

§ 30.71 How does the Secretary exercise discretion to compromise a student loan debt or to suspend or terminate collection of a student loan debt?

(a)

(1) The Secretary ~~may uses~~ its authority under 31 U.S.C. § 3711, 31 U.S.C. § 1082(a)(5) or (6) or any other independent statutory authority to the standards in the FCCS, 31 CFR part 902, to determine whether compromise of a debt is appropriate if the debt arises under a student loan or grant program administered by the Department, ~~unless compromise of the debt is subject to paragraph (b) of this section.~~

~~(2)~~ (2) If the amount of the debt is more than \$100,000, or such higher amount as the Department of Justice may prescribe, the Secretary refers a proposed compromise of the debt to the Department of Justice for approval, ~~unless the compromise is subject to paragraph (b) of this section or the debt is one described in paragraph (e) of this section.~~

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~~(b) Under the provisions in 34 CFR 81.36, the Secretary may enter into certain compromises of debts arising because a recipient of a grant or cooperative agreement under an applicable Department program has spent some of these funds in a manner that is not allowable. For purposes of this section, neither a program authorized under the Higher Education Act of 1965, as amended (HEA), nor the Impact Aid Program is an applicable Department program.~~

~~(e)(b)~~

(1) The Secretary ~~may uses~~ the standards in the FCCS, 31 CFR part 903, to determine whether suspension or termination of collection action on a debt is appropriate.

(2) ~~Except as provided in paragraph (c), the Secretary—~~

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(i) Refers the debt to the Department of Justice to decide whether to suspend or terminate collection action if the amount of the debt outstanding at the time of the referral is more than \$100,000 or such higher amount as the Department of Justice may prescribe; or

(ii) May suspend or terminate collection action if the amount of the debt outstanding at the time of the Secretary's determination that suspension or termination is warranted is less than or equal to \$100,000 or such higher amount as the Department of Justice may prescribe.

~~(d)(c)~~ In determining the amount of a debt ~~under this section under paragraph (a), (b), or (c) of this section,~~ the Secretary deducts any partial payments or recoveries already received, and excludes interest, penalties, and administrative costs.

~~(e)(d)~~

(1) Subject to paragraph ~~(de)~~(2) of this section, under the provisions of 31 CFR part 902 or 903, the Secretary may compromise a debt in any amount, or suspend or terminate collection of a debt in any amount, if the debt arises under the Federal Family Education Loan Program authorized under title IV, part B, of the HEA, the William D. Ford Federal Direct Loan Program authorized under title IV, part D of the HEA, ~~or~~ the Perkins Loan Program authorized

under title IV, part E, of the HEA, the Health Education Assistance Loan Program authorized by sections 701-720 of the Public Health Service Act, 42 U.S.C. 292-292o, or any other loan programs authorized under Title IV of the HEA.

(2) The Secretary refers a proposed compromise, or suspension or termination of collection, of a debt that exceeds \$1,000,000 and that arises under a loan program described in paragraph (e)(1) of this section to the Department of Justice for review. The Secretary does not compromise, or suspend or terminate collection of, a debt referred to the Department of Justice for review until the Department of Justice has provided a response to that request.

~~(f) The Secretary refers a proposed resolution of a debt to the Government Accountability Office (GAO) for review and approval before referring the debt to the Department of Justice if —~~

~~(1) The debt arose from an audit exception taken by GAO to a payment made by the Department; and~~

~~(2) The GAO has not granted an exception from the GAO referral requirement.~~

(e) The Secretary may compromise debts described in part (a) because:

- (1) The debtor is unable to pay the full amount in a reasonable time, as verified through credit reports or other financial information;
- (2) The Department is unable to collect the debt in full within a reasonable time by enforced collection proceedings;
- (3) The cost of collecting the debt does not justify the enforced collection of the full amount;
- (4) There is significant doubt concerning the Government's ability to prove its case in court, due to reasons including but not limited to servicer misconduct, the borrower's eligibility for other forms of statutory relief, and missing documentation, including but not limited to payment history records or master promissory notes.;
- (5) Compromise is warranted to further the purposes of the Higher Education Act or in the interest of justice.

(f) A borrower may request that the Department compromise his or her debt at any time. Where the Department has evidence demonstrating that compromise is appropriate for one or more borrowers, the Department may compromise loans on its own initiative. If the Department provides one or more borrowers with a compromise offer, the offer will be deemed accepted if the borrower does not opt out.

(g) When determining whether the borrower is unable to pay their debt in full in a reasonable amount of time under (e)(1), the Department may consider financial information or other relevant evidence, which may include one or more of the following, or other relevant evidence not enumerated here:

- (1) The borrower's credit report;
- (2) Information submitted on a financial statement form approved by the Department;
- (3) Income information submitted to the Department, or to the IRS or other government agencies and made available to the Department;

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Commented [A1]: The Comptroller General and GAO's roles have been eliminated from federal debt collection. See 62 Fed. Reg. 68476 (Dec. 31, 1997); 65 Fed. Reg. 70391, 70394 (Nov. 22, 2000).

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(4) Age or health of the borrower:

(5) Present and, if relevant, potential income, which may be determined by assessing:

(a) The borrower's income information, including any current and past income information submitted for eligibility or enrollment in an income-contingent repayment plan, income-based repayment plan, income-sensitive repayment plan, or alternative plan provided in 34 CFR §§ 685.208, 685.209, 685.221, 682.209, or 682.215;

(b) Whether the borrower has been in receipt of means-tested state or federal public benefits for a minimum of 12 months;

(c) Whether the borrower completed the program for which they borrowed the debt;

(d) Whether the borrower attended a school that has since closed; or

(e) Whether the borrower's debt was borrowed to attend a school or program that
(i) had high cohort default rates as defined by as defined in 20 U.S.C. § 1085(m);

(ii) qualified as a Gainful Employment program and either failed the debt-to-earnings measure or earnings premium measure as defined by 34 CFR 668.601 et seq;

(iii) lost programmatic or institutional accreditation;

(iv) lost authorization to operate in the borrower's state;

(iv) the Secretary has initiated an emergency action against an institution pursuant to § 487(c)(1)(G) of the HEA or an action to limit, suspend, or terminate an institution participating in any Title IV HEA Program pursuant to 487(c)(1)(F) of the HEA; or

(iv) engaged in school misconduct that was documented by the Department or by another state or federal agency;

(6) The availability of assets or income that may be realized by enforced collection proceedings;

(7) Other necessary expenses the borrower must pay, including but not limited to housing costs, medical debt, and childcare or caregiving costs;

(8) If the borrower entered repayment on their first loan over 10 years ago; or

(9) For Parent PLUS loan borrowers, if the student for whom the debt was borrowed had an Estimated Family Contribution (EFC) of \$0.

(h) When considering whether the Department is unable to collect a debt in full within a reasonable time by enforced collection proceedings under (e)(2), the Department will consider one or more of the following non-exhaustive factors:

(1) When the borrower's loans were disbursed;

(2) How long the debt has been in default, if applicable;

(3) Whether prior enforced collection proceedings have made progress towards reducing the borrower's defaulted loan balance, if applicable;

(4) The amount of the borrower's current outstanding debt;

(5) The age of the borrower;

(6) Whether the borrower was enrolled in or would have been eligible for \$0 monthly payments in an income-contingent repayment plan, income-based repayment plan, income-sensitive repayment plan, or alternative plan provided in 34 CFR §§ 685.208, 685.209,

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685.221, 682.209, or 682.215, and the amount of time the borrower would have been eligible for a \$0 payment;

(7) Whether the borrower has been in receipt of means-tested state or federal public benefits;
or

(8) Whether the borrower's primary income is Social Security or retirement income.

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(i) When considering whether a debt will not be repaid in full under either (e)(1) or (2), the Department must consider any applicable exemptions available to the debtor under state and Federal law in determining the Government's ability to enforce collection, including whether the borrower is or is likely to be eligible for any form of a statutory discharge or forgiveness authorized by the Higher Education Act.

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~~(e)~~ (j) Nothing in this section precludes—

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~~(1)~~ (1) A contracting officer from exercising his authority under applicable statutes, regulations, or common law to settle disputed claims relating to a contract; or

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~~(2)~~ (2) The Secretary from redetermining a claim.

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~~(k)~~ (k) Nothing in this section authorizes the Secretary to compromise, or suspend or terminate collection of, a debt—

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(1) Based in whole or in part on conduct in violation of the antitrust laws; or

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(2) Involving fraud, the presentation of a false claim, or misrepresentation on the part of the debtor or any party having an interest in the claim.

(l) If any provision of this section or its application to any person or circumstance is held invalid, the remainder of the section or the application of its provisions to any person or circumstance will not be affected.

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