

**Department of Housing and Urban Development**

**Administrative Wage Garnishment  
Implementation Plan**

**September 2003**

## **Background**

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

The Debt Collection Improvement Act of 1996 (DCIA) authorized federal agencies to garnish up to 15 percent of the disposable pay (as defined in 5 CFR Part 550.1103) of delinquent debtors who do not work for the federal government via Administrative Wage Garnishment (AWG). Federal government employees are subject to offset of their federal pay via the Treasury Offset Program (TOP) rather than through AWG. Unlike standard garnishments, AWG is accomplished administratively. AWG does not require a judgment or court order. Under AWG, a federal agency directly orders the garnishment of the debtor's wages after sending a warning notice to the debtor. Due process is provided through administrative hearings rather than through a court.

### **How Does AWG Work?**

DCIA directed the Secretary of the Treasury to issue regulations to implement AWG. Treasury's AWG Regulations were issued in May 1998 and may be found at 31 CFR 285.11.

The regulations require that at least 30 days before initiating wage garnishment proceedings, agencies must notify the delinquent debtors in writing. The agency's Notice of Intent (NOI) letter that initiates the AWG proceedings must provide the debtor:

- (1) The nature and amount of the debt;
- (2) The agency's intention to collect through AWG from the debtor's paycheck;
- (3) An explanation of the debtor's rights, which include the opportunity to inspect and copy agency records related to the debt;
- (4) An opportunity to establish a written repayment agreement; and
- (5) 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.

An agency must provide a debtor with a hearing before it issues a wage garnishment order if the agency receives the debtor's written request for a hearing on or before the 15<sup>th</sup> business day following the mailing of the NOI. (Note: If the debtor requests a hearing past the deadline, a hearing will be granted; however, such hearing need not be provided prior to issuance of the garnishment order.) If no hearing is requested or if the hearing official authorizes AWG, the agency initiates the garnishment by sending a withholding order to the debtor's employer. On receipt of the order, the employer must deduct the amount of the garnishment and remit these funds to the

agency. An agency may sue an employer for not implementing the AWG properly against a debtor.

Refer to the debt collection regulations issued by Treasury's Financial Management Service (FMS) for additional guidance regarding:

- How the garnishment amount is to be calculated;
- Timing issues related to the hearing;
- How to deal with multiple garnishments;
- How agencies may deal with non-cooperative employers;
- Rules for stopping garnishments; and
- Annual agency reviews.

### **AWG is Optional, but Highly Recommended**

Some DCIA-authorized debt collection tools are mandatory, but the usage of AWG is discretionary. According to the General Accounting Office (GAO) Report: *Debt Collection Improvement Act of 1996: Status of Selected Agencies' Implementation of Administrative Wage Garnishment (GAO-02-313)*, AWG has the potential to be a powerful tool for collecting delinquent federal debts and all agencies should effectively incorporate AWG into their debt collection process.

### **AWG via the Treasury Cross-Servicing Program**

The DCIA requires referral of all eligible debt to Treasury's FMS for cross-servicing collection action when the debt becomes 180 days delinquent. Debts less than 180 days delinquent may be referred earlier as long as the appropriate due process pre-requisites are met by the agency. AWG is one of several actions used by FMS to collect the debt on behalf of federal agencies.

Private collection agencies (PCAs) under contract to Treasury provide collection services to support Treasury's cross-servicing activities including AWG. PCAs are responsible for identifying debtors eligible for AWG and for confirming the debtor has been employed for at least 12 months. PCAs are authorized to issue the NOI letter on behalf of the federal agency and to issue AWG withholding orders to the employer. The PCA will monitor the collections to ensure the employer's compliance. FMS will initiate legal action as appropriate against employers who do not comply. Hearing requests will be forwarded by FMS to the federal agency when necessary.

### **AWG at HUD**

The DCIA assigned primary responsibility for collecting delinquent federal debt to Treasury's FMS. To support this mandate and in order to leverage the collection resources provided by Treasury, HUD will refer eligible delinquent debtors to Treasury for cross-servicing action and for the Treasury Offset Program (TOP) at the earliest practicable date. Accordingly, HUD will conduct AWG primarily through Treasury

Cross-Servicing. HUD's debt collection staff responsible for referring debt for AWG action consists of the following offices:

Federal Housing Administration (FHA) Albany Finance Center  
Chief Financial Officer Accounting Offices in Headquarters and FT. Worth  
Government National Mortgage Association (GNMA)

HUD acquires loans and other receivables through its program activities and performs the initial debt collection for these accounts. Non-routine cases that are not eligible for Treasury action will be handled in-house. When a new debt is established, HUD will issue demand letters to seek voluntary payment. For debtors who are willing and able, HUD will negotiate repayment plans and compromise settlements, provide customer service, and otherwise directly service such debts until settled. HUD's collection activities also include credit bureau reporting and maintaining information about federal debts in the Credit Alert Interactive Voice Response System (CAIVRS). In addition, HUD will directly service bankrupt accounts, debts in dispute, and other non-routine debts that are not eligible for Treasury referral.

When HUD's initial collection efforts are not successful and voluntary payment is not obtained from the debtor, HUD will initiate action to provide the debtor with appropriate due process in order to refer them to FMS. This action includes mailing a NOI letter and, if requested, handling the request for a hearing by the HUD Board of Contract Appeals (HUDBCA). (Note: The NOI and hearing at this stage of the collection cycle pertain to TOP and Cross-Servicing, but not AWG.) If the debt remains unpaid and eligible (i.e., not bankrupt, in dispute, etc.), the debt will be referred to FMS for TOP and for Cross-Servicing on the first scheduled weekly/monthly referral date following the debtor's deadline to respond to the NOI or following HUDBCA authorization to proceed.

With the process outlined above, the criteria and timing for referral to FMS and for initiating AWG action is essentially the same. Any delinquent consumer debt identified as a good candidate for AWG should already be at FMS for Cross-Servicing.

Accordingly, HUD will conduct AWG both in-house and via Treasury Cross-Servicing, but HUD's primary means of implementing AWG will be via the Treasury Cross-Servicing program. In-house AWG will be limited to instances where AWG action is appropriate and where AWG action via FMS is not possible.

### **The Threat of AWG is a Collection Tool**

AWG is an important tool that when properly used in tandem with other debt recovery techniques should generate increased collections and provide leverage for HUD to obtain payments from delinquent debtors. Many debtors will elect to voluntarily pay their debt to avoid the consequences of AWG. Accordingly, HUD demand letters and other communications with delinquent consumer debtors will be modified to indicate that AWG is an available collection tool that will be used by HUD if necessary. In the future,

HUD staff will use the threat of AWG in conjunction with other debt collection tools, when appropriate and practicable, as leverage to obtain voluntary payment from delinquent debtors.

### **Types of Debts Subject to AWG**

To be a candidate for AWG the debt must be:

- Owed by a person;
- Valid and legally enforceable;
- Past due; and
- Greater than \$100.

In addition:

- The debtor must be employed (at least 12 months);
- The employer must be other than the federal government;
- 15% of the debtor's disposable pay would produce a significant payment. A significant payment is one that exceeds the cost to collect and process the payment and produces a monthly debt collection that exceeds the monthly accrual of interest; and
- The anticipated garnishment would not result in a claim of financial hardship by the debtor that would likely be sustained by HUDBCA.

All types of delinquent debts owed to HUD must be considered for AWG using the above criteria. For debts referred to FMS, the decision to initiate AWG action will be made by FMS or PCAs under contract to FMS. For any delinquent debt not referred to FMS, HUD will initiate AWG action in-house if the debtor meets the above criteria. HUD has already authorized FMS to pursue AWG on the following types of debts referred by the Department:

Title I Claims

Single Family Deficiency Judgments

Single Family Rents

Single Family One Time Mortgage Insurance Premiums (debts from erroneous refunds of insurance premiums)

Single Family Unsecured Debts

Defaulted Title I loans held by GNMA for which FHA has not paid the claim

Section 8 Subsidy Overpayments

## **Procedures**

### **Initiating AWG**

To maximize the collection potential from initiating AWG via Treasury Cross-Servicing, a delinquent debt should be referred to FMS at the earliest possible date. Generally, HUD refers new debts to FMS at the end of each month either by an automated electronic process for a large volume or by disk for a small volume. All new referrals must be accompanied by a certification by HUD that the debts are legally enforceable, past due, and that all required due process procedures have been completed. In addition, HUD provides FMS with an "Agency Profile" document for each program area. The Agency Profile, among other things, advises FMS if AWG may be used as a collection tool. To initiate AWG, HUD must give FMS permission via the profile. If new types of debt are to be referred to FMS, a new Agency Profile for each type must be provided. More detailed information on the process for referring debts to Cross-Servicing may be obtained via FMS' website at <http://www.fms.treas.gov/debt/crosserv.html> or by contacting FMS at telephone 202-874-8700.

To initiate AWG in-house, HUD must send the debtor a written notification that includes the information regarding the debtor's rights as outlined in Treasury's AWG regulations at 31 CFR285.11 ([http://www.fms.treas.gov/debt/regulations2.html#285\\_11](http://www.fms.treas.gov/debt/regulations2.html#285_11)) and that is also in compliance with HUD's AWG regulations at 24 CFR17.170. After the time limit expires for the debtor to request a hearing or after the hearing is completed and AWG action is authorized, HUD sends a Wage Garnishment Order to the debtor's employer. More detailed information on this process may be obtained from FMS' website at <http://www.fms.treas.gov/debt/awg.html>. Should HUD identify a significant number of debts where AWG must be initiated in-house, detailed AWG procedures for HUD staff to follow will be developed.

### **Hearings**

The HUDBCA will conduct AWG hearings for both in-house and FMS- initiated AWG actions. HUD's hearing procedures for AWG are very similar to the procedures already in place at HUD for hearings regarding TOP (see 24 CFR 17.170). Hearings will be Written Hearings with deadlines for submission of evidence by HUD and the debtor determined by HUDBCA. Oral Hearings will not be conducted unless an exception is made by HUDBCA.

A debtor's request for a hearing must be sent to:

Department of Housing and Urban Development  
Board of Contract Appeals  
1707 H Street, NW; 11<sup>th</sup> Floor  
Washington, DC 2006

AWG NOIs sent by FMS or an FMS PCA will instruct the debtor to submit a request for a hearing to FMS or the PCA. FMS will log in these requests and then send them directly to HUDBCA. AWG NOIs sent by HUD may instruct the debtor to submit their request for hearing directly to HUDBCA. To ensure timely processing, all requests for a hearing must be immediately routed to HUDBCA if received elsewhere at HUD.

To be timely, the debtor must request a hearing within 15 business days after the postmark date of the NOI. If a hearing request is submitted timely, AWG may not commence until after HUDBCA issues a final decision that authorizes AWG. If a hearing request is submitted, but not timely, AWG action may continue during the hearing process.

The regulations require that the hearing be held and a decision made within 60 days of the date of the request for a hearing. If this deadline is not met and AWG was implemented because the request for hearing was not timely, then AWG action must stop at that point (60 days) until a final decision is issued by HUDBCA. In addition to the above, HUD must comply with any orders issued by HUDBCA.

The process for responding to AWG hearing requests is very similar to the current process for responding to TOP Appeals. Information and documentation regarding the existence and amount of the debt or regarding HUD's position on the debtor's financial ability regarding the proposed 15 percent garnishment should be provided to the HUD Office of General Counsel (OGC). The Offices of the Assistant General Counsel located in Seattle, Chicago or New York will represent HUD before HUDBCA and will submit any motions, pleadings, and Secretary's Statements to HUDBCA. Debt collection staff should assist OGC by providing appropriate documentation and information that is responsive to the issues raised by the debtor.

HUD 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 garnishment would cause a financial hardship, or other legal objections.

If HUDBCA authorizes AWG, then AWG may continue. For AWG via FMS, HUD need only notify FMS that FMS may proceed to issue the Garnishment Order. For in-house AWG, HUD may prepare and issue the Garnishment Order to the debtor's employer. If HUDBCA authorizes AWG but at a rate less than 15 percent, then further AWG action must be at the rate specified by HUDBCA. If HUDBCA does not authorize AWG, then HUD's follow-up action should be based on the specific Decision and Order issued by HUDBCA.

A similar process will be used to respond to post-AWG requests from debtors claiming financial hardship caused by materially changed circumstances.

## **Tracking**

To assist the OGC and HUDBCA in meeting the 60-day timeframe for Hearings, HUD's debt collection staff must expedite the submission of documents and information to OGC. All Decisions and Orders issued by HUDBCA should be implemented as soon as possible. To assure timely processing and as a means to identify and follow-up on cases that remain pending past 60 days, a system must be in place to track the status of pending AWG hearings. Since the AWG process models the TOP process, existing tracking systems for TOP appeals may be expanded to include AWG.

## **Stopping AWG**

AWG shall be suspended and the debtor's employer notified when:

- The debt is fully paid or compromised;
- The debtor files bankruptcy; or
- HUDBCA orders that AWG be stopped.

AWG will stop if the debtor ceases to be employed. AWG may be restarted through a new employer if the debtor's previous separation from employment was voluntary. If the debtor was involuntarily separated from employment, the AWG regulations mandate that AWG may not be restarted until the debtor has been reemployed continuously for at least 12 months.

When AWG is administered by FMS, FMS will contact the employer as part of their Cross-Servicing function. To assure that employer notification is timely, HUD must promptly advise FMS upon receipt of information regarding any of the above actions. HUD will be responsible for employer notification for in-house AWG cases, if any.

The AWG Regulations require that all AWG accounts be reviewed at least annually to ensure that garnishment has been terminated for accounts that have been paid in full. HUD will rely on FMS to timely terminate AWG on cases at FMS because FMS will have the most accurate, current information regarding the balance due on the debt. For in-house AWG cases, HUD is responsible for timely termination of AWG and for the required annual review. This review may be in connection with existing procedures regarding the regular review and action on small balance debts.

## **HUD Implementation of AWG**

### **Regulations**

The proposed rule for HUD AWG regulations was prepared by OGC and put into Departmental clearance on January 9, 2002. The proposed rule was published for comment on March 8, 2002. The Final Rule was published July 18, 2002 (see attached) and the revised regulations at 24 CFR Part 17 became effective on August 19, 2002.

HUD adopted by reference Treasury's AWG regulations at 31 CFR 285.11 and added new section 24 CFR 17.170 to authorize the use of AWG to collect HUD debt.

### **Profile Update**

HUD modified its Cross-Servicing Profile(s) with Treasury FMS in September 2002. This was required for Treasury to conduct AWG action on referred HUD debts. AWG action was immediately initiated where appropriate and will be considered for debts already referred to FMS as well as new debts referred to FMS in the future.

### **Staff Education**

HUD's debt collection staff will be provided with reference material, a copy of this Implementation Plan, and training regarding AWG. The training may be in the form of a staff meeting, workshop or other training event to further explain AWG and to provide a forum for HUD staff to ask questions and discuss their concerns. Each HUD organization with delinquent consumer debt should develop appropriate written guidelines that outline the processes, procedures, documentation requirements, system formats, staff responsibilities, etc. that will be used to conduct AWG via FMS Cross-Servicing. These tasks should be completed as soon as possible but not later than 90 days after issuing a Cross-Servicing Profile that authorizes FMS to use AWG.

### **Maximizing the Benefit of AWG**

AWG is an important tool that when properly used in tandem with other debt recovery techniques should generate increased collections and provide leverage for HUD to obtain payments from delinquent debtors. Many debtors will elect to voluntarily pay their debt to avoid the consequences of AWG.

In order to increase voluntary collections HUD will:

- Request funding for automated system development budgets to complete system enhancements to accelerate the current demand/due process cycle to refer debts to FMS at an earlier point in the age of the delinquent debt; and
- Revise its demand letters to add AWG to the list of consequences if the debtor does not make voluntary payments;
- Train its debt collection staff to be aware of the AWG option when in discussions with delinquent debtors; and
- Initiate another Title I Letter that includes language relating to collection by AWG in the notice with the requirement to be given to each borrower. Incorporate similar language to Title I regulations §201.26 in other notices

## Appendix A

### Acronyms:

AWG – Administrative Wage Garnishment

CAIVRS – Credit Alert Interactive Voice Response System

CFO – Chief Financial Officer

CFR – Code of Federal Regulations

DCIA - Debt Collection Improvement Act of 1996

FMS – Financial Management Service

GNMA – Government National Mortgage Association

HUD – Department of Housing & Urban Development

HUDBCA – HUD Board of Contract Appeals

NOI – Notice of Intent

OGC – Office of General Counsel

PCA – Private Collection Agency

TOP - Treasury Offset Program