

memorandum describing the circumstances and stating the reasons for the grant of a waiver or suspension.

(j) *Accrual of interest and penalty.* Interest and penalty will accrue on delinquent FEMA debts until FEMA receives payment at the address designated by the ACO or the ACO's designee.

[63 FR 1067, Jan. 8, 1998]

§ 11.49 Omission not a defense.

Failure to comply with any standard prescribed in 4 CFR chapter 11, or in this subpart shall not be available as a defense to any debtor.

§ 11.50 Standards for compromise of debts.

(a) *Compromise.* (1) A debt may be compromised if:

(i) The debtor is not able to pay the full amount within a reasonable period of time;

(ii) If the debtor refuses to pay the debt in full and the Agency is unable to enforce collection within a reasonable time by enforced collection proceeding;

(iii) If there is real doubt concerning the Agency's ability to prove its case in court for the full amount claimed;

(iv) If the cost of collecting the debt does not justify the enforced collection of the full amount;

(v) If, in connection with statutory penalties or forfeitures established as an aid to enforcement and to compel compliance, the Agency's enforcement policy will be adequately served by acceptance of the sum to be agreed upon; or

(vi) For other reasons deemed valid by the ACO after consultation with the General Counsel. The Standards set forth in 4 CFR 103.3 through 103.9 should be used.

(2) *Inability to pay.* If a debtor is unable to pay the full amount of the debt within a reasonable time or if the debtor refuses to pay and the Government is unable to collect the amount of the debt through enforcement proceedings then the Agency may compromise the claim either in whole or in part. The ACO may require that the debtor provide sworn information as to assets, actual or potential sources of income, liabilities and other financial data. The standards set forth in the GAO, Depart-

ment of Justice guidelines prescribed in 4 CFR 103.2 should be used.

(3) Compromises payable in installments will not normally be permitted by the Agency only if the debtor shows that full, immediate payment is impossible.

(4) *Litigative probabilities.* If there is a *bona fide* dispute as to facts or if there is a valid legal defense raised which may limit or eliminate the possibility of recovery, then the Agency Collections Officer may, after receiving a legal analysis from the General Counsel, compromise the action in whole or in part.

(b) *Documentary evidence of compromise.* No compromise of a debt shall be final or binding on the Agency unless it is in writing and signed by the appropriate officer who has authority to compromise the claim pursuant to this subpart.

(c) *Authority.* Only the ACO may compromise debts of more than \$2,500. Debts of \$2,500 or less may be compromised by the ACO or the DCO. Debts exceeding \$100,000 or such other limit prescribed by the Attorney General in accordance with 31 U.S.C. 3711(a)(2) may be compromised only after approval by the Department of Justice in accordance with 4 CFR 103.1(b).

[49 FR 38267, Sept. 28, 1984, as amended at 53 FR 47212, Nov. 22, 1988; 57 FR 54715, Nov. 20, 1992]

§ 11.51 Standards for suspension or termination of collection.

(a) *Suspension of collection action.* (1) Collection action shall be suspended temporarily on a debt when the debtor cannot be located after diligent effort but there is reason to believe that future collection action may be sufficiently productive to justify periodic review and action on the claim, making consideration for its size and the amount which may be realized. Collection action may be suspended temporarily on a debt when the debtor owns no substantial equity in realty and is presently unable to make payment on the Agency's debt or effect a compromise, but his future prospects justify retention of the claim for periodic review and action, and, (i) the applicable statute of limitations has been

tolled or started anew, or (ii) future collection can be effected by offset notwithstanding the statute of limitations. Suspension as to a particular debtor should not defer the early liquidation of security for the debt. Standards prescribed in 4 CFR part 104 shall be used in making determinations as to suspension as termination of collection efforts.

(2) *No substantial recovery possible.* If, at the time that collection is attempted, debtor is without assets or actual or potential income or if the debtor may have exemptions under the bankruptcy laws which make enforced collection of the debt not cost-effective, then collection action may be suspended. However, interest and other charges will accumulate unless waived.

(3) *Debtor cannot be located.* If the debtor cannot be located or is outside the United States, then collection action may be suspended until the debtor is located. The statute of limitations will be tolled during those periods that the debtor is outside the United States.

(b) *Termination of collection action.* (1) Collection action may be terminated and the Agency file closed for the following reasons: (i) No substantial amount can be collected; (ii) the debtor cannot be located; (iii) the cost will exceed recovery; (iv) the claim is legally without merit; or (v) the claim cannot be substantiated by evidence.

(2) *No substantial recovery possible.* If there is little likelihood that collection efforts will result in any substantial recovery, then collection efforts may be terminated. Costs of recovery may be a factor in determining whether any recovery would be substantial. Normally, costs of recovery would be more important in cases of small debts than in cases of large ones.

(3) *Debtor cannot be located.* Every effort, including, but not limited to, use of governmental records, Internal Revenue Service taxpayer information, private contractor skip tracer and credit agencies, shall be made to locate debtors in advance of the running of the statute of limitations. If the debtor cannot be located, then the Agency Collections Officer may determine, with the concurrence of the General Counsel, that collection efforts may be terminated.

(4) *Litigative possibilities.* The criteria and procedures of § 11.50(a)(4) of this subpart may be used to terminate collection efforts if it appears unlikely that the Government would prevail if it were to litigate collection of the debt.

(c) *Debts exceeding \$100,000.* Debts exceeding \$100,000 or higher limits prescribed by the Attorney General in accordance with 31 U.S.C. 3711(a)(2) (exclusive of interest, penalty charges and administrative charges) shall not be compromised by FEMA unless the proposed compromise has been referred for approval by the Department of Justice in accordance with 4 CFR 104.1(b). Such proposed compromises shall be referred to the Office of General Counsel, which shall review the proposal before being forwarded to the Department of Justice. However, where a debt claim is of no legal merit, the ACO may compromise such a debt without referral to the Department of Justice but only with the concurrence of the Office of General Counsel.

(d) *Enforcement policy.* Statutory penalties and forfeitures are used as an aid to secure compliance with FEMA requirements and to compel payment. These may be waived if the Agency's enforcement policy in terms of securing payment and securing compliance with FEMA regulations would be served by accepting a sum agreed upon. Mere accidental or technical violations will be dealt with less severely than willful or substantial violations.

[49 FR 38267, Sept. 28, 1984, as amended at 53 FR 47212, Nov. 22, 1988; 57 FR 54715, Nov. 20, 1992]

§ 11.52 Referral of delinquent debtors to consumer reporting agencies.

(a) *General.* This section implements 31 U.S.C. 3711(f) concerning reporting of debtors having overdue debts to consumer reporting agencies.

(b) *Procedures.* When a debt is unpaid for 120 days after the initial demand letter has been sent and where the debtor has not repaid the amount due nor has the debtor entered into an agreement for repayment satisfactory to the ACO or his designee, or the debt is not subject to administrative offset (as described in § 11.43), the ACO may