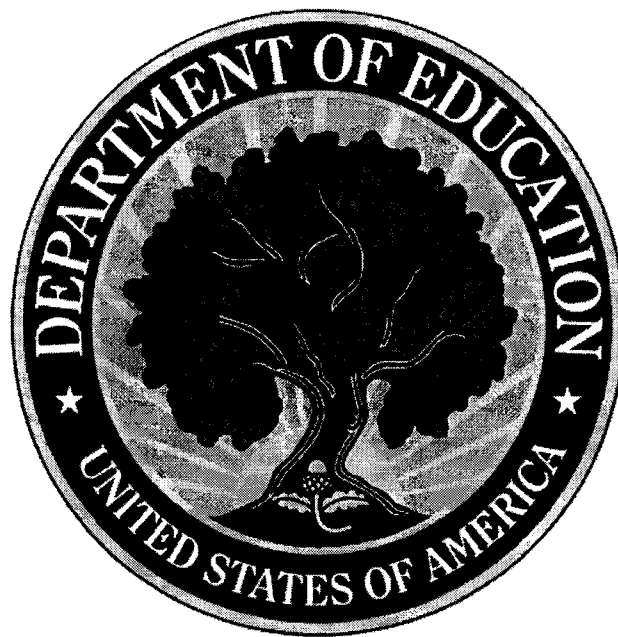


# *Administrative Wage Garnishment Compliance Branch*

*Private Collection Agencies (PCA)*

*Procedures Guide*



JULY 25, 2007

## Table of Content

INTRODUCTION .....	3
WHAT ARE THE DEBTOR'S RIGHTS IN THE AWG PROCESS? .....	4
AWG FLOW PROCESS FOR GARNISHMENT ACCOUNTS .....	6
GUIDELINES FOR SERVICING WAGE GARNISHMENT ACCOUNTS .....	8
REASON ACCOUNTS ARE REJECTED FOR VALIDATION .....	12
APPROPRIATE CORRECTIVE ACTION TO FIXED DENIED VALIDATION .....	13
CANCELLATION OF WITHHOLDING ORDERS .....	14
BATCH VALIDATION REQUIREMENTS .....	12
NCE / NCL FLOW CHART .....	13
VALIDATION PROCESS THROUGH NCE/NCL PROCESS .....	14
NON-COMPLIANT EMPLOYER (NCE/NCL) PROCESSING PROCEDURES .....	15
GUIDELINES FOR PROCESSING NCE ACCOUNT(S) AND REPORT(S) .....	17
HOW TO WORK THE NON-COMPLIANT EMPLOYER REPORTS .....	19
BEFORE INITIATING LITIGATION AGAINST AN EMPLOYER, AS A LAST EFFORT TO GAIN .....	20
VPY – HR3 – HR2 PROCESSING PROCEDURES .....	21
AWG CORRESPONDENCE PROCESSING REQUIREMENTS .....	22
PROCEDURES FOR VERIFYING AND UPDATING EMPLOYERS INFORMATION .....	23
CREATING A NEW P-FEIN .....	25
NEXT MESSAGE SHOULD READ AS FOLLOW: PRESS (PF14) / SHIFT F2 .....	25
PROCEDURES FOR CREATING A FEIN .....	26
GUIDELINES FOR PROCESSING REJECTED AWG-IMF CHANGE REQUEST TO FEIN / P-FEIN .....	28
APPENDIX A - REVISED AWG – IMF FORM .....	30
APPENDIX B: PCA QUALITY CONTROL CHECKLIST .....	31
APPENDIX C: NON-COMPLIANCE EMPLOYER(S) REFERRAL COVER SHEET .....	33
APPENDIX D: AWG NCE EMPLOYER REFERRAL CHECKLIST (PART A) .....	34
APPENDIX E: AWG NCE EMPLOYER REFERRAL SHEET (PART B) .....	35
APPENDIX F: PROCEDURES FOR REQUESTING V & U SERIES LETTERS .....	36
APPENDIX G: REVISED U05 LANGUAGE .....	37
APPENDIX H: FINAL REGULATIONS IMPLEMENTING DCIA GARNISHMENT AUTHORITY .....	38
APPENDIX 18 SECTION 152 OF THE INTERNAL REVENUE CODE: "DEPENDENTS" .....	58
APPENDIX I: AWG BRANCH FREQUENTLY ASKED QUESTIONS .....	61
COMMENTS FROM FRED MARINUCCI OF THE OFFICE OF GENERAL COUNSEL .....	67
APPENDIX J: CLARIFICATION OF PROCESS FOR UPDATING OR MODIFYING L142 SCREEN .....	71
APPENDIX K. CLARIFICATION NOTICES REGARDING AWG PROCESSES .....	72
APPENDIX L. CLARIFICATION NOTICES REGARDING DOCUMENTING EMPLOYER INFORMATION FOR AWG ACCOUNTS .....	73
APPENDIX M. CLARIFICATION NOTICES REGARDING UPDATING EMPLOYER INFORMATION ON L103 SCREEN .....	74
APPENDIX N: USEFUL WEB SITES .....	75
APPENDIX O: PCAS POINTS OF CONTACT IN THE AWG BRANCH .....	76
APPENDIX P: DENIAL OF VALIDATION FOR LACK V-SERIES NOTES AND ED LETTER CODES AVAILABLE FOR PCA USAGE .....	77
APPENDIX Q FINAL DEMAND LETTERS ISSUED BY OFFICE GENERAL COUNSEL .....	80
APPENDIX R: SAMPLE Z31 NOTICE ISSUED TO EMPLOYER .....	82
APPENDIX S SAMPLE X89 NOTICE TO EMPLOYER .....	83
APPENDIX T SAMPLE WITHHOLDING ORDER (Y11/Y13) .....	84
APPENDIX U SCREEN AND DATA REVIEWED DURING THE VALIDATION PROCESS .....	91

## Introduction

The Debt Collection Improvement Act of 1996 (DCIA) authorizes Federal agencies to garnish administratively, that is, without court order, up to 15% of the disposable pay of an individual who is not a Federal employee to collect a delinquent non-tax debt owed to the United States. The Department has recently adopted regulations to implement this authority for a debt owed to the United States under a program administered by the Department of Education. With the implementation of the DCIA provisions for administrative wage garnishment by the Department of Education, the amount of possible abuse or misuse of this authority increases. The authority granted to Federal agencies under this Act is tremendous, and will impact the lives and livelihood of many American voters.

It is imperative that we are all on our guard against abuse or misuse of this authority, and that we take action immediately to correct any improper conduct. This manual is designed to be used much like the AWG Hardship Calculator, as a tool in helping Private Collection Agency perform their duties, and like any other tools there will be changes and improvements. This manual is not to take the place of or substitute for the sound reasoning and deductive skills of the contractor. You're on the frontline and must make the final decision, as to best method to recover these funds, so do your best to be impartial, objective, honest, and to render the fairest decisions possible.

**ED considers AWG to be a tool of last resort.** Before using AWG, ED expects its representatives to have attempted to resolve the debt through voluntary means: attempting to secure balance in full, an approved settlement, or installment payments that are "reasonable and affordable" based on the debtor's individual financial circumstances. Representatives must further consider whether the debtor presents a legitimate defense to the repayment of the debt(s), and whether AWG may be ineffective because the debtor is self-employed or a Federal employee, in which cases the PCA should recommend litigation or salary offset.

The DCIA, as implemented by Treasury Department regulations, 31 C.F.R. 285.11, provide the authority and guidance for Federal agencies to conduct AWG under the DCIA. **Because AWG is the involuntary taking of the debtor's property by force of law, the Fifth Amendment to the Constitution, which requires due process of law before a person may be deprived of his or her property, further controls and guides the conduct of AWG by Federal agencies.** Treasury rules require agencies that wish to conduct AWG under the DCIA either to adopt Treasury's rules or to adopt their own regulations, provided the agency's rules meet the standards established in Treasury rules. Department regulations were developed with careful consideration of both Treasury rules and Department experience conducting AWG under the virtually identical provisions of HEA §488A, 20 U.S.C § 1095a. Department rules, published February 19, 2003, are to be codified at 34 C.F.R. Part 34, and are found in **Appendix H** to this Manual.

## **What are the debtor's rights in the AWG process?**

**Sections 34.4 - 34.7 describe the debtor's rights in connection with AWG: in summary, the debtor has the right to:**

**Be sent a notice 30 days prior** to ED ordering wage garnishment that explains ED's intention to garnish, the nature and amount of the debt obligation, and opportunity to inspect and copy records relating to the debt, to object to garnishment to collect the debt, and to avoid garnishment by voluntary repayment on terms agreeable to ED;

An opportunity to inspect and copy Department records pertaining to the debt;

An opportunity for a hearing to present evidence and argument and on any objection by the debtor to the existence, amount, or enforceability of the debt, and to obtain a ruling on the objection

An opportunity for a hearing to present and obtain a ruling on any objection that garnishment of 15% of the debtor's disposable pay would produce an extreme financial hardship;

An opportunity for a hearing to present and obtain a ruling on any objection that garnishment cannot be used at this time because the debtor is now employed for fewer than 12 months after involuntary separation from the most recent prior employment;;

Having garnishment action withheld by filing a timely request for a hearing, until the hearing is completed and an adverse decision issued;

Not to be discharged from employment, refused employment, or subject to disciplinary action due to the garnishment, and to seek redress in federal or state court if such action occurs; and

Not to have any information provided to the employer but that which is necessary for the employer to comply with the withholding order.

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### **§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;
- (2) The rate at which the garnishment order will require your employer to withhold pay; and
- (3) Whether you have been continuously employed less than 12 months after you were involuntarily separated from employment.

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

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

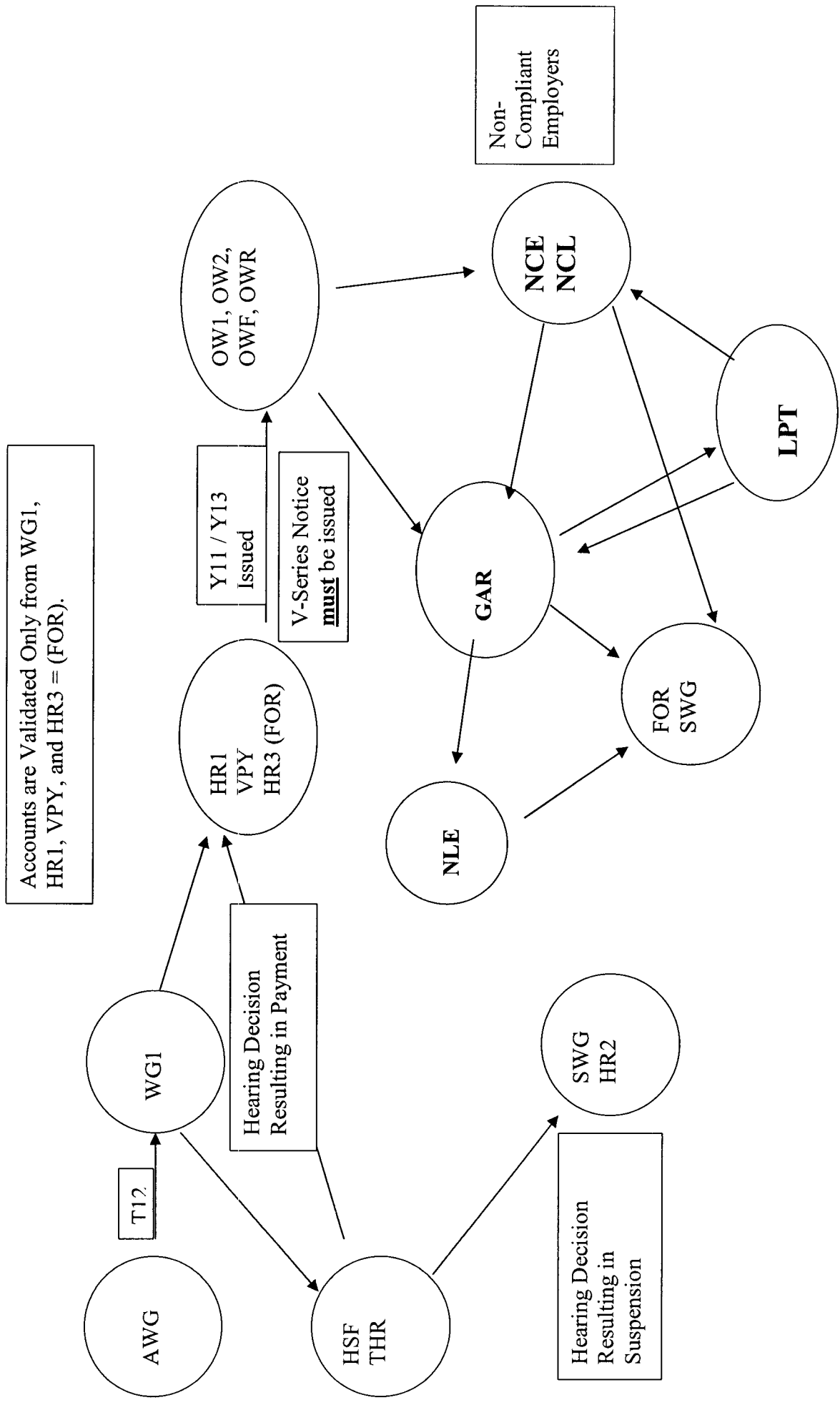
**(a) We consider objections to the rate or amount of withholding only if the objection rests on a claim that withholding at the proposed rate or amount would cause financial hardship to you and your dependents.**

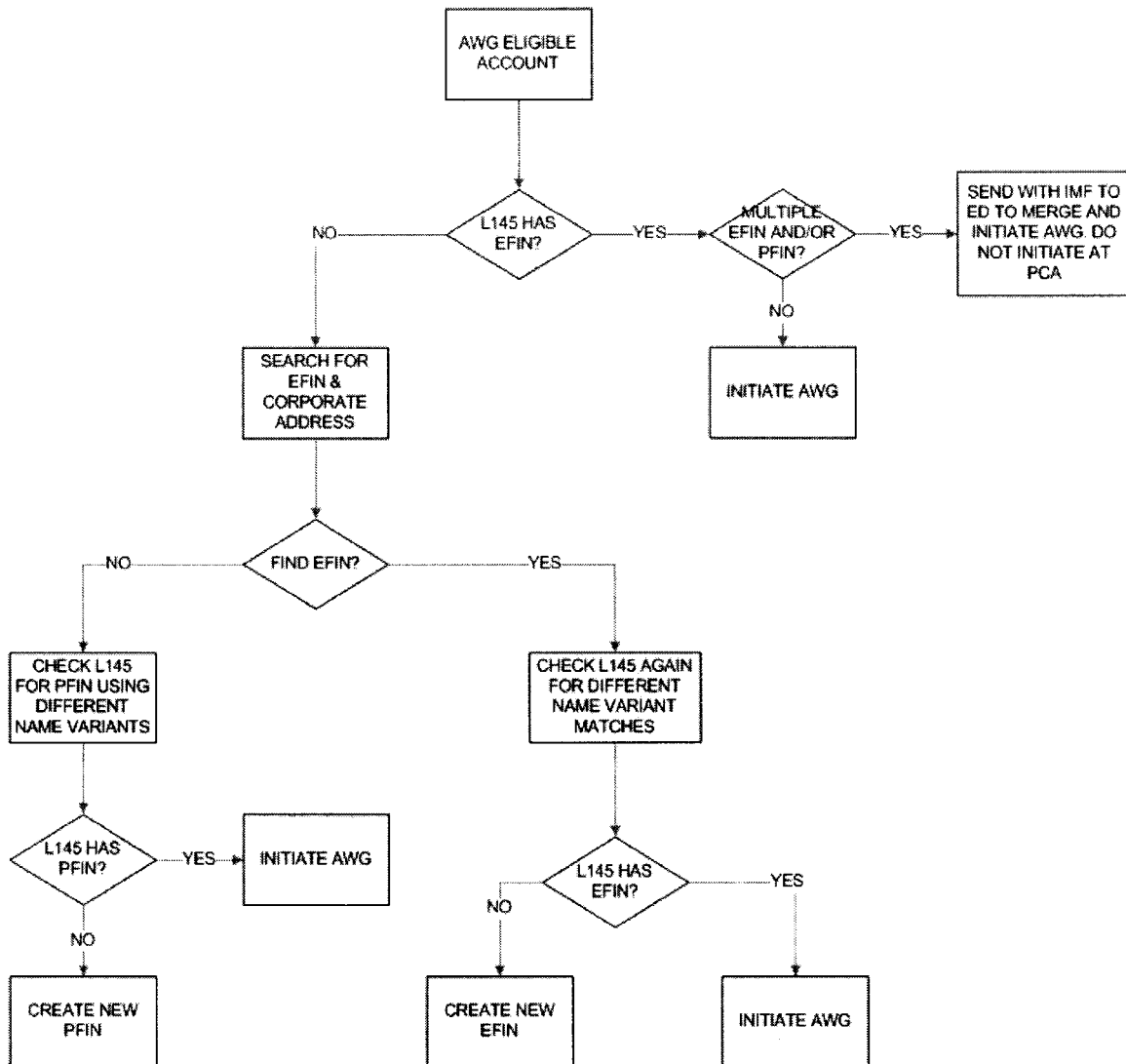
**(b) We do not provide a hearing on an objection to the rate or amount of withholding if the rate or amount we propose to be withheld does not exceed the rate or amount agreed to under a repayment agreement reached within the preceding six months after a previous notice of proposed garnishment.**

- (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)

# AWG FLOW PROCESS FOR GARNISHMENT ACCOUNTS





At any point, if the PCA finds multiple EFIN and/or PFIN, the account and the information must be sent to ED on the prescribed IMF. PCA shall not modify any information on that Employer record including employer name or address.

## Guidelines for Servicing Wage Garnishment Accounts

**Pre - Garnishment Requirements:** Prior to submission of any account for wage garnishment the Private Collection Agencies (PCAs) must meet the following requirements:

### a) Contractual Requirements

- The accounts **must** have been assigned to Private Collection Agencies (PCAs) at least **60 days** prior to attempting to place the accounts into the Administrative Wage Garnishment (AWG) program. During this period, the PCA must attempt the following collection activities prior to submitting the account for wage garnishment.
- The PCAs **must** have offered the borrower reasonable and affordable repayment plan prior to initiating wage garnishment via telephone or mail.
- If no contact can be made directly with the borrower, **at least** 2 messages **must be left** at the **borrower's place of employment** no less than 5 business days and **at least** 5 attempts at the **borrower's home** number at different times before AWG is initiated.
- **The PCA must send at least one complete letter series** generated to the borrower by the PCAs which includes at least – one letter offering repayment options (Rehab, Cons, Settlement in Full) and a warning / demand notice for payment in full.
- The PCAs **must** verify the debtor employment – **30 days** prior to initiating garnishment – this verification **must** include verification of the **employer's information** –

### b) Statutory Requirements (Validation of the Claim)

The PCAs **must** review the **L102 Notepad** to ensure there are no outstanding disputes of the debt(s) such as:

- Open or Pending Disputes of the Validity or Enforceability of Debt(s);
- Open or Pending Discharge Claims for Closed School, Unpaid Refund, Ability to Benefit, etc.
- Open or Pending Administrative Resolution Claims, such as: bankruptcy, or total and permanent disability.

If repayment terms have been established with the debtor prior to issuance of the withholding order but after the initiation of the AWG process the PCA **must** send one of the following **V-series Notices** to the debtor. (V07 – V08) or (V30 – V40) see Appendix M.



**c) Verification of Borrower Information**

PCAs **must** verify the following borrowers' information prior to the initiation of wage garnishment and Update L103 screen with the data.

- The Correct Spelling of the Debtor Full Name
- Verify the Borrowers' Social Security Number (SSN)
- Verify Borrowers' Home Address (U06 Notice)
- Verify Borrowers' Employer Data (U05 Notice)
  1. Company/Corporation Registered Name
  2. Company/Corporation Payroll Contact Person
  3. Company/Corporate Mailing Address
  4. Telephone Number
  5. Fax Number
  6. Employer Federal Identification Number
- U05 and U06 letters via Letter Request Program Administered by Mike Bryant (see Appendix F: Guidelines For Requesting System Letters)

**Note:** This information and method of verification must now be documented to the L102 Notepad screen and the L103 Employer Reference Section updated with information that matches the L140, L141, and L142 screens.

**d) Borrowers and Employers Ineligible for Administrative Wage Garnishment:**

The following categories of Employers and Employees are excluded from AWG Garnishment program:

- Federal Employees (Civilian/Military)
- Self-Employed (Independent Contractor) Debtors
- Merchant Seamen (U.S. C.G. Section 11190)
- The World Bank Employees (International Organization Immunities Act of 1945, (22 U.S. 288-288i))
- Individual's making less than minimal wage (\$5.85 per hour)
- Seasonal Employers with no Constant Employer (Farm Laborers)

- e) **Post – Garnishment Oversight** Responsibility Includes Monitoring and Surveillance of accounts approved for garnishment regardless of the amount of funds being withheld by the employer. In many cases either due to previously imposed child support order, other withholding orders or claims file prior to ED's, or insufficient income, the amount withheld by the employer will vary from one pay period to the next. It is the responsibility to monitor the accounts to ensure complaints by the employer, and that ED is receiving its appropriate share of all legal withhold by the employer.
  - f) It's the responsibility of the PCA to **identify the truly none Compliant Employers (NCE)** by working the NCE Reports provided monthly to the agencies. The PCAs are responsible for monitoring and routinely updating the employment and financial status of borrowers with established voluntary repayment plans, reduced payments, and borrowers where as the results of a hearing on their financial circumstances their accounts were suspended for garnishment and litigation only for a period of 6 months, and those accounts legally excluded from garnishment a period not to exceed 12 months.
- 

## **Batch Validation Process**

The AWG Compliance Branch is responsible for approving the issuance of all Administrative Wage Garnishment (**AWG**) Withholding Orders issued by the U.S. Department of Education (ED). Raytheon create mixed batches containing accounts from multiple contractor sites to ensure equity, and fairness in the processing of these accounts. The CICS-System randomly selects the accounts and places them in batches every Sunday, Tuesday, and Thursday night. In addition to the creation of the batches on these days, all requested changes to the AWG Subsystem Status Codes, and initiation of new garnishment action against debtors occurs on these days of the week.

Only batches containing accounts in the following AWG Subsystem Status Codes are eligible for validation of the debt(s): WG1, HR1, VPY, and **FOR (HR3 accounts)**, **all other batches will** normally be denied because an inability to validated the accounts because of their status in the AWG Subsystem. See **Appendix Q** for example of screens and data being reviewed by the Department for purposes of validating Orders.

AWG Status Code	Meaning of Status Code
<b><u>WG1</u></b>	Account(s)/Debt(s) in these validation batches are composed of borrowers who were notified via the <b>T12, T09, T08, or T07</b> notice of ED's intent to order the withholding of <b>15%</b> of their disposable pay for the repayment of a default student loan or grant over-payment held by the Department. These account(s)/debt(s) are move automatically into the validation process upon reaching and/or passing the legally mandated deadline of <b>30/36</b> days to file a <b>Timely Hearing Request (THR)</b> . These account(s) / debt(s) are subject to immediate validation of the withholding order unless there is documented claim of a current <b>bankruptcy filing</b> .
<b>HR1</b>	Account(s)/Debt(s) in these validation batches are composed of borrowers who have received a hearing on their objection(s) to the withholding order and failed to prove the claim(s). These account(s)/debt(s) are to be validated for garnishment if the borrower fails to establish and honor the terms of a repayment agreement within 15 days of the decision being render by ED. In addition, PCAs must review the L106 screen to ensure that the appropriate V-Series notification has been issued on all breeches of repayment offers and agreements.
<b>FOR</b>	Account(s)/Debt(s) in these validation batches are composed of borrowers who have received a hearing on their objection(s) to the withholding order and proved that withholding at the full rate of 15% would create an undue financial hardship; however, withholding at a lesser rate would not. These are account(s)/debt(s) being <b><i>forced-out</i></b> of AWG status code: <b><u>HR3</u></b> . Note: you <b><u>must review</u></b> the <b>L102 screen and L140 Screen</b> on these account(s)/Debt(s) to ensure the proper amount(s) and pay-cycle(s) are certified validated for withholding. In addition, PCAs must review the L106 screen to ensure that the appropriate V-Series notification has been issued on all breeches of repayment offers and agreements.
<b>VPY</b>	Account(s)/Debt(s) in these validation batches are composed of borrowers who were giving an opportunity to avoid garnishment by voluntarily paying 15% of their disposable pay an have failed to honor their repayment agreement. The PCAs must review the L106 screen to ensure that the appropriate V-Series notification has been issued on all breeches of repayment offers and agreements.

## Reason Accounts Are Rejected For Validation

These Categories Are More Inclusive And Definitive.

Count Violation	Do Not Count Violation
Account Not Eligible (Pseudo SSN / Active Ban / Hardship / DOJ - Judgment)	If, AWG Status Code Changed to "SWG"
Borrower Not Eligible (Fed Employees / Tribal Court / Self Employed / Contractor / NLE)	If, AWG Status Code Changed to "SWG"
Correspondence Returned Undeliverable (MAIL/N03/T07/T08/T09/T12)	If, AWG Status Code Changed to "SWG"
Due Diligence Requirement Not Met (36/65 Days)	If, N03 sent 36 days after T12 and AWG Status Code Changed to "SWG"
ED Balance Insufficient (Negative / <\$200.00)	If, TOP Payment Rec'd after Account Batched
Failed to Issue Breach of Repayment Notice (V-Series)	No Excuse Acceptable
Ineligible Account Due to: Repayment Plan (VPY/PIF/SIF/CONSOL/REHAB)	If, AWG Status Code Changed to "VPY/SWG"
Missing / Incorrect Notice of Intent to Withhold Issued (T07/T08/T09/T12)	No Excuse Acceptable
No Pseudo FIN > if EIN Available	No Excuse Acceptable
Status Code Ineligible for Validation (NLE/SWG/HR2)	If, AWG Status Code Updated on L140 Screen to Proper Status Code
Timely Request for Hearing Received (THR/HSF)	If, AWG Status Code Changed to: "THR / HSF"
Wrong Employer / Incorrect, Incomplete or Misspelled Company Name or Address	No Excuse Acceptable
* Miscellaneous Reason(s) See L102 Screen for Details	Depends on Reason
Denied if appropriate V-Series notification has not been issued on broken agreement accounts.	Primarily VPY/FOR Accounts but from time to time WG1, HR1, and HR3

## Appropriate Corrective Action To Fixed Denied Validation

Reason Validation Denied	Appropriate/Corrective Action
Misc. Reason(s) See L102 Screen for Details	<b>Driven by the Error(s) listed on L102</b> , call your AWG Representative if you need clarification or requirement(s).
Account Not Eligible (Pseudo SSN / Active Ban / Hardship / DOJ - Judgment)	<b>Remove from Garnishment process</b> until, all legal restrictions have been resolved or period of suspension has expired.
Borrower Not Eligible (Fed Employee/ Tribal Court / Self Employed / Contractor / NLE	<b>Federal Employees</b> submit for Federal Offset Program, and CWG Account. <b>Self-Employed/Contracted Employees</b> submit for litigation through SFSC, and CWG Account. <b>Tribal Court</b> – All garnishment orders going to person employed by businesses operating on or belonging to an Indian Nation must be directed to the Tribal Court. <b>NLE/ Never Employed:</b> verify current employment and resubmit, <b>there is no requirement to re-issue a new T12 Notice</b> . However, you must request CSB to link the account to new employer FIN to avoid a new T12 being generated automatically by the subsystem.
Correspondence Returned Undeliverable (MAIL/N03/T07/T08/T09/T12)	Issue U06, Verify Delivery address and re-send Notice of Intent to Garnish.
Due Diligence Requirement Not Met (36/65 Days)	Wait the appropriate period time for the N03 / T12 Due Diligence Requirement is Met
ED Balance Insufficient (Negative / <\$200.00)	Bill for Balance greater than 0 / submit for closure.
Failed to Issue Breach of Repayment Notice (V-Series)	Monitor all repayment plans and submit for letter request for appropriate V –notice should debtor fail to honor repayment agreement.
Ineligible Account Due to: Repayment Plan (VPY/PIF/SIF/ CONSOL/REHAB)	Monitor all repayment plans and submit timely for closure upon receipt of final payment.
Missing / Incorrect Notice of Intent to Withhold Issued (T07/T08/T09/T12)	Issue or Re-issue the appropriate notice to the debtor of intent.
No Pseudo FEIN If FEIN Available	Submit all account rejected for validation due to the creation of or linking to an incorrect FEIN to the CSB Help Desk for Correction. They are the only one's who can move the account to the correct FEIN or Eliminate a duplicate Pseudo FEIN by merging the accounts without restarting the process. Open a problem log.
Status Code Ineligible for Validation (NLE/SWG/HR2)	Move the account to appropriate status and resubmit.
Timely Request for Hearing Received (THR/HSF)	Suspend all activities pending issuance of decision by the CSC Hearing Branch.
Wrong Employer / Incorrect, Incomplete, or Misspelled Company Name or Address	Re-verify and correct the spelling of the employer or company name on the L142. Submit IMF to your AWG Branch Representative to Correct.

## Cancellation of Withholding Orders

Once accounts have been validated and an withholding order issued by the AWG Branch to employers, private collection agencies (PCAs) are **prohibited** from stopping the AWG process, **unless** the following occurs:

- The Borrower is Deceased
- The Borrower Provides Evidence No Longer Employed (NLE)
- The Borrower Files A Timely Request For Hearings
- The Borrower Files Bankruptcy
- The Borrower resolves the Account

The purpose of issuing the withholding orders is to secure the Department's positioning in line of with other withholding orders from other creditors. Except for Child Support, withholding orders are enforced based upon the date of receipt, and the availability of funds. Regardless, of date of receipt or availability of funds, child support orders take priority over all other orders.

If, an Order must be stopped the L102 Notepad screen must be documented with the reason for the cancellation of the withholding Order.

Should any of the following circumstances occur the Order is not to be cancelled but the Collector Number (COLL NO) changed from 99999 to 11111, this maintains ED's position in line of pending Liens, and other withholding Orders. Orders are enforced based on the date received by the employer, and position in line with all other garnishments.

### Scenario

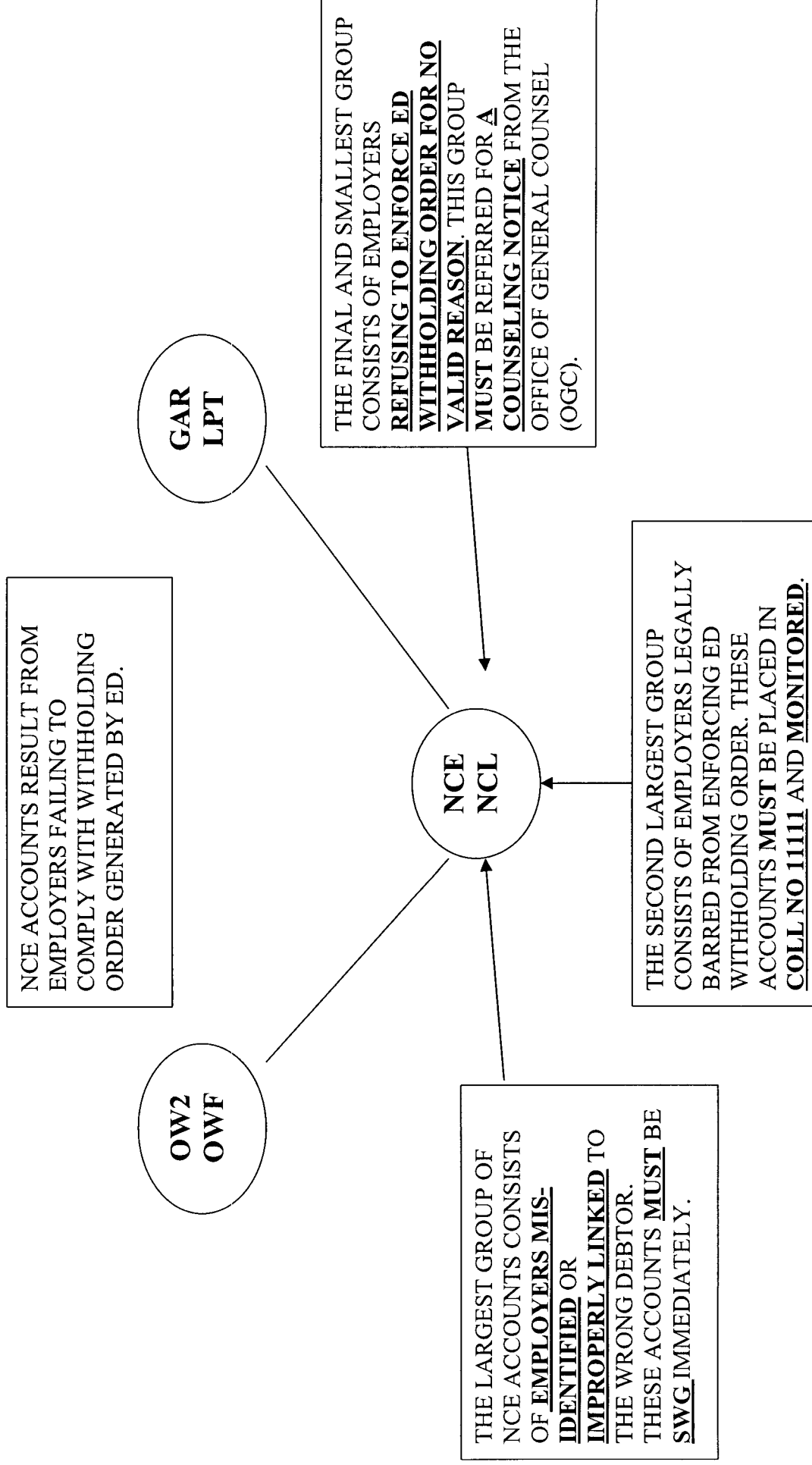
- Borrower has been laid off, with an estimated date of return
- Borrowers that are on short-term disability, with an estimate date of return
- Borrowers that are on leave of absence with an estimated date of return
- Borrowers who makes insufficient wages to deduct
- Borrowers with low income
- Borrowers who are seasonable employees, and are still employed by the same employer
- Borrowers who are temporary or part-time employees
- Borrowers Who Have Child Support Order (s) Or Prior Garnishment(s) That Exceed 25% Of Disposal Pay

## Batch Validation Requirements

Validation Group	No Negative Balances	Remaining Balance Greater Than \$200.00	Valid / Verified EIN or PIN	Verified Employer Information Address, Etc. Documented to L102 Effective 11/25/06 – AVOID Usage of Initials	T12, T09, T08, T07 Notice Delivered to Good / Verified Home Address	No Pending RFH Received in Writing	No New Debt(s) Added within the Last 65 Days – N03 Notices	Broken PTP Documented clearly to the L102 Notepad	Requires V-Letter Notification If, No Signed Repayment Agreement on File
WG1	<b>X</b>	<b>X</b>	<b>X</b>	<b>X</b>	<b>X</b>	<b>X</b>	<b>X</b>		
HR1	<b>X</b>	<b>X</b>	<b>X</b>	<b>X</b>	<b>X</b>		<b>X</b>		
VPY	<b>X</b>	<b>X</b>	<b>X</b>	<b>X</b>	<b>X</b>		<b>X</b>	<b>X</b>	<b>X</b>
FOR	<b>X</b>	<b>X</b>	<b>X</b>	<b>X</b>	<b>X</b>		<b>X</b>	<b>X</b>	<b>X</b>

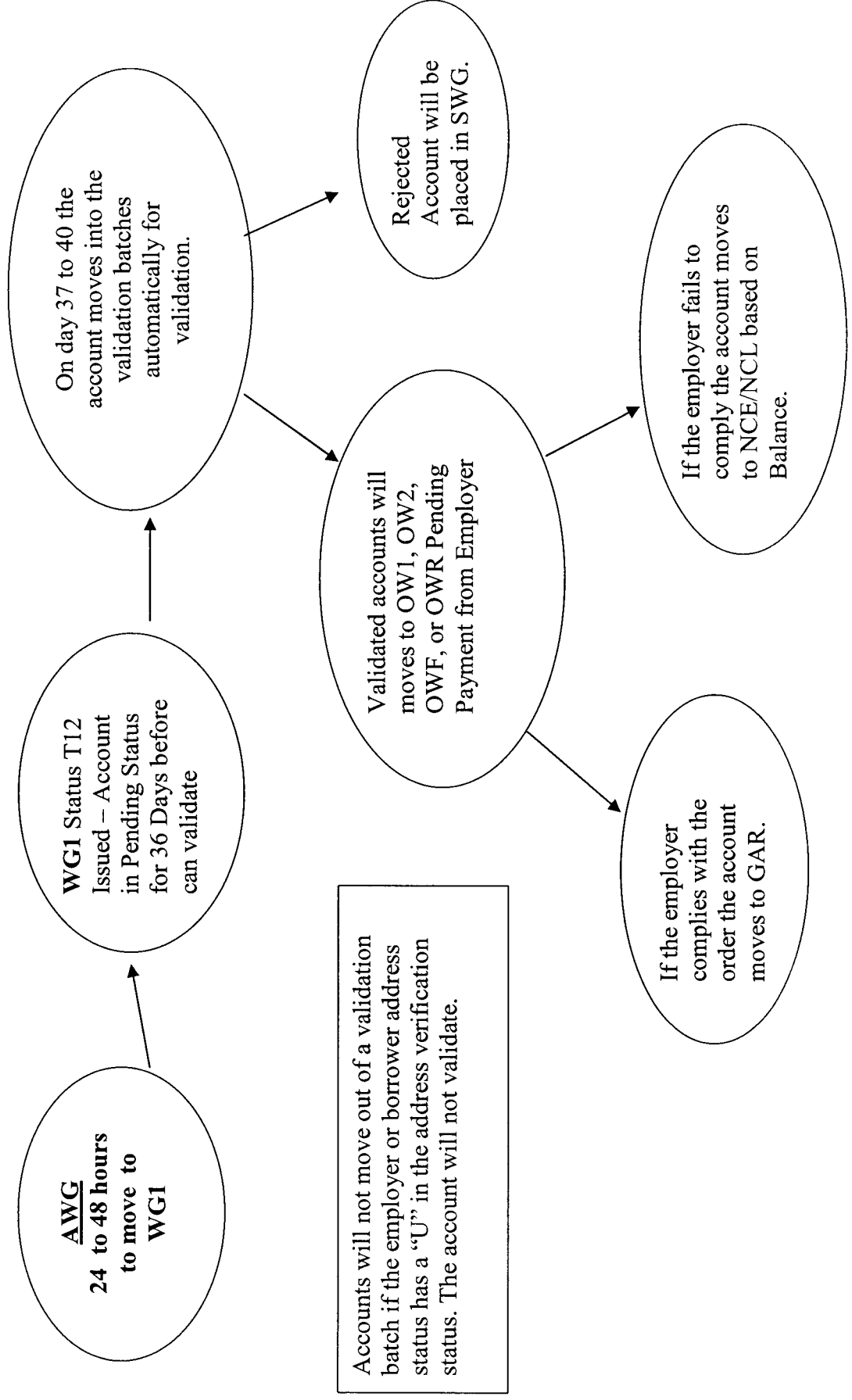
Effective November 24, 2006, Accounts must meet all the above criteria in order to be validated by the AWG Branch. In addition, no account will be validated from any other status codes.

# NCE / NCL FLOW CHART





# VALIDATION PROCESS THROUGH NCE/NCL PROCESS



## **Non-Compliant Employer (NCE/NCL) Processing Procedures**

Unfortunately, as a result of collection efforts, numerous employers have been improperly identified as Non-Compliant Employers in the AWG Subsystem. Who are these employers and how can they be removed or unlinked from our database of employers subject to litigation by ED? These erroneous NCE cases are the direct result of failing to verify debtor employment **30 days prior to submission for an AWG withholding order** to be issued.

The following categories of employers and employees **must** be **SWG** and **moved to COLL NO 99999** immediately.

- Federal or Military Personnel (Government Agencies)
- Self-Employed or Independent Contractors
- Former Employers (Borrower Terminated/Quit)
- Miss-Identified Employers (Borrower Never Employed By Company)
- Borrower's Under the Protection of U.S. Bankruptcy Court (Chapter 7 / 13)

**True** NCE / NCL employers fall into two-2 categories:

- Those where the employer is legally restricted from enforcement at this time;
- Those that simply refuse to comply with the withholding order.

These accounts must remain in these status codes however they are treated very differently.

The first and most controversial groups are those employers legally barred from enforcement.

Currently, the PCAs are not allowed to return these accounts. These accounts must be retained and monitored at least once a year to determine any changes in the debtor's financial situation, and the status of any prior garnishment orders. These accounts must be placed in COLL NO 11111, and the L102 notepad notated with the reason for non-compliance and the debtors current financial status if known.

The second category is those employers that refuse to enforce the withholding orders, and have no valid reason or excuse. These employers should be brought to the attention of the AWG Hearing Branch following the guidelines outlined below for Non-Compliant Employer Litigation.

- Contact the employer's payroll or personnel director by telephone to ensure the Withholding Order was mailed to correct address and entity/company.

- Re-verify employment status of borrower.
- Determine the reason for non-compliance with the Withholding Order
- Explain the regulations and consequences of continued non-compliance.
- Clearly document the ED's L102 Notepad with all communication with the employer.  
Specifically, the name of the person contacted, their position in the company, and the name of the CEO, CFO, Owner, or Agent of Record. Contractor may use the following website to obtain the registered agent name and legal mailing address:

**<http://www.sos.state.ga.us/misc/othersossites.htm>**

The PCAs will submit an updated report to their designated AWG Branch contact, via the NCE Referral Sheet (Appendix C). The AWG Compliance Branch is charged with ensuring that employers understand the ramification of failing to comply with the withholding orders issued by the U.S. Department of Education (ED), under the Debt Collection Improvement Act of 1996, 31 U.S.C. 3720D, and under section 488A of the Higher Education Act, 20 U.S.C. 1095a. If, after receiving the appropriate warning and counseling, the employer continues to refuse to execute the order it is the responsibility of the Branch to initiate litigation against the employer. However, history has shown us that the majority of employers comply with the Orders once they are educated or face possible litigation. The objective of the Branch is not litigation but compliance; therefore, we measure our success by the number of employers we bring into compliance. In order to accomplish this task the PCAs must take the following actions.

1. Identify True NCE Cases
2. Educate the Employers
3. Change the Perception of the Employers to gain compliance

## **Guidelines for Processing NCE Account(s) and Report(s)**

The Contractor will be provided a listing every thirty-30 days of new NCE accounts. Upon receipt of the Monthly NCE Report, the PCAs **must**:

**1. If the account is in NCE status and placed CollNo#11111:**

A) Verify and document clearly the L102 Screen with any changes to the following information concerning the “11111” accounts.

- i. Debtor’s Name and SSN
- ii. Company / Employer Name
- iii. Name of Person Confirming Information & Telephone Number
- iv. Length of Employment
- v. Current Gross Salary / Income
- vi. Employer has ED Withholding Order on File
- vii. Date Order was Received by Employer
- viii. Provide Quarterly Update Report(s) to ED in writing
- ix. Immediately remove accounts from Coll Num “11111” to “99999” upon receipt of either a payment from the employer or information from the employer of a change in debtor employment status (NLE), return to work from laid-off, or leave of absence.

**b) If the account is in NCE status and placed CollNo#11111**

- Obtain current financial disclosure statement from the debtor,
- Attempt to negotiate a reasonable and affordable repayment plan
- Re-verify the debtor’s current employment status within **30 days**, and identify any supplemental income or employment for the debtor.
- Attempt to determine the length of time the employer may be barred from withholding funds from the debtor’s pay. For example: is the order ahead of ED for child support which may have an undeterminable amount of time to run or for a tax-lien which may be resolve in a short period.

- If the existing order is for a relative short period (6 to 12 months) the PCAs is to maintain the account and monitor its status. However, if the period is undeterminable or for periods to exceed 12 months and no others source of revenue can be identified, and no repayment terms established with the debtor. Then PCA are to change the AWG status code from NCE to SWG and may return the accounts as uncollectible.
- If the balance is less than \$200.00 the borrower should be billed for the balance and the NCE stats changed to SWG.

**2. If the account is in NCE status and placed CollNo#99999**

- The agency must contact to the employer to determine the reason for non-compliance with the withholding order from ED. If, no legitimate excuse can be provided then the agency is to document the employer's statements to the L102 Notepad and submit the account for ED to issue a warning to the employer.
- If, unable to reach the employer by telephone, either fax or request U05 letter be sent to the employer to obtain the information, and re-issue the withholding order.
- Re-verify borrower's current employment
- The balance due must be in excess of \$200.00 in order to remain in AWG status, and account with a balance less than \$200.00 must be removed from the program, and the debtor billed manually.

All accounts must remain in NCE status, unless you received confirmation from the employer that the borrower is no longer employed or that the employer is barred from enforcement of the order for period to exceed 12months and no repayment terms can be established with the debtor. This information and the source **must be** documented to the **L102 Notepad**. The only action required of the contractor with these cases is re-verify employment status, and mailing address.

All accounts regardless of collector code status 11111 or 99999 must have the home and employment address re-verified and the L102 Notepad updated.

## HOW TO WORK THE NON-COMPLIANT EMPLOYER REPORTS

The NCE Reports have been combine into one report effective 04/21/06, the report combines the NCE – none responsive employers with the NCE responsive employer, however, they are unable to enforce at this time. The Agency will contact the listed employers to obtain the following:

Question(s)	Y E S	N O
Did the company/employer receive initial orders? Did we have the correct mailing address for employer? [Verify and update employer's information on L142 screen, to include correct spelling of employer's name, address, telephone number, to include their facsimile and point of contact.] If Y11 letter was sent to the wrong address, resend Y11 letter from the L141 screen after the L142 screen has been updated, for only those accounts active in the AWG subsystem		
If Employer is refusing to cooperate mark the account for Pre-Lit review. Consult this website <a href="http://www.sos.state.ga.us/misc/othersossites.htm">http://www.sos.state.ga.us/misc/othersossites.htm</a> to obtain the correct Registered Agent or Service of Process information. If this information is not available, call the Secretary of State Office or the organization to obtain this information.		
Does the employer have legal grounds for not complying with order such as: Employer/Employee in current bankruptcy. Place the account in SWG.		
Debtor NLE / Never Employed by company. Place the account in SWG.		
Debtor on Long Term Disability / Leave of Absence? Telephone employer (either the payroll for human resources department) and verify borrower's home address, expected date of return and update L102 screen.		
Borrower is deceased? (Request a copy of the death certificate or contact person to receive one.) Balance too small or Income Insufficient. Place the account in SWG.		
Borrower self – employed / Independent contractor? Place the account in SWG.		
Employer currently garnishing wages for / in excess of 25%, Part time employee, and insufficient income. Place in Coll Num 11111, and obtain an appropriate expiration time on pre-existing garnishment. Document L102 Notepad.		
If the employer addressed is marked with "U" for Undeliverable – change the AWG Status code to SWG		

## **NCE Litigation Criteria**

1. The employer has submitted no payment within the last 12 months.
2. Verify that the employer is subject to enforcement under the status.
  - No Employees of Tribal Reservation (at this time)
  - No Federal Employees
  - No Merchant Seamen
  - No United Nations or World Bank Employees
3. The debtor is a current employee of the company.
4. The account balance or combine balances exceed \$3,000.00.
5. The employer acknowledged receipt of the Withholding Order.
6. The employer's legal mailing address and officer have been identified and documented to the L102 screen.
7. Panagon has been reviewed for receipt of the Employer Certification Form (329C/D) from the employer.

Before initiating litigation against an employer, as a last effort to gain compliance of the withholding order, the Office of the General Counsel, will issue a warning letter to the employer on their letterhead requiring compliance or possible litigation. All request for this letter must go through the AWG Branch Chief, and must include the following items:

- Copy of the agency's notepad
- Copy of the Department's Notepad (L102 screens)
- Non-Compliance Employer(s) Referral Cover Sheet
- AWG NCE Employer Referral Checklist (Part A and Part B)

## **VPY – HR3 – HR2 Processing Procedures**

The PCAs are required to monitor accounts in these statuses every 6 months to ensure the department is receiving the maximum amount available for recovery. The Department will provide to the agency monthly a report of all VPY – HR3 – HR2 accounts that have been in these statuses for periods exceeding 180 days.

The following categories of employers and employees must be SWG and moved to COLL NO 99999 immediately.

- Federal or Military Personnel (Government Agencies)
- Self-Employed or Independent Contractors
- Former Employers (Borrower Terminated/Quit)
- Miss-Identified Employers (Borrower Never Employed By Company)
- Borrower's Under the Protection of U.S. Bankruptcy Court (Chapter 7 / 13)
- Any debtor earning less than the minimal wage (\$5.15 per hour)

The PCA is required to obtain and evaluate current financial data on debtor's in these particular AWG status codes every six-6 months to determine their ability to start submitting voluntary payments, or increase the amount currently being submitted voluntarily.

Upon receipt of the reports the PCA will contact the debtor and request current financial data. If the debtor fails to provide the requested data, the PCA will generate via the L105 screen a T07 or T09 Notice to debtor and wait 36 days for the debtor to file any objections to the proposal to garnish wages at 15%. If no response is received within appropriate time frame the PCA will request the account be moved via the L140 screen to a status to generate a withholding order.

Verify and document clearly the L102 Screen the following information concerning the account.

- Company / Employer Name
- Name of Person Confirming Information & Telephone Number
- Length of Employment
- Current Gross Salary / Income
- All Financial Data Obtained
- Debtor Ability Or Lack Of Ability To Pay Or Increase Payment Amount



## AWG Correspondence Processing Requirements

The Administrative Wage Garnishment Compliance Branch has the overall responsibility in receiving and processing correspondence (AWG payments, Employer Certifications, letters and AWG worksheets) received from employers. Raytheon has the responsibility of scanning all documents into Panagon prior to forwarding to the AWG Branch for processing.

The AWG Branch has the primary mission of ensuring that AWG status codes are changed in the AWG sub-system in a timely manner. This will prevent the unnecessary mailings to employers from the Department, regarding as to why employers have not submitted AWG payments on employees and will reduce the number of accounts in OW2, LPT and NCE status in the AWG sub-system.

Private Collection Agencies' Responsibility: PCAs will ensure after talking with the employer, that the employer send the appropriate documentation to the Department. All correspondence requested from employers by private collection agencies (PCAs), must be mailed to the National Payment Center, U.S. Department of Education, Post Office Box 4142, Greenville, TX 75403-4142, to be scanned relating to employee's status.

AWG Branch Loan Analysts' Responsibilities: Loan analysts will review all correspondence; take the appropriate action and update E-systems, based on the following:

- Document the L102 Screen (ED Notepad), only once for the same type of transaction. Below are examples to be used by the loan analyst to document the L102 screen:
- After processing correspondence and documenting the L102 screen, forward only correspondence relating to death, NAME/SSN Mismatch and the U05/U06 letters to the PCAs.
- Print and forward to the PCAs a weekly or monthly manifest on all general mail by category received and processed by the AWG Branch, for the PCAs' reference file.
- Loan analysts will review ED 329D (Employer Certification) received from employers, for **employment verification** by the PCAs, the following employer responses **will constitute an error** on the PCAs' part:
  1. Employer has different name/social security number
  2. **Federal employees** (civilian or military)
  3. Merchant seamen
  4. Self-employed (independent contractors/1099 employees)
  5. Never employed/no record of employment
  6. Resigned or terminated 31 days prior to issuance of withholding order
  7. Wrong employer information
  8. Wrong social security number

## Procedures for Verifying and Updating Employers Information

The L103, L140, L141, L142 and L145 Screens

Updates to AWG status code changes to the AWG subsystem occur on **Sunday, Tuesday, and Thursday** nights of each week. It is important that changes made to the AWG status codes on the L140 and L141 screens are done on the AWG subsystem in a timely manner. Due to incorrect employer address changes over the last few years, we are directing all PCAs to submit their request for changes to employers' Names, FEIN, and Address be submitted on the revised AWG – IMF to the AWG Compliance Branch in Atlanta.

There are two major reasons for making changes to the L142 screen information:

1. The **employer** changes its **company or corporate name** and **mailing address**, as the result of, a **merger or consolidation**; thereby, affecting the employment status of employees.
2. The **borrower's employment changes (voluntarily)** and the **new employer** is requesting or requires a new withholding order in order to continue withholding the debtors wages.

It is the responsibility of the PCAs to obtain and verify the correct Federal Employer Identification Number (Tax ID) FEIN

1. The PCAs **must** submit changes to **company name** or **address** on the **L142 screen** to their designated representative in the AWG Compliance Branch on the **AWG-IMF**.
2. The PCAs **must** submit a copy of the evidence obtained from the Secretary of State Office or elsewhere to show the legal identity of the **company** attached to the **AWG-IMF**.
3. The PCAs must update the Employer Reference Section of the **L103 screen** with the debtor current employment information, which **must** match up with the data on the **L140, L141, and L142 screens**. It is acceptable to list the Human Resources (H/R) Department on the L103 screen, and the Payroll Department (Payroll) on the L142 screen, however; the name on the L103 screen must be identifiable to the name on the L142 screen. For example: Walter Reid DBA Panola Investments.
4. The first step in changing / correcting **company** information is to determine the validity of the information to be changed/corrected.

**Go to the Secretary of State website:** <http://www.sos.state.ga.us/misc/othersossites.htm>, to analyze the requested change and verify the legal name of the **company** (**do not use acronyms or initials (for example: HP for Hewitt Packard)**, unless it is the legal name of the employer). If you are unable to verify through the Secretary of State Website, then search the Internet for the employer's official name of record, **FEIN**, address, and telephone number.

The PCA **may use any of the web sites listed** on the AWG-IMF or **any valid sites that provide FEIN information for the public**, however; regardless of the **website used to identify the FEIN**, the PCA **must contact** by telephone, the employer and attempt to verify the company /corporate name payroll mailing address and contact person.

If, the PCAs are unable to obtain a FEIN from these sources, the PCA **shall** request the creation of a Pseudo – FEIN (P-FEIN) by AWG Compliance Branch.

After determining which of the reasons apply, follow these simple instructions to link the account to an existing FEIN or P-FEIN.

**1st Go to the L145 screen and enter the employer legal name without the zip code and hit enter.** This will bring up the various ways the company may be listed. Look for the **FEIN / P-FEIN** that goes with your debtor employer, and then check the address to make certain it fits your borrower and company. Then follow the steps below to link the borrower to correct **FEIN / the existing P-FEIN**.

**2nd Identify the correct company/corporate name and FEIN / P- FEIN for the new employer** (a valid Employer Tax ID number will begin with an “E” and a Pseudo Employer Tax number will begin with an “P”).

- If an employer’s valid Federal Tax ID number (**E-000000000-000**) is already listed on the L145 screen, the borrower’s account must be attached to that employer. By following the guidelines provided by CSB for linking employers’ to debtor’s accounts.
- If an employer without a valid Federal Tax ID number, already has a Pseudo Tax ID number (**P-000000000-000**) listed on the L145 screen, the borrower’s account must be attached to that employer. **Do not create a new Pseudo FEIN.** By following the guidelines provided by CSB for linking employers’ to debtor’s accounts.
- **If the employer is not listed on the L145 screen, call the employer and get the EIN,** if you are not able to obtain the correct FEIN, a P-FEIN must be requested to be created by ED.

**3<sup>rd</sup>** If you encounter problems with linking or updating AWG subsystem status codes, you are to contact the CSB Help at 1-888-291-2160, to open a problem log ticket. Notify by email your AWG representative of the all unresolved problem logs.

Restriction on Updating Employer’s Name and Payroll Addresses is necessary because of the impact to other borrowers attached that employer. Changes can and will be made provided the following procedures are adhere to:

- PCAs must submit all changes to the employers’ name, legal mailing address, telephone numbers, and FEIN to their designate AWG Compliance Branch representative using the new AWG IMF.
- All AWG-IMF, **must have evidence attached** justifying the changes to original employer data or for the creation of a new employer or P-FEIN

Notice: The staff has been directed to reject all request for a new P-FEIN or modification to an existing FEIN data where no evidence to justify the modification or creation has been provided or there currently exist a FEIN / P-FEIN already loaded to the L145 screen.

## Creating A New P-FEIN

It is important that the Private Collection Agencies (PCA) creating a new E-FEIN OR P-FEIN carefully review all screens before creating a new one. Let's begin with the following instructions.

1. Go to the L140 screen, the account will not be active in AWG Status, Press the PF6 Key to Activate Garnishment. You will see the following message: "EMPLOYEE IS NOT ASSIGNED TO AN EMPLOYER; GO TO L141 TO ADD"
2. Go to the L142 screen to create the P-FEIN,  
Enter "Y" in the Create Pseudo: \_\_\_ Field
3. Enter New Employer Data following the screen prompts (see example below)

(L142)	ADMINISTRATIVE WAGE GARNISHMENT ED42XX	04/20/07 14:00:50
EMPLOYER INFORMATION/UPDATE SCREEN		
EMPLOYER FIN: _____	CREATE PSEUDO? Y	Enter Employer Data
ADDRESS TYPE: W	PSEUDO FIN: P000003814000	
EMPLOYER NAME: DAK Auto Repair _____		
EMPLOYER ADDRESS: Attn: Payroll Dept _____ 3709 Freedom Dr _____		
CITY: Charlotte _____	STATE: NC	Enter your AG XXX Number
EMPLOYER PHONE: 704 - 399- 2244	ZIP: 28208 - _____	
EMPLOYER FAX: 704 - 399 - 2442		
CONTACT: <u>Betty Owen (ED42XX)</u> _____		
ADDR STATUS: V	ADDR CHANGE DATE: / /	
ENTER INFO TO CREATE A NEW EMPLOYER RECORD OR PSEUDO FIN, PLEASE PF13-L140 14-141 15-142 16-145 6-CONFIRM		

Next message will read as follow: Press (PF6)

Warning - This Change May Impact Multiple Employees - Press <Pf6> To Update

Next Message should read as follow: Press (PF14) / Shift F2

Employer Created. Press <PF14> To Complete Process

(L141) ADMINISTRATIVE WAGE GARNISHMENT ED4250 04/20/07  
EMPLOYEE/EMPLOYER ADD/UPDATE SCREEN 14:10:01

ACCOUNT NO: S238045421 RESEND ORDER FOR WITHHOLDING  
EMPLOYER FIN: P000003814000 LETTER TYPE (Y11): \_

ACCOUNT OWNER: AG564 ICRP STATUS:  
ACCOUNT NAME: THOMPSON ELIZABETH A

EMPLOYER NAME: DAK AUTO REPAIR  
EMPLOYER ADDRESS: ATTN: PAYROLL DEPT  
3709 FREEDOM DR  
CITY: CHARLOTTE STATE: NC ZIP: 28208-

CONTACT: BETTY OWEN (ED42XX)  
ADDRESS STATUS: V  
CURRENT AWG STATUS: AWG ADDR CHANGE DATE: 04/20/07  
ED BALANCE: \$0.00 START DATE:  
CURRENT EMPLOYER STATUS: END DATE:

THIS ACCT NOT ACTIVE WITH THIS EMPLOYER. TO ACTIVATE PRESS <PF6>  
PF13-L140 PF14-L141 PF15-L142 PF16-L145

Next Step Enter Start Date:

ENTER START DATE: 04/20/07

Next Step:

PRESS PF6 TO CONFIRM OR PF5 TO CANCEL

Final Message should read as follow:

ACCOUNT ADDED. PLEASE, PRESS <PF5> TO REFRESH THE SCREEN

Finally, document the L102 Notepad Screen as follows:

"AWG-IMF PROCESSED PSEUDO-FEIN CREATED" AGxxxx

## Procedures for Creating a FEIN

- Before changing or re-assigning debtors to a new employer, make certain the debtor's AWG Subsystem Status Code has been changed to "SWG" on the L140 and L141 screens.
- Go to the L142 screen, Press the PF5 to refresh screen, then enter the new E-FEIN you have been requested to create to determine if it currently exist in ED database.
- Hit Enter – then the screens will either display all the employer information related to that FEIN or the screen will be blank and you will have to load the FEIN data from the AWG\_IMF provide by the PCAs.

- Procedures for Creating a FEIN on the L142 screen (See Example below of completed: L142 screen)

Address: Place a "W"  
 Enter employment Name: List the name of employer  
 Employment Address: Attn: Payroll  
 Address  
 City, State, and Zip Code  
 Contact: Payroll and ED#

(L142)	ADMINISTRATIVE WAGE GARNISHMENT EMPLOYER INFORMATION/UPDATE SCREEN	ED42XX 04/11/07 14:29:56
EMPLOYER FIN: _____ CREATE PSEUDO? _ ADDRESS TYPE: _____ PSEUDO FIN: _____ EMPLOYER NAME: _____		
EMPLOYER ADDRESS: _____ CITY: _____ STATE: _____ ZIP: _____ - _____		
EMPLOYER PHONE: ____ - ____ - ____ EMPLOYER FAX: ____ - ____ - ____		
CONTACT: _____		
ADDR STATUS: _____ ADDR CHANGE DATE: / /		
ENTER EMPLOYER FIN, OR IF UNKNOWN, PUT "Y" TO CREATE PSEUDO AND PRESS <ENTER> PF13-L140 14-141 15-142 16-145 6-CONFIRM		

- Press enter, then PF 6 followed by PF 14 (Shift F2) this will take you automatically to the L141 screen; then PF 6 (the system will require you to enter a Start date then press enter ("Start Date" which is today's date) (See Example below).

(L141)	ADMINISTRATIVE WAGE GARNISHMENT EMPLOYEE/EMPLOYER ADD/UPDATE SCREEN	ED42XX 04/11/07 14:39:01
ACCOUNT NO: S _____ RESEND ORDER FOR WITHHOLDING EMPLOYER FIN: _____ LETTER TYPE (Y11): _		
ACCOUNT OWNER: _____ ICRP STATUS: ACCOUNT NAME: _____		
EMPLOYER NAME: EMPLOYER ADDRESS: CITY: _____ STATE: _____ ZIP: _____		
CONTACT: _____		
ADDRESS STATUS: _____		
CURRENT AWG STATUS: _____		
ED BALANCE: _____		
CURRENT EMPLOYER STATUS: _____		
ENTER AN ACCOUNT NO AND/OR EMPLOYER FIN, PLEASE PF13-L140 PF14-L141 PF15-L142 PF16-L145		
ADDR CHANGE DATE: START DATE: END DATE		

- Once you Enter “Start Date” which is today’s date, the system will give you one last opportunity to cancel for any reason, if not press PF6 to confirm.
- The account is now linked to the current employer and FEIN
- Go to the L106 screen and check for the T12 (or any “T” Notices of Intent to Withhold at 15%) letters being issued.

**Note: (T08 is for 10% withholding and T12 is 15% withholding)**

- Review the L102 screen for any reason the garnishment was stop such as bankruptcy, pending hearings, etc. Review, the R110 screen to determine which debt(s) has an open balance due. Finally, if no reason can be identified for not validating the debt(s) at the present time; change the AWG Subsystem Status Code as follows: “from SWG to HSF to HR1 in order to issue a new withholding Order” on the L140 screen.
- Annotate the L102 “AWG-IMF processed – account linked to new employer ...AGxxxx.”
- The same procedures are to be followed in the creation of P-FEINs. The only difference is that the system will assign a P-FEIN on the L142 screen, if the original FEIN cannot be obtained from the debtors’ employer.

**Note:** This not a big deal – many employer do not wish to give out their FEIN over the telephone because it is equivalent to an individual disclosing their ssn to some unknown party over the telephone.

## **Guidelines For Processing Rejected AWG-IMF Change Request to FEIN / P-FEIN**

- 1<sup>st</sup> Check the list of verified FEINs provided by the AWG Compliance Branch.
- 2<sup>nd</sup> Check the L145 screen

Make certain the information on the borrower’s account is the same on the following screens: L103, L140 and L142 should be reviewed that they correctly reflect the same information as EIN/PIN. If they do not, the account will be rejected. Check the following information:

- **Company Name**
- **Existing FEIN / P-FEIN**
- **Misspelled company name**

In order for your agency to get these rejected accounts through the validation process your agency must work with your designated AWG Branch representative. By first performing the following task:

1. PCAs **must** determine which FEIN / P-FEIN is the accurate one by contacting the employer and verifying the following information
  - Legal and Full Name for Debtor’s **Employer**
  - Correct FEIN
  - Payroll mailing address for all Withholding Orders

- National Payroll Mailing Address for the Corporation, if applicable
- Payroll contact Person's Name and Extension Number, along with a fax number

**Note:** when checking the L145 screen for Employers, use variations on the spelling of employer's name. **Do not** limit yourself to searching by zip code because many accounts have the wrong zip code listed. (Ex: "State of Florida", "FL State..." "Florida State...").

2. When FEIN / P-FEIN information has been identified as incorrect, send an email to your AWG Loan Analyst containing all the corrected information:
  - List the name of the employer and all the FEIN / P-FEIN (s) associated with the employer
  - Give the address, contact person, and telephone/fax numbers
  - Subject line of email should be "corrected employer FEIN / P-FEIN"
  - If a new FEIN has been discovered and the employer has multiple FEIN / P-FEIN currently listed on the L145 screen. The PCA must enter the new FEIN and submit the updated information to their designated branch representative to link all outdated FEIN / P-FEIN in the following format.
3. After the account has been merge to / linked to the correct FEIN / P-FEIN, move the borrowers' account from **SWG** to **HSF** to **HR1**, and request the CSB Help Desk to create a special HR1 Batch containing these cases.

It is ED's goal to standardize requirements for certain employers and groups.

When reviewing accounts for FEIN / P-FEIN, be mindful of the following:

- Use various spellings of the employer's name in L145
- Do not limit yourself to search by zip code because many accounts have the wrong zip code listed
- Most states pay their employees through their **Office of the Comptroller**; so do not list the individual departments in the state government. Identify all states, cities, and counties as follows:

State of Georgia  
City of Atlanta, GA  
Fulton County, GA

State of New York  
City of New York, NY  
Orange County, NY

- Do not use numbers, abbreviations and prepositions identifying employers, unless the employer clearly states that is the formal name of the company or street address
- When verifying employment, ask for the **National Payroll Office** personnel that handle garnishment orders



## Appendix A - Revised AWG – IMF Form

Create New FEIN:  
Check Here: \_\_\_\_\_

### Administrative Wage Garnishment Internal Mail Form (IMF) Employer Update

Create New Pseudo –FEIN  
Check Here: \_\_\_\_\_

Date: \_\_\_\_\_

Agency Name: \_\_\_\_\_ Agency Code: \_\_\_\_\_

Requested By: \_\_\_\_\_ Contact Ph#: \_\_\_\_\_ Ext # \_\_\_\_\_

Borrower Name: \_\_\_\_\_ SSN: \_\_\_\_\_

#### Requested Action: (Check One)

Update Existing FEIN / P-FEIN Information: \_\_\_\_\_

Merge Pseudo FEIN to Correct FEIN: \_\_\_\_\_

Create New FEIN: \_\_\_\_\_

Create New Pseudo-FEIN: \_\_\_\_\_

**Fax / Re-Issue (Y11/Y13) Order** \_\_\_\_\_

#### Supporting Evidence Attached: (Check One):

Employer Notification:

Receipt of U05 Notice

Receipt of Form 329 D/E

Statement From Employer on Letterhead

Web Site Verification:

[HTTP://WWW.SOS.STATE.GA.US/MISC/OTHERSOSSITES.HTM](http://www.sos.state.ga.us/misc/OTHERSOSSITES.HTM)

[HTTP://WWW.DOS.STATE.FL.US/](http://www.dos.state.fl.us/)

[HTTP://WWW.NEXIS.COM](http://www.nexis.com)

[HTTP://WWW.SECURE.ACCURINT.COM](http://www.secure.accurint.com)

Other (complete the following):

Source Name: \_\_\_\_\_

Corporate / Company's Name: \_\_\_\_\_

ATTN (Dept & Contact's Name): **Payroll / Garnishment Department**

ADDRESS: \_\_\_\_\_

CITY/STATE/ZIP: \_\_\_\_\_

TELEPHONE #: \_\_\_\_\_

Existing / OLD FEIN/ P-FEIN: \_\_\_\_\_

New / Receiving FEIN/ P-FEIN: \_\_\_\_\_

Please assist with the following:

\_\_\_\_\_ Re-issue the Y13 Order to Employer listed above:

A) Borrower Name / SSN Changed \_\_\_\_\_

B) Employer Name Changed \_\_\_\_\_

\_\_\_\_\_ Comments (See L102) \_\_\_\_\_

## Appendix B: PCA Quality Control Checklist

	<b>ACCOUNT/EMPLOYMENT VERIFICATION</b>
✓	Verify all employment data within 30 days of submission for AWG.
✓	Submit IMF to AWG for U05 letter (Employment Verification) to be issued.
✓	Submit IMF to AWG for U06 letter (Address Information Request) be issued.
✓	Verify borrower is not a <b>Federal Employee</b> (civilian/military), merchant seaman, self-employed or independent contractor.
✓	ED balance is greater than \$200.00.
✓	No negative balance(s) or excessive fee(s) on the R101 screen.
✓	Tribal Employees requires special handling, PCA must determine if the tribal will honor the withholding order.
	<b>ENTERING ACCOUNTS IN AWG SUB-SYSTEM</b>
✓	Verify employer's legal name/entity (no acronym/initial), payroll office address, point of contact, telephone and fax number are correct on the L142 screen.
✓	Ensure account has been properly linked to the employer's correct EIN or Pseudo FIN from L145 screen.
	<b>FINAL REVIEW OF ACCOUNTS PRIOR TO VALIDATION</b>
✓	Ensure T12, T07, T08 or T09 letter was successfully delivered to the borrower's home address on the L106 Screen.
✓	Borrower has not filed a timely hearing request (THR) within 36-days prior to validation.
✓	Account is not in active bankruptcy.

	<b>REQUIRED TELEPHONE CONTACT WITH EMPLOYERS 30 DAYS AFTER Y11 LETTER HAS BEEN ISSUED</b>
✓	Call employer and confirm receipt of withholding order with employer.
✓	Re-verify employment status, to include name and social security number of borrower.
✓	Verify if borrower has any prior garnishment orders in effect.
✓	Verify whether the borrower is full-time or part-time.
✓	Stop wage garnishment action on borrowers who make less than the Federal Minimum Wage requirement of \$5.15 per hour.
✓	Verify if there is any reason why the employer legally cannot honor the withholding order.
✓	Clearly document ED L102 Screen (Notepad) with all telephone contacts with the employer.
	<b>FOLLOW-UP ACCOUNT MAINTENANCE</b>
✓	Keep borrower's home address current on the L103 screen.
✓	Keep borrower's employment status current on L103 and L142 screen.

## Appendix C: Non-Compliance Employer(s) Referral Cover Sheet

EMPLOYER NAME:		
EMPLOYER STREET ADDRESS		
CITY	STATE	ZIP CODE
BORROWER'S NAME:		
SOCIAL SECURITY NUMBER:	ACCOUNT LOCATION CODE: AG	

### Contractor Requirement(s):

#### Step 1. Review the L102 Note Pad and L106 Letter history to ensure the following:

1. Review the L102 screen to ensure the borrower has no outstanding dispute / issues regarding the past due status, amount, validity or enforceability of the debt(s).
2. Review the L106 screen for any new N03 Notice(s) being issued, which would indicate that all debt(s) have **not** been certified to the employer for garnishment.

#### Step 2. Verify with the employer and clearly document the following information on the L102 screen:

- Borrower Name and SSN
- Borrower is currently employed
- The name of the person contacted in the employer payroll or personnel office that verified the receipt of the Withholding Order(s).
- The Employer Name and FEIN/ P-FEIN
- The employer is not located on or own / operated by an Indian Reservation requiring the Tribal Court to be served. Furthermore, the contractor must confirm that the Tribal Court will not honor ED's Withholding Order.
- Re-verify the employer legal mailing address and the name of the register agent. Contractor may use the following website to obtain the registered agent name and legal mailing address: <http://www.sos.state.ga.us/misc/othersossites.htm>
- Document the reason for the employer's refusal to comply with the Withholding Order.
- Record the name and position of the individual you clarified the regulations and consequences of non-compliance.
- The contractor will submit an update report to their designated ED counterpart, via the attached **Referral Sheet**.

Transfer / update all communication with the employer to the L102 Notepad via EFT

Name: \_\_\_\_\_

Date: \_\_\_\_\_

**I certify that all the above requirements have been met, and the information clearly and properly updated to the L102 Note Pad.**

## Appendix D: AWG NCE Employer Referral Checklist (Part A)

### AWG NCE Employer Referral Checklist (Part A)

<b>EMPLOYER NAME :</b>			
<b>EMPLOYER STREET ADDRESS</b>			
<b>CITY</b>	<b>STATE</b>	<b>ZIP CODE</b>	
<b>NAME OF RESPONSIBLE OFFICIAL AT THE COMPANY/CORPORATION:</b>			
<b>BORROWER' S NAME:</b>			
<b>SOCIAL SECURITY NUMBER:</b>		<b>ACCOUNT LOCATION CODE:</b> AG	
<b>REQUIRED ACTIONS</b>		<b>YES</b>	<b>NO</b>
Were all telephone contact(s) made between the Agency, Pearson (PIC) or ED with the employer documented on the L102 Screen?			
Did the employer confirm receipt the withholding order?			
Did the employer verify their name, address, telephone numbers and point of contact?			
Did the employer verify that the borrower was not employed and working on an Indian reservation and the withholding order was addressed to the Tribal Court for servicing and that the Tribal Court will honor ED's withholding order?			
Is the employer in current bankruptcy status?			
Did the employer verify that the borrower's name and SSN matched their database?			
Did the employer verify that the borrower did not have another garnishment order(s) in excess of 25% of the borrower's disposal pay?			
Did the employer verify that the borrower was not deceased or totally and permanently disabled?			
Are there any new debt(s) (N03 Letter(s)) added to the L106 Screen since the issuance of the withholding order?			
Were the required audit adjustment(s), removal of negative balance(s) on debt(s) or excessive fee(s), or clean up any SP000 location code(s) completed?			
Were there any recent employer payment(s) received on the account within the last 60 days and the current balance is greater than \$3,000.00?			

**Appendix E: AWG NCE EMPLOYER REFERRAL SHEET (PART B)**

**AWG NCE EMPLOYER REFERRAL SHEET (PART B)**

**AGENCY** \_\_\_\_\_

Debtor: \_\_\_\_\_ SSN: \_\_\_\_\_

Account Balance: \_\_\_\_\_

Employer Name: \_\_\_\_\_

Company FEIN/P-FEIN: \_\_\_\_\_

Registered Agent / Sr. Officer: \_\_\_\_\_

Legal Mailing Address: \_\_\_\_\_

City, St. Zip Code: \_\_\_\_\_

Company Telephone: \_\_\_\_\_ Fax No# \_\_\_\_\_

Last Person Contacted: \_\_\_\_\_

Date Of Contact: \_\_\_\_\_

Withholding Order Received:      Circle: Yes / No

Reason Given For Non-Compliance: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Submitted By: \_\_\_\_\_

Date: \_\_\_\_\_

Telephone Number \_\_\_\_\_

## **Appendix F: Procedures For Requesting V & U Series Letters**

**Document the L102 Notepad as follow:**

**\*\*\*AWG LTR: NEED Vxx LETTER" Free style Comments"**

**\*\*\*AWG LTR: NEED U05 LETTER" Free style Comments"**

**\*\*\*AWG LTR: NEED U06 LETTER" Free style Comments"**

**\*\*\* Needs a space after the colon, before the word need\*\*\***

**Change the Collector Number from 99999 to 00699 on the L103 Screen**

**After the letter has been issued, you will need to immediately change the Collection**

**Number back to 99999 on the L103 screen.**

**In addition, you must adjust your time frames for responses by debtor, as the program is ran weekly not daily.**

**The only letters the PCAs are authorized to order via this method hat can be request via this method are as follow:**

**U05, U06, V34-36, V39, V40, V42-V44**

## Appendix G: Revised U05 Language

Employer Name  
Attn: Payroll Department  
Employer Address  
Emp City, St Zip

Subject: Request For Information

Re: <STUD-NAME><SSN>

Attention: Owner / Payroll Department

Your company has been reported as either the current employer or previous employer of the above reference individual. The Department has or will be issuing withholding orders under the authority granted to it by the Debt Collection Improvement Act of 1996, at 31 U.S.C. 3720D.

The Department is currently seeking your assistance to ensure that withholding order(s) issued to your company are properly addressed and correctly identify your company or corporate identity. Therefore, we are requesting that the following information be provided:

Employment Start Date: \_\_\_\_\_ Termination Date: \_\_\_\_\_

Home Address (If Known): \_\_\_\_\_  
\_\_\_\_\_

Company/Corporation Registered Name: \_\_\_\_\_

Street Address / P. O. Box Number: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip \_\_\_\_\_

Telephone Number: \_\_\_\_\_ Fax Number \_\_\_\_\_

Company/Corporation: Employer Federal Identification Number: \_\_\_\_\_

\_\_\_\_\_  
(Signature) Print Name

\_\_\_\_\_  
(Title) Date

Please return this information to the below address. Thank you.

U.S. Department Of Education  
Post Office Box 5227  
Greenville, Texas 75403  
<OWNER>



## Appendix H: Final Regulations Implementing DCIA Garnishment Authority

[Federal Register: February 19, 2003 (Volume 68, Number 33)]

[Rules and Regulations] [Page 8141-8152]

From the Federal Register Online via GPO Access  
[wais.access.gpo.gov]

[DOCID:fr19fe03-26] [[Page 8141]]

### Part IV

Department of Education

34 CFR Part 34

Administrative Wage Garnishment; Final Rule

[[Page 8142]]

### DEPARTMENT OF EDUCATION

34 CFR Part 34

#### Administrative Wage Garnishment

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

#### ACTION: Final regulations.

SUMMARY: These regulations 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 regulations implement this authority for a debt owed to the United States under a program administered by the Department of Education.

**DATES: These regulations are effective March 21, 2003.**

FOR FURTHER INFORMATION CONTACT:  
Marian E. Currie, U.S. Department of Education,  
Union Center Plaza Room 41B4, 830 First Street NE,  
Washington DC 20202, 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: On April 12, 2002, the Secretary published in the Federal Register a notice of proposed rulemaking (NPRM) (67 FR 18072) for implementation of the wage garnishment authority in the DCIA. This document contains the final regulations for the rules that were proposed in that NPRM. These final regulations contain a few changes from the NPRM.

#### Analysis of Comments and Changes

In response to the NPRM, we received comments from two parties. An analysis of the comments and of the changes in the regulations since publication of the NPRM is published as an appendix at the end of these final regulations.

#### Regulatory Flexibility Act Certification

The Secretary certifies that these regulations 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 these regulations and to the certification requirement in these regulations, as explained in the NPRM, the requirements will not have a significant economic impact on these entities.

#### Paperwork Reduction Act of 1995

These regulations do not contain any information collection requirements.

#### Assessment of Educational Impact

In the NPRM we requested comments on whether the proposed regulations would require transmission of information that any other agency or authority of the United States gathers or makes available.

Based on the response to the NPRM and on our review, we have determined that these final regulations do not require transmission of information that any other agency or authority of the United States gathers or makes available.

#### 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:

<http://www.ed.gov/legislation/FedRegister>.

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1-888-293-6498; or in the Washington, DC, area at (202) 512-1530.

You may also view this document in PDF at the following site: <http://ifap.ed.gov>.

Note: The official version of this document is the document published in the Federal Register. Free Internet access to the official edition of the Federal Register and the Code of Federal Regulations is available

on GPO Access at:

<http://www.access.gpo.gov/nara/index.html>

(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: February 12, 2003.

Rod Paige,

Secretary of Education.

For the reasons discussed in the preamble, the Secretary amends 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 or amount 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.

### **Sec. 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.

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

### **Sec. 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. [[Page 8143]]

(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)

### Sec. 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 mean the debtor.

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

### Sec. 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)

### Sec. 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 Sec. 34.6, and the time frame within which you may exercise your rights.

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

### Sec. 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 Sec. 34.8 concerning--

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

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

(3) Whether you have been continuously employed less than 12 months after you were involuntarily separated from employment.

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

### Sec. 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 we propose to be withheld does not exceed the rate or amount agreed to under a repayment agreement reached within the preceding six months after a previous notice of proposed garnishment.

(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)

### Sec. 34.8 Providing a hearing.

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

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

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

### Sec. 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.

[[Page 8144]]

(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 if--

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

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

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

#### Sec. 34.10 Conditions for a paper hearing.

We provide a paper hearing--

(a) If you request a paper hearing;

(b) If you requested an oral hearing, but we determine under Sec. 34.9(e) that you have withdrawn that request;

(c) If you fail to appear for a scheduled oral hearing, as provided in Sec. 34.15; or

(d) If we deny a request for an oral hearing because we conclude that, by a review of the written record, we can resolve the issues raised by your objections.

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

#### Sec. 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 for hearing 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)

#### Sec. 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) You base your request on grounds of financial hardship, and 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) This 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)

### Sec. 34.13 Conduct of a hearing.

(a)(1) A hearing official conducts any hearing under this part.

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

(b)(1) The hearing official conducts any hearing 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.

(c) Before the hearing official considers evidence we obtain that was not included in the debt records available for inspection when we sent notice of proposed garnishment, we notify you that additional evidence has become available, may be considered by the hearing official, and is available for inspection or copying.

(d) The hearing official considers any objection you raise and evidence you submit--

(1) In or with the request for a hearing;

(2) During an oral hearing;

(3) By the date that we consider, under Sec. 34.9(e), that a request for an oral hearing has been withdrawn; or

(4) Within a period we set, ordinarily not to exceed seven business days, after--

(i) We provide you access to our records regarding the debt, if you requested access to records within 20 days after the date of the notice under Sec. 34.4;

(ii) We notify you that we have obtained and intend to consider additional evidence;

(iii) You request an extension of time in order to submit specific relevant evidence that you identify to us in the request; or

(iv) We notify you that we deny your request for an oral hearing.

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

### Sec. 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 [[Page 8145]] 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 Sec. 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 continuous period of 12 months (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)

### Sec. 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)

#### Sec. 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)

#### Sec. 34.17 Content of decision.

(a) The written decision is based on the evidence contained in the hearing record. The decision includes--

(1) A description of the evidence considered by the hearing official;

(2) The hearing official's findings, analysis, and conclusions regarding objections raised to the existence or amount of the debt;

(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; and

(4) An explanation of your rights under this part for reconsideration of the decision.

(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)

#### Sec. 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)

#### Sec. 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 Sec. 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)

#### Sec. 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 Sec. 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 Sec. 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 amounts specified in the orders, the amount specified in Sec. 34.19(b)(2), or 15 percent of the debtor's disposable pay, whichever is smallest. [[Page 8146]]

(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)

#### Sec. 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)

#### Sec. 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)

#### Sec. 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)

#### Sec. 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 Sec. 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)

#### Sec. 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 Sec. 34.24.

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

#### Sec. 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)

#### Sec. 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)

Sec. 34.28 Refunds of amounts collected in error.

(a) If a hearing official determines under Sec. 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 [[Page 8147]] 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)

Sec. 34.29 Enforcement action against employer for noncompliance with garnishment order.

(a) If an employer fails to comply with Sec. 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) of this section 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)

Sec. 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)

Note: The following appendix will not appear in the Code of Federal Regulations.

Appendix: Analysis of Comments and Changes

An analysis of the comments and of the changes in the regulations since publication of the NPRM follows.

We discuss issues according to subject, under the sections of the regulations to which they pertain.

Scope of Garnishment Authority; Collection of Student Loans (Sec. 34.1 and 34.2)

Comment: One commenter contended that the Department lacks legal authority to use the garnishment power in the DCIA to collect student loans, because the commenter views section 488A of the Higher Education Act, 20 U.S.C. 1095a, as restricting the Department's garnishment authority to ten percent of disposable pay.

Discussion: The commenter bases this contention not on the terms of the DCIA, but on a rule of statutory construction that where two statutes authorize an action, the more specific of the two sets the limits to that authority. Section 488A of the HEA authorizes the

Secretary of Education and guaranty agencies to garnish up to ten percent of debtor pay to collect student loans, while the DCIA authorizes Federal agencies to garnish up to fifteen percent of debtor pay. The commenter views the HEA as the more specific of the two statutes, and contends that the HEA limits the Department's garnishment power to the ten percent rate it authorizes. We disagree that the HEA is the more specific of the two statutes; both statutes apply to a distinctive category of entities. The HEA extended garnishment authority to the Department and to some 36 separate State and non-profit entities operating as guaranty agencies, and empowers the latter group to collect both on their own behalf and on behalf of the Federal government.\1\ The DCIA applies only to Federal agencies, and applies exclusively to collection of debts owed to the Federal Government.

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\\1\ Guarantors are authorized to collect ``the amount owed'' by the defaulter, 20 U.S.C. 1095a(a), which includes that portion of the loan debt not

covered by Federal reinsurance, as well as that portion of the recovery that the guarantor is authorized to retain.

20 U.S.C. 1078(c)(1), 1078(c)(6).

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Even if the HEA were the more specific of the two authorities, the rule that the more specific of two potentially applicable statutes controls is merely one of several tools used to discern the intent of Congress. Another way to determine the intent of Congress when two potentially-applicable statutes adopt inconsistent terms is to view the more recent of the two as embodying the current intent of Congress. The 1996 DCIA is the more recent of the two statutes.

Thus, Congress' intent to allow garnishment at 15 percent supersedes the HEA's more limited authority.

Looking to the more recent of two statutes to discern Congress' intent is particularly apt because the DCIA garnishment provision is both more recently enacted and part of a comprehensive scheme inconsistent with the limits of the earlier HEA authority. The DCIA supersedes the more limited authority in HEA section 488A because the DCIA garnishment authority is an addition to a comprehensive statutory scheme (31 U.S.C. 3701-3720E) for enforcement of Federal debts, including student loan debts. That scheme includes, for example, authority under 31 U.S.C. 3720A to collect Federal debt by tax refund offset, and, under 31 U.S.C. 3711(g), to report delinquent Federal debt to credit bureau. Thus, because Congress intended this statutory scheme as in effect before the 1996 DCIA amendments to apply to student loans, there is no reason to infer that Congress did not intend the garnishment provision added by the DCIA to this scheme in 1996 to apply to student loans as well.

Changes to the roles of specific Federal agencies made by the DCIA show that Congress intended that the tools available under this statutory scheme, including garnishment, be used to collect student loans. For the first time, the DCIA required Federal agencies to transfer collection responsibility for their delinquent debt to Treasury, or to other Federal agencies which were designated "debt collection centers." The DCIA authorizes Treasury, as well as these designated "debt collection centers," to use all the collection tools provided in the DCIA, including its garnishment provision, to collect debts which they "cross-service." Education has been designated a debt collection center for student loans, thus, it is illogical to infer any congressional intent to bar

Education from using the same DCIA garnishment authority to collect Federal student loan debts that Treasury and other agencies are meant to use to collect Federal debts.

Moreover, if Education had not been designated a debt collection center, the DCIA would have required Education to transfer its student loan debts to Treasury (or another agency designated as a collection center) for cross-servicing. Treasury plainly has full authority to use DCIA garnishment to collect any debts transferred to it for servicing, including student loans from Education. Thus, because Treasury or other Federal agencies would have power to collect those very student loans at the 15 percent rate, it is illogical to infer any congressional intent to restrict garnishment to the lesser HEA level when those same loans are serviced by Education itself.

The text of the DCIA itself shows that the absence of any language excluding student loans from garnishment under 31 U.S.C. 3720D was no oversight. The DCIA expanded the scope of Federal offsets by amending 31 U.S.C. 3716 to authorize offset by Treasury against such Federal payments as Social Security benefits, 31 U.S.C. 3716(b)(3), but expressly excluded title IV HEA student assistance payments from offset. 31 U.S.C. 3716(b)(1)(C). That express exclusion of student aid from the DCIA offset provision, contrasted against the absence of any reference to student loans in the DCIA garnishment provision--a provision copied almost verbatim from HEA section 488A--shows that Congress spoke clearly when it meant to exclude student aid from the reach of the DCIA tools, and intended no exclusion of student loans from the DCIA garnishment provision.

In addition to the language of the statute itself, the legislative context of the garnishment provision shows that Congress intended the Department to use this DCIA authority to collect student loans. The subcommittee in which the provision originated understood from testimony before it that the provision would increase Education's authority to 15 percent to garnish [[Page 8148]] debtor wages to collect student loans.\2\ Subsequent oversight action by that subcommittee \3\ and by the General Accounting Office \4\ at the request of the subcommittee demonstrate the subcommittee's expectation, and Education's intention, that Education would implement the DCIA 15 percent wage garnishment authority to collect student loans.

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\2\ Hearing on H.R. 2234, the Debt Collection Improvement Act of 1995, before the Subcommittee on Government Management, Information and Technology of the Committee on Government Reform and Oversight, 104th Cong., 1st Sess. on H.R. 2234, Sept. 8, 1995 at 70, 159, 253. Moreover, the Congressional Budget Office estimated substantial increased recoveries on defaulted loans from these DCIA proposals. See 142 Cong. Rec. S1825 (Memorandum from John Richter, CBO, to Patrick Windham, Sen. Committee on Commerce, Science, and Transportation, regarding Preliminary scoring of the "Debt Collection Improvement Act of 1996," Chapter 2 of a proposed amendment to H.R. 3019). As explained by cognizant staff, CBO based its estimates on the understanding that Education would use fully these DCIA tools, including garnishment, to collect defaulted student loans.

\3\ Hearing on Federal Debt Collection Practices before the Subcommittee on Government Management, Information and Technology of the Committee on Government Reform and Oversight, 105th Cong., 1st Sess., Nov. 12, 1997, at 90, 91.

\4\ General Accounting Office: Debt Collection Improvement Act of 1996: Status of Selected Agencies' Implementation of Administrative Wage Garnishment (GAO-02-313).

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For these reasons, the Department considers unfounded the view that the HEA garnishment authority precludes use of the DCIA garnishment authority to collect student loans.

Changes: None.

Comment: One commenter objected that the explanation for the Department's implementation of DCIA garnishment authority in these regulations left confusion about whether current FFELP regulations, which address garnishment under HEA section 488A by student loan guarantors, will continue to apply to those guarantors, and invited speculation about whether student loan guarantors would continue to garnish to collect debts they held, and if so, whether the HEA, rather than the DCIA, authorized them to do so.

Discussion: The statements made by the Department regarding its intention to use DCIA garnishment authority make no suggestion that the role and authority of student loan guarantors has changed. The HEA expressly authorizes student loan guarantors to collect by garnishment, and nothing in the DCIA expressly or implicitly addresses the

authority of guarantors to garnish. Regulations adopted under the Federal Family Education Loan Program (FFELP) at 34 CFR 682.410(b)(9) to implement that authority for guarantors expressly apply to action by FFELP loan guarantors to conduct garnishment under HEA section 488A. Those regulations do not state or imply that they apply to the Department, either when the Department conducted garnishment under HEA section 488A or under any other authority. Because the FFELP regulations in most instances closely track the language of HEA section 488A, the Department, by following the provisions of the statute itself, generally conformed to those regulations. Because the DCIA garnishment provision mirrors HEA section 488A, the Department's reasons for interpreting and implementing several DCIA provisions apply with equal force to identical terms of HEA section 488A, which the Department has authority to interpret. That reasoning therefore helps clarify the intent of identical language found in both statutes. Discussion of the HEA in the explanation for this rule did not suggest that the Department considered student loan guarantors to be authorized to collect under the DCIA authority.

Changes: None.

## Computation of Time and System Changes (Sec. 34.3)

Comment: A commenter objects that adopting definitions of "day" and "business day" may require modification of current systems for mailings. As an example, the commenter stated that the garnishment order cannot be issued until 30 days after the date of the notice, and the proposed rule provides that if the last day of a period is a Saturday, Sunday, or Federal holiday, the period runs to the next business day. Thus, the rule would be violated if a contractor were to mail a garnishment order exactly 30 days after the date of the notice, if that 30th day fell on a Saturday or Sunday.

Discussion: These rules adopt verbatim the definitions and approach adopted by Treasury in its rule, which mirror rules almost invariably applied in litigation. The only act we take under this rule within a specified number of days after an event or deadline is the issuance of the garnishment order; Sec. 34.4 states that we provide notice of the proposed garnishment "at least" 30 days before we begin garnishment, and Sec. 34.18(a)(1) provides that we issue a garnishment order "within 30 days after the deadline for timely requesting a hearing" or "within 30 days after a decision." The Department is responsible for ensuring that its garnishment activities, and the actions of contractors as needed to

support those activities, conform to this rule. We therefore see no basis for the complaint that the rule would require modification of systems used to create and mail the notices and orders Education now uses in its garnishment process.

Changes: None.

### Rights in Connection With Garnishment (Sec. 34.6)

Comment: A commenter objected that the regulations do not articulate specific defenses that may be available to the debtor as grounds for objection to the proposed garnishment, and urged that the rule should mandate use of a form request for hearing of the kind now used by the Department for garnishment action to collect student loans.

Discussion: The Department has used, and will continue to use for collection of student loan debts, a form Request for Hearing that lists potentially available grounds for objection. Because this regulation applies to garnishment to collect any debts held by the Department, the Department did not consider it necessary to adopt any specific provisions applicable only to some debts. The Department has no intention to change this procedure for student loans. However, neither the statute, Treasury regulations, nor due process requires use of a notice that lists potentially available defenses. There is no need to include in these regulations provisions that would imply that such a duty exists.

Changes: None.

Comment: A commenter urged that the regulations should specifically require the Department to give notice that a debtor may object to garnishment on the ground that the debtor was recently reemployed after involuntary separation.

Discussion: The Department agrees that debtors may not be aware that they may object on the grounds that the debtor has been recently been reemployed after involuntary separation from employment. The notice and the request for hearing now used by the Department for HEA garnishment explain this option. Because this objection applies regardless of the nature of the debt to be collected, the Department agrees that the regulations should commit to providing express notice of this option.

Changes: The regulations are modified in Sec. 34.6 to provide that the pre-garnishment notice includes an explanation of the availability of objection on the grounds of recent reemployment after involuntary separation.

Comment: A commenter urged that the regulations should specifically require notice to the debtor that limits on withholding imposed by 15 U.S.C. 1671 et seq. may preclude actual withholding of pay.

Discussion: Neither the Department, nor any other garnishing creditor, can reliably determine whether, and for what period, 15 U.S.C. 1673 may bar an employer from honoring a particular garnishment order. That statute imposes the duty on the employer to honor its limits, because only the employer actually knows both the amount of the debtor's disposable pay and the number, amount, relative priority, and duration of all withholding orders that may affect the debtor. The court or administrative body that issues a garnishment order meets its duty under 15 U.S.C. 1673(c) by stating in the garnishment order that the employer must pay no more than the amount permitted by that statute. Standard Form 329B, the garnishment order prescribed for Federal agencies by Treasury, thus directs the employer to pay the lesser of the amount permitted under 15 U.S.C. 1673 or the amount determined by the agency (either 15 percent of disposable pay or a lesser amount).

Therefore, these regulations, consistent with Treasury regulations, do not recognize as a valid defense to a garnishment action a contention by the debtor that the proposed withholding order, if honored by the employer, would result in withholding amounts greater than those permitted by 15 U.S.C. 1673. Because this statute provides no defense to the debtor in a proceeding under this part, it does not affect the debtor's ability to respond in a meaningful manner in the proposed garnishment. We note that neither 15 U.S.C. 1671 et seq., the garnishment statutes themselves (HEA section 488A or 31 [[Page 8149]] U.S.C. 3720D), nor Treasury regulations require the creditor who intends to garnish to include in the notice or complaint initiating collection action an explanation of the effect of 15 U.S.C. 1673. There appears to be little value in including an explanation of this statute in the notice, which is intended to explain the debtor's rights in the garnishment proceeding.

Changes: None.

Comment: A commenter stated that the regulations lacked language to mirror the assurance in the preamble that the Department provides hearings even if the request for a hearing is not made timely, and that the regulations should include this assurance.

Discussion: Section 34.8 requires the debtor to make any request for a hearing in writing, regardless of the type of hearing sought. Section 34.11(c)(1)

expressly states that we provide a hearing even if that written request for a hearing is untimely. That provision contains the assurance that the commenter describes, and no additional language is needed to ensure that right.

Changes: None.

Comment: A commenter stated that regulations should require that the Department make available for inspection by the debtor prior to the hearing any evidence on which the Department intends to rely to establish the existence and amount of the debt.

Discussion: The proposed rule, in Sec. 34.5 and 34.6(a), stated that the Department would explain in the pre-garnishment notice that the debtor may inspect and copy records regarding the debt, and in Sec. 34.14(a)(2) further provided that the Department would, on request, make available to the debtor, as part of the hearing process, the evidence which we believe establishes the existence and amount of the debt. These provisions ensure that the debtor has an opportunity to examine the evidence on which the Department's claim rests, in a timely manner, that permits the debtor effectively to respond with evidence and argument before a decision is issued. No change is needed.

Changes: None.

#### Conditions for an Oral Hearing (Sec. 34.9)

Comment: A commenter objected to the requirement that the objecting debtor who seeks an oral hearing must state reasons why the objection cannot be satisfactorily reviewed based on the records, including any material provided by the debtor. The commenter objected that this requirement places an unfair burden on borrowers, many of whom may be low-income or unsophisticated.

Discussion: By requiring the debtor to show that an oral hearing is actually needed to resolve the disputed facts, the regulations adopt the same approach used in judicial proceedings, the paradigm of due process. Courts routinely dispose of defenses--including those raised by pro se or unsophisticated defendants--through summary judgment rulings, and that disposition meets constitutional due process standards. The Department has limited resources available to conduct oral hearings; published statistics show that the Department received approximately 9000 requests for hearings in its HEA garnishment actions in FY 2000. General Accounting Office: Debt Collection Improvement Act of 1996: Status of Selected Agencies' Implementation of Administrative Wage Garnishment (GAO-02-313) p. 16. Limitations on resources do not warrant curtailing the rights of debtors, but do militate in favor of the

Department, like Federal courts exercising summary judgment authority, avoiding unnecessary hearings.

Consistent with Treasury regulations applicable to offset proceedings, 31 CFR 901.3(e), and to DCIA garnishment actions, 31 CFR 285.11(e), the Department in these regulations simply requires the debtor who seeks an oral hearing to show a good reason why we cannot resolve the disputed issues by reviewing the debt records. This is a common-sense standard that we have generously applied for years in Federal offset proceedings. The Department sees no readily articulated and sensible lesser standard, and no reason to commit in these regulations to provide an oral hearing on request regardless of the nature of the objection or the kind of evidence available.

Proposed Sec. 34.10(a) stated that a paper hearing would be held upon request, but inadvertently omitted the word "or" before stating that paper hearings would be provided if we conclude that we can resolve the issues raised by an objection without an oral hearing.

Changes: Section 34.10(a) of the proposed rule is revised to state that we provide a paper hearing upon request by the debtor or if an oral hearing was requested but we determine that we can resolve the issues raised by the objection through a review of the written record regarding the debt.

Comment: A commenter urged that, for in-person or telephone hearings, the regulations be revised to state that the Department must send a copy of the hearing file to the debtor prior to the hearing.

Discussion: The Department has used, and will continue to use, a pre-garnishment notice that encourages the debtor to request copies of the records that pertain to the debt to be collected by garnishment, and to do so before the hearing, and indeed before the submission of the actual objection to the proposed garnishment. The proposed rule in Sec. 34.5(c)(1) provides that the Department makes these records available on request. If the debtor does not choose to request and review these records, we see no need to incur the expense of sending the records to the debtor.

Changes: None.

#### Conduct of Hearings (Sec. 34.13)

Comment: One commenter disagreed with the statement in the preamble that contractors cannot rule on debtor objections. The commenter considered the statement that this activity was an inherently governmental function to imply that student loan guarantors could not use independent hearing

officials, including administrative law judges and other parties, whom they retain by contract.

Discussion: The Department intended no inference that student loan guarantors could not use contracts to retain independent hearing officials. HEA section 488A requires student loan guarantors to appoint administrative law judges or to retain independent hearing officials, not under the supervision or control of the guarantor, to adjudicate debtor objections to the proposed garnishment; that retainer agreement will obviously be embodied in a contract with the hearing official. As Treasury stated in promulgating controlling regulations, Federal agencies "may not contract out 'inherently governmental functions,' . . . [but] contractors can[ ] assist agencies" by mailing notices, orders authorized by the agency, receiving documents from debtors and employers, and arranging repayment agreements approved by the agency. 63 FR 25137. Unlike these supporting functions, adjudication of debtor disputes to the compulsory taking of a portion of their wages by garnishment is an inherently governmental function. The Department therefore cannot use contractors to decide debtor objections. The Department recognizes that the HEA requires guarantors to use individuals, including administrative law judges, who are independent of the guarantor to perform this adjudication function. We fully agree that guarantors can arrange for these services by contracts.

Changes: None.

Comment: One commenter agreed with the statement that only qualified employees of the Department may conduct hearings, but objected to the statement that the Department may use contracted services to analyze debtor objections and propose appropriate findings to those objections. The commenter requested that the Department clarify that any findings proposed by contractors are not final, and that Department hearing officials must exercise independent judgment and provide independent rationales for decisions. The commenter further urged that the regulations bar use of employees of collection agencies or other agencies collecting debts on behalf of the Department to analyze objections. The commenter urged that contractors receive specific training on borrower defenses and other critical hearing procedures.

Discussion: The Department agrees with the commenter that Department contractors cannot conduct hearings or rule on objections to garnishment, because those are inherently governmental functions. As discussed earlier, HEA section 488A expressly requires guarantors to use independent hearing officials not under the control of

the guarantor to judge debtor objections to garnishment. In contrast, both HEA section 488A and 31 U.S.C. 3720D direct the Department itself to provide a hearing and decide debtor objections. The Department cannot, therefore, delegate this duty to a contractor. This does not, however, preclude use of contractors to analyze debtor objections and propose resolutions on those objections. Department officials must therefore consider the objections raised by each debtor, and must issue a decision on those objections. Unless and until a Department official makes findings and issues a decision, there is no ruling on a debtor's objections. [[Page 8150]] The Department agrees that contractors used to prepare recommendations should be trained to properly analyze debtor objections. However, because contractor analyses of those objections are clearly no more than recommendations to Department staff and have no binding effect whatever on the debtor, we see no need to include language in the regulations to characterize contractor analyses.

Debtors have the right, under these regulations, to avoid garnishment by entering a voluntary repayment agreement. The Department uses its collection contractors to negotiate repayment terms with those debtors sent notice of garnishment who wish to repay voluntarily. Collection contractors have a financial interest in recovery, whether by garnishment or by voluntary payment, and the Department does not use them to prepare recommended analysis for a hearing on any objection, including hardship objections. These regulations ensure a hearing by a designated Department official for any debtor who does not agree to repay voluntarily and has requested a hearing.

Changes: None.

Comment: A commenter opined that the regulations should adopt guidelines and training procedures for any Department staff designated to conduct hearings of debtor objections. The commenter urged that the regulations should require the Department to provide debtors a list of hearing officials available for review of their objections so that they may object to those they consider unqualified or biased.

Discussion: Any decision issued by the Department on debtor objections to garnishment is subject to judicial review under Administrative Procedure Act (APA). The Department has a strong interest in seeing that Department staff who conduct hearings do so in conformance with applicable substantive and procedural law. Therefore, the Department sees little value in adding generalized

language to this part that would purport to govern its own internal training procedures.

The commenter points to no administrative or judicial tribunal that allows debtors to select the individual to hear their cases, and shows no good reason to adopt that course in this part. The commenter urged that this would permit a debtor to reject a particular individual who the debtor considers biased against the debtor. A debtor who objects to a hearing official as biased, can object as part of the hearing process to that individual serving as hearing official.\5\ Hearings under this part are not subject to 5 U.S.C. 556, which requires the agency to consider and include in the administrative record its ruling on any objection to a proposed hearing official. However, the Department must meet that test, because it must consider and rule on any objection raised by the debtor, including an objection that the hearing official is biased. That determination, and any claim that a decision was the result of bias by the hearing official, may be tested on judicial review.

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\5\ Grounds for disqualification in proceedings under this part would include those applicable to Federal court proceedings; as pertinent here, Federal law requires disqualification of a judge in a Federal court proceeding who has personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts. 28 U.S.C. 455(b)(1).

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No Department hearing official benefits financially from the outcome of a hearing, and Federal ethics rules prohibit a hearing official from participating in a matter in which the individual has a financial interest. 5 CFR 2635.402(a). The Department therefore sees no need to add provisions to these regulations offering debtors a choice of hearing officials as a remedy for speculation that some Department official may harbor bias against a particular debtor.

Changes: None.

#### Content of Decision; Basis of Decision on Evidence Considered at Hearing (Sec. 34.17)

Comment: A commenter stated that regulations should require that hearing decisions be based only on evidence presented at the hearing and should clearly state the grounds for denial of an objection.

Discussion. Section 34.17 of the proposed rule provided that the decision would include the hearing official's conclusions and reasoning for each objection presented. We agree that the decision must rest on evidence presented in the hearing, but that hearing process is informal and may extend beyond the actual oral hearing. The regulations do not bar debtors from presenting in oral hearings objections not raised in the request for hearing, and do not require debtors who seek oral hearings to disclose all the evidence on which they will rely to support an objection. Because new objections and evidence first presented by the debtor during an oral hearing may require the Department to obtain further evidence in order to evaluate, the hearing official may leave the record open both for the Department and for the debtor. We may need to obtain additional evidence to respond to objections and evidence submitted by a debtor in either an oral or paper hearing.

To ensure that evidence we may obtain after the notice is sent is fairly considered in the hearing process, the debtor must have an opportunity to examine and respond to that evidence before the hearing official makes his or her decision. Therefore, if we intend to consider evidence that was not included in our records of the debt that were available for inspection prior to the hearing, the hearing official will consider that evidence only after we notify the debtor, make that evidence available to the debtor, and provide a reasonable period for rebuttal evidence and argument by the debtor.

The proposed regulations did not address the situation in which the debtor learns after filing the request for hearing that specific relevant evidence is available, and wishes to submit that evidence and have it considered in the proceeding. We believe that the debtor should have the opportunity to do so, if that evidence can be promptly acquired and produced. To ensure that this opportunity does not unduly delay completion of the hearing and issuance of the decision, it is reasonable to expect the debtor to make a specific request that the record be held open for consideration of such evidence, and to describe in that request what the evidence is, and why it is relevant.

The proposed regulations did not address situations in which a debtor requests access to records, and then seeks to submit evidence and objection based on a review of our records of the debt, or seeks--but is denied--an oral hearing at which he or she would offer evidence and objections. Department regulations for the Treasury Offset Program assure a debtor who seeks access to Department debt records with reasonable diligence--within 20 days of the date



of the notice of proposed offset--an extended deadline for presenting evidence and argument opposing the offset. 34 CFR 30.33(d). A similar assurance is appropriate in these proceedings. Finally, the regulations can clarify that a debtor who intended to present evidence and objection at an oral hearing should have an opportunity to submit both in written form if that request for an oral hearing is denied.

The time provided for submission of evidence and objections not included in the request for hearing may vary depending on the situation. We believe that this period should ordinarily be at least seven business days, but could in particular circumstances be shorter, or, as resources may permit, longer. In any event, the particular deadline applicable in each situation should be communicated to the debtor.

Changes: Section 34.17 is modified to provide that the decision rests on evidence in the hearing record, and includes a description of the evidence considered in making that decision. Section 34.13 is modified to add a new paragraph (d) to state the instances in which the hearing official will accept evidence and argument not included in the request for hearing or presented during an oral hearing.

Section 34.13(d)(4)(i) provides that if the debtor requests access to records within 20 days of the date of the notice, the debtor may submit evidence and objection for a limited time after we provide the requested records. Section 34.13(d)(4)(ii) and (c) provide that if we obtain and intend to have considered in the hearing process evidence that was not included in the records that were available for inspection by the debtor when notice was sent, we first notify the debtor regarding the new evidence, make this evidence available to the debtor, and provide a reasonable period for rebuttal evidence and argument. Section 34.13(d)(4)(iii) provides for a brief extension of time, upon request, for a debtor to submit specifically-identified evidence not previously presented, and to raise an objection based on that evidence. Section 34.13(d)(4)(iv) provides an opportunity to submit evidence and argument after a request for an oral hearing is denied.

Comment: A commenter urged that the regulations require that information about reconsideration and appeal rights be included in the decision, and that this information be displayed in the decision in large bold letters.

Discussion: The regulations now state that the garnishment hearing decision is final agency action for purposes of the judicial review under the APA. We have no administrative appeal procedures for

garnishment decisions, and therefore no administrative appeal rights to explain in the [[Page 8151]] decision. We currently state in a garnishment decision that the debtor may contest the ruling by filing suit in Federal district court and we expect to continue to do so. These regulations to create reconsideration rights, and we agree that the decision offers a useful vehicle for presenting those rights to the debtor.

Changes: Section 34.17(a) is modified to provide that the decision includes an explanation of reconsideration rights available to the debtor.

Comment: A commenter believed that we should state that the position taken in the proposed rule regarding the effect of a failure to issue a decision within 60 days of an untimely request for a hearing applies as well to garnishment action by guarantors under the HEA.

Discussion: We stated in the preamble that the statutory requirement that a hearing decision be issued within 60 days of the debtor's request does no more than require the garnishing party to suspend any outstanding garnishment order if a hearing decision is not issued within 60 days of the debtor's request, but does not bar resumption of garnishment, or, if an order has not been issued, issuance of the order, after an adverse hearing decision is issued. As explained there, this conclusion follows from well-established case law addressing the effect of statutory deadlines on agency action. *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). Pursuant to the principle articulated in these rulings, failure by a guarantor to meet the HEA 60-day decision requirement, like a failure to meet the same duty under the DCIA addressed in these rules, does no more than suspend the garnishor's right to issue or continue in effect an existing garnishment order.

Changes: None

#### Financial Hardship; Reconsideration (Sec. 34.24, 34.25)

Comment: A commenter stated that provisions regarding the right to claim financial hardship were inconsistent and should be clarified to allow the debtor to raise hardship at any time.

Discussion: The regulations provide that the debtor may object to garnishment on financial hardship grounds at any time, but that the Department in general commits to provide a hearing on a hardship objection no earlier than six months after we issue a garnishment order. The Department recognizes that

in some instances, financial circumstances may change substantially within a relatively short time, so that a debtor not faced with hardship at the time of the notice or hearing may suffer financial setbacks before six months of garnishment have been completed. The regulations therefore provide that the Department will consider a hardship objection raised within that six-month period if in the judgment of the Department, the debtor shows in the request for review that his or her financial circumstances have substantially worsened after the notice of proposed garnishment on account of an event such as disability, divorce, or catastrophic illness.

Section 34.7 of the proposed regulations stated that we provided no hearing regarding objection to the rate or amount of withholding on a new garnishment action if, within the past 12 months, we had begun garnishment proceedings and determined in those proceedings an appropriate withholding amount, either by decision or by terms of voluntary agreement. This section applies to those circumstances in which we start garnishment to collect a different debt than that which we have already issued a garnishment order, or we start garnishment action to enforce a debt after the debtor breached an agreement to repay that debt after we had given notice of intent to collect that debt by garnishment. In both voluntary repayment agreements and hardship determinations, the Department typically states that the determination is effective for a period of six months, after which the debtor must demonstrate that he or she cannot pay more than the installment amount agreed to or the withholding rate determined to be appropriate. The 12-month period in proposed Sec. 34.7(b) would have been inconsistent with this practice and with the general commitment in proposed Sec. 34.24(c)(1) to consider a hardship objection within six months after the garnishment took effect.

Changes. Section 34.7(b) is revised first to state that a hearing is available to contest the amount or rate of a proposed garnishment only if the rate or amount there proposed exceeds the rate or amount we had agreed to within the preceding six months in an agreement resolving a prior garnishment proposal. Second, the same provision is revised to remove the restriction of hardship objection where a hearing decision within the preceding 12 months had set the withholding rate or amount.

Comment: A commenter objected that the grounds for hardship should not be compared to the grounds for undue hardship discharge of student loans in bankruptcy. The commenter disagrees that the case law interpreting the undue hardship requirement

provides useful guidance, because a hardship determination under this rule is binding for six months, while a bankruptcy hardship determination in bankruptcy is permanent and takes into account the expected long-term financial difficulties of the debtor.

Discussion: The commenter suggests that the degree of financial hardship that merits a financial hardship under this rule differs from, and is less than, the kind of financial hardship needed to support a claim of undue hardship in bankruptcy. The observation is accurate, because these regulations measure hardship using the national standards, which compare the debtor's expenses to the average amounts incurred by families of similar size and income, while bankruptcy hardship analysis compares the debtor's expenses to those needed to maintain what case law refers to as a "minimal standard of living." *Brunner v. N.Y. Higher Educ. Serv. Corp.*, 831 F.2d 395, 396 (2nd Cir. 1987). The amounts spent for living expenses by peers of the debtor will in many instances significantly exceed those justifiable for a minimal standard of living.\6\

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\\6\ The Brunner test includes two other steps not relevant to hardship claims in garnishment proceedings.

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Under these regulations, the debtor bears the burden of proving the necessity of any amounts claimed in excess of the average amounts spent by his or her peers. The debtor may contend that above-average expenses are needed for housing costs, retirement savings, tuition for private schools, charitable contributions, vehicles, utilities, and telephone charges which the debtor now incurs. Bankruptcy courts routinely address these claims in evaluating undue hardship claims; that case law can provide guidance in considering whether a debtor carries his or her burden under these regulations of proving that above-average expenses are necessary.

Changes: None.

Comment: A commenter urged that the Department include with the notice of proposed garnishment a separate form for debtors to use to claim financial hardship, which would explain the grounds for a hardship claim and how to obtain a hearing on the objection.

Discussion: The notice currently used by the Department, and that which the Department intends

to use for garnishment under these regulations, explains the debtor's right to contest the proposed garnishment on both substantive and hardship grounds. The Department may modify the format of the notice as experience demonstrates that particular changes are useful.

The Department currently sends financial statement forms to those debtors who state on their request for hearing that they intend to object on hardship grounds. The overwhelming majority of objections to proposed garnishments that the Department now receives are based on financial hardship. The Department agrees that a self-explanatory form has proven very useful to encourage debtors to present their financial circumstances in a way that makes analysis of the objection by the Department easier, but sees no reason to commit at this point in regulations to a particular form, or to a particular method of providing that form to debtors.

Changes: None.

Comment: A commenter asked that we state that positions taken in the proposed rule regarding the burden of proof of hardship and the need to present that claim by completing a financial statement disclosing the income and assets available to meet the needs of the debtor and his or her family, apply to garnishment proceedings by guaranty agencies under HEA section 488A.

Discussion. Because the debtor alone has evidence needed to prove financial hardship, we believe that financial hardship is like an affirmative defense to a claim, such as repayment. As a matter of common sense and common law, the person who claims an affirmative defense bears the burden of proving that defense by a preponderance of the credible evidence. We provide a financial statement form for debtors who claim hardship to complete, and we intend to [[Page 8152]] continue to do so. The rule itself does not bar consideration of evidence presented in other forms.

Fair consideration of hardship claims depends on full and accurate disclosure of the income and assets available to meet the needs of the debtor and his or her family. Hearing officials should reject as unsupported those hardship claims by debtors who fail to disclose completely and--for written records hearings--in a form that bears some indicia of trustworthiness, such as a statement or affirmation that the disclosure is made under penalty of perjury.

Independent hearing officials conducting hearings under HEA section 488A must rule in accordance with applicable law, including Department program

regulations. FFELP regulations do not contain any provision that expressly allocates the burden of proof of financial hardship. Section 34.21(d) does not bind either debtors whose loans are collected by guarantors, or hearing officials used by the guarantors, but rests on principles that courts generally apply to allocating the burden of proof between litigants. Those principles, as well as common sense, should persuade FFELP hearing officials to place on the debtor the burden of proof and persuasion of a hardship claim. As noted above, Sec. 34.21 does not require the debtor to use a particular financial statement form to prove hardship in garnishment proceedings under these regulations; a guarantor may adopt a rule that requires debtors to use a particular form to prove hardship in its garnishment proceedings.

Changes: None.

Comment: A commenter urged that we state that the National Standards adopted by the Internal Revenue Service (IRS) also apply to evaluation of hardship claims raised in garnishment proceedings under the HEA.

Discussion: As discussed in response to other comments, these rules apply only to debtors subject to Department garnishment action under the DCIA, and these regulations do not bind debtors in garnishment actions under the HEA by either the Department or guarantors. However, we strongly believe that the Standards provide unique and well-founded, empirically-based benchmarks of amounts needed for basic living expenses. These regulations stipulate that amounts spent up to these benchmarks are reasonable and necessary, and create an explicit rebuttable presumption that amounts claimed in excess of these benchmarks are not necessary.

Under both the HEA and the DCIA, as discussed in response to other comments, the debtor bears the burden of proof and burden of persuasion that particular expense amounts are necessary. In absence of a FFELP regulation that expressly adopts the Standards, a hearing official could conceivably accept an expense claim as necessary based on the official's own judgment, even though the claimed amount exceeded the Standards and the debtor presented no evidence to support the need for that amount. We strongly believe that such a judgment would not be well founded. The Department believes that hearing officials in HEA garnishment proceedings should accept the Standards as persuasive evidence of the amounts reasonable and necessary, and should require any debtor who claims larger amounts are needed to support that contention by persuasive evidence. If debtors in HEA

garnishment proceedings are properly held to their burden of proof, there should be little practical difference between the presumption created in these regulations and the use of the Standards as reliable empiric evidence of reasonableness.

Changes: None.

#### Amount Withheld Under Garnishment Order (Sec. 34.19)

Comment: A commenter objected to the proposal that the Department might issue multiple garnishment orders under this rule regarding a debtor who owes several debts to the Department. The commenter believes that neither the DCIA nor the HEA allows multiple garnishment orders, and believes that Congress intended to limit garnishment to 10 percent of disposable pay.

Discussion: Treasury rules interpret the DCIA to allow a Federal agency that holds several claims against a debtor to issue more than one garnishment order to recover those claims. 31 CFR 285.11(i)(3)(iii). However, the comment is well taken that the total amount that may be withheld pursuant to orders issued by a single agency cannot exceed 15 percent of the debtor's disposable pay. 31 CFR 285.11(i)(2), (3)(iii).

Changes: The regulations are modified in Sec. 34.20(b) to state that the aggregate amount that may be withheld by an employer pursuant to one or more orders we issue may not exceed 15 percent of the debtor's disposable pay.

Comment: A commenter urged that Sec. 34.19 be changed to state that the amount required to be withheld by the employer be 15 percent of disposable pay, rather than the amount directed in the garnishment order. The commenter believed this change to be needed to make the employer and debtor both aware of their potential liability if they do not enter into voluntary repayment of the debt. The commenter also believed that the change to the proposed language would help the employer validate that the amount demanded in the order is accurate.

Discussion: Section 34.19 describes the amount that the employer must withhold pursuant to the garnishment order. That order is sent to the employer, not the debtor, and therefore has no effect on the debtor's ability to repay voluntarily. The notice, on the other hand, is sent to the debtor and warns of the potential garnishment of 15 percent of disposable pay; the notice is intended to motivate the debtor to

repay voluntarily. If we determine that withholding at that rate would cause hardship, but that withholding a smaller amount would not do so, we must order the employer to withhold that lesser amount. HEA section 488A similarly requires guarantors, and the Department when garnishing under that HEA authority, to order withholding of a lesser amount if the debtor proves that withholding ten percent would cause hardship. In any case, the order must always state clearly the amount to be withheld, whether as a percentage of disposable pay or as a specific amount. The employer has no standing to scrutinize or object to a garnishment order, and has no need to be assured that the amount claimed is accurate. That duty lies with the government or the guarantor; the employer is entitled to rely on the garnishing creditor's representation that the debt is owed, and no change is needed to facilitate a review that the employer need not conduct.

Changes: None.

Comment: A commenter urged that we state that the position taken in Sec. 34.24(c)(1) of the proposed rule, that we will consider or reconsider an objection on hardship grounds only after an order has been outstanding for six months, applies to garnishment action by student loan guarantors under the HEA.

Discussion: These regulations allow the debtor to raise or renew a hardship claim after an order has been outstanding for six months, but also allow consideration of a hardship claim earlier if the debtor demonstrates substantially worsened financial circumstances.

34 CFR 34.24(c)(2). This standard provides a reasonable balance between the debtor's interest in having potentially changed circumstances promptly evaluated and the government's need for finality for its determinations. This regulation is a procedural rule binding only in garnishment proceedings under this part. In the absence of a comparable FFELP regulation, however, whether and when a guarantor provides for reconsideration of a hardship claim remains a case-by-case determination.

Changes: None.

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## Appendix 18 Section 152 of the Internal Revenue Code: “dependents”

**(a)** General definition: For purposes of this subtitle, the term "dependent" means any of the following individuals **over half of whose support, for the calendar year in which the taxable year of the taxpayer begins, was received from the taxpayer** (or is treated under subsection (c) or (e) as received from the taxpayer):

**(1)** A son or daughter of the taxpayer, or a descendant of either,

**(2)** A stepson or stepdaughter of the taxpayer,

**(3)** A brother, sister, stepbrother, or stepsister of the taxpayer,

**(4)** The father or mother of the taxpayer, or an ancestor of either,

**(5)** A stepfather or stepmother of the taxpayer,

**(6)** A son or daughter of a brother or sister of the taxpayer,

**(7)** A brother or sister of the father or mother of the taxpayer,

**(8)** A son-in-law, daughter-in-law, father-in-law, mother-in-law, brother-in-law, or sister-in-law of the taxpayer, or

**(9)** An individual (other than an individual who at any time during the taxable year was the spouse, determined without regard to section 7703, of the taxpayer) who, for the taxable year of the taxpayer, has as his principal place of abode the home of the taxpayer and is a member of the taxpayer's household.

**(b)** Rules relating to general definition :

For purposes of this section -

**(1)** The terms "brother" and "sister" include a brother or sister by the half-blood.

**(2)** In determining whether any of the relationships specified in subsection (a) or paragraph (1) of this subsection exists, a legally adopted child of an individual (and a child who is a member of an individual's household, if placed with such individual by an authorized placement agency for legal adoption by such individual), or a foster child of an individual (if such child satisfies the requirements of subsection (a)(9) with respect to such individual), shall be treated as a child of such individual by blood.

**(3)** The term "dependent" does not include any individual who is not a citizen or national of the United States unless such individual is a resident of the United States or of a country contiguous to the United States. The preceding sentence shall not exclude from the definition of "dependent" any child of the taxpayer legally adopted by him, if, for the taxable year of the taxpayer, the child has as his principal place of abode the home of the taxpayer and is a member of the taxpayer's household, and if the taxpayer is a citizen or national of the United States.

**(4)** A payment to a wife which is includible in the gross income of the wife under section 71 or 682 shall not be treated as a payment by her husband for the support of any dependent.

**(5)** An individual is not a member of the taxpayer's household if at any time during the taxable year of the taxpayer the relationship between such individual and the taxpayer is in violation of local law.

**(c)** Multiple support agreements: For purposes of subsection (a), over half of the support of an individual for a calendar year shall be treated as received from the taxpayer if -

**(1)** no one person contributed over half of such support;

**(2)** over half of such support was received from persons each of whom, but for the fact that he did not contribute over half of such support, would have been entitled to claim such

individual as a dependent for a taxable year beginning in such calendar year;

(3) the taxpayer contributed over 10 percent of such support; and

(4) each person described in paragraph (2) (other than the taxpayer) who contributed over 10 percent of such support files a written declaration (in such manner and form as the Secretary may by regulations prescribe) that he will not claim such individual as a dependent for any taxable year beginning in such calendar year.

(d) Special support test in case of students: For purposes of subsection (a), in the case of any individual who is -

(1) a son, stepson, daughter, or stepdaughter of the taxpayer (within the meaning of this section), and

(2) a student (within the meaning of section 151(c)(4)),<sup>1</sup>

amounts received as scholarships for study at an educational organization described in section 170(b)(1)(A)(ii) shall not be taken into account in determining whether such individual received more than half of his support from the taxpayer.

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<sup>1</sup> §151(C)(4) Student defined: the term "student" means an individual who during each of 5 calendar months during the calendar year in which the taxable year of the taxpayer begins -

(A) is a full-time student at an educational organization described in section 170(b)(1)(A)(ii); or

(B) is pursuing a full-time course of institutional on-farm training under the supervision of an accredited agent of an educational organization described in section 170(b)(1)(A)(ii) or of a State or political subdivision of a State.

(e) Support test in case of child of divorced parents, etc.

(1) Custodial parent gets exemption: Except as otherwise provided in this subsection, if -

(A) a child (as defined in section 151(c)(3))<sup>2</sup> receives over half of his support during the calendar year from his parents -

(i) who are divorced or legally separated under a decree of divorce or separate maintenance,

(ii) Who are separated under a written separation agreement, or

(iii) Who live apart at all times during the last 6 months of the calendar year, and

(B) Such child is in the custody of one or both of his parents for more than one-half of the calendar year,

Such child shall be treated, for purposes of subsection (a), as receiving over half of his support during the calendar year from the parent having custody for a greater portion of the calendar year (hereinafter in this subsection referred to as the "custodial parent").

(2) Exception where custodial parent releases claim to exemption for the year: A child of parents described in paragraph (1) shall be treated as having received over half of his support during a calendar year from the noncustodial parent if -

(A) the custodial parent signs a written declaration (in such manner and form as the Secretary may by regulations prescribe) that such custodial parent will

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<sup>2</sup> § 151(c)(3) Child defined: the term "child" means an individual who (within the meaning of section 152) is a son, stepson, daughter, or stepdaughter of the taxpayer.

not claim such child as a dependent for any taxable year beginning in such calendar year, and

**(B)** the noncustodial parent attaches such written declaration to the noncustodial parent's return for the taxable year beginning during such calendar year.

For purposes of this subsection, the term "noncustodial parent" means the parent who is not the custodial parent.

**(3)** Exception for multiple-support agreement: This subsection shall not apply in any case where over half of the support of the child is treated as having been received from a taxpayer under the provisions of subsection (c).

**(4)** Exception for certain pre-1985 instruments

**(A)** In general: A child of parents described in paragraph (1) shall be treated as having received over half his support during a calendar year from the noncustodial parent if -

**(i)** a qualified pre-1985 instrument between the parents applicable to the taxable year beginning in such calendar year provides that the noncustodial parent shall be entitled to any deduction allowable under section 151 for such child, and

**(ii)** the noncustodial parent provides at least \$600 for the support of such child during such calendar year.

For purposes of this subparagraph, amounts expended for the support of a child or children shall be treated as received from the noncustodial parent to the extent that such parent provided amounts for such support.

**(B)** Qualified pre-1985 instrument: For purposes of this paragraph, the term "qualified pre-1985 instrument" means

any decree of divorce or separate maintenance or written agreement -

**(i)** Which is executed before January 1, 1985,

**(ii)** Which on such date contains the provision described in subparagraph (A)(i), and

**(iii)** Which is not modified on or after such date in a modification which expressly provides that this paragraph shall not apply to such decree or agreement.

**(5)** Special rule for support received from new spouse of parent: For purposes of this subsection, in the case of the remarriage of a parent, support of a child received from the parent's spouse shall be treated as received from the parent.

**(6)** Cross reference For provision treating child as dependent of both parents for purposes of medical expense deduction, see section 213(d)(5)

## Appendix I: AWG Branch Frequently Asked Questions

### A. Frequently Asked Questions Concerning the Garnishment Amount.

1. Why do I have to change the garnishment withholding from 10% to 15% of my employee's wages? The Department of Education is now issuing withholding orders for up to 15% of the disposal pay of individuals who owe a debt to Education. The Debt Collection Improvement Act of 1996, at 31 U.S.C. 3720D, authorizes this withholding order. The Department has issued orders pursuant to authority of section 488A of the Higher Education Act, 20 U.S.C. 1095a, and many such orders remain outstanding and effective.

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2. If someone else already is garnishing my employee's disposable pay, do I still have to comply with the Administrative Wage Garnishment (AWG) Order? Whether you must currently withhold to honor Education's order depends on the amount now being withheld from the employee's pay to meet other garnishment orders. Federal law (15 USC §1673) imposes a maximum on how much can be withheld from an employee's pay for garnishment orders; except where the order in question is a family support order, no more than 25% of the employee's disposable pay, or the amount the exceeds 30 times the minimum wage, whichever is smaller. If, for example, that employee is currently being garnished for student loan debts under two separate orders for 10% withholding, Education's newly received order must be honored to the extent of the remaining 5% of the employee's disposable pay. On the other hand, if the prior garnishment(s) account for 25%, then nothing would have to be withheld under the AWG Order, at least until the prior garnishment(s) was satisfied or expired.

Remember:

That same Federal law also protects from garnishment a "floor" level of income equal to 30 times the Federal minimum wage per week.

Some garnishments expire; AWG withholding orders issued under the authority of section 488A Higher Education Act, 20 U.S.C. 1095a, or 31 U.S.C. 3720D do not expire.

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3. How do I use the Wage Garnishment Worksheet to calculate my employee's wages? The Wage Garnishment Worksheet (Standard Form 329C) is enclosed with the Wage Garnishment Order (Standard Form 329B) to assist you in determining the proper amount to withhold. You may use a copy of the Worksheet each pay period to calculate the Wage Garnishment Amount to be deducted from the debtor's disposable pay.

You may also use the U.S. Department of Treasury Financial Management Service's calculator to assist in your calculations at <http://fms.treas.gov/debt/awg.html#forms>.



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4. 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 this is the smaller of an amount equal to 25% of the debtor's disposable pay less the amount or amounts withheld under the garnishment order or orders with priority over our order. See the examples below:

Examples A&B

Note 1: As explained on the Order and worksheet, the total amount of an employee's wages subject to garnishment of any kind is the lesser of 25% of the employee's disposable pay or the amount exceeding 30 times the minimum wage (\$5.15 / hour).

Note 2: Federal law sets a higher limit on disposable pay subject to garnishment for a child support order. 15 U.S.C. 1673(b)(2).

Examples A & B are based on an employee earning enough to make 25% of disposable pay the only limit applicable to handling the specific garnishment orders in the examples.

<u>Creditor (A)</u>	<u>Date order served on Employer</u>	<u>Requested Garnishment %</u>
Child Recovery Service (CRS)	01/15/03	20%
United Student Aid Fund (USAF)	02/10/01	10%
US Dept of Education (ED)	11/30/03	15%

Answer

Employer should pay CRS first 20% of the employee's disposable pay, and the remaining 5% of wages available for withholding to USAF. This exhausts the 25% available for withholding (15 U.S.C. 1673(a)(2)). The employer cannot honor any part of the ED order until either of the prior orders are satisfied or cancelled.

<u>Creditor (B)</u>	<u>Date order served on Employer</u>	<u>Requested Garnishment %</u>
Ford Motor Credit (FMC)	12/02/03	Full amt available under law
US Dept of Education (ED)	12/02/03	15%
Sears Home Central (SHC)	03/18/02	Full amt available under law

Answer

SHC's order is first in time, thus the Employer should pay SHC the full 25% of disposable pay authorized by 15 U.S.C. 1672(a) until the SHC order expires or the debt is paid in full. The Employer should then pay ED 15%, and FMC the remaining 10% of disposable pay subject to withholding

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B. Frequently Asked Questions General Topics.

5. May I send the garnishment payments electronically? No. Not at this time.

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6. Why isn't this student debt or garnishment shown on my employee's credit bureau report?

Federal law generally bars credit bureaus from reporting negative information on education loan debts more than seven years after the event being reported on many education loans, default - and, if a guaranteed loan, payment on that guarantee - has occurred more than seven years ago.

Credit reports generally do not include specific information on action taken by a creditor to collect a debt, other than entry of judgment. Administrative Wage Garnishments do not depend on a judgment,

neither the issuance of a garnishment order nor other collection the Department to credit bureaus, or included in reports issued by the bureaus reports actions.

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7. Does ED garnishment order take priority over all other garnishment orders? No. Federal regulations governing administrative wage garnishment orders require the employer to honor an ED wage garnishment order before any wage withholding order received by the employer after the ED order other than a family support order. If a specific Federal law requires a different priority that Federal law controls. ED's wage garnishment order remains effective until cancelled, and need not be reissued to remain in effect.

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 this is the smaller of an amount equal to 25% of the debtor's disposable pay less the amount or amounts withheld under the garnishment order or orders with priority over our order. See the examples below:

Examples A&B

Note 1: As explained on the Order and worksheet, the total amount of an employee's wages subject to garnishment of any kind is the lesser of 25% of the employee's disposable pay or the amount exceeding 30 times the minimum wage (\$5.15 / hour).

Note 2: Federal law sets a higher limit on disposable pay subject to garnishment for a child support order. 15 U.S.C. 1673(b)(2).

Examples A & B are based on an employee earning enough to make 25% of disposable pay the only limit applicable to handling the specific garnishment orders in the examples.

<u>Creditor (A)</u>	<u>Date order served on Employer</u>	<u>Requested Garnishment %</u>
Child Recovery Service (CRS)	01/15/03	20%
United Student Aid Fund (USAF)	02/10/01	10%
US Dept of Education (ED)	11/30/03	15%

Answer

Employer should pay CRS first 20% of the employee's disposable pay, and the remaining 5% of wages available for withholding to USAF. This exhausts the 25% available for withholding (15 U.S.C. 1673(a)(2)). The employer cannot honor any part of the ED order until either of the prior orders are satisfied or cancelled.

<u>Creditor (B)</u>	<u>Date order served on Employer</u>	<u>Requested Garnishment %</u>
Ford Motor Credit (FMC)	12/02/03	Full amt available under law
US Dept of Education (ED)	12/02/03	15%
Sears Home Central (SHC)	03/18/02	Full amt available under law

Answer

SHC's order is first in time, thus the Employer should pay SHC the full 25% of disposable pay authorized by 15 U.S.C. 1672(a) until the SHC order expires or the debt is paid in full. The Employer should then pay ED 15%, and FMC the remaining 10% of disposable pay subject to withholding

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8. Should employers withhold from a sub-contractor's compensation? No, because a sub-contractor is not an employee of the employer.

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9. Should an employer withhold from amounts payable to the employee as per diem reimbursement for travel expenses? No. Disposable pay includes only compensation owed to an employee for services rendered by the employee whether termed wages, salary, bonuses, commissions or vacation pay. Per diem payments are not compensation for personal services, but rather reimburse the employee for expenses incurred by the employee in the course of employment, and are therefore not subject to withholding pursuant to a Department garnishment order.

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10. Am I responsible as the employer for withholding on tips received by my employee? If you hold in hand tip money owed to your employee, then you are responsible for withholding from those funds. If you do not have possession of tips, you are not responsible for withholding from those funds.

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11. The Merchant Seamen Protection and Relief Act exempts my employee from your garnishment.

The Merchant Seamen Protection and Relief Act, 46 U.S.C. § 11109 protects seamen and others subject to its protection from garnishment. Although this Act does not specifically address administrative wage garnishment under section 488A of the Higher Education Act, 20 U.S.C. §1095a, or under 31 U.S.C. § 3720D, we believe that this protection applies to garnishments under those authorities.

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12. May I refer my employee to the contact person listed in the Department's withholding order? No. Prior to issuing any order, ED has already given each debtor an opportunity for a hearing and repayment terms, by notice sent to the best address ED has. The contact person and Internet email address listed on the order is to assist the employers in complying with the withholding order. In addition to assistance provided by the contact person, employer may speak with a Department Loan Analyst at (404) 562-6012 regarding the withholding order.

Reminder: A telephone call or email does not replace the requirement of completing and returning the employer Certification (ED-329D) to the Department. Federal regulations (34 CFR 34.21(b)) require you to complete and return the certification within 20 days of receipt.

#### Employee Referral:

The Department provides each individual an opportunity for a hearing for objections to garnishment, but requires that a request for hearing be made in writing. A request for hearing should be sent to the U.S. Department of Education, ATTN: Hearing Branch, 111 Canal Street, Chicago, Illinois. Your employee may also access information concerning the hearing process at our website at <http://www.ed.gov/offices/OSFAP/DCS/awg.html>.

13. I have received an AWG withholding order from a guaranty agency - is a guaranty agency also authorized to garnish employee wages for student loan debts? Yes, guaranty agencies are authorized by section 488A of the Higher Education Act, 20 U.S.C. 1095a; to garnish employee wages for Federally reinsured student loan debts. Student loan guarantors may order the employer of such a debtor to withhold up to 10% of the disposable pay of a defaulted borrower to repay the loan. For a list of

guaranty agencies, see the "Our Partners" section at the bottom of this web page. If you have a question concerning a guaranty agency, call our office at (404) 562-6013.

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14. I am told that my state law forbids wage garnishment, so can't I just ignore the AWG Order?

No. Federal law, both 20 USC §1095a and 31 U.S.C. 3720D, specifically preempt State law, and both authorize administrative wage garnishment.

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15. What are the consequences if I fail to comply? A non-compliant employer will be liable for, and subject to, suit by the Department to recover any amount that the employer fails to withhold after receipt of the AWG withholding order, plus attorneys' fees, costs, and, in the courts' discretion and punitive damages.

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16. Can I impose a fee for administering this? If I can, who pays? That depends on the state; some states permit the imposition of a fee or charge on the employee. Federal law does not address the issue. You should check your state's law.

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17. Borrower states he/she handles payroll and will not garnish his/her own salary. The borrower is not the employer you are. Your company has refused to comply with the U.S. Department of Education's (ED) wage garnishment order.

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18. My company was advised by your attorney not to honor the wage garnishment order. My agency does not garnish employee wages. I was advised by the Comptroller General's Office not to honor wage garnishments. Please note that 20 U.S.C. § 1095a states that the employer's failure to comply with this wage garnishment order will make the employer liable for any amounts that are not so withheld as well as for any collection costs incurred by ED as result of legal action taken.

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19. My employee's salary is currently being garnished to collect on another defaulted student loan held by a Guaranty Agency. I will implement the U.S. Department of Education's wage garnishment order after that garnishment order is satisfied in full. Please note that 15 U.S.C. Section 1673 states that salaries may be garnished a maximum of 25% of an employee's disposable pay; therefore, both garnishment orders (total garnishments up to 25% of disposable pay) can be satisfied simultaneously.

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20. My employee's salary is subject to a prior garnishment and my company is only allowed to pay one garnishment at a time. If the first in time garnishment results in a withholding of less than 25% of the employee's disposable pay, the U.S. Department of Education's (ED) wage garnishment order is still

operable to the extent that no more than 25% of the employee's disposable pay is garnished in total (either single or multiple garnishments). For example, if an employee's salary is already being garnished, but that prior garnishment only garnishes 15% of that employee's disposable pay, ED can collect up to 10% of the remaining salary.

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21. I have deducted the amount given to me on the first order, should I stop garnishing the employee's wages? No. Interest and fees continue to accrue on the unpaid principal balance. Your balance will not reflect the interest and fee accrual.

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22. My employee resigned his position and took a job with a new company to avoid garnishment. What should I do? If known, please provide ED with the new employment information if available.

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23. There is a state law that prevents wage garnishments in the state in which you reside. Your objection is not valid because the wage garnishment statute, 20 U.S.C. § 1095a, expressly preempts any state law.

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24. Michigan (or whatever state objecting) state law does not recognize wage assignments; there must be a court order or levy before a garnishment can occur. The federal administrative wage garnishment statute, 20 U.S.C. § 1095a, expressly displaces any state law to the contrary with respect to student loan garnishments. For your convenience, ED attaches a copy of this statute. Please refer to the language of the statute that reads, "[n]otwithstanding any provision of state law..." 20 U.S.C. § 1095a(a).

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25. Why does the debt balance shown on the Confirmation Report not appear to reflect the full amount already withheld and paid to ED? The report amount reflects principal and interest (ED's balance), which includes interest that has accrued since the date of the order, and ED has used some of the amount paid to defray collection costs. Near the end of the garnishment the employer will be notified of the remaining balance.

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26. Where can the borrower/employer call concerning the garnishment overpayment? Employers with additional questions about wage withholding for defaulted student loans should contact: Administrative Wage Garnishment Branch, 404-562-6013.

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27. My employee's salary is subject to a prior child support withholding totaling over 25% of his/her salary. What should I do? Complete and return the Employer's Acknowledgment of Withholding of Wages form or send a letter to us advising us of the situation. We will send a Stop Withholding of Wages Notice for your records.

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28. How do I apply the garnishment to an employee's salary, which varies each pay period? Submit garnishment withholding for any pay period exceeding the amount, if any, by which the employee's disposable wages for each workweek in a pay period exceeds thirty times the current Federal hourly minimum wage (currently \$154.50 weekly @ \$5.15 per hour).

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29. Do I have to complete and return the Employer's Acknowledgment of Withholding of Wages form? Yes. Under 31 U.S.C. 7701(c), you are required to complete and return the certification within 20 days of receipt.

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30. What is disposable pay and how do I determine my employee's disposable pay for the 15% wage garnishment withholding order? The disposable pay is your employee's remaining amount of compensation of personal services, whether or not denominated as wages, after the deduction of health insurance premiums, involuntary retirement systems and pension plans (such as teachers retirement), and any amounts required by law to be withheld (includes social security taxes and other withholding taxes, amounts withheld under a court order). See page 7 of the Employer's Handbook for further information regarding the calculation of wage withholding.

Comments from Fred Marinucci of the Office Of General Counsel

○ Subject: Negative Balances

We ought to be able to justify applying these amounts as a simple credit to the Cons. Loan debt, since they should have reduced the amount owed on the loans paid off by the Consolidation Loan in the first place. However, I think we need to treat them like unpaid refunds, and correct for interest accrued since the time they should have been credited.

Fred,

The AWG branch is working through a huge backlog of negative balance accounts--many which have been that way for 2-3 years or more in some cases. And I have a scenario that I want to run past you.

I have an account where a Direct Loan consolidation was done in 2001. Right after the consolidation posted, 2 or 3 wage garnishment payments posted to the account. Nothing was done at the time to return those payments to the borrower. So now the account comes to our attention because of the negative balance on the debt--only now we have added a defaulted Direct Loan Consolidation to the database.

I know we have been told that we have to return the money on the overpaid debt, that it can't be applied to the new debt we now have. And if it was totally a new debt, which we had added to the system, I would feel OK with that. But I feel sure that the debt with the negative balance is now a part of the defaulted consolidation that we now have, and I just hate to send that money back.

- Subject: Use of HEA AWG to collect from individuals protected by Merchant Seamen Protection and Relief Act.

— ?  
c h f

Sorry for the delay in getting back to you. After conferring with the cognizant officials here and with my counterparts at Treasury, we believe that the HEA authorizes collection by administrative wage garnishment from "seamen" and other protected by 46 U.S.C. Section 11109, Merchant Seamen Protection and Relief Act. This provision clearly protects "seamen" - which term apparently also covers longshoremen from judicial garnishment. It states, in pertinent part,

"No wages due or accruing to any...seaman...shall be subject to attachment or arrestment from any court."

We do not see this prohibition as applicable to HEA garnishment orders, which are issued by an administrative agency, and not by court.

- Subject: Refunds

It appears that this individual was sent a TOP notice by GL on ED's behalf with regard to the GL-held defaulted consolidation loan; there is a TOP applied to that loan as recent as 6/03. If ED has an overpayment (e.g., from TOP or AWG on another debt ED holds itself), ED has the right to offset that overpayment against the Federal claim on that GL-held defaulted Consolidation Loan. ED regulations state that ED does not repeat - when it intends to offset - the due process steps that have already been provided to the debtor for that debt. 34 CFR 30.22(d). To accomplish the offset, ED should send a notice to the debtor stating that our records show that the debtor owes on a Federally-reinsured defaulted loan, that the individual has been given an opportunity to dispute that debt and avoid offset by a repayment arrangement, has not done either (apparently), and that we are advising that we are applying an additional \$\$\$\$ owed to the debtor as a credit against that Cons. debt.

By the way, why would we "refund" - send money to the guarantor? We've just notified the GA to credit the debt.

This account came down on our PIC list could you look into it for me? I see a notation by you stating that AWG payments were being reversed to send loan back to Great Lakes. That notation was made 3/13/02. It appears that the account was PIF. So my question is did the loan get sent back or I should refund overpayment to borrower and closed account out as PIF?

- Subject: Disposal Pay

Good question (I knew you'd appreciate that).

The answer isn't clear; there haven't been any cases interpreting our garnishment statute yet. The term came from the Consumer Credit Protection Act, and the few cases that have interpreted the term in the Consumer Credit Protection Act have tended to find that the term disposable pay did not include payments earned as an independent contractor. Some have, however, and that means that it's an open issue.

I check with Treasury FMS, and they have been operating on a conservative reading of the garnishment statute, at least until the DCIA garnishment authority becomes well understood. Their marching orders included not rattling "employers" by demanding that they do anything differently than they do now. To check to see which payments to a contractor are really "just like wages" - and

therefore garnish able - and which ones aren't - would be hassle. Treasury suggests that where we have an independent contractor, we should send the case to DOJ, which can get an execution order and reach those payments.

That's my suggestion based on the uncertain state of the court decisions on the meaning of "disposable pay" - hold off for the time being.

- Subject: Use of HEA AWG to collect from individuals protected by Merchant Seamen Protection and Relief Act.

Question: Based on the above referenced title and section, a person employed on a vessel traveling on navigable waters is not subject to wage garnishment. My question is are we under any legal obligation to refund a federal tax refund offset as a result of the cited statute?

Answer: This statute has no application to tax refund offset.

- Subject: Tipped Employees

Unless and until Treasury in its FAQs takes a different position, I suggest that we can proceed, in light of the positions already taken and publicized by HHS and DOL, as follows:

Consider tips received by ("under the control of") the employer for the benefit of the employee as subject to garnishment.

Include tips paid by credit card as tips received by and under the control of the employer, and therefore subject to garnishment.

For the time being, do not demand that an employer include tip income reported to the employer by the employee, but not paid directly to ("under the control of") the employer, as part of the disposable pay of the employee. Including tip income reported to, but not received by, the employer would increase the total amount of "disposable pay," and therefore increase the amount that the employer could withheld pursuant to the 15% order, even though the employer would only use those funds owed to the employee that are "under the control of" the employer to honor the garnishment. If the employer chooses to include all tips in its computation of "disposable pay," that's fine. However, until the government (and Treasury in particular) publicly adopts a position that for garnishment purposes all tips are counted as part of disposable pay, it would be prudent to allow the employer to decide whether to do so or not.

Subject: Place of Employment Refusing to Verify

The only issue I've seen arising when we've not had some evidence of employment at a particular company arose when we had oral evidence (telephone call from PCA staff person) but nothing more, and the employer ignored the actual AWG Order.

There's no legal requirement to confirm employment prior to issuing an order. The only problem we may run into, eventually, may be difficulty in successfully suing that employer if we don't have independent evidence (which could be the NDNH evidence) that the debtor works or worked there.

The other wrinkle I see is a potential grievance from the debtor about disclosure of the existence of the debt to the company - which is perfectly authorized if we correctly identified that company as the employer, or at least had a reasonable basis for believing that the individual worked there. That may be a good bit less than an actual written confirmation from the company that the debtor in fact works



there.

Does this address the issue? Seeking affirmative positive confirmation is certainly a good practice, but not necessarily a prerequisite to enforcement, as long as we have some evidence that the debtor works there.

## Appendix J: Clarification of Process for Updating Or Modifying L142 Screen

TO: ALL AWG COORDINATOR  
FROM: AWG Compliance Branch  
SUBJECT: Format For Loading Accounts To The L142 Screen  
DATE: June 19, 2007

Effective June 26, 2007, all employer information loaded to the L142 screen needs to be loaded in the same format as ED staff, with the **EA# of the individual who is creating the new Federal Employer Identification Number (FEIN) or Pseudo-FEIN, listed in the contact field.** This formatting is essential as withholding orders are issued in the exact format shown below. See sample below for loading the L142 screen:

In addition, please do not use any abbreviations or use any punctuation, such as commas, periods, etc. in the employer name.

(L142)	ADMINISTRATIVE WAGE GARNISHMENT EMPLOYER INFORMATION/UPDATE SCREEN	ED4250 06/19/07 07:22:53
EMPLOYER FIN: E611452805000      CREATE PSEUDO? _		
ADDRESS TYPE: W      PSEUDO FIN: _____		
EMPLOYER NAME: <b>ASHLEY FURNITURE HOME STORES</b>		
EMPLOYER ADDRESS: <b>ATTN: PAYROLL/GARNISHMENT DEPARTMENT</b> <b>11521 BLUEGRASS PKWY</b>		
CITY: <b>LOUISVILLE</b> STATE: <b>KY</b> ZIP: <b>40299 - 2351</b>		
EMPLOYER PHONE: <b>502 - 238 - 2347</b>		
EMPLOYER FAX: <b>502 - 736 - 2851</b>		
CONTACT: <b>PAYROLL DEPT</b> <u><b>(EAXXXX)</b></u>		
ADDR STATUS: V      ADDR CHANGE DATE: 05 / 10 / 07		
UPDATE THE EMPLOYER RECORD, OR PRESS <PF5> TO REFRESH THE SCREEN PF13-L140 14-141 15-142 16-145 6-CONFIRM		

Thank you in advance for your cooperation in this matter.

Please contact John Jordan if you have any questions concerning this.

## **Appendix K. Clarification Notices Regarding AWG Processes**

**June 20, 2007**

### **NOTE TO CONTRACT ADMINISTRATORS**

As a result of recent on-site reviews, it has come to our attention that some additional guidance is needed in regard to the AWG process. Many agencies use automated employer verification systems to help identify borrower employment. In the event that an automated employer verification system is used, no borrower contact has occurred and the actual employment location of the borrower is not known, then the following steps should be taken prior to AWG initiation:

- At least 5 attempts must be made at different employer locations within the borrower's city of residence (if less than 5 locations, all locations should be contacted to locate and leave messages for the borrower - if messages are allowed)
- If the borrower is located (and messages are allowed) and/or specific locations will take messages for the borrower, then the agency needs to follow the current guidelines concerning leaving messages for borrowers at POEs (at least 2 messages, with the last message being left at least 5 days prior to AWG initiation).
- All attempts, instances where messages are left and instances where messages are not allowed to be left, should be clearly documented within the PCA notepad.

This requirement is in addition to all other pre-AWG steps (home attempts, no open disputes, no payment arrangement in past 60 days, etc.)

Please contact Lawannah Howell or David Bartnicki if you have any questions.

Lawannah Howell  
Assistant COR

## **Appendix L. Clarification Notices Regarding Documenting Employer Information For AWG Accounts**

June 29, 2007

### **NOTE TO CONTRACT ADMINISTRATORS**

Recently, AWG has provided guidance with regards to employer reference data on the L103. Due to recent off-site reviews and agency questions, the following information is being provided to help clarify agency responsibilities.

For account update purposes, agencies must provide current employment location information for the borrower (physical location where borrower works) on a daily basis. This information includes company name, address and phone number. This employer location information is also used during on-site and off-site account update reviews by Education. When employer reference information is requested during an account update review, the agency should provide records containing the employer data for where the borrower actually works.

For AWG purposes, we ask that the employment data on the L103 correlate with the information on the L140. This means if the name of the borrower's employment location (work address) on the L103 differs from the employer name on the L141, then there needs to be a notation on the L102 specifying the reason for the difference. If there is a similar name, but the address is the only variable, then a notation on the L102 is not necessary. This process will help ensure that the agency has verified employment and input the correct payroll address prior to the validation of the AWG batches. Agencies are NOT required to place payroll/garnishment employment information on the L103 as previously instructed through AWG training.

For example, if a borrower works at the Wal-Mart in Conyers, this information will be notated in the L103 screen. Since Wal-Mart's payroll/garnishment office is located in a central corporate location, a different address will be input on the L141 screen.

In addition, agencies should be maintaining the borrower's employer location information, as well as, the payroll/garnishment information separately (if not the same data) within their system.

In review, the L103 employer update requirements include updating borrower employer location information (where borrower actually works) and payroll/garnishment information, if required as spelled out above.

If you have any questions, please contact David Bartnicki or John Jordan.

Lawannah Howell  
Assistant COR

## **Appendix M. Clarification Notices Regarding Updating Employer Information on L103 Screen**

In response to your question of requiring that the debtor's current employment appear first under the reference field for employment, and that all former employment information to be marked as NLE on the L103 screen.

From the initial training provide to all agencies it has been made perfectly clear that ED requires that we be able to identify the debtor current employer, and that information correlates with the information on the L140, and L142 screen. The only way to ensure that ED staff is validating the current employer is for the agencies to mark all the invalid employment references on the L103 screen as no longer employed (NLE) under the reference type. ED staff will not assume that because one of the employers listed on the L103 screen is linked to the account that it is the correct or current employer; especially, where there is no documentation on the L102 Notepad clarifying or verifying which is the debtor's current employer.

ED continues receive too many letters and returned orders from employers stating the debtor is not employed or no longer employed by the company the account is linked to on the L142 screen to make that assumptions.

Therefore, we're holding all agencies responsible for ensuring the employment information reflected on the L103 screens is current, and updated or marked properly.

## **Appendix N: Useful Web Sites**

The U.S. Department of Treasury, Financial Management Services Calculator Website:

<http://fms.treas.gov/debt/awg.html#forms>

The Wage Garnishment Worksheet Calculator website:

<http://fms.treas.gov/debt/sf329.pdf>

AWG Branch website:

<http://www.ed.gov/offices/OSFAP/DCS/awg.employers.guide.html>

PCA website:

<http://www.collections.sfa.ed.gov/contractors/pcanew/index.html>

Links to other Secretary of State Office website:

<http://www.sos.state.ga.us/misc/othersossites.htm>

LSU Libraries Federal Agency Directory: Alphabetical Directory of Agencies website:

<http://www.lib.lsu.edu/gov/alpha>

Private Collection Agencies website:

<http://www.fsacollections.ed.gov/contractors/default.htm>

Fed Law website:

<http://www.thecre.com/fedlaw/default.htm>

Some Recommended Web Sites For Obtaining and Verifying Federal Employer Identification Numbers

<HTTP://WWW.SOS.STATE.GA.US/MISC/OTHERSOSSITES.HTM>

<HTTP://WWW.DOS.STATE.FL.US/>

<HTTP://WWW.NEXIS.COM>

<HTTP://WWW.SECURE.ACCURINT.COM>

## Appendix O: PCAs Points of Contact in the AWG Branch

PCA	Loan Analyst	Email Address	Telephone Number
404/504	Robin Andrews	<a href="mailto:Robin.Andrews@ed.gov">Robin.Andrews@ed.gov</a>	404-562-6874
406/546	Virginia Avery	<a href="mailto:Virginia.Avery@ed.gov">Virginia.Avery@ed.gov</a>	404-562-6052
412/552	Karen Morris	<a href="mailto:Karen.Morris@ed.gov">Karen.Morris@ed.gov</a>	404-562-6094
418/558	Larry Roles	<a href="mailto:Larry.Roles@ed.gov">Larry.Roles@ed.gov</a>	404-562-6105
420	Walter Reid	<a href="mailto:Walter.Reid@ed.gov">Walter.Reid@ed.gov</a>	404-562-6062
423	Virginia Avery	<a href="mailto:Virginia.Avery@ed.gov">Virginia.Avery@ed.gov</a>	404-562-6052
424/564	Wilma Bradley	<a href="mailto:Wilma.Bradley@ed.gov">Wilma.Bradley@ed.gov</a>	404-562-6022
427/567	Walter Reid	<a href="mailto:Walter.Reid@ed.gov">Walter.Reid@ed.gov</a>	404-562-6062
428/568	Wilma Bradley	<a href="mailto:Wilma.Bradley@ed.gov">Wilma.Bradley@ed.gov</a>	404-562-6022
429/569	Larry Roles	<a href="mailto:Larry.Roles@ed.gov">Larry.Roles@ed.gov</a>	404-562-6105
436/576	Robin Andrews	<a href="mailto:Robin.Andrews@ed.gov">Robin.Andrews@ed.gov</a>	404-562-6878
537	Wanda Dennis	<a href="mailto:Wanda.Dennis@ed.gov">Wanda.Dennis@ed.gov</a>	404-562-6043
538	Larry Roles	<a href="mailto:Larry.Roles@ed.gov">Larry.Roles@ed.gov</a>	404-562-6105
540	Larry Roles	<a href="mailto:Larry.Roles@ed.gov">Larry.Roles@ed.gov</a>	404-562-6105
542	Wanda Dennis	<a href="mailto:Wanda.Dennis@ed.gov">Wanda.Dennis@ed.gov</a>	404-562-6043
544	Walter Reid	<a href="mailto:Walter.Reid@ed.gov">Walter.Reid@ed.gov</a>	404-562-6062
571	Walter Reid	<a href="mailto:Walter.Reid@ed.gov">Walter.Reid@ed.gov</a>	404-562-6062
573	Evelyn Gresham	<a href="mailto:Evelyn.Graham@ed.gov">Evelyn.Graham@ed.gov</a>	404-562-6072
575	Marian Kohler	<a href="mailto:Marian.Kohler@ed.gov">Marian.Kohler@ed.gov</a>	404-562-6104
577	Debra Ruffin	<a href="mailto:Debra.Ruffin@ed.gov">Debra.Ruffin@ed.gov</a>	404-562-6094

## **Appendix P: Denial of Validation for Lack V-Series Notes And ED Letter Codes Available For PCA Usage**

To: Contract Administrators and  
AWG Compliance Branch Staff

From: John Jordan  
Acting Branch Chief  
AWG Compliance Branch

Subject: Clarification of Validation Error Issues

### **Denial of Validation for Lack V-Series Notes:**

Recently, a large number of VPY accounts were denied validation and an error charged for failure to issue the appropriate **V – Series notification** of breach of the repayment agreement. First, let's clarify that it has always been a requirement pursuant to the AWG Hearing Training Manuals that a breach of repayment notice be issued. The Department is committed to ensure that the debtor's right to due process are in no way hindered or made subject to questioning from outside sources.

Therefore, Fred Marinucci, Office of General Counsel, and Walter Reid, AWG Compliance Branch developed and provided training to all contractors on the usage of these notices. Unfortunately, in the past the enforcement of these guidelines has not been consistent. This will no longer be the case.

If, any account being submitted for validation from one of the following AWG Status Codes does not meet all the requirements for validation under that code, they will be denied validation and an error charged to the agency.

**HR1 – HR3 – FOR /VPY:** any accounts where the debtor has failed to honor the terms of their repayment agreement or request to pay prior to or after the rendering of a hearing decision.

A list of the V-Series Notices (see Appendix A) is attached for your reference.

### **Denial of Validation Due to Failure to Properly Monitor Accounts**

Consistently accounts have been denied validation and an error assessed due to the PCA's failure to stop garnishment actions being initiated automatically by ED's computer program (GDAWG510). The AWG Compliance Branch has initiated steps to modify the program to stop initiating (sending T12 Notices) garnishment action on debt(s) in AWG Subsystem Status Codes: **HR2, LEX, SWG,** and **CWG**. However, the program will continue to issue the N03 Notice of New Debt to the Debtors. The system will then move the debt(s) into AWG status code SWG rather than WG1, this will allow the agencies to initiate garnishment. Once this change to the program has been implemented, it should eliminate the majority of these violations.

However, it is the responsibility of the PCAs to monitor all the debt(s) in their custody and to work new debt(s) assigned in a **timely manner**; any account(s) identified / classified as ineligible due to **lack of due process** will be denied and **error accessed** against the agency for **failure to properly monitor their accounts**.



Recently, the question was raised regarding whether or not an agency could implement garnishment action against an individual currently having their income from SSI garnished (offset).

As stated in all the training provided regarding the AWG Program, ED has made it perfectly clear this program will run in conjunction with all other recovery program utilized / administered by the ED (TOP, FOP, SSOP).

I hope this memo will help clarify the Department position in regard to the above items.

John Jordan  
Branch Chief  
AWG Compliance Branch

## ED Letter Codes Available for PCA Usage

ED LTR CODE	PURPOSE OF LETTER
V30	No Financial Data, RFH Rec'd - ED will provide Hearing
V31	No Financial Data, No RFH Rec'd - ED will AWG / Garnish
V32	VPY Refused, RFH Rec'd - ED will provide Hearing
V33	VPY Refused, No RFH Rec'd - ED will AWG / Garnish
V34	VPY (Agreement Signed) but No \$\$ (No Dollars Rec'd) - ED will AWG / Garnish
V35	VPY (Agreement Signed) but No \$\$ (No Dollars Rec'd), Extension
V36	\$\$ (Dollars Rec'd), No VPY (No Signed Agreement), No RFH - ED will AWG / Garnish
V37	\$\$ (Dollars Rec'd), No VPY (No Signed Agreement), RFH Rec'd - ED will provide Hearing
V38	No \$\$ (No Dollars Rec'd), No VPY (No Signed Agreement), RFH Rec'd - ED will provide Hearing
V39	\$\$ (Dollars Rec'd) But No VPY (No Signed Agreement), Extension
V40	No VPY (No Signed Agreement), No \$\$ (No Dollars Rec'd), No RFH Rec'd - ED will AWG / Garnish
V29	POST HEARING FINANCIAL DATA NOT RECEIVED - ED WILL AWG
V41	Post Hearing VPY (Agreement) Refused - ED will AWG / Garnish
V07	Post Hearing VPY (Agreement) Refused - ED will AWG / Garnish
V08	Post Hearing VPY (Agreement) Refused - ED will AWG / Garnish
V42	Post Hearing VPY (Agreement Rec'd) But No \$\$ (No Dollars Rec'd), Extension
V43	Post Hearing \$\$ (Dollars Rec'd) But No VPY (Signed Agreement), Extension
V44	Post Hearing - No \$\$ (No Dollars Rec'd), No VPY (Signed Agreement), or Both - ED will AWG/Garnish
U05	EMPLOYMENT VERIFICATION FORM
U06	RESIDENCE / HOME ADDRESS VERIFICATION FORMS

## Appendix Q --- Final Demand Letters Issued By Office General Counsel



### THE UNITED STATES DEPARTMENT OF EDUCATION

Administrative Wage Garnishment Branch  
Division of Borrower Services, Atlanta Service Center  
61 Forsyth Street, SW, Room 19T89  
Atlanta, GA 30365

<DATE>

VIA CERTIFIED MAIL RETURN RECEIPT REQUESTED

<Registered Agent's Name or Service of Process>

<Employer's Name>

<Registered Agent's Mailing Address>

<Registered Agent's City, State, Zip Code>

**RE:** Administrative Wage Garnishment Order:

John K. Doe

999-99-9999

Employer FIN: E111111111111

Current Balance: \$99,999.99

### NOTICE OF INTENT TO ENFORCE GARNISHMENT ORDER

On or about **<date of Y11 letter on the L106 screen>**, the U.S. Department of Education issued to you a Wage Garnishment Order to deduct the amount stated there from the wages of the above mentioned employee. The Department issued this order pursuant to 31 U.S.C. §3720D.

On or about **<date of Z31 letter or X89 letter on the L106 the screen>**, the Department sent you notice that we had received neither the required remittance nor an explanation of why you did not

Our records indicate you failed to respond to either the Garnishment Order or notice. Attached are facsimile copies of the Order (SF-329B) and the material that accompanies the Order: the explanatory Letter to Employer and Important Notice to Employer, the Wage Garnishment Worksheet (SF-329C), and the Employer Certification Form (SF-329D). All of these have been already mailed to you.

Federal law holds an employer who fails to comply with a garnishment order liable to the United States for any amount that should have been withheld but was not, plus attorney's fees and costs incurred by the government to enforce the wage garnishment order. In addition, the court may hold the employer liable for punitive damages.

To comply with the Order, you must either remit the delinquent amount of pay that should have been remitted pursuant to the Order or provide a satisfactory explanation for not making payment. You may remit payment by check payable to "U.S. Department of Education," including the employee's name and social security number on the face of the check, and sent to the address below.

U.S. Department of Education  
National Payment Center  
Post Office Box 4142  
Greenville, Texas 75403-4142

If you believe you are not able to comply with the Order because the individual named in the Order was not employed by you at the time the Order was issued, or because the individual was employed but had no disposable pay available from which Federal Law allowed withholding, you must explain that position in writing or by e-mail to the Customer Service Representative in the Administrative Wage Garnishment Branch at the address below. Your response must be received on or before 15 days from the date of this notice. If you fail to remit payment or to provide a satisfactory explanation, we may refer this matter to the Department of Justice for litigation to enforce the Order.

U.S. Department of Education  
Administrative Wage Garnishment Branch  
Attention: John Doe  
61 Forsyth Street, SW, Room 19T89  
Atlanta, Georgia 30303

Sincerely,

John Doe  
Loan Analyst  
Via Facsimile: 404-562-6110  
Electronic Mail Address: John.Doe@ed.gov  
Enclosures

**Appendix R: Sample Z31 Notice issued to Employer**



**THE UNITED STATES DEPARTMENT OF EDUCATION**  
**Administrative Wage Garnishment Branch**  
**Division of Borrower Services, Atlanta Service Center**  
**61 Forsyth Street, SW, Room 19T89**  
**Atlanta, GA 30365**

**FACSIMILE (SECOND NOTICE FOR WITHHOLDING @ 15%)**

<MM/DD/YYYY>

NAME: <STUD-NAME>  
ACCOUNT NUMBER: <SSN>  
ACCOUNT BALANCE: <BALANCE>

THE U.S. DEPARTMENT OF EDUCATION PREVIOUSLY ISSUED TO YOU A WAGE GARNISHMENT ORDER PURSUANT TO 31 U.S.C. 3720D THAT REQUIRES YOU TO WITHHOLD AND REMIT TO THE DEPARTMENT A PORTION OF THE DISPOSABLE PAY OF THE EMPLOYEE IDENTIFIED ABOVE. OUR RECORDS REFLECT THAT WE HAVE NOT RECEIVED ANY PAYMENT IN RESPONSE TO THIS ORDER.

IF YOU HAVE REMITTED PAYMENTS NOT REFLECTED IN OUR RECORDS, OR YOU BELIEVE THAT NO PORTION OF THE PAY OF THIS EMPLOYEE REMAINS AVAILABLE FROM WHICH YOU MAY WITHHOLD TO PAY OUR CLAIM, PLEASE CONTACT THE CUSTOMER SERVICE NUMBER SHOWN BELOW TO RESOLVE THIS ISSUE.

FEDERAL LAW AUTHORIZES THE UNITED STATES TO SUE AN EMPLOYER WHO FAILS TO COMPLY WITH THIS GARNISHMENT ORDER. THE LAW AUTHORIZES RECOVERY OF THE AMOUNT THAT THE EMPLOYER HAS FAILED TO WITHHOLD, ATTORNEY'S FEES, COURT COSTS, AND, IN THE COURT'S DISCRETION, PUNITIVE DAMAGES. UNLESS WITHIN 30 DAYS OF THE DATE OF THIS LETTER, YOU REMIT THE AMOUNT REQUIRED UNDER THE GARNISHMENT ORDER OR PROVIDE A VALID REASON FOR YOUR INABILITY TO COMPLY WITH THE ORDER, ED MAY REFER THIS MATTER TO THE DEPARTMENT OF JUSTICE TO ENFORCE THIS ORDER BY LAWSUIT IN FEDERAL COURT.

PLEASE MAKE ALL PAYMENT INSTRUMENTS PAYABLE TO "U.S. DEPARTMENT OF EDUCATION" AND INCLUDE A MANIFEST SHEET WITH THE EMPLOYEE'S NAME AND SOCIAL SECURITY NUMBER ALONG WITH THE PAYMENT INSTRUMENT.

PAYMENTS TO: U.S. DEPARTMENT OF EDUCATION  
NATIONAL PAYMENT CENTER  
P.O. BOX 4142  
GREENVILLE, TX 75403-4142

INQUIRIES CONCERNING THIS LETTER SHOULD BE DIRECTED TO THE FOLLOWING CUSTOMER SERVICE NUMBER:

<RET-LINE1>  
<RET-LINE2>  
<RET-CSZ>  
<OUT-PHONE>

[HTTP://WWW.ED.GOV/OFFICES/OSFA/DCS/DEFAULT/AWG/EMPLOYERS/INDEX.HTML](http://www.ed.gov/offices/osfa/dcs/default/awg/employers/index.html)

**Appendix S**

**Sample X89 Notice to Employer**



**THE UNITED STATES DEPARTMENT OF EDUCATION**

**Administrative Wage Garnishment Branch  
Division of Borrower Services, Atlanta Service Center  
61 Forsyth Street, SW, Room 19T89  
Atlanta, GA 30365**

**FACSIMILE (NOTICE OF LATE PAYMENT OF EMPLOYEE WAGES)**

<MM/DD/YYYY>

<STUD-NAME><SSN>

<LAST-PAY-DATE><LAST-PAY-AMT>

AN ORDER FOR WITHHOLDING OF EMPLOYEE WAGES PERTAINING TO THE ABOVE INDIVIDUAL WAS PREVIOUSLY ISSUED BY THE U.S. DEPARTMENT OF EDUCATION. OUR RECORDS REFLECT THAT YOU COMPLIED WITH THIS ORDER AND BEGAN REMITTING PAYMENTS FOR THE ABOVE NAMED EMPLOYEE. HOWEVER, ED HAS NOT RECEIVED A REMITTANCE FROM YOU WITHIN THE LAST 45 DAYS.

IF THIS IS OVERSIGHT ON YOUR PART, PLEASE REMIT THE PAYMENT(S) IMMEDIATELY. PLEASE MAKE ALL PAYMENT INSTRUMENTS PAYABLE TO "U.S. DEPARTMENT OF EDUCATION" AND INCLUDE THE EMPLOYEE'S NAME AND SSN.

MAIL PAYMENTS TO:

U.S. DEPARTMENT OF EDUCATION  
NATIONAL PAYMENT CENTER  
P.O. BOX 4142  
GREENVILLE, TX 75403

## Appendix T – Sample Withholding Order (Y11/Y13)



FEDERAL  
STUDENT  
AID

UNITED STATES DEPARTMENT OF EDUCATION

61 FORSYTH STREET, ROOM 19T89

ATLANTA, GA 30303

PHONE NUMBER: 404-562-6012 FAX NUMBER: 404-562-6110

<MM/DD/YYYY>

Employer Name

Attention

Employer Address 1

Employer Address 2

Employer City, Employer St Zip

### Letter to Employer & Important Notice to Employer

Dear Employer,

One of your employees has been identified as owing a delinquent nontax debt to the United States. The Debt Collection Improvement Act of 1996 (DCIA), permits Federal agencies to garnish the pay of individuals who owe such debt without first obtaining a court order. Enclosed is a Wage Garnishment Order, directing you to withhold a portion of the employee's pay each pay period and to forward those amounts to us. We have previously notified the employee that this action was going to take place and provided the employee with the opportunity to dispute the debt.

As both a businessperson and a taxpayer you can understand and appreciate the importance of ensuring that duly owed debts do not go unpaid. Your cooperation in complying with the enclosed Wage Garnishment Order will assist in our efforts to collect the billions of dollars in delinquent nontax debt owed to the United States. A Wage Garnishment Worksheet is enclosed to assist you in determining the proper amount to withhold.

Please read the enclosed documents carefully. They contain information concerning your responsibilities to comply with this order if you have any questions, please call the contact name listed on the Order.

Thank you for your cooperation.

See enclosed: **Important Notice to Employer.**

**Enclosures:** Wage Garnishment Order (SF-329B)  
Wage Garnishment Worksheet (SF-329C)  
Employer Certification (ED-329D)

## Important Notice to Employer

### **Federal Law (31 U.S.C. 3720D, 31 C.F.R. 285.11) Provides:**

1. Federal Law supersedes State Law. Federal Law applies to wage garnishment pursuant to the Wage Garnishment Order notwithstanding State Law.
2. Disposable pay. For purposes of Wage Garnishment Order, “disposable pay” means the employee’s compensation (including, but not limited to, salary, overtime, bonuses, commissions, sick leave and vacation pay) from an employer after the deduction of health insurance premiums and any amounts required by law to be withheld. Proper deductions include Federal, State, and Local taxes, State unemployment and disability taxes, social security taxes, and involuntary pension contributions, but do not include voluntary pension or retirement plan contributions, union dues, or amounts withheld pursuant to a court order, and the like. A Wage Garnishment Worksheet is included with the Wage Garnishment Order to assist the employer in calculating disposable pay and the wage garnishment amount.
3. Multiple Withholding Orders. If in addition to the Wage Garnishment Order you, as employer, are served with other withholding orders pertaining to the same employee, then you may withhold sufficient amounts to satisfy the multiple withholding orders simultaneously, up to the maximum amount of 25%. The Wage Garnishment Order should be paid before garnishment or withholding order that you receive after you receive this one, Except that family support orders always should be paid first. Upon termination of the family support or prior withholding order(s), the amount withheld for the Wage garnishment Order shall be increased to the amount stated in Section 2 of the Wage Garnishment Order.
4. Pay cycles. An employer is not required to vary its normal pay and disbursement cycles to comply with the Wage Garnishment Order.
5. Failure to Comply. An employer who fails to comply with the Wage Garnishment order shall be liable for any amounts that the employer fails to withhold under the Wage Garnishment Order, plus Attorney’s Fees and costs incurred by the creditor agency to enforce the Wage Garnishment Order. In addition, the employer who fails to comply with the Wage Garnishment Order may be liable for punitive damages as determined by a court of competent jurisdiction.
6. No Retaliation. An individual may sue any employer who discharges from employment, refuses to employ, or takes disciplinary action against an individual subject to a Wage Garnishment Order by reason of the fact that the Individual’s wages have been subject to garnishment under 31 U.S.C. 3720D. A court of competent jurisdiction shall award Attorney’s Fees to a prevailing employee, and, in its discretion, may order reinstatement of the individual, award punitive damages and back pay to the employee, or order such other remedy as may be reasonably necessary.

Standard Form 329A(11-98)



**UNITED STATES GOVERNMENT  
WAGE GARNISHMENT ORDER (SF-329B)**

<b>1. Date of this Order:</b>  Insert Date	<b>2. Date Mailed to Employer:</b>  Insert Date	<b>3. Credit Agency Tracking No.</b> <b>(Refer to this number in all correspondence):</b>  Insert SSN
--	---	--

<b>RE: 4. Employee Name</b>  Insert Borrower's Name	<b>5. Employee Social Security No:</b>  Insert Borrower's SSN
---	---

<b>TO: 6. Employer:</b>  Insert Employer Name	<b>7. Employer Mailing Address</b> (include street address, p. o. box, suite no., city, state, zip code):  Employer Address 1 Employer Address 2 Emp. City, Emp. St, Emp. Zip
---	---

<b>FROM: 8. Creditor Agency</b>  <b>United States Department of Education</b>	<b>9. Creditor Agency Mailing Address (include street address, city, state, zip code):</b>  <b>National Payment Center P.O. Box 4142 Greenville, TX 75403</b>
<b>10. Contact Name:</b>  <b>Adam Evans</b>	<b>11. Telephone No.:</b>  <b>404-562-6012</b>
<b>12. Internet e-mail address:</b>  <b>FSA.AWG@ED.GOV</b>	<b>13. FAX No.:</b>  <b>404-562-6110</b>

<b>14. Amount Due:</b>  <b>\$ Insert Balance Due</b>	<b>15. As of (Month/Day/Year):</b>  <b>Insert Date</b>	<i>Note:</i> The amount due may be increased as a result of additional interest, penalties, and other costs being assessed by the creditor Agency.
--	--	--

Section 1. ORDER. YOU, the Employer, are hereby ORDERED to deduct from all disposable pay paid by you to the Employee the Wage Garnishment Amount described in Section 2 of this Order. You are ordered to begin deductions on the first payday after you receive this Order. If the first payday is within 10 days after you receive this Order, you may begin deductions on the second payday after you receive this Order. You are ordered to continue deductions until you receive notification from the Creditor Agency to suspend or discontinue deductions. You are further ORDERED to pay the Creditor Agency all Wage Garnishment Amounts deducted by you under this order within three (3) business days of the withholding. Employers are encouraged to make payments electronically, if possible as follows:

Standard Form 329B (11-98)  
Prescribed by 31 CFR 285.11

16. ABA Routing No.:	17. Account No.:	18. Agency Location Code (ALC) No.:
19. Account Title:	20. Other information required (i.e., tracking no., debtor name, etc.):  Borrower Name:  SSN:	

Otherwise, mail checks (postmarked within 3 business days of the withholding) to:

21. Mailing address for check payments:	U.S. Department of Education National Payment Center P.O. Box # 4142 Greenville, TX 75403
---	--

## **Section 2. WAGE GARNISHMENT AMOUNT.**

(a) The Wage Garnishment Amount is \$ \_\_\_\_\_ per pay period in accordance with an agreement between the Creditor Agency and the Employee.

**-OR-**

(b) The Wage Garnishment Amount for each pay period is the lesser of:

- (1) \_\_\_\_\_ % of the Employee's disposal pay (not to exceed 15%);
- (2) the garnishment amount set forth in 15 U.S.C. 1673(a)(2) ( the amount by which the employee's disposable pay exceeds an amount equivalent to 30times the minimum wage); or
- (3) 25% of the Employee's disposable pay less the amounts withheld under the withholding orders with priority. A withholding order with priority is valid, legally enforceable withholding order that either (1) was received by the Employer prior to this Order, or (2) is an order for family support regardless of date received. Upon termination of n withholding order with priority or upon receipt of an order for family support subsequent to the receipt of this Order, the amount withheld for this order shall be recalculated based on the formula described in this Section 2 (b).

**Note:** The Employer may use the enclosed Wage Garnishment Worksheet to calculate the Wage Garnishment Amount.

**CREDITOR AGENCY CERTIFICATION.** The CREDITOR AGENCY hereby certifies that this order is issued in accordance with the requirements of 31 U.S.C. § 3720D and 31 C.F.R. § 285.11 and is mailed to the Employer on the date shown above.

Title: **Regional Director**

**CREDITOR AGENCY SIGNATURE**

Print Name: **Erin Swanson-Hall**

**Standard Form 329B (11-98)**  
Prescribed by 31 CFR 285.11

## WAGE GARNISHMENT WORKSHEET (SF-329C)

**Notice to Employers:** The Employer may use a copy of this worksheet each pay period to calculate the Wage Garnishment Amount to be deducted from a debtor's disposable pay. Disposable pay includes, but is not limited to, salary, overtime, bonuses, commissions, sick leave and vacation pay. If section 2(a) of the Wage Garnishment Order specifies the dollar amount to be garnished, the employer does not need to complete this worksheet.

Debtor's Name: \_\_\_\_\_ Social Security Number: \_\_\_\_\_

Pay Period Frequency (Select One):

\*Weekly or less \*Every other week \*Two times per month \*Monthly \*Other (Specify: \_\_\_\_\_)

### DISPOSABLE PAY COMPUTATION

<b>1 Gross Amount Paid to Employee</b>		
<b>2 Amount Withheld</b>		
<b>a. Federal Income Tax:</b>		
<b>b. F. I. C. A. (Social Security)</b>		
<b>c. Medicare</b>		
<b>d. State Tax (including: income tax, unemployment, disability)</b>		
<b>e. City/Local tax</b>		
<b>f. Health Insurance Premiums</b>		
<b>g. Involuntary Retirement or Pension Plan Payments</b>		
<b>3 Total Allowable Deductions (add lines a - g)</b>		
<b>4 DISPOSABLE PAY (Subtract Line 3 from Line 1)</b>		

### WAGE GARNISHMENT AMOUNT COMPUTATION

If the Employee's wages are not subject to any withholding orders with priority, skip to line 8.

<b>5</b>	25% of Disposable Pay (Multiply Line 4 by .25)													
<b>6</b>	Total Amount Withheld Under Other Wage Withholding Orders with Priority. See section 2(b) of the Order.													
<b>7</b>	Subtract line 6 from line 5 (If line 6 is more than line 5 , enter zero)													
<b>8</b>	Multiply the percentage from section 2(b)(1) of the Order by Line 4. (The percentage from section 2(b)(1) of the Order may not exceed 15%). <u>Example:</u> If the percentage from section 2(b)(1) of the Order is 15%, multiply .15 by line 4.													
<b>9</b>	Amount equivalent to 30 times the Federal Minimum Wage (\$5.85) <table style="width: 100%; border: none;"> <tr> <td style="width: 33%;"><u>If the employee is paid</u></td> <td style="width: 16.5%;"><u>Line 9 is</u></td> <td style="width: 33%;"><u>If the employee is paid</u></td> <td style="width: 16.5%;"><u>Line 9 is</u></td> </tr> <tr> <td>weekly or less</td> <td>175.50</td> <td>2x per month</td> <td>380.25</td> </tr> <tr> <td>Every other week</td> <td>351.00</td> <td>Monthly</td> <td>760.50</td> </tr> </table>		<u>If the employee is paid</u>	<u>Line 9 is</u>	<u>If the employee is paid</u>	<u>Line 9 is</u>	weekly or less	175.50	2x per month	380.25	Every other week	351.00	Monthly	760.50
<u>If the employee is paid</u>	<u>Line 9 is</u>	<u>If the employee is paid</u>	<u>Line 9 is</u>											
weekly or less	175.50	2x per month	380.25											
Every other week	351.00	Monthly	760.50											
<b>10</b>	Subtract line 9 from line 4 (If line 9 is more than line 4 , enter zero)													
<b>11</b>	<b>WAGE GARNISHMENT AMOUNT</b> <b>LINE 7, 8, OR 10, WHICHEVER AMOUNT IS SMALLEST</b>													

Standard Form 329C(\_\_\_\_\_) Prescribed by 31 CFR 285.11

**EMPLOYER CERTIFICATION (ED-329D)**

**NOTICE TO EMPLOYERS: THE EMPLOYEE MUST COMPLETE AND RETURN THIS CERTIFICATION TO THE CREDITOR AGENCY WITHIN 20 DAYS OF RECEIPT.**

**TO BE COMPLETED BY CREDITOR AGENCY:**

<b>Date of this Order:</b>  Insert Date	<b>Date Mailed to Employer:</b>  Insert Date	<b>Credit Agency Tracking No. (Refer to this number in all correspondence):</b>  Insert SSN
---	--	---

<b>Creditor Agency:</b>  United States Department of Education	<b>Creditor Agency Mailing Address (include street address, city, state, zip code):</b>  <b>National Payment Center P.O. Box 4142 Greenville, TX 75403</b>
--	--

<b>Employee Name</b>  Insert Borrower's Name	<b>Employee Social Security No:</b>  Insert Borrower's SSN
--	--

**The remainder of the Employer Certification is to be completed by Employer:**

<b>Employer:</b>	<b>Employer Taxpayer Identifying Number:</b>
<b>Employer Address (for future correspondence on this matter):</b>	<b>Employer Contact Person:</b>

<b>Employer Telephone No.:</b>	<b>Employer Fax No.:</b>	<b>Employer E-mail Address:</b>
--------------------------------	--------------------------	---------------------------------

***Note: the employer Taxpayer Identifying Number, required by 31 U.S.C. 7701 (c), will be used to collect and report any delinquent amounts owed by the Employer under this Order.***

1. The Employer received the Wage Garnishment Order concerning the above named employee on \_\_\_\_\_ (Date).
2. Check one of the following:
  - a. \_\_\_\_\_ The above named Employee is currently employed with this Employer, or
  - b. \_\_\_\_\_ The above named Employee is no longer employed by this employer.

**Please provide the following information for employees no longer employed:**

<b>Employment Termination Date:</b>	<b>Employee's Last Known Address and Telephone No. (if, Known):</b>	<b>Employee's Current Employer (if Known):</b>
-------------------------------------	---	--

Note: If the Employee is no longer employed with this Employer, the Employer does not need to complete the rest of this Certification. Sign and date this certification on page 2 and return to the Creditor Agency.

3. Please provide the following information for the current pay period only. Or, you may attached a copy of a completed Wage Garnishment Worksheet to this Certification.

Gross Amount paid to Employee (indicate whether hourly, weekly, annually, etc.): \$ _____	Wage Garnishment Amount: \$ _____
--	--------------------------------------

Pay Interval (Select One):	
? Weekly or less	? Monthly
? Every other Week	? Other (Specify: _____)
? Two Times per month	

4. *If the Employee's wages are subject to withholding orders with priority, please complete the following:* A withholding order with priority is one received by the Employer prior to this Order or an order for family support received at any time. Upon termination of the family support or prior withholding order, the amount withheld for this Order shall be increased.

List All Withholding Order With Priority	Date Served On Employer	Approx. Date Withholding Expected To End (if known)

The person signing below hereby certifies that he or she is duly authorized representative of the Employer, and that the above information is accurate to the best of his or her knowledge and belief.

\_\_\_\_\_  
Signature of Employer Representative

\_\_\_\_\_  
Date

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

Telephone No.: \_\_\_\_\_

ED FORM 329D (Rev. 7-02)  
Prescribed by 31 FR 285.11

# Appendix U - Screen and Data Reviewed During the Validation Process

## Validation Screen Prints

(L147)

ADMINISTRATIVE WAGE GARNISHMENT  
ORDER FOR WITHHOLDING VALIDATION SCREEN  
FOR: 11/23/06 STATUS: WG1 GROUP NO: 001

ED42XX 11/24/06  
17:11:09

E	SSN	EMPLOYER NAME	BORROWER NAME	BAL LOC	EXPT AMT	AMT	LAST PAYMENT	T12 SENT
X	000000000	LOYOLA UNIVERSITY CHIC	LINDSAY	576	16516	0	00/00/00	00/00/00
-	111111111	HOICEPOINT INC	WHITE	537	13396	0	00/00/00	10/19/06
X	222222222	MODERN BUSINESS ASSOCI	KANELOPOU	558	186	0	00/00/00	10/19/06
-	333333333	INOVA HEALTH SYSTEM	HEREFORD	542	5229	0	11/22/06	10/19/06
X	444444444	CITY HALL	MALDONADO	546	10711	0	00/00/00	10/19/06
X	555555555	PROCTOR AND GAMBLE	MALLARD	540	5824	0	00/00/00	10/19/06
-	666666666	SPORTS AUTHORITY	LOCKHART	558	18955	0	00/00/00	00/00/00
X	777777777	SHEENA MANAGEMENT LLC	ROUSE	606	17083	0	00/00/00	10/19/06
-	888888888	MAN GROUP USA INC	HALEY	538	11027	0	00/00/00	10/19/06
-	999999999	CNI TECH	HOLMES	564	6969	0	00/00/00	10/19/06
X	000011111	STATE OF GEORGIA/DEPT	SOLOMAN	558	38	0	00/00/00	10/19/06
X	000002222	SERVICE SYSTEMS ASSOCI	GRANT	558	12207	0	11/09/06	11/09/06
-	000003333	CLAIRES ACCESSORIES	BOLLING	540	22942	0	00/00/00	10/19/06
-	000004444	LOGITREX LLC	ESTIL	546	45716	0	00/00/00	10/19/06

No T12  
Ltr Date

ED  
Balance  
Less Than  
\$200

In-House  
Account Do Not  
Validate Move  
to ED110

New T12  
Not Eligible  
for 36 days

Current Pmt Indicate  
New Debt Check L106  
Screen For N03, not  
eligible for 65 Days.

Incorrect  
Employer  
Name

ENTER X TO EXCLUDE PRESS ENTER TO VALIDATE THIS SCREEN  
PF3-EXIT PF5-REFRESH PF6-CONFIRM PF7-BACK PF8-FORWARD

PAGE 01

( L147 )

ADMINISTRATIVE WAGE GARNISHMENT ED42XX  
ORDER FOR WITHHOLDING VALIDATION SCREEN  
FOR: 11/15/06 STATUS: SWG GROUP NO: 100

11/24/06  
17:17:28

E	X	SSN	EMPLOYER NAME	BORROWER NAME	LOC	BAL AMT	EXPT AMT	LAST PAYMENT	T12 SENT
X		000000000	STG INTRNATIONAL INC	VALENZUEL	558	5789	0	00/00/00	11/23/06
X		111111111	WALMART STORES INC	HILL	558	5755	0	00/00/00	08/26/06
X		222222222	BELLSOUTH TELECOMMUNIC	PRICHARD	558	1616	0	00/00/00	04/25/06
X		333333333	BETH ISRAEL MEDICAL CE	MEREDITH	568	22371	0	00/00/00	04/06/05
X		444444444	ACTION TOWING AND RECO	GALLEGOS	428	2146	114	03/04/05	08/19/04
X		555555555	LOWES	HAGENS	568	59561	0	02/13/06	09/17/05
X		666666666	DARDEN RESTAURANTS INC	REDDY	568	27117	0	11/22/05	08/24/05
X		777777777	ROSS STORES INC	LOPEZ	568	3682	0	00/00/00	08/24/05
X		888888888	KNAWAHA EAGLE COAL	SNYDER	564	9035	0	00/00/00	09/26/06
X		999999999	KINDER CARE LEARNING	MAZUMDAR	564	23236	0	00/00/00	11/21/06

None of These Debts Are  
Eligible for Garnishment  
Because of AWG Status  
Code.

T12 Date - 36 days  
Hold on accounts

Special Batch Code -  
PCA Failed to Move  
Accounts to HR1 Prior  
to Requesting Special  
Batching.

ENTER X TO EXCLUDE PRESS ENTER TO VALIDATE THIS SCREEN  
PF3-EXIT PF5-REFRESH PF6-CONFIRM PF7-BACK PF8-FORWARD PAGE 01

( L147 )

ADMINISTRATIVE WAGE GARNISHMENT ED42XX  
ORDER FOR WITHHOLDING VALIDATION SCREEN  
FOR: 11/15/06 STATUS: NLE GROUP NO: 100

E	SSN	EMPLOYER NAME	BORROWER NAME	LOC	BAL AMT	EXPT AMT	LAST PAYMENT	T12 SENT
X	111111111	CVS CORPORATION	YOUSSEF	558	6885	0	00/00/00	04/25/06

Special Batch Request By PCA,  
Incorrect AWG Status Code  
Can not Validate – Deny

ENTER X TO EXCLUDE PRESS ENTER TO VALIDATE THIS SCREEN  
PF3-EXIT PF5-REFRESH PF6-CONFIRM PF7-BACK PF8-FORWARD PAGE 01



(L147)

ADMINISTRATIVE WAGE GARNISHMENT  
ORDER FOR WITHHOLDING VALIDATION SCREEN  
FOR: 11/14/06 STATUS: VPY GROUP NO: 001

ED42XX

11/24/06  
17:19:27

E	X	SSN	EMPLOYER NAME	BORROWER NAME	LOC	BAL AMT	EXPT AMT	LAST PAYMENT	T12 SENT
-	-	999999999	HOUSTON INDEPENDENT SC	TISINO	567	7002	131	09/14/06	05/18/06
-	-	888888888	WALMART STORES IN	CHAPA	552	5294	165	09/11/06	07/29/06
-	X	777777777	NOLAN SHIPMAN MD & ASS	WILDMO	624	30372	130	10/13/06	08/28/02
-	-	666666666	DEVERAUX WHITLOCK	OWENS	542	2642	241	09/08/06	10/25/05
-	-	555555555	SPRINT PAYROLL TAX DEP	FLOYD	569	3840	67	09/13/06	09/01/05
-	-	444444444	LOCKHEED MARTIN	MEDINA	575	810	142	09/14/06	03/23/06
-	-	333333333	ALCOA INC	MITCHELL	568	4978	196	09/14/06	12/24/05
-	-	222222222	PINNACLE STAFFING SOLU	SEVILLA	564	11085	244	00/00/00	07/28/06
-	X	111111111	BON APPETIT MANAGEMENT	PERKINS	575	77	95	00/00/00	00/00/00
-	-	000000000	ANTHEM BLUE CROSS AND	GIVENS	569	11919	338	09/07/06	07/29/06
-	-	987654321	T MOBILE USA	LUCKIE	569	2348	150	09/13/06	00/00/00
-	-	123456789	HALLKEEN MANAGEMENT	VILLAFANE	552	5631	191	08/28/06	07/08/06
-	X	876543210	HOMELAND DEPT EMPLOYM	CAMPBELL	568	3816	110	09/14/06	06/29/06
-	-	012345678	BARNES & NOBLE INC	MITCHELL	568	2896	287	09/14/06	04/21/06

ENTER X TO EXCLUDE PRESS ENTER TO VALIDATE THIS SCREEN  
PF3-EXIT PF5-REFRESH PF6-CONFIRM PF7-BACK PF8-FORWARD

PAGE 01

Account Not Eligible  
Due to Balance  
Remaining

Federal Employees  
Not Subject to this  
Program.

Account Not Eligible Due  
Location Code and Date  
of Last Payment - Last  
Payment must be over 61  
days Late.

Account Maybe Eligible for  
Garnishment Provided  
Debtor Signed Repayment  
Agreement - See L102  
Screen

ADMINISTRATIVE WAGE GARNISHMENT  
ORDER FOR WITHHOLDING VALIDATION SCREEN  
FOR: 11/23/06 STATUS: HR1 GROUP NO: 003

( L147 )

E	SSN	EMPLOYER NAME	BORROWER NAME	BAL LOC AMT	EXPT AMT	LAST PAYMENT	T12 SENT
-	999999999	LOVE'S TRAVEL STOPS	KING	552 5673	0	00/00/00	10/12/06
-	888888888	F L DRYWALL	MARTIN	428 4128	0	00/00/00	12/03/04
-	777777777	TCF BANK	WINFREY	568 1319	0	00/00/00	09/19/06
-	666666666	ADVANCE AUTO PARTS	CINTRON P	568 4350	0	00/00/00	08/31/06
-	555555555	AFFILIATED COMPUTER SE	TATE	564 82883	0	00/00/00	10/05/06
X	444444444	MARRIOTT INTERNATIONAL	CONGDON	428 11316	0	12/11/03	01/14/06
-	333333333	AIR SERV	FERDINAND	428 40491	200	03/23/06	09/22/05
-	222222222	PRINCESS CRUISES LINES	SANDERS	569 4155	0	00/00/00	09/28/06
X	111111111	GLISAN STREET CLEANERS	WILSON	538 227	0	11/17/06	06/03/06
-	000000000	JASPER SEATING CO	RESENBECK	568 2548	0	00/00/00	02/23/06
X	123456789	HOUSTON INDEPENDENT SC	PEAVY	546 1593	0	10/24/05	11/11/06
-	987654321	WALMART STORES INC	CONLIFFE	428 8685	0	08/31/04	11/22/03
X	876543210	J&J SERVICES INC.	GURULE	428 3878	52	11/21/06	09/01/06
-	012345678	BP AMOCO	HUNTER	428 5393	0	03/03/06	03/23/04

ENTER X TO EXCLUDE PRESS ENTER TO VALIDATE THIS SCREEN  
PF3-EXIT PF5-REFRESH PF6-CONFIRM PF7-BACK PF8-FORWARD PAGE 01

New T12 Issued  
Due Process  
Clause In Effect

Can't Tell Here  
But Pseudo FIN  
Created - Deny

Date of Last Payment  
Indicates the  
Possibility of a New  
Debt- Check for N03

( L147 )

ADMINISTRATIVE WAGE GARNISHMENT

ED42XX

11/24/06

ORDER FOR WITHHOLDING VALIDATION SCREEN

17:22:35

FOR: 11/14/06 STATUS: FOR GROUP NO: 001

E	SSN	EMPLOYER NAME	BORROWER NAME	LOC	BAL AMT	EXPT AMT	LAST PAYMENT	T12 SENT
X	333333333	FOOT LOCKER INC	NELSON	558	11642	0	04/19/06	01/26/06
X	222222222	BOISE SCHOOL DISTRICT	HAENELT	569	25274	142	00/00/00	11/18/06
X	111111111	NEWMAN CHIROPRACTIC	WILHELM	576	153916	0	00/00/00	10/14/06

Validation Denied - Because  
No Expected Amount Stated -  
Must Have Dollar Amount.  
These are Y13 Orders

Both Debts  
Ineligible Due date  
T12 Issued - Due  
Process Clause

ENTER X TO EXCLUDE PRESS ENTER TO VALIDATE THIS SCREEN  
PF3-EXIT PF5-REFRESH PF6-CONFIRM PF7-BACK PF8-FORWARD PAGE 01

(L145) ADMINISTRATIVE WAGE GARNISHMENT ED42XX 11/25/06  
EMPLOYER NAME AND SEARCH SCREEN 08:40:55

EMPLOYER NAME: MARRIOTT INTERNATIONAL \_\_\_\_\_ ZIP: \_\_\_\_\_

CURR FIN NO.	ZIP	SELECT	COMPANY	PHONE NO.
P-000734280-000	20058	-	MARRIOTT INTERNATIONAL	301-380-4439
P-000735471-000	20058	-	MARRIOTT INTERNATIONAL	301-380-4439
E-522017645-000	20058	-	MARRIOTT INTERNATIONAL	301-380-4439
E-521176180-000	20058-0000	-	MARRIOTT INTERNATIONAL	800-638-8108
E-330025735-000	20058-0000	-	MARRIOTT INTERNATIONAL	301-380-4439
E-581977720-000	20058-0000	-	MARRIOTT INTERNATIONAL	301-380-4439
E-522282047-000	20058-0000	-	MARRIOTT INTERNATIONAL	800-638-8108
E-522008088-000	20058-0000	-	MARRIOTT INTERNATIONAL	301-380-4439
E-522055918-000	20058-0000	-	MARRIOTT INTERNATIONAL	301-380-4439
P-000727647-000	20058-0000	-	MARRIOTT INTERNATIONAL	301-380-4439
E-521052660-000	20058-0000	-	MARRIOTT INTERNATIONAL	301-380-4439
E-000522283-659	20058	-	MARRIOTT INTERNATIONAL CO	301-380-3000

DO NOT  
VALIDATE P-  
FIN WHEN EIN  
EXIST

USE PF7 OR PF8 KEY TO SEARCH, OR SELECT FIN NBR AND ENTER TO TRANSFER L142  
PF13-L140 PF14-L141 PF15-L142 PF16-L145

PAGE: 002

(L106) LETTER HISTORY SCREEN ED4250 11/25/06  
ACCT NO: S55555555 REGION: 09 ACCT OWNER: AG568 COLL NUM: 99999 08:51  
ACCT NAME: BASS , MASON D  
ED BALANCE: 1,880.98 PROJ/ACT CA: 470.25 CA BALANCE: 2,351.23

LETTER REQUESTER LETTER

SENT DAT	CODE	TYPE	STREET	ZIP	U
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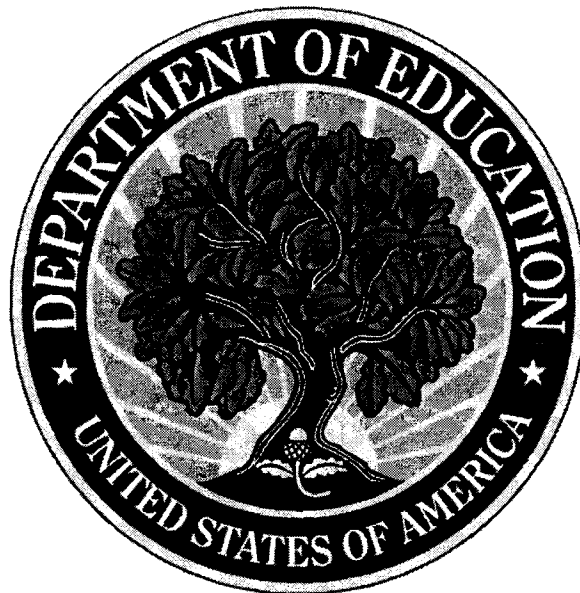
10/19/06	GDAWG510	T12	1110 PRAIRIE LN APT A	64075-9363	
10/19/06	GDAWG 510 N03	1110 PRAIRIE LN APT A	64075-9363		
08/18/06	AG568	20E	1110 PRAIRIE LN APT A	64075-9363	
08/08/06	AG568	20C	1110 PRAIRIE LN APT A	64075-9363	
07/31/06	AG568	20B	1110 PRAIRIE LN APT A	64075-9363	
06/28/06	AG568	20A	1110 PRARIE LANE APT A	64075-9363	
05/03/06	GDSKP502	W41	1110 PRARIE LANE APT A	64075-9363	
04/30/06	GDSKP502	N03	1110 PRARIE LANE APT A	64075-9363	

DO NOT  
VALIDATE IF  
NEW N03  
ISSUED

PF13-L101 14-L102 15-L103 16-L104 17-L105 18-L106 19-L107 20-L108 21-L109 22-L1

Mick

U.S. Department of Education  
Federal Student Aid  
Borrower Services – Collections Group



**Options for Financially-Challenged  
Borrowers in Default**

Payment terms, Refinancing, Administrative  
Discharge Relief

**October 2004**



Overview Of Types Of Student Loans	1
Loan programs not financed by Department of Education:	1
Loans made under the programs financed by Department of Education under Title IV of the Higher Education Act (HEA) of 1965: the Basics	1
1. Federal Family Education Loan Program (FFELP):	1
Institutional actors:	1
2. William D. Ford Federal Direct Loan Program (Direct Loan Program)	2
3. Perkins Loans	3
Repayment Plans:	3
Default and consequences:	6
Bankruptcy – Who’s got the ball?	8
ECMC	9
Options available only before default or after default has been cured: Deferments & Forbearances	10
Options available without regard to default status of loan:	12
Disability Discharge	12
Administrative Discharge Relief	15
Options for Refinancing Student Loan Debt and Curing Default:	17
Consolidation Loans	17
Rehabilitation of defaulted HEA loans	19
Reinstatement Of Eligibility For New Title IV HEA Student Aid	21
When push comes to shove: Non-judicial wage garnishment: Repayment options & financial hardship objections to garnishment	22
Resources: Forms	25
Direct Loan application and ICR calculator:	25
<a href="http://www.ed.gov/offices/OSFAP/DirectLoan/index.html">http://www.ed.gov/offices/OSFAP/DirectLoan/index.html</a>	25
Appendices	25



## Overview Of Types Of Student Loans

### Loan programs not financed by Department of Education:

- HEAL loans: made by banks and other financial institutions, esp. Student Loan Marketing Association (Sallie Mae); guaranteed by U.S. Public Health Service: special non-dischargeability provisions (unconscionability).
- Private loans – made by banks and other financial institutions; may be guaranteed by either for profit guarantors (e.g. HEMAR, a Sallie Mae subsidiary) or non-profit guarantors, e.g. The Educational Resources Institute (TERI). *Note that status of guarantor affects dischargeability under 11 U.S.C. §523(a)(8).*
- Scholarships with potential repayment obligations:

### Loans made under the programs financed by Department of Education under Title IV of the Higher Education Act (HEA) of 1965: the Basics

#### 1. Federal Family Education Loan Program (FFELP):

##### Institutional actors:

- **Lenders:** FFELP loans are made by financial institutions, typically large banks, as well as some State agencies, and – for Consolidation Loans, the Student Loan Marketing Association (Sallie Mae) and other special purpose loan corporations, sometimes through a trustee bank.
- **Secondary Markets:** Most FFELP loans are sold by the originating lenders on the secondary market. Some 70% of outstanding FFELP loans are held by secondary markets. Sallie Mae holds about 40% of all outstanding FFELP loans; other secondary markets include major banks and “student loan authorities,” inc. CHELA. The latter typically hold beneficial ownership to the loans, while a trustee bank holds legal title. References in the HEA and FFELP regulations to “lender” include both originating lenders and secondary market purchasers.
- **Loan Servicers:** Loans are typically serviced for the holder by contractors (“loan servicers” or “third party servicers”) who handle all billing and other transactions. Sallie Mae, UNIPAC, ACS (which acquired AFSA), and several guaranty agencies service non-defaulted FFELP loans for banks and secondary markets.
- **Guaranty agencies:** FFELP loans are directly guaranteed by State agencies or private non-profit organizations. Currently some 36 guaranty agencies, of greatly varying size; some offer multi-state coverage, others operate mostly in one state. United Student Aid Funds is largest; California Student Aid

Commission (CSAC) and its agent, EDFund is the “designated” guarantor for California.

- **Guarantor servicers:** Contractors who provide data management and other support services for guaranty agencies on defaulted FFELP loans held by the guaranty agency.
- **Collection agencies:** Collection contractors (often referred to as “PCAs” (“private collection agencies”) in Federal debt collection parlance who provide dunning, skip-tracing, garnishment support and other services on a contingent fee basis for guarantors and for the Education Department.
- **Credit Bureaus:** Credit Reporting Agencies, usually refers to the three major credit reporting agencies; the HEA requires holders of HEA loans to report the status of each loan to at least one national reporting agencies.
- **Education Department:** reinsures guaranty agencies, pays lenders interest subsidies on need-based FFELP loans, and, when needed to assure “market yield” to the lender, an added interest subsidy (special allowance payments) on all FFELP loans.

**Legal authority:**

- FFELP was formerly known as Guaranteed Student Loan Program (GSLP)
- Statutory authority: Title IV-B of the Higher Education Act, 20 U.S.C. §§ 1071 et seq.; regulations at 34 C.F.R. Part 682

**Types of FFELP Loans**

- Subsidized Staffords (made to student borrowers, amount based on needs test)
- Unsubsidized Staffords (formerly Supplemental Loan for Students (SLS) or Auxiliary Loan for Students (ALAS)) (made to student borrowers, not based on financial need of the student)
- Parent Loan for Undergraduate Students (PLUS) (made to parents of dependent undergraduate student, not based on need, but require credit check and no adverse credit history)
- Consolidation Loans (made to all borrowers to pay off PLUS, Stafford, and in some instances other Consolidation loans)

**2. William D. Ford Federal Direct Loan Program (Direct Loan Program)**

- **General Information:** loans made directly by Education; terms mirror terms of FFELP loans.
- **Statutory authority:** Title IV-D of the Higher Education Act, 20 U.S.C. § 1087a et seq.; regulations at 34 C.F.R. Part 685

### **Types of Direct Loans**

- Direct Subsidized Staffords
- Direct Unsubsidized Staffords
- Direct PLUS
- Direct Consolidation Loans
- Direct PLUS Consolidation Loans (Consolidation Loans to parent borrowers)

### **3. Perkins Loans**

- General information: loans made by postsecondary institutions from revolving loan fund capitalized by Federal funds from Education and matching institution contribution; loans repayable to school; may be assigned to Education, usually after protracted period of default and numerous unsuccessful collection efforts by the school.
- formerly known as the National Direct Student Loan Program or the National Defense Student Loan Program (NDSLP)
- loans only to students
- Statutory authority: Title IV-E of the Higher Education Act, 20 U.S.C. 1087aa-1087hh; regulations at 34 C.F.R. Part 674

### **Annual & Aggregate Limits on borrowing:**

- **FFELP & Direct - (34 C.F.R. § 682.204(e) & (h)(FFELP); (34 C.F.R. § 685.203 (e), (f), (g) (Direct):**
  - **Stafford** (Subsidized and Unsubsidized combined): annual limit for dependent undergraduate borrowers: \$2625 / \$3500 / \$5500 for first year/ second year/ third and remaining undergraduate;
  - **Stafford** (Unsubsidized in addition to subsidized): annual limit for independent undergraduate borrowers: \$4000 each for first year & second year; \$5000 each remaining undergraduate year; annual limit for graduate and professional: \$10,000/year
  - **Aggregate:** \$46,000 undergraduate, \$138,500 graduate or professional
  - **PLUS:** cost of attendance for student less other financial aid
- **Perkins:** annual limit: \$4,000/yr for undergraduate, \$6000/yr graduate
  - **Aggregate:** \$20,000 for bachelor's degree program; \$40,000 for graduate program; \$8,000 for any other student. 34 C.F.R. § 674.12

### **Repayment Plans:**

- **Standard Repayment (10 Years) (FFELP Stafford & PLUS, Perkins)**
  - 34 C.F.R. §§ 682.209(a)(7) (FFELP); 674.33(b)(1) Perkins)
  - Payments can be level or graduated (no payment larger than 3 x any other payment)
    - FFELP: for balances over \$30,000, payment period can extend up to 25 years
    - Perkins: limited to 10 years UNLESS low-income borrower, who can extend to 20 years 34 C.F.R. § 674.33(c).
- **Standard Repayment (all Direct Loans)(10 Years) 34 C.F.R. §685.208(b)(1)**

- **FFEL Consolidation Loans: Repayment (up to 30 years)**
  - 34 C.F.R. § 682.209(h)(2) (FFELP)
  - Payments can be level or graduated (no payment larger than 3 x any other payment)
  - Payment Term depends on total loan amount:
    - Less than \$7500 – 10 years
    - \$7500 - \$9999 – 12 years
    - \$10,000 - \$19,999 - 15 years
    - \$20,000 - \$39,999 – 20 years
    - \$40,000 - \$59,000 – 25 years
    - \$60,000 or more – 30 years
  
- **Extended and Graduated Plans (all Direct Loans) § 685.208(c), (e) (graduated); 34 C.F.R. § 685.208(d), (e) (extended)**
  - **Extended** (level payment) and **Graduated** terms generally same as FFELP (above), except minimum term – 12 years.
  - **Graduated:** no payment may be less the 50% or more than 150% of amount required under standard repayment plan
  
- **Income Contingent Repayment Plan (ICRP) (all Direct except Direct PLUS and Direct PLUS Consolidation)**
  - ICRP is a formula-based approach to tailoring repayment burden to financial ability: available – currently – only under Direct Loan Program, not for FFELP. See 20 U.S.C. § 1087e(d)(1)(D).
  
  - ICRP: borrower's annual repayment amounts are based on the income of the borrower **and, if married, his or her spouse**, and allows for payment over a **term of up to 25 years**. Any amount not paid by end of 25<sup>th</sup> year is cancelled. Amount cancelled under current view of IRS is taxable income in the year cancelled. HEA § 455(e)(4) directs ED to establish the terms of the income contingent repayment schedules by regulation; the schedules must vary the amount of installment payments required in relation to "the appropriate portion" of the annual income of the borrower and the borrower's spouse. 20 U.S.C. § 1087e(e)(4).
  
  - ICRP takes into consideration **only the adjusted gross income** of the borrower and his or her spouse. Income included therefore includes both wages and other taxable income (interest, dividends); income **not** included in AGI is not taken into account [e.g., **SSI payments**].
  
  - Under this option, borrowers provide authorization to ED to secure their adjusted gross income data directly from the Internal Revenue Service annually. 20 U.S.C. § 1087e(e)(1).
  
  - ICRP's flexibility was designed to make repayment affordable particularly for borrowers who take "lower-paying community service-type jobs." H.R. Rep. No. 111, 103d Cong. 1<sup>st</sup> Sess. 112, 121 (1993).

- PLUS loan borrowers (parents of dependent undergraduate students) are **not eligible** for income contingent repayment.
- ICRP Regulations: The installment amount depends on both the amount of the loan & the adjusted gross income of the borrower and his or her spouse. The installment amount required under income contingent repayment is set annually, in the following manner: (34 C.F.R. § 685.209(b), (c)).

**To establish the ICRP installment amount for a loan balance:** *the practical way: go to ED website and use the **ICRP Calculator**:*

**ED website allows estimate of monthly payments for a Direct Consolidation Loan:** <http://www.ed.gov/DirectLoan/index.html>

ICR - *understanding the concept*: two steps:

1. Establish the **"Pay Back Rate" amount**:
  - Find the installment payment amount needed to pay off the outstanding loan amount under a hypothetical 12-year level-payment amortization schedule.
  - Multiply that 12-year payoff installment amount (from step one) by a factor based on the borrower's income. For married borrowers with incomes roughly between \$40,000 to \$50,000, the factor is 1. The factor increases for borrowers with higher incomes, up to twice the 12-year level-payment amount, for those with incomes over \$245,000.
  - The factor decreases for borrowers with lower incomes, down to 55% of the 12-year level-payment amount for those with incomes under \$13,000.
  - The effect of the factor is to require more affluent borrowers to repay faster than a 12- year payback rate, and less affluent borrowers to repay more slowly than that required by a 12- year payback.
2. Determine the **actual monthly payment** under ICRP:
  - The monthly amount is based on the "payback rate" amount, but capped at 20 percent of the borrower's "disposable income."
  - Disposable income is adjusted gross income less the amount provided for a family of the same size as the borrower's under the HHS Poverty Guidelines.
  - The monthly installment payment for the individual borrower is based on the "payback rate" amount or 20% of the borrower's disposable income, whichever is less.
  - If payment is required, minimum required payment is \$5.00 per month.
  - Unpaid accrued interest is capitalized up to 10% of the original loan amount, and then accumulates without capitalizing.

- Amounts that remain unpaid at the end of the 25<sup>th</sup> year of repayment (excluding any periods of deferment or forbearance) are cancelled; under current rules, this amount is taxable income to the borrower.

#### Comments on ICRP:

- **Who benefits from ICRP?** Taking the 12-year payback amount as “normal,” ICRP demands higher than normal payments from those who have, and less from those who have not. The practical problem for middle-income borrowers is that ICRP identifies as “haves” borrowers with relatively modest income, and demands payback at rates that exceed those required under conventional 10 year level-payment amounts. As borrowers’ family income decreases below \$40,000, on the other hand, ICRP becomes more attractive option. — ch. 8
- Any student loan defaulter can arrange to pay off any HEA loan or PHS HEAL student loan debt by a Direct Consolidation Loan with ICRP terms. — 7. ✓
- **Parent borrowers [Direct PLUS loan] cannot obtain ICRP terms.**
- In first two years on ICRP, alternative documentation of income may be required. 34 C.F.R. § 685.209(c)(2).
- **Income Sensitive Repayment Plan (FFELP): [“ICRP lite”] -**
  - Payments not based on formula (as in ICR), but set by agreement with the holder of the loan; payments may vary, but no payment may be greater than 3 times any other payment
  - installment amount adjusted annually, based on borrower’s expected income;
  - loan must be repaid within otherwise applicable repayment timeframe, but lender can extend that timeframe for up to 5 years by exercise of forbearance. 34 C.F.R. § 682.209(a)(7), (8).

---

#### Default and consequences:

##### A. Default

- FFEL and Direct Loans: Failure to make required payment when due, if failure persists for 270 days: FFELP (20 U.S.C. § 1085(l); 34 C.F.R. § 682.200(b), and Direct: 34 C.F.R. § 685.102(b). Holder **always** accelerates the debt promptly after default.
- Perkins: Failure to make a payment when due: Perkins: 34 C.F.R. § 674.2(b); school **may** later accelerate the debt.

## **B. General comments:**

1. **Who determines default?** The party that holds the loan at the time that payments are due is the party that determines whether the borrower is in default. For FFELP, either lender/bank or secondary market; for Direct Loans, ED; for Perkins, the school.

2. **Credit bureau reporting and use of collection contractors:** Holders of loans in all three loan programs must report the debt as delinquent or in default to national credit bureaus, and typically use collection agency contractors to perform collection activity after default.

Note difference between billing and collection activity (see Perkins rules for examples): for the FFELP, real collection activity starts only after loan has been declared in default, accelerated by the lender, and assigned by the lender to guaranty agency with a claim by the lender on the loan guaranty. For Perkins Loan Program, the school holds the loan before and after default; after about one year of delinquency, program rules require the school to change treatment of the loan from “billing” activity (dunning and phone contacts) to traditional collection (including referral to contingent fee contractors). Similarly Direct Loans remain held by Education, but after about one year of delinquency, recovery efforts on the loan are transferred from a servicing component to collections office.

3. **Liability for collection costs:** The HEA makes defaulters liable for “reasonable” collection costs. 20 U.S.C. § 1091a(b)(1). FFELP regulations direct each guarantor to compute “reasonable costs” using a “make-whole” method that computes the charge to each defaulter on the model of a guarantor-specific contingent fee. The charge to each defaulted FFELP debtor is assessed as a percentage of the loan balance, with that rate set to generate funds sufficient to reimburse the guarantor for the costs of collection efforts on its entire defaulted loan portfolio – not just on that individual loan. 34 C.F.R. § 682.410(b)(2). The regulations require the guarantor to offer the defaulter a brief initial opportunity, after the default claim is paid, within which the debtor can agree to repay voluntarily, without liability for costs. (34 C.F.R. § 682.410(b) (5)(ii).

4. **Limits on Collection costs:** The guarantor’s collection cost charge is capped at the amount Education would charge if Education rather than the guarantor held the loan – currently 25% of principal and interest. (Note that regulations mandate a lower cap – 18.5% - for payoffs by Consolidation, 34 C.F.R. § 682.401(b)(27) or rehabilitation transfers, 34 C.F.R. § 682.405(b)(1)(iv)).

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## **Bankruptcy – Who’s got the ball?**

When a borrower files for relief in bankruptcy, how HEA loans are handled, and by whom they are handled, differs depending on the type of loan, the type of bankruptcy filing, who held the loan when the debtor filed, and whether the loan is already in default when the petition for relief is filed. In each case, **follow the money and the identity of the holder will become apparent:**

### **For FFELP loans:**

**Chapter 7 and 11:** The lender (bank or secondary market) that holds a FFELP loan must file a proof of claim, but retains the loan through the bankruptcy **unless and until the debtor files an adversary seeking a dischargeability determination** under 11 U.S.C. § 523(a)(8). The holder then files a claim with the guarantor on the loan guaranty, and assigns both proof of claim and the loan to the guarantor. Education reimburses the guarantor for the full amount paid to the lender on the claim.

The FFELP rationale never imposes on lenders any obligation to litigate or deal with litigation of any kind.

**Chapter 12 and 13:** The lender must suspend collection efforts, file a proof of claim in the bankruptcy, and then promptly claim on the guaranty and assign both the loan, and the proof of claim filed on the loan, to the guarantor. The guarantor pays the lender on the claim. Education reimburses the guarantor for the full amount paid to the lender on the claim.

**In all cases,** after taking assignment, the guarantor is responsible for defending the debt against discharge. **For State guarantors, this duty may be accomplished by raising sovereign immunity as a defense to adversary proceedings claiming undue hardship.**

**Non-defaulted FFELP loans held by guarantor:** After the bankruptcy case is closed, either by dismissal or general discharge order, the guarantor must put any **non-defaulted** loans back to the claiming lender, or must sell the loan to another eligible lender, and must repay to Education any amount received from Education as Federal reimbursement for a claim on that loan.

The loan is treated as in forbearance during the stay period by the original lender (if that party holds the loan through the bankruptcy proceeding) or the purchasing lender. 34 C.F.R. § 682.402(f)(5)(ii). Interest accrues during this period and is capitalized unless paid as it accrues. 34 C.F.R. § 682.402(j)(2).

**Defaulted FFELP loans held by guarantor:** If a FFEL loan is already in default and held by the guarantor when the borrower files in bankruptcy, the guarantor must file a proof of claim that includes, in the amount in the proof of claim, a claim for collection costs, computed by the make-whole method described earlier. When the case is closed, the guarantor resumes collection activity on the loan.



**Application of Payments:** Payments received by the guarantor during the bankruptcy are generally applied just as they would be outside bankruptcy: first to collection costs (for defaulted loans), then accrued interest, and last to principal. 34 C.F.R. 682.404(f). Although bankruptcy caps the amount that can be allowed on a claim at the amount owed at the filing date, which may not include postpetition interest, the guarantor (and ED) apply payments to interest without regard to whether that interest accrued before or after the petition date. There is little, if any, practical difference for the borrower between this "business as usual" method, and applying payments solely to prepetition interest but carrying, and capitalizing, unpaid postpetition interest.

### **ECMC**

The Educational Credit Management Corporation (ECMC) is a "special purpose" guaranty agency with a unique and growing role in FFELP bankruptcies. ECMC is a non-profit Minnesota corporation formed in 1994 at time when it appeared that a number of guaranty agencies were in imminent danger of financial failure, and that a new guarantor would be needed to step in and assume loan guaranty responsibilities in those locales. To assist in capitalizing ECMC, the Department has since then regularly assigned defaulted FFELP loans Education holds when the borrower files for relief in Chapter 13; ECMC takes title to the loan from Education, and pursues recovery both in the bankruptcy proceeding and, if the debt is not discharged, when the case is closed. ECMC then holds and collects those loans as would any other guaranty agency.

In 1998 amendments to the HEA, Congress reorganized the financial structure of guaranty agencies to divide in two the resources formerly considered to constitute the "reserve fund" of the guaranty agency. As pertinent, the HEA now requires guarantors to cover from their own resources (the "Operating Fund") those costs they incur in defending FFELP loans from discharge in bankruptcy. Rather than absorb these costs, some guarantors, including CSAC, have been routinely assigning to ECMC those FFELP loans they already hold when debtors file for bankruptcy relief, or which they acquire from lenders through payment of bankruptcy claims. On these loans, ECMC takes assignment of the loan and any proof of claim filed on the loan, and thereafter defends the loans in bankruptcy and attempts recovery on those loans not discharged. As with any other recoveries on defaulted Federally-reinsured FFELP loans, ECMC remits to Education, or holds subject to Federal direction, the "Federal share" of its recoveries on these loans. ECMC and Education work closely together.

ECMC uses a network of local counsel to represent its interests in bankruptcy proceedings.

**Direct Loans:** The Department retains Direct Loans owed by individuals who file for relief in bankruptcy, and generally suspends collection action and files proofs of claim directly. Education relies on the assistance of the local U.S. Attorney's office in defending against discharge attempts, including objectionable plan language.

**Service of process note:** Bankr. R. 7001 and 7004 make F. R. Civ. P. 4 service requirements apply to adversary proceedings and to contested matters (e.g., motions for stay violations, preference recoveries, etc.).

This requires service of a complaint or motion on the U.S. Attorney and the Attorney General, Bankr. R. 7004(4), as well as on the Secretary of Education. **Bankr. R. 7004(5).** Service on an Education contractor is not adequate service, nor is service on a regional Education office. The return address on most bills from Education is a contractor address, not an Education office. Per Federal regulations, See 34 C.F.R. 4.1, the only proper office for service of process on the Secretary of Education is

Office of the General Counsel,  
400 Maryland Ave. SW  
Washington DC 20202.

**Perkins Loans:** The school similarly retains Perkins loans through the bankruptcy process, and like a FFELP guarantor, is responsible for defending the debt against discharge. **For State postsecondary institutions, this duty may be accomplished by resisting undue hardship claims on sovereign immunity grounds.** After the case is closed, either by dismissal or general discharge order, the school resumes collection action. The loan is treated as in forbearance during the stay period. Interest accrues during this period and is capitalized unless paid as it accrues.

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**Options available only before default or after default has been cured: Deferments & Forbearances** — 7

Borrowers facing financial difficulty in meeting repayment obligations can switch to another repayment plan available for their kind of loan, or suspend or modify that repayment schedule by means of deferments or forbearances.

- **Deferment** is a suspension for specific causes of the obligation to repay; the borrower is entitled to a deferment upon demonstrating that qualifications are met.
- **Forbearance** is a temporary modification of an established repayment schedule either for inability to meet the existing repayment obligations or other specified grounds. Forbearances can suspend all repayment, or can temporarily reduce the required installment amount. Generally, forbearances are within the discretion of the lender and are not a right of the borrower. 7 ?

**A. General comments on deferments and forbearances**

- Deferments and forbearances are available prior to default and after rehabilitation, (which cures default – see below), but not while the loan is in default. ?
- Deferments: for those **FFEL and Direct** loans based on financial need, government will pay the interest accruing during deferments. Other FFEL and Direct, borrower is liable for accruing interest (can be paid as accrued or capitalized).

- Forbearances: debtor must pay the interest prior to end of forbearance or it is capitalized (added to principal balance)
- Whether particular type of deferment or forbearance is available depends upon many factors, including when the loan was taken out and if borrower had prior loans
- In general, borrower is limited to up to maximum of three years per type of deferment. Forbearances may be granted for up to one year at a time, but FFELP regulations do not limit the cumulative amount of forbearance periods.

**Deferments. Regulations:**

Authority: FFELP - 34 C.F.R. § 682.210; Direct - 34 C.F.R. § 685.204; Perkins/NDSLP - 34 C.F.R. § 674.34 et seq. Each program has a variety of deferment grounds; several are focused on financial hardship, including unemployment deferment and economic hardship deferment.

1. **Economic Hardship Deferment:** available under all Title IV Loan Programs; 34 C.F.R. § 682.210(s)(6) (FFEL); 34 C.F.R. § 685.204(b)(3) (Direct); 34 C.F.R. § 674.34(e)(Perkins). Borrower must be --
  - a. receiving **public assistance, or**
  - b. **working full-time (30 hrs/wk or more)** with low income - at or below the HHS Poverty Guideline amount for family of two [**for 2004, \$1040.80 per month**]<sup>1</sup>, **or**
  - c. **working full-time, with high debt/income ration:** (monthly income - student loan debt is less than \$2289 (220% of amount in (b)), **or**
  - d. **not working full-time**, with low income [less than \$2020 (2004)] and monthly income net of student loan payments lower than \$1040.80 [amount in (b)].

[Note: (b), (c), and (d) formally require the qualifying income to be below the greater of the HHS Guideline amount or the minimum wage; the HHS Guideline amount now produces a larger amount than the minimum wage.]

2. **Unemployment deferment** available to borrower who is registered with unemployment agency if within 50-mile radius and has made at least 6 attempts during preceding 6 month period to secure full time work. 34 C.F.R. § 682.210(h)(FFEL); 34 C.F.R. § 685.204(b)(2) (Direct); 34 C.F.R. § 674.34(d)(Perkins).

**Forbearances:**

**FFELP** 34 C.F.R. § 682.211; **Direct Loan:** 34 C.F.R. § 685.205; **Perkins** 34 C.F.R. § 674.33(d) --

- a. **Generally** available where lender believes borrower intends to repay, but is unable to make scheduled payments because of poor health or other acceptable reasons.
- b. **Loan Debt Burden Forbearance** Required where student loan debt burden equals at least 20% of monthly income; limited to total of 3 years. 34 C.F.R. § 682.211(h)(2); 34 C.F.R. § 685.205(a)(6).

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<sup>1</sup> Regulations state either minimum wage or poverty guideline amount; since minimum wage is lower (currently \$892 @ \$5.15/hr) the regulation defaults to the larger poverty guideline amount).

c. **Military mobilization or national emergency:** Required where Education Department determines that military mobilization or national emergency affects borrower.

**Service-based cancellation:**

**Partial cancellation for teaching and other public service work:** Perkins, National Direct, and National Defense Loans may be partially or wholly canceled in return for qualifying teaching or other specific kinds of public service work. See 34 C.F.R. §§ 674. Cancellation rates and types of qualifying employment vary considerably depending on the type of loan and the period during which the loan was made.

Borrowers whose loans are in default and have been accelerated may still qualify for cancellation, **but only for service performed prior to acceleration of the loan.** 34 C.F.R. § 674.52(c)(2). A borrower may obtain a cancellation only by written request to the holder of the loan together with documentation supporting the claim, typically a certification from the employer of the borrower. 34 C.F.R. § 674.52(a).

**FFELP and Direct Loan** borrowers may obtain limited cancellation for loans obtained no earlier than 1998, after five consecutive years of full-time teaching performed at least in part after 1997-98 school year. 20 U.S.C. § 1078-10; 34 C.F.R. § 682.215 (FFELP); 34 C.F.R. § 685.215 (Direct). Borrowers who claim this relief should be referred to ED Service Center staff.

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**Options available without regard to default status of loan:**

**Disability Discharge**

A. **Authority:** FFELP: 20 U.S.C. § 1087(a), 34 C.F.R. § 682.402(c)(1); Direct: 34 C.F.R. § 685.213; Perkins/NDSL: 20 U.S.C. § 1087dd, 34 C.F.R. § 674.61

**B. Definition of Total and Permanent Disability**

An individual is considered totally and permanently disabled for student loan purposes only if the individual is **unable to work and earn money** because of an **injury or illness that is expected to continue indefinitely or result in death**. 34 C.F.R. §§ 674.51(s) (Perkins), 682.200 (b) (FFELP), 685.102(a)(3) (Direct Loan Program). A borrower **cannot** be considered totally and permanently disabled based on a condition that existed before he or she received the loan, **unless** that condition has substantially deteriorated since the submission of the loan application and has rendered the borrower totally and permanently disabled.

**For FFELP and Direct Consolidation loans,** this means that the Consolidation loan may be discharged only if the borrower would qualify for discharge of each and every one of the loans paid off by the Consolidation Loan.

**Different Standard than for Social Security:** The Social Security Act defines disability as inability to perform substantial gainful activity because of an impairment expected to last at least 12 months. 42 U.S.C. § 423(d)(1)(A). Because the student loan standard of disability is stricter than the disability standard in the Social Security Act, the fact that an individual may be receiving Social Security disability benefits does not necessarily qualify that borrower for total and permanent disability cancellation under the HEA.

**Current Disability Discharge Regulations and Procedures:**

1. Under pre-July 1, 2002 rules, a borrower could receive a disability discharge based solely on a physician's certification that the borrower was totally and permanently disabled.

2. **Under current regulations**, the physician's certification only qualifies the borrower for a "conditional discharge." A borrower receives a final discharge only if the borrower demonstrates that he or she is disabled through a conditional discharge period, which may last up to three years. During this conditional discharge period, the borrower's repayment obligation is suspended and no interest accrues. ED monitors the borrower's status during the conditional discharge period. If the borrower meets regulatory requirements through the conditional discharge period, ED grants a final discharge at the end of that period.

- The three year conditional discharge period runs from the date on which the borrower's condition, in the opinion of the physician, became severe enough to render the borrower unable to work, not from the date the borrower or the physician signed the form.
- For many borrowers, the three-year conditional discharge period is completed by the time the application is submitted; in that case - if all other eligibility criteria are met - ED gives the borrower a conditional discharge, but very shortly thereafter approves permanent discharge.

**3. Requirements for Permanent Disability Discharge:** a borrower meets the requirements for a final discharge if, during and at the end of the conditional discharge period,

- (a) the borrower receives no new Title IV loans, and
- (b) the borrower's annual earnings from employment do not exceed the HHS Poverty Guideline amounts for a family of two.

- ED reviews the disability application in two steps:

1. **Medical review:** ED reviews the medical judgment stated on the application. If ED considers the disability statement by the physician to be acceptable, ED notifies the borrower that a conditional discharge is granted.

2. **Earnings review:** ED promptly secures and reviews earnings information. Earnings records may show that the borrower earned amounts in the conditional discharge period that exceed the earnings limits in the regulations (see below). Those

earnings disqualify the borrower from discharge. **In these circumstances, ED may revoke a conditional discharge very shortly after the notice granting conditional discharge.**

- If at any time during or at the end of the conditional discharge period, the borrower fails either the earnings or the borrowing test, the conditional discharge period ends and the borrower becomes once again responsible for repaying the loan. The loan is then held and owed to Education, but reverts to the status it reached when the application was approved – current, delinquent, or defaulted.

#### **4. Reaffirmation of Loans Discharged for Disability**

- Borrowers who received a disability discharge between July 1, 2001 and June 30, 2002, may qualify for a new loan within three years of the date of that disability only if they reaffirm the discharged loans.
- Discharges on or after July 1, 2002: Borrowers are no longer required to reaffirm debts previously cancelled due to total and permanent disability in order to qualify for new Title IV student loans.

**5. To borrow again after disability discharge of Title IV Loans:** borrowers who wish to borrow after a loan discharge must (a) submit a physician's statement that the individual is able to engage in substantial gainful activity and (b) sign and submit a statement acknowledging that the new loan they now apply for cannot be discharged in the future on the basis of any present impairment, unless that condition substantially deteriorates in the future.

#### **6. Applying for a TPD Loan Discharge**

- How to apply: Applications are available from the current holder of the loan, and should be returned to holder to initiate processing of TPD application. Applications can be downloaded from <http://www.ed.gov/offices/OSFAP/DCS/forms/disable.pdf>.
- Both Borrower and Physician must complete appropriate sections of application.
- **Physician Must Provide:**
  - **State License Number:** Doctors certifying a disability on a student loan must reside or be licensed to practice within the continental United States, American Samoa, the Commonwealth of Puerto Rico, the District of Columbia, Guam, the Virgin Islands, the Commonwealth of the Northern Mariana Islands, the Republic of the Marshall Islands, the Federated States of Micronesia, and the Republic of Palau. The latter three are also known as the Freely Associated States. Doctors from outside the US cannot certify a total and permanent disability for purposes of discharging a student loan debt, even if the borrower lives outside the United States.
- **Clear and Complete Diagnosis,** in laymen's terms, of borrower's condition, including, as necessary, clarification (nature, severity and duration) of the diagnosis and how it will impact borrower's ability to work because of a medically determinable impairment that is expected to continue indefinitely or result in death.

- **Upon request, Additional documentation** to support a borrower's application for loan discharge in cases where the information provided in the initial application is not definitive, is illegible or is incomplete.
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## **Administrative Discharge Relief**

### **A. Background of discharge relief under HEA § 437(c), 20 U.S.C. §1087(c).**

In the early 1990's, a series of class actions were brought against holders of FFELP loans seeking relief on a variety of theories from loan liability by reason of school misconduct. In 1992 amendments to the HEA, Congress, unwilling to close off resolution of the pending lawsuits, yet reluctant to avoid any relief for borrowers injured by school misfeasance recently documented in the Nunn committee hearings, adopted the "loan discharge" provisions in HEA § 437(c). 20 U.S.C. § 1087(c). These discharge provisions, subsequently expanded in the 1998 HEA reauthorization, implicitly recognize that borrowers affected by school misconduct or non-performance (closure, failure to pay refunds, false certification of eligibility to borrow) were still legally obligated to repay the FFELP loans they had received to attend these schools.

Relief is available for student borrowers, for parent borrowers if a student meets the eligibility standards, and for Consolidation Loan borrowers if a loan paid off by the Consolidation Loan would have qualified for discharge were it still outstanding. For unexplained reasons, the statute itself provided this relief only for loans made after January 1, 1986. Relief includes the following:

**B. Closed school discharge** Borrowers who received FFELP, Perkins or Direct loans on or after January 1, 1986 may qualify for a discharge of their obligation on those loans if they were unable to complete their education because the school in which they (or, for parent borrowers, the students for whom the loans were received) were enrolled closed or if they withdrew during a 90-day period of "constructive closure" preceding the closing date. HEA § 437(c), 20 U.S.C. § 1087(c) (FFELP); §464(g), 20 U.S.C. § 1087dd(g) (Perkins); and 34 C.F.R. § 685.213 (Direct). Relief is available upon satisfactory showing of eligibility by application to ED, or, for loans not held by ED, to the cognizant guaranty agency. Eligibility and procedures are set forth at 34 C.F.R. § 682.402(d). Relief includes refund of any payments made on the loan, reinstatement of eligibility for future Title IV, HEA student assistance, and expunging of adverse information disseminated on the loan to credit bureaus. Older (pre-January 1986) FFELP loans may qualify for pro-rated relief.

**C. False certification discharge** Borrowers who received FFELP loans after January 1, 1986 may obtain a discharge of their obligation if the school for which the loans were received falsely certified their eligibility to borrow. 20 U.S.C. § 1087(c). Relief is available by application to ED, or, for loans not held by ED, to the cognizant guaranty agency through procedures set forth at 34 C.F.R. § 682.402(e). Relief includes refund of

any payments made on the loan, reinstatement of eligibility for future Title IV, HEA student assistance, and expunging of adverse information disseminated on the loan to credit bureaus. The same relief is available for Federal Direct Loan borrowers. 34 C.F.R. § 685.214.

**D. Ability to benefit:** ED applies the false certification discharge provision first to those determinations of student eligibility made by the school attended by the borrowers (or, for parent borrowers, the student for whom the loan was received) that the student, although lacking a high school diploma or GED, was nevertheless an "eligible student" under the FFELP because the student nevertheless had the ability to benefit from the training offered from the school. 34 C.F.R. § 682.402(e). A borrower qualifies for loan discharge if the school's determination that the student had the ability to benefit was improperly made.

**E. False signature:** Relief under §437(c) is also available, under ED regulations, for a FFELP or Direct loan borrower whose loan application or promissory note was signed by the school without the borrower's authorization, upon satisfactory application to ED or the guarantor. 34 C.F.R. §§ 682.402(e); 685.214(c)(2).

**F. Forgery of disbursement check:** Loan relief is available under the False Certification procedure for forgeries on disbursement instruments. This includes claims that the school forged the FFELP or Direct loan borrower's endorsement on a loan disbursement check or on an authorization for the loan funds to be disbursed electronically. Relief is not given if the borrower received the proceeds of that loan either directly or by credit satisfying a tuition obligation owed to the school. 34 C.F.R. § 682.402(e)(1)(ii); § 685.214(c)(3).

**G. Unpaid refunds:** Borrowers who received FFELP or Direct loans on or after January 1, 1986 may, under § 437(c), obtain a partial discharge of their loan obligation if the school they attended failed to make a refund that would have been applied to reduce their loan balance. 20 U.S.C. § 1087(c). As with other discharge relief, the borrower must file an application with ED or the cognizant guaranty agency for discharge relief. 34 C.F.R. § 682.402(l)(FFELP); 34 C.F.R. 685.212(f) (Direct).

**I. Administrative Relief only:**

**No relief available by suit:**

Discharge relief claims of any kind **must** be presented **through the administrative process** created by ED regulations and cannot be obtained by a suit brought for affirmative relief or asserted as a defense to a collection claim in litigation. *In re Schol*, 239 B.R. 345 (Bankr. N.D. Iowa 2001)(closed school claim); *U.S. v. Wright*, 87 F.Supp.2d 464 (D. Md. 2000); *U.S. v. Bertucci*, C.A. No. 00-0078, 2000 U.S. Dist. LEXIS 12877 (E.D. La., Aug. 30, 2000) (unpaid refund claim); *In re Bega*, 180 B.R. 642 (Bankr. D. Kan. 1995).



**Discharge available even after judgment entered on debt:**

There is no limitation period for such a claim, and **no prohibition on relief even if the loan has been reduced to judgment**; raising a claim for discharge relief is therefore no basis for delay in entry of judgment on the debt. *U.S. v. Green*, No. 1:99 CV 53-C, 2000 U.S. Dist. LEXIS 3297 (W.D. N.C. Feb. 9, 2000).

To download application forms for these discharges, go to ED site at <http://www.ed.gov/offices/OSFAP/DCS>, select **Forms**, then select the application described for that discharge relief.

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**Options for Refinancing Student Loan Debt and Curing Default:**

**Consolidation Loans**

**A. The Basics:**

- Borrowers can obtain a Consolidation Loan from a FFEL lender or from the Department to pay off qualifying education loans, usually over substantially longer terms, based on loan amount, than were available on the original loans (see above). 20 U.S.C. §1078-3(c)(4). Interest rate on the Consolidation Loan is the weighted average of the rates on the outstanding loans at the time the Consolidation Loan is made.
- **Some** Non-HEA Title IV loans may be consolidated into a Direct Consolidation Loan; e.g., HEAL Loans. 34 C.F.R. § 685.220(b)(19). **Private loans** (loans from TERI *et al.*) **cannot** be paid off by a FFEL or Direct Consolidation loan.
- Borrowers with an outstanding Direct Loan are eligible for a Direct consolidation loan. Other borrowers - those who do not have a Direct Loan - must first attempt to obtain a FFEL Consolidation Loan from a FFELP lender, but can obtain Direct Consolidation Loan if they are unable to obtain an FFELP Consolidation Loan, or - for all but PLUS borrowers - if they would qualify for income contingent repayment on a Direct Loan, but cannot obtain a FFELP Consolidation Loan with income-sensitive repayment terms. 34 C.F.R. §§ 685.208(a), 685.215(d)(1)(I).

**B. Special considerations for Defaulters:**

- Applicants for FFEL Consolidation cannot be subject to a judgment on a Title IV loan or an administrative wage garnishment order under HEA § 488A. 20 U.S.C. §1078-3(a)(3).
- A defaulted borrower who makes satisfactory arrangements to repay the defaulted loan can obtain a FFELP or Direct Consolidation Loan. 34 C.F.R. § 682.201(c)(1) (iii)(C) (FFELP); 34 C.F.R. 685.215(d)(1) (ii)(E) (Direct).

- One may obtain a (new) Direct Consolidation Loan to repay a (prior) Direct Consolidation Loan that is currently in default, in exceptional circumstances and at the discretion of the Department. 34 C.F.R. §685.220(d)(1)(vi). Exceptional circumstances include the situation in which a borrower is in bankruptcy and is seeking to discharge the outstanding (defaulted) Direct Consolidation Loan. [note that ED website has in the past erroneously stated that a defaulter cannot re-consolidate a defaulted Direct Consolidation Loan.]
- A defaulted borrower may become eligible for a Direct Consolidation Loan without first making the series of payments otherwise required if the borrower agrees to pay the loan under the income contingent repayment plan. 34 C.F.R. § 685.215(d)(1) (ii)(F).
- **To apply for a Consolidation Loan**, borrowers should contact a FFELP lender or, for a Direct Consolidation Loan, the Direct Loan Servicing Center (800-848-0979), or download a Direct loan application from <http://loanconsolidation.ed.gov/forms.html>.
- **E-sign loans:** Applicants can apply for a Direct Loan on line, and execute the transaction, including signing the promissory note, electronically – on line. To do so, the applicant must have PIN from Education; the PIN can also be obtained on line.

### C. Some considerations about Consolidation:

- **The amount borrowed** under the Consolidation Loan must be large enough to pay off the outstanding loans in full, including all accrued and outstanding interest and – for those in default - any collection costs incurred as a result of that payoff. The costs incurred or that payoff will typically arise from, or are figured as, a contingent fee or commission – as a percentage of the payment from the proceeds of the Consolidation Loan.
- **Collection cost charges for defaulted borrowers:** Regulations cap at 18.5% the Consolidation Loan borrower's liability for collection cost charges on the outstanding defaulted loans being paid off by the Consolidation Loan. This is less than the rate typically charged on those loans if they remained outstanding and collected by the guarantor. The amount borrowed in the new, Consolidation Loan must therefore be sufficient to pay off all outstanding principal and interest, as well as the collection costs incurred for the payoff, of the outstanding defaulted loans. Interest will accrue on that new (larger) balance, not simply on the principal that was owed on the loans paid off by that Consolidation Loan. - C h. y
- **ED charges:** Note that ED currently charges 12% for collections costs incurred in those instances in which the new Consolidation Loan is arranged by a contractor under circumstances in which ED owes the contractor a commission. No commission is earned if the borrower obtains the new Direct Consolidation loan only by agreement to ICRP, and therefore no collection costs are incurred or added in that instance.

- **Interest rates:** In all instances, the new Consolidation Loan has a fixed interest rate that is the weighted average of the rates in effect on the loans being paid off.
- **Potential effect on disability claims:** A borrower who consolidates several loans cannot obtain a disability cancellation of the consolidation loan if the borrower would not qualify for discharge on each of those original loans paid off by the Consolidation Loan.

If a borrower and spouse take out a single Consolidation Loan to pay off both their outstanding loans, **both** must sign the new promissory note, and both are individually and jointly liable for the entire new debt. A spouse who subsequently becomes disabled can obtain a disability discharge of his or her respective portion of the Consolidation loan.

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### Rehabilitation of defaulted HEA loans

**A. FFELP Loan Rehabilitation** is a repayment process for curing a default by making twelve (12) consecutive (on time) monthly payments **and** by then having the holder of the defaulted loan (the guarantor or the Department) sell the loan to a lender. The guarantor or the Department reinstates the loan guaranty upon sale to the lender, and the borrower then regains all the benefits of the original loan, such as rights to deferment and cancellation, that were lost when the loan defaulted. The loan is rehabilitated only when it has actually been sold. The loan may then be repaid under a new repayment schedule; the borrower may be required to sign a new promissory note.

Authority: Section 428F(a) of the Higher Education Act of 1965, as amended, 20 U.S.C. §1078-6(a); 34 C.F.R. § 682.405

*ms* (The amount of the installment payments needed to qualify for rehabilitation must be "reasonable and affordable" based on the borrower's "total financial circumstances," as assessed by the guarantor. This is an ad-hoc, financial-statement based evaluation, unlike the formulaic ICRP.

Some payment must be made, but no pre-set minimum amount can be required. Amounts recovered by administrative wage garnishment or any other non-voluntary payment does not count toward these 12 qualifying payments.

Loans reduced to **judgment** are not eligible for rehabilitation unless and until the holder of the judgment: the government (for loans held by ED) or the guarantor, in its discretion, agrees to vacate the judgment and reinstate the loan as the basis of the debtor's obligation.

Separate rules apply for Perkins and Direct loans (see below): neither the school (Perkins) nor the Department (Direct) sells the loan when the qualifying payments have been made, but rather both restore the rehabilitated loan to normal servicing. Pell Grant overpayment debts cannot be rehabilitated.

Credit bureau reference by the guarantor or ED showing the loan as a defaulted student loan is deleted when the rehabilitation is complete; purchasing lender will report loan as current. **However**, the original lender's report of the loan as in default and paid by government guarantee will remain on credit bureau record until seven year limitation period for adverse credit information under Fair Credit Reporting Act lapses as to that lender's report.

Borrower regains eligibility for Title IV HEA student aid.

Interest rate remains same as original promissory note.

### **B. Direct Loan Rehabilitation**

Authority: 34 C.F.R. § 685.211(e) (Direct Loans)

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A defaulted Direct Loan is automatically ("rehabilitated") restored to normal servicing, with default status cured, after the debtor has made twelve (12) consecutive (on time) voluntary monthly payments.

Unlike FFELP, Direct Loan rules do **not** require a borrower to specifically request rehabilitation; rehabilitation for Direct Loans occurs **automatically** upon completion of the 12 qualifying payments. Servicing responsibility for the Direct Loan is therefore **automatically transferred** to the Direct Loan servicing system after the qualifying payments have been completed. The borrower **then** regains all benefits that are available to current Direct Loan borrowers, including deferments, forbearances, and choice of repayment plans.

Borrower regains eligibility for Title IV Aid.

ED notifies Credit Bureaus to delete previous reports of the loan as in default.

The debtor is liable for collection costs on individual qualifying payments (at the normal rate) up to the point at which the loan is rehabilitated, but not thereafter, unless the debtor defaults again.

Borrower continues paying ED until notification received from Direct Loans to send payment to Direct Loan Program again.

Education applies any voluntary payments made after rehabilitation to the loan; Education refunds any involuntary payments it receives after Rehabilitation occurs.

### C. Perkins Loan Rehabilitation

Authority: 20 U.S.C. § 1087dd(h), 34 C.F.R. § 674.39.

Same standards as FFELP and Direct: 12 qualifying payments; borrower liable for collection costs of up to 24% of the unpaid balance at time of 12<sup>th</sup> payment, which amount becomes part of the debt to be repaid thereafter.

### D. Comments on Rehabilitation:

**Potential increase in required installment payment amount.** Borrowers qualify for repayment installments under rehabilitation agreements that are “reasonable and affordable” based on their individual financial ability – not on any required amortization schedule. However, after the loan is sold (FFELP) or transferred in routine servicing (Direct or Perkins), the loan must be repaid under a conventional standard 10-year repayment schedule, or other repayment plan available under program rules (see above). The start of the new repayment term is the date the first of the qualifying 12 payments – leaving 9 years (under standard plans) to repay the loan in full. After rehabilitation, the holder of the loan (for FFELP, the purchasing lender, for Perkins, the school, or, for Direct Loans, the Department) must establish a repayment schedule that will actually amortize the loan over that 9-year term, with limited flexibility (depending on the loan program rules, see above) to extend by means of a forbearance agreement for reduced payments. This may well require substantially larger payments from the borrower after rehabilitation than were permitted for the 12 qualifying payments, and may exceed the borrower’s ability to pay.

**Increased principal – collection costs capitalized only by guarantors and schools:** At the point of rehabilitation, the guarantor (for FFEL loans) typically adds to the principal of the loan any collection costs incurred for the sale, those guarantor costs – capped at 18.5% of the principal and interest owed at the time of sale - are therefore capitalized and incur interest. Similarly, the Perkins school adds an amount capped at 24% of the principal and interest then owed.

**(Note that ED currently adds no collection costs or fees on any defaulted loans it holds when they are rehabilitated).**

- Consider whether the borrower actually needs the benefits of rehabilitation – chiefly a potentially improved credit record.

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### Reinstatement Of Eligibility For New Title IV HEA Student Aid

a. 20 U.S.C. § 1078-6(b); 34 C.F.R. § 668.35(a)(2); 682.201(a) (FFELP); 34 C.F.R. § 674.9(a) (Perkins); 34 C.F.R. § 685.200(c) (Direct Loans).

b. Satisfactory repayment arrangements consist of making of six consecutive, voluntary, on-time, full monthly payments on a defaulted loan. See 34 C.F.R. § 682.200 (FFEL); 34 C.F.R. § 674.2 (Perkins); 34 C.F.R. § 685.102 (Direct Loans).

i. Monthly Payment Amount: an amount satisfactory to the loan holder (ED, the guarantor, or the school that made the loan) based on financial documents from debtor; no set minimum amount required.

ii. Voluntary Payments: payments obtained through offset and garnishment are not considered voluntary but those payments can be considered by the loan holder in establishing a monthly payment amount

**Two strikes and you're out:** A borrower can regain eligibility only one time under this provision. If the borrower defaults again on that loan, reinstatement of eligibility is not available.

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**When push comes to shove: Non-judicial wage garnishment:** Repayment options & financial hardship objections to garnishment

Federal law now authorizes guarantors and the Department to collect defaulted loans they hold by non-judicial, "administrative" wage garnishment. Defaulters who do not come to repayment terms with the guarantor (for FFELP loans) or the Department (for any loan held by the Department) ultimately face enforcement by wage garnishment.

- Section 488A of the HEA, 20 U.S.C. § 1095a authorizes both guarantors and the Department to garnish up to 10 percent of the disposable pay of the debtor by an administrative order, without need for a judgment. Federal regulations require guarantors to use this tool, which is now the primary means of enforcing defaulted FFELP loans. 34 C.F.R. 682.410(b)(9). (Perkins schools do not have this authority.)
- The Debt Collection Improvement Act of 1996 enacted 31 U.S.C. § 3720D, a virtual clone of this HEA garnishment authority, which authorizes Federal agencies, such as Education, to garnish up to 15 percent of disposable pay. Education adopted regulations for this authority, 34 C.F.R. Part 34, 68 FR 8141 (2003), and has recently started relying on this new authority.

Both the HEA and DCIA require that the debtor be given notice of any proposed garnishment action, an opportunity to avoid garnishment by repaying voluntarily, and a hearing, on request, to dispute both the existence and amount of the debt, and whether withholding at the full rate authorized (10 percent under the HEA; 15 percent under the DCIA) would cause financial hardship. These rights are spelled out in the notices sent prior to garnishment.

Guarantors are free to use any method of evaluating hardship claims; some may use an ad hoc, financial statement-based approach; others, and the Department itself, use a method **based on** the standards adopted by the IRS for offers in compromise under IRC §

7122(c)(2).<sup>2</sup> The Department encourages, but does not require, guarantors to use this method.

Under this standards approach, a debtor who claims that garnishment at the full 10 or 15 percent rate of his or her disposable pay would cause financial hardship to him or her and his dependents must document the debtor's household expenses and income. The garnishment order reaches only the debtor's wages, but whether garnishment of the debtor's wages will cause financial hardship to the debtor and his or her dependents requires consideration of both the household income as a whole, as well as the household expenses. The debtor's expenses are then compared by the guarantor or Department with the amounts identified in the IRS standards as the average amounts spent for those same expenses by families of the same size and similar income as the debtor's. Using data from census and other empiric sources, the standards determine average housing expenses on a county-by-county basis; transportation expenses, on a regional basis; and personal expenses, on a national basis. A debtor who claims to need to spend more for a particular kind of expense than the average amount spent by families in his or her cohort of the standards bears the burden of persuasion that the added amount is necessary.

The Department uses the standards method in garnishment proceedings both to determine the terms of voluntary repayment agreements and the amount to be withheld when agreement cannot be reached:

**Repayment agreements:**

- For those debtors who respond to a garnishment notice by seeking to repay voluntarily and do not claim hardship, the Department generally is willing to accept – without documentation of expenses – an installment payment arrangement under which the debtor agrees to repay in installment amounts equal to amount collectible at the full garnishment rate authorized (now, 15% of disposable pay). Current pay stubs are sufficient to establish the amount of disposable pay of the debtor. The repayment terms are subject to reevaluation periodically.
- For those debtors who respond to a garnishment notice by claiming hardship but indicate a willingness to repay voluntarily, the Department is willing to accept – upon documentation of income and expenses – an installment payment amount based on available income after necessary household expenses, measured against the standards, are met. If no amount appears available after expenses are met, the Department suspends attempts to garnish. Any repayment agreement or suspension of enforcement action is subject to reevaluation periodically, typically at six-month intervals.

**Amount to be withheld by garnishment order:**

For those debtors who object to garnishment on hardship grounds but do not agree to repay voluntarily, the Department uses the standards in the hearing process to evaluate

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<sup>2</sup> Education and the guarantors that employ this method use it only to measure the reasonableness of expense claims, and not to determine the amount of debt that the individual will be required to repay to satisfy his or her obligation.

the hardship claim. Based on that evaluation, the hearing official may order withholding at less than the full amount authorized by statute, or may determine that withholding in any amount will cause hardship, and decide that no garnishment should occur. Again, a partial or complete hardship determination is subject to reevaluation periodically; if Education later determines that the financial circumstances no longer show that repayment would cause hardship, the Department will resume enforcement action, starting with a new notice of proposed garnishment, and an additional opportunity to object to that demand.



**Resources: Forms**

<http://www.ed.gov/offices/OSFAP/DCS/index.html>

<http://connected1.ed.gov/po/fsacollnet/forms>

**Direct Loan application and ICR calculator:**

<http://www.ed.gov/offices/OSFAP/DirectLoan/index.html>

To identify loans received by borrower: 1-800-4-FED-AID

**Appendices**

Total and Permanent Disability Discharge Application

Economic Hardship Deferment Request

Unemployment Deferment Request

Financial Disclosure Statement & Declaration of Caregiver Services