

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, § 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 (§ 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 § 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 § 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 § 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.

[FR Doc. 03-3947 Filed 2-18-03; 8:45 am]

BILLING CODE 4000-01-P