

debtor wages to collect student loans.² Subsequent oversight action by that subcommittee³ and by the General Accounting Office⁴ 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.

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 (§ 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; § 34.4 states that we provide notice of the proposed garnishment "at least" 30 days before we begin garnishment, and § 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 (§ 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 § 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

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 Righter, 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).