

UNITED STATES GOVERNMENT

GENERAL ACCOUNTING OFFICE

Memorandum

September 12, 1984

TO : Group Director, AFMD - Financial Systems Group -
Pete Coy

FROM : Assistant General Counsel - Robert L. Higgins *RLH*

LIMITED DISTRIBUTION

SUBJECT: Request of Department of the Interior for
Interpretation of Disposable Earnings Subject to
Garnishment and Salary Offset - B-213507-PLM-I

By letter dated October 17, 1983, Muriel Johnson, Chief of the Financial Functional Analysis Branch at the Denver, Colorado, Engineering and Research Center of the Department of the Interior's Bureau of Reclamation, presented a request for an unofficial review by your group of the interpretation "of disposable earnings subject to garnishment" - especially as it relates to "allowances for meals, lodging, and uniforms."

You have, in turn, requested our views and guidance on this matter.

GARNISHMENT UNDER 42 U.S.C. 659

Generally, section 18, title 6, of the General Accounting Office "Policy and Procedures Manual for Guidance of Federal Agencies" contains the Comptroller General's requirements for accounting in regard to deductions from pay. Written authorization to make deductions from pay shall be obtained from the employees in all cases, except when deductions are required by specific provisions of law or by court order. Under sections 459, 461, and 462 of the Social Security Act, as added by the Social Services Amendments of 1974, Public Law 93-647, January 4, 1975, 88 Stat. 2337, 2357, and section 501 of Public Law 95-30, May 23, 1977, 91 Stat. 1231, 157-162 (42 U.S.C. §§ 659, 661 and 662), the bar of sovereign immunity has been lifted in very limited circumstances to permit garnishment of the pay of Federal employees and members of the Armed Services for the enforcement of legal obligations to provide child support or make alimony payments. Accordingly, under section 18.1, title 6, of the Policy and Procedures Manual, court-ordered garnishments under these statutes shall be deducted from employees' pay.

1. More specifically, 42 U.S.C. ~~§ 659~~ provides for the enforcement of an individual's legal obligations to provide child support or make alimony payments by requiring that "moneys (the entitlement to which is based upon remuneration for employment) due from, or payable by, the United States" shall be subject to garnishment. Under the definitions set out in 42 U.S.C. ~~§ 662(f)~~, the entitlement of an individual to any money shall be deemed to be "based upon remuneration for employment", if such money consists of:

6

"(1) compensation paid or payable for personal services of such individual, whether such compensation is denominated as wages, salary, commission, bonus, pay, or otherwise, and includes but is not limited to, severance pay, sick pay, and incentive pay, but does not include awards for making suggestions, or

"(2) periodic benefits (including a periodic benefit as defined in section 428(h)(3) of this title) or other payments to such individual under the insurance system established by subchapter II of this chapter or any other system or fund established by the United States (as defined in subsection (a) of this section) which provides for the payment of pensions, retirement or retired pay, annuities, dependents of survivors' benefits, or similar amounts payable on account of personal services performed by himself or any other individual * * * and does not consist of amounts paid, by way of reimbursement or otherwise, to such individual by his employer to defray expenses incurred by such individual in carrying out duties associated with his employment."

The statutory scheme for defining the elements of an employee's pay subject to garnishment under 42 U.S.C. ~~§ 659~~ is equally precise in defining exclusions. Under 42 U.S.C. ~~§ 662(g)~~, in determining the amount of any moneys "due from, or payable by, the United States" to any individual, there shall be excluded amounts which:

7

"(1) are owed by such individual to the United States,

"(2) are required by law to be, and are, deducted from the remuneration or other payment involved, including but not limited to, Federal

employment taxes, and fines and forfeitures ordered by court-martial,

"(3) are properly withheld for Federal, State, or local income tax purposes, if the withholding of such amounts is authorized or required by law and if amounts withheld are not greater than would be the case if such individual claimed all dependents to which he was entitled (the withholding of additional amounts pursuant to section 3402(i) of the Internal Revenue Code of 1954 may be permitted only when such individual presents evidence of a tax obligation which supports the additional withholding),

"(4) are deducted as health insurance premiums,

"(5) are deducted as normal retirement contributions (not including amounts deducted for supplementary coverage), or

"(6) are deducted as normal life insurance premiums from salary or other remuneration for employment (not including amounts deducted for supplementary coverage)."

The Office of Personnel Management regulations implementing these statutory authorities are contained in Part 581 of title 5, Code of Federal Regulations (1983). Moneys which are subject to garnishment are itemized in 5 C.F.R. § 581.103; moneys which are not subject to garnishment are itemized in 5 C.F.R. § 581.104; and exclusions are addressed in 5 C.F.R. § 581.105. We find little if any room for confusion attending the determination of employee moneys subject to garnishment under the statutory scheme and implementing regulations reviewed above.

SALARY OFFSET
UNDER 5 U.S.C. § 5514

In view of our findings in regard to the garnishment issue, we are inclined to believe that the Chief, Financial Functional Analysis Branch, may be primarily concerned with interpreting "disposable earnings" as it relates to either "salary offset" or "administrative offset" from moneys due an employee. This observation appears especially applicable since amounts owed by an individual to the United States are excluded from the amount of moneys due from or payable by the

United States by the definition in 42 U.S.C. ~~§ 662(g)~~ for purposes of defining remuneration for employment subject to garnishment under 42 U.S.C. ~~§ 659~~. ¹³

As we have noted, section 18, title 6, of the Policies and Procedures Manual requires that all deductions from an employee's pay shall be made in accordance either with the written authorization of the employees or with laws, regulations, or court requirements. The authorization for each type of deduction shall contain sufficient information to properly establish the deduction and to enable payment to the proper payee of the amount deducted. Thus, for example, statutory deductions for Federal income taxes shall be supported by a certification by each employee of the number of exemptions claimed or extra withholdings authorized. Federal income taxes withheld shall be paid to the Internal Revenue Service as provided by its regulations. And, in accordance with the recording and reporting of deductions requirement contained in section 18.3, title 6, Policies and Procedures Manual, the amounts reported on the annual withholding tax statement furnished each individual shall agree with the total amounts withheld during the year as shown by the records.

Similar requirements exist for other deductions from pay such as retirement, life and health insurance, savings bonds, and indebtednesses due the United States. In accordance with 5 U.S.C. ~~§ 5514~~, the agency head may collect indebtednesses due the United States from personnel for erroneous payments by deduction from the individual's pay.

15 Under the "salary offset" provisions of section 5 of the Debt Collection Act of 1982, Public Law ~~97-365~~, 96 Stat. ~~1749~~, October 25, 1982 (5 U.S.C. ~~§ 5514~~), an agency may offset from an employee's basic pay, special pay, incentive pay, retired pay, retainer pay or any authorized pay, general debts owed to the Government. The amount deducted for any period may not exceed 15 percent of disposable pay, except that a greater percentage may be deducted upon the written consent of the individual involved. The employee shall be given a minimum thirty days written notice, an opportunity to inspect Government records relating to the debt, an opportunity to enter into a written agreement to establish a schedule for repayment, and an opportunity for a hearing on the determination of the existence or amount of debt or concerning the terms of the repayment schedule. The hearing may not be conducted by an individual under the supervision or control of the head of the agency.

The Debt Collection Act of 1982 was passed to increase the efficiency of Government-wide efforts to collect debts

owed the United States and to provide additional procedures for the collection of debts owed the United States. Thus, concerning what moneys of an employee are available for "salary offset," ~~5 U.S.C. § 5514~~ provides in these pertinent extracts as follows:

"(a)(1) When the head of an agency or his designee determines that an employee, member of the Armed Forces or Reserve of the Armed Forces, is indebted to the United States for debts to which the United States is entitled to be repaid at the time of the determination by the head of an agency or his designee, or is notified of such a debt by the head of another agency or his designee the amount of indebtedness may be collected in monthly installments, or at officially established pay intervals, by deduction from the current pay account of the individual. The deductions may be made from basic pay, special pay, incentive pay, retired pay, retainer pay, or, in the case of an individual not entitled to basic pay, other authorized pay. The amount deducted for any period may not exceed 15 percent of disposable pay, except that a greater percentage may be deducted upon the written consent of the individual involved. * * * (Emphasis added.)

* * * * *

"(4) For purposes of this subsection -

"(A) 'disposable pay' means that part of pay of any individual remaining after the deduction from those earnings of any amounts required by law to be withheld * * *"

The Office of Personnel Management (OPM), through the President's delegation of authority^{1/}, has issued final

^{1/} See Executive Order ~~11609~~, "Delegating Certain Functions Vested in the President to Other Officers of the Government" - redesignated by Executive Order ~~12107~~, "Relating to the Civil Service Commission and Labor-Management in the Federal Service" - which delegated to OPM authority to approve agency regulations governing installment deductions to recover debts and claims of the United States pursuant to 5 U.S.C. ~~§ 5514~~.

regulations^{2/} to guide agencies in their administration of the statutory authority in ~~5 U.S.C. § 5514~~ for recovering debts to the United States by installment collections from the current pay account of Federal employees and members of the Armed Forces and Reserves. OPM's regulations set out the minimum requirements that agency regulations governing salary offset must meet before being approved by OPM in accordance with ~~5 U.S.C. § 5514(b)(1)~~. They are intended to provide a minimum level of uniformity on basic procedures in the interest of expeditious debt collection and to ensure that all agency regulations meet criteria established by law and judicial decision.^{3/}

Under OPM's new rules, "disposable pay" means that part of current basic pay, special pay, incentive pay, retired pay, retainer pay, or in the case of an employee not entitled to basic pay, other authorized pay remaining after the deduction of any amount required by law to be withheld. Agencies must exclude deductions described in ~~5 C.F.R. § 581.105(b)~~ through (f) to determine disposable pay subject to salary offset. As a result, this definition of "disposable pay" requires an agency to exclude the deductions listed by OPM's garnishment regulations at ~~5 C.F.R. § 581.105(b)~~ through (f) to determine disposable pay for salary offset purposes. For garnishment purposes, agencies must exclude the deductions at ~~§ 581.105(b)~~ through (f) plus any amount deducted for a debt(s) due the United States ~~(§ 581.105(a))~~.

Under OPM's new rules "salary offset" means an offset to collect a debt under ~~5 U.S.C. § 5514~~ by deduction(s) at one or more officially established ~~pay~~ intervals from the current pay account of an employee without his or her consent. To this extent OPM's regulations track the law and provide that now agencies may offset from pay any debt which an employee or member owes to the United States, regardless of whether the debt is owed to his own or another agency. (Certain debts such as those arising under the Internal Revenue Code are not covered by the regulations). This new procedure allows agencies broader opportunities to collect debts owed to the United States as the offset from pay

^{2/} See 49 Fed. Reg. 27470 (July 3, 1984).

^{3/} The General Accounting Office and the Department of Justice have published final rules amending the Federal Claims Collection Standards. However, the Standards do not address salary offset. See 49 Fed. Reg. 8889 (March 9, 1984).

is no longer limited to debts owed to the employing agency but rather includes debts owed to other agencies. Note, however, that the term "current pay account" as used to define "salary offset" - like the use of the terms "basic pay, special pay, incentive pay, retired pay, retainer pay" in defining "disposable pay" - do not purport to exhaustively itemize what moneys payable to an employee are subject to statutory offset under ~~5 U.S.C. § 5514~~. Compare the listing of "Moneys which are subject to garnishment" at ~~5 C.F.R. § 581.103~~. In these circumstances individual agencies may further implement the salary offset provisions of ~~5 U.S.C. § 5514~~ to establish more precise guidelines.

As a result of this review we find that salary offset under ~~5 U.S.C. § 5514~~, as amended by the Debt Collection Act of 1982, is made against an employee's "current pay account," not to exceed 15 percent of the "disposable pay," which is the "pay of any individual remaining after the deduction from those earnings of any amounts required by law to be withheld." Expressed in these terms the statute appears to apply only to payments representing salary and not to allowances or reimbursements payable for expenses incurred in connection with employment.

This distinction is consistent with the Comptroller General's following definitions of "pay" and "allowances" in ~~4 C.F.R. § 91.2~~ (1983) which set standards for waiver of erroneous payments of pay and allowances authorized by ~~5 U.S.C. § 5584~~:

"(c) "Pay" as it relates to an employee means salary, wages, pay, compensation, emoluments, and remuneration for services. It includes but is not limited to overtime pay; night, Sunday standby, irregular and hazardous duty differential; pay for Sunday and holiday work; payment for accumulated and accrued leave; and severance pay. It does not include travel and transportation expenses and allowances, and relocation allowances payable under 5 U.S.C. 5724a.

"(d) "Allowances as they relate to an employee include but are not limited to payments for quarters, uniforms, and overseas cost of living expenses, but exclude travel and transportation allowances, and relocation expenses payable under 5 U.S.C. 5724a."

Thus, we are inclined to the view without ruling with finality that the "disposable pay" or earnings subject to salary offset under ~~5 U.S.C. § 5514~~ probably should not extend

to anything other than "pay" as it is varyingly described as salary, wages, pay, compensation, emoluments, and remuneration for services. As such, "allowances" and "reimbursable expenses" would be beyond the scope of the employee's moneys subject to salary offset. Thus, further, it would not extend to all "money payable by the United States to or held by the United States on behalf of a person." This introduces the additional distinction between "salary offset" under 5 U.S.C. § 5514, and "administrative offset" under 31 U.S.C. § 3701, et seq.

CONCLUSION

Rule-making initiatives implementing the Debt Collection Act of 1982 are in an operational mid-course. For this reason, it would be inappropriate at this time for the Comptroller General to attempt to define by formal decision what specific types of employee moneys are subject to offset by Federal agencies; or stated another way, what if any type of employee moneys are restricted from either salary offset or administrative offset.

We find that the composition of disposable earnings of employees subject to garnishment under 42 U.S.C. § 659 is clearly defined and exhaustively itemized by OPM's implementing regulations at 5 C.F.R. § 581. However, the categorization of employee moneys subject to salary offset under 5 U.S.C. § 5514, and administrative offset under 31 U.S.C. § 3716, is less precise, admitting only to the statutory distinctions we have outlined above. Moreover, as we have indicated above, each agency has the authority to further implement the salary offset and administrative offset authorities and in so doing may ascribe a test of reasonableness, consistent with the statutory purposes, which incorporate a more exacting definition of what employee moneys are subject to offset.

Consequently, we believe that while the definitions relating to garnishment contained in 5 C.F.R. Part 581 are instructive, still, they are only a model. Until individual agencies have had an opportunity to promulgate instructions and perhaps functional definitions further implementing the statutory offset authorities, we believe the matter presented must be committed to further study including further developments in the regulatory process.

B-213507-PLM-I

We trust our review and analysis here will assist you in responding to Ms. Muriel Johnson, Chief, Financial Functional Analysis Branch at the Bureau of Reclamation's Denver office. We look forward to working with your group as our Office continues to pursue and evaluate the objective implementation of the Debt Collection Act of 1982.