

DEPARTMENT OF THE TREASURY**Fiscal Service****31 CFR Part 285****RIN 1510-AA67****Administrative Wage Garnishment****AGENCY:** Financial Management Service, Fiscal Service, Treasury.**ACTION:** Final rule.

SUMMARY: This final rule implements the administrative wage garnishment provisions contained in the Debt Collection Improvement Act of 1996 (DCIA). Wage garnishment is a process whereby an employer withholds amounts from an employee's wages and pays those amounts to the employee's creditor in satisfaction of a withholding order. The DCIA authorizes Federal agencies administratively to garnish the disposable pay of an individual to collect delinquent nontax debts owed to the United States in accordance with regulations issued by the Secretary of the Treasury.

DATES: This rule is effective June 5, 1998.**FOR FURTHER INFORMATION CONTACT:**

Gerry Isenberg, Financial Program Specialist, Debt Management Services, at (202) 874-6660 or James Regan, Attorney-Advisor, at (202) 874-6680, Financial Management Service, Department of the Treasury, 401 14th Street SW, Washington, DC 20227. This document is available for downloading from the Financial Management Service web site at the following address: <http://www.fms.treas.gov>.

SUPPLEMENTARY INFORMATION:**Background**

This final rule implements the wage garnishment provision in section 31001(o) of the Debt Collection Improvement Act of 1996 (DCIA), Pub. L. 104-134, 110 Stat. 1321-358 (Apr. 26, 1996), codified at 31 U.S.C. 3720D. Wage garnishment is a process whereby an employer withholds amounts from an employee's wages and pays those amounts to the employee's creditor in satisfaction of a withholding order. The DCIA authorizes Federal agencies administratively to garnish up to 15% of the disposable pay of a debtor to satisfy delinquent nontax debt owed to the United States. Prior to the enactment of the DCIA, agencies were required to obtain a court judgment before garnishing the wages of non-Federal employees. Section 31001(o) of the DCIA preempts State laws that prohibit wage garnishment or otherwise govern wage garnishment procedures.

As authorized by the DCIA, a Federal agency collecting delinquent nontax debt may garnish administratively a delinquent debtor's wages in accordance with regulations promulgated by the Secretary of the Treasury. The Financial Management Service (FMS), a bureau of the Department of the Treasury, is responsible for promulgating the regulations implementing this and other debt collection tools established by the DCIA.

In accordance with the requirements of the DCIA, this final rule establishes the following rules and procedures:

1. Notice

At least 30 days before an agency initiates garnishment proceedings, the agency will give the debtor written notice informing him or her of the nature and amount of the debt, the intention of the agency to collect the debt through deductions from pay, and an explanation of the debtor's rights regarding the proposed action.

2. Rights of the Debtor

The agency will provide the debtor with an opportunity to inspect and copy records related to the debt, to establish a repayment agreement, and to receive a hearing concerning the existence or amount of the debt and the terms of a repayment schedule. A hearing must be held prior to the issuance of a withholding order if the debtor's request is timely received. For hearing requests that are not received in the specified time frame, an agency need not delay issuance of the withholding order prior to conducting a hearing. An agency may not garnish the wages of a debtor who has been involuntarily separated from employment until that individual has been reemployed continuously for at least 12 months. The debtor bears the burden of informing the agency of the circumstances surrounding an involuntary separation from employment.

3. Employer's Responsibilities

The agency will send to the employer of a delinquent debtor a wage garnishment order directing that the employer pay a portion of the debtor's wages to the Federal Government. This final rule requires the debtor's employer to certify certain payment information about the debtor. Employers will not be required to vary their normal pay cycles in order to comply with the garnishment order.

The DCIA prohibits employers from taking disciplinary actions against the debtor based on the fact that the debtor's wages are subject to administrative garnishment. In addition, the DCIA

authorizes an agency to sue an employer for amounts not properly withheld from the wages payable to the debtor.

Discussion of Comments**General**

In response to its Notice of Proposed Rulemaking (NPRM) concerning Administrative Wage Garnishment (62 FR 62458, Nov. 21, 1997), FMS received comments from Federal agencies, private collection agencies, an umbrella organization for organizations that support the activities of the Federal Family Education Loan Programs, and a private citizen. Many of the commenters have been involved in implementing a similar administrative wage garnishment provision that authorizes the U.S. Department of Education (Education) to garnish 10% of the disposable pay of employed individuals who have defaulted on their student loan obligations. See 20 U.S.C. 1095a; 34 CFR 682.410. FMS drafted the NPRM after consultation with the Departments of Education and Justice about their experience implementing wage garnishment to collect student loans. The comments received in response to the NPRM based on the commenters' experience with Education's program have been helpful in drafting the final rule. It is important to note that Education's wage garnishment program is applicable to the collection of one type of debt subject to a single statutory scheme. The DCIA wage garnishment provision and this rule, on the other hand, are applicable to all Federal agencies collecting all types of debt, the collection of which is subject to a variety of statutory provisions. Therefore, as explained below, while some of the suggestions have been incorporated into the final rule, others do not apply to a government-wide wage garnishment program involving all Federal agencies with various types of debts.

A review of the comments is provided in the following Comment Analysis which includes a discussion of FMS' determination whether to incorporate specific suggestions in the final rule. The Comment Analysis is organized by reference to the paragraphs in the NPRM.

NPRM § 285.11(a) Purpose

No changes were made to NPRM § 285.11(a). FMS did not receive any comments applicable to this paragraph.

NPRM § 285.11(b) Scope

One commenter suggested that FMS incorrectly interpreted the DCIA in the NPRM by not limiting the applicability

of administrative wage garnishment to the collection of only those debts evidenced by written agreements. The commenter believes that the language contained in 31 U.S.C. 3720D(a) authorizing wage garnishment "if the individual is not currently making required repayment in accordance with any agreement between the agency head and the individual" so limits the use of wage garnishment. FMS disagrees with the commenter. There is nothing in the plain language of the statute to indicate that the referenced phrase limits the applicability of wage garnishment to debts evidenced by a written agreement. The term "debt," as defined in 31 U.S.C. 3701(b)(1), as amended by the DCIA, is not limited to debts evidenced by a written agreement between the debtor and the Government.

One commenter suggested that the rule establish a minimum threshold amount for garnishment based on a cost estimate of the garnishment procedure. This is unnecessary since the use of the administrative wage garnishment tool by agencies is voluntary and should be used by agencies in appropriate situations. Agencies may set their own policies regarding minimum thresholds.

NPRM § 285.11(c) Definitions

One commenter suggested that the definition of agency under NPRM § 285.11(c) be expanded to authorize agents or vendors of Federal agencies to garnish debtors' wages in accordance with this rule. Whether or not an agent or vendor can perform a particular function on behalf of a Federal agency is beyond the scope of this rule. While the use of contractors for the collection of debt generally is authorized by law, agencies may not contract out "inherently governmental functions." See Office of Management and Budget (OMB) Circular A-76. This is not to say that contractors cannot assist agencies in conducting administrative wage garnishment. For example, contractors could be hired to mail notices and garnishment orders authorized by the agency, receive documents from the debtor and the employer, and document agency-approved repayment agreements with the debtor.

NPRM § 285.11(d) General Rule

One commenter suggested that FMS clarify a statement in the NPRM preamble concerning NPRM § 285.11(d) involving the use of wage garnishment by Treasury-designated debt collection centers. In addition to agencies that administer the program that gives rise to the debt, agencies that pursue the recovery of the debt for those agencies, such as the Department of the Treasury,

Treasury-designated debt collection centers, and the Department of Justice, are authorized to conduct administrative wage garnishment. See, e.g., the definition of "agency" in NPRM § 285.11(c), unchanged in the final rule.

NPRM § 285.11(e) Notice Requirements

The suggestion by one commenter that the rule specifically prohibit the combination of an agency's notice of intention to garnish a debtor's wages with other notices to the debtor has not been incorporated into this rule. The rule gives agencies the flexibility to combine notices where appropriate. In many circumstances, the debtor can be informed clearly in a single communication of all debt collection remedies available to the Federal agency and the opportunities available to the debtor to be heard concerning the existence or amount of the debt.

One commenter's suggestion that FMS develop a standard administrative wage garnishment notice for government-wide use has not been incorporated in the final rule. Because agency-specific laws applicable to debt collection have to be considered in drafting a notice, a standard government-wide form would not be appropriate.

One commenter suggested that the rule exempt private collection professionals acting on behalf of agencies from the liability provisions of the Fair Debt Collection Practices Act (FDCPA), 15 U.S.C. 1692 *et seq.*, provided that such entities comply with the terms of this rule and use notices and forms developed by Treasury or other agencies. The extent to which the FDCPA may apply to any entity, particularly private collection agencies, is outside the scope of this rule.

Several commenters suggested that the rule should clearly state that the certificate of service may be retained electronically. Other commenters suggested that a certificate of service is unnecessary. The final rule retains the requirement that an agency keep a certificate of service as evidence of mailing. However, NPRM §§ 285.11(e)(3) and 285.11(g)(3) have been amended to indicate more clearly that the certificate of service may be retained electronically so long as the manner of retention is sufficient for evidentiary purposes.

NPRM § 285.11(f) Hearing

One Federal agency asked that the rule address whether an agency needs to publish its own regulation before it can engage in administrative wage garnishment under the DCIA. Another commenter questioned how an agency's

existing hearing procedures for debt determination relate to the wage garnishment requirements contained in the DCIA and NPRM. The phrase "consistent with this section" was added to NPRM § 285.11(f)(1) in this final rule to clarify that agency regulations must follow the minimum requirements for wage garnishment hearings as set forth in this rule. Each agency is responsible for prescribing hearing procedures in accordance with the statutory and regulatory requirements of this rule and other requirements applicable to that agency's debt collection hearing procedures. Those agencies with hearings procedures which meet the requirements established under this rule and agency-specific statutory and other requirements need not develop new hearing procedures. Agencies should seek legal advice from their agency counsel to determine whether existing agency procedures meet the requirements established under this rule and whether the agency is required to publish new or amended regulations. Section 285.11(b)(6) has been added to the final rule to further clarify that "(n)othing in this section requires agencies to duplicate notices or administrative proceedings required by contract or other laws or regulations."

The final rule does not incorporate one commenter's suggestion that the Department of the Treasury or the Department of Justice be required to review agencies' wage garnishment procedures and regulations prior to allowing an agency to initiate a wage garnishment program. Unique statutory requirements apply to every Federal program that gives rise to delinquent debt. Thus, the agency administering the program that gives rise to the debt is in the best position to know what is required. The Departments of Treasury and Justice will continue, however, to provide guidance to agencies concerning debt collection practices and procedures.

One commenter recommended amending NPRM § 285.11(f)(4) by establishing that a debtor has 15 "calendar" days, rather than 15 "business" days, to request a hearing. FMS was concerned that 15 calendar days would not allow sufficient time for a debtor to request a hearing prior to the issuance of a garnishment order given that 15 calendar days could include four to seven weekend days or holidays. For this reason, NPRM § 285.11(f)(4) has not been changed.

Several comments addressed the hearing procedures proposed in the NPRM. The final rule incorporates the comment from two commenters

suggesting that the requirement in NPRM § 285.11(f)(8)(ii) that a debtor prove by “clear and convincing evidence” that no debt exists or that the amount of the debt is incorrect is too burdensome. In the final rule at § 285.11(f)(8)(ii), FMS replaced the “clear and convincing” standard with the less burdensome “preponderance of the evidence” standard.

One commenter suggested that proving the terms of the repayment schedule are “unreasonable,” as required at NPRM § 285.11(f)(8)(ii), is too vague and that the debtor should be required to show that the terms of the repayment schedule would cause a “financial hardship” to the debtor. The final rule incorporates this suggestion.

In response to a commenter’s suggestion, NPRM § 285.11(f)(8)(ii) has been amended to clarify that the debtor may present evidence that collection of the debt may not be pursued due to operation of law, *e.g.*, enforcement of the order is subject to the automatic stay imposed at the time of a bankruptcy filing pursuant to 11 U.S.C. 362.

Two commenters suggested that this rule restrict hearing officials to those individuals not under the supervision or control of the head of the agency. The commenters suggested that the rule, without such a change, could result in inequitable wage garnishment hearing decisions since an agency, and its qualified hearing officer, have a vested interest in the outcome. FMS disagrees for three reasons. First, Congress did not intend to require that hearing officials be independent. Unlike other statutes, *see, e.g.*, 5 U.S.C. 5514(a)(2) (concerning Federal salary offset), the DCIA does not require an independent hearing official. Second, the rule explicitly sets forth minimum hearing procedures that ensure the debtor has a meaningful opportunity to be heard and minimize the risk of erroneous deprivation of the debtor’s property interest in his or her wages. Finally, any final hearing decision by the agency on wage garnishment is subject to judicial review under the Administrative Procedure Act. *See, e.g.*, 5 U.S.C. 706 (concerning judicial review of an agency’s actions).

NPRM § 285.11(g) Wage Garnishment Order

One commenter noted that the provision under NPRM § 285.11(g) requiring agencies to submit a wage garnishment order to a debtor’s employer within 30 days of a hearing decision (or within 30 days after the debtor fails to make a timely request for a hearing) should be reconciled with the 20 day period provided under Education’s wage garnishment

regulation at 34 CFR 682.410(b)(10)(H). Such a reconciliation with Education’s rule is not warranted or necessary. The time period in this rule accommodates a broad range of agencies’ requirements and is consistent with the goal of issuing a wage garnishment order promptly after notice and an opportunity to be heard have been provided to the debtor.

The final rule does not incorporate one commenter’s suggestion that NPRM § 285.11(g)(2) be amended to delete the requirement that the wage garnishment order be signed by the head of the agency or his/her designee. The commenter suggested that issuance of the wage garnishment order on agency letterhead including the agency’s seal is sufficient to demonstrate official issuance. This rule requires a signature to authenticate a wage withholding order. Failure to include a signature on a wage withholding order could result in employer uncertainty as to the validity of the order and could result in delay, and possible loss, of garnishment payments to which the Government is entitled.

As noted in the NPRM and as suggested by a commenter, FMS is developing a wage garnishment order form. It is anticipated that the use of a standard wage garnishment order form by agencies will make it easier for private sector employers to recognize and comply with agency wage garnishment order requirements. This form will be available from FMS at the address listed above and will be available for downloading from the FMS web site at the following address: www.fms.treas.gov.

One commenter suggested that rather than require the agency to keep a certificate of service indicating the date of the mailing of a garnishment order, the rule should require the debtor’s employer to verify receipt. The commenter’s rationale is that the DCIA (31 U.S.C. 3720D(f)(2)(A)) and NPRM § 285.11(o) authorize the agency to sue the employer for noncompliance with the wage garnishment order. The final rule does not incorporate this comment because the Government need only show that the order was mailed, not whether it actually was received. *Nelson v. Diversified Collection Services*, 961 F.Supp. 863, 868–69 (D. Md. 1997). By requiring an agency to retain a copy of the certificate of service, the agency can produce evidence that the order was mailed without having to place an additional burden on the employer.

One commenter suggested that the requirement to comply with the wage garnishment order should be waived under circumstances when a small

employer (with less than five employees) would be subject to a major hardship (financial or otherwise) as a result of complying with the order. Such a change to the rule is unnecessary since the use of the wage garnishment collection tool by agencies is not mandated under the DCIA. Agencies can set their own policies on when it is appropriate to utilize the administrative wage garnishment process.

NPRM § 285.11(h) Certification by Employer

The final rule did not incorporate the recommendation of two commenters to delete the requirement under NPRM § 285.11(h) requiring the debtor’s employer to complete and return a certification form to the agency. The commenters suggested this provision is unduly burdensome and that an employer’s failure to complete and return the form could unnecessarily delay the garnishment process. The certification form serves multiple purposes. One, the form provides the agency with information necessary to monitor the employer’s compliance with the wage garnishment order in accordance with the requirements of the DCIA and applicable laws. The form also will provide information so the agency can calculate anticipated collection amounts to determine whether to pursue other collection tools. Finally, the form will assist the employer in calculating the amount to be garnished from the debtor’s disposable pay. It is noted that the employer’s failure to complete the certification form as required does not affect the employer’s responsibility to withhold the appropriate garnishment amount within a “reasonable time” in accordance with this rule. *See* NPRM § 285.11(i)(7), renumbered as § 285.11(i)(8) in the final rule.

NPRM § 285.11(i) Amounts Withheld

Two commenters recommended clarifying the impact of the Consumer Credit Protection Act’s (CCPA) minimum disposable pay requirement on the wage garnishment provisions of the DCIA and this rule. *See* CCPA, § 303(a)(2), codified at 15 U.S.C. 1673(a)(2) (maximum allowable garnishment). NPRM § 285.11(i) has been amended to clarify that the amount of garnishment is limited by the CCPA. Under section 285.11(i) of the final rule, the amount of garnishment is the lesser of the amount indicated on the garnishment order up to 15% of the debtor’s disposable pay or the amount set forth in 15 U.S.C. 1673(a)(2). The amount set forth in 15 U.S.C. 1673(a)(2) is the amount by which a debtor’s

disposable pay exceeds an amount equivalent to thirty times the minimum wage. For example, if a debtor receives disposable pay of \$160.00 per week and thirty times the minimum wage is \$154.50, the amount that may be garnished weekly is the lesser of \$24.00 (15% of \$160) or \$5.50 (\$160.00–\$154.40 = \$5.50). See 29 CFR 870.10(b)(1) for information on calculating an amount equivalent to thirty times the minimum wage.

Section 285.11(i)(3) of the final rule is the same as NPRM § 285.11(i)(2) except that § 285.11(i)(3)(iii) has been added to clarify the amount of garnishment for a debtor who owes multiple debts to a single creditor agency. Under section 285(i)(3)(iii) of the final rule, an agency may issue multiple withholding orders so long as the total amount garnished from the debtor's pay for such orders does not exceed the garnishment amount permitted under § 285.11(i)(2). For purposes of § 285.11(i)(3)(iii), the term "agency" refers to the agency that is owed the debt.

One commenter suggested deleting the language in NPRM § 285.11(i)(7) (renumbered as § 285.11(i)(8) in the final rule) requiring that the wage garnishment order "indicate a reasonable period of time within which the employer is required to commence wage withholding" because garnishment orders in all other contexts typically require immediate compliance. This suggestion was not incorporated into the final rule. The "reasonable period of time" given to employers allows employers adequate time to calculate garnishment withholding payroll data involving a debtor employee without disrupting the normal payroll cycle. It is anticipated that a "reasonable period of time" generally will mean that the employer will commence withholdings within two pay cycles following receipt of the garnishment order. This may vary given an employer's circumstances.

NPRM § 285.11(j) Exclusions From Garnishment.

No changes were made to the NPRM § 285.11(n). FMS did not receive any comments applicable to this paragraph.

NPRM § 285.11(k) Financial Hardship

The final rule does not incorporate one commenter's suggestion that NPRM § 285.11(k) be amended further to define the standards for agency review of a debtor's request for an adjustment in the amount withheld under a wage garnishment order due to "financial hardship" based on "materially changed circumstances." NPRM § 285.11(k), unchanged in the final rule, provides

illustrative examples of the type of events which may give rise to financial hardship due to "materially changed circumstances," such as disability, divorce, or catastrophic illness. However, whether financial hardship exists must be determined by an agency's review of the particular facts and circumstances of a given case.

NPRM § 285.11(l) Ending Garnishment

The final rule does not incorporate a commenter's suggestion that the rule clarify whether collection costs need to be collected before terminating the garnishment action. NPRM § 285.11(l), unchanged in the final rule, clearly requires termination of garnishment only after the agency "has fully recovered the amounts owed by the debtor, including interest, penalties and administrative costs consistent with the FCCS (Federal Claims Collection Standards)." See 31 U.S.C. 3717(e) and 4 CFR 102.13 regarding the collection of administrative costs associated with a debt.

NPRM § 285.11(m) Actions Prohibited by the Employer

No changes were made to NPRM § 285.11(m). FMS did not receive any comments applicable to this paragraph.

NPRM § 285.11(n) Refunds

No changes were made to NPRM § 285.11(n). FMS did not receive any comments applicable to this paragraph.

NPRM § 285.11(o) Right of Action.

The final rule does not incorporate a commenter's suggestion that NPRM § 285.11(o) be amended to remove the requirement that a Federal agency must "terminate collection action" as a prerequisite to commencing suit against a debtor's employer for failure to withhold amounts from wages pursuant to a wage garnishment order. The DCIA specifically provides that "suit (against an employer) may not be filed before the termination of the collection action, unless earlier filing is necessary to avoid expiration of any applicable statute of limitations period." 31 U.S.C. 3720D(f)(2)(B).

However, FMS has amended NPRM § 285.11(o) in the final rule to incorporate a suggestion by another commenter that the rule be changed to clarify that "termination of the collection action" merely refers to the particular debtor/employee, rather than the debt. This change gives agencies flexibility to terminate collection action against one of the debtors and file suit against that debtor's employer for failing to withhold that debtor's wages pursuant to a wage garnishment order.

At the same time, the agency could continue collection efforts involving the other debtors who are jointly and severally liable to the agency on the debt.

Regulatory Analysis

This rule is not a significant regulatory action as defined in Executive Order 12866. It is hereby certified that this regulation, including the certification referenced in this final rule (see paragraph (h) of this section), will not have a significant economic impact on a substantial number of small entities. Although a substantial number of small entities will be subject to this regulation and to the certification requirement in this rule, the requirements will not have a significant economic impact on these entities. Employers of delinquent debtors must certify certain information about the debtor such as the debtor's employment status and earnings. This information is contained in the employer's payroll records. Therefore, it will not take a significant amount of time or result in a significant cost for an employer to complete the certification form. Even if an employer is served withholding orders on several employees over the course of a year, the cost imposed on the employer to complete the certifications would not have a significant economic impact on that entity. Employers are not required to vary their normal pay cycles in order to comply with a withholding order issued pursuant to this rule.

List of Subjects in 31 CFR Part 285

Administrative practice and procedure, Claims, Debts, Garnishment of wages, Hearing and appeal procedures, Salaries, Wages.

Authority and Issuance

For the reasons set forth in the preamble, 31 CFR part 285 is amended as follows:

PART 285—DEBT COLLECTION AUTHORITIES UNDER THE DEBT COLLECTION IMPROVEMENT ACT OF 1996

1. The authority citation for part 285 is revised to read as follows:

Authority: 26 U.S.C. 6402; 31 U.S.C. 321, 3701, 3711, 3716, 3720A, 3720D; E.O. 13019; 3 CFR, 1996 Comp., p. 216.

2. Section 285.11 is added to Subpart B to read as follows:

§ 285.11 Administrative wage garnishment.

(a) *Purpose.* This section provides procedures for Federal agencies to collect money from a debtor's

disposable pay by means of administrative wage garnishment to satisfy delinquent nontax debt owed to the United States.

(b) *Scope.* (1) This section applies to any Federal agency that administers a program that gives rise to a delinquent nontax debt owed to the United States and to any agency that pursues recovery of such debt.

(2) This section shall apply notwithstanding any provision of State law.

(3) Nothing in this section precludes the compromise of a debt or the suspension or termination of collection action in accordance with applicable law. See, for example, the Federal Claims Collection Standards (FCCS), 4 CFR parts 101–105.

(4) The receipt of payments pursuant to this section does not preclude a Federal agency from pursuing other debt collection remedies, including the offset of Federal payments to satisfy delinquent nontax debt owed to the United States. A Federal agency may pursue such debt collection remedies separately or in conjunction with administrative wage garnishment.

(5) This section does not apply to the collection of delinquent nontax debt owed to the United States from the wages of Federal employees from their Federal employment. Federal pay is subject to the Federal salary offset procedures set forth in 5 U.S.C. 5514 and other applicable laws.

(6) Nothing in this section requires agencies to duplicate notices or administrative proceedings required by contract or other laws or regulations.

(c) *Definitions.* As used in this section the following definitions shall apply:

Agency means a department, agency, court, court administrative office, or instrumentality in the executive, judicial, or legislative branch of the Federal Government, including government corporations. For purposes of this section, agency means either the agency that administers the program that gave rise to the debt or the agency that pursues recovery of the debt.

Business day means Monday through Friday. For purposes of computation, the last day of the period will be included unless it is a Federal legal holiday.

Certificate of service means a certificate signed by an agency official indicating the nature of the document to which it pertains, the date of mailing of the document, and to whom the document is being sent.

Day means calendar day. For purposes of computation, the last day of the period will be included unless it is

a Saturday, a Sunday, or a Federal legal holiday.

Debt or claim means any amount of money, funds or property that has been determined by an appropriate official of the Federal Government to be owed to the United States by an individual, including debt administered by a third party as an agent for the Federal Government. *Delinquent nontax debt* means any nontax debt that has not been paid by the date specified in the agency's initial written demand for payment, or applicable agreement, unless other satisfactory payment arrangements have been made. For purposes of this section, the terms "debt" and "claim" are synonymous and refer to delinquent nontax debt.

Debtor means an individual who owes a delinquent nontax debt to the United States.

Disposable pay means that part of the debtor's compensation (including, but not limited to, salary, bonuses, commissions, and vacation pay) from an employer remaining after the deduction of health insurance premiums and any amounts required by law to be withheld. For purposes of this section, "amounts required by law to be withheld" include amounts for deductions such as social security taxes and withholding taxes, but do not include any amount withheld pursuant to a court order.

Employer means a person or entity that employs the services of others and that pays their wages or salaries. The term employer includes, but is not limited to, State and local Governments, but does not include an agency of the Federal Government.

Garnishment means the process of withholding amounts from an employee's disposable pay and the paying of those amounts to a creditor in satisfaction of a withholding order.

Withholding order means any order for withholding or garnishment of pay issued by an agency, or judicial or administrative body. For purposes of this section, the terms "wage garnishment order" and "garnishment order" have the same meaning as "withholding order."

(d) *General rule.* Whenever an agency determines that a delinquent debt is owed by an individual, the agency may initiate proceedings administratively to garnish the wages of the delinquent debtor.

(e) *Notice requirements.* (1) At least 30 days before the initiation of garnishment proceedings, the agency shall mail, by first class mail, to the debtor's last known address a written notice informing the debtor of:

(i) The nature and amount of the debt;

(ii) The intention of the agency to initiate proceedings to collect the debt through deductions from pay until the debt and all accumulated interest, penalties and administrative costs are paid in full; and

(iii) An explanation of the debtor's rights, including those set forth in paragraph (e)(2) of this section, and the time frame within which the debtor may exercise his or her rights.

(2) The debtor shall be afforded the opportunity:

(i) To inspect and copy agency records related to the debt;

(ii) To enter into a written repayment agreement with the agency under terms agreeable to the agency; and

(iii) For a hearing in accordance with paragraph (f) of this section concerning the existence or the amount of the debt or the terms of the proposed repayment schedule under the garnishment order. However, the debtor is not entitled to a hearing concerning the terms of the proposed repayment schedule if these terms have been established by written agreement under paragraph (e)(2)(ii) of this section.

(3) The agency will keep a copy of a certificate of service indicating the date of mailing of the notice. The certificate of service may be retained electronically so long as the manner of retention is sufficient for evidentiary purposes.

(f) *Hearing—(1) In general.* Agencies shall prescribe regulations for the conduct of administrative wage garnishment hearings consistent with this section or shall adopt this section without change by reference.

(2) *Request for hearing.* The agency shall provide a hearing, which at the agency's option may be oral or written, if the debtor submits a written request for a hearing concerning the existence or amount of the debt or the terms of the repayment schedule (for repayment schedules established other than by written agreement under paragraph (e)(2)(ii)) of this section.

(3) *Type of hearing or review.* (i) For purposes of this section, whenever an agency is required to afford a debtor a hearing, the agency shall provide the debtor with a reasonable opportunity for an oral hearing when the agency determines that the issues in dispute cannot be resolved by review of the documentary evidence, for example, when the validity of the claim turns on the issue of credibility or veracity.

(ii) If the agency determines that an oral hearing is appropriate, the time and location of the hearing shall be established by the agency. An oral hearing may, at the debtor's option, be conducted either in-person or by telephone conference. All travel

expenses incurred by the debtor in connection with an in-person hearing will be borne by the debtor. All telephonic charges incurred during the hearing will be the responsibility of the agency.

(iii) In those cases when an oral hearing is not required by this section, an agency shall nevertheless accord the debtor a "paper hearing," that is, an agency will decide the issues in dispute based upon a review of the written record. The agency will establish a reasonable deadline for the submission of evidence.

(4) *Effect of timely request.* Subject to paragraph (f)(13) of this section, if the debtor's written request is received by the agency on or before the 15th business day following the mailing of the notice described in paragraph (e)(1) of this section, the agency shall not issue a withholding order under paragraph (g) of this section until the debtor has been provided the requested hearing and a decision in accordance with paragraphs (f)(10) and (f)(11) of this section has been rendered.

(5) *Failure to timely request a hearing.* If the debtor's written request is received by the agency after the 15th business day following the mailing of the notice described in paragraph (e)(1) of this section, the agency shall provide a hearing to the debtor. However, the agency will not delay issuance of a withholding order unless the agency determines that the delay in filing the request was caused by factors over which the debtor had no control, or the agency receives information that the agency believes justifies a delay or cancellation of the withholding order.

(6) *Hearing official.* A hearing official may be any qualified individual, as determined by the head of the agency, including an administrative law judge.

(7) *Procedure.* After the debtor requests a hearing, the hearing official shall notify the debtor of:

(i) The date and time of a telephonic hearing;

(ii) The date, time, and location of an in-person oral hearing; or

(iii) The deadline for the submission of evidence for a written hearing.

(8) *Burden of proof.* (i) The agency will have the burden of going forward to prove the existence or amount of the debt.

(ii) Thereafter, if the debtor disputes the existence or amount of the debt, the debtor must present by a preponderance of the evidence that no debt exists or that the amount of the debt is incorrect. In addition, the debtor may present evidence that the terms of the repayment schedule are unlawful, would cause a financial hardship to the

debtor, or that collection of the debt may not be pursued due to operation of law.

(9) *Record.* The hearing official must maintain a summary record of any hearing provided under this section. A hearing is not required to be a formal evidentiary-type hearing, however, witnesses who testify in oral hearings will do so under oath or affirmation.

(10) *Date of decision.* The hearing official shall issue a written opinion stating his or her decision, as soon as practicable, but not later than sixty (60) days after the date on which the request for such hearing was received by the agency. If an agency is unable to provide the debtor with a hearing and render a decision within 60 days after the receipt of the request for such hearing:

(i) The agency may not issue a withholding order until the hearing is held and a decision rendered; or

(ii) If the agency had previously issued a withholding order to the debtor's employer, the agency must suspend the withholding order beginning on the 61st day after the receipt of the hearing request and continuing until a hearing is held and a decision is rendered.

(11) *Content of decision.* The written decision shall include:

(i) A summary of the facts presented;

(ii) The hearing official's findings, analysis and conclusions; and

(iii) The terms of any repayment schedules, if applicable.

(12) *Final agency action.* The hearing official's decision will be the final agency action for the purposes of judicial review under the Administrative Procedure Act (5 U.S.C. 701 *et seq.*).

(13) *Failure to appear.* In the absence of good cause shown, a debtor who fails to appear at a hearing scheduled pursuant to paragraph (f)(4) of this section will be deemed as not having timely filed a request for a hearing.

(g) *Wage garnishment order.* (1) Unless the agency receives information that the agency believes justifies a delay or cancellation of the withholding order, the agency shall send, by first class mail, a withholding order to the debtor's employer within 30 days after the debtor fails to make a timely request for a hearing (i.e., within 15 business days after the mailing of the notice described in paragraph (e)(1) of this section), or, if a timely request for a hearing is made by the debtor, within 30 days after a final decision is made by the agency to proceed with garnishment.

(2) The withholding order sent to the employer under paragraph (g)(1) of this section shall be in a form prescribed by the Secretary of the Treasury on the

agency's letterhead and signed by the head of the agency or his/her delegatee. The order shall contain only the information necessary for the employer to comply with the withholding order. Such information includes the debtor's name, address, and social security number, as well as instructions for withholding and information as to where payments should be sent.

(3) The agency will keep a copy of a certificate of service indicating the date of mailing of the order. The certificate of service may be retained electronically so long as the manner of retention is sufficient for evidentiary purposes.

(h) *Certification by employer.* Along with the withholding order, the agency shall send to the employer a certification in a form prescribed by the Secretary of the Treasury. The employer shall complete and return the certification to the agency within the time frame prescribed in the instructions to the form. The certification will address matters such as information about the debtor's employment status and disposable pay available for withholding.

(i) *Amounts withheld.* (1) After receipt of the garnishment order issued under this section, the employer shall deduct from all disposable pay paid to the applicable debtor during each pay period the amount of garnishment described in paragraph (i)(2) of this section.

(2)(i) Subject to the provisions of paragraphs (i)(3) and (i)(4) of this section, the amount of garnishment shall be the lesser of:

(A) The amount indicated on the garnishment order up to 15% of the debtor's disposable pay; or

(B) The amount set forth in 15 U.S.C. 1673(a)(2) (Restriction on Garnishment). The amount set forth at 15 U.S.C.

1673(a)(2) is the amount by which a debtor's disposable pay exceeds an amount equivalent to thirty times the minimum wage. See 29 CFR 870.10.

(3) When a debtor's pay is subject to withholding orders with priority the following shall apply:

(i) Unless otherwise provided by Federal law, withholding orders issued under this section shall be paid in the amounts set forth under paragraph (i)(2) of this section and shall have priority over other withholding orders which are served later in time. Notwithstanding the foregoing, withholding orders for family support shall have priority over withholding orders issued under this section.

(ii) If amounts are being withheld from a debtor's pay pursuant to a withholding order served on an employer before a withholding order

issued pursuant to this section, or if a withholding order for family support is served on an employer at any time, the amounts withheld pursuant to the withholding order issued under this section shall be the lesser of:

(A) The amount calculated under paragraph (i)(2) of this section, or

(B) An amount equal to 25% of the debtor's disposable pay less the amount(s) withheld under the withholding order(s) with priority.

(iii) If a debtor owes more than one debt to an agency, the agency may issue multiple withholding orders provided that the total amount garnished from the debtor's pay for such orders does not exceed the amount set forth in paragraph (i)(2) of this section. For purposes of this paragraph (i)(3)(iii), the term *agency* refers to the agency that is owed the debt.

(4) An amount greater than that set forth in paragraphs (i)(2) and (i)(3) of this section may be withheld upon the written consent of debtor.

(5) The employer shall promptly pay to the agency all amounts withheld in accordance with the withholding order issued pursuant to this section.

(6) An employer shall not be required to vary its normal pay and disbursement cycles in order to comply with the withholding order.

(7) Any assignment or allotment by an employee of his earnings shall be void to the extent it interferes with or prohibits execution of the withholding order issued under this section, except for any assignment or allotment made pursuant to a family support judgment or order.

(8) The employer shall withhold the appropriate amount from the debtor's wages for each pay period until the employer receives notification from the agency to discontinue wage withholding. The garnishment order shall indicate a reasonable period of

time within which the employer is required to commence wage withholding.

(j) *Exclusions from garnishment.* The agency may not garnish the wages of a debtor who it knows has been involuntarily separated from employment until the debtor has been reemployed continuously for at least 12 months. The debtor has the burden of informing the agency of the circumstances surrounding an involuntary separation from employment.

(k) *Financial hardship.* (1) A debtor whose wages are subject to a wage withholding order under this section, may, at any time, request a review by the agency of the amount garnished, based on materially changed circumstances such as disability, divorce, or catastrophic illness which result in financial hardship.

(2) A debtor requesting a review under paragraph (k)(1) of this section shall submit the basis for claiming that the current amount of garnishment results in a financial hardship to the debtor, along with supporting documentation. Agencies shall consider any information submitted in accordance with procedures and standards established by the agency.

(3) If a financial hardship is found, the agency shall downwardly adjust, by an amount and for a period of time agreeable to the agency, the amount garnished to reflect the debtor's financial condition. The agency will notify the employer of any adjustments to the amounts to be withheld.

(l) *Ending garnishment.* (1) Once the agency has fully recovered the amounts owed by the debtor, including interest, penalties, and administrative costs consistent with the FCCS, the agency shall send the debtor's employer notification to discontinue wage withholding.

(2) At least annually, an agency shall review its debtors' accounts to ensure that garnishment has been terminated for accounts that have been paid in full.

(m) *Actions prohibited by the employer.* An employer may not discharge, refuse to employ, or take disciplinary action against the debtor due to the issuance of a withholding order under this section.

(n) *Refunds.* (1) If a hearing official, at a hearing held pursuant to paragraph (f)(3) of this section, determines that a debt is not legally due and owing to the United States, the agency shall promptly refund any amount collected by means of administrative wage garnishment.

(2) Unless required by Federal law or contract, refunds under this section shall not bear interest.

(o) *Right of action.* The agency may sue any employer for any amount that the employer fails to withhold from wages owed and payable to an employee in accordance with paragraphs (g) and (i) of this section. However, a suit may not be filed before the termination of the collection action involving a particular debtor, unless earlier filing is necessary to avoid expiration of any applicable statute of limitations period. For purposes of this section, "termination of the collection action" occurs when the agency has terminated collection action in accordance with the FCCS or other applicable standards. In any event, termination of the collection action will have been deemed to occur if the agency has not received any payments to satisfy the debt from the particular debtor whose wages were subject to garnishment, in whole or in part, for a period of one (1) year.

Dated: April 30, 1998.

Richard L. Gregg,
Commissioner.

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