

# **federal register**

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Friday  
November 21, 1997

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## **Part III**

# **Department of the Treasury**

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**Fiscal Service**

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**31 CFR Part 285  
Administrative Wage Garnishment;  
Proposed Rule**

**DEPARTMENT OF THE TREASURY****Fiscal Service****31 CFR Part 285**

[Docket No. FMS-285.11]

RIN 1510-AA67

**Administrative Wage Garnishment****AGENCY:** Financial Management Service, Fiscal Service, Treasury.**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This proposed rule implements the administrative wage garnishment provisions contained in the Debt Collection Improvement Act of 1996 (DCIA). The DCIA authorizes Federal agencies 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.

**DATE:** Comments must be received by December 22, 1997.

**ADDRESSES:** Comments should be sent to Gerry Isenberg, Financial Program Specialist, Debt Management Services, Financial Management Service, Department of the Treasury, 401 14th Street, S.W., Room 151, Washington, D.C. 20227.

**FOR FURTHER INFORMATION CONTACT:** Gerry Isenberg, Financial Program Specialist, at (202) 874-6660; Ronda Kent or Ellen Neubauer, Senior Attorneys, or Laurie Levin, Attorney-Advisor, at (202) 874-6680. 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 proposed regulation 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. Under this provision Federal agencies may administratively garnish up to 15 percent of the wages 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 which is collecting delinquent nontax debt may administratively

garnish a delinquent debtor's wages in accordance with regulations promulgated by the Secretary of the Treasury. As the lead agency for the collection of nontax debt in the Federal Government, 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 proposed 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. The hearing will 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.

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 proposed regulation 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.

**Section Analysis***(a) Purpose*

The purpose of this section is to implement the wage garnishment provision in the DCIA, codified at 31 U.S.C. 3720D, under which Federal agencies may administratively garnish up to 15% of the wages of a debtor to satisfy delinquent nontax debt owed to the United States.

*(b) Scope*

Paragraph (b)(1) states that all Federal agencies are authorized to utilize this collection tool to collect delinquent nontax debt owed to the United States. The term "agency" is defined in paragraph (c).

As provided in the DCIA, paragraph (b)(2) explains that State law does not apply to the withholding of an employee's wages under this section to the extent that such State law conflicts or interferes with the procedures and requirements of this section.

Paragraph (b)(3) explains that an agency's use of this collection tool does not interfere with an agency's discretion to compromise a debt, or to suspend or terminate collection action of the debt.

Paragraph (b)(4) explains that administrative wage garnishment is one of many debt collection tools available to an agency. An agency may use administrative wage garnishment concurrently with other collection tools, even if an agency receives payments through the use of wage garnishment.

Paragraph (b)(5) distinguishes Federal salary offset from administrative wage garnishment. Federal salary offset procedures, whereby Federal salary payments payable to Federal employees who owe debt to the United States are withheld to satisfy the outstanding obligations, are set forth in 5 U.S.C. 5514 and the implementing regulations.

*(c) Definitions*

*Agency.* The term "agency" has the same meaning as found in 31 U.S.C. 3701(a)(4). The term refers to an agency in the executive, judicial or legislative branches of the Government, including government corporations, that either administers the program that gave rise to the debt or pursues recovery of the debt. For example, the Department of the Treasury and Treasury-designated debt collection centers may collect debts by administrative wage garnishment in accordance with the provisions of this rule when collecting debts for other agencies.

*Business day.* The term "business day" means Monday through Friday and shall be calculated consistent with Rule

6(a) of the Federal Rules of Civil Procedure.

*Certificate of service.* A "certificate of service" refers to a signed certificate that an agency is required to retain as evidence of mailing of a document. A certificate may be retained electronically and may contain a computer generated signature.

*Day.* Unless otherwise indicated, the term "day" means calendar day and shall be calculated consistent with Rule 6(a) of the Federal Rules of Civil Procedure.

*Debt or claim.* For the purposes of this rule, the terms "debt" and "claim" refer to delinquent nontax debt. The term "delinquent nontax debt" refers to debt that is past-due.

*Debtor.* The term "debtor" refers to an individual who owes a delinquent nontax debt to the United States.

*Disposable pay.* "Disposable pay" is all of a debtor's compensation except health insurance premiums and those amounts required to be withheld by law, such as social security taxes. Lump sum payments, such as bonuses and back pay, are included in disposable pay. For purposes of calculating disposable pay, voluntary withholdings, such as savings allotments, are not deducted from a debtor's compensation.

*Employer.* The term "employer" refers to a person or entity that employs the services of others and includes State and local Governments. For purposes of this section, however, the Federal Government is not an "employer" because debts owed by Federal employees are collected in accordance with the Federal salary offset procedures.

*Garnishment.* The term "garnishment" refers to the process of withholding amounts from an employee's pay and forwarding those amounts to a creditor in satisfaction of a withholding order.

*Withholding order.* The term "withholding order" refers to any order for withholding or garnishment of pay, whether issued under the provisions of this section or otherwise. A withholding order may be issued by an agency, or a judicial or administrative body. For purposes of this proposed rule, the terms "wage garnishment order" and "garnishment order" have the same meaning as "withholding order."

#### (d) General Rule

Paragraph (d) sets forth the authority contained in the DCIA that authorizes an agency to administratively garnish the wages of a delinquent debtor. Agencies authorized to administratively garnish the wages of a delinquent debtor include the Department of the Treasury

and Treasury-designated debt collection centers when collecting debt for other agencies.

#### (e) Notice Requirements

Paragraph (e)(1) contains the DCIA requirement that the agency give the debtor written notice at least 30 days before initiating garnishment proceedings. The notice will inform the debtor 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. The notice will include the time frame within which a debtor may exercise his or her rights. This notice may be combined with and made a part of any notice of intent to use other collection tools that an agency sends to the debtor.

Paragraph (e)(2) contains the DCIA requirement that the agency 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. Agencies should review a debtor's request to establish a repayment agreement under paragraph (e)(2)(ii) of this section in accordance with the requirements of the Federal Claims Collection Standards (4 CFR Parts 101-105), or other applicable standards, to ensure that the debtor's ability to pay is considered. The debtor is entitled to a hearing only with respect to (1) the existence of the debt; (2) the amount of the debt; or, (3) the terms of the proposed repayment schedule under the garnishment order, e.g., that the amount withheld would create a financial hardship. 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 between the debtor and the agency. As discussed below, a debtor who is subject to a wage garnishment order may request a review by the agency of the amount garnished based on materially changed circumstances that result in financial hardship. See paragraph (k) of this section.

Paragraph (e)(3) requires that the agency keep a copy of the certificate of service indicating the date of mailing of the notice required by this section as evidence of the agency having provided the debtor with notice and the opportunity for review. This regulation does not specify how the certificate should be retained by the agency, and accordingly the certificate may be retained electronically. However, agencies are advised to consult with the Department of Justice as to the adequacy

of computer generated records for evidentiary purposes.

#### (f) Hearing

The DCIA requires agencies to promulgate regulations concerning procedures for the conduct of administrative wage garnishment hearings. Agencies may use established hearing procedures so long as they meet the requirements of this section. Paragraph (f)(1) allows agencies either to prescribe their own regulations for this purpose or adopt this section without change.

Under paragraph (f)(2), agencies may decide whether to hold an oral or written hearing. The subject matter of the hearing is limited to the existence or amount of the debt or the terms of an involuntary repayment schedule as described under paragraph (e) of this section.

Paragraph (f)(3) sets forth factors an agency should consider in determining the type of hearing or review to provide. If an agency determines that an oral hearing is appropriate, the debtor may choose an in-person hearing or a hearing by telephone conference.

As required by the DCIA, paragraph (f)(4) provides that a hearing will be held prior to the issuance of a withholding order if the debtor's request for a hearing is timely received by the agency. Timely received means that the request for a hearing 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. Agencies are required to inform the debtor of the deadline for requesting a hearing prior to the issuance of a withholding order.

Paragraph (f)(5) addresses hearing requests received after the 15th business day following the mailing of the notice described in paragraph (e)(1) of this section. As provided in the DCIA, an agency need not delay issuance of the withholding order prior to conducting a hearing if the request for a hearing is not timely received.

Paragraph (f)(6) authorizes the head of the agency to designate any qualified individual as a hearing official.

Paragraph (f)(7) requires an agency to notify the debtor about the hearing, including the date and time of the hearing or the deadlines for the submission of evidence.

Paragraph (f)(8) describes the burden of proof on the respective parties to a hearing. The agency must present evidence as to the existence or amount of the debt. To dispute the debt, the debtor must present clear and convincing evidence that no debt exists or that the amount of the debt is

incorrect. If the terms of the repayment schedule are an issue, the debtor must show that such terms are unreasonable or unlawful.

Paragraph (f)(9) describes the type of record required for a hearing provided under this section.

As required by the DCIA, under paragraph (f)(10), the hearing official is required to issue a written decision no later than sixty (60) days after the request for a hearing was made. Thus, a hearing must be held and a decision rendered within 60 days after the receipt of a hearing request by the debtor. The agency may not issue a withholding order until a hearing is held and a decision rendered. If an agency has previously issued a withholding order and the agency is unable to hold a hearing and issue a decision within the 60-day time period, the agency must suspend the withholding order until a hearing and a decision have been provided to the debtor. The provisions of this paragraph (f)(10) do not apply to financial hardship reviews under the provisions of paragraph (k) of this section.

Paragraph (f)(11) sets forth the information that must be included in the hearing official's written decision.

Paragraph (f)(12) states that the hearing official's decision is the final agency action for appeal purposes.

Paragraph (f)(13) provides that if a debtor, without good cause shown, fails to appear at a scheduled hearing, an agency may issue a withholding order prior to rescheduling or holding a subsequent hearing.

#### (g) Wage Garnishment Order

In accordance with the provisions of the DCIA, paragraph (g)(1) requires agencies to send to employers of delinquent debtors a wage garnishment order directing the employer to pay a portion of the debtor's wages to the Federal Government. The agency is required to send the order within 30 days after the debtor fails to make a timely request for a hearing, or if a timely request is made, within 30 days after a final decision is made to proceed with the garnishment.

Paragraph (g)(2) describes the format and content of a withholding order. A withholding order may contain a computer generated signature.

Paragraph (g)(3) requires that the agency retain a copy of the certificate of service indicating the date of mailing of the withholding order as evidence of the agency having served the employer with the order. While a copy of the certificate may be retained electronically, agencies are advised to consult with the Department of Justice as to the adequacy

of computer generated records for evidentiary purposes.

#### (h) Certification by Employer

When a debtor's employer receives a withholding order, paragraph (h) requires the employer to complete a certification in a form prescribed by the Secretary of the Treasury. The certification will address matters such as information about the debtor's employment status and disposable pay available for withholding.

#### (i) Amounts Withheld

Paragraphs (i)(1), (i)(2), and (i)(3) describe the restrictions on the amounts that can be withheld from an employee's pay to satisfy a withholding order issued pursuant to this proposed rule. As provided in the DCIA, under paragraph (i)(1) no more than 15% of the debtor's disposable pay for each pay period may be garnished.

Special rules apply to calculating the amount to be withheld from a debtor's pay that is subject to multiple withholding orders. Paragraph (i)(2) describes the amount that may be garnished from a debtor's disposable pay if, at the time of the withholding, the debtor's pay is subject to other wage garnishment orders, whether issued under this section or otherwise, e.g., a wage garnishment order issued pursuant to the provisions of 28 U.S.C. 3205 (Garnishment) or a commercial wage garnishment.

For garnishments issued under this section, an employer is required to withhold from a debtor's pay the amounts set forth in paragraph (i)(1). However, when the employee's pay is subject to multiple withholding orders that would result in the withholding of more than 25% of a debtor's disposable pay, this proposed rule requires that the amounts withheld under this section be reduced if the other withholding orders are for family support or were served on the employer prior in time. For example, if the employer is withholding 15% of a debtor's disposable pay for a family support or prior withholding order, the amount withheld for the subsequent withholding order issued under this section is limited to 10% of the debtor's disposable pay. When the family support or prior withholding order terminates, the amount withheld for the subsequent withholding order issued under this section may be increased to the maximum 15% allowed under (i)(1).

The following examples illustrate how the rules described in paragraphs (i)(1) and (i)(2) work.

*Examples:* An agency issues a garnishment order under this section setting the amount

of garnishment at 15% of the debtor's disposable pay.

(A) If the debtor's disposable pay is \$200 weekly and is not subject to other garnishment orders with priority, then the amount of the garnishment under this section will be \$30 weekly, 15% of disposable pay ( $15\% \times \$200 = \$30$ ).

(B) If the debtor's disposable pay is \$200 weekly and is subject to a prior garnishment order in the amount of \$40 weekly, then the amount of the garnishment under this section will be \$10 weekly. The \$10 amount is the lesser of 15% of disposable pay ( $15\% \times \$200 = \$30$ ) or the maximum amount to be garnished where a debtor's pay is subject to withholding orders with priority ( $25\% \times \$200 = \$50$ ;  $\$50 - \$40 = \$10$ ). When the prior garnishment order terminates, the amount of the garnishment shall be increased to \$30 weekly because the calculation regarding the prior withholding orders is no longer necessary.

(C) If the debtor's disposable pay is \$200 weekly and is subject to a garnishment order with priority in the amount of \$100 weekly, then the amount of the garnishment under this section will be \$0. The \$0 amount is the lesser of 15% of disposable pay ( $15\% \times \$200 = \$30$ ) or the maximum amount to be garnished where a debtor's pay is subject to withholding orders with priority ( $25\% \times \$200 = \$50$ ;  $\$50 - \$100 = \$0$ ). When the prior garnishment order terminates, the amount of the garnishment shall be increased to \$30 weekly because the calculation regarding the prior withholding orders is no longer necessary.

Paragraph (i)(3) allows the debtor to consent in writing to withholding a greater amount than provided in paragraphs (i)(1) and (i)(2).

Under paragraph (i)(4), the employer is required to promptly pay to the agency amounts withheld under the garnishment order, generally within 10 days.

As provided in the DCIA, under paragraph (i)(5) an employer is not required to vary its pay cycle or disbursement cycle to comply with a withholding order issued pursuant to this section.

Paragraph (i)(6) provides that a withholding order issued under this section will take priority over any assignment or allotment by an employee of his wages, except for an assignment or allotment made pursuant to a family support judgment or order.

Paragraph (i)(7) requires the employer to continue to garnish an employee's wages until the agency notifies the employer that garnishment is no longer appropriate.

#### (j) Exclusions From Garnishment

As required by the DCIA, paragraph (j) provides that no withholding of a debtor's wages may occur in the case of an individual 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 notifying the agency of an involuntary separation and the circumstances surrounding any separation from employment to avoid wage withholding based on this provision.

**(k) Financial Hardship**

Paragraph (k)(1) allows a debtor to request a review by the agency of the amount being garnished under a wage garnishment order based on materially changed circumstances which result in a financial hardship.

Paragraph (k)(2) requires the debtor to explain and submit evidence of the materially changed circumstances and the effect of the change on the debtor's ability to pay.

Paragraph (k)(3) explains that an agency is required to adjust the amounts withheld under the garnishment order if a financial hardship is found to exist.

**(l) Ending Garnishment**

Paragraph (l)(1) requires an agency to instruct the employer to discontinue garnishment upon its receipt of the full amount of the debt, including interest, penalties, and administrative costs.

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

**(m) Actions Prohibited by the Employer**

As mandated by the DCIA, paragraph (m) prohibits employers from taking disciplinary actions against a debtor based on the fact that the debtor's wages are subject to administrative garnishment.

**(n) Refunds**

Paragraph (n)(1) requires an agency to refund promptly to a debtor amounts improperly withheld from wages.

Paragraph (n)(2) provides that, unless required by law or contract, refunds shall not bear interest.

**(o) Right of Action**

As authorized by the DCIA, paragraph (o) provides that an agency may sue an employer for the amounts that were not properly withheld from the wages payable to the debtor. The agency may initiate action against an employer only after terminating its collection efforts against the debtor. For purposes of this section, this occurs when an agency (1) has terminated collection action in accordance with the Federal Claims Collection Standards or other applicable standards, or (2) has not received any

payments for the debt from any source for at least one year.

**Regulatory Analyses**

This proposed rule is not a significant regulatory action as defined in Executive Order 12866.

It is hereby certified that this proposed regulation, including the certification referenced in this notice of proposed rulemaking (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 proposed regulation and to the certification requirement in this proposed 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 with 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 proposed 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 proposed to be amended to read 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, 3716, 3720A, 3720D; E.O. 13019

2. Subpart B consisting of § 285.11 is added to Part 285 to read as follows:

**Subpart B—Authorities Other Than Offset**

**§ 285.11 Administrative wage garnishment.**

(a) *Purpose.* This regulation 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 regulation 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 regulation shall apply notwithstanding any provision of State law.

(3) Nothing in this regulation 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 regulation 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 regulation 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 the implementing 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 regulation, 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. 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 to administratively 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.

(f) *Hearing.*—(1) *In general.* Agencies shall prescribe regulations for the conduct of administrative wage garnishment hearings 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) This section does not require an oral hearing with respect to debt collection systems in which a determination of indebtedness rarely

involves issues of credibility or veracity and the agency has determined that review of the written record is ordinarily an adequate means to correct prior mistakes.

(iv) 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 but 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 clear and convincing 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 unreasonable or unlawful.

(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 Procedures 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 as may be 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.

(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) Subject to the provisions of paragraph (i)(3), 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 indicated on the garnishment order up to 15% of the debtor's disposable pay.

(2) 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)(1) 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)(1) 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.

(3) An amount greater than that set forth in paragraphs (i)(1) and (i)(2) of this section may be withheld upon the written consent of debtor.

(4) The employer shall promptly pay to the agency all amounts withheld in

accordance with the withholding order issued pursuant to this section.

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

(6) 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 part, except for any assignment or allotment made pursuant to a family support judgment or order.

(7) 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 bears 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, after receipt of the garnishment order provided by the agency under paragraph (g) of this section, fails to withhold from wages owed and payable to an employee. However, a suit 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. 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, in whole or in part, from any source for a period of one (1) year.

Dated: November 17, 1997.

**Russell D. Morris,**

*Commissioner.*

[FR Doc. 97-30611 Filed 11-20-97; 8:45 am]

BILLING CODE 4810-35-P