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conference. All travel expenses incurred by the debtor in connection with an in-person hearing will be borne by the debtor. All telephonic charges incurred during the hearing will be the responsibility of the agency.

(c) In cases when it is determined that an oral hearing is not required by this section, the FDIC will accord the debtor a ''paper hearing,'' that is, the FDIC will decide the issues in dispute based upon a review of the written record.

§ 313.84 Effect of timely request.

If the FDIC receives a debtor's written request for hearing within 15 business days of the date the FDIC mailed its notice of intent to seek garnishment, the FDIC shall not issue a withholding order until the debtor has been provided the requested hearing, and a decision in accordance with § 313.88 and § 313.89 has been rendered.

§ 313.85 Failure to timely request a hearing.

If the FDIC receives a debtor's written request for hearing after 15 business days of the date the FDIC mailed its notice of intent to seek garnishment, the FDIC shall provide a hearing to the debtor. However, the FDIC will not delay issuance of a withholding order unless it determines that the untimely filing of the request was caused by factors over which the debtor had no control, or the FDIC receives information that the FDIC believes justifies a delay or cancellation of the withholding order.

§ 313.86 Hearing official.

A hearing official may be any qualified individual, as determined by the FDIC, including an administrative law judge.

§ 313.87 Procedure.

After the debtor requests a hearing, the hearing official shall notify the debtor of:

(a) The date and time of a telephonic hearing;

(b) The date, time, and location of an in-person oral hearing; or

(c) The deadline for the submission of evidence for a written hearing.

§ 313.88 Format of hearing.

The FDIC will have the burden of proof to establish the existence or amount of the debt. Thereafter, if the debtor disputes the existence 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. The hearing official shall maintain a record of any hearing held under this section. Hearings are not required to be formal, and evidence may be offered without regard to formal rules of evidence. Witnesses who testify in oral hearings shall do so under oath or affirmation.

§ 313.89 Date of decision.

The hearing official shall 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 the FDIC. If the FDIC is unable to provide the debtor with a hearing and decision within sixty (60) days after the receipt of the request for such hearing:

(a) The FDIC may not issue a withholding order until the hearing is held and a decision rendered; or

(b) If the FDIC had previously issued a withholding order to the debtor's employer, the withholding order will be suspended beginning on the 61st day after the date the FDIC received the hearing request and continuing until a hearing is held and a decision is rendered.

§ 313.90 Content of decision.

The written decision shall include:

(a) A summary of the facts presented;

(b) The hearing official's findings, analysis and conclusions; and

(c) The terms of any repayment schedule, if applicable.

§ 313.91 Finality of agency action.

Unless the FDIC on its own initiative orders review of a decision by a hearing official pursuant to 17 CFR 201.431(c), a

decision by a hearing official shall become the final decision of the FDIC for the purpose of judicial review under the Administrative Procedure Act.

§ 313.92 Failure to appear.

In the absence of good cause shown, a debtor who fails to appear at a scheduled hearing will be deemed as not having timely filed a request for a hearing.

§ 313.93 Wage garnishment order.

(a) Unless the FDIC receives information that it believes justifies a delay or cancellation of the withholding order, the FDIC will send by first class mail a withholding order to the debtor's employer 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 of the FDIC's intent to seek garnishment) or, if a timely request for a hearing is made by the debtor, within 30 days after a decision to issue a withholding order becomes final.

(b) The withholding order sent to the employer will be in the form prescribed by the Secretary of the Treasury, on the FDIC's letterhead, and signed by the head of the agency or delegate. The order will contain all information necessary for the employer to comply with the withholding order, including the debtor's name, address, and social security number, as well as instructions for withholding and information as to where payments should be sent.

(c) The FDIC will keep a stamped copy of the order indicating the date it was mailed.

§ 313.94 Certification by employer.

Along with the withholding order, the FDIC will send to the employer a certification in a form prescribed by the Secretary of the Treasury. The employer shall complete and return the certification to the FDIC 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.

§ 313.95 Amounts withheld.

(a) Upon receipt of the garnishment order issued under this section, the employer shall deduct from all disposable pay paid to the debtor during each pay period the amount of garnishment described in paragraphs (b) through (d) of this section.

(b) Subject to the provisions of paragraphs (c) and (d) of this section, the amount of garnishment shall be the lesser of:

(1) The amount indicated on the garnishment order up to 15% of the debtor's disposable pay; or

(2) The amount set forth in 15 U.S.C. 1673(a)(2). The amount set forth at 15 U.S.C. 1673(a)(2) is the amount by which the 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 shall apply:

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

(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 section, 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 section shall be the lesser of:

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

(ii) An amount equal to 25% 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 the FDIC, the FDIC may issue multiple withholding orders. The total amount garnished from the debtor's pay for such orders will 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.