



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF POSTSECONDARY EDUCATION

Proposed Regulatory Text for Questions 1-4
Student Debt Relief
Negotiated Rulemaking, Session 2
November 6-7, 2023

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 314 CFR parts 900-904 ~~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;

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(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) Waive repayment of a debt under subpart G of this part;

~~(78)~~ Take any other actions under the procedures of the FCCS in order to protect the United States Government's interests; or

~~(89)~~ Use any combination of the procedures listed in this paragraph (c) as may be appropriate in a particular case.

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§ 30.62 When does the Secretary forego interest, administrative costs, or penalties?

(a) For a debt of any amount based on a loan, the Secretary may refrain from collecting interest or charging administrative costs or penalties to the extent that compromise of these amounts is appropriate under the standards for compromise of a debt contained in 431 CFR part ~~902103~~ or to the extent that waiver of repayment of these amounts is appropriate under §30.80.

(b) For a debt not based on a loan, the Secretary may waive, or partially waive, the charging of interest, or the collection of administrative costs or penalties, if—

(1) Compromise of these amounts is appropriate under the standards for compromise of a debt contained in 431 CFR part ~~902103~~; or

(2) The Secretary determines that the charging of interest or the collection of administrative costs or penalties is—

(i) Against equity and good conscience; or

(ii) Not in the best interests of the United States.

(c) The Secretary may exercise waiver under paragraph (b) (1) of this section without regard to the amount of the debt.

(d) The Secretary may exercise waiver under paragraph (b) (2) of this section if-

(1) The Secretary has accepted an installment plan under 431 CFR 901.8+02.11;

(2) There is no indication of fault or lack of good faith on the part of the debtor; and

(3) The amount of interest, administrative costs, and penalties is such a large portion of the installments that the debt may never be repaid if that amount is collected.

(e)

(1) The Secretary does not charge interest on any portion of a debt, other than a loan, owed by a person subject to 31 U.S.C. 3717 if the debt is paid within 30 days after the date of the first demand for payment.

(2) The Secretary may extend the period under paragraph (e) (1) of this section if the Secretary determines that the extension is appropriate.

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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 may ~~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 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 (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, or the Health Education Assistance Loan Program authorized by sections 701-720 of the Public Health Service Act, 42 U.S.C. 292-292o.

(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.

Subpart G Waiver of Federal Student Loan Debts

Commented [A1]: The entirety of this section is new so we are not showing it as a redline.

§ 30.80 Waiver of Federal student loan debts.

(a) General. The Secretary may waive all or part of any debts owed to the Department arising 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, the Federal Perkins Loan Program authorized under title IV, part E, of the HEA, and the Health Education Assistance Loan Program authorized by sections 701-720 of the Public Health Service Act, 42 U.S.C. 292-292o, under the conditions described in this section including but not limited to those described in paragraphs (b)-(g) of this section.

(b) Current balance exceeds the original principal balance. The Secretary may waive [all or a portion of] the amount by which a borrower's total outstanding balance exceeds the original principal balance of the loan, including if the loan is a Federal Consolidation Loan or a Direct Consolidation Loan, the total original principal balance of all loans repaid by such loan, if-

Commented [A2]: Question for negotiators: Should this kind of language be considered for inclusion in the draft rule, and if so how might the Department further define it?

(i) The loan was in repayment for at least XX months by no later than July 1, 2025; and

Commented [A3]: Question for negotiators: We are interested in thoughts for how to define this period such that a borrower would have likely paid off their in-school interest.

[(ii) BORROWER ELIGIBILITY REQUIREMENTS].

Commented [A4]: Question for negotiators: What requirements, if any, should the department include?

(c) First entered repayment 25 years ago. (1) The Secretary may waive the outstanding balance of a loan if the loan was in repayment, including periods when the loan was in default, deferment, or forbearance, for at least 300 months by no later than July 1, 2025.

(2) For the purpose of this paragraph (c), a loan enters repayment on-

(i) For a Federal Stafford Loan, a Direct Subsidized Loan, or a Direct Unsubsidized Loan, the day after the initial grace period ends;

(ii) For a Federal PLUS Loan or a Direct PLUS Loan, the day the loan is fully disbursed; or

(iii) For a Federal Consolidation Loan or Direct Consolidation Loan, the earliest day as determined under paragraphs (c)(2)(i) and (ii) of this section for any loan that was repaid by that consolidation loan.

(d) Forgiveness based upon repayment plan. (1) The Secretary may waive the outstanding balance of a loan where the Secretary determines that a borrower is not enrolled in, but otherwise meets the eligibility requirements for forgiveness under—

(i) An income-based repayment plan under § 682.215 or § 685.221;

(ii) An income-contingent repayment plan under § 685.209; or

(iii) An alternative repayment plan under § 685.208(1).

(e) Targeted forgiveness programs. (1) The Secretary may waive up to the entire outstanding balance of a loan where the Secretary determines that a borrower has not successfully applied for, but otherwise meets the eligibility requirements for—

(i) Public Service Loan Forgiveness under § 685.219;

(ii) Closed School Discharge under § 674.33(g), § 682.402(d), or § 685.214;

(iii) Borrower Defense to Repayment under part 685, subpart D; or

(iv) Any other loan discharge, cancellation, or forgiveness program under parts 682 or 685.

(f) Gainful employment. (1) For loans received for enrollment in a gainful employment (GE) program, as described in 20 U.S.C. 1002(b)(1)(A)(i) and (c)(1)(A), the Secretary may waive repayment if the following conditions are met:

(i) The Secretary determines that the GE program has failed the debt-to-earnings (D/E) rates measure, or has failed the earnings premium measure, under paragraph (f)(2) of this section in two out of any three consecutive award years for which the program's D/E rates or earnings premium, as applicable, are calculated.

(ii) The borrower-

(A) Completed the program and the borrower was in the cohort whose debt was used to calculate the failing D/E rates or earnings premium; or

(B) Withdrew from the program within-

(1) Four award years prior to the most recent award year in the cohort period used to calculate the failing D/E rates or earnings premium, for a bachelor's degree, doctoral degree, or first professional degree program;

(2) Two award years prior to the most recent award year in the cohort period used to calculate the failing D/E rates or earnings premium for an associate or master's degree program; or

(3) The same award year as the most recent award year in the cohort period used to calculate the failing D/E rates or earnings premium for a certificate program.

(iii) The borrower did not submit an acknowledgment under § 668.605.

(2) For the purpose of this paragraph (f)-

(i) The Secretary calculates D/E rates and the earnings premium in accordance with §§ 668.403, 668.404, and 668.405, beginning with the first award year that the Secretary calculates D/E rates and the earnings premium for a program under part 668, subpart Q; and

(ii) For award years 2015-2022 and any subsequent award year where the Secretary does not calculate D/E rates and the earnings premium for a program under part 668, subpart Q for reasons other than those described in § 668.403(f) or § 668.404(d), as applicable, the Secretary will calculate the measures by [using available data and a methodology that reasonably approximates those described in §§ 668.403, 668.404, and 668.405].

(g) Cohort default rates. For loans received for attendance at an institution that lost its eligibility to participate in any title IV, HEA program because of its high cohort default rate, as defined in 20 U.S.C. 1085(m), the Secretary may waive repayment of the loan provided that the borrower was included in

the cohort whose debt was used to calculate the cohort default rate.

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§ 682.403 Waiver of FFEL Program loan debt.

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Waivers.

(1) The Secretary may waive the outstanding balance on an FFEL Program loan if the loan would qualify for a waiver under--

- (i) 34 CFR 30.80(c);
- (ii) 34 CFR 30.80 (d) (1) (i); or
- (iii) 34 CFR 30.80 (e) (1) (ii) and (e) (1) (iv).

(2) After determining that a loan qualifies for a waiver under paragraph (a) (1) of this section, the Secretary may direct the lender to submit a claim to the guaranty agency so the loan can be assigned to the Secretary.

(3) After the loan is assigned, the Secretary may waive all or a portion of the loan in accordance with 34 CFR 30.80.

(b) Lender and guaranty agency actions.

(1) If the Secretary determines that a loan qualifies for a waiver under paragraph (a) (1) of this section--

- (i) The Secretary notifies the lender that the loan qualifies for a waiver;
- (ii) The lender must submit a claim to the guaranty agency, within 60 days of the date the lender received the notification, that includes the following documentation:
 - (A) An original or a true and exact copy of the promissory note.
 - (B) The notification described in paragraph (b) (1) (i) of this section.

(2) If the claim meets the requirements of paragraph (b) (1) (ii) of this section, the guaranty agency must pay the claim submitted by the lender.

(3) The Secretary reimburses the guaranty agency for a claim paid to the lender after the agency pays the claim to the lender.

(4) The guaranty agency must assign the loan to the Secretary within 45 days of the date the guaranty agency pays the claim and receives the reimbursement payment or within 45 days of the date the guaranty agency receives the notification described in paragraph (a) (2) of this section if the guaranty agency is the lender.