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Testimony

For Release
on Delivery
Expected at
9:30 a.m. EST
Thursday
Feb. 18, 1988

H.R. 3565--ALLOWING FOR THE GARNISHMENT OF
FEDERAL EMPLOYEES' PAY FOR COMMERCIAL DEBT

Statement of
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Before the
Subcommittee on Civil Service
Committee on Post Office and Civil Service
House of Representatives



Madam Chairwoman and Members of the Subcommittee:

I am pleased to be here today to discuss garnishment of federal employees' wages as proposed in H.R. 3565--the "Goose, Gander, and Sauce Act of 1987"--introduced by Congressman Andy Jacobs. The bases for my statement are work we recently completed for Congressman Jacobs and our 1980 reply to Congressman Jack F. Kemp addressing his need for information on garnishment of federal employees' wages (B-200066, Oct. 31, 1980).

Let me begin by saying that we believe that federal employees should be treated comparably to private sector employees with respect to having to repay legitimate debts. Federal employees should not be given special protection. All federal employees are already subject to garnishment for child support and alimony payments under the Social Service Amendments of 1974 (P.L. 93-647). Federal employees at some organizations, such as the Postal Service, are subject to garnishment for the collection of commercial debt. However, enactment of legislation such as that proposed by Congressman Jacobs would end the current immunity of most federal employees from garnishment for commercial debt.

Our only concern about allowing garnishments for commercial debt is the administrative burden that would be placed on the federal government in responding to garnishment orders. There is not enough information available for us to estimate the total

number of such orders that would be instituted against federal employees if their general protection from garnishment were removed, or to estimate the cost to federal agencies of processing such actions. However, based on the Postal Service's experience, it appears that federal agencies would encounter greater administrative difficulties in processing garnishments for commercial debt than garnishments for alimony and child support. This is due largely to differing state and local requirements on the (1) information required from employers, (2) maximum amounts that can be taken from an employee, and (3) manner in which employers must handle payments.

Therefore, if the Subcommittee decides it would be desirable to generally allow garnishment of federal employees' salaries, we suggest it look into how this could be done in a manner that would minimize the administrative burden on federal agencies. In addition, we suggest the Subcommittee consider amending the bill to authorize federal agencies to collect a fee for processing garnishments that would cover at least a portion of their administrative costs. An attorney at the Postal Service said that garnishment laws in some states allow such a fee.

GARNISHMENT FOR
COMMERCIAL DEBT IS
GENERALLY PROHIBITED

Unless a right to garnishment is specifically granted by a statute or implicitly authorized by judicial interpretation of statutory language allowing an agency to sue and be sued in its own name, federal civilian employees and members of the Armed Forces are protected from garnishment of their wages for commercial debt by the doctrine of sovereign immunity.¹ The common-law rule has been that the sovereign (i.e. the federal government) may be sued only if it consents, and that the sovereign may specify the terms and conditions under which such a suit may be filed.

Federal employees in 18 of 21 departments and agencies we contacted during our review for Congressman Jacobs have their wages protected from garnishment for commercial debt based on the doctrine of sovereign immunity. The other three agencies have the authority to sue or be sued in their own names. The courts have held that this broad authority constitutes a sufficient waiver of sovereign immunity to permit garnishment for the collection of commercial debts.

¹Buchanan v. Alexander, 45 U.S. (4 How.) 20 (1846).
Applegate v. Applegate, 39 F. Supp. 887
(E.D. Va. 1941).

One such agency is the Postal Service which is authorized to sue and be sued in its own name by 39 U.S.C. 401(1). As of December 1987, at least 2,708 postal employees' wages were being garnished for commercial debts. This represents about .3 percent of the Service's employees (797,851) as of the end of fiscal year 1987. The other two agencies in our sample authorized to sue and be sued are the Federal Deposit Insurance Corporation and a part of the Department of Housing and Urban Development whose employees are paid from the Federal Housing Administration Fund.

None of the departments and agencies in our review had records on denials of garnishment orders for commercial debt. Eight departments and agencies estimated they denied from 1 to about 200 such garnishment orders each year.

Fifteen of the departments and agencies estimated the number of employees whose wages are garnished for child support and alimony each year to be less than 1 percent of their total civilian workforce.

COST OF PROCESSING
GARNISHMENT ORDERS
FOR COMMERCIAL DEBT

Very little information is available on how much it costs the government to process a garnishment order. The only documented analysis we were able to identify on the subject was a

study of garnishment for child support and alimony made by the Air Force Finance Center in 1979. This study showed that the Air Force processed approximately 7,600 garnishment orders in that year at an estimated cost of \$54 for each action.

None of the 21 departments and agencies we contacted maintained actual cost information on their processing of garnishment orders. The Postal Service did not have cost information but said that two key costs were the initial costs of computer programming and the on-going costs of time spent processing garnishments for commercial debt. Postal Service officials said that its employees spend at least 3 hours to process each such garnishment.

The Postal Service's experience in processing garnishments for commercial debt seemed to shed some light on the administrative burden other federal agencies could face if they are required to honor such garnishments. In fact, other agencies could face an even greater burden if their size makes it impractical for them to computerize garnishment processing to the same extent as the Postal Service. According to Postal Service officials:

-- Differing state laws and regulations governing garnishments for commercial debt preclude standardized processing of garnishment orders, thereby affecting the time and cost associated with administrative processing.

For example, states have varying limits on the amount of an employee's wages that may be garnished, and the Consumer Credit Protection Act (P.L. 90-321) contains restrictions applicable to all garnishments. Federal agency personnel must be knowledgeable of these requirements in computing the amounts to be deducted. When conflicts between state and federal laws exist, the law resulting in the smaller garnishment must be observed.

- In some states, court officers can make on-the-spot demands for garnishment of employees' wages. In these cases, Postal Service employees on-site must process the garnishment, affecting their ability to carry out other duties.

- Courts require the Postal Service to provide different information or relatively similar information in different formats on employees whose wages are being garnished. These differences preclude standardized, computer generated responses, necessitating manual preparation.

- Garnishments for alimony and child support are easier to process because the federal law waiving sovereign immunity imposes conditions on that waiver that allow more uniform processing.

Although the number of garnishments for commercial debt may not be large at any one federal agency, administrative difficulties and costs will be associated with processing them. This is because federal agencies will have to be able to respond to garnishment orders issued under the law of any state.

Given the increasing pressures on federal agencies to reduce costs and improve efficiency, we believe the Subcommittee should consider what steps could be taken to minimize the administrative burden on federal agencies if it decides to proceed with H.R. 3565. Because the Postal Service has been processing commercial garnishments for several years, we believe it is in a good position to advise the Subcommittee in this regard.

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This concludes my prepared statement, Madam Chairwoman. I would be glad to answer any questions you may have.