

§ 11.46

44 CFR Ch. I (10–1–04 Edition)

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 written 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 the date on or after that date when FEMA first sent the debtor a letter notifying the debtor that the Agency would assess interest.

(c) *Exceptions to interest charges.* However, no interest, described in paragraph (a) of this section, shall be charged if:

(1) The amount due is paid in full within 30 days of the mailing of the demand. However, the ACO or the ACO's designee, as documented by a memorandum in the debt collection file, may extend this 30-day period on a case-by-case basis for good cause shown in accordance with the Federal Claims Collection Standards (4 CFR 102.13(g)), or

(2) The applicable statute, regulation required by statute, loan agreement or contract either prohibits the charging of interest or explicitly fixes interest

or charges, which apply to the debt involved.

(d) *Penalty charges.* Except in the situation described in paragraph (c) of this section, the debtor shall be liable for a penalty of 6% annually on the unpaid principal, interest, and administrative charges if the debtor fails to pay the debt in full within 90 days of the date after the first written notice by FEMA that FEMA would assess penalty charges. However, if the debtor enters into a repayment agreement, satisfactory to the ACO or the ACO's designee within the 90-day period, then FEMA will not assess penalty so long as the debtor adheres to the provisions of the agreement. Penalty shall accrue starting on and including the day of FEMA's first written notice where FEMA mentioned that it would assess penalty charges on the debt. Penalty will not be assessed against Federal agencies. Penalty charges shall accrue on administrative charges, starting on the day that FEMA incurred the administrative charge. However, if the debtor pays the debt in full within 90 days of FEMA's first notice that the Agency would assess penalty charges or if the debtor enters into a repayment agreement satisfactory to the ACO or the ACO's designee within that time, then FEMA will not assess penalty on accrued administrative charges.

(e) *Administrative costs for processing delinquent debts.* Debtors shall pay the United States for costs incurred by the Government in collecting the debt in accordance with 31 U.S.C. 3717(e)(1). Administrative cost calculations will be based upon actual costs incurred by FEMA or upon analyses establishing an average of actual costs incurred by FEMA in processing debts in similar stages of delinquency.

(f) *Standards for waiver of interest, penalties, and administrative charges.* (1) The ACO or the ACO's designee may waive interest, penalties and administrative charges, either in whole or in part, if the ACO or the ACO's designee finds that:

(i) The debtor is financially unable to pay;

(ii) The Agency's enforcement policy will be adequately served if there is a waiver in whole or in part;

(iii) The debtor has shown good cause, satisfactory to the ACO, that the claim was not timely paid. If waiver is granted, the administrative claims file shall be adequately documented; or

(iv) The ACO or the ACO's designee may waive imposition of interest in accordance with standards set forth in 4 CFR 102.13 and §§ 11.50 and 11.51 of this subpart.

(2) The ACO, with the concurrence of the General Counsel, may waive interest, penalties and administrative costs based on criteria set forth in paragraphs (f)(3) through (f)(5) of this section. When such charges are waived, the Agency Collections Officer or the ACO's designee shall prepare a memorandum for the debt collection file stating the reasons for not collecting such charges.

(3) If the costs of collection exceed the projected recovery then interest, penalties and administrative costs may be waived.

(4) If FEMA determines that the debtor is unable to pay, as shown by complete and sworn statements as to his or her assets and projected income, then the ACO or the ACO's designee may waive interest, penalties and administrative charges in whole or in part. If the principal outstanding amount of the debt exceeds \$5,000, the determination shall be made by the ACO. If the principal outstanding amount of the debt is \$5,000 or less, the determination may be made by the DCO, the ACO, or a person designated by the ACO.

(5) The ACO or the ACO's designee may waive assessing interest, penalty, and administrative charges if such assessment would be against equity and good conscience or not in the best interests of the United States. Examples include, but are not limited to:

(i) FEMA's undue delay in rendering a decision where the debtor had requested an administrative review or review within the Agency. Under these circumstances, interest and penalty would be waived during the period of undue delay.

(ii) The amount of interest is so large, in relation to the debtor's ability to pay that assessment of interest

would leave the debtor perpetually indebted to the United States.

(g) *Nonapplicability.* The provisions of this section do not apply to debts owed by Federal agencies.

(h) *Installment collections or partial payments.* When a debtor pays a debt either partially or in installments, the payments shall first be applied to administrative costs, second to penalty charges, third to accrued interest, and finally to principal. Partial payments shall be deemed to be made when received at the FEMA office designated to receive the payments. If the debtor owes more than one debt, then the ACO or the ACO's designee will apply the partial payment to the oldest debt first unless the debtor is making a voluntary installment payment. Under voluntary circumstances, the debtor may designate to which debt the payment is to be applied.

(i) *Collection of interest, penalties, and administrative charges while an appeal is pending.* If the debtor requests administrative review of the existence or the amount of the debt, interest, penalties, and administrative charges may be waived or suspended by the ACO or the ACO's designee under the following circumstances:

(1) If a State or local government requests review within the Agency of a proposed referral to the Treasury Offset Program or an administrative review of a proposed administrative offset, then the ACO or the ACO's designee may waive interest, penalty or administrative charges if the State or local government shows to the satisfaction of the ACO or the ACO's designee that its taxes and other revenues would be insufficient to allow the State or local government to provide essential public services if FEMA were to collect interest, penalty, administrative charges, or any two or more, either in whole or in part. The ACO or the ACO's designee may require that the State or local government provide FEMA with such economic, accounting, financial or demographic data as the ACO or the ACO's designee may deem necessary to reach an informed decision as to waiver.

(2) If a debtor notes an appeal or requests an administrative review that is mandated by law, then FEMA shall not

assess interest and penalties while the appeal is pending from the time that the debtor requests an administrative review or an appeal until the Agency has taken final action on the administrative review or the appeal.

(3) When a debtor notes an appeal or requests an administrative review that is permissive under statute or regulation, then interest, penalties and administrative charges may be waived if:

(i) There is no fault or lack of good faith on the part of the debtor and if the amount of interest, penalties and administrative charges is so high in relation to affordable installment repayments that the debt would never be repaid. In determining whether interest and penalties should be waived, the ACO, the ACO's designee, or the DCO may demand that the debtor provide such financial data as he or she may determine is necessary to reach an informed decision.

(ii) FEMA unreasonably delays in rendering a decision on a debtor's request for an administrative review or review within the Agency, then the ACO or the ACO's designee may waive assessment of interest, penalty, and administrative charge during the period of the unreasonable delay.

(iii) The ACO or the ACO's designee may waive or suspend the collection of interest, penalty and administrative charges, for good cause shown and if such waiver or suspension would serve FEMA's interests. The FEMA official making such a waiver shall prepare a 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.