

§ 30.22 Bases for compromise.

(a) *Compromise*. The Secretary may compromise a debt if the full amount cannot be collected based upon inability to pay, inability to collect the full debt, cost of collection, or doubt debt can be proven in court.

(1) *Inability to pay*. The debtor is unable to pay the full amount in a reasonable time, as verified through credit reports or other financial information. In determining a debtor's inability to pay the full amount of the debt within a reasonable time, the Secretary will obtain and verify the debtor's claim of inability to pay by using credit reports or a current financial Statement from the debtor, executed under penalty of perjury, showing the debtor's assets, liabilities, income, and expenses. The Secretary may use a Departmental financial information form or may request suitable forms from Justice or the local United States Attorney's Office. The Secretary also may consider other relevant factors such as:

- (i) Age and health of the debtor;
- (ii) Present and potential income;
- (iii) Inheritance prospects;
- (iv) The possibility that assets have been concealed or improperly transferred by the debtor; and
- (v) The availability of assets or income that may be realized by enforced collection proceedings.

(2) *Inability to collect full debt*. The Government is unable to collect the debt in full within a reasonable time by enforced collection proceedings.

(i) In determining the Government's ability to enforce collection, the Secretary will consider the applicable exemptions available to the debtor under State and Federal law, and may also consider uncertainty as to the price the collateral or other property will bring at a forced sale.

(ii) A compromise effected under this section should 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.

(3) *Cost of collection*. The cost of collecting the debt does not justify the enforced collection of the full amount.

(i) The Secretary may compromise a debt if the cost of collecting the debt does not justify the enforced collection of the full amount. The amount accepted in compromise of such cases may reflect an appropriate discount for the administrative and litigation 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.

(ii) In determining whether the costs of collection justify enforced collection of the full amount, the Secretary will consider whether continued collection of the debt, regardless of cost, is

necessary to further an enforcement principal, such as the Government's willingness to pursue aggressively defaulting and uncooperative debtors.

(4) *Doubt debt can be proven in court.* There is significant doubt concerning the Government's ability to prove its case in court.

(i) 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 accepted in compromise of such cases should fairly reflect the probabilities of successful prosecution to judgment, with due regard to the availability of witnesses and other evidentiary support for the Government's claim.

(ii) In determining the litigation risks involved, the Secretary 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.

(b) *Installments.* The Secretary 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, the Secretary shall, except in the case of compromises based on paragraph (a)(4) of this section, obtain a legally enforceable written agreement providing that, in the event of default, the full original principal balance of the debt prior to compromise, less sums paid thereon, is reinstated. The Office of the General Counsel should be consulted concerning the appropriateness of including such a requirement in the case of compromises based on paragraph (a)(4) of this section. Whenever possible, the Secretary will obtain security for repayment in the manner set forth in subpart B of this part.