

Federal Emergency Management Agency, DHS

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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

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by law to be withheld. However, installment payments of less than \$25.00 will be accepted only in the most unusual circumstances. Disposable pay is defined in 5 CFR 550.1103 and 5 CFR 581.105(b) through (f).

(e) Procedural requirements specified in paragraph (c) of this section shall not be used in cases of collections of such obligations as changes in coverage under a Federal benefits program or resulting from ministerial adjustments pay and allowances which cannot be placed in effect immediately because of normal processing delays.

(f) When an employee, who is subject to salary offset in accordance with this section and who is making repayment in installments, finds that total repayment of the debt is about to be made, then the employee must notify the employee's payroll office, at least two pay periods before the final payment, that final payment is being made.

(g) Debts arising from travel advances provided under 5 U.S.C. 5705 and for travel and transportation expenses for transferred employees under 5 U.S.C. 5724 may be collected by taking offsets in accordance with 44 CFR 11.43.

[49 FR 38267, Sept. 28, 1984, as amended at 50 FR 40007, Oct. 1, 1985; 57 FR 54715, Nov. 20, 1992]

§ 11.46 Liquidation of collateral.

Where FEMA holds security or collateral that may be liquidated and the proceeds applied on debts due it through the exercise of a power of sale in the security instrument or a non-judicial foreclosure, such procedures should be followed if the debtor fails to pay his debt within a reasonable time after demand, unless the cost of disposing of the collateral will be disproportionate to its value or special circumstances require judicial foreclosure.

§ 11.47 Collection in installments.

Debts with accrued interest and penalties should be collected in full in one lump sum whenever this is possible. However, if the debtor is financially unable to pay the indebtedness in one lump sum, payment with applicable interest may be accepted in regular installments in accordance with a writ-

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ten agreement approved by the ACO or his designee. If possible, installment payments shall be sufficiently large to complete collection in the three years. Installment payments should not be less than \$50.00 per month unless there are most unusual circumstances. The Agency may require the debtor to execute a confess-judgment, negotiable note for the amount of the indebtedness. The ACO or DCO may require the debtor to provide a statement as to financial condition.

§ 11.48 Interest, penalties, and administrative charges.

(a) *Definition.* In §§ 11.30 through 11.65 of this part, a debt is deemed to be delinquent if the debtor has not paid the debt by the collection due date and if the debtor has not entered into a repayment agreement satisfactory to FEMA. A debt is also deemed delinquent if the debtor has not made payment by the date specified in the applicable agreement.

(b) *Interest.* FEMA's delinquent debtors shall be charged interest on the outstanding principal balance due on debts owed the United States at the rate published by the Secretary of the Treasury under provisions of 31 U.S.C. 3717(a). The interest rate in effect at the time that FEMA first mailed or hand delivered to the debtor written notice, stating that the debt was due and that interest would be assessed on the debt, shall be the rate applied throughout the duration of the debt until the debt is paid in full.

(1) However, if the debtor defaults on a debt repayment agreement made with the ACO or the ACO's designee, then interest shall accrue at the rate published by the Secretary of the Treasury under the provisions of 31 U.S.C. 3717(a)(1) that was in effect when the debtor defaulted on the repayment agreement. Interest shall accrue either from the date that FEMA first informed the debtor that the Agency would assess interest on the debt or some subsequent date specified in the written notice given by FEMA to the debtor stating that interest would be assessed.

(2) However, where FEMA first sent the notice of indebtedness prior to October 25, 1982, interest shall run from