

Issue Paper 11
Session 3: March 16-18, 2016

Issue: Whether to revise regulations that describe the authority of the Department to compromise, suspend, or terminate collection of debts

Statutory cite: Sections 432(a), 451(b), and 468(2) of the Higher Education Act of 1965, as amended (HEA); 31 U.S.C. 3711

Regulatory cite: 34 CFR 30.70

Summary of Issue:

The current regulation in 34 CFR 30.70 was adopted in 1988 to describe the procedures and standards the Secretary follows to compromise, suspend, or terminate collection of debts arising under programs administered by the Department. The HEA has, since 1965, authorized the Secretary to compromise—without dollar limitation – debts arising from title IV, HEA student loans. The Federal Claims Collection Act of 1966 (FCCA), now at 31 U.S.C. 3711, authorized Federal agencies to compromise, suspend, or terminate collection of debts, subject to dollar limitations and compliance with the Federal Claims Collection Standards (FCCS), now at 31 CFR 900 – 904. As in effect in 1988, the FCCA required agencies generally to obtain approval from the Department of Justice (DOJ) in order to resolve debts exceeding \$20,000, unless DOJ were to prescribe a higher amount. No higher amount was prescribed, and the Department included that \$20,000 dollar limit in 34 CFR 30.70, where it has remained.

In 1988, Section 452(j) of the General Education Provisions Act (GEPA) was enacted, to provide standards and procedures for certain compromises of debts arising under any program administered by the Department other than the Impact Aid Program or HEA programs. These provisions were also included in 34 CFR 30.70(c), (d), and (e).. However, in 1989, the Department adopted 34 CFR 81.36 to implement these same GEPA standards; that regulation supersedes current 34 CFR 30.70(c), (d), and (e). Compromises of debts under Department programs that do not fall under standards in 34 CFR 81.36 would continue to be subject to the standards and dollar limits generally applicable to Department debts. In 1990, in Pub. L. 101-552, Congress increased to \$100,000 the size of debts that agencies may resolve without DOJ approval; that change is not reflected in 34 CFR 30.70. Finally, in 2008, Pub. L. 110-315 amended section 432 of the HEA to require the Department to provide DOJ an opportunity to review and comment on any proposed resolution of a claim arising under any of the title IV, HEA loan programs that exceeds \$1,000,000. That, too, is not reflected in 34 CFR 30.70.

The proposed changes would revise the regulation to –

- Reflect the increased debt resolution authority (\$100,000);
- Refer to 34 CFR 81.36 to describe the authority and procedures for those compromises of claims that are subject to section 452(j) of GEPA;
- Clarify that the generally-applicable \$100,000 limit does not apply to resolution of claims arising under the Federal Family Education Loan Program, or under the William D. Ford Federal Direct Loan Program or Federal Perkins Loan Program; and Include the requirement that the Department seek DOJ review of any proposed resolution of a claim exceeding \$1,000,000 under

any of those loan programs.

34 C.F.R. § 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, ~~431~~ CFR part ~~103902~~, to determine whether compromise of a debt is appropriate if—

~~(1) the debt must be referred to the Department of Justice under this section; or~~

~~(2) The amount of the debt is less than or equal to \$20,000 and the Secretary does not follow the procedures in paragraph (c) of this section.~~

~~(b) The Secretary refers a debt to the Department of Justice to decide whether to compromise a debt if—~~

~~(1) The debt was incurred arises under a program or activity administered by the Department, unless compromise of the debt is subject to section 452(f) of the General Education Provisions Act and the initial determination of the debt was more than \$50,000; or paragraph (b) of this section.~~

~~(2) The debt was incurred under a program or activity not subject to section 452(f) of the General Education Provisions Act and if the amount of the debt is more than ~~\$20~~100,000.~~

~~(c), or such higher amount as the Department of Justice may prescribe, the Secretary may refers a proposed compromise of the debt under to the procedures in Department of Justice for approval, unless the compromise is subject to paragraph ~~(e)~~b of this section if—~~

~~(1) The debt was incurred under a program or activity subject to section 452(f) of the General Education Provisions Act; and~~

~~(2) The initial determination of the debt was less than or equal to \$50,000.~~

~~(d) The Secretary may compromise a debt without following the procedure or the debt is one described in paragraph (e) of this section if the amount of the debt is less than or equal to \$20,000.~~

~~(e) The Secretary may compromise the debt pursuant to paragraph (c) of this section if—~~

~~(1) The Secretary determines that—~~

~~(i) Collection of any or all of the debt would not be practical or in the public interest; and~~

~~(ii) The practice that resulted in the debt has been corrected and will not recur;~~

~~(2) At least 45 days before compromising the debt, the Secretary publishes a notice in the Federal Register stating—~~

~~(i) The Secretary's intent to compromise the debt; and~~

~~(ii) That interested persons may comment on the proposed compromise; and~~

~~(3) The Secretary considers any comments received in response to the Federal Register notice before finally compromising the debt.~~

~~(f)(1)(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 program.~~

~~(c)(1) The Secretary uses the standards in the FCCS, 431 CFR part 104903, 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 \$~~20~~100,000; or

(ii) May ~~decide to~~ suspend or terminate collection action if the amount of the debt outstanding at the time of the ~~Secretary's decision~~Secretary's determination that suspension or termination is warranted is less than or equal to \$~~20~~100,000.

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

~~(h) Notwithstanding paragraphs (b) through (f)(e) (1) Subject to paragraph (e)(2), under the provisions of this section 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 Guaranteed Student Federal Family Education Loan Program authorized under title IV, part B, of the Higher Education Act HEA, the William D. Ford Federal Direct Loan Program authorized under title IV, part D of 1965, as amended the HEA, or the Perkins Loan Program authorized under title IV, part E, of the Higher Education Act of 1965, as amended HEA.~~

~~(i)(2) The Secretary refers a proposed compromise, suspension or termination of collection of a debt to the General Accounting that exceeds \$1,000,000 and that arises under a loan program described in paragraph (e)(1) to the Department of Justice for review. The Secretary does not compromise, 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 for litigation 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, 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.