

**Financial Management Service**

**Suggested Guidelines and Reference Materials**

**for**

**Administrative Wage Garnishment**

**Hearing Officials**

**January 2009**

## INTRODUCTION

Many debtors are employed and able to make payments. When debtors default, it is ultimately the taxpayers that pay the expense for their defaulted debts. Wage garnishment is one way to facilitate the repayment of debts by those debtors who have the means to do so.

### **What is Administrative Wage Garnishment?**

Wage garnishment is a traditional debt collection remedy that compels a third party who owes a debtor wages to pay the employee's creditor instead of the employee/debtor. Traditionally, wage garnishment was available only by means of a court order, typically to enforce a court judgment. Non-judicial, or administrative, wage garnishment (AWG), authority, allows federal agencies to garnish wages without resort to judicial power. In 1996, the Debt Collection Improvement Act of 1996 (codified at 31 U.S.C. 3720D) (DCIA) authorized all federal agencies to order an employer to withhold 15% of a debtor's disposable pay to satisfy any delinquent debt owed to the United States.

### **What is the Purpose of this Manual?**

This manual is designed to help agencies develop AWG hearing procedures and provide guidelines for staff serving as hearing officials. Treasury rules require federal agencies that conduct AWG under the DCIA to either adopt Treasury's rules or adopt their own regulations consistent with Treasury requirements. See 31 CFR 285.11. These regulations require agencies to have hearing procedures in place prior to initiating AWG.

Prior to issuing an AWG order, debtors have the right for an opportunity for a hearing. If the debtor takes advantage of this right, the agency will have to conduct a hearing that addresses the debtor's grounds for a hearing request. The agency has responsibility to ensure that debtors' rights are not abused and that the integrity of the form their duties, ensuring that final decisions are impartial, objective, honest, and fair. This manual helps agency personnel perform their duties in a manner that will ensure final decisions are impartial, objective, honest, and fair

### **What Role Do Agency Regulations and Guidance Play?**

Each hearing official needs to be aware of any special rights, privileges, or procedures that are contained in the agency's own AWG regulations or policy guidance. This manual only addresses the procedures that are required by the DCIA and Treasury regulations. It should be customized for each agencies particular debts and governing regulations.

### **What Role Does the Treasury Cross-Servicing Program Play?**

AWG is one of several actions Treasury uses to collect debts on behalf of federal agencies that transfer servicing of their debts to Treasury pursuant to the DCIA.

Private collection agencies (PCAs) under contract to Treasury are responsible for identifying debtors eligible for AWG. PCAs issue the notice of intent to garnish letter on behalf of the federal creditor agency. A Treasury official signs the AWG order, and the PCA forwards it to the employer. The PCA will monitor the collections to ensure the employer's compliance. Treasury will initiate legal action, as appropriate, against employers who do not comply with the AWG order.

If the debtor requests a hearing, Treasury will forward the hearing request to the creditor agency for adjudication.

## OVERVIEW OF AWG HEARINGS

### What is an AWG hearing?

An AWG hearing is a procedure in which a hearing official “hears” and considers any argument and evidence regarding an objection by a debtor to enforcement by garnishment of a debt held by the agency. There are two types of hearings:

Written Records or “Paper” Hearing. A written records hearing is conducted by a review of written materials and other records and is often referred to informally as a "paper hearing"

Telephone or In-Person Hearing. A telephone hearing is conducted by review of written materials, other records and testimony presented by telephone.

### What are the grounds for requesting a hearing?

Debtors may object to garnishment action on such grounds as the following:

- 1) Existence, validity, past-due status or amount of the debt: Objection on grounds that –
  - The debt was previously paid or settled in full
  - The debtor is in compliance with a valid repayment agreement
  - The amount owed on the debt is incorrectly stated because not all payments had been credited
  - The debtor has a legal defense as to liability for the debt under Federal or State law
- 2) Enforceability of the debt through AWG:
  - The debt was discharged or is currently in active bankruptcy
  - The debt is unenforceable by AWG due to involuntarily separation from previous employment and employed less than 12 months
- 3) Financial hardship: Garnishment of fifteen (15) percent of the debtor’s disposable pay will create a financial hardship on the debtor and his or her dependents

### What if the debtor has already had a hearing?

No Requirement to Duplicate Hearings. Agencies do not have to provide more than one hearing based on the same grounds or objections. If an agency has already provided a hearing on the

existence of the debt, and the debtor has no new evidence, the agency does not have to repeat that hearing just because it wants to use AWG.

New Grounds Do Require a Hearing. If requested, agencies must provide a hearing for any of the above bases that have not been addressed in prior hearings. For example, if the debtor has already had a hearing on the existence of the debt, but has never had a hearing regarding involuntary separation from previous employment, the agency must grant the debtor a hearing to address whether AWG is appropriate in that case. Likewise, if a debtor has materially changed financial circumstances from the last hearing, the agency should grant the debtor another hearing to determine hardship.

### **What records are involved in the hearing process?**

- 1) The record of the hearing: In every case in which the agency provides a hearing, the agency creates a record of the proceeding, whether that hearing is an in-person or paper hearing. The record includes all key documents and records of the hearing, including:
  - the debtor's request for hearing,
  - any and all material (whether evidence or argument) submitted at any time during the course of the hearing by either the debtor or the agency,
  - a summary of any (live) testimony presented by the debtor and his or her witnesses;
  - notes of any events that may have affected the course of the hearing;
  - if the debtor requested access to records, whether and when the agency gave access (or sent copies) to the debtor;
  - if an oral hearing was requested, the agency's decision on that request;
  - if the agency was unable to contact the debtor to conduct a telephone hearing, the date or dates of the attempt, the number used to make the attempt;
  - requests for extensions of time by the debtor, and the agency's response to those requests;
  - if the agency secured added evidence to respond to evidence or argument from the debtor, when and how the agency provided that new evidence to the debtor, how the agency offered the debtor an opportunity to respond to that new evidence, and whether and how the debtor responded.
  
- 2) Retention of the hearing record: The agency must retain the contents of the hearing record in the debt file for that debt. These records are official the agency records and the agency may not legally discard those records except as permitted by published agency record retention schedules that pertain to that particular category of records.

### **What burden of proof do the agency and the debtor each bear?**

- 1) Agency's burden. If the debtor challenges the existence, enforceability, or amount of the debt, the agency has the burden of proving that the debt exists, is enforceable (i.e., is delinquent) and

the amount of the debt is correct. The agency must have enough evidence such that a reasonable person would consider it more likely than not (referred to as a “preponderance of the evidence”) that the debt exists in the amount stated.

2) Debtor’s burden. The debtor has the burden of proving any facts that make out a "defense" to the proposed AWG, because the debtor—not the agency—is assumed to have knowledge of such facts. Thus, the debtor has the burden of proving by a preponderance of the evidence any fact that would prevent or reduce AWG. The debtor’s evidence must prove that, more likely than not:

- the debt does not exist, is smaller than claimed, has been paid, is currently in repayment status, or is not legally enforceable for any reason recognized by applicable law (which may include the program statute and regulations, other Federal law, court rulings (common law), or State law);
- AWG is not available to collect this debt because the debtor was involuntarily separated from his or her last job and has not been employed for 12 months, or because a bankruptcy stay is in effect as to this debtor;
- AWG would cause a financial hardship to the debtor and his or her dependents.

### **What if hardship is claimed?**

Fair and Objective Standards. Agencies must adopt standards that are fair and objective. In other words, the standards should ensure that debtors in substantially similar circumstances receive the same outcome. For example, if two debtors each live in the same geographic area, have the same income and number of dependents, and have no extenuating circumstances (e.g., catastrophic illness of a dependent), they should each have the same determination of hardship. Individual choices, such as size of mortgage or car payments should generally not play a role in determining hardship.

IRS National & Local Standards. IRS has published standards for determining hardship. (See <http://www.irs.gov/individuals/article/0,,id=96543,00.html>.) FMS encourages the use of those standards for those agencies that have not yet developed their own standards for hardship. These standards provide a basis for determining what is reasonable based upon the debtor’s place of residence and number of dependents. Therefore, the agency can determine if the amount of a debtor’s proven expense (e.g., rent, mortgage, clothing allowance, etc.) is reasonable given the debtor’s geographic and familial situation.

### **What Are the Debtor’s Rights in the AWG Hearing Process?**

The debtor has a right to an opportunity to present evidence and argument on any objection:

- 1) To the existence, amount, or enforceability of the debt;

- 2) That garnishment cannot be used at this time because the debtor is now employed for less than 12 months after involuntary separation from the most recent prior employment;
- 3) That garnishment of 15% of the debtor's disposable pay would produce an extreme financial hardship;

### **What Are The Debtor's Responsibilities In The AWG Hearing Process?**

The debtor must:

- 1) Make a hearing request in writing postmarked (if mailed) or received by the agency (if delivered by a commercial service, e.g. FedEx or Airborne, or in person) no later than the deadline on the garnishment notice;
- 2) If requesting copies of documents, make a request for a hearing, because the making of a document request does not delay a garnishment order;
- 3) Provide proof to support any objection made to the existence, amount, or enforceability of the debt, or a claim of legal exclusion or, financial hardship;
- 4) Pay any expenses he or she incurs to obtain legal representation and to attend an in-person hearing; and

### **When Is A Debtor's Response Considered To Be A Request For An AWG Hearing?**

A response by a debtor to a notice of proposed garnishment is considered to be an effective request for an AWG hearing if the debtor makes the objection in writing, after a Notice of Proposed Wage Garnishment has been issued to the debtor, and the debtor in that writing refers to the garnishment action. The regulations require neither specific form to be used nor any specific language to be included.

Agencies should treat any written objection that is sent by the debtor after a notice of intent to garnish is sent out be a request for a hearing, if the writing contains either a dispute about the existence, validity, enforceability, or amount of the debt, or a claim that wage withholding will cause financial hardship.

If a response does not request a hearing and contains simply a complaint about or dissatisfaction with collections actions, then it need not be considered a hearing request, but as a piece of correspondence from the debtor.

Generally, if the written document from the debtor contains the words "hearing" or "review" in addition to a dispute about the existence of the debt or the appropriateness of AWG, then the agency is safer treating it as a hearing request.

## **When Does the Agency Provide a Hearing?**

- 1) **Timely**: A hearing request is timely if the request for hearing is postmarked (if mailed) or received (if not mailed - e.g., fax, commercial delivery service [FedEx] or in person delivery) within 15 days of date of the AWG notice.

Note: If the hearing request is timely, AWG cannot proceed until the hearing is completed and the decision is communicated to the debtor.

- 2) **Untimely**: A hearing request is untimely if the request for hearing is postmarked (if mailed) or received (if sent any other way) more than 15 days after the date of the AWG.

Note: If the request is untimely, do not stop a garnishment order that has already been issued unless the hearing decision is not issued within 60 days.

## **Who Can Be a Hearing Official?**

Federal Employees. Hearing officials are federal employees (not contractors) authorized to receive and consider evidence presented by the debtor to support objections to garnishment, to make any findings of fact and conclusions of law needed to determine the validity of the objections raised by the debtor, and to issue a decision for the agency on the objections. The hearing official must be a federal employee. A contractor may gather evidence, create a record, and make recommendations to the agency regarding the outcome of the dispute; however, only a federal employee may make the final determination of indebtedness and sign the disposition of the claim. Note: the employee does not have to be from another agency for AWG. That requirement only applies to federal salary offset.

No other requirements other than fairness. The regulations contain no restrictions or requirements regarding who may serve as a hearing official. The only limitation is what a court would consider as fair. Generally, the hearing official should not be the person responsible for establishing the debt or who has primary responsibility for collecting the debt.

## **What Is The Role Of The Hearing Official?**

The hearing official signs any notice or letter that cancels or reduces the garnishment amount. The decision of the hearing official in an AWG proceeding is the decision of the head of the agency, and is the final action of the agency for purposes of judicial review.

Dual Responsibilities. Note that the agency hearing official "wears two hats" - both judge as to the evidence and arguments, and representative of the agency (by gathering or ensuring that evidence from the agency is included and considered to support the validity of the debt and to oppose hardship claims). This is not at unusual in Federal administrative agency hearings. In Social Security benefit hearings, by far the most numerous administrative hearings in the government, the Administrative Law Judge or hearing official has for decades functioned "under two hats" in this same way.

Ensuring disclosure of evidence: Consistent with the responsibility to act impartially in conducting a hearing, the hearing official ensures that the debtor has an adequate opportunity to request and receive copies of any documentation that was not already provided to the debtor, that the hearing official will consider in making a determination. If the debtor provides evidence not previously considered by the agency in the course of supporting his or her objection, the hearing official may obtain additional evidence related to that objection from other sources (the agency records or records of any other entity involved with the establishment or collection of the debt). The hearing official, as representative of the agency, may include that additional evidence in the record. The hearing official, as judge of the facts and argument, may then consider that evidence.

### **What Authority Does the Hearing Official Have?**

Generally, the hearing official is the final authority regarding decisions to garnish debtors' wages. The hearing official determines the validity of any objection to garnishment, including objections that the debt is being repaid under a current agreement, that the debt is for any reason not enforceable in the full amount stated in the notice of garnishment, that collection of the debt by garnishment is now barred by law (e.g., bankruptcy stay or recent reemployment), and that garnishment at the rate of 15%, or a lower rate if previously determined appropriate, would cause financial hardship to the debtor and his or her family.

**Treatment of new evidence:** To ensure fairness to the debtor, the hearing official notifies the debtor when the official has added evidence to the record that the debtor has not had an opportunity to review.

**Oral testimony:** In conducting an oral hearing, the hearing official provides the debtor an opportunity to present testimony regarding the objections raised by the debtor. The hearing official may exclude testimony that is repetitive or irrelevant to the objection raised by the debtor

## Conducting Hearings

Most elements of the paper, or written records, hearing apply to in-person or telephone hearings.

### **Conducting the “Paper” Hearing**

#### Entering agency evidence into the record.

1. The agency produces evidence of the debt by introducing – putting into the record created of this specific AWG hearing – evidence of the debt. This is typically a copy of any documents that prove the existence of the debt (e.g., the promissory note, order for civil fine, etc.). If the amount of interest or administrative charges is at issue, the agency should enter an accounting into the record.
2. The agency also includes any evidence that addresses the debtor’s objections.

Defenses. In AWG, the debtor has three kinds of legitimate objections:

1. challenges to the debt,
2. challenges that AWG is not an appropriate collection tool, and
3. challenges that garnishment would cause financial hardship.

Because both numbers 2 and 3 above are defenses, the debtor has the burden of proof of both.

Agency burden of proof. The agency has the burden of proving the existence and amount of a debt. The agency meets this burden by including in the record and making available to the debtor on request records that show that—

1. The debt exists in the amount stated in the garnishment notice; and
2. The debt is currently delinquent.

#### Debtor's burden of proof.

1. If the debtor disputes the existence or amount of the debt, the debtor must prove by a preponderance of the credible evidence that—
  - (i) No debt exists,
  - (ii) The amount the agency claims to be owed on the debt is incorrect, or
  - (iii) The debtor is not delinquent with respect to the debt.
2. If the debtor objects on the ground that applicable law bars the agency from collecting the debt by garnishment at this time, the debtor bears the burden of proving the facts that would

establish that claim. Examples of applicable law that may prevent collection by garnishment include:

- (i) the automatic stay in bankruptcy (11 U.S.C. 362(a)),
  - (ii) and the preclusion of garnishment action against a debtor who was involuntarily separated from employment and has been re-employed for less than 12 months (31 U.S.C. 3720D(b)(6)).
3. If the debtor objects that the proposed garnishment rate would cause financial hardship, the debtor bears the burden of proving by a preponderance of the credible evidence that withholding the amount of wages proposed in the notice would leave the debtor unable to meet the basic living expenses of the debtor and his or her dependents.
  4. The standards for proving financial hardship are those in **{insert agency standards, which may simply be IRS standards adopted by the agency}**

**Note:** Defenses based on State or local laws are not valid. The AWG authority in the DCIA supersedes all State and local laws. (Authority: 31 U.S.C. 3720D)

Deadlines For Requests For Records And Submission Of Evidence. Agencies should have written procedures for determining deadlines for the debtor to request agency records. Because the AWG regulations require a hearing to be completed within 60 days, these would normally be very short time frames. If the AWG hearing is happening through FMS's cross-servicing program, agencies have already certified to FMS that they have given the debtor an opportunity to inspect and copy records; however, agencies should consider whether they should notify the debtor of another opportunity prior to the AWG hearing. In any case, the agency should always allow the debtor access to their records no matter what stage of collection the debt is in. Debtors are entitled to copies of their records under the Privacy Act of 1974 as amended.

Closing the Record. The debtor must present whatever he or she wants considered before the hearing official “closes the record” and makes a decision on the objections raised and the evidence already submitted by the debtor. After any deadlines, the hearing official decides the case, and the debtor must request records in time to submit anything he or she wants considered from those records by these decision deadlines. The hearing official may allow extensions of these deadlines if the debtor requests.

1. If the debtor requests only a written records hearing, the debtor must submit both objections and evidence in or with the request for a hearing. Thus, the deadline is the request for hearing deadline.
2. If the debtor requests a written records hearing and also requests records within 15 days of the notice date, the agency should notify the debtor of how many days the debtor has to submit objections and evidence based on those records.

3. If the debtor receives an oral hearing (see "Conducting the Oral Hearing" below), agency procedures should provide that the debtor present objections and evidence no later than the oral hearing itself.
4. If the debtor requests an oral hearing, but does not show up or call in for the scheduled hearing, the agency may consider the debtor to have withdrawn the request.
5. If the debtor timely requests copies of debt records, and the agency obtains evidence that the hearing officials wants to consider, but that was not in the debtor's file and has not been provided to the debtor, the agency notifies the debtor of the evidence (or more simply sends a copy of the evidence to the debtor.).

New Objections and Evidence. Sometimes in the middle of an oral hearing, the debtor presents an objection or evidence that needs further development to properly address. The hearing official can adjourn (suspend) the hearing to seek additional evidence that may bear on the merit of the objection.

Giving the Debtor a Chance to Respond. If the hearing official finds relevant evidence (evidence that relates to a disputed fact and tends to make the claim more likely to be either true or false), the hearing official must consider that evidence in making the decision, and must notify the debtor of the new evidence, provide a copy of the evidence to the debtor, and allow the debtor to respond by his or her own additional evidence, or even a new objection. The hearing official must then resume the hearing.

Resuming the Hearing. Get the debtor's agreement on how the hearing continues: if the hearing was an oral hearing, the debtor may insist on resuming an oral hearing. On the other hand, the debtor may be satisfied at that point to have the hearing continue only on the written record – supplemented by whatever added evidence and argument he or she adds after getting the agency's new evidence, or the debtor may insist that the oral hearing be reconvened, at which the debtor could present added evidence and arguments.

Extensions. Agencies should have procedures addressing whether and how the agency will grant an extension of time to the debtor if requested.

### **Conducting the Oral Hearing**

Required When Testimony is Critical. The agency must provide the debtor with an opportunity for an oral hearing when the agency determines that the issues in dispute cannot be resolved by review of the documentary evidence. For example, an oral hearing should be held if the veracity or credibility of any person involved is at issue.

1. The hearing official conducts any hearing as an informal proceeding
2. A witness in an oral hearing must testify under oath or affirmation.
3. The hearing official maintains a summary record of any hearing.

4. Before the hearing official considers any evidence obtained that was not included in the debt records available for inspection when the agency sent the notice of proposed garnishment, the agency should notify the debtor that additional evidence has become available and may be considered by the hearing official and is available for inspection or copying.

### **Steps to Take for Both Written and Oral Hearings:**

**Step 1:** Review the debtor's request for hearing form to identify the objections.

**Step 2:** Start creating the record of the hearing. The record must include all key documents and records regarding the hearing, including:

- a. the debtor's request for hearing, any and all material (whether evidence or argument) submitted at any time during the course of the hearing by either the debtor or the agency;
- b. a summary of any (live) testimony presented by the debtor and his or her witnesses;
- c. notes of any events that may have affected the course of the hearing;
- d. if the debtor requested access to records, whether and when the agency gave access (or sent copies) to the debtor;
- e. if an oral hearing was requested, the agency's decision on that request;
- f. if the agency was unable to contact the debtor to conduct a telephone hearing, the date or dates of the attempt, the phone number used to make the attempt;
- g. requests for extensions of time by the debtor, and the agency's response to those requests;
- h. if the agency secured added evidence to respond to evidence or argument from the debtor, when and how the agency provided that new evidence to the debtor, how the agency offered the debtor an opportunity to respond to that new evidence, and whether and how the debtor responded.

**Step 3:** Meeting the agency's burden of proof:

Whether or not the debtor requested copies of records, obtain and make part of the hearing record:

- a. A copy of the debt instrument (typically, the promissory note, for a loan obligation) or other acceptable proof of the existence of the debt to be enforced by AWG. An Indemnification Agreement is not proof of the debt;
- b. In all cases, copies of pertinent the agency records showing that the debt is held by the agency and unpaid, and that the debt is past-due, that the debtor is not currently repaying the debt.

**Note:** If during the course of a telephone or in-person hearing the debtor states that he or she does not have a particular record that you refer to or will use to make your decision, stop the hearing if you have not given the debtor an opportunity to inspect and copy that record.

#### Step 4: Disclosure of Evidence:

Prior to issuing your decision, on request by the debtor, you must provide to the debtor any evidence that you intend to use to make your decision. Review the evidence to prepare for the oral hearing with the following points in mind:

- a. You must list that evidence in your decision in reasonable enough detail to permit the debtor, and a third party (e.g., the Federal District Court that may review the decision) to know what exactly you considered in reaching your conclusion (statements that you reviewed "the agency loan records" makes it impossible to determine what exactly you looked at).
- b. Attach to the decision copies of any evidence you rely on in making the decision, and make sure that copies of the entire decision are retained in the agency records. Items you should obtain and review before an oral hearing

#### Step 5: Conducting the Oral Hearing:

Identify yourself to debtor and the debtor's representative, if any.

- a. Explain your role and your responsibilities; use the opening statement on the hearing worksheet or similar language to convey your independence.
- b. Explain that the purpose of this hearing is to allow the debtor to present evidence including the testimony of debtor and his or her witnesses as to why the debt should not be enforced through AWG.
- c. Explain to the debtor that no decision will be rendered during the hearing.
- d. State: "You have the right to counsel. Anything you say may be recorded and may be used against you to collect this debt. You have the right to call witnesses, to challenge the agency's evidence, and to provide evidence for consideration by the Hearing Official. False testimony here is subject to criminal penalty: 18 U.S.C. 1001 provides that "whoever ...knowingly and willfully falsifies, conceals, or covers up by any trick, scheme, or device a material fact, or makes any materially false, fictitious, or fraudulent statement or representation ...shall be fined up to \$10,000.00 or imprisoned up to five years, or both."<sup>1</sup>
- e. Get an affirmation from witnesses: "Repeat after me:" "I (Debtor & Witness Name) declare under penalty of law that the testimony I give and any written statements I offer in this proceeding are to the best of my knowledge and belief true, correct and complete."

#### Step 6. Actively listen to the debtor:

- a. Make Notes. Use an agency-approved form to record the hearing notes.
- b. Verify with the debtor that you have all of their issues identified and the information/statements clearly documented the way that they stated them.

---

<sup>1</sup> 1 Warning: Since this is not technically an "oath," the witness is therefore not sworn, and the testimony is not given subject to penalty of perjury. However, the testimony is a statement subject to penalty of law.

- c. Ask Questions until you understand – Make sure you understand the debtor’s objection. If you don’t, keep asking the debtor questions about the objection until you do understand.
- d. Rephrase the debtor’s objection(s) – as you think you’ve heard it -- back to the debtor to make sure the debtor agrees that you’ve captured the reasoning of the objection.
- e. Ask the debtor – after the debtor closes his or her presentation – one final time whether he or she has submitted all the material he or she intends to have you consider.
- f. Tell the debtor that he or she will receive your findings in writing.

Step 7. Prepare your response:

- a. Review the information provided.
- b. Prepare your response after careful analysis of all the material.

**Telephone / In-person Hearing Documentation Worksheet**  
(If used, should be included with the hearing record)

HEARING OFFICIAL: \_\_\_\_\_ DATE: \_\_\_\_\_ TIME: \_\_\_\_\_ DEBTOR'S  
NAME: \_\_\_\_\_ SSN: \_\_\_\_\_ PARTICIPANT(S): \_\_\_\_\_

\_\_\_\_\_,  
OPENING STATEMENT: My Name is \_\_\_\_\_, and I am the Hearing Official assigned to consider your objection(s) to garnishment to collect the debt held against you by the U.S. Department of Education that was described in the Notice of Proposed Garnishment sent to you. I am an employee of the Department of Education. I am responsible for conducting hearings on objections to garnishment, and am part of a unit of the Department that is responsible for conducting hearings and deciding objections. I have no responsibility for collecting this debt, and I have no responsibility for negotiating repayment terms if you were to desire to repay voluntarily either in the course of this hearing or later. During this hearing, you will be permitted to present oral testimony and written documentation and to present argument to support your belief that the Department should not garnish your wages to collect this debt. Furthermore, you will be granted additional 10 working days after we finish this oral hearing to submit any additional evidence before a decision is rendered in this matter.

(Ask this Question) Do you have any question(s) and are you prepared to present your case? Yes: \_\_\_\_\_ No: \_\_\_\_\_

If not prepared to proceed, stop hearing and reschedule at more appropriate time (reach agreement right then, when the hearings will be held and document the reason for the delay). If yes, proceed with the hearing and ask debtor questions for clarity of any statements.

Debtor Objection (s) and Pertinent Testimony: Did the Hearing Official commit to providing records or evidence to the debtor after the hearing was finished? Yes/ No

If so, describe the records to be provided \_\_\_\_\_

Date hearing official sent records to debtor: \_\_\_\_\_ Hearing Official initials: \_\_\_\_\_

Does the debtor request extension to submit additional evidence? \_\_Yes / No\_\_

If so, what deadline was set for that submission? mm/dd /yy Date debtor submitted additional evidence, if any: \_\_mm/dd/yy\_\_ Hearing Official initials \_\_\_\_\_

Hearing Official Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Remember:

- The debtor can submit evidence and argument, and raise objections, during the oral hearing, whether or not those points were raised in the debtor's request for hearing.
- The hearing official can obtain (new) evidence as well, but if the debtor has requested copies of his or her records, notice and description or copies of this new evidence must be given to the debtor, and the debtor should be given an opportunity to respond to this new evidence.
- The debtor can respond to new the agency evidence by submitting his or her own additional evidence, or making argument about the new the agency evidence, or even raising new objections (the new evidence may disclose grounds for objection that the debtor could not, and did not, know about earlier).
- The simplest way to handle newly-acquired agency evidence is to send the debtor copies of the new evidence, rather than send a notice and wait for a request.
- If a debtor challenges the application of AWG funds to interest, penalties, costs and principal, agencies should consult the Federal Claims Collection Standards to determine if funds have been applied correctly.

## **What Must Be Included in the Hearing Official's Decision?**

The hearing decision must show that the official actually considered the evidence and argument presented by the debtor to support these objections. It must also explain why the hearing official accepted or rejected evidence and arguments presented by the debtor by means of a well-reasoned substantive response to each objection raised by the debtor.

### **Elements of the Written Decision:**

1. Introduction -- explains the purpose of the “letter” and the type of hearing conducted on the objections.
2. Summary of Procedures to Date -- explains such background facts as whether an oral hearing was held, and if so, where and when that hearing was held; if not, why the oral hearing was changed to a paper hearing; whether or not the debtor sought additional time to submit further evidence, and whether additional evidence was in fact submitted.
3. Evidence Considered -- lists the various types of evidence considered in sufficient detail to make relatively clear after the fact what kinds of records and documents were considered by the hearing official.
4. Analysis And Determinations Regarding Objections To Garnishment -- describes each objection raised, the evidence presented relating to the objection, the legal principles that apply to the objection, and the determination whether the particular objection is upheld, rejected, or upheld in part.
5. Conclusion -- states the bottom line: the amount owed by the debtor on the debt or debts included in the notice as a result of all the agency decisions on the debtor’s objections to AWG, whether and to what extent the debtor has proven any hardship claim, and whether the debt is enforceable by garnishment at this time.
6. Consequences of decision -- explains whether the agency is going to initiate or continue garnishment as stated in the Conclusion, and if so, at what rate or withholding amount, and what repayment options are available to this particular debtor.
7. Reconsideration -- explains the debtor’s right to seek a change in the decision based on newly-submitted evidence, and the right to later claim financial hardship. Also included here is a statement that the debtor may seek judicial review in Federal district court.
8. Legal Protection explains that the law forbids employer retaliation against the debtor by reason of the garnishment.<sup>2</sup>
9. Limitation of Scope of Decision explains that the determinations apply only to the debts listed in the notice, and only debts held directly by the agency.
10. Signature of the hearing official
11. Enclosures. Copies of the request for hearing and evidence listed and considered by the hearing official.

---

<sup>2</sup> It should be noted that the creditor agency has no enforcement mechanism against an employer who fires an employee in violation of 31 U.S.C. 3720D. The employee must bring action against the employer if this occurs.

## **AWG Standardized Decision Format and Suggested Text**

**[text in brackets for explanatory purposes: do not copy in decision]**

Debtor's Name  
ADDRESS  
CITY, STATE ZIP

**Re:** [Debt Information, Account #, etc.)

### **GARNISHMENT HEARING DECISION**

This letter presents the findings and conclusions reached after the recent [IN-PERSON/ TELEPHONE/WRITTEN RECORDS] hearing you requested regarding an objection to collection of a delinquent debt owed to [AGENCY] through wage garnishment action. This decision was rendered after careful review of your arguments and accessible and available pertinent material records related to your account, including those submitted by you and those held by [AGENCY].

We state here the Department's decision with regard to the other objections you raised to garnishment to collect the debts listed in the notice. The description of the procedures, the evidence considered, and the conclusion refer to the other objection(s) you raised. We state here the consequences of both determinations, including the amount the Department determines to enforceable by garnishment, and we explain your rights with respect to this decision.

### **SUMMARY OF PROCEDURES TO DATE**

#### **[Telephone or in person hearing only]**

Your hearing was held on <DATE, TIME>, EST. You presented testimony to the undersigned who served as the agency's Hearing Official.

[If debtor testified that no added evidence was to be submitted:]At the hearing, you stated that you had submitted all the written statements and documents you had intended to submit.

[If debtor requested time to submit added evidence, but did not do so:] You were granted an extension ending <DATE> to submit additional evidence in support of your objection. Nothing further, however, has been received, and this review is based on your original submission and the testimony presented at the hearing and Department records regarding the debt.

[If debtor submitted additional evidence:]Your additional submission has been received and was considered in this review.

#### **[For Written Records Hearing For Debtor Who Requested Oral Hearing]**

[A. Debtor failed to attend scheduled in-person or telephone hearing].

You requested an oral hearing, and on <DATE>, a notice was mailed to your last known address (your attorney) advising you that your in-person/telephone hearing had been scheduled for \_\_\_\_\_ at \_\_\_\_\_ Eastern Time. You did not, either on or prior to the hearing date, request that the hearing be rescheduled. We therefore conduct this hearing as a written records hearing.

[Add one of the following, as appropriate:]

(A – 1 For telephone hearings) We were not able to reach you by telephone at the scheduled time, and you did not telephone the agency for your hearing as scheduled.

(A – 2 For in-person hearings) You failed to attend the scheduled hearing.

[B. Unable to contact debtor to schedule hearing:] You requested an oral hearing, and on <DATE> a notice was mailed to your last known address advising you to contact this office to schedule a hearing. You did not contact this office to schedule your hearing and we were unable to reach you by telephone to schedule your hearing. We therefore conduct this hearing as a written records hearing.

[C. No reason, or inadequate reason, given for requested oral hearing:] You requested a telephone or in-person hearing, but you failed to show a good reason to conclude that we cannot resolve the issues in dispute by review of the documentary evidence, by demonstrating that the validity of the claim turns on the credibility or veracity of witness testimony. We therefore conduct this review as a written records hearing.

[D. Debtor provided sufficient evidence to support objection]

You requested an oral hearing, but we conduct this review as a written records hearing because you provided sufficient documentation and evidence to establish the facts on which you wished to present testimony, and we accept those facts as proven.

[E. Debtor requested the oral hearing be cancelled]

You requested an oral hearing, but cancelled that request. This hearing is therefore conducted as a written records hearing.

[F. Debtor failed to attend agreed upon in-person/telephone hearing (Spoke to on Telephone and Scheduled Time & Date) ] [For telephone hearing (choose one):]

[F – 1.1] You requested an oral hearing, but we were unable to contact you at the agreed upon time for the hearing, and you did not request, prior to the scheduled hearing, that the hearing be rescheduled. We therefore conduct this review as a written records hearing. [or] [F – 1.2] You requested an oral hearing, but you failed to contact us at the agreed upon time and you did not request, prior to the scheduled hearing, that the hearing be rescheduled. We therefore conduct this review as a written records hearing. [F – 2 For in-person hearings] You requested an oral hearing, but you did not attend the scheduled hearing and you did not request, prior to the scheduled hearing, that the hearing be rescheduled. We therefore conduct this review as a written records hearing.

[G. Debtor contacted the agency to schedule/reschedule hearing but the agency unable to contact debtor]

You requested an oral hearing. On <DATE> you (your attorney) contacted the agency to schedule/reschedule an in-person/oral hearing. We attempted to contact you/your attorney back on

(dates) but were unable to reach you/him/her. We therefore conduct this review as a written records hearing.

[H. Debtor said would call back to schedule a hearing but did not do so.]

You requested an oral hearing. On <DATE> we contacted you/your attorney and were informed that you/your attorney would call us back to schedule a hearing. We did not receive a subsequent call to schedule a hearing. We therefore conduct this review as a written records hearing.

[I. The following applies to any hearing where the borrower was sent a letter for more information, and debtor was given an extension to submit added evidence]

[I – 1 If debtor failed to submit added evidence] You were granted an extension ending <DATE> to submit additional evidence in support of your objection(s). Nothing further, however, has been received, and this review is based on your original submission and Department records regarding the debt.

[I – 2 If debtor submitted additional evidence] You were granted an extension ending <DATE> to submit additional evidence in support of your objection(s). Your additional submission has been received and was considered in this review. EVIDENCE CONSIDERED: [Records from the agency's computer database or other records]:

[Any additional information submitted by the debtor]. Financial Disclosure Statement Account Transaction Screen (R103) FISL Program Specific Screen (R105)NDSL Program Specific Screen (R106) GSL Program Specific Screen (R 107) FDSL Program Specific Screen (R117) Federal Offset Account Info Screen (I100)

Pay stubs & Income Statements Expense Statements Correspondence

[Describe any additional information submitted by the borrower]. [If an oral hearing, add: Testimony of [name of any individual who provided testimony] Your oral testimony

## **ANALYSIS AND DETERMINATIONS REGARDING OBJECTIONS TO GARNISHMENT**

[Generally, each hearing decision must include –

- I. A determination regarding enforceability by AWG at present, if claimed;
- II. A determination on the validity and enforceability of the debt; and/or
- III. A determination regarding hardship, if claimed.

The following four objections should be decided first, and only if they are rejected should the hearing official decide any other objections.

1. a self-employed debtor, because he or she is not a likely AWG candidate in the near future;

2. an unemployed debtor, because he or she is also not a likely AWG candidate in the near future;
3. a debtor who objects and proves to be in current compliance with a repayment agreement with the agency, and therefore not in delinquent status;
4. a borrower who proves to be currently under bankruptcy protection, because such debtors are very likely to be in Chapter 13 proceedings, which may be expected to last 3-5 years, making the debtor unlikely to be an AWG candidate in the near future.

**[I. Enforceability issues:]**

[I – A- protected status] You objected to enforcement of the debt or debts described in the notice by garnishment at this time on the ground that you are –[select appropriate status] –

[A – 1] reemployed for fewer than 12 months after having been involuntarily terminated from your last employment;

[A – 2] protected from garnishment because you filed for relief in bankruptcy and your case is still open;

[A –3] currently making payments as required under a repayment agreement.

[I – B – not subject to AWG under DCIA authority] You objected to enforcement of the debt or debts described in the notice by garnishment on the ground that you are – [select appropriate category] –

[B –1] self-employed;

[B –2] unemployed.

[Continue with analysis and findings Note that bankruptcy discharge claims are objections to the existence of the debt, while bankruptcy protection is a protected-status objection.]

**[II. Determinations Regarding The Existence, Amount, Or Validity Of The Debt, Where Debtor Presented No Claim For Discharge Relief On Application For Discharge]**

[A. Debtor Raised No Objections To The Existence, Amount Or Validity Of The Debt]

[Use Statement II -A-1 when we only have, and enclose with the decision, computer records, particularly in hardship cases where the promissory note was not requested.] [II -A-1 Computer Records Only] You did not object that the debt(s) described in the notice were not owed and enforceable in the amount stated there. The agency records, including the enclosed copies of the agency’s electronic records, are presented to establish the existence, amount, and past-due status of the debt. We therefore conclude that the debt or debts listed are past due and enforceable in the amounts stated there and in the Conclusion here.

[Use Statement II - A-2 when sending both the physical documents (promissory notes, citations for penalties, court judgments, etc.) and computer records to the borrower.]

[II - A-2 Computer Records and Physical Documents] You did not object that the debt(s) described in the notice were not owed and enforceable in the amount stated there. The agency records, including the enclosed copies of the agency's electronic records and promissory notes, are presented to establish the existence, amount, and past-due status of the debt. We therefore conclude that the debt or debts listed in the notice are past due and enforceable in the amount stated there and in the Conclusion here.

### **[III. Debtor Raised Objections Based On Financial Hardship]**

[Use Statement III – A to introduce hardship analysis and findings if the debtor raised only hardship claim:]

[III-A] You objected to garnishment only on the basis that withholding at the rate of 15% of your disposable pay would cause a financial hardship to you.

[continue with analysis and findings:]

[Use Statement III– B to introduce hardship analysis and findings if the debtor raised both objections to the debt & hardship claim:]

[II-B] You also objected to garnishment on the basis that withholding at the rate of 15% of your disposable pay would cause a financial hardship to you.

[continue with analysis and findings:]

### **CONCLUSION**

[CONCLUSION: state the bottom line conclusions on the objections –

- state the total amount owed
- state whether or not the debt, although valid, is unenforceable by garnishment at this time for other reasons, such as recent reemployment or bankruptcy protection, etc.] [note – whether the agency will in fact garnish or continue an outstanding garnishment order is not addressed in the Conclusion, but in the Consequences of Decision, which follows]
- state whether hardship has been proven, and if so, to what extent,.]

[A-1 Debt fully enforceable, no hardship claim or hardship claim not proven (see D below)]: the agency has determined that the debt or debts described in the notice are enforceable, in the amount of \$ xxxxx.xx in principal and \$xxxxx.xx in accrued interest, by garnishment at the rate of 15 percent of your disposable pay. The agency has determined that the debt or debts described in the notice are enforceable, in the amount of \$xxxxxx.xx in principal and \$xxxxxx.xx in accrued interest, by garnishment at the rate of 15 percent of your disposable pay.

[B. Debt fully enforceable, full hardship proven] The agency has determined that the debt or debts described in the notice are enforceable in the amount of \$ xxxxx.xx in principal and \$xxxxxx.xx in accrued interest, but that garnishment would create a financial hardship. This decision applies only to collection by wage garnishment, and not by other means.

[C. Debt fully enforceable, partial hardship proven:] The agency has determined that the debt or debts described in the notice are enforceable in the amount of \$ xxxxx.xx in principal and \$xxxxx.xx in accrued interest, by garnishment at a rate of [X%] of disposable pay. [Avoid using a "per month" amount, if possible, because employees may be paid bi-weekly or in other intervals]. This decision applies only to collection by wage garnishment, and not by other means.

[D. Agency Will Not Garnish At This Time For Reasons Other Than Hardship]

[D-1. Approval of Objection Due to Legal Exclusion (LEX) or pending bankruptcy; debts fully enforceable as stated; if LEX or bankruptcy status denied, use an A option] The agency has determined that the debt or debts described in the notice are enforceable, in the amount of \$xxxxx.xx in principal and \$xxxxx.xx in accrued interest, but that at this time, your wages are not subject to garnishment as proposed in the notice because [select appropriate]

[D – 1.1.1] you have been reemployed for fewer than 12 months after involuntary separation from your last employment.

[D -1.1.2] you are currently in bankruptcy proceedings and protected from garnishment at this time.

[D – 1.2] This decision applies only to collection by wage garnishment, and not by other means.

[D-2. Borrower is self-employed – NOTE: employed by a corporation or other entity that debtor controls is not the same as self-employed. If the person draws a salary, they are subject to AWG, and the corporation or other entity is liable.] The agency has determined that the debt is enforceable in the amount of \$xxxxx.xx in principal and \$xxxxx.xx in accrued interest, but that at this time, your compensation is not subject to a garnishment by the agency as proposed in the notice because you are self-employed. This decision applies only to collection by wage garnishment, and not by other means.

[D-3. Borrower is unemployed] The agency has determined that the debt described in the notice is enforceable in the amount of \$xxxxx.xx in principal and \$xxxxx.xx in accrued interest. However, you are currently unemployed and have no wages subject to garnishment. This decision applies only to whether to pursue collection of this debt by wage garnishment, and not by other means. [D-5.2 if balance changed] the agency has determined that the debt described in the notice is enforceable in the amount of \$xxxxx.xx in principal and \$xxxxx.xx in accrued interest. However, you are currently unemployed and have no wages subject to garnishment. This decision applies only to whether to pursue collection of this debt by wage garnishment, and not by other means.

CONSEQUENCES OF THE DECISION [Explain the consequences: o Is the agency going to garnish or to continue garnishment already started, and at what rate or withholding amount? [refer to debt amount stated in the "Conclusion"]

o What, if any, repayment options are available to this particular debtor?

o Use A, B, or C regardless of the type of objection raised to the debt;

o Use D for any request for hearing that includes a protected status claim] [Select from following examples:] [A - HARDSHIP CLAIM PARTIALLY ACCEPTED:]

[A – 1. If order already issued:] Based on these findings, the agency will order your employer to withhold from your wages the amount of \$00.00 per pay period until the debt determined in the Conclusion is paid in full. [A – 1.1 payment option for PCA accounts] The unpaid principal balance stated in the Conclusion above will continue to accrue interest, and the agency will apply part of any payment to defray collection costs the agency incurs. You can have this wage garnishment action canceled by the agency by sending payment in full. [A – 1.2 payment option for in-house accounts with no fees:] The unpaid principal balance stated in the Conclusion above will continue to accrue interest. You can have this wage garnishment action canceled by the agency by sending payment in full.

[Or] [A –2 If order not yet issued or stopped:] Based on these findings, the agency will order your employer to withhold from your wages the amount of \$XXX.xx per pay period until the debt determined in the Conclusion here is paid in full.

[A – 2.1 payment option for PCA accounts] The unpaid principal balance stated in the Conclusion above will continue to accrue interest, and the agency will apply part of any payment to defray collection costs the agency incurs. You still have the option to avoid wage garnishment action by voluntarily repaying this debt at an amount equal to or greater than the payment amount stated above or by making payment in full. If you wish to repay voluntarily, contact: Collection Agency Address and Phone Number

[A – 2.2 payment option for in-house accounts with no fees:] The unpaid principal balance stated in the Conclusion above will continue to accrue interest. You still have the option to avoid wage garnishment action by voluntarily repaying this debt at an amount equal to or greater than the payment amount stated above or by making payment in full. If you wish to repay voluntarily, contact: U.S. Department of Education/ 1-800-621-3115

[A – 3. Payment instructions and deadlines] If you agree to repay this debt, you must immediately contact the representative listed above within 15 calendar days of the date of this decision, and sign and return a repayment agreement within the deadlines explained by the representative. If you fail to do so by this deadline, you will forfeit this voluntary repayment opportunity, and the agency will immediately order your employer to begin withholding.

[And, in either case:] Send payment in full to: U.S. Department of Education National Payment Center P.O. Box 4169 Greenville, Texas 75403-4169 Make all payment instruments payable to the “U.S. Department of Education” and include your name and Social Security Number on the face of the payment instrument.

[A – 4. Six-month limit on hardship & future review] We will review your financial circumstances in six months, and based on that review we may consider changing the amount to be withheld at that time. If we propose to increase the amount to be withheld, we will notify you of our intent to do so, and you may object at that time.

[B - HARDSHIP CLAIM DENIED:] [B – 1. If order already issued:] Based on these findings, the agency orders your employer to withhold from your wages the rate of 15% of your disposable pay per pay period until the debt determined in the Conclusion is paid in full.

[and, as appropriate:] [B – 1.1 payment option for PCA accounts]

The unpaid principal balance stated in the Conclusion above will continue to accrue interest, and the agency will apply part of any payment to defray collection costs the agency incurs. You can have this wage garnishment action canceled by the agency by sending payment in full.

[B – 1.2 payment option for in-house accounts with no fees:] The unpaid principal balance stated in the Conclusion above will continue to accrue interest. You can have this wage garnishment action canceled by the agency by sending payment in full.

[Or] [B –2 If order not yet issued or stopped:] Based on these findings, the agency will order your employer to withhold from your wages at the rate of 15% of your disposable pay per pay period until the debt determined in the Conclusion here is paid in full.

[C. HARDSHIP CLAIM ACCEPTED IN FULL:] [C – 1 If order not yet issued:] Based on these findings, the agency will not order withholding of any amount from your wages at this time.

[Or] [C – 2 If order already issued, or recently stopped:] Based on these findings, the agency is canceling any garnishment order the agency has issued.

[And, in either case, as appropriate:]

[C – 2.1 Payment options – PCA accounts] The unpaid principal balance stated in the Conclusion above will continue to accrue interest, and the agency will apply part of any payment to defray collection costs the agency incurs. You may avoid garnishment action in the future by voluntarily repaying this debt under an acceptable repayment plan or by making payment in full. If you wish to repay voluntarily, contact:

[Collection Agency Address and Phone Number]

[C – 3 Six – month limit on hardship & future review] We will review your financial circumstances in six months, and if you have not entered into a repayment arrangement, we may consider garnishment action at that time. If we do so, we will notify you of our intent to garnish, and you may object to garnishment at that time.

[D. OBJECTIONS BASED ON PROTECTED STATUS: LEX, SE, VPY, BK] [D – 1.1 LEX]  
[Untimely filed - is in active garnishment]

Based on these findings, the agency is canceling any garnishment order the agency has issued.

[D – 1.2 Based on these findings, the agency will not order withholding from your wages at this time.

[D – 1.3 In either case, add warning] The evidence considered shows that on <mm/dd/yy> will have been reemployed for at least 12 months and at that date no longer ineligible for garnishment. If you have not entered into a repayment arrangement at that time, we may consider garnishment action.

If we do so, we will notify you of our intent to garnish, and you may object to garnishment at that time.

[D – 1.4. Payment options] The unpaid principal balance stated in the Conclusion above will continue to accrue interest, and the agency will apply part of any payment to defray collection costs the agency incurs. You may avoid garnishment action in the future by voluntarily repaying this debt under an acceptable repayment plan or by making payment in full. If you wish to repay voluntarily, contact: [FMS Cross-Servicing Contact]

[D – 2 SE: Self-employed/Independent Contractor]

[D - 2.1 the agency will not AWG] Based on these findings, the agency will issue no garnishment order and rescinds any order that may have been issued to you. The agency will pursue collection of the debt described in the notice from you by other means, such as referral to the U.S. Department of Justice for collection by litigation, and by offset of any Federal funds you may be owed.

[D – 2.2.1 Payment options – PCA accounts] The unpaid principal balance of the debts described in the notice will continue to accrue interest, and the agency will apply part of any payment to defray collection costs the agency incurs. You may avoid collection action in the future by voluntarily repaying this debt under an acceptable repayment plan or by making payment in full. If you wish to repay voluntarily, contact: [Contact FMS]

[D – 2.2.2 Payment options – in house accounts with no fees] The unpaid principal balance stated in the Conclusion above will continue to accrue interest. You may avoid collection action in the future by voluntarily repaying this debt under an acceptable repayment plan or by making payment in full. If you wish to repay voluntarily, contact:

[D – 2.3 Payment instructions] Send payment in full to: [Address and any information debtor must include in order to identify and properly credit the payment.]

[D - 3 Active Bankruptcy] [D – 3.1 If order not yet issued:] Based on these findings, the agency will not order withholding from your wages until your bankruptcy proceeding is closed or dismissed.

[D – 3.2 If order already issued:] Based on these findings, the agency is canceling any garnishment order the agency has issued.

[In either case, add] [D – 3.3.1 Payment options: PCA accounts] The unpaid principal balance on the debts stated above will continue to accrue interest, and the agency will apply part of any payment to defray collection costs the agency incurs. Unless this debt is determined to be dischargeable, you will remain responsible for repayment after your bankruptcy proceedings. If this debt is neither discharged nor repayment arrangements made, we may consider garnishment action in the future. If we do so, we will notify you of our intent to garnish, and you may object to garnishment at that time. [The agency] offers installment payment arrangements on any debt listed here that is not discharged in your bankruptcy case, in amounts that are reasonable and affordable based on your financial circumstances. When your bankruptcy proceedings are completed, or

earlier if you wish, we encourage you to contact our representative at the address listed below to arrange repayment. Collection Agency Address and Phone Number

[D – 3.3.2 Payment options: in house accounts with no fees] The unpaid principal balance on the debts stated above will continue to accrue interest. Unless this debt is determined to be dischargeable, you will remain responsible for repayment after your bankruptcy proceedings. If this debt is neither discharged nor repayment arrangements made, we may consider garnishment action in the future. If we do so, we will notify you of our intent to garnish, and you may object to garnishment at that time. [The agency] offers installment payment arrangements on any debt listed here that is not discharged in your bankruptcy case, in amounts that are reasonable and affordable based on your financial circumstances. When your bankruptcy proceedings are completed, or earlier if you wish, we encourage you to contact our representative at the address listed below to arrange repayment.

[D – 4 : Debtor is unemployed]

[D –4.1 the agency will not AWG] Based on these findings, the agency will not attempt to collect by garnishment at this time. the agency may pursue collection of the debt described in the notice from you by other means, such as offset of any Federal funds you may be owed.

[D – 4.1 Payment options – PCA accounts] The unpaid principal balance of the debts described in the notice will continue to accrue interest, and the agency will apply part of any payment to defray collection costs the agency incurs. [The agency] offers installment payment arrangements on any debt listed here that are reasonable and affordable based on your financial circumstances. You may avoid collection action in the future by voluntarily repaying this debt under an acceptable repayment plan or by making payment in full. If you wish to repay voluntarily, contact: collection agency address and phone number

Legal Protection From Employer Adverse Action: Your employer may not discharge you from employment, nor take disciplinary action against you as a result of an AWG order; nor can a prospective employer refuse to employ you as a result of this action. If any such actions for such reason are taken against you, you may sue that employer in a state or federal court for reinstatement, back pay, attorney's fees, and punitive damages.

Limitation Of Scope Of Decision: This determination affects only the debt described in the notice of garnishment, and is totally separate from any notice of proposed Federal payment offset or garnishment you may have received from any other agency.

SUMMARY OF PROCEDURES TO DATE [Telephone or in person hearing only] Your hearing was held on <DATE, TIME>, EST. You presented testimony to the undersigned who served as the agency's Hearing Official.

[If debtor testified that no added evidence was to be submitted:]At the hearing, you stated that you had submitted all the written statements and documents you had intended to submit.

[If debtor requested time to submit added evidence, but did not do so:] You were granted an extension ending <DATE> to submit additional evidence in support of your objection. Nothing

further, however, has been received, and this review is based on your original submission and the testimony presented at the hearing and Department records.

[If debtor submitted additional evidence:] Your additional submission has been received and was considered in this review.

[For Written Records Hearing For Debtor Who Requested Oral Hearing]

[A. Debtor failed to attend scheduled in-person or telephone hearing] You requested an oral hearing. However, on <DATE>, a notice was mailed to your last known address (your attorney) advising you that your in-person/telephone hearing had been scheduled for \_\_\_\_\_ at \_\_\_\_\_ Eastern Time. You did not, either on or prior to the hearing date, request that the hearing be rescheduled. We therefore conduct this review as a written records hearing.

[Add one of the following:] (A - 1 For telephone hearings) We were not able to reach you by telephone at the scheduled time, and you did not telephone the agency for your hearing as scheduled. (A - 2 For in-person hearings) You failed to attend the scheduled hearing.

[B. Unable to contact debtor to schedule hearing:] You requested an oral hearing. However, on <DATE> a notice was mailed to your last known address advising you to contact this office to schedule a hearing. You did not contact this office to schedule your hearing and we were unable to reach you by telephone to schedule your hearing. We therefore conduct this review as a written records hearing.

[C. No reason, or inadequate reason, given for requested oral hearing:] You requested a telephone or in-person hearing, but you failed to show a good reason to conclude that we cannot resolve the issues in dispute by review of the documentary evidence, by demonstrating that the validity of the claim turns on the credibility or veracity of witness testimony. We therefore conduct this review as a written records hearing.

[D. Debtor provided sufficient evidence to support objection:] You requested an oral hearing, but we conduct this review as a written records hearing because you provided sufficient documentation and evidence to establish the facts on which you wished to present testimony, and we accept those facts as proven.

[E. Debtor requested the oral hearing be cancelled:] You requested an oral hearing but later requested that the oral hearing be canceled. We therefore conduct this review as a written records hearing.

[F. Debtor failed to attend agreed upon in-person/telephone hearing (Spoke to on Telephone and Scheduled Time & Date) ] [F - 1 For telephone hearing (choose one):]

[F - 1.1] You requested an oral hearing. However, we were unable to contact you at the agreed upon time for the hearing, and you did not request, prior to the scheduled hearing, that the hearing be rescheduled. We therefore conduct this hearing as a written records hearing

[F - 1.2] You requested an oral hearing. However, you failed to contact us at the agreed upon time and you did not request, prior to the scheduled hearing, that the hearing be rescheduled. We therefore conduct this hearing as a written records hearing.

[F - 2 For in-person hearings:] You requested an oral hearing, but you did not attend the scheduled hearing nor did you request the hearing be rescheduled. We therefore conduct this hearing as a written records hearing.

[G. Debtor contacted us to schedule/reschedule hearing but we were unable to contact debtor] You requested an oral hearing. On <DATE> you (your attorney) contacted the agency to schedule/reschedule an in-person/oral hearing. We attempted to contact you/your attorney back on

(dates) to reschedule the requested oral hearing, but were unable to reach you/him/her. We therefore conduct this hearing as a written records hearing.

[H. Debtor said would call back to schedule a hearing but did not do so.] You requested an oral hearing. On <DATE> we contacted you/your attorney and were informed that you/your attorney would call us back to schedule a hearing. We did not receive a subsequent call to schedule a hearing. We therefore conduct this hearing as a written records hearing.

[The following applies to any hearing where the borrower was sent a letter for more information, and debtor was given an extension to submit added evidence]

[I – 1 If debtor failed to submit added evidence]: You were granted an extension ending <DATE> to submit additional evidence in support of your objection(s). Nothing further, however, has been received, and this review is based on your original submission and Department records regarding the debt.

[I – 2 If debtor submitted additional evidence] You were granted an extension ending <DATE> to submit additional evidence in support of your objection(s). Your additional submission has been received and was considered in this review.

**EVIDENCE CONSIDERED:** We considered the following evidence:

[Include a complete list of all evidence considered, including names of computer records and screen shots, correspondence, official reports, canceled checks, loan documents, testimony, affidavits, etc.]

[Decision Language for Use for Previously Addressed Issues:]

On [Insert Date(s)], the [Agency] issued a decision that the debt to which you now object was a valid, enforceable debt in the amount claimed at that time, and was past-due. You now object that the debt is not a valid, enforceable past-due debt, for reasons that relate to the enforceability of the debt at the time of that prior decision. We therefore consider your current objection to be a request for reconsideration of the prior decision that the debt was enforceable. As of the date of this letter, you have not submitted any additional information or documentation that persuades us that this prior decision should be changed. Therefore, we deny your request for reconsideration of the decision that the debt is valid and enforceable in the amount stated.

Other Hearing Issues:

No-Shows And Repayment Negotiations What Are The Consequences To The Debtor For Failing To Appear For An Oral Hearing? If the debtor does not appear for an in-person hearing, or call in to a scheduled telephone hearing, the debtor is considered to have withdrawn the request for an oral hearing, and instead, the hearing is conducted as “paper hearing”

Repayment Terms. The hearing does not negotiate payment terms. If the debtor's Request for Hearing (request for hearing) is timely filed, he or she can still negotiate a voluntary agreement with the PCA or FMS. However, if the request for hearing was untimely filed, the debtor cannot ordinarily negotiate installment repayment terms, and withholding will be ordered at the amount determined strictly by the hearing official.

Can The Debtor Pay A Compromise To Resolve The Debt After the AWG Order Has Been Issued? Debtors can and quite often do negotiate lump sum payoffs of a debt after garnishment has started, However, garnishment does not stop until the debt has been paid in full. Any overpayments of the compromise amount resulting from a garnishment payment will be returned to the debtor.

Can The Hearing Official Negotiate Repayment Options? No. Hearing Officials do not negotiate repayment options, and do not offer terms in their decisions. The Hearing Official must not only be objective and impartial in fact, but must maintain the appearance of total neutrality and objectivity. Any participation in, or suggestion, of payment terms may give the impression that the hearing official is not impartial, or worse, that the hearing official promotes a compromise in order to avoid completing a thorough and careful analysis of the objections. Hearing officials must refer debtors who indicate a desire to negotiate repayment terms to FMS.

## Financial Hardship

### What Is Financial Hardship in the AWG Context?

Financial Hardship is the most common objection raised to garnishment at the rate of 15 percent of individual wages. Financial Hardship is defined, for AWG purposes, as the inability to meet basic living expenses of the debtor and his or her dependents if 15% of the debtor's disposable pay (Gross Salary minus taxes, Medicare, FICA, Medical Insurance), were to be withheld or used to pay the debt.

Based on the evidence of hardship presented, the Hearing Official may reject the claim, or may approve the claim in whole or in part, cancel or reduce the garnishment.

Debtors should be informed of the documents that need to be submitted in order to claim hardship.

### Suggested Language From the Dept. of Education To Claims Of Financial Hardship

[Use the following language to articulate the findings made regarding the hardship claim.]

[A. If the debtor's financial hardship claim should be denied because the debtor failed to present sufficient information to support that claim, Hearing Official should articulate that analysis in the recommended determination as follows:]

**You objected to garnishment on the basis that withholding at the rate of 15% of your disposable pay would cause a financial hardship to you.**

On <DATE>, a <Name of Form or Letter Sent to Debtor Requesting Financial Information> was mailed to you that the requested documents that must be received no later than <##> of days after receipt of that notice in order to be considered in evaluating your objection to garnishment. As of the date of this letter, we have not received –

**[Insert applicable language ]**

<A: completed "Statement of Financial Status" or other explanation of your financial circumstances to support your claim of financial hardship.> **[or]**

**[if the Statement of financial status or similar list of expenses was submitted but without supporting documents, identify]<missing documents>** to support <the income> or <the following sources of income or expenses that you stated on the "Statement of Financial Status" or other description of your financial circumstances that you did provide. **[identify element for which documentation is missing]>**:

Particular supporting documents may include copies of the last two (2) pay stubs of the debtor and his or her spouse, and of any other income earners in the household, 1040 Tax Filing Copies of Billing Statements for current monthly expenses, including: Rent / Mortgage Payments, Medical Expenses, Child Care Expenses, Automobile Expenses, Emergency Expenses.

In the absence of evidence to support the <income> <expenses> that you claimed, we conclude that your hardship objection is not proven and the claim is denied.

**[Alternative language to be used when expenses exceed IRS averages:**

[Use the following format if the debtor provides documentation proving the amount of the income and expenses claimed – or if the amounts of income and expenses stated are accepted as accurate and actually incurred - but the debtor gives no explanation to justify necessity of expenses claimed in amounts that exceed pertinent IRS average expense amounts for similarly-situated families:]

You presented evidence that showed a gross family monthly income of **\$0.00** based on **(26 2-week pay periods per year)**. After deducting health insurance premiums, if any, and amounts required by law to be withheld for taxes, your net family monthly disposable income is **\$0.00**. You listed monthly expenses totaling **\$0.00**. As explained in the notice of proposed garnishment you were sent, we compared the amounts you claimed for various expenses against the National and local Standards developed by the Internal Revenue Service to determine whether these expense amounts are reasonable and necessary. The National and local Standards show the average amounts spent by individuals or families of similar size in your region of the country (for housing and transportation expenses) and in the nation as a whole for all other expenses.

We accepted as reasonable and necessary the amount of expenses you claimed in amounts that were no larger than these averages. To the extent that an expense amount you claimed exceeded the average amount spent for that expense claim, we considered that excess not reasonable and necessary, unless you provided a persuasive explanation for that larger amount.

You claimed expenses of **\$0.00** for Food, Housekeeping Supplies, Apparel and Services, Personal Care Products, and Miscellaneous. The average national cost of Food, Housekeeping Supplies, Apparel and Services, Personal Care Products, and Miscellaneous for families of size and monthly gross income similar to yours is **\$0.00**.

**[If the food etc. expense claimed was not larger than the IRS average:]**

We accepted the amount you claimed as reasonable and necessary.

**[If the food etc. expense claimed exceeded the IRS average and the debtor provided no explanation:**

<You provided no explanation why the larger amount was reasonable and necessary, and therefore we accepted the national average cost for your monthly expenses in this category. >

You claimed expenses of **\$0.00** for Housing and Utilities. The average cost of Housing and Utilities for families of size similar to yours in your county is **\$0.00**.

**[If the housing/utilities expense claimed was not larger than the IRS average:]**

<We accepted the amount you claimed as reasonable and necessary. >

**[If the housing/utilities expense claimed exceeded the IRS average and the debtor provided no explanation:**

<You provided no explanation why the larger amount was reasonable and necessary, and therefore we accepted the national average cost for your monthly expenses in this category.

You claimed expenses of **\$0.00** for Transportation. The average cost of Transportation for the number of cars you own in your region is **\$0.00**.

**[If the transportation expense claimed was not larger than the IRS average:]**

<We accepted the amount you claimed as reasonable and necessary. >

**[If the transportation expense claimed exceeded the IRS average and the debtor provided no explanation:**

<You provided no explanation why the larger amount was reasonable and necessary, and therefore we accepted the national average cost for your monthly expenses in this category. >

You claimed additional miscellaneous expense of \$0.00 for (list of additional expenses). The cost of these additional expenses was added to the accepted costs of Housing and Utilities, Transportation, and Food, Housekeeping Supplies, etc. to arrive at your monthly expenses: **\$0.00**.

**[If the garnishment order has not been issued:]**

Under the proposed garnishment order 15% of your disposable pay, <\$\$ amount of debtor's disposable pay> will be withheld. Your accepted monthly expenses, \$0.00, when subtracted from your family monthly income, \$0.00, leave \$0.00 in disposable income. This amount <equals> [or] <exceeds> 15% of your disposable pay, and therefore you have not demonstrated that withholding 15% of your pay would cause a financial hardship.

**[If the garnishment order has been issued:]**

Under the garnishment order issued, 15% of your disposable pay, <\$\$ amount of debtor's disposable pay> is withheld. Your accepted monthly expenses, \$0.00, when subtracted from your family monthly income, \$0.00, leave \$0.00 in disposable income. This amount <equals> [or] <exceeds> 15% of your disposable pay, and therefore you have not demonstrated that withholding 15% of your pay would cause a financial hardship.

**[B. If the debtor's financial hardship claim is partially accepted,** the garnishment order should order withholding in a reduced amount that would not cause financial hardship and any outstanding garnishment order should be reduced to that amount.]

[If the expenses claimed and supported by the debtor exceed one or more pertinent IRS average amounts but the debtor submits an argument why the amount claimed was necessary for the debtor and his or her family, do not use the following language.

[Use the following to prepare a recommended partial hardship determination if the expenses claimed and supported by the debtor do not exceed pertinent IRS average amounts or the debtor claims higher expense amounts but presents no explanation why those larger amounts are reasonable and necessary, and the total of the lesser of the claimed amount for each expense or the IRS average amount for that expense leaves an amount of the family disposable income that is less than 15% of the debtor's disposable pay.]

You objected to garnishment on the basis that withholding in the amount equal to 15% of your disposable pay would cause financial hardship. You presented evidence that showed a gross family monthly income of **\$0.00** based on **(26 2- week pay periods per year)**. After deducting amounts required by law to be withheld for taxes, your net family monthly disposable income is **\$0.00**. You listed monthly expenses totaling **\$0.00**. To determine whether these expense amounts are

reasonable and necessary, we compared the amounts you claimed for various expenses against the National Standards developed by the Internal Revenue Service. The National Standards show the average amounts spent by individuals or families of similar size in your region of the country (for housing and transportation expenses) and in the nation as a whole for all other expenses. Pursuant to 34 CFR 34.24(e)(3), we accepted as reasonable and necessary the amount of expenses you claimed in amounts that were no larger than these averages. To the extent that an expense amount you claimed exceeded the average amount spent for that expense claim, we considered that excess not reasonable and necessary, unless you provided a persuasive explanation for that larger amount.

You claimed expenses of **\$0.00** for Food, Housekeeping Supplies, Apparel and Services, Personal Care Products, and Miscellaneous. The average national cost of Food, Housekeeping Supplies, Apparel and Services, Personal Care Products, and Miscellaneous for families of size and monthly gross income similar to yours is **\$0.00**.

**[If the food etc. expense claimed was not larger than the IRS average:]**

<We accepted the amount you claimed as reasonable and necessary. >

**[If the food etc. expense claimed exceeded the IRS average and the debtor provided no explanation: ]**

<You provided no explanation why the larger amount was reasonable and necessary, and therefore we accepted the national average cost for your monthly expenses in this category. You claimed expenses of **\$0.00** for Housing and Utilities. The average cost of Housing and Utilities for families of size similar to yours in your county is **\$0.00**.

**[If the housing and utilities expense claimed was not larger than the IRS average:]**

<We accepted the amount you claimed as reasonable and necessary. >

**[If the housing and utilities expense claimed exceeded the IRS average and the debtor provided no explanation:]**

<You provided no explanation why the larger amount was reasonable and necessary, and therefore we accepted the national average cost for your monthly expenses in this category.

**[If the housing and utilities expense claimed was not larger than the IRS average:]**You claimed expenses of **\$0.00** for Transportation. The average cost of Transportation for the number of cars you own in your region is **\$0.00**.

**[If the transportation expense claimed was not larger than the IRS average:]**

<We accepted the amount you claimed as reasonable and necessary. >

**[If the transportation expense claimed exceeded the IRS average and the debtor provided no explanation:]**

<You provided no explanation why the larger amount was reasonable and necessary, and therefore we accepted the national average cost for your monthly expenses in this category. You claimed additional miscellaneous expense of **\$0.00** for **(list of additional expenses)**. The cost of these additional expenses was added to the accepted costs of Housing and Utilities, Transportation, and Food, Housekeeping Supplies, etc. to arrive at your monthly expenses: **\$0.00**.

**[If the garnishment order has not been issued:]**

Under the proposed garnishment order 15% of your disposable pay, <\$\$ amount of debtor's disposable pay> will be withheld. Your accepted monthly expenses, \$0.00, were then subtracted from your net family monthly income, \$0.00, leaving \$0.00 in disposable income. Because this amount is less than 15% of your disposable pay, we conclude that withholding 15% of your pay would cause a financial hardship, but that withholding this lesser amount, \$\$0.00, would not cause financial hardship.

**[If the garnishment order has been issued:]**

Under the garnishment order issued, 15% of your disposable pay, <\$\$ amount of 15% of debtor's disposable pay> is withheld. Your accepted monthly expenses, \$0.00, when subtracted from your net family monthly income, \$0.00, leave \$0.00 in disposable income. Because this amount is less than 15% of your disposable pay, we conclude that withholding 15% of your pay would cause a financial hardship, but that withholding this lesser amount, \$\$0.00, would not cause financial hardship.

**[C. If the debtor's financial hardship claim is fully accepted,** no garnishment order should be issued, any outstanding garnishment order should be cancelled, and the AWG status should be reviewed at a later time]

**[Use the following to prepare a recommended full hardship determination if, deducting the total of the lesser of each of the claimed expense or the IRS average expense amount for that category of expense from the full amount of family disposable income leaves no disposable family income.]**

You objected to garnishment on the basis that withholding in the amount equal to 15% of your disposable pay would cause financial hardship. You presented evidence that showed a gross family monthly income of **\$0.00** based on **(26 2- week pay periods per year)**. After deducting amounts required by law to be withheld for taxes, your net family monthly disposable income is **\$0.00**.

**[If the debtor's expense claim is accepted state that as follows]]**

You listed monthly expenses totaling **\$0.00**. To determine whether these expense amounts are reasonable and necessary, we compared the amounts you claimed for various expenses against the National Standards developed by the Internal Revenue Service. The National Standards show the average amounts spent by individuals or families of similar size in your region of the country (for housing and transportation expenses) and in the nation as a whole for all other expenses. We accepted as reasonable and necessary the amount of expenses you claimed in amounts that were no larger than these averages. To the extent that an expense amount you claimed exceeded the average amount spent for that expense claim, we considered that excess not reasonable and necessary, unless you provided a persuasive explanation for that larger amount. You claimed expenses of **\$0.00** for Food, Housekeeping Supplies, Apparel and Services, Personal Care Products, and Miscellaneous. The average national cost of Food, Housekeeping Supplies, Apparel and Services, Personal Care Products, and Miscellaneous for families of size and monthly gross income similar to yours is **\$0.00**. We accepted the national average cost for your monthly expenses in this category.

You claimed expenses of **\$0.00** for Housing and Utilities. The average cost of Housing and Utilities for families of size similar to yours in your county is **\$0.00**. We accepted the smaller of the two figures for your monthly expenses in this category. You claimed expenses of **\$0.00** for

Transportation. The average cost of Transportation for the number of cars you own in your region is **\$0.00**. We accepted the smaller of the two figures for your monthly expenses in this category. You claimed additional miscellaneous expense of **\$0.00** for (*list of additional expenses*). The cost of these additional expenses was added to the accepted costs of Housing and Utilities, Transportation, and Food, Housekeeping Supplies, etc. to arrive at your monthly expenses: **\$0.00**. Under the <proposed> [**or**] <current garnishment order>, 15% of your disposable pay, <\$\$amount of 15% disposable pay> <is> [or] <will be> withheld. Your accepted monthly expenses, **\$0.00**, when subtracted from your net family monthly disposable income, **\$0.00**, leave **\$0.00** for family monthly discretionary income. Based on these findings, we conclude that garnishment would cause financial hardship at this time.