Federal Emergency Management Agency
Directives Management System

STANDARD OPERATING PROCEDURE

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Debt Resolution Process

Foreword

This Standard Operating Procedure is for the administrative collection of debt by the Federal Emergency Management Agency (FEMA), Office of the Chief Financial Officer (OCFO), Financial Management Division, FEMA Finance Center, Accounts Receivable Section. The Debt Resolution Process evaluates a debtor's ability to pay. This procedure is for overpayment of individual debt such as disaster assistance, salary and travel expenses.

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CHAPTER 1 - GENERAL

1-1. Purpose

This Standard Operating Procedure (SOP) is guidance for the debt resolution process used for the administrative collection of debt from individual debtors. It is used by the Federal Emergency Management Agency (FEMA), Office of the Chief Financial Officer (OCFO), Financial Management Division (FMD), FEMA Finance Center (FFC), Accounts Receivable (AR) Section.

1-2. Applicability and Scope

This SOP applies to AR, FFC, FMD, OCFO, and Office of Chief Counsel (OCC) employees included in the debt resolution process.

This revised SOP is used for debts owed to FEMA by individuals including salary, travel and disaster assistance recoups from Hurricane Sandy, DR4085, forward. The previous FEMA Debt Resolution Process for Individuals SOP dated February 2012 is used for disaster assistance recoups for pre-DR4085.

1-3. Supersession

None. See 1-2. II above.

1-4. Objectives

To ensure the debt resolution process is conducted in an efficient, fair and consistent manner.

1-5. Authorities/References/Policy

I. Debt Collection Act of 1982, as amended, Public Law 07-365, dated October 25, 1982.

II. Debt Collection Improvement Act of 1996, Public Law 104-134, Section 31001, dated April 26, 1996.

III. Improper Payments Elimination and Recovery Improvement Act of 2012, Public Law 112-248, dated January 10, 2013.

IV. 6 Code of Federal Regulations (CFR) Part 11, Domestic Security, Claims.

V. 31 CFR Part 901, Standards for the Administrative Collection of Claims.

VI. 31 CFR Part 902.2, Standards for the Compromise of Claims.

VII. Treasury Financial Manual (TFM), Volume 1, Chapter 4000, Debt Management Services Collection of Delinquent Non-Tax Debt.

VIII. Internal Revenue Service, Collection Financial Standards.

IX. U.S. Department of the Treasury, Managing Federal Receivables: A Guide for Managing Loans and Administrative Debt, dated May 2005.

X. FEMA Delegation of Authority for Debt Collection Actions memo, dated October 29, 2008.

XI. . DHS Delegation of Authority memo, dated February 9, 2007.

XII. U.S. Department of Health & Human Services, Office of the Assistant Secretary for Planning and Evaluation, Poverty Guidelines.

XIII. Data Integrity Act, dated May 9, 2014.

1-6. Definitions

I. **ACCPAC**: Accounting software package used by the FFC to record account information and provide a record of all contact with debtors.

II. **Assets**: Cash, property (homes, vehicles), stocks, bonds, CDs, portfolio accounts, mutual funds, and tax deferred retirement assets, i.e., IRAs, Keogh, and 401(k) plans. Tax deferred retirement plans and profit sharing plans are also considered assets if there are no tax consequences or early withdrawal penalties for liquidating the account.

A. **Liquid Assets**: Cash balances in checking and savings accounts.

B. **Other Assets**: All other assets except the primary home, primary vehicle(s) and liquid assets. Other Assets are subject to 80% collection of the equity ownership in its Fair Market Value (FMV) if sold. Equity is the monetary value of property that exceeds any amounts owed. FMV is provided by the debtor on their Debt Collection Financial Statement and verified using Lexis Nexis, Kelley Blue Book, or Equifax.

C. **Disposable Assets**: Liquid Assets plus Other Assets.

III. **Balloon Payment**: Large payment due at the end of a payment plan when the entire recoup amount cannot be paid over the life of the plan.

IV. **Cancellation of Debt, Form 1099-C**: Internal Revenue Service (IRS) form for debts that are cancelled, forgiven, or discharged.

V. **Compromise**: Agreement to accept less than the full amount of the debt.

VI. **Debt Resolution Workbook**: Excel spreadsheet used to calculate the debtor's ability to pay.

VII. **Debt Collection Financial Statement (DCFS)**: Formal record of the the debtor's financial circumstances.

VIII. **Disposable Pay**: Gross salary or wages, commission, overtime, and bonuses and tips less salary deductions.

IX. **Salary Deductions**: Federal income tax, FICA (social security), Medicare, state tax, city/local tax, income tax, unemployment, disability, health insurance premiums, involuntary retirement, pension, and life insurance.

X. **Other Income:** Income from self-employment, rental properties, interest, dividends, child support, family support, unemployment benefits, social security benefits, and annuities.

XI. **IRS Collection Financial Standards (ICFS)**: Standards used by the IRS to determine a taxpayer's ability to pay delinquent taxes. These standards were selected by FEMA to assure fairness, objectivity and consistency in evaluating debtors ability to pay. They are used to determine whether actual expenses are reasonable and necessary living expenses for the debtor and the debtor's dependents. Link to standards can be found at https://www.irs.gov/Businesses/Small-Businesses-&-Self-Employed/Collection-Financial-Standards.

XII. **Letter of Determination**: Letter to the debtor explaining the results of the evaluation.

A. **Partial Compromise**: Explains the payment plan for the adjusted balance due (original recoup balance less the amount of the partial compromise), promissory note, and amortization schedule.

B. **Full Compromise**: Explains that the entire balance is forgiven based on an inability to pay.

C. **Payment Plan**: Explains the payment plan, promissory note, and amortization schedule for the full balance due.

D. **Lump Sum**: Explains that the entire balance is due in one payment.

E. **Suspension**: Explains that collection of the debt is suspended for a determined period of time.

XIII. **Net Disposable Income (NDI)**: Income remaining necessary to maintain standard of living after subtracting salary deductions and reasonable living expenses, i.e., rent or mortgage, utilities, insurance, medical, transportation, and food.

XIV. **Other Welfare Benefits**: Benefits from Food Stamps and Supplemental Nutrition Assistance Program (SNAP) reduce the allowed expense for food. Benefits from Section 8 and other rental assistance reduce the allowed expense for housing.

XV. **Payment Plan**: Obligation to repay in more than one payment at fixed intervals or on demand under specific terms.

XVI. **Promissory Note**: Written contract in which the debtor promises to pay at fixed intervals or on demand under specific terms.

XVII. **Recoup Balance Amount Due**: Recoup balance less penalties.

XVIII. **Recoup Collection Potential (RCP)**: FEMA's measure of the debtor's ability to pay. The RCP is the debtor's calculated NDI plus the value of the debtor's assets.

XIX. **Request for Information (RFI)**: Packet sent to the debtor to obtain financial information. It includes the DCFS form and a letter with instructions of what documents to provide. This information is used to determine if the debtor qualifies for a lump sum, payment plan, a partial compromise, or a full compromise.

XX. **SharePoint**: Microsoft Office application used to create, store, track, and manage electronic documents for approval/denial/further clarification of RFI evaluations and/or determination letters.

XXI. **Suspension**: Suspension of collection action is to place active collection action temporarily in abeyance due to the existence of a particular set of circumstances. Suspension of collection action is most appropriate in those cases where an agency has reason to believe that the suspension will enhance the chances of recovery, or, at minimum, will not endanger the recovery of the debt.

XXII. **Supplemental Security Income (SSI)**: Federal income supplement program that provides cash to meet basic needs for food, clothing, and shelter to help aged, blind, and disabled people who have little or no income.

XXIII. **Treasury Report on Receivables (TROR)**: Report that informs Treasury of the status of FEMA's debt portfolio.

1-7. Responsibilities

I. Debt Collection Specialist (DCS): Compiles and keys information into the Debt Resolution Workbook from the debtor's documents using guidelines in the workbook. Recommends a disposition and sends the workbook to the Unit Chief for approval.

II. Unit Chief: Reviews the evaluation and approves or denies the disposition.

III. Section Chief and Deputy Chief: Reviews and approves/denies all determinations.

IV. FFC Chief, FMD Director, Executive Officer, Chief Financial Officer (CFO), and OCC: Reviews and approves/denies any compromise over $10,000. Compromises over $100,000 require the Department of Justice's (DOJ) approval in addition to the OCC and CFO.

1-8. Reporting Requirements

I. 1099C, "Cancellation of Debt" Reporting.

II. Treasury Report on Receivables (TROR).

1-9. Forms Prescribed

I. RFI Packet

II. 2nd RFI Request

III. DCFS

IV. Debt Resolution WIorkbook

1-10. Questions

Questions regarding this SOP should be addressed to the FFC AR Section Chief or the FFC Debt Services Unit Chief.

CHAPTER 2 - BACKGROUND AND PROCESS

2-1. General

I. FEMA may compromise a debt if unable to collect the full amount if:

A. FEMA verifies the debtor is unable to pay the full amount in a reasonable time;

B. FEMA is unable to collect the debt in full within a reasonable time by enforced collection;

C. Cost of collecting the debt does not justify the collection of the full amount; or

D. Significant doubt of FEMA's ability to prove its case in court exists.

II. FEMA considers factors such as:

A. Age and health of the debtor;

B. Present and potential income;

C. Possibility that assets have been concealed or improperly transferred by the debtor; and

D. Availability of assets or income that may be obtained by enforced collection.

2-2. Valid Debt

I. A debt resolution evaluation can be conducted when requested by a debtor regardless of whether the debt has been certified to FFC to proceed with debt collection. However, final determination letters will not be sent until the debt is certified to FFC as valid unless the debtor has chosen to pay. Payments can be accepted if the debtor chooses to pay in a lump sum or acceptable payment plan options discussed below. No compromises would be finalized prior to certification.

2-3. Payment Options

I. Debtors call FEMA's Recoupment Helpline for payment information. DCS verifies the name, address, social security number, etc., and discusses the debtor's ability to:

A. Pay the debt in one lump sum. Instruct the debtor to complete the FEMA Debt Repayment Form and pay using the method(s) provided on the form.

B. Pay the debt in 72 months or less. No financial documents are required from the debtor. Upload the negotiated payment plan letter and attachments into SharePoint for management approval. Mail the debtor a promissory note and payment plan.

C. Make other payment arrangements. Mail the debtor an RFI packet. Instruct the debtor to complete the forms, attach supporting documentation, and return the package within thirty (30) days for evaluation.

II. The Payment Plan and RFI letters explain the consequences of failure to act on one of the above options.

2-4. Request for Financial Information

I. If the debtor returns an RFI packet that is not signed and dated, not legible, or missing information, a second request explaining what is needed is mailed to the debtor. The debtor will have fifteen (15) days to return the required documents. If the debtor does not return documents needed to conduct the evaluation, or does not pay their debt, the debt is referred to the U. S. Department of the Treasury (Treasury) for collection.

2-5. Evaluation

I. DCS conducts the evaluation when all required RFI documents are received. SharePoint is used to route the package utilizing a workflow to obtain approvals (or denials) and any necessary changes. The Debt Resolution Workbook and required documents are uploaded into the Unassigned View in SharePoint. The DCS accesses the next available case to begin the evaluation process. The financial information from the debtor's document(s) is entered into the Debt Resolution Workbook. The workbook is used to calculate the debtor's NDI and RCP to determine ability to pay. The disposition is established and the appropriate workflow used to send the evaluation for review and approval.

II. Income

A. Use the financial information on the DCFS and the Federal Tax Return to determine the debtor's income. Compare the documents for reasonable assurance that the information is accurate. Review the debtor's tax return for additional information, i.e., business and rental income, assets earning interest and dividends. Contact the debtor to clarify inconsistencies or conflicting information. For example, the tax return may have accounts earning interest and dividend income that are not listed as assets on the DCFS.

B. Determine rental income and business income by deducting the expenses from the gross receipts. No depreciation or vehicle costs apply unless the vehicle is business-owned, produces income, or provides business services.

III. Expenses

A. Use the debtor's actual expenses to determine NDI. Use the ICFS to determine if the actual expenses are reasonable and necessary living expenses. The ICFS factors are the debtor's residential location, household size and age(s). Use the lessor of the standard allowance or the amount actually spent for housing and utilities, food, clothing, transportation, out-of-pocket healthcare expenses, and other.

B. Treat medical expenses over 10% of disposable pay as excessive.

C. The household size equals the debtor, their spouse, and the debtor's dependents. The number of dependents should be the same as the number of exemptions on the debtor's most recent income tax return. If the number is not the same, determine which is accurate and note the reason for that decision. For example, if a child or parent joined the household, a higher number of dependents on the DCFS than on the tax return would be explained. If household size is unclear and the evaluation results in a compromise, contact the debtor for clarification.

D. Debtors must provide supporting documentation for actual expenses in excess of the ICFS. For example:

    1. Excessive medical expenses may be itemized on the tax return. If they have not been paid or no tax return was filed, request additional documents if the expenses exceed 10% of disposable pay.
    2. Verify mortgage payments for the primary residence by using mortgage statements, and public research tools or credit reports. Excessive expenses for items like cable, satellite, or internet are not considered necessary; do not request statements.
    3. Use the miscellaneous allowance included in the food and clothing category for expenses not listed elsewhere or that exceed other standards.

IV. Assets

A. Include liquid assets that exceed 3 months of reasonable living expenses in lump sum and initial payment plan dispositions.

B. Consider other assets in the case of compromise or if needed to negotiate a payment plan. Verify assets by using public record research tools. Locate and input the FMV of other assets noted on the DCFS. Barring unusual circumstances that will be addressed on a case-by-case basis, these assets are factored into the RCP.

C. Use the FMV of rental income property when rent does not provide enough income to result in a positive RCP. For example, a debtor with multiple properties may be eligible for a payment plan rather than compromise, if the FMV of the property is used rather than rental income. However, if the rent is the debtor's sole source of income, use the income rather than the FMV of the property.

D. Excerise sound judgment in these cases and record the reason(s) for any decision.

V. Determinations

A. Research, evaluate, and when needed, contact the debtor in order to recommend a final disposition. Summarize all special factors or extenuating circumstances affecting the disposition. The final determination of ability to pay is based on the debtor's NDI and RCP. Generally, if the debtor does not have any special factors, the debtor is required to repay the debt within a 6 year payment plan. If the debtor does have special factors, determine the RCP as follows. The RCP = ([NDI using 0, if negative * 72 months] + [80% of equity in FMV of Other Assets using 0, if < $1,800] + [Liquid Assets – 3 months of Expenses]). Total RCP cannot be less than $1,800; if less than $1,800 use 0.

B. Lump Sum

    1. The debtor is required to pay the entire debt in one lump sum if they have an adequate NDI and/or liquid assets.

        a. If the NDI is sufficient to pay the recoup balance due, the debtor is not eligible for a payment plan or compromise. The lump sum is due unless the debtor has agreed to pay in 12 months or less.

        b. If the NDI + (liquid assets – 3 months of expenses) is sufficient to pay the recoup balance due, the debtor is not eligible for a payment plan or compromise. The lump sum is due unless the debtor has agreed to pay in 12 months or less.

C. Payment Plans

    1. The debtor is eligible for a payment plan if they have an inadequate NDI and/or liquid assets to pay the debt in one lump sum. Evaluate assets, income and expenses to determine whether the debtor can make an initial payment and then pay the remaining balance in a payment plan for 6 years or less.

        a. An initial payment is due when liquid assets – 3 months of expenses is greater than 0;

        b. A payment plan of the NDI or $25, whichever is greater, is offered a payment plan for 6 years or less;

        c. A balloon payment is due as the final payment when the NDI or $25 will not pay the debt in 6 years or less. The payment plan may be re-negotiated following a new evaluation at the end of the 6 year period. Ninety (90) days prior to the balloon payment due date, the FFC will send a letter notifying the applicant of the upcoming final payment due.

    2. Final approval by the Unit Chief, AR Section Chief and FFC Deputy Chief is required for all payment plans.

    3. Mail the debtor a payment plan agreement offer letter, promissory note and amortization schedule after the payment plan is approved. Instruct the debtor to return the signed and dated promissory note within thirty (30) days. If the signed promisorry note is not returned within thirty days and no payments are made, the debt may be referred to Treasury. If the debtor makes the proposed or higher payments without returning a signed promissory note, the debt will not be referred to Treasury.

D. Compromise

    1. A compromise is based on special factors and inability to pay. The debt is compromised in full if the debtor has special factors, disposable income less than $25 per month and no assets. Debtors without special factors are not eligible for a compromise.

    2. Calculate the RCP, identify special factors, the amount of the recoup, and the permanence of the debtor’s situation. Note the special factor(s) that justify a recommendation to compromise. Special factors may include:

a. Age (65 or over);

b. Health, e.g., medical expenses considered excessive if greater than 10% of disposable pay;

c. Advanced Age, e.g., it may be unreasonable to require a debtor aged 80 to repay a large balance in one lump sum;

d. Disability;

e. Income below the poverty level as documented by the U.S. Federal Poverty Guidelines;

f. Only income is Supplemental Security Income;

g. Other extraordinary circumstances resulting in financial hardship.

Note: Different circumstances prescribe the use of different special factors. Job loss could be a special factor during a recession, but not during periods of economic growth.

E. Suspension

1. Some debts may be deemed currently uncollectible, but may have future collection potential. For example, the debtor may be young or well educated, but is currently unemployed or under employed. When this situation exists, a decision must be made whether to suspend collection action, establish a minimum payment plan and potentially refer the debt to Treasury for collection if payments are not made, or compromise the debt. By necessity, this decision must be made on a case-by-case basis, giving due regard to the debt amount, the posture of the debtor, and the likelihood for improvement in the debtor's financial situation over time.

2. If suspension is deemed appropriate, debt collection will be suspended for six months and reevaluated at that time. The debt may be suspended for an additional six months at which time a final decision will be made. The debtor must agree to pay administrative fee and interest on the amount of the debt on which collection action is suspended. Penalties will not be assessed during the suspension period. The debt should be compromised and written off whenever current financial information reveals that the present and future prospects of collecting a substantial amount are so poor that the potential gain does not warrant the cost to keep the debt in suspense.

3. The DCS or any reviewer can determine whether to suspend a debt and move it to a suspense folder in SharePoint. However, debts over $10,000 will require CFO and OCC concurrence.

VI. Payment Plan and/or Partial Compromise

A. Compromise the recoup if special factors and assets (less exceptions) plus NDI do not resolve the debt within 6 years with a minimum payment of $25. The amount compromised is the balance due less the RCP.

B. Verify the debtor’s non-monetary assets and liabilities by using public record research tools, e.g., Lexis Nexis, CLEAR, and Equifax. Summarize the factors affecting the decision to compromise debts that are unclear or unverifiable through routine processing. Summarize the factors affecting the decision to compromise debts over $10,000. All compromises of principal debt greater than $10,000 require a review of the debtor’s Equifax report to:

1. Verify financial information on the DCFS, i.e., first and second mortgage payments and car payments.
2. Identify trends, i.e., accounts in collection and late payment history.
3. Search for medical debt and bankruptcies.

VII. Final Disposition

A. The Unit Chief reviews the recommended disposition to ensure it is consistent with debt resolution policies. Questions or modifications are sent to the DCS who prepared the evaluation by using Request to Change feature in SharePoint. Provide detailed answers to questions and make any necessary changes, then respond to the Requestor. If this process changes the disposition, ask the Requestor to cancel the original workflow. Add a clear explanation of the changes made to the case within the new workflow so the Requestor can focus on the changes. This will ensure that the appropriate reviews are completed according to designated roles and responsibilities.

B. Once a final disposition is approved, update the case information in ACCPAC, prepare any adjustments, and remove penalties. Prepare the final disposition letter and payment plan documents. Add the document(s) to the AR Letter Approval folder in SharePoint for Unit Chief, Section Chief or Deputy Chief final review. Mail the approved disposition letter and document(s) to the debtor.

C. Debtors who receive a compromise in the amount of the principal portion of any debt greater than $600 are issued an IRS Form 1099C, Cancellation of Debt.

D. Non-Prosecuted Fraud cases identified by the Fraud Prevention and Investigation Branch of the Office of Chief Security Officer or the Office of Inspector General (OIG) are not eligible for a compromise. Determine NDI and available liquid assets to establish a payment plan. Calculate a 6 year pay plan if the debtor does not have sufficient RCP to pay the debt in 6 years or less. The debt will be referred to Treasury if the debtor does not comply with the payment plan. If a compromise is provided and the debt is later identified as a non-prosecuted fraud case, the compromise will be revoked.

2-6. Referral to the U. S. Department of the Treasury

I. All debt collection letters, financial forms, and disposition letters that require payment of the debt provide an explanation of the consequences of failure to act. The debt is referred to Treasury for collection if the debtor does not comply with the requirements of any letter to resolve their debt.

II. The debt is referred to Treasury for collection if the debtor does not return the signed and dated promissory note within 30 days or make the required payments, or pay by alternate means. As long as the debtor makes the payments required, the debt will not be referred to Treasury, even if the prommisory note was not signed and returned.

III. The debt is referred to Treasury if the debtor fails to make two consecutive payments or makes two underpayments.