

§581.104

5 CFR Ch. I (1-1-03 Edition)

(6) Any payment under any federal program established to provide “black lung” benefits;

(7) Any payment by the Secretary of Veterans Affairs as compensation for a service-connected disability paid by the Secretary to a former member of the Armed Forces who is in receipt of retired or retainer pay if the former member has waived either the entire amount or a portion of the retired or retainer pay in order to receive such compensation. In such cases, only that part of the Department of Veterans Affairs payment that is in lieu of the waived retired pay or waived retainer pay is subject to garnishment.

[45 FR 85667, Dec. 30, 1980, as amended at 48 FR 26279, June 7, 1983; 55 FR 1356, Jan. 16, 1990; 56 FR 36723, Aug. 1, 1991; 58 FR 35846, July 2, 1993; 59 FR 66154, Dec. 23, 1994; 61 FR 3544, Feb. 1, 1996; 63 FR 14758, Mar. 26, 1998]

§581.104 Moneys which are not subject to garnishment.

(a) Payments made pursuant to the provisions of the Federal Tort Claims Act, as amended, sections 1346(b) and 2671 *et seq.*, of title 28 of the United States Code;

(b) Payments or portions of payments made by the Department of Veterans Affairs pursuant to sections 501-562 of title 38 of the United States Code, in which the entitlement of the payee is based on non-service-connected disability or death, age, and need;

(c) Refunds and other payments made in connection with overpayments or erroneous payments of income tax and other taxes levied under title 26 of the United States Code;

(d) Grants;

(e) Fellowships;

(f) Education and vocational rehabilitation benefits for veterans and eligible persons under chapters 30, 31, 32, 35, and 36 of title 38, United States Code, and chapters 106 and 107 of title 10, United States Code;

(g) Contracts, except where the contractor recipient performed personal services and received payments in his/her capacity as an employee of a governmental entity; and

(h) Reimbursement for expenses incurred by an individual in connection with his/her employment, or allow-

ances in lieu thereof, and other payments and allowances, including, but not limited to:

- (1) In the case of civilian employees:
 - (i) Uniform allowances;
 - (ii) Travel and transportation expenses (including mileage allowances);
 - (iii) Relocation expenses;
 - (iv) Storage expenses;
 - (v) Post differentials;
 - (vi) Foreign areas allowances;
 - (vii) Education allowances for dependents;
 - (viii) Separate maintenance allowances;
 - (ix) Post allowances and supplementary post allowances;
 - (x) Home service transfer allowances;
 - (xi) Quarters allowances;
 - (xii) Cost-of-living allowances (COLA), when applicable to an employee in a foreign area or an employee stationed outside of the continental United States or in Alaska;
 - (xiii) Remote worksite allowance; and
 - (xiv) Per diem allowances.

(2) In the case of members of the uniformed services:

- (i) Position pay (Navy only);
- (ii) Basic allowance for quarters;
- (iii) Basic allowance for subsistence;
- (iv) Station allowances;
- (v) Armed Forces health professions scholarship stipends;
- (vi) Public Health Service scholarship stipends;
- (vii) Travel and transportation allowances;
- (viii) Dislocation allowances;
- (ix) Family separation allowances;
- (x) ROTC subsistence allowance;
- (xi) Allowance for recruiting expenses;
- (xii) Education allowances for dependents;
- (xiii) Clothing allowances for enlisted personnel;
- (xiv) Uniform allowances; and
- (xv) Personal money allowances for General and Flag officers, and for the Surgeon General of the United States.

(3) In the case of volunteers serving under either the Domestic Volunteer Service Act or the Peace Corps Act, all allowances, including, but not limited to, readjustment allowances, stipends, and reimbursements for out-of-pocket expenses.

Office of Personnel Management

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(i) Moneys due a deceased employee obligor where the amounts are reimbursement for expenses incurred by the deceased employee in connection with his/her employment, or allowances in lieu thereof, including:

(1) Per diem instead of subsistence, mileage, and amounts due in reimbursement of travel expenses, including incidental and miscellaneous expenses in connection therewith;

(2) Allowances on change of official station;

(3) Quarters allowances; and

(4) Cost-of-living allowances (COLA), when applicable as a result of the deceased employee obligor's having been in a foreign area or stationed outside of the continental United States or in Alaska.

(j) Supplemental Security Income (SSI) payments made pursuant to sections 1381 *et seq.*, of title 42 of the United States Code (title XVI of the Social Security Act).

[45 FR 85667, Dec. 30, 1980, as amended at 48 FR 26280, June 7, 1983; 55 FR 1356, Jan. 16, 1990; 56 FR 36724, Aug. 1, 1991; 58 FR 35846, July 2, 1993; 60 FR 5044, Jan. 25, 1995; 63 FR 14758, Mar. 26, 1998]

§ 581.105 Exclusions.

In determining the amount of any "moneys due from, or payable by, the United States" to any individual, there shall be excluded amounts which:

(a) Are owed by the individual to the United States, except that an indebtedness based on a levy for income tax under section 6331 of title 26 of the United States Code, shall not be excluded in complying with legal process for the support of minor children if the legal process was entered prior to the date of the levy;

(b) Are required by law to be deducted from the remuneration or other payment involved, including, but not limited to:

(1) Amounts withheld from benefits payable under title II of the Social Security Act where the withholding is required by law;

(2) Federal employment taxes;

(3) Amounts mandatorily withheld for the United States Soldiers' and Airmen's Home;

(4) Fines and forfeitures ordered by a court-martial or by a commanding officer; and

(5) Amounts deducted for Medicare;

(c) Are properly withheld for Federal, State, or local income tax purposes, if the withholding of the amounts is authorized or required by law and if amounts withheld are not greater than would be the case if the individual claimed all dependents to which he/she were entitled. The withholding of additional amounts pursuant to section 3402(i) of title 26 of the United States Code may be permitted only when the individual presents evidence of a tax obligation which supports the additional withholding;

(d) Are deducted as health insurance premiums, including, but not limited to, amounts deducted from civil service annuities for Medicare where such deductions are requested by the Health Care Financing Administration;

(e) Are deducted as normal retirement contributions, not including amounts deducted for supplementary coverage. For purposes of this section, all amounts contributed under sections 8351 and 8432(a) of title 5 of the United States Code to the Thrift Savings Fund are deemed to be normal retirement contributions. Amounts withheld as Survivor Benefit Plan or Retired Serviceman's Family Protection Plan payments are considered to be normal retirement contributions. Except as provided in this paragraph, amounts voluntarily contributed toward additional retirement benefits are considered to be supplementary; or

(f) Are deducted as normal life insurance premiums from salary or other remuneration for employment, not including amounts deducted for supplementary coverage. Both Servicemen's Group Life Insurance and "Basic Life" Federal Employees' Group Life Insurance premiums are considered to be normal life insurance premiums; all optional Federal Employees' Group Life Insurance premiums and life insurance premiums paid for by allotment, such as National Service Life Insurance, are considered to be supplementary.

[45 FR 85667, Dec. 30, 1980, as amended at 48 FR 26280, June 7, 1983; 55 FR 1356, Jan. 16, 1990; 63 FR 14758, Mar. 26, 1998]