STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

JOHNNY MARTIN,	)	
	)	
Petitioner,	)	
	)	
vs.	)	Case No. 00-0712
	)	
DEPARTMENT OF EDUCATION,	)	
	)	
Respondent.	)	
_____	)	

RECOMMENDED ORDER

Pursuant to notice, the Division of Administrative Hearings and its duly-designated Administrative Law Judge, Stephen F. Dean, held a formal hearing in the instant case on August 25, 2000, in Jacksonville, Florida.

APPEARANCES

For Petitioner: Johnny Martin, pro se
11431 Quailhollow Drive
Jacksonville, Florida 32218-3621

For Respondent: Ronald G. Stowers
Assistant General Counsel
Department of Education
The Capitol, Suite 1701
Tallahassee, Florida 32399-0400

STATEMENT OF ISSUES

Whether Petitioner has defaulted on student loans and, if so, the principal amounts due on the loans, as well as accrued interest, and collection costs. Whether Petitioner's employer

should be required to withhold payments from Petitioner's pay pursuant to Section 112.175, Florida Statutes.

PRELIMINARY STATEMENT

By letter dated August 13, 1999, Respondent, Department of Education (Department) advised Petitioner, Johnny Martin (Petitioner), that his student loans held by the Department were in default status. Petitioner was advised as to the total amount due on the loans, including claimed interest and collection costs, and that an involuntary wage withholding proceeding pursuant to Section 112.175, Florida Statutes, would be instigated if a voluntary withholding agreement was not reached. Further, Petitioner was advised that the amount did not include legal fees which would be incurred during collection proceedings. Prior to and at hearing, the Department acknowledged that the total amount due quoted in the letter mistakenly included amounts for two loans (Loans 2 and 3) which were discharged in bankruptcy.

The letter advised Petitioner that he could request a hearing within 15 days of receipt of the letter challenging the debt. Petitioner received the letter on August 20, 1999. Petitioner's request for hearing, dated September 12, 1999, and received by the Department on September 16, 1999, was neither timely completed nor filed. Nonetheless, the Department

forwarded the request for hearing to the Division of Administrative Hearings (DOAH).

The formal hearing was held in Jacksonville, Florida, on August 25, 2000. At hearing, the Department presented the testimony of one witness employed by the Department's Bureau of Student Financial Assistance and presented six exhibits which were accepted into evidence. Petitioner testified on his own behalf and present 11 exhibits which were accepted in to evidence.

A Transcript of the proceeding was filed on October 2, 2000. The parties were accorded ten days from the date of the filing of the transcript to file proposed recommended orders. On October 12, 2000, the Department timely filed an extension of time, until November 2, 2000, in which to file its proposed recommended order. Both parties filed proposed recommended orders, which were duly considered by the undersigned in preparation of this Recommended Order.

FINDINGS OF FACT

1. Petitioner is Johnny Martin. Petitioner's mailing address is 11431 Quailhollow Drive, Jacksonville, Florida.

2. Respondent is the Florida Department of Education. The Department's business address is 325 West Gaines Street, Tallahassee, Florida. The Department is a guarantee agency which

holds the loan account in question after paying the claim of the lender on July 28, 1994.

3. All loans in this proceeding are Supplemental Loan(s) for Students (SLS), also known as Florida Auxiliary Loans. SLS loans are not subsidized by the federal government. Therefore, the federal government has no responsibility for payment of interest during periods of deferment or forbearance and there is no grace period for SLS loans. During any period of deferment or forbearance, such as when a borrower is unemployed, the borrower's repayment obligation may be suspended; however, interest accrues to the account for which the borrower is responsible. When the deferment or forbearance ends, the outstanding interest is capitalized on the loan.

4. SLS loans accrue interest at the rate of 12 percent per year from the date of disbursement.

5. Persons eligible to receive SLS loans include parents of dependent undergraduate students.

6. As set forth below, Petitioner, as parent of an eligible dependent undergraduate student, received four SLS loans.

7. Loan 1: Petitioner applied for and received Loan A000000442 in 1983. This loan, in the amount of $3,000.00, will be referred to as Loan 1. Although the Department is the guarantor of Loan 1, the lender never declared the loan in

default or sold it to the Department. Therefore, Loan 1 is not at issue in this proceeding.

8. Loan 2: Petitioner applied for and received Loan A000001064 in 1984. This loan, in the amount of $3,000.00, will be referred to as Loan 2. The lender declared Petitioner in default and sold Loan 2 to the Department as guarantor. Because Loan 2 was in repayment status for more than seven years, exclusive of suspensions of the repayment period, Loan 2 was discharged in bankruptcy. Therefore, Loan 2 is not at issue in this proceeding.

9. Loan 3: Petitioner applied for and received Loan A000003767 in 1985. This loan, in the amount of $3,000.00, will be referred to as Loan 3. The lender declared Petitioner in default and transferred Loan 3 to the Department as guarantor. Because Loan 3 was in repayment status for more than seven years, exclusive of suspensions of the repayment period, Loan 3 was discharged in bankruptcy. Therefore, Loan 3 is not at issue in this proceeding.

10. Loan 4: On or about August 5, 1986, Petitioner executed an Auxiliary (SLS) Loan application on behalf of his daughter, Kelly Aleta Martin, an eligible dependent undergraduate student. On or about September 8, 1986, Petitioner executed the promissory note for this loan. This SLS Loan was in the amount

of $3,000.00. This loan was disbursed on or about October 9, 1986. The Department guaranteed this loan. Throughout exhibits presented by the Department, the loan number for this SLS Loan is A000007005; however, for convenience, herein this loan will be referred to as Loan 4. Loan 4 is the only loan at issue in this proceeding.

11. Petitioner's first payment for Loan 4 was due October 25, 1986. The payment due date later changed to the 20th of each month.

12. Petitioner's last payment to the lender was made on July 17, 1990. However, as Petitioner was behind in his payments, this payment was applied to the payment due May 20, 1990. The Petitioner is considered in repayment status for 44 months, from October 1986 through May 1990.

13. A borrower is not considered in repayment status during any suspension of the repayment period, including any period of forbearance or deferment.

14. Petitioner applied for and received an unemployment deferment on September 18, 1990. This deferment was for the period from July 21, 1990 through December 28, 1990. Because Petitioner was not current in his payments, he requested and received a forbearance from the lender for the payments due on June 20 and July 20, 1990, in order to qualify for the unemployment deferment. The forbearance together with the

unemployment deferment brought Petitioner current in his payments; however, they suspended the repayment period for Loan 4 for seven months (two months for the forbearance and five months for the deferment).

15. Petitioner failed to make any payments following the deferment period ending December 28, 1990. Petitioner applied for and received an unemployment deferment on April 23, 1991. This deferment was for the period from February 24 through July 23, 1991. Because Petitioner failed to make any payments following the deferment ending December 28, 1990, he again requested and received a forbearance for the payments due January 20 and February 20, 1991. The forbearance and unemployment deferment brought Petitioner current in his payments; however, they again suspended the repayment period for Loan 4 by another seven months (two months for the forbearance and five months for the deferment).

16. Following Petitioner's unemployment deferment ending July 1991, he failed to resume payment to the lender beginning August 20, 1990. Thereafter, the lender declared Petitioner in default and made application to the Department for claim payment based on the guarantee. However, the Department refused to pay the lender's claim citing due diligence violations, and as a result, Petitioner is considered in repayment status from

August 20, 1991 through April 20, 1992, or nine months, even though no payments were actually received by virtue of his Fresh Start Application.

17. Petitioner submitted a Fresh Start Application to the lender dated May 13, 1992. This document reaffirmed the student loan obligation and, when received by the lender on May 19, 1992, reinstated the Department's guarantee of Loan 4.

18. In an application dated May 24, 1992, Petitioner requested another unemployment deferment. The lender refused Petitioner's request for an unemployment deferment due to the fact that Petitioner was working at the time. However, the lender granted Petitioner a forbearance. This forbearance covered payments due from May 20 through December 20, 1992. Thereafter, Petitioner again requested and was granted forbearance of payments due through June 20, 1993. These forbearances, from May 20, 1992 through June 20, 1993, suspended the period Loan 4 is in repayment status by 14 months.

19. Petitioner failed to resume payments beginning July 20, 1993, the final due date at default.

20. In 1994, the lender declared Petitioner in default on Loan 4 and made application to the Department for claim payment based on the guarantee. The Department paid the default claim on Loan 4 on July 28, 1994. Although no payments were received from July 20, 1993 through July 20, 1994, or 13 months, Petitioner is

considered in repayment status for that time because there was no forbearance or deferment in place.

21. When the Department acquired Loan 4, Petitioner owed $2,195.68 in principal and $290.19 in accrued (claim) interest. These figures were capitalized by the Department and yield the figure of $2,484.18 in capitalized principal which is subject to interest at the rate of 12 percent per year.

22. Beginning in 1995, Petitioner entered into a voluntary wage garnishment agreement with the Department. Under this agreement and through the period Petitioner was under the bankruptcy court's jurisdiction, a total of $383.95 was received by the Department and applied to Petitioner's account in accordance with Title 34, Code of Federal Regulations Section 682.404(f), relating to how borrower payments will be applied. The entire amount received was applied to outstanding interest.

23. Prior to filing bankruptcy, Petitioner's Loan 4 was considered in repayment status from July 29, 1994 through January 5, 1995, during the time it was held by the Department. The Petitioner was credited for being in repayment status for five months, even though he made no payments. Additionally, Petitioner was credited for being in repayment status for 12 months in 1995, whether or not regular payments were received under Petitioner's voluntary wage garnishment agreement.

24. Because Petitioner filed for bankruptcy prior to the January 20, 1996, the payment due date, the month of January 1996 cannot be counted as being in repayment status.

25. Petitioner filed for Chapter 13 bankruptcy protection on January 11, 1996.

26. The Department filed a proof of claim with the bankruptcy court for Loans 2, 3, and 4 in the principal amount of $5,571.91, the amount of capitalized principal due on the accounts. The Department filed with the court the claim of $5,647.02 due on the accounts through date of filing the case. See item 5 on page 2 of Department's Exhibit 5. This amount was the capitalized principal and interest due.

27. On February 4, 1999, the United States Bankruptcy Court for the Middle District of Florida, Jacksonville Division, issued an "Order Discharging Debtor After Completion of Chapter 13 Plan" in Petitioner's case, number 96-00175-3F3. That order provides in pertinent part, "The debtor is discharged for all debts provided for by the plan or disallowed under 11 U.S.C. [Section] 502, except any debt . . . for a student loan or educational benefit overpayment as specified in 11 U.S.C.[Section]523(a)(8)."

28. In 1996, Title 11 United States Code Section 523(a) provided in pertinent part:

> (a) A discharge under . . . this title does not discharge an individual debtor from any debt--

> (8) for an educational benefit overpayment or loan made, insured or guaranteed by a governmental unit, or made under any program funded in whole or part by a governmental unit or nonprofit institution, or for an obligation to repay funds received as an education benefit, scholarship or stipend, unless--
>
> (A) such loan, benefit, scholarship, or stipend overpayment first became due more than 7 years (exclusive of an applicable suspension of the repayment period) before the date of the filing of the petition . . .

29. Pursuant to this order, Petitioner's debt to the Department for Loans 2 and 3 was discharged.

30. The first payment for Loan 4 was due October 25, 1986. Petitioner filed for bankruptcy on January 11, 1996, nine days prior to the payment due date of January 20, 1996. There were 111 months from the month the first payment of Loan 4 was due through the month prior to the filing of bankruptcy (the month that bankruptcy was filed cannot be counted if the payment due date was after the date Petitioner filed for bankruptcy). Petitioner was in forbearance or deferment status for 28 months which suspends the period Loan 4 is considered in repayment status. Petitioner was in repayment status on Loan 4 for 83 months regardless of whether he actually made payments on the account. Therefore, Loan 4 was not discharged.

31. Section 682.410(b)(2) of Title 34, Code of Federal Regulations, provides that the Department shall impose collection costs as follows:

> (2) Collection charges. Whether or not provided for in the borrower's promissory note and subject to any limitation on the amount of those costs in that note, the guarantee agency shall charge a borrower an amount equal to reasonable costs incurred by the agency in collecting a loan on which the agency has paid a default or bankruptcy claim. These cost may include, but are not limited to, all attorneys fees, collection agency charges, and court costs. Except as provided in [Sections] 682.401(b)(27) and 682.405(b)(1)(iv), the amount charged borrower must equal the lesser of --
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> (i) The amount the same borrower would be charged for the cost of collection under the formula in 34 CRF 30.60; or
>
> (ii) The amount the same borrower would be charged for the cost of collection in the loan was held by the U.S. Department of Education.

32. The Department established that the amount of the annual collection cost mandated by Title 34 Code of Federal Regulations Section 682.410(b)(2) for the loan at issue in this proceeding should be calculated at least annually at the rate of 25 percent of the outstanding principal and accrued interest. Petitioner agreed to pay these costs in the application and promissory note he executed.

33. Petitioner is employed by the Duval County School Board, a political subdivision of the State of Florida.

34. As an employee of a political subdivision of the State of Florida, Petitioner is subject to the provisions of Section 112.175, Florida Statutes, and Chapter 28-40, Florida Administrative Code. These provisions pertain to employees of the State of Florida or its political subdivisions who have defaulted on an education loan made or guaranteed by the State of Florida.

35. The Department notified Petitioner by letter dated August 13, 1999, that he had one or more student loans in default and offered him the opportunity to make voluntary payments on the loans. The letter also advised Petitioner that the Department would seek to make involuntary withholdings if he did not make voluntary payments. Petitioner elected to request the formal hearing which triggered this proceeding.

36. As stated above, the capitalized principal due the Department for Loan 4 is $2,485.87. This amount reflects the principal due and the outstanding interest accrued on the account at the time the Department acquired the loan from the lender. All payments received by the Department were applied to outstanding interest which accrued on the account after the loan was bought by the Department, and no payment was applied to the capitalized principal. The capitalized principal accrues interest at the rate of 12 percent per year of $.82 per day. As of February 4, 1999, after taking into consideration the $383.95

received by the Department, the unpaid accrued interest for Loan 4 was $881.74.

37. Pursuant to federal regulations collection costs assessed at the rate of 25 percent of principal and interest due as of February 4, 1999, were $867.08. Therefore, as of February 4, 1999, the total principal, interest, and collection costs due for Loan 4 totaled $4,234.69. Interest continues to accrue to the account as provided by law and collection costs may be reassessed as provided by law.

CONCLUSIONS OF LAW

38. The Division of Administrative Hearings has jurisdiction over the parties to and the subject matter of these proceedings. Sections 120.569, 120.57(1), and 120.60(5), Florida Statutes.

39. The issue in this proceeding is whether the Department may institute involuntary wage garnishment against Petitioner for Loan 4 which is still owned by the Department after Petitioner's bankruptcy. Petitioner's argument that Loan 4 has been discharged in bankruptcy is not persuasive.

40. Pertinent to this case, Section 112.175, Florida Statutes, provides:

> Employee wages; withholding to repay educational loan.--
>
> (1)(a) Any person who has received an educational loan made or guaranteed by the

state or any of its political subdivisions and who at any time becomes or is an employee of the state or any of its political subdivisions shall be deemed to have agreed as a condition of employment to have consented to voluntary or involuntary withholding of wages to repay such loans. Any such employee who has defaulted or does default on the repayment of such loan shall, within 60 days after service of a notice of default by the agency holding the loan to the employee and the employing agency, establish a loan repayment schedule which shall be agreed to by both the agency holding the loan and the employee for repaying such defaulted loan through payroll deductions. Under no circumstances may an amount in excess of 10 percent per pay period of the pay of period of the pay of such employee be required by the agency holding the loan as part of a repayment schedule or plan. If such employee be required by the agency holding the loan as part of a repayment schedule or plan. If such employee fails to establish a repayment schedule within the specified period of time or fails to meet the terms and conditions of the agreed to or approved repayment schedule as authorized by this subsection, such employee shall be deemed to have breached an essential condition of employment and shall be deemed to have consented to the involuntary withholding of wages of salary for the repayment of the loan.

(b) No person who is employed by the state or any of its political subdivisions on or after October 1, 1986, may be dismissed for having defaulted on the repayment of an educational loan made or guaranteed by the state or any of its political subdivisions.

(2) The Administration Commission shall adopt rules to implement this section, which shall include, but not be limited to, a standard method of calculating amounts to be withheld from employees who have failed to establish a repayment schedule within the

> specified period of time or failed to meet the terms and conditions of the agreed to or approved repayment schedule provided for in this section. Such method shall consider the following factors:
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> (a) The amount of the loan which remains outstanding;
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> (b) The income of the employee who owes such amount; and
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> (c) Other factors such as the number of dependents supported by the employee.

41. Pursuant to Section 112.175(2), Florida Statutes, the Administration Commission has adopted Rule 28-40, Florida Administrative Code, to implement Section 112.175, Florida Statutes.

42. Rule 28-40.006, Florida Administrative Code, provides the procedures that must be followed before an involuntary withdrawal from a person's pay pursuant to Section 112.175(2), Florida Statutes, will be permitted. The Department has followed those procedures in this proceeding.

43. Rule 28-40.007, Florida Administrative Code, provides the methodology to be followed in calculating the amount of the involuntary withholding. The total amount due is stated above in paragraph 37.

44. Petitioner's first payment on Loan 4 was due October 25, 1986. Petitioner filed for bankruptcy protection on January 11, 1996.

45. On February 4, 1999, the United States Bankruptcy Court, Middle District of Florida, Jacksonville Division, entered an Order Discharging Debtor in Petitioner's case.

46. In 1996, when Petitioner filed for bankruptcy protection, Title 11 United States Code Section 523(a) provided in pertinent part:

> (a) A discharge under . . . this title does not discharge an individual debtor from any debt--
>
> (8) for an educational benefit overpayment or loan made, insured or guaranteed by a governmental unit, or made under any program funded in whole or part by a governmental unit or nonprofit institution, or for an obligation to repay funds received as an educational benefit, scholarship or stipend, unless--
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> (A) such loan, benefit, scholarship, or stipend overpayment first became due more than 7 years (exclusive of an applicable suspension of the repayment period) before the date of the filing of the petition . . . . (Emphasis supplied.)

47. Chapter 13 debtors have no interest in obtaining a fresh start unfettered by obligations that Congress expressly declares should be non-dischargeable. In re Sullivan, 195 B.R. 649 at 654 (Bkrtcy. W.D. Tex. 1996). In enacting Section 523(a)(8)(A), Congress intended to protect the student loan program by preventing borrowers from discharging their debt too soon. To further this policy Congress exempted from discharge student loans until they have been "due and owing" for the

statutory period. Gibson v. Virginia, 86 F.3d 1150 (4th Cir. 1996).

48. The legal standard for determining when student loans "first became due," and thus, for determining whether student loan obligations are dischargeable, is a question of contract interpretation, and relevant inquiry is to determine when payment was due or, in an installment arrangement, the date that first payment became due. Department of Education v. White, DOAH Case Number 99-1592, Recommended Order page 9, dated August 2, 1999, citing with approval In re Bachner, 165 B.R. 875.

49. Pursuant to Title 11 United States Code Section 523(a)(8)(A), student loans are dischargeable in bankruptcy, including a Chapter 13 bankruptcy, only if they first became due more than seven years prior to the filing of the bankruptcy petitioner, "exclusive of any applicable suspension of the repayment period." Any suspension of the repayment period during which the lender granted a forbearance or deferment or during the pendency of an earlier bankruptcy proceeding was an "applicable suspension of the repayment period" because, while the loans were owing, they were not due. Gibson v. Virginia, 86 F.3d 1150 at 1151 (Prior Chapter 7 bankruptcy proceeding was applicable suspension of repayment period for purposes of Gibson's current Chapter 13 filing.); citing with approval Georgina v. Higher Education Assistance Foundation, 124 B.R. 562, 564 (Bkrtcy. W.D.

Mo. 1991)(Period during which lender granted a forbearance of repayment was an "applicable suspension of repayment" because while loans were owing, they were not due.); Woodcock v. Chemical Bank, 144 F.3d 1340 (10th Cir. 1998)(Chapter 7 debtor's deferments were applicable suspensions of the repayment period for purposes of the statutory seven year period of non-dischargeability for student loan debt, even if debtor was not legally entitled to deferments under terms of promissory notes, given absence of evidence that extensions were granted by lender in bad faith.)

50. Interest continues to accrue at the contract rate on obligations after debtor's Chapter 13 filing, and where obligation is non-dischargeable student loan obligation, such interest may be recovered from debtor personally in addition to creditor's bankruptcy claim once bankruptcy stay is terminated. Leeper v. Pennsylvania Higher Education Assistance Agency, 49 F.3d 98 (3d. Cir. 1995) (Creditors may accrue postpetition interest on non-dischargeable debts while bankruptcy is pending, including interest on non-dischargeable student loans during pendency of Chapter 13 bankruptcy plan.); In re Sullivan 195 B.R. 649 at 652 (While postpetition interest is not allowed against the bankruptcy estate of Chapter 13 debtor, nothing in the Bankruptcy Code acts to suspend the accrual of interest when the debt is non-dischargeable. The code merely prevents postpetition

interest from being collect from the bankruptcy estate (ever) or from the debtor (during the pendency of the bankruptcy). However, after the bankruptcy and the lifting of the stay, there is nothing to prevent a creditor from seeking to collect the interest which has accrued on a debt that was not discharged.); In re Hamilton, 179 B.R. 749 at 755-756 (Bkrtcy. S.D. Ga. 1995) (Although Georgia Higher Education Assistance was bound to payment schedule contained in Chapter 13 plan, it may pursue any deficiency should student loan debt be non-dischargeable to the extent that the debt is not satisfied in bankruptcy.); Branch v. UNIPAC/NEBHELP, 175 B.R. 732 (Bkrtcy. D. Neb. 1994) (Interest accrued on non-dischargeable student loan obligation after debtor filed Chapter 13 petition was non-dischargeable. Although post-petition interest not collectable from the Chapter 13 bankruptcy estate, it continued to accrue and remained obligation of debtor following closing of case); In re Shelbayah, 165 B.R. 332 at 337 (Bkrtcy. N.D. Ga. 1994)(Postpetition interest in Chapter 13 bankruptcy proceeding is not allowable against the bankruptcy estate, even if the underlying claim is non-dischargeable; however, postpetition interest on a non-dischargeable student loan debt continues to accrue on unpaid balance for which debtor remains liable at the conclusion of the bankruptcy proceeding.); Jordan v. Colorado Student Loan Program, 146 B.R. 31 (D. Colo.

1992)(Postpetition interest on non-dischargeable student loan is not dischargeable in Chapter 13 proceeding.).

51. Even if debtor's fully paid guarantor's allowed claims and were granted discharge under Chapter 13, postpetition interest on non-dischargeable student loan is non-dischargeable and may be collected from Chapter 13 debtor personally. Guarantor's acceptance of disbursement from trustee was not accord and satisfaction as to postpetition interest claim. Wagner v. Ohio Student Loan Commission, 200 B.R. 160 (Bkrtcy. N.D. Oh. 1996).

52. Even where creditor failed to object to debtor's Chapter 13 plan which provided no interest was to be paid during pendency of Chapter 13 proceeding, holder of claim for non-dischargeable student loan could collect postpetition interest as part of its non-dischargeable claim at conclusion of bankruptcy case. Ridder v. Great Lakes Higher Education Corporation, 171 B.R. 345 (Bkrtcy. W.D. Wis. 1994)

53. In addition to any unpaid principal and postpetition interest which accrues to a non-dischargeable debt, a Chapter 13 debtor remains personally responsible for any debt, including collection costs, not discharged in the bankruptcy proceeding. Cousin v. Cousins, 209 F.3d 38 at 40 (1st Cir. 2000) (Debtor remains personally responsible for any debt not discharged in bankruptcy.). Congress created the student loan program and

decided for policy reasons to make debts arising from those loans non-dischargeable. Leeper at 105. A non-dischargeable "debt" under Section 523(a)(8)a in a Chapter 13 proceeding encompasses the entire amount of the obligation. Branch at 734. Creditors may pursue any deficiency should a debt be non-dischargeable under Section 523(a)(8)a in a Chapter 13 bankruptcy proceeding. In re Hamilton, 179 B.R. 749 at 756 (Bkrtcy. S.D. Ga. 1995).

54. The Department is required to assess collection costs on all defaulted student loans in the amount of 25 percent of the total principal and interest due. Collection costs are required to be reassessed at least annually. Title 34 Code of Federal Regulations Section 682.410(b)(2).

55. The uncontroverted proof at hearing demonstrated that Petitioner applied for and received Loan 4. Petitioner's first payment for Loan 4 was due on October 25, 1986. Petitioner filed for bankruptcy protection on January 11, 1996.

56. Petitioner filed for bankruptcy 111 months after his first payment was due. However, Petitioner received several forbearances and deferments which suspended the repayment period for 28 months. Those forbearances and deferments reduced the time Petitioner was in repayment status from 111 months to 83 months (6 years, 11 months). (Petitioner filed for bankruptcy prior to the due date in January, and that month is not included.

57. Petitioner's Loan 4 was not eligible for discharge by the 1999 bankruptcy order, because the first payment became due less than seven years before the filing of the bankruptcy petition when the periods of forbearance and deferments are considered. Therefore, Loan 4 is not discharged. The capitalized principal balance due the Department for Loan 4 is $2,485.87. This amount reflects principal due and outstanding accrued interest on the loan at the time the Department acquired Loan 4 from the lender. Petitioner made payments to the Department totaling $383.95 on Loan 4. All of these payments were applied to accrued interest on the principal balance. As of February 4, 1999, the capitalized principal balance for Loan 4 was $2,485.87, unpaid accrued interest was $881.74, and collection costs of $867.08 were due. The principal continues to accrue interest at the rate of 12 percent per year.

58. The Petitioner is an employee of the Duval County School Board, a political subdivision of the State of Florida. As an employee of a political subdivision of the State of Florida, Petitioner is subject to Section 112.175 and Rule 28-40, Florida Administrative Code.

59. The total due for Loan 4 as of February 4, 1999, is $4,234.69. The Department is entitled to make involuntary withdrawals from Petitioner's pay pursuant to the provisions of Section 112.175, Florida Statutes, and Chapter 40-28, Florida

Administrative Code. The amount of withdrawals should be calculated pursuant to Rule 28-40.007, Florida Administrative Code. Interest will continue to accrue on the debt as provided by law and collection costs may be reassessed as provided by law.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is

RECOMMENDED that the Department enter a final order that adopts the findings of fact and conclusions of law contained herein, finds that Petitioner, as of February 4, 1999, owes the sum of $4,234.69, and orders the involuntary wage withholding of Petitioner's pay through his employer, Duval County School Board, pursuant to Section 112.175, Florida Statutes, and Chapter 28-40, Florida Administrative Code.

DONE AND ENTERED this 22nd day of December, 2000, in Tallahassee, Leon County, Florida.

STEPHEN F. DEAN
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 22nd day of December, 2000.

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NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within 15 days from the date of this Recommended Order. Any exceptions to this Recommended Order should be filed with the agency that will issue the Final Order in this case.