

§ 1177.22 Bases for compromise.

(a) NEH may compromise a debt if the Government cannot collect the full amount 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 Government is unable to collect the debt in full by enforced collection proceedings within a reasonable time;

(3) The cost of collecting the debt does not justify the enforced collection of the full amount; or

(4) There is significant doubt concerning the Government's ability to prove its case in court.

(b) NEH will consider the following relevant factors when determining the debtor's inability to pay:

(1) The debtor's age and health;

(2) The debtor's present and potential income;

(3) The debtor's inheritance prospects;

(4) The possibility that the debtor has concealed or improperly transferred assets; and

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

(c) NEH will verify the debtor's claim of inability to pay by using a credit report and other financial information as provided in paragraph (g) of this section. NEH will consider the applicable exemptions available to the debtor under state and Federal law in determining the Government's ability to enforce collection. NEH also may consider uncertainty as to the price that collateral or other property will bring at a forced sale in determining the Government's ability to enforce collection. A compromise that NEH effects under this section will be for an amount that bears a reasonable relation to the amount that can be recovered by enforced collection procedures, with regard to the exemptions available to the debtor and the time that collection will take.

(d) If there is significant doubt concerning the Government's ability to prove its case in court for the full amount claimed, either because of the legal issues involved or because of a bona fide dispute as to the facts, then the amount that NEH accepts in compromise of such cases should fairly reflect the probabilities of successful prosecution to judgment, with due regard given to the availability of witnesses and other evidentiary support for the Government's claim. In determining the litigative risks involved, NEH will consider the probable amount of court costs and attorney fees pursuant to the Equal Access to Justice Act, 28 U.S.C. 2412, that may be imposed against the Government if it is unsuccessful in litigation.

(e) NEH may compromise a debt if the cost of collecting the debt does not justify the enforced collection of the full amount. The amount NEH accepts in compromise in such cases may reflect

an appropriate discount for the administrative and litigative costs of collection, with consideration given to the time it will take to effect collection. Collection costs may be a substantial factor in the settlement of small debts. In determining whether the cost of collecting justifies enforced collection of the full amount, NEH will consider whether continued collection of the debt, regardless of cost, is necessary to further an enforcement principle, such as the Government's willingness to pursue aggressively defaulting and uncooperative debtors.

(f) NEH generally will not accept compromises payable in installments. This is not an advantageous form of compromise in terms of time and administrative expense. If, however, payment of a compromise in installments is necessary, NEH will obtain a legally enforceable written agreement providing that, in the event of default, the debtor's full original principal balance prior to compromise, less sums paid thereon, will be reinstated. Whenever possible, NEH also will obtain security for repayment in the manner set forth in subpart B of this part.

(g) To assess the merits of a compromise offer based in whole or in part on the debtor's inability to pay the full amount of a debt within a reasonable time, NEH will obtain a current financial statement from the debtor, executed under penalty of perjury, showing the debtor's assets, liabilities, income, and expenses. NEH also may obtain credit reports or other financial information to assess compromise offers. NEH may use its own financial information form or may request suitable forms from DOJ or the local United States Attorney's Office.