

VA Financial Policies and Procedures  
Administrative Wage Garnishment

CHAPTER 1F

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## **0101 OVERVIEW**

This chapter establishes the Department of Veterans Affairs (VA) financial policies and procedures relating to initiating administrative wage garnishment (AWG) from an employee's disposable pay through a non-Federal employer for delinquent nontax debts owed to VA. VA retains the final authority to resolve disputes, compromise debts, suspend or terminate collection action and refer accounts to the Department of Justice (DOJ) for litigation.

010101 **AUTHORITY FOR AWG.** VA may garnish wages from a non-Federal employee's disposable pay, as authorized by 31 U.S.C. 3720(d), the Department of the Treasury (Treasury) Regulation 31 C.F.R. 285.11 and VA Regulation 38 C.F.R. 1.923.

010102 **ACTIONS FOR AWG.** In accordance with 31 C.F.R. 285.12, VA may pursue wage garnishment independently. However, in most cases, VA will rely on garnishment through Treasury's cross-servicing procedures for aggressive collection action in accordance with 38 C.F.R. 1.910. VA will forward all eligible delinquent debts over 180 days to Treasury for collection action. Refer to Volume XII Chapter 1 "*VA Debt Collection Standards*" for detailed information relating to the due process rights available to debtors and the actions leading up to AWG.

## **0102 POLICIES**

010201 **AUTHORITY FOR AWG.**

VA will take the appropriate action to garnish wages from a non-Federal employee's disposable pay for delinquent nontax debts, as authorized by 31 U.S.C. 3720(d), either directly or through Treasury when other collection methods are not advantageous or have been exhausted.

010202 **ACTIONS FOR AWG.**

A. VA will refer eligible delinquent debts over 180 days to Treasury to initiate aggressive collection action through cross-servicing procedures to pursue debt collection on behalf of VA. AWG is an integral part of the cross-servicing program. To maximize the collection potential of AWG, a delinquent debt should be referred to Treasury at the earliest possible date.

B. Once delinquent debts are referred to Treasury and AWG is deemed the preferred method for collection, VA/Treasury will notify the debtor in writing of its intent to use AWG to recover the debt. The notice will be sent at least 30 days prior to initiating any garnishment proceedings and will include information about the facts surrounding the debt, along with advice on the debtor's due process rights, including the right to a hearing to dispute the debt or repayment conditions.

C. VA/Treasury will provide the debtor with the hearing before any wage garnishment order is issued, provided the debtor's hearing request is received on or before the 15<sup>th</sup> business day following the mailing of the notice in "B" above.

D. After the time limit expires for the debtor to request a hearing, or after the hearing is completed and AWG action is authorized, VA/Treasury will send the Wage Garnishment Order to the debtor's employer. Multiple garnishment orders may be issued to the same debtor, but the total may not exceed 15 percent of the debtor's disposable pay. Multiple garnishments from all sources against one debtor's wages may not exceed 25 percent of disposable pay of an individual. (See 010502D4b)

E. VA/Treasury will ensure employers adhere to the terms and conditions of wage garnishment orders. Employers may be sued by VA if they fail to comply with the approved garnishment order to withhold money from the debtor's disposable pay. Such a suit is possible if VA/Treasury anticipates an applicable statute of limitations may expire.

F. VA will perform annual reviews of its debtors' accounts to ensure wage garnishment procedures are discontinued for debts paid in full and employers are so notified. If wage garnishment activity was in error, VA will refund any erroneous amount collected from the debtor.

G. VA will review all debtor requests claiming financial hardship and will decide on the merits of each case as to the need to continue wage garnishment action.

### **0103 AUTHORITY AND REFERENCES**

010301 31 U.S.C. 3720(d), Garnishment

010302 31 C.F.R. Part 285, Federal Claims Collection Standards - Debt Collection Authorities under the Debt Collection Improvement Act of 1996

010303 38 C.F.R. 1.923, Administrative Wage Garnishment

010304 Financial Accounting Standards and Advisory Board (FASAB), Statement of Federal Financial Accounting Standards (SFFAS) No. 1: Accounting for Selected Assets and Liabilities, par. 40-41

010305 Office of Management and Budget (OMB) Circular A-129 Revised - Policies for Federal Credit Programs and Non-Tax Receivables, November 2000

010306 U.S. Department of the Treasury, Debt Management Services – Administrative Wage Garnishment Guide

010307 U.S. Department of the Treasury, Debt Management Services – Cross Servicing Implementation Guide

010308 U.S. Department of the Treasury, Managing Federal Receivables –  
Administrative Wage Garnishment, pages 6-47 to 6-54

#### **0104 ROLES AND RESPONSIBILITIES**

010401 The Assistant Secretary for Management/Chief Financial Officer (CFO) oversees all financial management activities relating to the Department's programs and operations, as required by the Chief Financial Officers Act of 1990 and 38 U.S.C. 309. Specific responsibilities include the direction, management and provision of policy guidance and oversight of VA's financial management personnel, activities and operations. The CFO establishes financial policy, systems and operating procedures for all VA financial entities and provides guidance on all aspects of financial management.

010402 Under Secretaries, Assistant Secretaries, Chief Financial Officers, Fiscal Officers, Chief Accountants and other key officials are responsible for ensuring compliance with the policies and procedures set forth in this chapter.

010403 The Chief of the respective Finance Activity and the Director of the Debt Management Center (DMC) must ensure that the policies and procedures contained in this chapter are followed for implementing AWG.

#### **0105 PROCEDURES**

010501 AUTHORITY FOR AWG.

A. VA/Treasury will initiate collection action, using wage garnishment procedures, to recover debts owed to VA from non-Federal employees. Garnishment orders will be issued to their employers to collect debts from the employees' disposable pay.

B. VA will not resort to wage garnishment in the following circumstances:

1. The debtor earns less than 30 times the Federal minimum wage per week (See 010502D4);
2. The debtor is in a repayment agreement with VA and is meeting his or her obligations under the agreement; or
3. The debtor has identified that he/she is ineligible for wage garnishment because he/she has not been working in his or her current job for at least 12 months and was involuntarily separated from his or her prior job.

010502 ACTIONS FOR AWG.<sup>1</sup>

A. VA will forward all eligible delinquent debts over 180 days to Treasury for collection. As part of VA's aggressive collection action, Treasury's cross-servicing program includes the initiation of AWG as necessary in order to proceed with debt collection. Treasury's cross-servicing program also includes the use of contracted private collection agents (PCAs) to assist in identifying debtors eligible for AWG and in performing the following activities:

1. Verifying that the debtor has been employed for at least 12 months and issuing a notice letter on behalf of the Federal agency before garnishing the debtor's wages.
2. Forwarding any request for a hearing by a debtor to Treasury.
3. Monitoring collections under the AWG Order to ensure employer compliance.

B. VA/Treasury will send a 30-day written notice by first class mail to the debtor's last known address as the initial step in implementing a garnishment process for debt collection. The notice will advise the debtor of the ensuing process, whereby the debtor's non-Federal employer will garnish wages via payroll deductions to satisfy the debt owed VA. The written notice informs the debtor of the following:

1. The nature and amount of the debt;
2. The intention to initiate proceedings to collect the debt through deductions from the debtor's pay until the debt and all accumulated interest and other late payment charges are paid in full;
3. An explanation of the debtor's due process rights; and
4. The opportunity to inspect and copy VA records pertaining to the debt, to enter into a written repayment agreement with VA/Treasury under terms agreeable to VA/Treasury and to request a hearing concerning the existence or amount of the debt or the terms of the proposed repayment schedule under the garnishment order<sup>2</sup>.

C. The debtor has the right to request a hearing concerning the existence or amount of the debt or the terms of the proposed repayment schedule under a wage garnishment order. The hearing is not required to be a formal, evidentiary-type hearing, but during oral hearings, witnesses will testify under oath or affirmation. Any hearing conducted as part of the AWG process will be conducted by a designated hearing official as described in 31 C.F.R. 285.11(f) and 38 C.F.R. 1.923(c). The hearing official may be any VA

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<sup>1</sup>Refer to Volume XII Chapter 1, "VA Debt Collection Standards" for detailed information relating to the due process rights available to debtors and the actions leading up to AWG.

<sup>2</sup> The debtor is not entitled to a hearing concerning the terms of the proposed repayment schedule if these terms have been established by written agreement between the debtor and VA/Treasury.

hearing official who is also qualified to conduct AWG hearings for other Federal agencies.

1. If the debtor's written request for a hearing is received by VA/Treasury within 15 business days following the mailing of the written notice, VA/Treasury will not issue a wage garnishment order until the completion of the hearing and a decision has been rendered.
2. If a written request for a hearing is received after 15 business days following the date of the original VA notice, a hearing will still be conducted; however, the wage garnishment order may be issued before the hearing is concluded, unless the hearing official determines the delay in filing was caused by factors beyond the debtor's control or the hearing official receives information that justifies a delay or cancellation of the withholding order.
3. The hearing may be oral or written as determined by the hearing official. The hearing official will provide the debtor with a reasonable opportunity for an oral hearing when the hearing official determines that the issue in dispute cannot be resolved by review of documentary evidence. At the debtor's option, an oral hearing may be conducted either in person or by telephone conference call. In the absence of good cause, a debtor who fails to appear at a hearing will be deemed as not having timely filed a request for a hearing.
  - a. The hearing official will notify the debtor of the date and time of a telephone conference hearing; the date, time and place for an in-person oral hearing; or the deadline for the submission of evidence for a written hearing.
  - b. VA has the initial burden to prove the existence or amount of the debt. Thereafter, the debtor must present by a preponderance of the evidence that no debt exists or that the amount of the debt is incorrect. In addition, the debtor may present evidence that the 15 percent proposed garnishment would cause a financial hardship, or that collection of the debt may not be pursued due to an existing law.
  - c. If the hearing official determines an oral hearing is not necessary, the debtor will be afforded a "paper hearing" and the hearing official will notify the debtor that the issues in dispute will be decided based upon a review of the written record.
4. If the debtor has previously contested the existence or amount of the debt in accordance with 38 C.F.R. 1.911(c)(1) or 1.911a(c)(1) and VA subsequently rendered a decision upholding the existence or amount of the debt, then such decision shall be incorporated by reference and become the basis of the hearing official's decision. If the debtor was previously advised of the right to contest the existence or amount of the debt and failed to do so within the statutory or regulatory time limit, then the debtor is not entitled to a hearing on these issues, and this fact shall be incorporated into the hearing official's decision.

5. The hearing official will issue a final written decision as soon as practicable, but not later than 60 days after the date on which the request for such hearing was received by VA/Treasury. If a wage garnishment order has been issued and a final decision has not been issued by the 60<sup>th</sup> day, then the withholding order will be suspended beginning on the 61<sup>st</sup> day. The suspension will not be lifted nor will the withholding order be reinstated until the hearing is completed and the hearing official has rendered a final decision. The decision, when rendered, will be the final action for the purposes of judicial review under the Administrative Procedures Act (5 U.S.C. 701 et seq.). The decision will include:

- A summary of the facts presented;
- The hearing official's findings, analysis and conclusions; and
- The terms of the repayment schedule, if applicable.

6. The hearing official will maintain a summary record of the proceedings, even though it is not necessary to produce a transcript of the hearing.

D. VA/Treasury will send a wage garnishment order and the certification form by first class mail to the debtor's employer within 30 days after the debtor fails to make a timely request for a hearing.

1. Treasury Form SF-329, "*Administrative Wage Garnishment*,"<sup>3</sup> will be used to issue withholding orders. For guidance on completing the form, link to the form's step-by-step instructions (see footnote 3 below).

2. The form consists of the following four parts:

a. Letter to Employer and Important Notice to Employer (SF-329A), which is sent to the employer with the garnishment order to explain why a garnishment order is being issued.

b. Wage Garnishment Order (SF-329B), which describes the terms of the garnishment and the amount the employer is required to garnish.

c. Wage Garnishment Worksheet (SF-329C), which assists the employer in calculating the amount to be garnished.

d. Employer Certification (SF-329D), which is completed and returned by the employer with information related to the garnishment and within the timeframe prescribed in the instructions to the form. The certification will address matters such as information about the debtor's employment status, disposable pay available for withholding, and information as to where payments should be sent.

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<sup>3</sup> The form may be obtained through Treasury's web site at [www.fms.treas.gov/debt](http://www.fms.treas.gov/debt).

3. The wage garnishment order will contain only the information necessary for the employer to comply with the withholding order and will be signed by the VA/Treasury designated official, whose name and title are printed or typed on the order.

a. A copy of a certification must indicate the date of mailing to a Treasury official for cases referred to Treasury. The certification may be retained electronically so long as the manner of retention is sufficient for evidentiary purposes.

b. All four parts of the SF-329 will be sent to the debtor's employer.

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

4. VA/Treasury will take whatever action is necessary to ensure the employer, after receipt of the garnishment order, withholds the amount of garnishment, as described in 31 CFR 285.11(i), from all disposable pay paid to the applicable debtor during each pay period. The amount of the garnishment, calculated by the employer, will be the lesser of (1) the amount indicated on the garnishment order up to 15 percent of the debtor's disposable pay, or (2) the amount by which the debtor's disposable pay exceeds the amount equivalent to thirty times the minimum wage<sup>4</sup>. For example, if the disposable pay of a debtor is \$350.00 per week, the deduction for the 15 percent calculation would be \$52.50; for the minimum wage calculation, \$132.50 (\$350 minus 30 x \$7.25). Since the debtor's pay may not be reduced by the lesser of these two calculations, the garnishment amount would be \$52.50.

a. The debtor may give his/her written consent for the withholding of a greater amount.

b. If a debtor owes multiple debts and the debtor's pay is already subject to other garnishments, the total amount garnished, including other garnishment orders, may not exceed 25 percent of the debtor's disposable pay. For example, if the disposable pay of the debtor in the above example was subject to a prior withholding order of 15 percent, then the amount available for garnishment would be limited to \$35.00 (10 percent of the debtor's disposable pay).

c. If amounts are being withheld from a debtor's pay pursuant to a withholding order served on an employer before a withholding order has been issued pursuant to this procedure, or if a withholding order for family support is served on an employer at any time, the amounts withheld will be the lesser of (1) the amount calculated in paragraph "a" above, or (2) an amount equal to 25 percent of the debtor's disposable pay less the amount(s) withheld under the withholding order with priority. AWG withholding orders

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<sup>4</sup> Effective July 24, 2009, the Federal minimum wage is \$7.25.

have priority over other withholding orders that are served later in time. However, withholding orders for family support will have priority over AWG withholding orders.

E. The employer shall promptly pay VA all amounts withheld in accordance with the withholding order, including the fees charged by the PCAs under the contract with Treasury.

1. An employer will not be required to vary its normal pay and disbursement cycles in order to comply with the withholding order.
2. Any assignment or allotment by an employee of his or her earnings shall be void to the extent it interferes with or prohibits execution of the withholding order, except for any assignment or allotment made pursuant to a family support judgment or order. VA/Treasury will assign a higher priority to AWG withholding orders than to other subsequent withholding orders. However, withholding orders for family support will have priority over AWG withholding orders.
3. The employer shall withhold the appropriate amount from the debtor's wages for each pay period until the employer receives notification from VA/Treasury to discontinue wage withholding.
4. The garnishment order shall indicate a reasonable period of time within which the employer is required to commence wage withholding.
5. The employer is liable to VA for noncompliance with the terms and conditions of wage garnishment orders and may be sued by VA to ensure compliance. VA/Treasury may sue any employer for any amount the employer fails to withhold from wages owed and payable to an employee in accordance with this chapter. Termination of collection by the employer will have been deemed to have occurred if VA/Treasury has not received any payments to satisfy the debt, in whole or in part, for a period of one year. VA may not file a suit before the termination of collection action involving a particular debtor, unless earlier filing is necessary to avoid expiration of any applicable statute of limitations period.

F. VA/Treasury will review its debtors' accounts, at least annually, to ensure garnishments have been discontinued for accounts that have been paid in full, including interest, penalties and administrative costs, or have otherwise been resolved through compromise or other agreement with the agency. VA/Treasury may send a letter, or use Form 329E, *Notice of Termination of Wage Garnishment Order*, to inform the employer the garnishment is terminated and that all withholdings from the employee's pay should cease. Agencies will use SF-329E when a debtor's employer requests an Order of Termination signed by Treasury. Where garnishment resulted in erroneous deductions from an employee's pay, refunds will be promptly made. Refunds shall not bear interest unless required by Federal law or contract.

G. VA will review the amount garnished if a request is made by the debtor on a claim of financial hardship due to materially changed circumstances (e.g., disability, divorce, or catastrophic illness), which may result in limiting the debtor's ability to provide food, housing, clothing, transportation and medical care for himself or herself and his or her dependents. The Chief of the Finance Activity at the station responsible for collection of the debt, or the DMC Director, or his/her designee, will normally review financial hardship requests. If VA determines a financial hardship exists, it will request a downward adjustment by an amount and for a period of time agreeable to VA, or terminate or suspend collection through AWG, as appropriate. VA/Treasury will notify the employer of any adjustments to the amounts to be withheld.

## **0106 DEFINITIONS**

010601 Administrative Wage Garnishment (AWG). Withholding of wages of a delinquent debtor from a non-Federal employer without first obtaining a court order to collect delinquent non-tax debt. The AWG process is authorized by 31 U.S.C. 3720(d).

010602 Cross-servicing. Refers to an arrangement between two or more Federal agencies in which a function, such as debt collection, is performed by one agency in support of one or more agencies, and for which reimbursement is required from the agencies receiving the support. Cross-servicing most often refers to a Federal agency's referral of a delinquent debt to Treasury for collection action.

010603 Debtor. Any person who owes a debt to VA. This includes individuals, corporations, partnerships, sole proprietorships, estates, trusts, other government agencies, and other legal entities against which VA has a claim.

010604 Delinquent Non-tax Debt. Any claim that has not been paid by the date specified in the agency's bill of collection or demand letter for payment or which has not been satisfied in accordance with a repayment agreement (22 C.F.R. 213.2, Chapter 625). For purposes of administrative wage garnishments, the terms "debt" and "claim" are synonymous and refer to delinquent nontax debt.

010605 Disposable Pay. The part of the debtor's compensation (including, but not limited to, salary, bonuses, commissions and vacation pay) from an employer remaining after the deduction of health insurance premiums and any amounts required by law to be withheld. For purposes of administrative wage garnishments, "amounts required by law to be withheld" include amounts for deductions, such as social security taxes and withholding taxes, but do not include any amount withheld pursuant to a court order. "Disposable pay" is also described in the Wage Garnishment Worksheet (SF-329C).

010606 Employer. Person or entity who employs the services of others and pays their wages or salaries. The term employer includes, but is not limited to, state and local governments, but does not include an agency of the Federal Government.

010607 Garnishment. The process of withholding amounts from an employee's disposable pay and the paying of those amounts to a creditor to satisfy a withholding order.

010608 Hearing Official. The hearing official may be any qualified person, as determined by VA, who will maintain an official summary record of the hearing. There is no requirement that the hearing official be an administrative law judge or someone outside of VA.

010609 Nontax Debt. Refers to a debt or claim, used interchangeably, to any amount of money, funds or property as determined by an appropriate official of the Federal Government to be owed to the United States by an individual, including debt administered by a third party as an agent for the Federal Government.

010610 Private Collection Agency (PCA). A private sector company specializing in the collection of delinquent debt. A PCA will attempt to find and contact a debtor by searching various databases, making telephone calls and sending collection letters. Once the debtor is located and contacted, the PCA will encourage the debtor to satisfy the debt. Recently, AWG has been added to the list of debt collection tools and is available to those PCAs participating in the Treasury cross-servicing program. Collection efforts by PCAs are governed by various Federal and State laws, including, but not limited to, the Fair Debt Collection Practices Act, the Federal Claims Collection Standards and the Privacy Act.

010611 Termination of Collection Action. Refers to a decision made to cease active collection action on a debt, in accordance with criteria set out in the Federal Claims Collection Standards, because such action is not economically worthwhile or is otherwise inappropriate.

010612 Withholding Order. Any order for withholding or garnishment of pay issued by an agency, or judicial or administrative body. For purposes of this section, the terms “wage garnishment order” and “garnishment order” have the same meaning as “withholding order.”

## **0107 RESCISSIONS**

010701 VA Handbook 4800.19, Administrative Wage Garnishment

## **0108 QUESTIONS**

Questions concerning these financial policies and procedures should be directed as shown below:

VHA	VHA Accounting Policy (Outlook)
VBA	VAVBAWAS/CO/FINREP (Outlook)
All Others	OFP Accounting Policy (Outlook)