

**Issue Paper: Student Loan Debt Relief**  
**Session 1: October 10 and 11, 2023**

**Issue:** Legal powers and responsibilities for Federal student loan debt

**Statutory citations:** §432(a) of the Higher Education Act of 1965, as amended (HEA)

**Regulatory citations:** 34 CFR 30.1(c)(6); 34 CFR Part 30; 34 CFR Parts 682 and 685

**Summary of issues:** Section 432(a) of the HEA outlines the legal powers and responsibilities of the Secretary of Education. In particular, Section 432(a)(6) provides that, “in the performance of, and with respect to, the functions, powers and duties, vested in him by this part, the Secretary may enforce, pay, compromise, waive, or release any right, title, claim, lien, or demand, however acquired, including any equity or any right of redemption.” These provisions apply to Federal Family Education Loans (FFEL) and Direct Loans through Sec. 455(a)(1), which states that Direct loans have parallel terms and conditions to FFEL loans.

In 2016, the Department modified 34 CFR 30.70(e)(1) and (e)(2) to further provide that, under the provisions of 31 CFR part 902 or 903, the Secretary may compromise a debt, or suspend or terminate collection of a debt, if the debt arises under the Federal Family Education Loan Program, the William D. Ford Federal Direct Loan Program, or the Perkins Loan Program. The Secretary refers a proposed compromise, or suspension or termination of collection, of a debt that exceeds \$1,000,000 to the Department of Justice for review.

The Federal Claims Collection Standards (FCCS) are regulations jointly prescribed by the Departments of Justice and Treasury. These regulations, in 31 CFR parts 902 and 903, provide more specific bases for compromise and termination of collection of a debt. Under §902.2(a), an agency may compromise a debt if the government cannot collect the full amount of the debt because:

- The debtor is unable to pay the full amount in a reasonable time, based on financial information;
- The government is unable to collect the debt in full within a reasonable time by enforced collection proceedings;
- The cost of collecting the debt does not justify the enforced collection of the full amount; or
- There is significant doubt concerning the government's ability to prove its case in court.

In addition to considering revisions to its compromise regulations, the Department also is considering adding regulations on the circumstances under which the Department may waive all or part of federal student loan debts. In crafting regulations pursuant to the Secretary's waiver authority, the Department seeks to articulate bases for waiver that comport with the principles that govern waiver across federal agencies and with the goals of the Higher Education Act. For instance, when exercising waiver authority under other statutes, some agencies consider whether collection would be against equity and good conscience, and agencies have articulated numerous factors that may weigh in favor of an individual waiver, including when collection would defeat the purpose of the benefit program or impose financial hardship, among other considerations.

**Additional background:** The Supreme Court recently ruled on a Department policy that would have provided debt relief based on a different distinct statute, the HEROES Act of 2003, 20 U.S.C. § 1098bb. That debt relief plan would have provided forgiveness for up to 43 million borrowers. Eligible borrowers would have qualified for relief if they made under \$125,000 as a single individual or \$250,000 for couples. The plan would have forgiven up to \$20,000 for a qualifying borrower who received a Pell Grant and \$10,000 for a qualifying borrower who did not. The Department had estimated that the plan would have cost \$379 billion.

The Supreme Court found that the Secretary's debt relief policy presented a question of "economic and political significance" and that the policy was not clearly authorized by the HEROES Act, which permits the Secretary to "waive or modify any statutory or regulatory provision" of the Higher Education Act that he deems necessary to ensure that borrowers are not worse off financially in relation to their loans as a result of a national emergency. The Court held that the debt relief policy was neither a waiver nor a modification of the Higher Education Act.

The Department also has operational constraints in implementing new regulations. In particular, complex individualized reviews of borrowers' circumstances that rely on extensive information not easily accessible from administrative data will not be feasible to administer in a way that ensures consistent decision-making. It would also run the risk of extended delays in considering applications.

**Current Department of Education Regulations:** To assist the Committee in discussing these issues, the Department is providing the text of the current regulations pertaining to compromise, waiver, release, and settlement, and links to applicable provisions of the Federal Claims Collection Standards and to the applicable section of the U.S. Code.

**Committee questions for consideration:** On July 18, the Department held a public hearing to discuss ideas for changes to the relevant regulatory sections. We also invited public comment through July 20. The Department heard a range of ideas from stakeholders during the hearing and in written comments. In considering that feedback, the Department is interested in discussing the following questions with the committee:

1. Many borrowers have seen their balances grow due to the accrual of unpaid interest such that many borrowers now have overall balances higher than what they originally borrowed. Are there ways to help borrowers who are in this situation that could put them on a better path for successful repayment?
2. How could the Department better assist borrowers who are eligible for forgiveness under programs such as income-driven repayment but who do not apply for those programs?
3. How should the Department consider debts taken out by students to attend programs when we later find that such programs did not provide a minimum level of financial value sufficient to make loans affordable for many or most borrowers?
4. Congress and the Department have provided borrowers with many additional benefits for their student loans over time. There are many borrowers, however, who borrowed or entered repayment before the creation of those various benefits. Since those benefits were not available when those borrowers took out their loans, those borrowers may have struggled to repay their

loans in ways that those taking on debts today may not. How should the Department treat loans that first entered repayment many years ago, including well prior to the creation of additional benefits? How should the Department apply the FCCS compromise principle to loans that the borrower is unable to repay in a reasonable amount of time?

5. Borrowers who experience hardship with respect to their student loans may have certain ways to reduce or delay loan payments or seek forgiveness on their loans. Yet borrowers may continue to experience hardship in ways that the current student loan system does not adequately address. What are potential types of hardship that borrowers may continue to face and how might the Department address those cases of hardship?

## Negotiated Rulemaking – Student Loan Relief Committee

### Current Regulatory Text

#### 34 CFR PART 30—DEBT COLLECTION

##### Subpart A—General

##### § 30.1 What administrative actions may the Secretary take to collect a debt?

(a) The Secretary may take one or more of the following actions to collect a debt owed to the United States:

- (1) Collect the debt under the procedures authorized in the regulations in this part.
- (2) Refer the debt to the General Accounting Office for collection.
- (3) Refer the debt to the Department of Justice for compromise, collection, or litigation.
- (4) Take any other action authorized by law.

(b) In taking any of the actions listed in paragraph (a) of this section, the Secretary complies with the requirements of the Federal Claims Collection Standards (FCCS) at 4 CFR parts 101–105 that are not inconsistent with the requirements of this part.

(c) The Secretary may—

- (1) Collect the debt under the offset procedures in subpart C of this part;
- (2) Report a debt to a consumer reporting agency under the procedures in subpart C of this part;
- (3) Charge interest on the debt as provided in the FCCS;
- (4) Impose upon a debtor a charge based on the costs of collection as determined under subpart E of this part;
- (5) Impose upon a debtor a penalty for failure to pay a debt when due under subpart E of this part;
- (6) Compromise a debt, or suspend or terminate collection of a debt, under subpart F of this part;
- (7) Take any other actions under the procedures of the FCCS in order to protect the United States Government's interests; or
- (8) Use any combination of the procedures listed in this paragraph (c) as may be appropriate in a particular case.

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Subpart F—What Requirements Apply to the Compromise of a Debt or the Suspension or Termination of Collection Action?

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

(a)

(1) The Secretary uses the standards in the FCCS, 31 CFR part 902, to determine whether compromise of a debt is appropriate if the debt arises under a program administered by the Department, unless compromise of the debt is subject to paragraph (b) of this section.

(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.

(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.

(c)

(1) The Secretary 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 (e), the Secretary—

(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) In determining the amount of a debt 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)

(1) Subject to paragraph (e)(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.

(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.

(g) Nothing in this section precludes—

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

(2) The Secretary from redetermining a claim.

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

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

(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.

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20 U.S. Code 1082(a) is provided at this link:

[USCODE-2021-title20-chap28-subchapIV-partB-sec1082.pdf \(govinfo.gov\)](https://www.govinfo.gov/uscodes/title20/chap28/subchapIV/partB/sec1082.pdf)

31 U.S. Code 3711 (Collection and Compromise) is provided at this link:

[USCODE-2021-title31-subtitleIII-chap37-subchapII-sec3711.pdf \(govinfo.gov\)](https://www.govinfo.gov/uscodes/title31/subtitleIII/chap37/subchapII/sec3711.pdf)

Regulations for 31 CFR parts 902 and 903 are provided at these links:

<https://www.ecfr.gov/current/title-31/subtitle-B/chapter-IX/part-902>

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