

ISSUE BRIEF

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Wage Garnishment Without a Court Order: Not a Good Idea

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Right before the July 4th holiday this year, the Environmental Protection Agency (EPA) issued a direct final rule entitled “Administrative Wage Garnishment.”¹ This rule sought to amend EPA standards for claims collections, implementing the wage garnishment provisions of the Debt Collection Improvement Act (DCIA) of 1996.² It did so by incorporating by reference a 1998 rule issued by the Department of the Treasury.³

The new EPA rule established procedures for the EPA to collect delinquent nontax debt by wage garnishment. According to the Treasury Department, under the DCIA, such nontax debts include “unpaid loans, overpayments or duplicate payments made to federal salary or benefit payment recipients, misused grant funds, and fines, penalties or fees assessed by federal agencies.”⁴

The rule would have required the EPA to send a letter to a debtor at least 30 days before garnishment proceedings, outlining the nature and amount of the debt, the EPA’s intention to garnish the debtor’s wages, and a statement of the debtor’s rights. Assuming the debtor does not immediately negotiate with the EPA, the agency would hold a “hearing,” either an in-person oral hearing or simply a review of all relevant documents. However it conducts the review, the EPA would then issue a finding. If the EPA found that

the debt was owed, it would be empowered to instruct the employer to garnish the debtor’s wages. Finally, if the employer did not comply, the EPA would be authorized to sue the employer for the wages.

All of this would be accomplished through agency process—in other words, an Article III court would not be involved at any stage. Certainly, if a debtor or employer felt the EPA were violating a statute (such as demanding more than the 15 percent of disposable pay that the DCIA authorizes) or a constitutional right (such as violating the due process rights of the putative debtor), the aggrieved party could challenge the EPA’s action in federal court. However, for the bulk of cases, a federal court would have no involvement whatsoever.

This new EPA rule drew significant criticism, and The Heritage Foundation filed a public comment as well.⁵ Our formal comment focused on a variety of ways in which the EPA could provide additional due process to debtors. However, the wage garnishment rule prompts additional concerns beyond a need to improve due process.

First, many Americans view the EPA with skepticism because it wields immense regulatory authority. It has occasionally acted in an incredibly heavy-handed manner, such as levying daily fines of \$75,000 against a family and arguing that challenges to the underlying agency action could not be made prior to the accrual of the fines.⁶

Regulatory agencies such as the EPA have also been known to use massive fines as an “opening bid” in negotiations, subsequently reducing penalties as a part of a “consensual” settlement that insulates the underlying basis for the fine. Arming regulatory agencies such as the EPA with wage garnishment as

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a debt collection tool, especially for fines or penalties assessed by the same agency, provides a method of intimidation and a means of manufacturing “voluntary” agreements. For many Americans, the mere suggestion of wage garnishment could be a major disincentive to challenge the underlying regulations.

Moreover, there is a question as to whether *any* federal agency should have the ability to garnish wages for nontax debts other than accidental overpayments. After all, these types of debts may not indicate any sort of financial misfeasance on the part of the debtor.

Due to the large number of adverse public comments that were filed, the EPA withdrew the direct final rule on July 17.⁷ However, the DCIA statutory authority remains in place, and pursuant to an Office of Management and Budget directive, various other agencies implemented identical wage garnishment rules this year.⁸ In other words, the EPA could reverse course and reinstate the rule at any time. Thus, legislative reform is essential.

Potential Legislative Reform

The most direct and effective option is for Congress to simply repeal the wage garnishment provisions of the DCIA. The Internal Revenue Service

would, of course, retain its authority to garnish wages for taxes owed.⁹ Further, agencies could still initiate collection proceedings in federal court or apply administrative offsets to collect debts.

A less expansive approach could be to limit the kinds of nontax debts that agencies could pursue outside the courts. Congress could specifically preclude agencies from garnishing wages to collect fines or penalties without a court order. Such a limitation would prevent the EPA and other agencies from using wage garnishment or the threat of wage garnishment to deter challenges to underlying regulations or their specific applications.

Congress could limit the subject matter for administrative wage garnishment in various ways. For example, it could amend the DCIA to authorize administrative wage garnishment solely for nontax debt arising out of clerical errors resulting in overpayment or limit administrative wage garnishment of nontax debt to failure to meet contractual obligations. This would enable garnishment of funds for failure to comply with a grant condition or failure to meet repayment terms on a loan, in addition to making it available to collect on clerical overpayments. Given political realities this is minimum citizens should expect.

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1. Administrative Wage Garnishment Direct Final Rule, 79 Fed. Reg. 37644-02 (July 2, 2014) (to be codified at 40 C.F.R. pt. 13) (withdrawn July 17, 2014).
 2. 31 U.S.C. § 3720D.
 3. Administrative Wage Garnishment Direct Final Rule, 63 Fed. Reg. 25136-01 (May 6, 1998) (codified at 31 C.F.R. § 285.11).
 4. Fact Sheet, FMS Debt Collection and The Debt Collection Improvement Act of 1996, Office of Legislative and Public Affairs, Bureau of the Fiscal Service, U.S. Dep’t of the Treasury, *available at* <http://www.fms.treas.gov/news/factsheets/dcia.html> (accessed September 18, 2014).
 5. Public Comment to the EPA on Administrative Wage Garnishment Direct Final Rule, The Heritage Foundation (July 3, 2014), *available at* <http://www.scribd.com/doc/232509922/CommentsTheHeritageFoundationonDirectFinalRuleGarnishmentFRL-9910-14-OFEO> (accessed September 18, 2014).
 6. See *Sackett v. EPA*, 566 U.S. ____ (2012).
 7. Withdrawal of Administrative Wage Garnishment Direct Final Rule, 79 Fed. Reg. 37644-02 (July 17, 2014) (to be codified at 40 C.F.R. pt. 13), *available at* <https://s3.amazonaws.com/public-inspection.federalregister.gov/2014-16808.pdf> (accessed September 18, 2014).
 8. Some of the agencies that have enacted similar regulations include: Consumer Financial Protection Bureau, Department of Defense, Department of Homeland Security, Department of Commerce, Department of Labor, Department of State, Department of Transportation, Equal Employment Opportunity Commission, Federal Aviation Administration, Federal Deposit Insurance Corporation, General Services Administration, Department of Housing and Urban Development, National Labor Relations Board, Office of Personnel Management, Railroad Retirement Board, Small Business Administration, Social Security Administration, U.S. Department of Agriculture, United States Navy, United States Postal Service, and the Department of the Interior. See also *Circular No. A-129: Policies for Federal Credit Programs and Non-Tax Receivables*, Executive Office of the President, Office of Management and Budget (Jan. 2013) (“To achieve these objectives, agencies shall: ... Effectively manage delinquent debt, including the use of all available techniques, as appropriate, to collect delinquent debts, ...including ... administrative wage garnishment ...”, *available at* http://fiscal.treasury.gov/fsservices/gov/debtColl/pdf/dca/circ_a129_upd_0113.pdf (accessed September 18, 2014).
 9. 26 U.S.C. § 6331.
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Even more modest reforms could afford additional due process protections to those who might be subjected to administrative wage garnishment. Providing additional notice and opportunity to be heard and contest wage garnishment before it begins would be welcome. Congress could also amend the DCIA to require agencies to inform any potential loan or grant recipient that failure to abide by the terms of the loan or grant could result in wage garnishment without a court order. Requiring such disclosure would be simple and consistent with efforts to make government more transparent.

Conclusion

In sum, Congress has a responsibility to protect the constitutional due process rights of all Americans by eliminating or sharply curtailing the authority of agencies to enact wrongheaded wage garnishment regulations.

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