

**§ 11.37**

(c) An audited balance sheet of a corporate debtor.

The file should also contain a checklist or brief summary of action taken to collect or compromise a debt. All debts files relating to debts owed by individuals are to be safeguarded in accordance with 5 U.S.C. 552a, popularly known as the "Privacy Act of 1974"; 31 U.S.C. 3711 *et seq.*, popularly known as the "Debt Collection Act of 1982"; 44 CFR part 6 and this subpart. Each DCO is responsible for maintaining files on debtors with information sufficient to enable the Government to effectuate administrative or judicial collection.

(Approved by the Office of Management and Budget under control number 3067-0122)

**§ 11.37 [Reserved]**

**§ 11.38 Annual reports to the Director, Office of Management and Budget, and the Secretary of the Treasury.**

(a) The ACO shall gather data on loans, accounts receivable, and debts which are required by 31 U.S.C. 3719 and shall transmit them to the Director, Federal Emergency Management Agency. Such data shall include:

(1) The total amount of loans and accounts receivable owed to the Agency and when the funds owed to the Agency are due to be repaid;

(2) The total amount of receivables and number of debts that are at least thirty days past due;

(3) Total amount written off as uncollectable, actual, and allowed for;

(4) The rate of interest charged for overdue debts and the amount of interest charged and collected on debts;

(5) The total number of debts and total amount collected;

(6) The number of debts and the total amount of debts referred to the Department of Justice for settlement or collection and the total number of debts and the total amount of debts settled or collected by that Department;

(7) For each program or activity administered by the Agency, the data described in paragraphs (a) (1) through (6) of this section; and

(8) Such other data as the Director, Office of Management and Budget, shall prescribe by regulations issued under authority of 31 U.S.C. 3719.

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(b) Data described in paragraph (a) of this section shall be collected on a calendar year basis and transmitted to the Director, FEMA not later than the end of January of the year following the year for which the data described in paragraph (a) of this section, were collected. The Director, FEMA, shall report these data to the Secretary of the Treasury and the Director, Office of Management and Budget in accordance with 31 U.S.C. 3719. If the Secretary of the Treasury and the Director, Office of Management and Budget prescribe, by regulation, a different annual reporting cycle, the Agency's reporting cycle, described in the first sentence of this subsection shall be changed to conform with the cycle prescribed by the Department of the Treasury and Office of Management and Budget regulation.

**§ 11.40 Records retention.**

The file of each debt on which administrative collection action has been completed shall be retained by the appropriate officer not less than 1 year after the applicable statute of limitations has run.

**§ 11.41 Suspension or revocation of eligibility.**

(a) Where a contractor, grantee, or other participant in programs sponsored by the Agency fails to pay his debts to the Agency within a reasonable time after demand, the fact shall be reported by the ACO to the Inspector General and to the Office of Acquisition Management, which shall place such defaulting participant's name on the Agency's list of debarred, suspended and ineligible contractors and grantees. The participant will be so advised. Suspension or revocation of eligibility may be waived in whole or in part in the case of grants for disaster programs administered by FEMA, if the Director FEMA, so directs.

(b) The failure of any surety to honor its obligations in accordance with 6 U.S.C. 11 is to be reported at once to the ACO, who shall so advise the Treasury Department. That Department will notify this Agency when a surety's certificate of authority to do business with the Government has been revoked or forfeited.

(c) Failure by a recipient of FEMA financial or nonfinancial assistance to pay a substantial debt or a number of outstanding debts being collected under this subpart may be ground for Government-wide debarment and suspension as described in 44 CFR 17.305(c)(3).

[49 FR 38267, Sept. 28, 1984, as amended at 57 FR 54715, Nov. 20, 1992]

**§ 11.42 Demand for payment of debts.**

(a) *Initial demand.* An initial demand shall be made in writing and sent by certified mail, return receipt requested, or delivered by hand to the debtor identifying the debt and advising that the full amount due should be paid by a specified date, not less than 30 days from the date of mailing or the hand delivery. If the debtor is other than a State or local government or an agency of the United States, the initial demand notice shall also advise the debtor that interest, calculated at rates provided by 31 U.S.C. 3717(a), shall be assessed if the debt is not paid in full by the due date. Interest shall be charged on the outstanding balance due at the rate prescribed by the Secretary of the Treasury in accordance with 31 U.S.C. 3717(a), beginning on the date that the first notice was mailed to the debtor. The debtor shall also be advised that if any portion of the debt remains unpaid for 90 days after the due date, without a repayment schedule satisfactory to the Agency being arranged, then additional penalties, as described in 31 U.S.C. 3717(e)(2), of 6 percent per year shall be charged on the unpaid balance of principal and interest.

(b) *Subsequent demands.* If the debt is not paid by the due date or if a repayment program acceptable to the ACO, has not been arranged with the debtor, then an initial demand shall be made followed by two progressively stronger written demands at not more than 30-day intervals, will be made unless a response to the initial or subsequent demands indicates that further demands would be futile and that the debtor's response does not require rebuttal.

(c) *Debts arising from contracts executed on or before October 25, 1982.* If the claim arises from a contract executed before October 25, 1982, then the initial

and subsequent demands shall mention nothing about the imposition of penalties or interest, prior to rendering of judgment by a court of competent jurisdiction.

(d) *Waiver of subsequent written demands.* If there is valid reason, the sending of second and third demand letters may be waived. Such reasons may include, but are not be limited to, statute of limitations being about to run.

[49 FR 38267, Sept. 28, 1984, as amended at 53 FR 47211, Nov. 22, 1988; 57 FR 54715, Nov. 20, 1992]

**§ 11.43 Collection by administrative offset.**

(a) *General.* The Agency Collections Officer (ACO) or the ACO's designee may collect debts owed to the United States by means of offsets against monies due from the United States under provisions of 31 U.S.C. 3716 and the procedures set forth below. Under provisions of 31 U.S.C. 3716(h)(1) and reciprocal agreements entered into by the Secretary of the Treasury and the States concerned, the ACO or the ACO's designee may institute administrative offsets covered in this section to collect debts that are owed to States and which arise under programs administered by FEMA. The procedures prescribed by this section shall not be used if the debtor has executed a written agreement satisfactory to the ACO or the ACO's designee for the payment of the debt so long as the debtor adheres to the provisions of the agreement. Before using the procedures of this section, the ACO or the ACO's designee shall examine the debt to determine whether the likelihood of collecting such a debt and the best interests of the United States justify the use of administrative offset. If the debt is over 6 years old but is not 10 years old, the ACO or the ACO's designee shall examine the debt and decide whether using these procedures is cost effective. Further, FEMA shall not use administrative offset procedures on debts existing for more than 10 years after the Government's right to collect the debt first accrued unless facts material to the Government's right to collect the debt were not known and could not have been known by the officials of