

**DEPARTMENT OF EDUCATION****34 CFR Part 34****Administrative Wage Garnishment**

**AGENCY:** Office of the Chief Financial Officer, Department of Education.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** These proposed regulations would implement for the Department of Education the provisions for administrative wage garnishment in the Debt Collection Improvement Act of 1996 (DCIA). The DCIA authorizes Federal agencies to garnish administratively, that is, without court order, the disposable pay of an individual who is not a Federal employee to collect a delinquent nontax debt owed to the United States. These proposed regulations would implement this authority for a debt owed to the United States under a program administered by the Department of Education.

**DATES:** We must receive your comments on or before June 11, 2002.

**ADDRESSES:** Address all comments about these proposed regulations to Marian E. Currie, U.S. Department of Education, 830 First Street NE., room 41B4, Washington, DC 20202. If you prefer to send your comments through the Internet, use the following address: [marian.currie@ed.gov](mailto:marian.currie@ed.gov)

You must include the term "Comments on DCIA NPRM" in the subject line of your electronic message.

**FOR FURTHER INFORMATION CONTACT:** Marian E. Currie. Telephone: (202) 377-3212 or via Internet:

[marian.currie@ed.gov](mailto:marian.currie@ed.gov) If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1-800-877-8339.

Individuals with disabilities may obtain this document in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT**.

**SUPPLEMENTARY INFORMATION:****Invitation To Comment**

We invite you to submit comments regarding these proposed regulations. To ensure that your comments have maximum effect in developing the final regulations, we urge you to identify clearly the specific section or sections of the proposed regulations that each of your comments addresses and to arrange your comments in the same order as the proposed regulations.

We invite you to assist us in complying with the specific requirements of Executive Order 12866 and its overall requirement of reducing regulatory burden that might result from these proposed regulations. Please let us know of any further opportunities we should take to reduce potential costs or increase potential benefits while preserving the effective and efficient administration of the program.

During and after the comment period, you may inspect all public comments about these proposed regulations in room 41B4, Union Center Plaza, 830 First Street, NE., Washington, DC, between the hours of 8:30 a.m. and 4 p.m., Eastern time, Monday through Friday of each week except Federal holidays.

**Assistance to Individuals With Disabilities in Reviewing the Rulemaking Record**

On request, we will supply an appropriate aid, such as a reader or print magnifier, to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for these proposed regulations. If you want to schedule an appointment for this type of aid, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

**Background**

These proposed regulations would implement 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 procedure by which an employer withholds amounts from the wages of an employee who is a debtor and pays those amounts to the employee's creditor in satisfaction of the debt. The DCIA authorizes a Federal agency to garnish administratively—as distinct from garnishing by court order—up to 15 percent of the disposable pay of a debtor to satisfy delinquent nontax debt owed to the United States. Section 31001(o) of the DCIA preempts State laws that prohibit wage garnishment or otherwise conflict with these wage garnishment procedures.

We have used administrative wage garnishment to collect defaulted loan debts under section 488A of the Higher Education Act (HEA) of 1965, as amended by section 605 of the Emergency Unemployment Compensation Act of 1991, Pub. L. 102-164, 105 Stat. 1066 (Nov. 15, 1991), codified at 20 U.S.C. 1095a. The HEA authorizes the Secretary and student

loan guarantee agencies to collect defaulted student loans by administrative garnishment up to 10 percent of a debtor's disposable pay under terms and due process provisions in almost all other respects virtually identical to those enacted in the DCIA.

The Secretary has not adopted regulations governing implementation of the HEA garnishment authority, but has followed the statutory provisions directly. Treasury Department regulations require Federal agencies that use the DCIA garnishment authority either to adopt regulations promulgated by the Treasury Department Financial Management Service (FMS) (31 CFR 285.11) or to adopt their own regulations consistent with FMS regulations. Under these proposed regulations, we would adopt regulations for the use of this DCIA authority by us (31 CFR 285.11(f)). In the future we will use the DCIA authority to collect those loans we are now collecting by means of the HEA garnishment authority.

We expect that the great majority of the debts that we would collect using the DCIA wage garnishment authority under these proposed regulations would be defaulted loans and grant overpayments arising under the HEA student financial assistance programs. We would use administrative wage garnishment under the DCIA to collect these debts in generally the same way that we have used administrative wage garnishment under HEA section 488A (20 U.S.C. 1095a) to collect defaulted loans held by the Department.

A few garnishment provisions of the DCIA differ from requirements under the HEA; two of these differences are significant. First, the DCIA authorizes garnishment of up to 15 percent of a debtor's disposable pay (31 U.S.C. 3720D(b)(1)), rather than 10 percent, as under the HEA (20 U.S.C. 1095a(a)(1)). Second, under Treasury Department regulations governing the use of DCIA garnishment, amounts deducted from a debtor's gross pay for health insurance premiums, as well as amounts required by law to be withheld by the employer, are excluded from the debtor's disposable pay (31 CFR 285.11(c)). Those amounts are not deducted in computing disposable pay under the HEA, because HEA § 488A(e) defines the term disposable pay to exclude only those amounts required by law to be withheld. (20 U.S.C. 1095a(e)).

We may also use DCIA wage garnishment under this rule to collect "administrative debts" that are not based on student loan or grant obligations, and may transfer the debt to the Treasury Department for servicing under 31 U.S.C. 3711(g)(1). We propose

to follow these rules for conducting wage garnishment to collect administrative debts, but if we transfer servicing of a debt to Treasury, wage garnishment conducted by Treasury will also be governed by these procedures.

### Significant Proposed Regulations

Under the requirements of the DCIA, these proposed regulations would establish the following rules and procedures:

#### 1. Notice

If you are a debtor, at least 30 days before we initiate garnishment action, we would send you written notice informing you of the nature and amount of the debt, our intention to collect the debt through deductions from pay, and an explanation of your rights regarding the proposed action.

#### 2. Rights of the Debtor

We would provide you 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 rate at which the garnishment order would require withholding by your employer. You may object to the garnishment on the grounds that you do not owe the debt, that you do not owe a debt in the amount stated in the notice, that you are repaying the debt under a satisfactory repayment agreement with us, or that we cannot enforce the debt by garnishment against you at the time because collection action is stayed by the automatic stay on collection imposed by bankruptcy law (11 U.S.C. 362(a)) or because you have recently been reemployed after an involuntary separation from employment and are therefore protected from garnishment for the first twelve-month period of reemployment (31 U.S.C. 3720D(b)(6)).

Before issuing a garnishment order, we would provide you with a hearing if we receive your request with a postmark within 30 days of our mailing the notice. If we did not receive your hearing request within the 30-day period, we would provide you a hearing but would not delay issuance of a garnishment order in the amount and at the rate proposed in the notice of proposed garnishment.

If you are a debtor who demonstrated that you had been involuntarily separated from employment, we, as required by the DCIA, would not garnish your wages until you had been reemployed continuously for at least 12 months. Exemption from garnishment on the basis of recent reemployment, like other grounds for not proceeding

with garnishment, is a defense you would have to establish by credible evidence.

If you've received a decision, the proposed rule would not limit your ability to file a subsequent request for a hearing. However, you would have to demonstrate with any subsequent request (1) that your financial circumstances had changed materially since the initial decision and that you thus warranted a reduction in the garnishment rate or amount; or (2) that newly submitted evidence not previously considered demonstrated that we should reconsider the initial decision.

We have limited resources to devote to hearing activities and must ensure a timely hearing to any debtor who seeks a hearing in response to a notice of proposed garnishment. Thus, in the case of a debtor who has already received a hearing, we would review a request for reconsideration and arrange for proceedings to implement that reconsideration only as resources permit. We would notify the debtor only if we agreed to reconsider the decision.

#### 3. Financial Hardship

The DCIA, like the HEA, allows you to object to the terms of a proposed payment schedule. As with the HEA garnishment authority, we consider this provision to allow you to object to the amount of the proposed garnishment only on the ground that the garnishment would cause financial hardship to you and your dependents.

As with any other objection, you would bear the burden of proof of a claim of hardship. For you to support a claim of financial hardship, we would typically require you to complete a financial statement as part of the hearing process and to report the income and expenses on which your hardship claim rests. This statement would have to disclose the income available from all members of your household unit whose living expenses you claimed in this process. Thus, we would require you to report the amount of disposable pay and other income received by you, your spouse, and any other member of your household.

For purposes of this part, financial hardship is the inability to meet basic living expenses using the disposable pay and other income of you and your spouse and dependents. Basic living expenses are expenses incurred for goods and services necessary to the survival of your family and in amounts that are reasonable.

Drawing on a comprehensive body of empirical data, the Internal Revenue Service (IRS) has analyzed the amounts

needed to meet the various categories of necessary living expenses for family sizes of different income levels on a national, regional, and local level. Based on that data, IRS has adopted standards (the "National Standards") to use in determining the amount that delinquent taxpayers should be expected to use to pay their tax obligations.

We believe that similarly situated debtors should be held to the same levels of effort to meet their financial obligations to the taxpayer. To achieve this goal of simple fairness to debtors, we now use (for garnishment determinations made under the HEA garnishment authority) and would continue to use these standards for DCIA garnishment determinations. They would serve as an authoritative and well-established base against which to measure the reasonableness of the amounts claimed for necessary expenses by a delinquent debtor in response to a garnishment action.

If you are a debtor who claims financial hardship, we consider a necessary expense to be reasonable to the extent that the amount does not exceed the amount spent by family units of the same size and similar income, as those amounts are identified in the National Standards. If you claim expenses that exceed the National Standards, you must prove that circumstances unique to your family require the amount you have claimed for that expense.

Case law interpreting the kind of undue hardship that a debtor must prove in order to obtain a discharge of an educational loan or benefit debt in bankruptcy under 11 U.S.C. 523(a)(8) offers useful guidance in assessing financial hardship in the context of garnishment under the DCIA (and the HEA, as well). In assessing long-term undue hardship claims, that precedent discounts debtor preferences about expenses such as private schooling for family members, retirement saving, automobile ownership, vacations and entertainment, charitable contributions, and career choices. The precedent is even more persuasive when applied to weight given these preferences in the short-term hardship assessment conducted in garnishment proceedings.

The facts that may justify above-average expenses would vary from family to family, but a debtor must prove that the proposed garnishment would cause significant short-term inability to meet basic living expenses. Hardship is not mere inconvenience or even inability to satisfy lifestyle choices and financial obligations already incurred in disregard of the debt owed to the public and now collectible by

garnishment. Repayment of a debt owed to the public, in particular, debts arising from publicly-financed student financial assistance received by a debtor, is not an expense to be honored only after other expenses have been satisfied.

Hardship assessments in bankruptcy and garnishment contexts do differ regarding the period for which each assesses the claimed hardship. Undue hardship in bankruptcy looks to whether financial hardship will persist over the long term—the period over which the loan may be repaid under available options. Hardship for garnishment purposes looks only to the short term—a six-month period—after which the debtor may apply for reconsideration. A finding of financial hardship in a garnishment proceeding, therefore, does not establish or even provide persuasive support for an undue hardship claim in bankruptcy.

#### 4. Employer's Responsibilities

If you are the employer of a delinquent debtor, we would send you a wage garnishment order directing that you pay a portion of the debtor's wages to us. By incorporating a provision of the Treasury Department regulations (31 CFR 285.11(h)), these proposed regulations would require you to certify certain payment information about the debtor.

The certification form would serve multiple purposes. First, the form would provide us with information necessary to monitor your compliance with our wage garnishment order in accordance with the requirements of the DCIA and applicable laws. The form would also provide information enabling us to calculate anticipated collection amounts to determine whether to pursue other collection tools. Finally, the form would assist you in calculating the amount you must withhold from the debtor's disposable pay. Failure to complete the certification form as required would affect your responsibility to withhold the appropriate garnishment amount within a "reasonable time" in accordance with these proposed regulations.

The DCIA authorizes us to sue an employer for amounts not properly withheld from the wages payable to the debtor. However, you would not be required to vary your normal pay cycle to comply with the garnishment order. In addition, the DCIA prohibits taking disciplinary actions against the debtor based on the fact that the debtor's wages are subject to administrative garnishment.

#### 5. Use of Contractors

As Treasury Department regulations make clear, government agencies may not contract out "inherently governmental functions." (See Office of Management and Budget (OMB) Circular A-76.) Therefore, we cannot delegate to our contractors any "inherently governmental function" in connection with garnishment action. Consistent with 31 CFR 285.11(c), we do not delegate to our contractors "inherently governmental functions" such as ruling on a debtor's objections to garnishment, deciding to issue a garnishment order regarding an individual debtor, or causing a garnishment order to be issued regarding an individual debtor.

We do make extensive use of our collection contractors in connection with collection by garnishment. These functions may include recommending garnishment action with respect to particular debtors, receiving and reviewing for completeness objections to garnishment and requests for hearing, attempting to secure missing information needed to resolve satisfactorily several kinds of objections to garnishment, analyzing financial statements under Department guidelines to determine affordable repayment amounts, and negotiating repayment agreements with debtors. We may also use other contracted services to analyze debtor objections to garnishment and propose to our hearing official appropriate findings with respect to particular objections. However, none of these contracted services are "inherently governmental functions."

#### 6. Multiple Garnishment Orders and Federal Limitation on Amounts Withheld

We would recognize in these proposed regulations the limitations imposed by the Consumer Credit Protection Act, 15 U.S.C. 1671-1677 (CCPA) on garnishment actions. Those limitations apply to garnishments taken under the authority of the DCIA. The CCPA establishes minimum disposable pay requirements on the wage garnishment provisions of the DCIA and of these proposed regulations. (See CCPA, Sec. 303(a)(2), codified at 15 U.S.C. 1673(a)(2) (maximum allowable garnishment)). Under § 34.19(b), the maximum amount that would be withheld under a DCIA garnishment order would be the lesser of the amount indicated in the order (up to 15 percent of the debtor's disposable pay) or the amount specified in 15 U.S.C. 1673(a)(2). The latter is the amount by which a debtor's disposable pay exceeds

an amount equivalent to 30 times the minimum wage.

These proposed regulations would also recognize that we may issue multiple garnishment orders so long as the total amount garnished does not exceed the garnishment amount permitted under 15 U.S.C. 1673(a)(2). We ordinarily do not know the amount of a debtor's disposable pay and cannot determine whether payment of the amount stated in the order would cause a greater amount to be withheld than permitted by the CCPA. Because the employer knows both the debtor's disposable pay and the amount that may be currently withheld under other garnishment orders, if any, the employer as a practical matter will be the party best able to determine the amount that may actually be withholdable to satisfy our garnishment order. The order, therefore, would direct the employer to withhold and remit the amount demanded unless to do so would—either by itself or with other withholding orders outstanding—exceed the amount permitted by the CCPA for that debtor. Therefore, the employer, not the creditor, is responsible to ensure that, with regard to that employee, the total amount withheld and paid out for all garnishment orders—including those issued under DCIA authority—does not exceed the limits imposed by the CCPA.

#### 7. Effect of Deadlines for Completion of Actions

The DCIA establishes a number of time limits within which a debtor and a creditor agency must complete various actions. Based on experience in conducting garnishment under the HEA, we wish to clarify the consequences of failure to meet those requirements under the HEA, as well as under the DCIA. Because the applicable provisions in the two statutes are identical, we would consider the same principles in the DCIA to apply, also, to time limits established in the HEA with respect to garnishment actions.

The debtor would be required to meet any deadline established in these proposed regulations or in any extension of this deadline provided by a Department official in an individual case. Failure by the debtor to meet a deadline does not result in forfeiture of a procedural right such as the right to access to records or the right to a hearing. However, failure to meet a deadline does generally result in the garnishment process moving forward, up to and including the issuance of a garnishment order. In particular, we would provide a hearing to a debtor who makes an untimely request for a

hearing, but we would not suspend garnishment proceedings until that hearing has been conducted.

The DCIA, like its HEA counterpart, directs the creditor agency to complete any hearing within 60 days of the date on which the debtor files a request for a hearing (31 U.S.C. 3720D(c)(3)). (See 20 U.S.C. 1095a(b).) Neither statute adopts a particular consequence for failure to complete the hearing within 60 days. Therefore, consistent with well-established case law, we would not consider our failure to issue a decision within the 60-day period to invalidate a garnishment proceeding or preclude issuance of a garnishment order when we issue a decision beyond that period. *United States v. James Daniel Good Real Property*, 510 U.S. 43, 63 (1993); *United States v. Montalvo-Murillo*, 495 U.S. 711 (1990); *Brock v. Pierce County*, 476 U.S. 253 (1986).

With respect to a debtor who files a timely hearing request, because we would not issue a garnishment order until the requested hearing is completed and a decision issued, that debtor would suffer no injury if the hearing and decision are not completed within the 60-day period.

With respect to a debtor who files an untimely hearing request, that request would not suspend garnishment proceedings. Therefore, the debtor's wages could be withheld before the requested hearing could be held and a decision issued. Under these proposed regulations, we would suspend any garnishment order with respect to that debtor if the hearing is not completed and a decision issued within the 60-day period. The 60-day rule, as implemented in these proposed regulations, would thus ensure that a debtor who makes a tardy request for a hearing would suffer only a limited injury.

The proposed regulations contain a number of provisions that would have the Department take certain actions within specific time periods, such as the issuance of a garnishment order within 30 days of a hearing decision adverse to a debtor (§ 34.18(a)). Unless the proposed regulations state a specific consequence for failure to complete any action within the specified period, these provisions would not affect the validity of the action.

#### Executive Order 12866

##### Clarity of the Regulations

Executive Order 12866 and the Presidential memorandum of June 1, 1998 on "Plain Language in Government Writing" require each agency to write regulations that are easy to understand.

The Secretary invites comments on how to make these proposed regulations easier to understand, including answers to questions such as the following:

- Are the requirements in the proposed regulations clearly stated?
- Do the proposed regulations contain technical terms or other wording that interferes with their clarity?
- Does the format of the proposed regulations (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce their clarity?
- Would the proposed regulations be easier to understand if we divided them into more (but shorter) sections? (A "section" is preceded by the symbol "§" and a numbered heading; for example, § 34.1 Purpose of this part.
- Could the description of the proposed regulations in the **SUPPLEMENTARY INFORMATION** section of this preamble be more helpful in making the proposed regulations easier to understand? If so, how?
- What else could we do to make the proposed regulations easier to understand?

Send any comments that concern how the Department could make these proposed regulations easier to understand to the person listed in the **ADDRESSES** section of the preamble.

#### Regulatory Flexibility Act Certification

The Secretary certifies that these proposed regulations would not have a significant economic impact on a substantial number of small entities. Although a substantial number of small entities would be subject to these regulations and to the certification requirement in these regulations, the requirements would not have a significant economic impact on these entities.

The employer of a delinquent debtor would have to 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 would 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 serves garnishment 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. An employer is not required to vary its normal pay cycle to comply with a garnishment order issued under these regulations.

#### Paperwork Reduction Act of 1995

These proposed regulations do not contain any information collection requirements.

#### Intergovernmental Review

These proposed regulations are not subject to Executive Order 12372 and the regulations in 34 CFR part 79.

#### Assessment of Educational Impact

The Secretary particularly requests comments on whether these proposed regulations would require transmission of information that any other agency or authority of the United States gathers or makes available.

#### Federalism

Executive Order 13132 requires us to ensure meaningful and timely input by State and local elected officials in the development of regulatory policies that have federalism implications. "Federalism implications" means substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. The proposed regulations in § 34.2 may have federalism implications, as defined in Executive Order 13132. We encourage State and local elected officials to review and provide comments on these proposed regulations.

#### Electronic Access to This Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: [www.ed.gov/legislation/FedRegister](http://www.ed.gov/legislation/FedRegister)

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<http://ocfo.ed.gov/fedreg.html>  
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(Catalog of Federal Domestic Assistance Number does not apply.)

**List of Subjects in 34 CFR Part 34**

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

Dated: April 8, 2002.

**Rod Paige,**

*Secretary of Education.*

For the reasons discussed in the preamble, the Secretary proposes to amend title 34 of the Code of Federal regulations by adding a new part 34 to read as follows:

**PART 34—ADMINISTRATIVE WAGE GARNISHMENT**

Sec.

- 34.1 Purpose of this part.
- 34.2 Scope of this part.
- 34.3 Definitions.
- 34.4 Notice of proposed garnishment.
- 34.5 Contents of a notice of proposed garnishment.
- 34.6 Rights in connection with garnishment.
- 34.7 Consideration of objection to the rate of withholding.
- 34.8 Providing a hearing.
- 34.9 Conditions for an oral hearing.
- 34.10 Conditions for a paper hearing.
- 34.11 Timely request for a hearing.
- 34.12 Request for reconsideration.
- 34.13 Conduct of a hearing.
- 34.14 Burden of proof.
- 34.15 Consequences of failure to appear for an oral hearing.
- 34.16 Issuance of the hearing decision.
- 34.17 Content of decision.
- 34.18 Issuance of the wage garnishment order.
- 34.19 Amounts to be withheld under a garnishment order.
- 34.20 Amount to be withheld under multiple garnishment orders.
- 34.21 Employer certification.
- 34.22 Employer responsibilities.
- 34.23 Exclusions from garnishment.
- 34.24 Claim of financial hardship by debtor subject to garnishment.
- 34.25 Determination of financial hardship.
- 34.26 Ending garnishment.
- 34.27 Actions by employer prohibited by law.
- 34.28 Refunds of amounts collected in error.
- 34.29 Enforcement action against employer for noncompliance with garnishment order.
- 34.30 Application of payments and accrual of interest.

**Authority:** 31 U.S.C. 3720D, unless otherwise noted.

**§ 34.1 Purpose of this part.**

This part establishes procedures the Department of Education uses to collect money from a debtor's disposable pay by means of administrative wage garnishment to satisfy delinquent debt owed to the United States.

**§ 34.2 Scope of this part.**

(a) This part applies to collection of any financial obligation owed to the United States that arises under a program we administer.

(b) This part applies notwithstanding any provision of State law.

(c) We may compromise or suspend collection by garnishment of a debt in accordance with applicable law.

(d) We may use other debt collection remedies separately or in conjunction with administrative wage garnishment to collect a debt.

(e) To collect by offset from the salary of a Federal employee, we use the procedures in 34 CFR part 31, not those in this part.

(Authority: 31 U.S.C. 3720D)

**§ 34.3 Definitions.**

As used in this part, the following definitions apply:

*Administrative debt* means a debt that does not arise from an individual's obligation to repay a loan or an overpayment of a grant received under a student financial assistance program authorized under Title IV of the Higher Education Act.

*Business day* means a day Monday through Friday, unless that day is a Federal holiday.

*Certificate of service* means a certificate signed by an authorized official of the U.S. Department of Education (the Department) that indicates the nature of the document to which it pertains, the date we mail the document, and to whom we are sending the document.

*Day* means calendar day. For purposes of computation, the last day of a period will be included unless that day is a Saturday, a Sunday, or a Federal legal holiday; in that case, the last day of the period is the next business day after the end of the period.

*Debt* or *claim* means any amount of money, funds, or property that an appropriate official of the Department has determined an individual owes to the United States under a program we administer.

*Debtor* means an individual who owes a delinquent nontax debt to the United States under a program we administer.

*Disposable pay.* This term—

(a)(1) Means that part of a debtor's compensation for personal services, whether or not denominated as wages, from an employer that remains after the deduction of health insurance premiums and any amounts required by law to be withheld.

(2) For purposes of this part, "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 under a court order; and

(b) Includes, but is not limited to, salary, bonuses, commissions, or vacation pay.

*Employer.* This term—

(a) Means a person or entity that employs the services of another and that pays the latter's wages or salary;

(b) Includes, but is not limited to, State and local governments; and

(c) Does not include an agency of the Federal Government.

*Financial hardship* means an inability to meet basic living expenses for goods and services necessary for the survival of the debtor and his or her spouse and dependents.

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

*We* means the United States Department of Education.

*Withholding order.* (a) This term means any order for withholding or garnishment of pay issued by this Department, another Federal agency, a State or private non-profit guaranty agency, or a judicial or administrative body.

(b) For purposes of this part, the terms "wage garnishment order" and "garnishment order" have the same meaning as "withholding order."

*You* means the debtor.

(Authority: 31 U.S.C. 3720D)

**§ 34.4 Notice of proposed garnishment.**

(a) We may start proceedings to garnish your wages whenever we determine that you are delinquent in paying a debt owed to the United States under a program we administer.

(b) We start garnishment proceedings by sending you a written notice of the proposed garnishment.

(c) At least 30 days before we start garnishment proceedings, we mail the notice by first class mail to your last known address.

(d)(1) We keep a copy of a certificate of service indicating the date of mailing of the notice.

(2) We may retain this certificate of service in electronic form.

(Authority: 31 U.S.C. 3720D)

**§ 34.5 Contents of a notice of proposed garnishment.**

In a notice of proposed garnishment, we inform you of—

(a) The nature and amount of the debt;

(b) Our intention to collect the debt through deductions from pay until the debt and all accumulated interest,

penalties, and collection costs are paid in full; and

(c) An explanation of your rights, including those in § 34.6, and the time frame within which you may exercise your rights.

(Authority: 31 U.S.C. 3720D)

#### **§ 34.6 Rights in connection with garnishment.**

Before starting garnishment, we provide you the opportunity—

(a) To inspect and copy our records related to the debt;

(b) To enter into a written repayment agreement with us to repay the debt under terms we consider acceptable;

(c) For a hearing in accordance with § 34.8 concerning—

(1) The existence, amount, or current enforceability of the debt; and

(2) The rate at which the garnishment order will require your employer to withhold pay.

(Authority: 31 U.S.C. 3720D)

#### **§ 34.7 Consideration of objection to the rate or amount of withholding.**

(a) We consider objections to the rate or amount of withholding only if the objection rests on a claim that withholding at the proposed rate or amount would cause financial hardship to you and your dependents.

(b) We do not provide a hearing on an objection to the rate or amount of withholding if the rate or amount does not exceed the rate or amount established within the 12-month period preceding the notice of garnishment under—

(1) A repayment agreement we reached with you after a previous notice of proposed garnishment; or

(2) A hearing decision issued under this part.

(c) We do not consider an objection to the rate or amount of withholding based on a claim that by virtue of 15 U.S.C. 1673, no amount of wages are available for withholding by the employer

(Authority: 31 U.S.C. 3720D)

#### **§ 34.8 Providing a hearing.**

(a) We provide a hearing if you submit a written request for a hearing concerning the existence or amount of the debt or the rate of wage withholding.

(b) At our option the hearing may be an oral hearing under § 34.9 or a paper hearing under § 34.10.

(Authority: 31 U.S.C. 3720D)

#### **§ 34.9 Conditions for an oral hearing.**

(a) We provide an oral hearing if you—

(1) Request an oral hearing; and

(2) Show in the request a good reason to believe that we cannot resolve the

issues in dispute by review of the documentary evidence, by demonstrating that the validity of the claim turns on the credibility or veracity of witness testimony.

(b) If we determine that an oral hearing is appropriate, we notify you how to receive the oral hearing.

(c)(1) At your option, an oral hearing may be conducted either in-person or by telephone conference.

(2) We provide an in-person oral hearing with regard to administrative debts only in Washington D.C.

(3) We provide an in-person oral hearing with regard to debts based on student loan or grant obligations only at our regional service centers in Atlanta, Chicago, or San Francisco.

(4) You must bear all travel expenses you incur in connection with an in-person hearing.

(5) We bear the cost of any telephone calls we place in order to conduct an oral hearing by telephone.

(d)(1) To arrange the time and location of the oral hearing, we ordinarily attempt to contact you first by telephone call to the number you provided to us.

(2) If we are unable to contact you by telephone, we leave a message directing you to contact us within 5 business days to arrange the time and place of the hearing.

(3) If we can neither contact you directly nor leave a message with you by telephone—

(i) We notify you in writing to contact us to arrange the time and place of the hearing; or

(ii) We select a time and place for the hearing, and notify you in writing of the time and place set for the hearing.

(e) We consider you to have withdrawn the request for an oral hearing, and we will conduct the hearing as a paper hearing, if—

(1) Within 15 days of the date of a written notice to contact us, we receive no response to that notice;

(2) Within five business days of the date of a telephone message to contact us, we receive no response to that message; or

(3) You do not appear in person or by telephone at the hearing as set by agreement or by our notice.

(Authority: 31 U.S.C. 3720D)

#### **§ 34.10 Conditions for a paper hearing.**

We provide a paper hearing—

(a) At your request if we conclude that, by a review of the written record, we can resolve the issues raised by your objections; or

(b) If we determine that you have withdrawn a request for an oral hearing.

(Authority: 31 U.S.C. 3720D)

#### **§ 34.11 Timely request for a hearing.**

(a) A hearing request is timely if—

(1) You mail the request to the office designated in the garnishment notice and the request is postmarked not later than the 30th day following the date of the notice; or

(2) The designated office receives the request not later than the 30th day following the date of the garnishment notice.

(b) If we receive a timely written request from you for a hearing, we will not issue a garnishment order before we—

(1) Provide the requested hearing; and

(2) Issue a written decision on the objections you raised.

(c) If your written request for a hearing is not timely—

(1) We provide you a hearing; and

(2) We do not delay issuance of a garnishment order unless—

(i) We determine from credible representations in the request that the delay in filing the request was caused by factors over which you had no control; or

(ii) We have other good reason to delay issuing a garnishment order.

(d) If we do not complete a hearing within 60 days of an untimely request, we suspend any garnishment order until we have issued a decision.

(Authority: 31 U.S.C. 3720D)

#### **§ 34.12 Request for reconsideration.**

(a) If you have received a decision on an objection to garnishment you may file a request for reconsideration of that decision.

(b) We do not suspend garnishment merely because you have filed a request for reconsideration.

(c) We consider your request for reconsideration if we determine that—

(1) Your financial circumstances, as shown by evidence submitted with the request, have materially changed since we issued the decision so that we should reduce the amount to be garnished under the order; or

(2)(i) You submitted with the request evidence that you did not previously submit; and

(ii) The evidence demonstrates that we should reconsider your objection to the existence, amount, or enforceability of the debt.

(d)(1) If we agree to reconsider the decision, we notify you.

(2)(i) We may reconsider based on the request and supporting evidence you have presented with the request; or

(ii) We may offer you an opportunity for a hearing to present evidence.

(Authority: 31 U.S.C. 3720D)

**§ 34.13 Conduct of a hearing.**

(a)(1) After you request a hearing, we notify you of—

- (i) The date and time of a hearing that we conduct by telephone;
- (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.

(2) If you request an oral hearing, we follow the steps in § 34.9 to attempt to contact you to arrange a mutually-agreeable date and time for that hearing.

(b)(1) A hearing official conducts any type of hearing referred to in paragraph (a) of this section.

(2) The hearing official may be any qualified employee of the Department whom the Department designates to conduct the hearing.

(c)(1) The hearing official conducts any hearing provided under this section as an informal proceeding.

(2) A witness in an oral hearing must testify under oath or affirmation.

(3) The hearing official maintains a summary record of any hearing provided under this section.

(Authority: 31 U.S.C. 3720D)

**§ 34.14 Burden of proof.**

(a)(1) We have the burden of proving the existence and amount of a debt.

(2) We meet this burden by including in the record and making available to the debtor on request records that show that—

- (i) The debt exists in the amount stated in the garnishment notice; and
  - (ii) The debt is currently delinquent.
- (b) If you dispute the existence or amount of the debt, you must prove by a preponderance of the credible evidence that—

- (1) No debt exists;
- (2) The amount we claim to be owed on the debt is incorrect, or
- (3) You are not delinquent with respect to the debt.

(c)(1) If you object that the proposed garnishment rate would cause financial hardship, you bear the burden of proving by a preponderance of the credible evidence that withholding the amount of wages proposed in the notice would leave you unable to meet the basic living expenses of you and your dependents.

(2) The standards for proving financial hardship are those in § 34.24.

(d)(1) If you object on the ground that applicable law bars us from collecting the debt by garnishment at this time, you bear the burden of proving the facts that would establish that claim.

(2) Examples of applicable law that may prevent collection by garnishment include the automatic stay in

bankruptcy (11 U.S.C. 362(a)), and the preclusion of garnishment action against a debtor who was involuntarily separated from employment and has been reemployed for less than a 12-month period (31 U.S.C. 3720D(b)(6)).

(e) The fact that applicable law may limit the amount that an employer may withhold from your pay to less than the amount or rate we state in the garnishment order does not bar us from issuing the order.

(Authority: 31 U.S.C. 3720D)

**§ 34.15 Consequences of failure to appear for an oral hearing.**

(a) If you do not appear for an in-person hearing you requested, or you do not answer a telephone call convening a telephone hearing, at the time set for the hearing, we consider you to have withdrawn your request for an oral hearing.

(b) If you do not appear for an oral hearing but you demonstrate that there was good cause for not appearing, we may reschedule the oral hearing.

(c) If you do not appear for an oral hearing you requested and we do not reschedule the hearing, we provide a paper hearing to review your objections, based on the evidence in your file and any evidence you have already provided.

(Authority: 31 U.S.C. 3720D)

**§ 34.16 Issuance of the hearing decision.**

(a) *Date of decision.* The hearing official issues a written opinion stating his or her decision, as soon as practicable, but not later than 60 days after the date on which we received the request for hearing.

(b) If we do not provide you with a hearing and render a decision within 60 days after we receive your request for a hearing—

- (1) We do not issue a garnishment order until the hearing is held and a decision rendered; or
- (2) If we have already issued a garnishment order to your employer, we suspend the garnishment order beginning on the 61st day after we receive the hearing request until we provide a hearing and issue a decision.

(Authority: 31 U.S.C. 3720D)

**§ 34.17 Content of decision.**

(a) The written decision includes—

- (1) A summary of the facts presented;
- (2) The hearing official's findings, analysis, and conclusions regarding objections raised to the existence or amount of the debt; and
- (3) The rate of wage withholding under the order, if you objected that withholding the amount proposed in the

garnishment notice would cause an extreme financial hardship.

(b) The hearing official's decision is the final action of the Secretary for the purposes of judicial review under the Administrative Procedure Act (5 U.S.C. 701 *et seq.*).

(Authority: 31 U.S.C. 3720D)

**§ 34.18 Issuance of the wage garnishment order.**

(a)(1) If you fail to make a timely request for a hearing, we issue a garnishment order to your employer within 30 days after the deadline for timely requesting a hearing.

(2) If you make a timely request for a hearing, we issue a withholding order within 30 days after the hearing official issues a decision to proceed with garnishment.

(b)(1) The garnishment order we issue to your employer is signed by an official of the Department designated by the Secretary.

(2) The designated official's signature may be a computer-generated facsimile.

(c)(1) The garnishment order contains only the information we consider necessary for your employer to comply with the order and for us to ensure proper credit for payments received from your employer.

(2) The order includes your name, address, and social security number, as well as instructions for withholding and information as to where your employer must send the payments.

(d)(1) We keep a copy of a certificate of service indicating the date of mailing of the order.

(2) We may create and maintain the certificate of service as an electronic record.

(Authority: 31 U.S.C. 3720D)

**§ 34.19 Amounts to be withheld under a garnishment order.**

(a)(1) After an employer receives a garnishment order we issue, the employer must deduct from all disposable pay of the debtor during each pay period the amount directed in the garnishment order unless this section or § 34.20 requires a smaller amount to be withheld.

(2) The amount specified in the garnishment order does not apply if other law, including this section, requires the employer to withhold a smaller amount.

(b) The employer must comply with our garnishment order by withholding the lesser of—

(1) The amount directed in the garnishment order; or—

(2) The amount specified in 15 U.S.C. 1673(a)(2) (Restriction on Garnishment); that is, the amount by which a debtor's

disposable pay exceeds an amount equal to 30 times the minimum wage. (See 29 CFR 870.10.)

(Authority: 31 U.S.C. 3720D)

**§ 34.20 Amount to be withheld under multiple garnishment orders.**

If a debtor's pay is subject to several garnishment orders, the employer must comply with our garnishment order as follows:

(a) Unless other Federal law requires a different priority, the employer must pay us the amount calculated under § 34.19(b) before the employer complies with any later garnishment orders, except a family support withholding order.

(b) If an employer is withholding from a debtor's pay based on a garnishment order served on the employer before our order, or if a withholding order for family support is served on an employer at any time, the employer must comply with our garnishment order by withholding an amount that is the smaller of—

(1) The amount calculated under § 34.19(b); or

(2) An amount equal to 25 percent of the debtor's disposable pay less the amount or amounts withheld under the garnishment order or orders with priority over our order.

(c)(1) If a debtor owes more than one debt arising from a program we administer, we may issue multiple garnishment orders.

(2) The total amount withheld from the debtor's pay for orders we issue under paragraph (c)(1) of this section does not exceed the lesser of the amounts specified in the orders or the amount specified in § 34.19(b)(2).

(d) An employer may withhold and pay an amount greater than that amount in paragraphs (b) and (c) of this section if the debtor gives the employer written consent.

(Authority: 31 U.S.C. 3720D)

**§ 34.21 Employer certification.**

(a) Along with a garnishment order, we send to an employer a certification in a form prescribed by the Secretary of the Treasury.

(b) The employer must complete and return the certification to us within the time stated in the instructions for the form.

(c) The employer must include in the certification information about the debtor's employment status, payment frequency, and disposable pay available for withholding.

(Authority: 31 U.S.C. 3720D)

**§ 34.22 Employer responsibilities.**

(a)(1) Our garnishment order indicates a reasonable period of time within which an employer must start withholding under the order.

(2) The employer must promptly pay to the Department all amounts the employer withholds according to the order.

(b) The employer may follow its normal pay and disbursement cycles in complying with the garnishment order.

(c) The employer must withhold the appropriate amount from the debtor's wages for each pay period until the employer receives our notification to discontinue wage garnishment.

(d) The employer must disregard any assignment or allotment by an employee that would interfere with or prohibit the employer from complying with our garnishment order, unless that assignment or allotment was made for a family support judgment or order.

(Authority: 31 U.S.C. 3720D)

**§ 34.23 Exclusions from garnishment.**

(a) We do not garnish your wages if we have credible evidence that you—

(1) Were involuntarily separated from employment; and

(2) Have not yet been reemployed continuously for at least 12 months.

(b) You have the burden of informing us of the circumstances surrounding an involuntary separation from employment.

(Authority: 31 U.S.C. 3720D)

**§ 34.24 Claim of financial hardship by debtor subject to garnishment.**

(a) You may object to a proposed garnishment on the ground that withholding the amount or at the rate stated in the notice of garnishment would cause financial hardship to you and your dependents. (See § 34.7)

(b) You may, at any time, object that the amount or the rate of withholding which our order specifies your employer must withhold causes financial hardship.

(c)(1) We consider an objection to an outstanding garnishment order and provide you an opportunity for a hearing on your objection only after the order has been outstanding for at least six months.

(2) We may provide a hearing in extraordinary circumstances earlier than six months if you show in your request for review that your financial circumstances have substantially changed after the notice of proposed garnishment because of an event such as injury, divorce, or catastrophic illness.

(d)(1) You bear the burden of proving a claim of financial hardship by a preponderance of the credible evidence.

(2) You must prove by credible documentation—

(i) The amount of the costs incurred by you, your spouse, and any dependents, for basic living expenses; and

(ii) The income available from any source to meet those expenses.

(e)(1) We consider your claim of financial hardship by comparing:

(i) The amounts that you prove are being incurred for basic living expenses against

(ii) The amounts spent for basic living expenses by families of the same size and similar income to yours.

(2) We regard the standards published by the Internal Revenue Service under 26 U.S.C. 7122(c)(2) (the "National Standards") as establishing the average amounts spent for basic living expenses for families of the same size as, and with family incomes comparable to, your family.

(3) We accept as reasonable the amount that you prove you incur for a type of basic living expense to the extent that the amount does not exceed the amount spent for that expense by families of the same size and similar income according to the National Standards.

(4) If you claim for any basic living expense an amount that exceeds the amount in the National Standards, you must prove that the amount you claim is reasonable and necessary.

(Authority: 31 U.S.C. 3720D)

**§ 34.25 Determination of financial hardship.**

(a)(1) If we conclude that garnishment at the amount or rate proposed in a notice would cause you financial hardship, we reduce the amount of the proposed garnishment to an amount that we determine will allow you to meet proven basic living expenses.

(2) If a garnishment order is already in effect, we notify your employer of any change in the amount the employer must withhold or the rate of withholding under the order.

(b) If we determine that financial hardship would result from garnishment based on a finding by a hearing official or under a repayment agreement we reached with you, this determination is effective for a period not longer than six months after the date of the finding or agreement.

(c)(1) After the effective period referred to in paragraph (b) of this section, we may require you to submit current information regarding your family income and living expenses.

(2) If we conclude from a review of that evidence that we should increase

the rate of withholding or payment, we—

- (i) Notify you; and
- (ii) Provide you with an opportunity to contest the determination and obtain a hearing on the objection under the procedures in § 34.24.

(Authority: 31 U.S.C. 3720D)

**§ 34.26 Ending garnishment.**

(a)(1) A garnishment order we issue is effective until we rescind the order.

(2) If an employer is unable to honor a garnishment order because the amount available for garnishment is insufficient to pay any portion of the amount stated in the order, the employer must—

- (i) Notify us; and
- (ii) Comply with the order when sufficient disposable pay is available.

(b) After we have fully recovered the amounts owed by the debtor, including interest, penalties, and collection costs, we send the debtor's employer notification to stop wage withholding.

(Authority: 31 U.S.C. 3720D)

**§ 34.27 Actions by employer prohibited by law.**

An employer may not discharge, refuse to employ, or take disciplinary action against a debtor due to the issuance of a garnishment order under this part.

(Authority: 31 U.S.C. 3720D)

**§ 34.28 Refunds of amounts collected in error.**

(a) If a hearing official determines under §§ 34.16 and 34.17 that a person does not owe the debt described in our notice or that an administrative wage garnishment under this part was barred by law at the time of the collection action, we promptly refund any amount collected by means of this garnishment.

(b) Unless required by Federal law or contract, we do not pay interest on a refund.

(Authority: 31 U.S.C. 3720D)

**§ 34.29 Enforcement action against employer for noncompliance with garnishment order.**

(a) If an employer fails to comply with § 34.22 to withhold an appropriate amount from wages owed and payable to an employee, we may sue the employer for that amount.

(b)(1) We do not file suit under paragraph (a) of this section before we terminate action to enforce the debt as a personal liability of the debtor.

(2) However, the provision of paragraph (b)(1) may not apply if earlier filing of a suit is necessary to avoid expiration of any applicable statute of limitations.

(c)(1) For purposes of this section, termination of an action to enforce a debt occurs when we terminate collection action in accordance with the FCCS, other applicable standards, or paragraph (c)(2) of this section.

(2) We regard termination of the collection action to have occurred if we have not received for one year any payments to satisfy the debt, in whole or in part, from the particular debtor whose wages were subject to garnishment.

(Authority: 31 U.S.C. 3720D)

**§ 34.30 Application of payments and accrual of interest.**

We apply payments received through a garnishment in the following order—

(a) To costs incurred to collect the debt;

(b) To interest accrued on the debt at the rate established by—

(1) The terms of the obligation under which it arises; or

(2) Applicable law; and

(c) To outstanding principal of the debt.

(Authority: 31 U.S.C. 3720D)

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