

(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

the Government who were charged with responsibility to discover and collect the debt. FEMA may refer debts to the Department of the Treasury for Government-wide administrative offset under the provisions of 31 U.S.C. 3716(c) and for offsets against Federal tax refunds under provisions of 31 U.S.C. 3720A.

(b) *Written notice.* After the ACO or the ACO's designee has examined the debt under procedures set forth in paragraph (a) of this section, FEMA shall hand deliver or send by mail a notice to the debtor advising the debtor of:

(1) Nature and amount of the debt determined by the Agency to be due, and of intention to collect by administrative offset;

(2) Rights available under this section;

(3) Opportunity to inspect and copy the records relating to the debt;

(4) Opportunity for review within the Agency with respect to the debt; and

(5) Opportunity to enter into an agreement with the ACO with respect to the debt. Such agreement may include voluntary but nonrevocable withholding of monies due from the United States to the debtor.

(c) *Review within the Federal Emergency Management Agency.* The debtor may request, within sixty calendar days after mailing or hand-delivery of the written notice specified in paragraph (b) of this section, review within the Agency as to the existence or amount of the debt or terms of repayment. An attorney in the Office of General Counsel, acting as an Administrative Review Official (ARO), shall conduct the review. The ARO may determine that no debt is due, that the amount of the debts should be reduced, that terms of repayment should be set, or that the demanded amount should be paid in full.

(1) If the debtor has made a timely request for a review within the Agency, then FEMA shall stay any offsets until the ARO has rendered a decision. However, interest, penalties and administrative charges, as specified in § 11.48, shall continue to accrue during the pendency of the review within the Agency. If the debtor files a request for a review within the Agency after the 60

days specified above, then FEMA shall continue with the offset action. However, if the ARO finds that the debtor owes less than the amount offset, then FEMA will refund the amount over-withheld. For purposes of determining whether the debtor has filed a timely request for administrative review, the date of FEMA's receipt of the debtor's request establishes the time of filing.

(2) The ARO shall transmit the decision on the debtor's request for review within the Agency. The ARO may contact the debtor directly to request additional information and data in order to allow the ARO to reach a knowledgeable decision. The ARO's decision shall be final insofar as FEMA's administrative processing of the debt is concerned.

(3) FEMA shall use procedures in this section to decide debtors' requests for review within FEMA under the provisions of § 11.64(d).

(d) If the debtor does not execute a written agreement, if the debtor does not request review within the Agency, or if the review within the Agency determines that a debt is due, then FEMA shall use administrative offset against monies payable by the United States in accordance with this section and appropriate regulations. However, if a statute or FEMA agreement either prohibits or explicitly provides for collection through administrative offset for the debt or the type of debt involved then the provisions of that statute or FEMA agreement rather than the provisions of this section shall be used for such offset.

(e) If the debtor has a judgment against the United States, then notice shall be provided to the General Accounting Office for offset in accordance with 31 U.S.C. 3728.

(f) In addition to administrative offset remedies described above, FEMA may use its rights to collect debts by offsets conducted under principles of common law.

(g) The debtor's failure to receive notice, described in paragraph (b) of this section, mailed by FEMA to the debtor's last-known address, shall not impair the validity of offsets taken under this section.

(h) If FEMA or any other Federal department or agency incurs costs in

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taking offsets to collect delinquent debts, then the debtor shall be liable for such costs as administrative costs in accordance with section 11.48(d).

[63 FR 1066, Jan. 8, 1998]

### § 11.44 [Reserved]

### § 11.45 Collection by salary offset.

(a) *General.* Where an individual is an employee of the Federal Government or a member of the Armed Forces or a reserve component of the Armed Forces or is receiving retired or re-tainer pay for service as a Federal employee and where the individual is indebted to the United States and where the individual fails to satisfy his indebtedness voluntarily after the Agency has made demands in accordance with § 11.42 of this part, the ACO may institute collection action by salary or pay offset procedures in accordance with 5 U.S.C. 5514, 5 CFR 550.1101 through 550.1106, 5 CFR part 845, 5 CFR 831.1301 et seq., and the procedures described below.

(b) *Notice to debtor.* At least 30 days prior to initiating salary offset, the ACO or his designee shall send notice by certified mail, return receipt requested, to the debtor advising him of:

(1) Nature, origin and amount of indebtedness determined by the Agency to be due, the date that the debt was due, and a statement that FEMA has complied with applicable statutes, regulations and procedures,

(2) Agency intention to initiate proceedings to collect the debt by deductions from pay,

(3) Rights available under 5 U.S.C. 5514(a),

(4) Debtor's opportunity to inspect and copy Government records relating to the debt,

(5) Opportunity to enter into a written agreement, under terms satisfactory to the ACO, to establish terms for the repayment of the debt, and

(6) Opportunity for a hearing, described in paragraph (c) of this section, concerning the existence or the amount of the debt or, if no repayment schedule has been established (in accordance with paragraph (b)(1) of this section) concerning the terms of the repayment schedule,

(7) If there is a statutory provision authorizing waiver, remission, or forgiveness of the debt due the United States; the individual will be notified as to:

(i) Nature of the provision,

(ii) Explanation of the conditions under which the waiver shall be granted,

(iii) Reasonable opportunity to request a waiver,

(iv) If waiver is requested, then a written response will be given to the request.

(c) *Hearing.* The debtor shall file a written petition for hearing or for a waiver (if applicable) on or before the twentieth calendar day after receipt of notice, referred to in paragraph (b) of this section, addressed to the Agency Collections Officer, Federal Emergency Management Agency, Washington, DC 20472. The postmark or receipt date, if mail is not used, shall establish the date of petition.

(1) The hearing official shall be an Administrative Law Judge or a person of grade GS/GM-14 or higher, not under the supervision or control of the Director, FEMA. The Director may enter into interagency support agreements with other Federal agencies or departments for providing hearing officials.

(2) The hearing shall be informal but the debtor shall be given the basic safeguards of due process. The debtor shall have the right to be represented by an attorney. A summary record shall be made of the proceedings at the hearing. The hearing shall, insofar as possible, be conducted at a location and time convenient to the debtor.

(3) As soon as practicable, but in no event later than 60 days after the filing of the petition for hearing, the hearing official shall render a final decision. If a hearing is requested, no further action shall be taken to collect the debt until the final decision is rendered.

(d) *Amount deducted.* The amount deducted from pay for any period shall not exceed 15 percent of disposable pay. However, the debtor may voluntarily agree to the deduction of a greater amount of pay. Disposable pay means that part of pay of any individual remaining after the deduction from those earnings of any amounts required