

## Federal Emergency Management Agency, DHS

## § 11.70

### § 11.64 Review within Federal Emergency Management Agency.

(a) *Notification by debtor.* A debtor receiving notice of intent under § 11.63(a)(2) has the right to present evidence and arguments within 60 days of mailing of the notice of intent that all of the debt is not past-due or not legally enforceable. To exercise this right, the debtor must:

(1) Send a written request for review of evidence to the FEMA office sending the notice of intent; and

(2) State in the request the amount disputed and the reasons why the debtor believes that the debt is not past-due or is not legally enforceable; and

(3) Include in the request any documents that the debtor wishes to be considered, or state that additional information will be submitted within the remainder of the 60-day period. FEMA is not obligated to consider any of debtor's evidence received after the 60-day period, except as specified in paragraph (c) of this section.

(b) *Submission of evidence.* The debtor may submit evidence that all or part of the debt is not past due or legally enforceable along with the notification required by paragraph (a) of this section. Debtor's failure to submit the notification and evidence within the 60-day period may result in FEMA's referral of the debt to the Department of the Treasury with only a review by the ACO or the ACO's designee that FEMA's records show that the debt is actually due FEMA.

(c) *Late filed requests for review within FEMA.* If the debtor submits a request for review after the 60-day time limit in paragraph (a) of this section, FEMA shall render a decision as described in paragraph (d) of this section, but FEMA shall not stay offset action as described in § 11.65. However, if FEMA, after the review of the debtor's evidence and arguments, determines that the debtor owes less than the amounts that FEMA has taken through offset, then FEMA shall refund any difference between any amounts offset and amounts that the review within the Agency determines is actually owed.

(d) *Review of the evidence.* FEMA will review the debtor's arguments and evi-

dence in accordance with procedures set forth in § 11.43(c).

[63 FR 1069, Jan. 8, 1998]

### § 11.65 Stay of tax refund offset action.

If the debtor notifies FEMA that the debtor is exercising rights described in § 11.64 and submits evidence within time limits specified in § 11.64, any notice to the Department of the Treasury concerning tax refund offset will be stayed until the issuance of a written decision that sustains, amends, or ends collection action resulting from FEMA's original debt collection decision.

[63 FR 1069, Jan. 8, 1998]

## Subpart D—Personnel Claims Regulations

AUTHORITY: 31 U.S.C. 3721.

SOURCE: 50 FR 8112, Feb. 28, 1985.

### § 11.70 Scope and purpose.

(a) The Director, Federal Emergency Management Agency (FEMA), is authorized by 31 U.S.C. 3721 to settle and pay (including replacement in kind) claims of officers and employees of FEMA, amounting to not more than \$25,000 for damage to or loss of personal property incident to their service. Property may be replaced in-kind at the option of the Government. Claims are payable only for such types, quantities, or amounts of tangible personal property (including money) as the approving authority shall determine to be reasonable, useful, or proper under the circumstances existing at the time and place of the loss. In determining what is reasonable, useful, or proper, the approving authority will consider the type and quantity of property involved, circumstances attending acquisition and use of the property, and whether possession or use by the claimant at the time of damage or loss was incident to service.

(b) The Government does not underwrite all personal property losses that a claimant may sustain and it does not underwrite individual tastes. While the Government does not attempt to limit possession of property by an individual, payment for damage or loss is made

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only to the extent that the possession of the property is determined to be reasonable, useful, or proper. If individuals possess excessive quantities of items, or expensive items, they should have such property privately insured. Failure of the claimant to comply with these procedures may reduce or preclude payment of the claim under this subpart.

### § 11.71 Claimants.

(a) A claim pursuant to this subpart may only be made by: (1) An employee of FEMA; (2) a former employee of FEMA whose claim arises out of an incident occurring before his/her separation from FEMA; (3) survivors of a person named in paragraph (a) (1) or (2) of this section, in the following order of precedence: (i) Spouse; (ii) children; (iii) father or mother, or both or (iv) brothers or sisters, or both; (4) the authorized agent or legal representative of a person named in paragraphs (a) (1), (2), and (3) of this section.

(b) A claim may not be presented by or for the benefit of a subrogee, assignee, conditional vendor, or other third party.

### § 11.72 Time limitations.

(a) A claim under this part may be allowed only if it is in writing, specifies a sum certain and is received in the Office of General Counsel, Federal Emergency Management Agency, Washington, DC 20472: (1) Within 2 years after it accrues; (2) or if it cannot be filed within the time limits of paragraph (a)(1) of this section because it accrues in time of war or in time of armed conflict in which any armed force of the United States is engaged or if such a war or armed conflict intervenes within 2 years after the claim accrues, when the claimant shows good cause, the claim may be filed within 2 years after the cause ceases to exist but not more than 2 years after termination of the war or armed conflict.

(b) For purposes of this subpart, a claim accrues at the time of the accident or incident causing the loss or damage, or at such time as the loss or damage should have been discovered by the claimant by the exercise of due diligence.

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### § 11.73 Allowable claims.

(a) A claim may be allowed only if: (1) The damage or loss was not caused wholly or partly by the negligent or wrongful act of the claimant, his/her agent, the members of his/her family, or his/her private employee (the standard to be applied is that of reasonable care under the circumstances); and (2) the possession of the property lost or damaged and the quantity possessed is determined to have been reasonable, useful, or proper under the circumstances; and (3) the claim is substantiated by proper and convincing evidence.

(b) Claims which are otherwise allowable under this subpart shall not be disallowed solely because the property was not in the possession of the claimant at the time of the damage or loss, or solely because the claimant was not the legal owner of the property for which the claim is made. For example, borrowed property may be the subject of a claim.

(c) Subject to the conditions in paragraph (a) of this section, and the other provisions of this subpart, any claim for damage to, or loss of, personal property incident to service with FEMA may be considered and allowed. The following are examples of the principal types of claims which may be allowed, unless excluded by § 11.74.

(1) *Property loss or damage in quarters or other authorized places.* Claims may be allowed for damage to, or loss of, property arising from fire, flood, hurricane, other natural disaster, theft, or other unusual occurrence, while such property is located at:

(i) Quarters within the 50 states or the District of Columbia that were assigned to the claimant or otherwise provided in-kind by the United States; or

(ii) Any warehouse, office, working area, or other place (except quarters) authorized for the reception or storage of property.

(2) *Transportation or travel losses.* Claims may be allowed for damage to, or loss of, property incident to transportation or storage pursuant to orders, or in connection with travel under orders, including property in the custody of a carrier, an agent or agency of the Government, or the claimant.