

§ 105-57.004 Notice requirements.

(a) At least 30 days before the initiation of garnishment proceedings, GSA will send, by first class mail, overnight delivery service, or hand delivery to the debtor's last known address a written notice informing the debtor of—

(1) The nature and amount of the debt;

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

(3) The debtor's rights, including those set forth in paragraph (b) of this section, and the time frame within which the debtor may exercise his or her rights.

(b) The debtor will be afforded the opportunity—

(1) To inspect and copy Agency records related to the debt;

(2) To enter into a written repayment agreement with GSA under terms agreeable to the Agency; and

(3) To request a hearing in accordance with § 105-57.005 of this part concerning the existence and/or amount of the debt, and/or the terms of the proposed repayment schedule under the garnishment order. However, the debtor is not entitled to a hearing concerning the terms of the proposed repayment schedule if these terms have been established by written agreement under paragraph (b)(2) of this section.

(c) The notice required by this section may be included with GSA's demand letter required by 41 CFR 105-55.010.

(d) GSA will keep a copy of the evidence of service indicating the date of submission of the notice. The evidence of service may be retained electronically so long as the manner of retention is sufficient for evidentiary purposes.

§ 105-57.005 Hearing.

(a) GSA will provide a hearing, which at the hearing official's option may be oral or written, if within fifteen (15) business days of submission of the notice by GSA, the debtor submits a signed and dated written request for a hearing, to the official named in the notice, concerning the existence and/or

amount of the debt, and/or the terms of the repayment schedule (for repayment schedules established other than by written agreement under § 105-57.004(b)(2) of this part). A copy of the request for a hearing must also be sent to the GSA Board of Contract Appeals (GSBCA) at the address indicated in paragraph (b)(2) of this section.

(b) *Types of hearing or review.* (1) For purposes of this section, whenever GSA is required to afford a debtor a hearing, the hearing official will provide the debtor with a reasonable opportunity for an oral hearing when he/she determines that the issues in dispute cannot be resolved by review of the documentary evidence, for example, when the validity of the claim turns on the issue of credibility or veracity.

(2) If the hearing official determines that an oral hearing is appropriate, he/she will establish the time and location of the hearing. An oral hearing may, at the debtor's option, be conducted either in-person or by telephone conference. In-person hearings will be conducted in the hearing official's office located at GSA Central Office, 1800 F St., NW., Washington, DC 20405, or at another location designated by the hearing official. All personal and travel expenses incurred by the debtor in connection with an in-person hearing will be borne by the debtor. All telephonic charges incurred during a hearing will be the responsibility of GSA.

(3) The debtor may represent himself or herself or may be represented by another person of his or her choice at the hearing. GSA will not compensate the debtor for representation expenses, including hourly fees for attorneys, travel expenses, or costs for reproducing documents.

(4) In those cases when an oral hearing is not required by this section, the hearing official will nevertheless conduct a "paper hearing", that is, the hearing official will decide the issues in dispute based upon a review of the written record. The hearing official will establish a reasonable deadline for the submission of evidence.

(c) Subject to paragraph (k) of this section, if the debtor's written request is received by GSA on or before the 15th business day after the submission of the notice described in § 105-57.004(a)

of this part, the Agency will not issue a withholding order under § 105-57.006 of this part until the debtor has been provided the requested hearing and a decision in accordance with paragraphs (h) and (i) of this section has been rendered.

(d) If the debtor's written request for a hearing is received by GSA after the 15th business day following the mailing of the notice described in § 105-57.004(a) of this part, GSA may consider the request timely filed and provide a hearing if the debtor can show that the delay was because of circumstances beyond his or her control. However, GSA will not delay issuance of a withholding order unless the Agency determines that the delay in filing the request was caused by factors over which the debtor had no control, or GSA receives information that the Agency believes justifies a delay or cancellation of the withholding order.

(e) After the debtor requests a hearing, the hearing official will notify the debtor of—

- (1) The date and time of a telephonic hearing;
- (2) The date, time, and location of an in-person oral hearing; or
- (3) The deadline for the submission of evidence for a written hearing.

(f) *Burden of proof.* (1) GSA will have the burden of establishing the existence and/or amount of the debt.

(2) Thereafter, if the debtor disputes the existence and/or amount of the debt, the debtor must prove 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 terms of the repayment schedule are unlawful, would cause a financial hardship to the debtor, or that collection of the debt may not be pursued due to operation of law.

(g) The hearing official will arrange and maintain a written transcript of any hearing provided under this section. The transcript will be made available to either party in the event of an appeal under the Administrative Procedure Act, 5 U.S.C. 701 through 706. All charges associated with the taking of the transcript will be the responsibility of GSA. A hearing is not required to be a formal evidentiary-type hearing;

however, witnesses who testify in oral hearings will do so under oath or affirmation.

(h) The hearing official will issue a written opinion stating his or her decision, as soon as practicable, but not later than sixty (60) days after the date on which the request for such hearing was received by GSA. If the hearing official is unable to provide the debtor with a hearing and render a decision within 60 days after the receipt of the request for such hearing—

(1) GSA will not issue a withholding order until the hearing is held and a decision rendered; or

(2) If GSA had previously issued a withholding order to the debtor's employer, the Agency will suspend the withholding order beginning on the 61st day after the receipt of the hearing request and continuing until a hearing is held and a decision is rendered.

(i) The written decision will include—

- (1) A summary of the facts presented;
- (2) The hearing official's findings, analysis and conclusions; and
- (3) The terms of any repayment schedules, if applicable.

(j) The hearing official's decision will be the final Agency action for the purposes of judicial review under the Administrative Procedure Act (5 U.S.C. 701 *et seq.*).

(k) In the absence of good cause shown, a debtor who fails to appear at a hearing scheduled pursuant to paragraph (e) of this section, or to provide written submissions within the time set by the hearing official, will be deemed to have waived his or her right to appear and present evidence.

§ 105-57.006 Wage garnishment order.

(a) Unless GSA receives information it believes justifies a delay or cancellation of the withholding order, the Agency will send, by first class mail, overnight delivery service or hand delivery, a SF 329A (Letter to Employer & Important Notice to Employer), a SF 329B (Wage Garnishment Order), a SF 329C (Wage Garnishment Worksheet), and a SF 329D (Employer Certification), to the debtor's employer—

(1) Within 30 days after the debtor fails to make a timely request for a hearing (*i.e.*, within 15 business days