

§ 32.1

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AUTHORITY: 31 U.S.C. 3720D, 5 U.S.C. 552, 553, E.O. 12866, 12988, 13808.

SOURCE: 68 FR 15093, Mar. 28, 2003, unless otherwise noted.

§ 32.1 Purpose and scope.

(a) *Purpose.* This part prescribes the standards and procedures for the Department to collect money from a debtor's disposable pay by means of administrative wage garnishment to satisfy delinquent non-tax debts owed to the United States.

(b) *Authority.* These standards and procedures are authorized under the wage garnishment provisions of the Debt Collection Improvement Act of 1996, codified at 31 U.S.C. 3720D, and the Department of the Treasury Administrative Wage Garnishment Regulations at 31 CFR 285.11.

(c) *Scope.* (1) This part applies to all Departmental Operating Divisions and Regional Offices that administer a program that gives rise to a delinquent non-tax debt owed to the United States and to all officers or employees of the Department authorized to collect such debt.

(2) This part shall apply notwithstanding any provision of State law.

(3) Nothing in this part precludes the compromise of a debt or the suspension or termination of collection action in accordance with part 30 of this title, or other applicable law or regulation.

(4) The receipt of payments pursuant to this part does not preclude the Department from pursuing other debt collection remedies, including the offset of Federal payments to satisfy delinquent non-tax debt owed to the United States. The Department may pursue such debt collection remedies separately or in conjunction with administrative wage garnishment.

(5) This part does not apply to the collection of delinquent non-tax debts owed to the United States from the wages of Federal employees from their Federal employment. Federal pay is subject to the Federal salary offset procedures set forth in 5 U.S.C. 5514 and other applicable laws.

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(6) Nothing in this part requires the Department to duplicate notices or administrative proceedings required by contract or other laws or regulations.

§ 32.2 Definitions.

In this part, unless the context otherwise requires:

Business day means Monday through Friday. For purposes of computation, the last day of the period will be included unless it is a Federal legal holiday, in which case the next business day following the holiday will be considered the last day of the period.

Certificate of service means a certificate signed by an employee of the Department indicating the nature of the document to which it pertains, the date of mailing of the document, and to whom it is being sent.

Day means calendar day. For purposes of computation, the last day of the period will be included unless it is a Saturday, Sunday, or a Federal legal holiday, in which case the next business day will be considered the last day of the period.

Debt or claim means an amount of money, funds, or property that has been determined by the Secretary to be owed to the United States by an individual, including debt administered by a third party as an agent of the Federal Government. A debt or claim includes, but is not limited to: amounts owed on account of loans made, insured or guaranteed by the Federal Government, including any deficiency or difference between the price obtained by the Federal Government upon selling the property and the amount owed to the Federal Government; overpayments to program beneficiaries; any amount the Federal Government is authorized by statute to collect for the benefit of any person; the unpaid share of any non-Federal partner in a program involving a Federal payment, including a matching or cost-sharing payment of the non-Federal partner; any fine, civil penalty or assessment; and other amounts or money or property owed to the Federal Government.

Debtor means an individual who owes a delinquent non-tax debt to the United States.

Delinquent debt means any non-tax debt that has not been paid by the date

specified in the Department's initial written demand for payment, or applicable payment agreement or instrument, unless other satisfactory payment arrangements have been made. For purposes of this part, "delinquent" and "overdue" have the same meaning.

Department means the United States Department of Health and Human Services, including each of its Operating Divisions and Regional Offices.

Disposable pay means that part of the debtor's compensation (including, but not limited to, salary, bonuses, commissions, and vacation pay) from an employer remaining after the deduction of health insurance premiums and any amounts required by law to be withheld. For purposes of this part, "amounts required by law to be withheld" include amounts for deductions such as social security taxes and withholding taxes, but do not include any amount withheld pursuant to a court order.

Employer means a person or entity that employs the services of others and that pays their wages or salaries. The term employer includes, but is not limited to, State and local Governments, but does not include an agency of the Federal Government as defined by 31 CFR 285.11(c).

Garnishment means the process of withholding amounts from an employee's disposable pay and paying those amounts to a creditor in satisfaction of a withholding order.

Hearing means a review of the documentary evidence concerning the existence or amount of a debt, or the terms of a repayment schedule, provided such repayment schedule is established other than by a written agreement entered into pursuant to this part. If the hearing official determines that the issues in dispute cannot be resolved solely by review of the written record, such as when the validity of the debt turns on the issue of credibility or veracity, an oral hearing may be provided.

Hearing official means any qualified individual, as determined by the Secretary, including a Departmental Appeals Board administrative law judge.

Secretary means the Secretary of Health and Human Services, or the

Secretary's designee within the Department.

Withholding order for purposes of this part means "Wage Garnishment Order (SF329B)." Also for purposes of this part, the terms "wage garnishment order" and "garnishment order" have the same meaning as "withholding order."

§ 32.3 General rule.

(a) Except as provided in paragraph (b) of this section, whenever a delinquent debt is owed by an individual, the Secretary, or another federal agency collecting a debt on the Department's behalf (*See* 45 CFR part 30), may initiate proceedings administratively to garnish the wages of the delinquent debtor.

(b) The Secretary may not garnish the wages of a debtor who the Secretary knows has been involuntarily separated from employment until the debtor has been re-employed continuously for at least 12 months. The debtor has the burden of informing the Secretary of the circumstances surrounding an involuntary separation from employment.

§ 32.4 Notice.

(a) Notice requirements. At least 30 days before the initiation of garnishment proceedings, the Secretary shall mail, by first class mail, to the debtor's last known address a written notice informing the debtor of:

(1) The nature and amount of the debt;

(2) The intention of the Secretary to initiate proceedings to collect the debt through deductions from pay until the debt and all accumulated interest, penalties, and administrative costs are paid in full;

(3) The debtor's right—

(i) To inspect and copy Department records related to the debt;

(ii) To enter into a written repayment agreement with the Department under terms agreeable to the Department;

(iii) To a hearing, in accordance with § 32.5, concerning the existence or the amount of the debt or the terms of the proposed repayment schedule under the garnishment order, except that the