

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

after the mailing of the notice described in § 105-57.004(a) of this part); or

(2) If a timely request for a hearing is made by the debtor, within 30 days after a final decision is made by the hearing official to proceed with garnishment.

(b) The withholding order sent to the employer under paragraph (a) of this section will contain the signature of, or the image of the signature of, the Administrator or his or her delegate. The order will contain only the information 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 are to be sent.

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

§ 105-57.007 Certification by employer.

The employer must complete and return the SF 329D (Employer Certification) to GSA within the time frame prescribed in the instructions to the form. The certification will address matters such as information about the debtor's employment status and disposable pay available for withholding.

§ 105-57.008 Amounts withheld.

(a) After receipt of the garnishment order issued under this part, the employer shall deduct from all disposable pay paid to the applicable debtor during each pay period the amount of garnishment described in paragraph (b) of this section. The employer may use the SF 329C (Wage Garnishment Worksheet) to calculate the amount to be deducted from the debtor's disposable pay.

(b) Subject to the provisions of paragraphs (c) and (d) of this section, the amount of garnishment 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 set forth in 15 U.S.C. 1673(a)(2) (Restriction on Garnish-

ment), which is the amount by which a debtor's disposable pay exceeds an amount equivalent to thirty times the minimum wage. *See* 29 CFR 870.10.

(c) When a debtor's pay is subject to withholding orders with priority, the following will apply:

(1) Unless otherwise provided by Federal law, withholding orders issued under this part will be paid in the amounts set forth under paragraph (b) of this section and will have priority over other withholding orders which are served later in time. Notwithstanding the foregoing, withholding orders for family support will have priority over withholding orders issued under this part.

(2) If amounts are being withheld from a debtor's pay pursuant to a withholding order served on an employer before a withholding order issued pursuant to this part, or if a withholding order for family support is served on an employer at any time, the amounts withheld pursuant to the withholding order issued under this part will be the lesser of—

(i) The amount calculated under paragraph (b) of this section; or

(ii) An amount equal to 25 percent of the debtor's disposable pay less the amount(s) withheld under the withholding order(s) with priority.

(3) If a debtor owes more than one debt to GSA, the Agency may issue multiple withholding orders provided the total amount garnished from the debtor's pay for such orders does not exceed the amount set forth in paragraph (b) of this section.

(d) An amount greater than that set forth in paragraphs (b) and (c) of this section may be withheld upon the written consent of the debtor.

(e) The employer shall promptly pay to GSA all amounts withheld in accordance with the withholding order issued pursuant to this part.

(f) An employer will not be required to vary its normal pay and disbursement cycles in order to comply with the withholding order.

(g) Any assignment or allotment by an employee of his or her earnings will be void to the extent it interferes with or prohibits execution of the withholding order issued under this part, except for any assignment or allotment