable attempt to notify the debtor by using the most recent address information available to the Agency or obtained from the IRS, unless written notification to the Agency is received from the debtor stating that notices from the Agency are to be sent to a different address.

(d) The notification required by paragraph (b) of this section and sent to the address specified in paragraph (c) of this section may, at the option of the Agency, be incorporated into demand letters required by paragraph (a) of this section.

§ 102.175 Agency review of the obligation.

(a) The Agency official responsible for collection of the debt will consider any evidence submitted by the debtor as a result of the notification required by §102.174 and notify the debtor of the result. If appropriate, the debtor will also be advised where and to whom to request a review of any unresolved dispute.

(b) The debtor will be granted 30 days from the date of the notification required by paragraph (a) of this section to request a review of the determination of the Agency official responsible for collection of the debt on any unresolved dispute. The debtor will be advised of the result.

§ 102.176 Prior provision of rights with respect to debt.

To the extent that the rights of the debtor in relation to the same debt have been previously provided under some other statutory or regulatory authority, including administrative offset procedures set forth in subpart U, the Agency is not required to duplicate those efforts before referring a debt for tax refund offset.

Subpart W—Misconduct by Attorneys or Party Representatives

§ 102.177 Exclusion from hearings; Refusal of witness to answer questions; Misconduct by attorneys and party representatives before the Agency; Procedures for processing misconduct allegations.

(a) Any attorney or other representative appearing or practicing before the Agency shall conform to the standards of ethical and professional conduct required of practitioners before the courts, and the Agency will be guided by those standards in interpreting and applying the provisions of this section.

(b) Misconduct by any person at any hearing before an administrative law judge, hearing officer, or the Board shall be grounds for suspension and/or
disbarment from practice before the Agency and/or other sanctions.

(e) All allegations of misconduct pursuant to paragraph (d) of this section, except for those involving the conduct of Agency employees, shall be handled in accordance with the following procedures:

(1) Allegations that an attorney or party representative has engaged in misconduct may be brought to the attention of the Investigating Officer by any person. The Investigating Officer, for purposes of this paragraph, shall be the Associate General Counsel, Division of Operations-Management, or his/her designee.

(2) The Investigating Officer or his/her designee shall conduct such investigation as he/she deems appropriate and shall have the usual powers of investigation provided in Section 11 of the Act. Following the investigation, the Investigating Officer shall make a recommendation to the General Counsel, who shall make the determination whether to institute disciplinary proceedings against the attorney or party representative. The General Counsel’s authority to make this determination shall not be delegable to the Regional Director or other personnel in the Regional Office. If the General Counsel determines not to institute disciplinary proceedings, all interested persons shall be notified of the determination, which shall be final.

(3) If the General Counsel decides to institute disciplinary proceedings against the attorney or party representative, the General Counsel or his/her designee shall serve the Respondent with a complaint which shall include: a statement of the acts which are claimed to constitute misconduct including the approximate date and place of such acts together with a statement of the discipline recommended; notification of the right to a hearing before an administrative law judge with respect to any material issues of fact or mitigation; and an explanation of the method by which a hearing may be requested. Such a complaint shall not be issued until the Respondent has been notified of the allegations in writing and has been afforded a reasonable opportunity to respond.

(4) Within 14 days of service of the disciplinary complaint, the respondent shall file an answer admitting or denying the allegations, and may request a hearing. If no answer is filed or no material issue of fact or relevant to mitigation warranting a hearing is raised, the matter may be submitted directly to the Board. If no answer is filed, then the allegations shall be deemed admitted.

(5) Sections 102.24 through 102.51, rules applicable to unfair labor practice proceedings, shall be applicable to disciplinary proceedings under this section to the extent that they are not contrary to the provisions of this section.

(6) The hearing shall be conducted at a reasonable time, date, and place. In setting the hearing date, the administrative law judge shall give due regard to the respondent’s need for time to prepare an adequate defense and the need of the Agency and the respondent for an expeditious resolution of the allegations.

(7) The hearing shall be public unless otherwise ordered by the Board or the administrative law judge.

(8) Any person bringing allegations of misconduct or filing a petition for disciplinary proceedings against an attorney or party representative shall be given notice of the scheduled hearing. Any such person shall not be a party to the disciplinary proceeding, however, and shall not be afforded the rights of a party to call, examine or cross-examine witnesses and introduce evidence at the hearing, to file exceptions to the administrative law judge’s decision, or to appeal the Board’s decision.

(9) The respondent will, upon request, be provided with an opportunity to read the transcript or listen to a recording of the hearing.

(10) The General Counsel must establish the alleged misconduct by a preponderance of the evidence.

(11) At any stage of the proceeding prior to hearing, the respondent may submit a settlement proposal to the General Counsel, who may approve the settlement or elect to continue with the proceedings. Any formal settlement reached between the General Counsel and the respondent, providing for entry of a Board order
reprimanding, suspending, disbar[ing]
or taking other disciplinary action
against the respondent, shall be subject
to final approval by the Board. In the
event any settlement, formal or infor-
mal, is reached after opening of the
hearing, such settlement must be sub-
mitted to the administrative law judge
for approval. In the event the adminis-
trative law judge rejects the settle-
ment, either the General Counsel or
the respondent may appeal such ruling
to the Board as provided in §102.26.
(12) If it is found that the respondent
has engaged in misconduct in violation
of paragraph (d) of this section, the
Board may issue a final order imposing
such disciplinary sanctions as it deems
appropriate, including, where the mis-
conduct is of an aggravated character,
suspension and/or disbarment from
practice before the Agency, and/or
other sanctions.
(1) Any person found to have engaged
in misconduct warranting disciplinary
sanctions under paragraph (d) of this
section may seek judicial review of the
administrative determination.

[61 FR 65331, Dec. 12, 1996]

Subpart X—Special Procedures
When the Board Lacks a Quorum

SOURCE: 76 FR 77700, Dec. 14, 2011, unless
otherwise noted.

§ 102.178 Normal operations should
continue.

The policy of the National Labor Rel-
lations Board is that during any period
when the Board lacks a quorum normal
Agency operations should continue to
the greatest extent permitted by law.

§ 102.179 Motions for default judg-
ment, summary judgment, or dis-
missal referred to Chief Administra-
tive Law Judge.

During any period when the Board
lacks a quorum, all motions for default
judgment, summary judgment, or dis-
m issal filed or pending pursuant to
§102.50 of this part shall be referred to
the Chief Administrative Law Judge in
Washington, DC, for ruling. Such rul-
ings by the Chief Administrative Law Judge, and orders in con-
nection therewith, shall not be ap-
pealed directly to the Board, but shall
be considered by the Board in review-
ing the record if exception to the rul-
ing or order is included in the state-
ment of exceptions filed with the Board
pursuant to §102.46.

§ 102.180 Requests for special permis-
sion to appeal referred to Chief Ad-
ninistrative Law Judge.

During any period when the Board
lacks a quorum, any request for special
permission to appeal filed or pending
pursuant to §102.26 of this part shall be
referred to the Chief Administrative
Law Judge in Washington, DC, for rul-
ing. Such rulings by the Chief Adminis-
trative Law Judge, and orders in con-
nection therewith, shall not be ap-
pealed directly to the Board, but shall
be considered by the Board in review-
ing the record if exception to the rul-
ing or order is included in the state-
ment of exceptions filed with the Board
pursuant to §102.46.

§ 102.181 Administrative and proce-
dural requests referred to Execu-
tive Secretary.

During any period when the Board
lacks a quorum, administrative and
proc edural requests that would nor-
mal ly be filed with the Office of the
Executive Secretary for decision by the
Board prior to the filing of a request
for review under §102.67 of this part, or
exceptions under §§102.46 and 102.69 of
this part, shall be referred to the Exec-
tutive Secretary for ruling. Such rul-
ings by the Executive Secretary, and
orders in connection therewith, shall
not be appealed directly to the Board,
but shall be considered by the Board if
such matters are raised by a party in
its request for review or exceptions.

§ 102.182 Representation cases should
be processed to certification.

During any period when the Board
lacks a quorum, the second proviso of
§102.67(b) regarding the automatic im-
bounding of ballots shall be suspended.
To the extent practicable, all represen-
tation cases should continue to be
processed and the appropriate certifi-
cation should be issued by the Regional
Director notwithstanding the pendency