

## **Administrative Wage Garnishment Procedures**

The Department of the Interior has adopted the regulations set forth in 31 C.F.R., § 285.11 of the Department of the Treasury concerning Administrative Wage Garnishment (AWG). As a result, our internal process has been aligned in accordance with the cited regulation and the Treasury FMS cross-servicing agreement. The cross-servicing agreement allows FMS to perform collection activities on delinquent receivables referred to them by Interior's Bureaus and Offices. Specifically, the FMS collection procedures are accomplished in partnership with Private Collection Agencies (PCA) under contract with Treasury FMS. The PCA will initiate the AWG process on behalf of Interior as a last resort, once all available collection efforts and remedies are exhausted.

Successful implementation of the AWG process requires a partnership between Treasury FMS, the Department's Bureaus/Offices, and the Office of Hearing and Appeals. The role of each of these entities is set forth below.

### **The Bureau/Office Role in the AWG Process**

The Bureau/Office must refer the delinquent debt electronically, via FedDebt or Connect:Direct, to Treasury for cross-servicing. Bureaus/Offices that are unable to refer debt electronically should contact the Treasury FMS helpdesk at 1-800-858-0725 for instructions on manual debt processing.

The Bureau/Office retains the original file with documentation of all collection efforts performed prior to referral to FMS for evidentiary purposes in the event the debtor requests a hearing. If the PCA initiates AWG and the debtor requests a hearing, the Bureau/Office dispute contact will receive the following materials:

- Notice of Assignment letter from Office of Hearing and Appeals
- Updated collection notes from PCA
- Copy of the debtors' written request for a hearing and any accompanying documentation to support the debtors' position.

The Bureau/Office dispute contact must be familiar with the case history to ensure against any unusual defense or counterclaim on the part of the debtor.

Upon notification of request for a hearing, the bureau dispute contact shall prepare a written administrative report for submission to the Office of Hearing and Appeals (OHA) containing a chronological summary of the facts and circumstances, including but not limited to the following:

- The name and mailing address of the debtor from whom collection is sought;
- The gross original amount of the claim;
- The date the claim was established;

- Date the debtor was notified of delinquency via demand letters or other pertinent collection methods;
- The date the debt was referred to Treasury for cross-servicing;
- A statement as to whether there is any indication of fraud, misrepresentation, fault, or lack of good faith on the part of the debtor; and
- A recommendation from the Bureau/Office on whether AWG should be pursued in this case for collecting the debt owed to Interior.

After submission of the administrative report to OHA, the Director of OHA or his/her designee will promptly notify the Bureau/Office if the administrative report is incomplete. The report shall be maintained in the Bureau/Office and a copy provided to the OHA for consideration in the final determination.

If the debtor disputes the existence or amount of the debt, the debtor must present by a preponderance of the evidence that no debt exists or that the amount of the debt is incorrect. The debtor may present evidence that the terms of the repayment schedule are unlawful, would cause a financial hardship, or that collection of the debt may not be pursued due to operation of law. If a hearing official, at a hearing determines that a debt is not legally due and owed to the United States, the Department shall promptly refund any amount collected by means of administrative wage garnishment. Unless required by Federal law or contract, refunds shall not bear interest.

The Bureau/Office may not recommend the garnishment of wages for a debtor who it 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 Department of the circumstances surrounding an involuntary separation from employment.

Once the Bureau/Office has fully recovered the amounts owed by the debtor, including interest, penalties, and administrative costs consistent with the FCCS, the PCA shall send the debtor's employer notification to discontinue wage withholding.

### **Treasury FMS and PCA Roles in the AWG Process.**

Treasury FMS acts as a liaison between the Department of the Interior and the PCA Agency assigned to initiate the AWG. At least 30 days before the initiation of garnishment proceedings, the PCA contractor mails, by first class mail, to the debtor's last known address a written notice informing the debtor of:

- The nature and amount of the debt;
- The intention of the agency to initiate proceedings to collect the debt through deduction from pay until the debt and all accumulated interest, penalties and administrative costs are paid in full; and,
- An explanation of the debtor's rights as described in 31 C.F.R., §285.11(e)(2), and the timeframe within which the debtor may exercise his/her rights.

The Private Collection Agency shall afford the debtor the opportunity:

- To inspect and copy agency records related to the debt;
- To enter into a written repayment agreement under terms agreeable to the Bureau/Office; and,
- For a hearing concerning the existence, debt amount, or the terms of the proposed repayment schedule under the garnishment order.

Treasury FMS should forward its collection follow-up file to the Bureau/Office dispute contact whenever the PCA is notified of a request for a hearing on the part of the debtor. Treasury will generally forward the file to the agency within 48 hours.

Unless the PCA receives information that justifies a delay or cancellation of the withholding order, the PCA shall send, by first class mail, a withholding order to the debtor's employer after 30 days from the date the notice letter is mailed to the debtor. If the debtor's written request for a hearing is received by the PCA on or before the 15th business day following the mailing of the notice, the PCA shall not issue a withholding order until OHA has provided the debtor with the requested hearing and a decision has been rendered.

The withholding order is signed by the Treasury FMS Director of the Private Collection Division or his/her delegate and sent to the debtor's employer by the PCA. The order contains only the information that is necessary for the employer to comply with the withholding order. Such information includes the debtor's name, address, and social security-number, as well as instructions for withholding and information as to where payments should be sent.

The PCA will keep a copy of the withholding order and all documents pertaining to the AWG. The "evidence of service" may be retained electronically so long as the manner of retention is sufficient for evidentiary purposes.

Along with the withholding order, the PCA sends the employer a certification form prescribed by the Secretary of the Treasury. The employer shall complete and return the certification form to the PCA within the time frame prescribed in the instructions. The certification addresses matters such as information about the debtor's employment status and disposable pay available for withholding.

A debtor whose wages are subject to a wage withholding order may, at any time, request a review of the amount garnished, based on materially changed circumstances such as disability, divorce, or catastrophic illness which result in financial hardship. A debtor requesting a review due to financial hardship must submit supporting documentation to the PCA. FMS will forward this request along with the supporting documentation to OHA. OHA will forward all of the information to the Bureau Dispute Contact for review. If a financial hardship is found, the Bureau Dispute Contact should adjust the payment by an amount and period of time to reflect the debtor's financial condition. OHA will notify FMS of the final decision. Once the decision is received, the PCA will

notify the employer of any adjustments to the amounts to be withheld through a modified withholding order.

In the event that the employer refuses to garnish the debtor's wages, Treasury FMS will refer the matter to its legal counsel for any amount the employer fails to withhold. However, a suit will not be filed before the termination of the collection action involving a particular debtor, unless earlier filing is necessary to avoid expiration of any applicable statute of limitations period. Termination of the collection action occurs when Treasury does not receive any payments to satisfy the debt from the particular debtor whose wages were the subject of garnishment, in whole or in part, for a period of one year.

During the term of the withholding order, the PCA will review its debtors' accounts to ensure that the debtor's wages will not be garnished in excess of the amount due.

### **The Office of Hearings and Appeals Role in the AWG Process**

OHA will provide a hearing to resolve disputes involving the Department of the Interior and debtors (non-federal employees) who owe delinquent non-tax debts. The procedures OHA will follow, as summarized in part below, are taken from the Department of the Treasury regulations at 31 C.F.R. 285.11 (f). Once the debtor submits a written request for a hearing and the hearing request and administrative report are forward to OHA by the Bureau/Office, OHA shall:

- Log and assign docket number for hearing request;
- Issue notice of assignment to debtor and bureau;
- Determine whether the dispute can be resolved using Alternative Dispute Resolution (ADR) procedures. OHA will contact the debtor and Bureau/Office in making this determination;
- Shall provide the debtor an opportunity for an oral or written hearing concerning the existence or amount of the debt or the terms of the repayment schedule. OHA will notify the debtor and Bureau/Office of the deadline for submission of information for a written hearing, and the date, time, and location of any oral hearing; and
- Provide a hearing, which at the OHA's option may be oral or written, concerning the existence or amount of the debt or the terms of the repayment schedule when established other than by written agreement.

### **Type of Hearing or Review**

OHA shall provide the debtor with a reasonable opportunity for an oral hearing when the issues in dispute cannot be resolved by review of the documentary evidence. If OHA determines that an oral hearing is appropriate, the time and location of the hearing shall be established by OHA. An oral hearing may, at the debtor's option, be conducted either in-person or by telephone conference. All travel expenses incurred by the debtor in connection with an in-person hearing will be borne by the debtor. All telephonic charges incurred during the hearing will be the responsibility of the Department.

In cases when an oral hearing is not required, OHA will decide the issues in dispute based upon a review of the written record. OHA will establish a reasonable deadline for the submission of evidence from the debtor and the Bureau/Office dispute contact.

#### Hearing Official

Any hearing required to establish the right to collect a delinquent non-tax debt by means of administrative wage garnishment shall be conducted by a qualified individual assigned by the Director of OHA.

#### Record of Decision

The hearing official must maintain a summary record of any hearing provided under this section. A formal evidentiary hearing is not required; however, witnesses who testify in oral hearings will do so under oath or affirmation.

#### Hearing Official Decision

The hearing official shall issue a written opinion stating his or her decision, as soon as practicable, but not later than sixty days after the date on which the request for such hearing was received by OHA. The written decision shall include a summary of the facts presented, the hearing official's findings, analysis and conclusions, and the terms of any repayment schedules, if applicable. If the OHA is unable to provide the debtor with a hearing and render a decision within 60 days after the receipt of the request for such hearing, Treasury FMS may not continue to pursue withholding from the debtor's wages until the hearing is held and a decision is rendered. If Treasury FMS had previously issued a withholding order to the debtor's employer, the order must be suspended beginning on the 61st day after the receipt of the hearing request and continuing until a hearing is held and a decision is rendered.

The hearing official's decision will be the final Department action for the purposes of judicial review under the Administrative Procedure Act (5 U.S.C., §551, et seq.).