

(7) Approval—On October 20, 1997, Ohio submitted a revision to the maintenance plan for the Jefferson County area. The revision consists of an allocation of a portion of the safety margin in the area to the transportation conformity mobile source budget for that area. The mobile source budget for transportation conformity purposes for Jefferson County are now: 5.1 tons per day of volatile organic compound emissions for the year 2005 and 4.4 tons per day of oxides of nitrogen emissions for the year 2005.

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## FEDERAL EMERGENCY MANAGEMENT AGENCY

### 44 CFR Part 11

RIN 3067-AC77

#### Debt Collection

**AGENCY:** Federal Emergency Management Agency (FEMA).

**ACTION:** Interim final rule with request for comments.

**SUMMARY:** Under this rule FEMA will refer delinquent debts owed to this Agency to the Department of the Treasury for collection under the Government-wide Treasury Offset Program (TOP) and for tax refund offsets at the same time. FEMA amends its administrative offset regulations to allow administrative offset against delinquent debtor States and units of general local government. FEMA also amends its regulations to change the method for calculating interest, penalty and administrative charges assessed on delinquent debts and to make States and units of general local government subject to such charges.

**DATES:** This interim final rule is effective January 1, 1998. We invite comments on the rule, which should be submitted on or before March 9, 1998.

**FOR FURTHER INFORMATION CONTACT:** Richard S. Buck, IV, Financial Policy Division, Office of Financial Management, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646-4091.

**ADDRESSES:** Please submit any comments to the Rules Docket Clerk, Office of the General Counsel, Federal Emergency Management Agency, 500 C Street SW., room 840, Washington, DC 20472. Comments may also be submitted to the Rules Docket Clerk by facsimile at (202) 646-4536, or by e-mail addressed to Crane.Miller@fema.gov. Please refer to RIN 3067-AC61, Debt

Collection when submitting your comments.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

The Debt Collection Improvement Act of 1996 (DCIA), Pub.L. 104-134, § 31001, 31 U.S.C. 3720A, provides that the Department of the Treasury ensure that any Federal Government payment to a delinquent non-tax Federal debtor is subject to automatic offset against any tax refunds that may be owed to the debtor. Creditor Federal agencies are to receive any funds that are offset and are to apply them against outstanding debts. The DCIA also provides that the Department of the Treasury manage the tax refund offset program, previously administered by the Internal Revenue Service (IRS).

To implement these DCIA provisions, the Department of the Treasury's Financial Management Service (FMS) published an interim final rule at 62 FR 34175 on June 25, 1997, which added § 285.2 to 31 CFR and covered both TOP and the tax refund offset programs. The FMS rule requires that all Federal agencies revise their debt collection regulations so that the agencies refer their delinquent debts to the Department of the Treasury. This FMS rule also centralizes and streamlines collection of delinquent non-tax Federal debt by having the Department of the Treasury (Treasury) manage the tax refund offset program as part of the Treasury's Government-wide offset program.

The FMS rule also requires Federal agencies to amend their debt collection regulations on administrative offset and tax refund offset by the end of 1997 to conform to the FMS rule. FEMA's interim final rule complies with the FMS requirement.

Under the FMS rule, FEMA will refer delinquent debt to Treasury for both TOP and tax refund offset. Under FEMA's previous tax refund offset regulation, 44 CFR §§ 11.61-11.65, FEMA referred to the IRS only those delinquent debts that could not be recovered through administrative or salary offset and that had been reported as delinquent to consumer reporting agencies (commonly known as "credit bureaus"). The new FMS rule allows agencies to use the three collection methods concurrently. The FMS rule allows agencies to report delinquent consumer debt to credit bureaus either before or after submitting a debt to the Treasury Offset Program, that is, credit bureau reporting is not a prerequisite to tax refund offset under this rule.

Under 31 U.S.C. 3701(c) the definition of "persons" who are subject to the administrative offset provisions (31 U.S.C. 3716) of the Debt Collection Act of 1982 (DCA), makes any individual, organization, or entity except other Federal agencies subject to such offset, including States and units of general local government. Under 31 U.S.C. 3717 Federal agencies assess interest, penalty and administrative charges against unpaid claims of the United States, including debts owed by States and units of general local government. FEMA's interim final rule allows FEMA to use administrative offset and to assess interest, penalty and administrative charges against these governments. Previously, FEMA charged States and units of general local government interest under principles of common law. However, principles of common law did not allow creditors, such as Federal agencies, to assess penalties or costs of collection against States and units of general local government. FEMA debt collection regulations had provided for common law offset against these entities.

FEMA amends § 11.48 on interest, penalty and administrative charges to change its methods for calculating these charges.

##### II. Section-by-Section Analysis of the Regulations

*Section 11.43, Administrative Offset*, is changed to allow FEMA to:

1. Take administrative offsets against States and units of general local government;
2. Collect, through the use of administrative offset and tax refund offset, debts owed by individuals and other private sector delinquent debtors to States and local governments, which arise under programs administered by FEMA. FEMA will take such action under the provisions of 31 U.S.C. 3716(h)(1) and reciprocal agreements entered into by the Secretary of the Treasury and the States concerned. For instance, FEMA administers the Individual & Family Grant (IFG) program, which is funded 75% by the FEMA and 25% by the States. If a debtor owed a debt under the IFG Program, then FEMA could use administrative and tax refund offsets to recover the State's 25% share;
3. Refer specifically delinquent debt to the Department of the Treasury for TOP in addition to conducting Agency administrative offset. Previously, the FEMA regulation (§ 11.43(a)) only allowed FEMA to use administrative offset against any monies due to the debtor from the United States;

4. Change the period in which the debtor could request an administrative review from 15 days after receipt of the administrative offset notice to 60 days after FEMA mails such notice to the debtor. Since the period is calculated from the date of mailing rather than from date of receipt of notice, FEMA no longer has to use expensive certified mail, return receipt requested, for mailing such notices. See § 11.43(c). Administrative review means that FEMA considers evidence and arguments submitted by the debtor and takes a fresh look as to whether FEMA should continue collection efforts for the full amount of the debt. 31 U.S.C. 3716(a)(3) provides that agencies must afford debtors a right to a "review within the agency" before taking administrative offset;

5. Stay offset action where the debtor made a request for administrative review within the 60-day request period until FEMA has rendered a decision on the debtor's request;

6. Continue offset action where the debtor has made a late request (after the 60-day period) for administrative review. Under such circumstances, FEMA will review the debtor's evidence and arguments. If the FEMA Administrative Review Official (ARO) finds that the debtor owes less than amounts already offset at the time of the decision, then FEMA will refund the difference to the debtor;

7. Use offset under principles of common law in addition to FEMA's having the ability to collect by administrative offset. This implements DCIA § 31001 (d)(2), 31 U.S.C. 3716(d);

8. Determine that the debtor's failure to receive FEMA's notice of administrative offset, where this Agency had mailed the notice to debtors' last known address, will not affect the validity of the administrative offset action;

9. Make debtors liable for all costs incurred by the Federal Government administrative offsets. For instance, delinquent debtors will have to pay the charges, now (in 1997) \$7.02 per offset, that the Department of the Treasury incurs in making a TOP offset. Administrative offset costs are "administrative costs" provided for in § 11.48(d).

*Section 11.44, Collection of debts from Federal agencies or States or units of general local government* by common law offset has been removed and the section reserved. The DCIA now allows Federal agencies to use DCA administrative offset against States and units of general local government, and excepts Federal departments and agencies from administrative offset.

Before the enactment of the DCIA, FEMA provided procedures by which FEMA would exercise common law offsets against these entities.

#### *Section 11.48, Interest, Penalty and Administrative Charges*

The DCIA, by changing the definition of "persons" subject to interest, penalty and administrative costs of collection under 31 U.S.C. 3717, now allows Federal agencies to assess such charges against States and units of general local government. Previously, FEMA had assessed interest against these entities only under principles of common law. At common law, any creditor could charge interest against debtors who were tardy in making payments of debts. In *United States v. Texas*, 507 U.S. 529 (1993), the Supreme Court approved a Federal department's charging a State interest on a past-due debt. However, principles of common law did not permit creditors, or Federal agencies, to assess penalties and administrative costs of collection against delinquent debtors. FEMA's prior rule, § 11.48(c), excluded States and units of local government from penalty or administrative charge assessments. Sections 11.48(b), 11.48(d) and 11.48(e) now allow FEMA to assess interest, penalties and administrative charges against these entities under the provisions of 31 U.S.C. 3717.

Section 11.48(a) contains a definition of "delinquent debt" to be used in all FEMA's debt collection regulations (§ 11.30–11.65). A debt becomes delinquent when it is not paid for by the due date or if a debtor has entered into a payment plan and fails to make a payment when due under the plan.

#### *Waiver of Interest and Penalties*

Section 11.48(f)(5) now provides that the FEMA Agency Collections Officer (ACO) or the ACO's designee may waive assessment of interest where such assessment would be against equity and good conscience and not in the best interests of the United States. The section gives two situations where such waiver may be granted. Under § 11.34(a)(1) FEMA's Chief Financial Officer also serves as FEMA's Agency Collections Officer.

#### *Penalty Charges*

FEMA is changing its method of calculating penalty charges in § 11.48(d). Previously, FEMA deemed a debt to be delinquent if the debtor did not pay the debt in full within 30 days after FEMA first notified the debtor that the debt was due. Since the Debt Collection Act of 1982, 31 U.S.C. 3717(e)(2), assesses penalty charges

where a debt is 90 days past due, FEMA did not begin charging penalty charges until the 120th day after notification with accrual starting with the 31st day after notification.

Under revised § 11.48(d), debtors will not be liable for penalty charges so long as they pay their debts in full within 90 days after the date that FEMA first sent notice that this Agency would assess penalty. See 31 U.S.C. 3717(e)(2). The penalty accrual period will start with the date of notification rather than 30 days after the date of the notification letter. Penalty will accrue also on unpaid interest as it accumulates and on administrative charges from the date that the Federal Government incurred them.

Under the new § 11.48(f)(5), if FEMA were to delay unduly in rendering an administrative review decision, then the ACO may waive assessment of penalty during the period of unreasonable delay.

Revised § 11.48(f)(1)(iv) grants FEMA authority to waive impositions of interest in accordance with standards set out in the Federal Claims Collection Standards (FCCS) at 4 CFR 102.13(c) and FEMA's debt collection regulations relating waiver, termination and suspension of debts at §§ 11.50 and 11.51. FEMA is eliminating as grounds for waiver of interest and penalty the debtor's having a valid dispute with FEMA on issues involved in the debt.

In the non-applicability of interest, penalty and administrative charges subsection (§ 11.48(g)), FEMA provides that only Federal agencies are exempt from these charges. As previously mentioned, with the passage of the DCIA, States and units of general local government no longer are exempt from assessment of such charges under the Debt Collection Act of 1982 (31 U.S.C. 3717).

Where a debtor owes FEMA more than one debt and the debtor makes an involuntary partial payment the FMS states that the payment should be applied to the oldest debt first. FEMA has revised § 11.48(h) to require that such partial payments will be applied to the oldest debt first. However, where the debtor makes a voluntary payment the debtor may choose to which debt the payment may be credited. This latter rule follows principles of common law.

FEMA has revised its rule, § 11.48(i)(1), relating to waiver of interest, penalty and administrative charge waivers as applied to States and local governments. If such governments can demonstrate to the satisfaction of the ACO or a designated deputy that the government's revenues are insufficient to enable the government to provide essential public services, then FEMA

may waive these charges. However, FEMA may demand that the requesting government provide accounting, economic, and demographic data to enable the ACO or the deputy to reach an informed conclusion as to whether to grant the waiver.

Under revised § 11.48(i) States and local governments that request review of proposed offsets will be charged interest, penalty or administrative charges on the amounts found to be due and owing after the completion of the administrative review process, just as any other debtor would be. Where a statute or regulation provides for a mandatory review, FEMA must waive interest and penalty charges (see the Federal Claims Collection Standards, 4 CFR 102.13(h)). Under § 11.48(j), interest and penalty will continue to accrue on debts until debtors' payments actually are received at the place of payment designated by FEMA.

#### *Sections 11.61 Through 11.65, Covering Tax Refund Offsets*

Since the Department of the Treasury has assumed management of the entire tax refund offset program in lieu of the IRS, FEMA has revised §§ 11.61–11.65 to substitute "Department of the Treasury" wherever "Internal Revenue Service" or "IRS" previously appeared. These sections have been changed so that the procedures may be applied against any tax refund, whether the refund is for customs, alcohol, tobacco and firearms, or any other tax collected under the aegis of the Department of the Treasury. FEMA's prior regulation only covered "income tax refunds" even though the Debt Collection Act of 1982 (31 U.S.C. 3720A) covered tax refunds generally.

The Debt Collection Act (31 U.S.C. 3720A(b)(2)) requires agencies to grant the debtor at least 60 days to present evidence that their debt was not past-due or legally enforceable. FEMA's prior tax refund offset regulations granted debtors 65 days from the mailing of notice that FEMA was intending to use tax refund offset to collect delinquent debt. The additional five days was to allow time for the mails. However, to make times uniform for debtors to file requests for administrative review and reviews within the agency throughout FEMA's debt collection regulations, §§ 11.30–11.65 set the time in which debtors may make a timely request for such reviews at 60 days from the mailing of the notice.

#### *Section 11.61, Referral of Debt for Tax Refund Offset*

Based on former IRS regulations, the previous § 11.61(a) limited referral of

delinquent debts for tax refunds to those debts:

1. that had already been reported to consumer reporting agencies ("credit bureaus");
2. that were not collectable through Federal salary, uniformed services pay, or Federal Government service retirements; or
3. that were not collectable by using administrative offsets under 31 U.S.C. 3716.

In this interim final rule FEMA no longer eliminates certain debtors from the tax refund offset process. FEMA will continue aggressive use of credit bureau reporting of delinquent debtors, of collection by offsets against Federal employees, members of the uniformed services, and Federal retirees, and of administrative offsets, such as TOP.

#### *Section 11.63, Notice to Debtor Before Tax Refund Offset*

Aside from the amendments made to all FEMA's tax refund offset regulations described above, this section has been amended to refer to "tax refund offsets" generically, rather than "income tax refund offsets" as previously.

Under §§ 11.63(a)(2)(iv) through 11.63(b) the FEMA Office of General Counsel (OGC) will decide debtors' requests for review within the Agency. Previously, the ACO rendered such decisions. This is to transfer this quasi-adjudicatory function from the ACO to OGC, which bears responsibility for legal interpretations of FEMA regulations.

#### *Section 11.64, Review Within Federal Emergency Management Agency*

Section 11.64 changes to 60 days after mailing of the notice the time in which the debtor may make a timely request for a review within FEMA. However, § 11.64(c) allows FEMA to consider requests for review filed after the 60-day period. If the request is filed late, FEMA will consider the debtor's arguments and evidence but the Federal Government will not stay offset while preparing a decision. If the decision results in the debtor owing less (possibly zero) than amounts previously offset, then FEMA will refund the difference to the debtor.

We amend 11.64 to substitute the OGC for the ACO as the office to render decisions where debtors request administrative reviews. This rule transfers an adjudicative function from the ACO, whose staff is charged with collecting debts, to OGC where the staff is concerned with legal interpretations and determining equities of situations. Procedures for conducting reviews within the Agency will be the same as

those for administrative reviews under § 11.43(d).

#### *Section 11.65, Stay of Offset*

This section is changed only to substitute "Department of the Treasury" where IRS had previously been used.

#### **Administrative Procedure Act Determination**

FEMA is publishing this interim final rule without opportunity for prior public comment under the Administrative Procedure Act, 5 U.S.C. 553. FEMA has determined that a comment period would be unnecessary, impractical, and contrary to the public interest. This interim final rule does not contain any significant, substantive changes from the Internal Revenue Service regulations and does not change how the tax refund offset program affects the taxpayer who owes delinquent nontax debt. This interim rule reflects changes to internal procedures under which FEMA as a creditor agency will submit delinquent debt information to the Department of the Treasury in compliance with requirements of the Debt Collection Improvement Act.

Procedures affecting debtors remain substantially unchanged. The procedural changes do not affect the rights of the debtor to dispute the nature or the amount of the debt or method of collection; they reflect changes required by merger of the tax refund offset with the Treasury Offset Program, or by enactment of the Debt Collection Improvement Act. Further, the procedural changes in this interim final rule primarily affect how FEMA will participate in the offset program. In order to implement the offset programs for tax refund payments made after January 1, 1998, FEMA needs to modify and publish its offset regulations. FEMA determines that good cause exists and that it is in the public interest to issue this interim final rule without opportunity for prior public comment. We invite public comments on the interim final rule, which comments will be taken into account when the final rule is published.

#### **Regulatory Flexibility Act**

The Director certifies that this interim final rule is exempt from the requirements of the Regulatory Flexibility Act because it makes minor and technical amendments mandated by statute, 31 U.S.C. 3720A and by Department of the Treasury Interim Rule. This interim final rule does not contain any significant substantive changes from FEMA's present debt collection regulations and does not

substantially change how FEMA collects debts owed the United States that arise under FEMA programs. The Regulatory Flexibility Act does not apply to this interim final rule; no regulatory analysis has been prepared.

#### Paperwork Reduction Act

The information collection requirements contained in this interim final rule have been approved by the Office of Management & Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB control number 3067-0122.

#### Executive Order 12866, Regulatory Planning and Review

Promulgation of this interim final rule is required by statute, 31 U.S.C. 3716 and 3720A, and is not a significant regulatory action within the definition of E.O. 12866. To the extent possible under the statutory requirements of 31 U.S.C. 3720A this interim final rule adheres to the principles of regulation set forth in Executive Order 12866. This interim final rule was not reviewed by the Office of Management and Budget under Executive Order 12866.

#### Congressional Review of Agency Rulemaking

FEMA has submitted this interim final rule to the Congress and to the General Accounting Office under the Congressional Review of Agency Rulemaking Act, Pub. L. 104-121. This interim final rule is not a "major rule" within the meaning of that Act. It does not result in nor is it likely to result in an annual effect on the economy of \$100,000,000 or more; it will not result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and it will not have "significant adverse effects" on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises.

This interim final rule is exempt (1) from the requirements of the Regulatory Flexibility Act, as certified previously, and (2) from the Paperwork Reduction Act.

This interim final rule is not an unfunded Federal mandate within the meaning of the Unfunded Mandates Reform Act of 1995, Pub. L. 104-4. It does not meet the \$100,000,000 threshold of that Act.

#### List of Subjects in 44 CFR Part 11

Administrative practices and procedures, Claims, Debts, Offsets, Taxes, Refunds.

Accordingly, §§ 11.43, 11.44, 11.48, and 11.61 through 11.65 of 44 CFR are amended as follows:

1. The authority citation for Part 11 is revised to read as follows:

**Authority:** 31 U.S.C. 3701 *et seq.*

2. Section 11.43 is revised to read as follows:

#### § 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 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).

**§ 11.44 [Removed and reserved]**

3. Section 11.44 is removed and reserved.

4. Section 11.48 is revised read as follows:

**§ 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.

5. Sections 11.61 through 11.65 are revised to read as follows:

**§ 11.61 Referral of delinquent debts to Department of the Treasury for offsets against tax refunds.**

(a) FEMA may refer delinquent debts to the Department of the Treasury for

offset against tax refunds in accordance with 31 U.S.C. 3720A and that Department's implementing regulations.

(b) FEMA will provide information to the Department of the Treasury within time limits prescribed by the Secretary of the Treasury or his or her designee and in accordance with agreements entered into between FEMA and the Department of the Treasury and its constituent agencies.

(1) Information submitted to the Department of the Treasury shall include a description of:

(i) The size and age of FEMA's inventory of delinquent debts; and

(ii) The prior collection efforts that the inventory reflects; and

(2) In accordance with time limits and record transmission requirements established by the Department of the Treasury or its constituent agencies, FEMA may submit magnetic media containing information on debtors being referred to that Department for tax refund offset. FEMA may use the electronic data transmissions facilities of other federal agencies in transmitting data on debtors or for referral of debts to the Department of the Treasury.

(c) FEMA shall establish a collect-call or toll-free telephone number that the Department of the Treasury or its constituent agencies will furnish to debtors whose refunds have been offset to obtain information from FEMA concerning the offsets taken.

(d) Tax refund offset procedures described in §§ 11.61 through 11.64 shall apply to debts owed to the United States that are past-due and legally enforceable, and

(1) Except in the case of a judgment debt, the debt has been delinquent for at least three months but has not been delinquent for more than ten years at the time the offset is made; and

(2) Where FEMA has given the debtor at least 60 days from the date of mailing of the notification (described in § 11.63 of this part) to request a review within FEMA and to present evidence that all or part of the debt is not past-due or legally enforceable. If the debtor has requested a review and presented evidence, then FEMA has considered the debtor's evidence and reasons and has determined that all or a part of the debt is past-due and legally enforceable; and

(3) With respect to which FEMA has notified or has made a reasonable attempt to notify the debtor that the debt is past-due and, unless repaid within 60 days of the mailing of the notification the debt will be referred to the Department of the Treasury for offset against any overpayment of tax; and

(4) Is at least \$25.00; and

(5) Meets all other requirements of 31 U.S.C. 3720A and the Department of the Treasury regulations relating to the eligibility of a debt for tax refund offset have been satisfied.

**§ 11.62 Administrative charges incurred in referrals for tax refund offset.**

In accordance with § 11.48(e), all administrative costs incurred in connection with the referral of the debts to the Department of the Treasury for collection by tax refund offset shall be added to the amount owed by the debtor. Such costs will include, but not be limited to, a pro-rata share of total costs of taking offsets incurred by the Department of the Treasury in accordance with agreements executed by FEMA, the Department of the Treasury and the Department's constituent agencies.

**§ 11.63 Notice to debtor before tax refund offset.**

(a) FEMA will refer a debt to the Department of the Treasury for tax refund offset only after FEMA:

(1) Makes a determination that the debt is owed to the United States;

(2) Sends the debtor a notice of FEMA's intent to use Department of the Treasury tax refund offset that provides the debtor with items of information described in paragraphs (a)(2) (i) through (vii) as follows:

(i) Debtor owes FEMA an amount due; and

(ii) The debt is past due; and

(iii) Unless the debt is repaid within 60 days of the date of FEMA's mailing of the notice of intent described above, FEMA intends to collect the debt by requesting the Department of the Treasury to take offset to reduce the debtor's federal tax refund by the amount of the principal amount of the debt and all accumulated interest, penalty, and other charges; and

(iv) Debtor has an opportunity to present arguments and evidence within 60 days of mailing of the notice of intent that all or a part of the debt is not due. A debtor requesting a review within the Agency shall send these arguments to the FEMA office that sent the notice of intent under § 11.63(a)(2); and

(v) Debtor has had an opportunity to arrange to inspect and copy records relating to the debt by mailing a request to the FEMA office sending the notice of intent under § 11.63(a)(2); and

(vi) If no reply is received from the debtor within 60 days of mailing of the notice, FEMA may refer the debt to the U.S. Department of the Treasury after reviewing the file and determining that the debt is due; and

(vii) Debtor may negotiate a repayment agreement, satisfactory to FEMA, for the repayment of the debt.

(b) If the debtor has presented evidence and arguments as described in subsection (a)(2)(iv) FEMA will refer the debt to the Department of the Treasury only after the FEMA Office of General Counsel has rendered a decision under provisions of §§ 11.64 and 11.65 of this subpart concerning the debtor's arguments and evidence, if any, and has determined that the debt is due either in whole or in part. If the debtor has submitted evidence in accordance with paragraph (a)(2)(iv)(g) of this section, the FEMA Office of General Counsel shall notify the debtor of the Agency's final determination.

(c) If the debtor has questions concerning the debt or procedures being used, the debtor may contact FEMA at an address and telephone number provided in the notice of intent under § 11.63(a)(2).

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

**§ 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.

Dated: December 31, 1997.

**James L. Witt,**

*Director.*

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