



Office of the General Counsel

B-276550

December 15, 1997

Mr. William R. Barton
Inspector General
General Services Administration

Dear Mr. Barton:

This responds to your request for our opinion on whether the Administrator, General Services (GSA), has the authority to compromise debt arising from the disposal of surplus property under section 204(g) of the Federal Property and Administrative Services Act of 1949 (Property Act), 40 U.S.C. § 485(g) (1994). Section 204(g) provides that where the Administrator has extended credit in connection with the disposal of surplus property, he "may enforce, adjust, and settle any right of the Government with respect to [that credit] in such manner and upon such terms as he deems in the best interest of the Government." As explained below, section 204(g) does not provide the Administrator with compromise authority.

While you have asked for our views on this issue, we note that our statutory role in this area was limited in 1996, when the Congress transferred the Comptroller General's authority under 31 U.S.C. § 3702(a) to settle and adjust claims of or against the United States to the Office of Management and Budget (OMB). OMB in turn delegated parts of this authority to other executive departments and agencies. Pub. L. No. 104-316, Tit. II, § 202(n)(1), 110 Stat. 3843-44 (1996); see also Pub. L. No. 104-53, § 211, 109 Stat. 535 (1995).

Background

Your question arose in connection with the GSA sale of the United States Custom House in Boston to the City of Boston. In March 1986, GSA declared that the Custom House was surplus property, and, in October 1987, sold it to Boston, receiving from the city a 10-year promissory note. In April 1991, Boston defaulted on the note. At the time, Boston's total outstanding debt (principal and accumulated interest) exceeded \$13 million. In January 1996, after a restructuring

of the debt and almost 5 years of negotiations, the city discharged its debt for approximately \$6.1 million.

Your office has concluded that the Administrator's restructuring of Boston's loan agreement and eventual agreement to Boston's discharge of the debt resulted in compromises of Boston's debt in violation of the FCCA. In January 1996, when GSA discharged Boston's debt, the FCCA limited agencies' compromise authority to claims that did not exceed \$20,000. Pub. L. No. 89-508, § 3, 80 Stat. 308, 309 (1966).¹

GSA disagrees that its actions constituted a compromise, but argues, nevertheless, that section 204(g) of the Property Act, in authorizing the Administrator to restructure credit offerings, permits GSA to compromise debt, and that section 204(g), enacted prior to the FCCA, supersedes any restrictions imposed by the FCCA.²

In your view, the Property Act did not grant the Administrator the authority to compromise debts. As requested by your office, our opinion does not address GSA's sale of the Custom House and GSA's contention that its actions do not constitute a compromise of debt. Rather, we address only the question whether section 204(g) permits the Administrator to compromise debt.

Discussion

I.

The Constitution lodges the power to release or otherwise dispose of the rights and property of the United States in the Congress. U.S. Const., Art. IV, § 3, Cl. 2; Royal Indemnity Co. v. United States, 313 U.S. 289, 294 (1941). For this reason, absent statutory authority, the officers and agents of the government have no authority to waive contractual rights which have accrued to the United States or to modify existing contracts to the detriment of the United States without adequate legal consideration or a compensating benefit. 67 Comp. Gen. 271, 273 (1988). In this regard, the FCCA provides the officers and agents of the government with the

¹The FCCA, as amended by the Debt Collection Improvement Act, now authorizes heads of agencies, generally, to compromise debts, but only in amounts of not more than \$100,000. 31 U.S.C.A. § 3711(a)(2) (West Supp. 1997). The Federal Claims Collection Standards require that agencies refer to the Department of Justice for approval any proposal to compromise debt in excess of \$100,000. 4 C.F.R. § 103.1(b) (1997).

²Section 4 of the FCCA specifies that the authorities provided agencies by the FCCA were not intended to diminish any pre-existing authority that an agency had to compromise debt. Pub. L. No. 89-508, § 4, 80 Stat. 309 (1966).

authority to compromise debts of less than \$100,000 without Justice Department approval and in excess of \$100,000 with Justice Department approval. 31 U.S.C. § 3711(a)(2) (West Supp. 1997). While the FCCA or its implementing regulations do not define the word "compromise", it is commonly understood to mean the discharge of a debt for less than the outstanding balance without any compensating benefit. See, e.g., 62 Comp. Gen. 489, 492 (1983) ("the discretion . . . to allow the borrower to discharge the debt by paying less than the outstanding balance"). See also S. Rep. No. 89-1331, at 2, *reprinted in* 1966 U.S.C.C.A.N., at 2532-33 (FCCA legislative history).

In the absence of express statutory language, as a general rule, the authority to adjust and settle claims does not confer the authority to compromise claims. 62 Comp. Gen. 489, 490 (1983); B-200112, May 5, 1983. This rule draws support from a 1916 Supreme Court decision, Illinois Surety Co. v. United States ex rel. Peeler, 240 U.S. 214 (1916). After reviewing the statutes establishing the administrative practice for claims and account settlement, the Court pointed out that "[t]he words 'settled and adjusted' [as used in the predecessor statute to 31 U.S.C. § 3702 (1994)] were taken to mean the determination in the Treasury Department for administrative purposes of the state of the account and the amount due." Accordingly, the Court concluded that "[t]he word 'settlement' in connection with public contracts and accounts . . . has a well defined meaning as denoting the appropriate administrative determination with respect to the amount due." Id. at 221. In this context, the Supreme Court's limited definition is applicable. See, e.g., B-276561, Sept. 30, 1997.

Where the Congress has authorized agencies to waive contractual rights and compromise debt, it has done so by providing specific authority. For example, the Administrator of the Small Business Administration is authorized to "sue and be sued" and "pursue to final collection, by way of compromise . . . all claims against third parties assigned to the Administrator," 15 U.S.C. § 634(b)(1), (4); the Secretary of the Department of Veterans Affairs is authorized to "sue and be sued" and "pay, compromise, waive or release any right, title, claims, lien or demand . . .," 38 U.S.C. § 3720(a)(1), (3), (4); and, the Secretary of Agriculture is authorized to "compromise, adjust, reduce, or charge-off debts or claims, and adjust, modify, subordinate, or release the terms of security instruments, leases, contracts, and agreements entered into or administered by the Farmers Home Administration . . .," 7 U.S.C. § 1981(d).

II.

At issue here is whether section 204(g) of the Property Act provides the Administrator with such authority. Section 204(g) provides as follows:

"Where credit has been extended in connection with any disposition of

surplus property . . . or where such disposition has been by lease or permit, the Administrator shall administer and manage such credit, lease, or permit, and any security therefor, and may enforce, adjust, and settle any right of the Government with respect thereto in such manner and upon such terms as he deems in the best interest of the Government." 40 U.S.C. § 485(g).

In its response to your report on the sale of the Custom House, GSA states that since 1955, it has interpreted section 204(g) as providing the Administrator with compromise authority. In the 1955 opinion, addressing the sale of notes and mortgages acquired in the course of a sale of surplus property pursuant to section 204(g), GSA's General Counsel stated that

"where a debtor is in default in payment under such a note, settlement with the debtor for an amount less than the face value is authorized under the provision in section 204(g) of the Act authorizing the Administrator to 'enforce, adjust and settle any right of the Government with respect thereto in such manner and upon such terms as he deems in the best interest of the Government.'"

Opinion of the General Counsel No. 99, Mar. 10, 1955.

OMB, recently, reached the same conclusion. In a May 19, 1997, memorandum to GSA, OMB, referring to the clause in section 204(g), "in such manner and upon such terms . . . ", stated,

"this provision cannot reasonably be construed as having conveyed only the non-discretionary authority to 'determine the amount due.' . . . The 'no compromise' theory . . . cannot account for, and in fact is inconsistent with, the discretionary authority that is conveyed by virtue of the 'upon such terms' language of the GSA statute."

Section 204(g), by its terms, authorizes the Administrator only to "adjust, and settle". Noticeably missing from section 204(g) is the word (or words equivalent in effect to) "compromise". Clearly, the clause "in such manner and upon such terms" modifies the phrase "adjust, and settle", and, thus, does not overcome the general rule and establish authority to compromise. In our view, section 204(g) authorizes the Administrator to fix the amount owed by the purchaser ("adjust, and settle"), and, because of the clause, permits the Administrator discretion in adjusting the terms of any credit offered, for example, by extending its repayment period.

Cf. 67 Comp. Gen. 271 (1988)³ and cases cited therein. Because it does not clearly and expressly authorize the Administrator to compromise, the Administrator may not allow the debtor to pay less than the outstanding balance owed or otherwise waive a right of the United States without obtaining some consideration or other compensating benefit in return. To do so is tantamount to a compromise. To read section 204(g) as permitting compromise would require us to infer compromise authority from its general language.⁴

As noted above, GSA advised that it has interpreted section 204(g) as providing compromise authority since 1955. However, in a January 8, 1992 opinion that discusses the Administrator's authority to waive debts due to the United States, GSA concluded that a restructuring of debts for less than the full amount due, *i.e.* compromising the debt, required Justice Department approval. Memorandum to James J. Buckley, Special Assistant, Office of the Commissioner, Federal Property Resources Service, from Gordon S. Creed, Deputy Associate General Counsel, Real Property Division, Jan. 8, 1992. In that opinion, GSA stated:

"[a] preferred approach to situations where a debtor has fallen in arrears is refinancing of the obligation. For example, the conditions of a note, including its payment term and interest rate, may be modified allowing the debtor to work out any difficulty encountered with the obligation. Under the authorities granted to the Administrator, this method may be undertaken without the approval of the Attorney General or the Comptroller General of the United States; however, any such arrangement must ensure that the United States receives the full amount owing to it."

On the other hand in a March 6, 1992 opinion, GSA asserts that section 204(g) does provide the Administrator compromise authority. Memorandum to Earl E. Jones,

³The Small Business Administration (SBA), unlike GSA, had express authority to compromise debts as well as to modify (or adjust) the terms of loans. SBA opined, and we agreed, that its authority to modify loans was separate and distinct from its compromise authority. SBA would compromise debts after SBA concluded that its debtor was unable to pay the debt, but would require adequate legal consideration from its debtor before its would agree to modifications that would reduce the value of a loan.

⁴We are aware of only one instance where compromise authority has been inferred when not expressly granted by statute. In that instance, the agency had "sue and be sued" authority. We accepted without objection the Virgin Islands Company's authority to compromise damage claims for personal injuries as part of its authority to "sue and be sued". 25 Comp. Gen. 685, 687 (1946).

Commissioner, Federal Property Resources Service, from Gordon S. Creed, Deputy Associate General Counsel, Real Property Division, Mar. 6, 1992. In that opinion, GSA stated:

[i]t is our opinion that the Administrator is authorized to compromise or write-off-debts . . . in excess of \$100,000 without referring such matters to the Department of Justice . . ."⁵

In our opinion, GSA may refinance or otherwise review the terms of its credit offerings under section 204(g). However, because section 204(g) does not provide GSA with compromise authority, GSA may not revise the terms of its credit offerings in such a way that would result in a reduction of the outstanding balance unless it receives adequate consideration from the debtor in return.

III.

If GSA persists in its current interpretation of section 204(g), we would suggest that GSA formally request a decision from the Attorney General interpreting section 204(g). Except in a few instances not relevant here, the Attorney General, as noted above, has sole authority to compromise debts exceeding \$100,000, and she, together with the Secretary of the Treasury, prescribes the standards (FCCS) implementing FCCA, including its provisions governing compromises.

We trust that you will find this useful. We would be happy to discuss this matter with you further if you have additional questions. Please call Gary Kepplinger or Tom Armstrong of my staff at (202) 512-5644.

Sincerely yours,

Robert P. Murphy
General Counsel

⁵According to the GSA memo, the Department of Justice "accepted" GSA's proposal in 1992 to refinance Boston's note. It is not clear whether Justice agreed with GSA's opinion that section 204(g) authorizes the Administrator to compromise debts.

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DIGEST

In our opinion, section 204(g) of the Federal Property and Administrative Services Act, 40 U.S.C. § 485(g), which authorizes the Administrator of the General Services Administration (GSA) to "adjust, and settle" amounts owed GSA, "upon such terms as [GSA] deems in the best interest of the Government," does not permit the Administrator to compromise debts in the absence of adequate legal consideration. Where the Congress has authorized agencies to compromise debts, it has provided specific statutory authority to do so. Because of the Attorney General's authorities under the Federal Claims Collection Act, as amended, 31 U.S.C. § 3711(a)(2), to compromise debts owed the United States exceeding \$100,000, we suggest that the Administrator ask the Attorney General for her interpretation of section 204(g).