

action, we promptly refund any amount collected by means of this garnishment.

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

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

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

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

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

(2) However, the provision of paragraph (b)(1) 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)

§ 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 (§§ 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.

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

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).

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