



U.S. OFFICE OF SPECIAL COUNSEL
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The Special Counsel

December 4, 2023

The Honorable Miguel Cardona
Secretary
United States Department of Education
400 Maryland Avenue, S.W.
Washington, D.C. 20202

Re: OSC File No. DI-24-000101
Referral for Investigation—5 U.S.C. § 1213(c)

Dear Secretary Cardona:

I am referring to you for investigation a whistleblower disclosure that employees of the U.S. Department of Education (ED), Federal Student Aid, Borrower Defense Group (BDG), Washington, D.C., engaged in conduct that may constitute a violation of law, rule, or regulation. A report of your investigation of these allegations and any related matters is due to the Office of Special Counsel (OSC) on February 2, 2024.

The whistleblower, who chose to remain confidential, alleged that ED officials have failed to comply with agency regulations in discharging student loan debt on behalf of groups of borrowers pursuant to 20 U.S.C. § 1082(a)(6).¹ Specifically, the whistleblower alleged that in June 2023, the agency approved a group discharge of approximately \$130 million on behalf of borrowers who attended Colorado campuses of CollegeAmerica, a defunct institution formerly operated by the Center for Excellence in Higher Education (CEHE). The whistleblower alleged that the CEHE discharge procedure violated 34 C.F.R. § 30.70, the regulation that governs the procedures by which the Secretary may “compromise, waive, or release any right, title, claim, lien, or demand” of the Department under 20 U.S.C. § 1082(a)(6) (also known as the Secretary’s “settlement and compromise” authority). The allegations to be investigated include:

- Agency officials have failed to adhere to regulatory requirements, including those of 34 C.F.R. § 30.70, in discharging student loan debt on behalf of borrowers pursuant to the Secretary’s settlement and compromise authority; and
- Any additional or related allegations of wrongdoing discovered during the investigation of the foregoing allegations.

In relevant part, 34 C.F.R. § 30.70 provides that “[t]he Secretary uses the standards in the FCCS [Federal Claims Collection Standards], 31 C.F.R. part 902, to determine whether compromise of a debt

¹ 20 U.S.C. § 1082(a)(6) provides, “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.”

is appropriate if the debt arises under a program administered by the Department.” The regulation further provides that in accordance with the FCCS, the Secretary may compromise debts that arise under federally administered student loan programs. According to the FCCS, “Agencies 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 within a reasonable time by enforced collection proceedings; (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.” *See* 31 C.F.R. § 902.2(a).

The whistleblower disclosed that the Borrower Defense Group received an application for a group discharge on behalf of the CEHE borrowers in June 2022. The CEHE borrowers, through the Attorney General of Colorado, asked the agency to relieve their student loan debt using the group discharge process set forth in 34 C.F.R. § 685.222.² However, the whistleblower provided a June 2023 memorandum from BDG, and a June 2023 approval notice from Under Secretary James Kvaal, in which the agency elected not to initiate a group discharge process. In lieu of a group process, agency officials recommended that the Secretary exercise the settlement and compromise authority under 20 U.S.C. § 1082(a)(6) to discharge all debt on behalf of the CEHE borrowers. The whistleblower alleged that the discharge procedure failed to comply with regulations governing the Secretary’s settlement and compromise authority, namely, 34 C.F.R. § 30.70 and the FCCS. The whistleblower alleged that agency officials approved the CEHE discharge without any determination of any individual debtor’s ability to pay; the government’s ability to collect within a reasonable time; the costs of collection; or the prospects of recovery through litigation. *See* 34 C.F.R. § 902.2. Instead, the agency applied a Department policy that establishes a presumption in favor of full relief, found that the presumption was not rebutted by sufficient countervailing evidence, and granted full relief to the CEHE borrowers. The whistleblower disclosed that the presumption in favor of full relief is the Department’s method of determining relief under the group process.³ In contrast, the whistleblower alleged that the settlement and compromise authority, by virtue of 34 C.F.R. § 30.70 and the FCCS, requires an individualized, case-by-case determination of relief. Therefore, the whistleblower maintains that the Department’s use of the presumption in favor of full relief is inappropriate where, as here, a discharge is accomplished through the settlement and compromise authority. Consequently, the whistleblower alleged that the CEHE discharge was not an appropriate use of the settlement and compromise authority as the discharge procedure failed to comply with 34 C.F.R. § 30.70 and the FCCS.

² 34 C.F.R. § 685.222 establishes procedures through which the agency can initiate a group process for adjudicating borrower defenses that are asserted on behalf of multiple borrowers, including, for example, defenses based on misrepresentations made by the institution. *See* 34 C.F.R. §§ 685.222(d) and (f). The group process requires the Secretary to designate a Department official to present the group’s claim in a fact-finding process; provide notice to each identified group member, including an opportunity to opt out of the proceeding; and, if applicable, notify the school of the basis of the group’s defense and the initiation of the fact-finding process. 34 C.F.R. §§ 685.222(f)(1) and (2). Both the group process described in 34 C.F.R. § 685.222 and the settlement and compromise authority under 20 U.S.C. § 1082(a)(6) are distinct from the Biden Administration’s prior student debt forgiveness plan under 20 U.S.C. § 1098bb, a provision of the Higher Education Relief Opportunities for Students Act of 2003 (HEROES Act). *See generally* *Biden v. Nebraska*, 600 U.S. 477 (2023).

³ *See* 34 C.F.R. § 685.222(i).

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The whistleblower also alleged that agency officials approved similar discharges on behalf of other groups of borrowers between April 2022 and August 2022 without adhering to regulatory requirements. Specifically, the whistleblower alleged that ED approved group discharges on behalf of students who attended ITT Technical Institute, Westwood College, and Marinello School of Beauty. In each of these instances, the whistleblower alleged that agency officials elected to discharge the group's debt *en masse* via the Secretary's settlement and compromise authority despite failing to assess the individualized factors set out in the FCCS that establish the permissible bases for compromise.

Pursuant to my authority under 5 U.S.C. § 1213, I have concluded that there is a substantial likelihood that the information provided to OSC discloses a violation of law, rule, or regulation. Please note that specific allegations and references to violations of law, rule, or regulation are not intended to be exclusive. If, in the course of your investigation, you discover additional violations, please include your findings on these additional matters in the report to OSC. As previously noted, your agency must conduct an investigation of these matters and produce a report, which must be reviewed and signed by you. Per statutory requirements, I will review the report for sufficiency and reasonableness before sending copies of the agency report, along with the whistleblower's comments and any comments or recommendations I may have, to the President and congressional oversight committees and making these documents publicly available.

Additional important requirements and guidance on the agency report are included in the attached Appendix, which can also be accessed at <https://osc.gov/Pages/DOW.aspx>. If your investigators have questions regarding the statutory process or the report required under 5 U.S.C. § 1213, please contact Catherine A. McMullen, Chief, Disclosure Unit, at (202) 804-7088 or cmcmullen@osc.gov for assistance. I am also available for any questions you may have.

Sincerely,



Karen P. Gorman
Acting Special Counsel

Enclosure

cc: The Honorable Sandra D. Bruce, Inspector General

APPENDIX

AGENCY REPORTS UNDER 5 U.S.C. § 1213

GUIDANCE ON 1213 REPORT

- OSC requires that your investigators interview the whistleblower at the beginning of the agency investigation when the whistleblower consents to the disclosure of his or her name.
- Should the agency head delegate the authority to review and sign the report, the delegation must be specifically stated and include the authority to take the actions necessary under 5 U.S.C. § 1213(d)(5).
- OSC will consider extension requests in 60-day increments when an agency evidences that it is conducting a good faith investigation that will require more time to complete.
- Identify agency employees by position title in the report and attach a key identifying the employees by both name and position. The key identifying employees will be used by OSC in its review and evaluation of the report. OSC will place the report without the employee identification key in its public file.
- Do not include in the report personally identifiable information, such as social security numbers, home addresses and telephone numbers, personal e-mails, dates and places of birth, and personal financial information.
- Include information about actual or projected financial savings as a result of the investigation as well as any policy changes related to the financial savings.
- Reports previously provided to OSC may be reviewed through OSC's public file, which is available here: <https://osc.gov/Pages/Resources-PublicFiles.aspx>. Please refer to our file number in any correspondence on this matter.

RETALIATION AGAINST WHISTLEBLOWERS

In some cases, whistleblowers who have made disclosures to OSC that are referred for investigation pursuant to 5 U.S.C. § 1213 also allege retaliation for whistleblowing once the agency is on notice of their allegations. The Special Counsel strongly recommends the agency take all appropriate measures to protect individuals from retaliation and other prohibited personnel practices.

EXCEPTIONS TO PUBLIC FILE REQUIREMENT

OSC will place a copy of the agency report in its public file unless it is classified or prohibited from release by law or by Executive Order requiring that information be kept secret in the interest of national defense or the conduct of foreign affairs. 5 U.S.C. § 1219(a).

EVIDENCE OF CRIMINAL CONDUCT

If the agency discovers evidence of a criminal violation during the course of its investigation and refers the evidence to the Attorney General, the agency must notify the Office of Personnel Management and the Office of Management and Budget. 5 U.S.C. § 1213(f). In such cases, the agency must still submit its report to OSC, but OSC must not share the report with the whistleblower or make it publicly available. See 5 U.S.C. §§ 1213(f), 1219(a)(1).