

ADMINISTRATIVE WAGE GARNISHMENT

- 1. REASON FOR ISSUE:** To introduce procedures for Department of Veterans Affairs (VA) administrative wage garnishment.
- 2. SUMMARY OF CONTENTS/MAJOR CHANGES:** This handbook establishes the general procedural guidelines for administrative wage garnishment.
- 3. RESPONSIBLE OFFICE:** Cash and Debt Management Division (047GC1), Office of the Deputy Assistant Secretary for Finance.
- 4. RELATED DIRECTIVE:** VA Directive 4800, Debt Management.
- 5. RESCISSIONS:** None.

CERTIFIED BY:

**BY DIRECTION OF THE SECRETARY
OF VETERANS AFFAIRS**

/s/
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Acting Assistant Secretary for
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ADMINISTRATIVE WAGE GARNISHMENT

- 1. PURPOSE AND SCOPE.** This handbook provides the general guidelines for the application of Administrative Wage Garnishment (AWG).
- 2. RESPONSIBILITY.** The Chief of the Fiscal Activity, the Director of the Debt Management Center (DMC), and the Chairperson of the Board of Contract Appeals must ensure that appropriate procedures in accordance with this handbook are followed for implementing garnishment.
- 3. LEGAL AND REGULATORY AUTHORITY.** The Debt Collection Improvement Act of 1996 (Pub. L. 104-134) and the Department of the Treasury (Treasury) regulation 31 CFR §285.11 give Federal agencies the authority to request that a non-Federal employer garnish the disposable pay of an individual to collect delinquent nontax debt owed to VA.
- 4. GENERAL.** VA may pursue wage garnishment independently in accordance with this handbook section or garnishment may be pursued after VA refers a debt to Treasury for cross servicing in accordance with 31 CFR §285.12. In almost all cases, VA will rely on garnishment via Treasury cross-servicing procedures. For the purposes of this handbook, any reference to Treasury also includes any private collection agency under contract to Treasury. VA's DMC in St. Paul, MN, will be responsible for conducting any administrative wage garnishment hearings.
- 5. NOTICE.** At least 30 days prior to the initiation of garnishment proceedings, VA/Treasury shall send a written notice, by first class mail, to the debtor's last known address. This notice shall inform the debtor of:
 - a. The nature and amount of the debt;
 - b. The intention to initiate proceedings to collect the debt through deductions from the debtor's pay until the debt and all accumulated interest, and other late payment charges, are paid in full, and;
 - c. An explanation of the debtor's rights, including the opportunity:
 - (1) To inspect and copy VA records pertaining to the debt;
 - (2) To enter into a written repayment agreement with VA/Treasury under terms agreeable to VA/Treasury, and;
 - (3) To request a hearing concerning the existence or amount of the debt or the terms of the proposed repayment schedule under the garnishment order. However, the debtor is not entitled to a hearing concerning the terms of the proposed repayment schedule if these terms have been established by written agreement between the debtor and VA/Treasury.

6. HEARING

a. Any hearing conducted as part of the administrative wage garnishment process shall be conducted by the designated hearing official in accordance with the procedures set forth in 31 CFR 285.11(f). This hearing official may be any VA Board of Contract Appeals Administrative Judge or Hearing Examiner, or any other VA hearing official. This hearing official may also conduct administrative wage garnishment hearings for other Federal agencies. The hearings will be arranged, coordinated, and administratively supported by the director or chairperson of the organization responsible for conducting the hearing. Upon receipt of a debtor's request for an AWG hearing in those cases under Treasury jurisdiction, Treasury shall immediately forward the request, a copy of the file, and supporting documents to the DMC. The DMC will take appropriate action to update the debtor's records and forward the hearing material to the hearing official. The hearing official shall then determine the type of hearing to be conducted.

b. The hearing may be oral or written as determined by the designated hearing official. The hearing official shall provide the debtor with a reasonable opportunity for an oral hearing when the hearing official determines that the issue in dispute cannot be resolved by review of documentary evidence. The hearing official shall establish the time and place of any oral hearing. At the debtor's option, an oral hearing may be conducted either in-person or by telephone conference call. A hearing is not required to be a formal, evidentiary-type of hearing, but witnesses who testify in oral hearings must do so under oath or affirmation. While it is not necessary to produce a transcript of the hearing, the hearing official must maintain a summary record of the proceedings. All travel expenses incurred by the debtor in connection with an in-person hearing shall be borne by the debtor. VA or Treasury shall be responsible for all telephone expenses. In the absence of good cause shown, a debtor who fails to appear at a hearing will be deemed as not having timely filed a request for a hearing.

c. If the hearing official determines that an oral hearing is not necessary, then he/she shall afford the debtor a "paper hearing." In a "paper hearing," the hearing official will decide the issues in dispute based upon a review of the written record. The debtor shall have 15 business days to submit evidence once notified by the hearing official that a "paper hearing" will be conducted.

d. If the debtor's written request for a hearing is received by either VA or Treasury within 15 business days following the mailing of the notice described in paragraph 5, then VA or Treasury shall not issue a withholding order as described in paragraph 7 until the debtor is afforded the requested hearing and a decision rendered. If debtor's written request for a hearing is not received within 15 business days following the mailing of the notice described in paragraph 5, then the hearing official shall provide a hearing to the debtor, but will not delay issuance of a withholding order as described in paragraph 7, unless the hearing officer determines that the delay in filing was caused by factors beyond the

debtor's control, or the hearing official receives information that justifies a delay or cancellation of the withholding order.

e. The hearing official shall notify the debtor of:

- (a) The date and time of a telephone conference hearing;
- (b) The date, time, and location of an in-person oral hearing, or;
- (c) The deadline for the submission of evidence for a written hearing.

f. VA or Treasury shall have the burden of going forward to prove the existence or amount of the debt. Thereafter, the debtor must present, by a preponderance of the evidence, that no debt exists or that the amount of the debt is incorrect. In general, this means that the debtor must show that it is more likely than not that a debt does not exist or that the amount of the debt is incorrect. The debtor may also present evidence that indicates terms of the repayment agreement are unlawful, would cause a financial hardship, or that collection of the debt may not be pursued due to operation of law.

g. If the debtor has previously contested the existence or amount of the debt in accordance with 38 CFR §1.911(c)(1) or §1.911a(c)(1) and VA subsequently rendered a decision upholding the existence or amount of the debt, then such decision shall be incorporated by reference and become the basis of the hearing official's decision. If the debtor was previously advised of the right to contest the existence or amount of the debt and failed to do so within the statutory or regulatory time limit, then the debtor is not entitled to a hearing on these issues and this fact shall be incorporated into the hearing official's decision.

h. The hearing official shall issue a written decision as soon as practicable, but not later than 60 days after the date on which the request for such hearing was received by VA or Treasury. If the hearing official is unable to provide the debtor with a hearing and render a decision within 60 days after the receipt of the request for such hearing:

(1) VA or Treasury may not issue a withholding order until the hearing is held and a decision rendered; or

(2) If VA or Treasury had previously issued a withholding order, the withholding order must be suspended beginning on the 61st day after the receipt of the hearing request and continuing until a hearing is held and a decision is rendered.

(3) The decision will be the final action for the purposes of judicial review under the Administrative Procedures Act (5 U.S.C. 701 et seq.). The decision shall include:

- (a) A summary of the facts presented;

- (b) The hearing official's findings, analysis, and conclusions, and;
- (c) The terms of the repayment schedule, if applicable.

7. WAGE GARNISHMENT ORDER

a. In accordance with 31 CFR §285.11(g) and (h), VA/Treasury shall send a withholding order and certification form (Treasury Form SF-29) by first class mail to the debtor's employer within 30 days after the debtor fails to make a timely request for a hearing (i.e., within 15 business days after mailing of the notice described in paragraph 5). If a timely request for a hearing has been filed by the debtor, then VA/Treasury shall send a withholding order and certification form by first class mail to the debtor's employer within 30 days after a final decision (see paragraph 6h) is made to proceed with the garnishment. The employer shall complete and return the certification form within the time frame prescribed in the instructions to the form. The order shall contain only the information necessary for the employer to comply with the withholding order. The certification will address matters such as information about the debtor's employment status, disposable pay available for withholding, and information as to where payments should be sent. A copy of a certificate of service indicating the date of mailing of the order shall be retained. The certificate of service may be retained electronically so long as the manner of retention is sufficient for evidentiary purposes.

b. VA/Treasury may not garnish the wages of a debtor who is known to have been involuntarily separated from employment until the debtor has been reemployed continuously for at least 12 months. The debtor has the burden of informing VA or Treasury of the circumstances surrounding an involuntary separation from employment.

8. AMOUNTS WITHHELD

a. After receipt of the garnishment order, the employer shall withhold the amount of garnishment as described in 31 CFR §285.11(i) from all disposable pay paid to the applicable debtor during each pay period. Basically, the amount of the garnishment shall be the lesser of the amount indicated on the garnishment order up to 15% of the debtor's disposable pay; or the amount by which the debtor's disposable pay exceeds the amount equivalent to thirty times the minimum wage. The debtor may give his or her written consent for the withholding of a greater amount.

b. AWG withholding orders have priority over other withholding orders that are served later in time. However, withholding orders for family support shall have priority over AWG withholding orders. If amounts are being withheld from a debtor's pay pursuant to a withholding order served on an employer before a withholding order issued pursuant to this section, or if a withholding order for

family support is served on an employer at any time, the amounts withheld shall be the lesser of:

(1) the amount calculated under paragraph 8a, or

(2) an amount equal to 25% of the debtor's disposable pay less the amount(s) withheld under the withholding order with priority.

c. If a debtor owes more than one debt, VA may issue multiple withholding orders provided that the total amount garnished from the debtor's pay for such orders does not exceed the amount set forth in paragraph 8a. The employer shall promptly pay to the agency all amounts withheld in accordance with the withholding order issued pursuant to this section. An employer shall not be required to vary its normal pay and disbursement cycles in order to comply with the withholding order. Any assignment or allotment by an employee of his earnings shall be void to the extent it interferes with or prohibits execution of the withholding order, except for any assignment or allotment made pursuant to a family support judgment or order. The employer shall withhold the appropriate amount from the debtor's wages for each pay period until the employer receives notification from the agency to discontinue wage withholding. The garnishment order shall indicate a reasonable period of time within which the employer is required to commence wage withholding.

9. FINANCIAL HARDSHIP. A debtor whose wages are subject to a wage withholding order may request a review of the amount garnished. A request for review shall only be considered after garnishment has been initiated. The request must be based on materially changed circumstances such as disability, divorce, or catastrophic illness which result in financial hardship that limit the debtor's ability to provide food, housing, clothing, transportation, and medical care for himself or herself and his or her dependents. The request will normally be reviewed by the Chief of the Fiscal Activity at the station responsible for collection of the debt or by the Director of VA's DMC, or his/her designee. If it is determined that a financial hardship exists, VA shall request a downward adjustment by an amount and for a period of time agreeable to VA. VA or Treasury will notify the employer of any adjustments to the amounts to be withheld.

10. ENDING GARNISHMENT. Once VA/Treasury has fully recovered the amounts owed by the debtor, including interest, penalties, and administrative costs, VA/Treasury shall send the debtor's employer notification to discontinue wage withholding. At least annually, VA/Treasury shall review its debtors' accounts to ensure that garnishments have been terminated for accounts that have been paid.

11. REFUNDS. If a hearing official, at a hearing pursuant to paragraph 6b, determines that a debt is not legally due and owing to the United States, VA/Treasury shall promptly refund any amount collected by means of AWG.

Unless required by Federal law or contract, refunds under this section shall not bear interest.

12. RIGHT OF ACTION. VA/Treasury may sue any employer for any amount that the employer fails to withhold from wages owed and payable to an employee in accordance with paragraph 7(a). However, a suit may not be filed before the termination of the collection action involving a particular debtor, unless earlier filing is necessary to avoid expiration of any applicable statute of limitations period. Termination of the collection action will have been deemed to occur if the agency has not received any payments to satisfy the debt from the particular debtor whose wages were subject to garnishment, in whole or in part, for a period of 1 year.