

Equity and Good Conscience Debt Waiver Statutes

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Each year, the federal government spends trillions of dollars through a wide variety of government programs. Agencies employ staff, rent office buildings, procure goods or services from private firms, award grants, make loans and loan guarantees, issue direct payments to program beneficiaries, extend insurance, or otherwise disburse federal funds in service of their statutory missions. Some of these disbursements may have been made in error. That is, a payment recipient might not have been eligible to receive all or part what the agency paid. The reason why an overpayment occurred can vary. For example, recipients could have fraudulently certified their eligibility for the payment. Other overpayments can arise solely from errors on the part of the agency, such as when an agency makes calculation errors in determining benefit payment amounts.

Regardless of the reason it occurred, an overpayment of federal funds is a [debt](#) that its recipient owes to the United States. Congress has generally charged agencies with [pursuing the collection of such debts](#), granting them a variety of administrative and judicial tools to use in the effort. Congress has recognized, though, that debt collection might be inequitable. Congress has enacted dozens of statutes that, though they vary in certain respects, all permit an agency to waive a debt owed to the United States where enforced collection of that debt would conflict with fairness or public policy considerations.

This Legal Sidebar examines this class of waiver statutes, known as *equity and good conscience debt waiver authorities* (EGC authorities). The Sidebar begins by discussing background principles of law that govern an agency's duty to collect debts and its ability to waive them. It then surveys the dozens of EGC authorities that exist, noting their similarities and differences, and describes how certain agencies have implemented EGC authority by rule. The Sidebar concludes with several legislative options Congress may consider regarding debt collection and waiver authorities.

Background Law

The [Property Clause of the U.S. Constitution](#) vests Congress with the “Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States.” The Supreme Court has described this power to control the use of federal property in broad terms: Congress, the Court has explained, “[exercises the powers of the proprietor](#),” or owner, of federal property.

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These proprietary powers extend to federal land and “other personal and real property rightfully belonging to the United States,” including intangible personal property such as debts owed to the United States. Congress can assert the United States’ property rights, or it can waive them.

Congress makes proprietary decisions over federal property by enacting statutes, which can either directly exercise its property powers (e.g., by agreeing to forgo the enforcement of deed restrictions if certain conditions are met) or delegate authority to officers and employees of the United States to exercise property-related powers as Congress’s agents (e.g., by authorizing an agency to dispose of surplus government property). Officers and employees of the United States may lawfully exercise only those property-related powers granted to them by statute. Actions that exceed a federal official’s actual statutory authority do not bind the United States. Unlike disputes between private parties, if a federal official misstates the extent of her authority, including in ways that invite good-faith, detrimental reliance from a third party, a court cannot prevent the United States from correcting its prior misstatements of law while recovering an overpayment.

Congress has exercised its property-related powers with respect to debts owed to the federal government, in large part, by delegating statutory powers to federal officials. One key statute is the Debt Collection Improvement Act of 1996, as amended (DCIA). The statute requires the head of a federal agency to “try to collect a claim of the United States Government for money or property arising out of the activities of, or referred to, the agency.” The statute uses the term “claim” as a synonym for “debt.” It broadly defines a claim to include “any amount of funds or property that has been determined by an appropriate official of the Federal Government to be owed to the United States by a person, organization, or entity other than another Federal agency.” The statute mentions “over-payments” as one example of a claim covered by the Act. Agencies act under the DCIA standards prescribed by the Attorney General and the Secretary of the Treasury, titled the *Federal Claims Collection Standards* (FCCS), as well as under the agency’s own rules.

The DCIA authorizes or, in some cases, requires an agency head to employ certain administrative debt collection tools when trying to collect federal debts. These include administrative wage garnishment (i.e., an agency order to a debtor’s employer to withhold and remit to the United States a portion of a debtor-employee’s disposable pay) and administrative offset (i.e., the withholding of federal payments otherwise owed to a debtor to satisfy all or part of their federal debt). The DCIA also mentions litigation as a means of debt collection. The Attorney General, rather than the agency head responsible for the debt collection, typically pursues debt collection litigation, given his general authority to control litigation in which the United States is interested. Judicial debt collection provides the United States with collection tools beyond administrative means, such as the ability to gather evidence of a debtor’s financial condition through compulsory means, prejudgment attachment to preserve debtor property during the pendency of litigation, and the creation of a judicial lien on all of a debtor’s real property upon entry of judgment in the United States’ favor. The United States may then use a lien to force a judicial sale of the debtor’s property and apply sale proceeds to the debt.

The DCIA also grants an agency head the authority to depart from her general debt collection duty. The head of an agency may compromise a debt of less than \$100,000 by agreeing to accept less than the full amount owed as satisfaction of the debt. An agency head may also suspend (i.e., temporarily pause) or terminate (i.e., end in perpetuity) the collection of a debt of less than \$100,000 “when it appears that no person liable on the claim has the present or prospective ability to pay a significant amount of the claim or the cost of collecting the claim is likely to be more than the amount recovered.” An agency head may discharge a debt only if she first takes “all appropriate steps to collect such debts.”

The FCCS prescribe standards that further govern agency use of the statute’s compromise and collection-ending authorities. In general, the FCCS permit an agency head to depart from the statute’s mandate for “aggressive[]” debt collection based on the likely ability of the agency to collect a federal debt. For example, the FCCS permit an agency to terminate collections if, among other things, it is “unable to

collect any substantial amount through its own efforts or through the efforts of others,” the agency is legally barred from collecting the debt, or a debtor cannot be located. The FCCS allow an agency to compromise debts of less than \$100,000 for similar reasons, such as the debtor’s inability to pay the full amount owed within a reasonable time, considering factors such as age, health, or income potential.

Select Examples of EGC Authorities

The DCIA, as implemented through the FCCS, pairs an agency mandate with exceptions to that mandate. Under the statute’s mandate, agencies must generally aggressively pursue federal debts using administrative and judicial tools. However, if the agency is unlikely to collect the full amount owed or is unlikely to do so in a cost-effective manner, it may compromise a debt or end collection activities, temporarily or permanently.

An element of agency discretion is absent from the DCIA’s framework: neither the statute nor the FCCS expressly allow an agency to depart from aggressive debt collection based on considerations of public policy or the perceived fairness of pursuing a debt. The reason why a debt arose is usually legally irrelevant to whether an agency must pursue the debt. Thus, under the DCIA, an agency generally has the duty to aggressively pursue the collection of debts regardless of whether a particular debt arose because of a mistake of the agency rather than of the debtor.

Over the decades, Congress has provided agencies with additional debt waiver authorities, and the FCCS expressly preserve agency use of non-DCIA waiver authorities. EGC authorities are perhaps the most numerous examples of such additional debt waiver authorities. Congress has enacted dozens of EGC authorities, which today appear in more than 50 sections of *U.S. Code*. (Other sections of Title 37 of the *U.S. Code* provide EGC authority by cross reference to other provisions.) As a general matter, an EGC authority allows an agency to waive a debt owed to the United States based on policy or equitable considerations.

The terms of EGC authorities vary widely. EGC authorities differ in terms of the agency functions to which they apply. Some statutes are relatively narrow, applying to debts arising under only one agency program (e.g., debts stemming from incentives for active-duty service in a critical military specialty). Other authorities allow a particular agency to waive a range of debts, such as the Department of Veterans Affairs’ (VA’s) authority to waive debts arising under any of its benefits programs. Congress has also provided EGC authority to a class of agencies, though each for a relatively narrow category of debts. Title 5 of the *U.S. Code* is home to the largest number of EGC authorities. The Title 5 EGC authorities, for the most part, are available to “executive agencies.” Each permits the waiver of a different category of debt owed by federal employees. Thus, one statute authorizes covered agencies to waive debts that arose as pay advances, another permits waiver of life-insurance-related debts, and still others apply to travel and relocation expenses or student loan repayment benefits.

Many EGC authorities provide waiver authority for debts that arise under “benefit” programs in which Congress authorizes assistance payments to a class of beneficiaries to advance a public purpose. For example, the Trade Act of 1974, as amended, authorizes adjustment assistance for farmers who are injured by competition from imports. The statute requires the Secretary of Agriculture to recover assistance overpayments but permits waiver where pursuing collection against a person not at fault for the overpayment would conflict with equity and good conscience. Other EGC authorities concern debts incurred when an individual does not fulfill a promise they made in exchange for a benefit. Many such authorities appear in the statutes that provide scholarships or other compensation to an individual in exchange for that person’s service commitment. Thus, a federal statute allows certain department secretaries to purchase savings bonds for the benefit of an active-duty servicemember if the servicemember commits to remain on active duty for at least an additional six years. The federal debt created by a servicemember’s failing to complete their term of service may be waived based on equity

and good conscience. Only one EGC authority specifically applies to debts incurred under loans made or guaranteed by a federal agency. VA makes and guarantees loans to assist veterans [in purchasing a home or running a small business](#). VA may “[waive payment of an indebtedness](#)” incurred under these credit programs, “following default or loss of the property,” if collection “would be against equity and good conscience.”

Some statutes provide EGC authority that is expressly discretionary. As an example, if “recovery would be against equity and good conscience,” the Secretary of Defense “*may* waive” a requirement to repay [voluntary separation benefits](#) when a recipient also receives retirement or retainer pay. Other EGC authorities are phrased as mandates. For instance, the Commissioner of Social Security “*shall*” [not adjust](#) Old Age and Survivors Disability Insurance (OASDI) payments to recover prior overpayments if an adjustment would be against equity and good conscience.

EGC authorities also vary in terms of the findings required of an agency to waive a debt. Most EGC authorities expressly permit an agency to waive a debt only if a debtor did not have a hand in creating the debt. For example, the Railroad Retirement Board may [waive debts](#) resulting from a Railroad Retirement Act annuity or benefit overpayment only if its recipient is “without fault.” Other EGC authorities provide more detail on the types of mental states that render an EGC waiver unavailable. The Secretary of the Senate, as an example, may waive certain debts incurred by the Vice President, Senators, or Senate employees only if, upon investigation, there is no “[indication of fraud, misrepresentation, fault, or lack of good faith](#)” on the debtor’s part.

All EGC authorities use an equity-and-good conscience standard to define when waiver may occur, but some include alternate grounds for waiver tied to the public policy effects of enforced collection. One common, additional basis for waiver allows an agency to discharge a debt when its collection would be contrary to the purposes of the statute under which the debt arises. The Federal Employees Compensation Act (FECA), for example, authorizes [compensation for the death or disability of a federal employee](#) from injuries sustained while performing their duties. The Department of Labor may forgo collecting overpayments if collection [would defeat FECA’s purposes](#). Other alternate grounds for waiving debt are phrased in even broader terms. Under some statutes, debt may be waived if its collection would be against the “[best interests of the United States](#),” a phrase that encompasses considerations beyond the purposes of the particular statute under which the debt arose.

EGC Authority and Agency Rules

Statutory EGC authorities use broad standards to describe waiver authority, such as debtor “fault,” “equity and good conscience,” and references to the “purposes of” the statute under which a debt arose, among others. Agencies have interpreted these terms by rule to more particularly define when debt may be waived.

SSA’s EGC rules are perhaps the most prominent example of an agency’s efforts to implement EGC authority. The OASDI programs annually account for [over \\$1.5 trillion in outlays](#) in the form of old-age benefits, disability insurance, and other payments. SSA reports that in FY2025, the programs made an estimated [\\$9.3 billion in overpayments](#). The Social Security Act stipulates that, in general, [SSA must recover overpayments](#), even if SSA was responsible for the payment error. However, the Social Security Act’s EGC authority [bars recovery](#) if the recipient was not at fault and recovery would defeat the purposes of the Social Security Act or offend equity and good conscience.

SSA determines a debtor’s fault for an overpayment under agency rules that ask whether the overpayment resulted from the recipient’s [culpable action or inaction](#). As an example, the rules ask whether SSA made the overpayment because of an “incorrect statement made by the individual which he knew or should

have known to be incorrect.” SSA considers “all pertinent circumstances,” such as the recipient’s physical or mental abilities.

If SSA finds an individual to be without fault for an overpayment, the agency next considers whether collecting the overpayment would run counter to the OASDI programs’ statutory purposes or equity and good conscience, which the rule treats as distinct grounds for debt waiver. SSA’s rules describe the programs’ statutory purpose as ensuring that a beneficiary can meet “[ordinary and necessary living expenses](#).” If the overpayment recipient could not meet those basic expenses without the overpayment, recovery would defeat the purposes of the Act and recovery could not occur. Recovery would conflict with equity and good conscience, by contrast, if the recipient [detrimentally relied on the overpayment](#), such as by resigning employment based on an expectation of a level of retirement benefits that turned out to be wrong.

Other agencies have promulgated rules implementing EGC authority using different terms than those employed by SSA, but these different terms do not appear to result in waiver authority of substantially different scope. VA defines the equity-and-good conscience standard in relatively more general terms than does the SSA. For VA, the “[phrase equity and good conscience means arriving at a fair decision between the](#)” debtor and the federal government, one that is not unduly favorable to either party. However, in making a waiver determination, VA considers factors like those in the SSA framework—the debtor’s share of fault, their financial circumstances, and any detrimental reliance on the overpayment. DOL’s rules for [waiving disability compensation overpayments](#) likewise echo SSA’s rules.

Considerations for Congress

EGC authorities appear throughout the *U.S. Code*, but not all agencies possess such authority, and the EGC authorities that do exist do not apply to all debts that may arise under an agency’s activities. As the actor with proprietorial powers over federal property, Congress may alter these authorities. It may authorize EGC-based waivers where none are possible today. As an example, no EGC authority applies to federal student loans. (However, the Biden Administration considered whether the use of EGC authorities in other contexts [could inform the Department of Education’s use of other, more general debt waiver authority](#) that encompasses such loans.) Congress may also alter existing EGC authorities to modify their scope—to apply, for example, to VA programs that do not fit the “[benefits](#)” category, such as debts that arise in the course of procuring goods or services for the agency’s use—or to modify the equity-and-good conscience standard in ways that expand or constrain agency discretion. Alternatively, Congress might eschew the EGC framework while providing similar debt waiver authority. Congress stipulated, for example, that the DCIA’s debt collection mandate does not apply to payments made under the Hermit’s Peak/Calf Canyon Fire Assistance Act absent “[evidence of civil or criminal fraud, misrepresentation, presentation of a false claim](#)” or in certain advance-payment cases. Congress might also seek to limit or eliminate EGC authority if it decides that the interests served by debt collection, such as program integrity or federal budgetary considerations, outweigh those served by existing fairness-based waiver authority.

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