

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 §§ 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 § 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 (§ 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 § 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 § 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 (§ 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.