

U.S. DEPARTMENT OF EDUCATION
PERSONNEL MANUAL INSTRUCTION

PMI: 581-1

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APPROVED:
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**SUBJECT: Processing of Commercial and Non-Commercial
Garnishments and Bankruptcy Orders**

I. AUTHORITY

Title 5, United States Code (U.S.C.) § 5520a, 26 U.S.C. § 6331, and 42 U.S.C. § 659 provide the basic provisions governing garnishments of wages of the U.S. Department of Education (ED) employees. ED issues this Instruction consistent with Title 5, Code of Federal Regulations (CFR), § 581.501 and § 582.501. Bankruptcy orders are processed under the authority of 11 U.S.C. § 101, et.seq.

II. POLICY

It is ED's policy to comply with all court orders which seek to garnish the bi-weekly disposable earnings of an ED employee. Furthermore, it is ED's policy not to represent the interests of the employee-obligor in any pending legal proceedings associated with the garnishment.

III. APPLICABILITY

This Instruction applies to all employees as defined in 5 U.S.C. 2105 who are presently employed by ED.

IV. DEFINITIONS

A. Agency - means each agency of the executive branch of the federal government, excluding the United States Postal Service, the Postal Rate Commission, and the General Accounting Office. Agency does not include the government of the District of Columbia or the territories and possessions of the United States.

- B. Employee or employee-obligor - means an individual who is employed by an agency as defined in 5 CFR 582.102(a), except for reemployed annuitants and retired members of the uniformed services who are employed by an agency. Employee does not include a retired employee, member of the uniformed services, or a retired member of the uniformed services.
- C. Child Support - means periodic payments of funds for the support and maintenance of a child or children which is subject to, or in accordance with, state or local law which includes, but is not limited to payments to provide for health care, education, recreation, clothing, food, or to meet any other specific needs of the child or children. Child support also includes attorney's fees, interest, and court costs, but only if these items are expressly made coverable as child support under a court decree, order, or judgment issued in accordance with state or local law.
- D. Alimony - means periodic payments of funds for the Support and maintenance of a spouse or former spouse which is subject to, or in accordance with, state or local law. Alimony also includes attorney's fees, interest, and court costs, but only if these items are expressly made recoverable as alimony under a decree, order, or judgment issued in accordance with applicable state or local law. This term does not include the payment or transfer of property.
- E. Legal Process - means any writ, order summons, or other similar process in the nature of a garnishment, which may include an attachment, writ of execution, court ordered wage assignment, or tax levy from a state or local government, which:
1. Is issued by:
 - a. A court of competent jurisdiction, including tribal court, within any state, territory, or possession of the United States, or the District of Columbia. Pay is subject to legal process in the same manner and to the same extent as if the Department were a private person. There is, therefore, no requirement in this part that, for example, legal process be signed by a judge; or
 - b. An authorized official pursuant to an order of a court of competent jurisdiction or pursuant to state or local law; or

- c. A state agency authorized to issue income withholding notices pursuant to state or local law; and
 - 2. Orders an agency to withhold an amount from the pay of an employee-obligor and to make a payment of such withholding to another person, for a specifically described satisfaction of a legal debt of the employee-obligor, or recovery of attorney's fees, interest, or court costs.
- F. Person - may include an individual, partnership, corporation, association, or private organization, and includes the plural of that term. Person may include a state or local government.
- G. Pay - means basic pay; premium pay paid under 5 U.S.C. subchapter V; any payments received under subchapters VI, VII, or VIII of 5 U.S.C.; severance and back pay Under 5 U.S.C. subchapter IX; sick pay; incentive pay; Locality pay (including interim geographic adjustments, special pay adjustments for law enforcement officers, and locality-based comparability payments); and any other compensation paid or payable for personal services, whether such compensation is denominated as pay, wages, salary, lump sum leave payments, commission, bonus, award, or otherwise. Pay does not include awards for making suggestions, reimbursement for expenses incurred by an individual in connection with employment, or allowances in lieu thereof.

V. DELEGATION OF AUTHORITY

The Assistant Secretary, Office of Human Resources and Administration has been delegated the authority to process commercial garnishments, alimony and child support garnishments, and bankruptcy orders in the manner specified in 5 CFR, Parts 581 and 582 and this Instruction.

VI. PROCEDURES FOR PROCESSING COMMERCIAL AND NON-COMMERCIAL GARNISHMENTS

- A. **Legal Process** - Legal process should be received in the office of the Designated ED Agent, the Director,

Personnel Management Service, Office of Human Resources and Administration. The legal process need not expressly name ED as a garnishee.

- 1. Service of legal process may be accomplished by certified or registered mail, return receipt requested, or by personal service upon

ED's Designated Agent.

2. Parties bringing garnishment actions shall comply with the service of process provisions of this section. Service will not be effective where the parties fail to comply with the service of process provisions, even if the party bringing the garnishment action has complied with the service of process requirements of the jurisdiction issuing legal process.
3. Upon receipt, ED's Designated Agent shall note the date and time of receipt on the legal process.
4. If the court documents are received either in the Office of the Secretary or the Office of the General Counsel, it should be date stamped in that office and immediately forwarded to the Director, Personnel Systems Staff for processing.

B. Information Minimally Required to Accompany Legal Process - The Director, Personnel Systems Staff will verify the following information:

1. Sufficient identifying information must accompany the legal process in order to enable processing by ED. Parties seeking garnishment actions are asked to provide the following information concerning the employee-obligor:
 - a. Full name;
 - b. Date of birth;
 - c. Employment or social security number;
 - d. Component of ED for which the employee-obligor works;
 - e. The official duty station or worksite;
and
 - f. Home address.
2. If the information submitted is not sufficient to identify the employee-obligor, the legal process shall be returned directly to the court or other authority with an explanation of the deficiency. However, prior to returning these documents, if there is sufficient time prior to the time limitations imposed in section IX, an attempt should be made to inform the party who caused the legal process to be served, or the party's representative, that ED cannot honor the legal process unless adequate identifying information is supplied.
3. ED shall comply with legal process, except where process cannot be complied with because:

- a. The legal process would require the withholding of funds not deemed moneys due from, or payable by, the United States as remuneration for employment;
- b. Notice is received that the obligor has appealed either the legal process or the underlying judgment. In this case, the funds will continue to be garnished from the employee but will be retained by ED until it is ordered to resume payments. No suspension shall be taken if the jurisdiction wherein the appeal is filed requires compliance during the pendency of the appeal;
- c. ED is directed by the Justice Department not to comply with the legal process; and/or
- d. In the event that ED is served with more than one legal process for the same moneys due or payable to an individual, then the moneys shall be available to satisfy such processes on a first-come, first-served basis: Provided, that in no event will the total amount garnished for any pay or disbursement cycle exceed the applicable limitation set forth in 5 CFR 581.402 and 582.402.

C. **Suspension of Payment** - Upon issuance of proper service of legal process as specified in section VI, paragraphs A and B, ED shall withhold payment of the amount specified in the court order or ED shall withhold the maximum amount permitted under this Instruction to permit compliance with the legal process.

In the case of non-commercial garnishments, it is

the employee-garnishee's responsibility to contact the court, if, for any reason, alimony and/or child support payment should be suspended or terminated. The Department will not be held liable for payment made to a trustee and/or court under a valid court order.

D. **Determining Employee-Obligor's Aggregate Disposable Income** - The employee-obligor's gross biweekly salary will be determined and a list compiled of the employee's excluded disposable income amounts.

- 1. **Exclusions** - In determining the amount of pay subject to garnishment, the following amounts shall be excluded:

FOR COMMERCIAL GARNISHMENTS* :

- a. Funds owed by the individual to the United States;
- b. Funds which are required by law to be deducted from the employee-obligor's pay which includes, but is not limited to:
 - (1) Amounts withheld from benefits payable under Title II of the Social Security Act;
 - (2) Federal employment taxes;
 - (3) Amounts deducted for Medicare; and

*Commercial garnishments will be processed by Department of Interior (DOI), Bureau of Reclamation consistent with this Instruction under interagency agreement.

- (4) Amounts properly withheld for federal, state, or local income tax, if the withholding of the amounts is authorized or required by law and if the amounts withheld are not greater than would be the case if the employee-obligor claimed all dependents to which the employee was entitled. The withholding of additional amounts pursuant to section 26 U.S.C. 3402(i) may be permitted only when the employee-obligor presents evidence of a tax obligation which supports the additional withholding;
- (5) Amounts deducted for health insurance premiums;
- (6) Amounts deducted as normal retirement contributions, not including amounts for supplemental coverage. All amounts contributed under 5 U.S.C. 8351 and 8432(a) 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; and/or

- (7) Amounts deducted as normal life insurance premiums from salary or other remuneration for employment, not including amounts deducted for supplemental coverage. Federal Employees' Group Life Insurance premiums for "Basic Life" coverage are considered to be normal life insurance premiums. All optional Federal Employees' Group Life Insurance premiums and life insurance premiums paid for by allotment are considered to be supplementary.

FOR NON-COMMERCIAL GARNISHMENTS: The following payments may not be garnished according to 5 CFR 581.104:

- a. Payments made pursuant to the provisions of the federal Tort Claims Act, as amended, sections 1346(b) and 5 U.S.C. 2671, et seq.
- b. Payments or portions of payments made by the Department of Veterans Affairs pursuant to 38 U.S.C. 501-562, 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 26 U.S.C.;
- d. Grants;
- e. Fellowships;
- f. Veterans' educational assistance payments under Title 38 U.S.C. 1651, et seq.;
- 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/or
- h. Reimbursement for expenses incurred by an individual in connection with his/her employment, or allowances in lieu thereof, and other payments and allowances, including, but not limited to: travel and transportation expenses (including mileage allowances); relocation expenses; education allowances

for dependents; separate maintenance allowances; cost-of-living allowances (COLAS); and per diem allowances.

- i. Moneys due a deceased employee-obligor where the amounts are reimbursement for expenses incurred in connection with his/her employment;
- j. Amounts due for payment of cash awards for employees' suggestions; and
- k. Supplemental Security Income (SSI) payments made pursuant to 42 U.S.C. 1381, et seq. (Title XVI of the Social Security Act). In determining the amount of any "moneys due from, or payable by the United States" to an individual, when processing a non-commercial garnishment, there shall be excluded amounts which:
 - (1) Are owed by the individual to the United States, except where the obligator's debt is for child support and the amount owed the United States results from an income tax lien or levy under 26 U.S.C. 6331;
 - (2) Are required by law to be deducted from the remuneration or other payment involved, including, but limited to:
 - (a) Amounts withheld from benefits payable under title II of the Social Security act where withholding is required by law;
 - (b) Federal employment taxes;
 - (c) Amounts mandatorily withheld for the United States Soldiers' and Airmen's Home;
 - (d) Fines and forfeitures ordered By a court-martial or by a commanding officer; and
 - (e) Amounts deducted for Medicare.
 - (3) 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 26 U.S.C. 3402(i) may be permitted only when the individual present evidence of a tax obligation which supports the additional withholding;

(4) 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;

(5) Are deducted as normal retirement contributions, not including amount deducted for supplementary coverage. All amounts contributed under 5 U.S.C. 8351 and 8432(a) 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 towards additional retirement benefits are considered to be supplementary; or

(6) Are deducted as normal life insurance premiums from salary or other remuneration for employment, not including amounts deducted for supplemental 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.

1. Moneys paid by a governmental entity which may be due and payable to an individual at some future date shall not be considered due to the individual unless and until all of the conditions necessary for payment of the moneys

to the individual have been met, including, but not limited to, the following conditions which might apply:

- (1) Retirement;
- (2) Resignation from a position in the federal service; or
- (3) Application for payment of moneys by the individual.

2. **Priority of Alimony and Child Support Payments to Commercial Debts** - A legal process to which an agency is subject under sections 459, 461, and 462 of the Social Security Act (42 U.S.C. 659, 661, and 663) for the enforcement of the employee's legal obligation to provide child support or make alimony payments, shall have priority over any other legal process to which ED is subject.

VII. HONORING LEGAL PROCESS

- A. ED shall comply with legal process, except where the process cannot be complied with because:
 1. It is not regular on its face;
 2. The legal process would require withholding funds not deemed as pay as described in section VI, paragraph D, of this Instruction;
 3. It does not comply with section 5 U.S.C. 5520a (in the case of commercial garnishments), the mandatory provisions of 5 CFR Part 581 (in the case of noncommercial garnishments) or 582 (commercial garnishments), or the requirements of this Instruction;
 4. An order from a court of competent jurisdiction enjoining or suspending the operation of legal process has been served upon ED.
- B. While ED will not comply with legal process which, on its face, indicates that it has expired or is otherwise no longer valid, legal process will be deemed valid notwithstanding the fact that the underlying debt and/or the underlying judgment arose prior to the effective date of 5 U.S.C. 5520a.
- C. While the filing of an appeal by an employee-obligor will not generally delay the processing of a garnishment action, if the employee-obligor establishes that the law of the jurisdiction which issued the legal process provides that the processing of the garnishment action will be suspended during an

appeal, and if the employee-obligor establishes that he/she has filed an appeal, ED shall comply with the applicable law of the jurisdiction and delay or suspend the processing of the garnishment action.

- D. Where ED is directed by the Department of Justice not to comply with the legal process, ED shall respond directly to the court, or other authority, setting forth its reasons for noncompliance with the legal process. In addition, ED shall inform the party who caused the legal process to be served, or the party's representative, that the legal process will not be honored. Thereafter, if litigation is initiated or appears imminent, the matter shall first be referred to the Office of the General Counsel and then to the United States Attorney for the district from which the legal process was issued.

- E. Neither the United States, ED, or any disbursing officer shall be liable for any payment from moneys due from, or payable by, the United States to any individual pursuant to legal process regular on its face, if the payment is made in accordance with this Instruction and federal regulations. If ED initially determines that legal process should not be honored and if it subsequently determined that its initial determination was erroneous, ED may correct its initial determination and honor legal process. If ED corrects an error or is required to do so by a court or other authority, under no circumstances will ED be required to pay more than if it had originally honored the legal process.

- F. ED shall not be required to vary its normal or disbursement cycles to comply with the legal process. However, legal process, valid at the time of service, which is received too late to be honored during the disbursement cycle in which it is received, shall be honored, to the extent that the legal process may be satisfied, during the next disbursement cycle within the limits of section XI of this Instruction. The fact that the legal process may have expired during this period will not relieve ED of its obligation to honor legal process which was valid at the time of service. If, in the next disbursement cycle, no further payment will be due from the agency to the employee-obligor, ED shall follow the procedures set forth in section IX of this Instruction.

- G. ED need not establish an escrow account in order to comply with legal process. Therefore, if the amount garnished in one disbursement cycle is not sufficient to satisfy the entire indebtedness, the agency need not retain these funds until the amount retained would satisfy the entire indebtedness.

However, in most cases, ED will make every effort to remit the garnished amount after each disbursement cycle. ED need not pro-rate payments for less than a full disbursement cycle.

- H. If ED receives legal process which is regular on its face, it shall not be required to ascertain whether the authority which issued the legal process had obtained personal jurisdiction over the employee-obligor.
- I. If an employee-obligor established that he/she has filed a bankruptcy petition under 11 U.S.C. 301, 302, or 303, ED is required to comply with the automatic stay provision of the Revised Bankruptcy Act, 11 U.S.C. 362(a), and cease any garnishment action affecting the employee-obligor petitioner.
- J. **Priority of Subsequent Commercial Garnishments** - In the event that ED is served with more than 1 legal process or garnishment order with respect to payments due or payable to the same employee, ED shall satisfy such processes in priority based on the time of service upon the agency. However, under no circumstances will the total amount garnished exceed the applicable limitations set forth in 5 U.S.C. 5520a, 5 CFR 582, or this Instruction. Legal processes which are not limited in time shall preserve their priority based on time of service until fully discharged. The processing fee will be reimbursed by DOI to the employee-garnishee only if ED is notified in writing by the court that the judgment was obtained in error and that the employee no longer owes a commercial debt.

VIII. ASSESSING FEES FOR PROCESSING

In the case of commercial garnishments, the employee will be charged administrative costs for processing the garnishment. This fee will be collected from the employee's salary with the first payroll deduction. The processing fee will be reimbursed by DOI to the employee-garnishee only if ED is notified in writing by the court that the judgment was obtained in error and that the employee no longer owes a commercial debt.

IX. LACK OF ENTITLEMENT TO PAY OF THE EMPLOYEE-OBLIGOR BY ED ONCE SERVICE HAS BEEN MADE

- A. When legal process is served on ED and the individual identified in the legal process as the employee-obligor is found not to be entitled to pay from the agency, ED shall return the legal process to the court, or other authority from which it was issued, and advise the court, or other authority, that the identified employee-obligor is not entitled

to any pay from the agency.

- B. Where it appears that the employee-obligor is only temporarily not entitled to pay from ED, the court, or other authority, shall be fully advised as to why, and for how long, the employee-obligor's pay will not be garnished, if that information is known by ED officials and if disclosure would not be prohibited.

- C. If an employee-obligor separates from ED's employment during the processing of a continuing garnishment order, ED shall inform the party who caused legal process to be served, or the party's representative, and the issuing court, or other authority, that the garnishment action is being discontinued. If the employee-obligor is now employed by another agency or private employer, and where this information is known by the agency, ED shall provide the party with the name and address of either the new designated federal agent or the name and address of the private employer.

X. LIMITATIONS ON GARNISHED AMOUNTS

A. Maximum Limitations for Non-Commercial Garnishments

Pursuant to 15 U.S.C. 1673(b)(2)(A) and (B) (the Consumer Protection Act, as amended), unless a lower maximum garnishment limitation is provided by applicable state or local law, the maximum part of the aggregate disposable earnings subject to garnishment to enforce any support order(s) shall not exceed:

- 1. Fifty (50) percent of the obligor's aggregate disposable income for any workweek, where the obligor asserts by affidavit or by other acceptable evidence, that he/she is supporting a spouse and/or dependent child other than the former spouse and/or child for whose support such order is issued, except that an additional five (5) percent will apply if it appears on the face of the legal process or from other evidence submitted with the court documents that such earnings are to enforce a support order for a period which is twelve (12) weeks prior to that workweek. An obligor shall be considered to be supporting a spouse and/or dependent child only if the obligor provides over half of the spouse's and/or dependent child's support.

- 2. Sixty (60) percent of the obligor's aggregate disposable earnings for any workweek, where the obligor fails to assert by affidavit or establishes by other acceptable evidence, that he/she is supporting a spouse and/or dependent child, other than a former spouse and/or dependent child for

whose support such order is issued, except an additional five (5) percent will apply if it appears on the face of the legal process, or from other evidence submitted with the court documents, that such earnings are to enforce a support order for a period which is twelve (12) weeks prior to that workweek.

3. Where, under 5 CFR 581.302(a), an obligor submits evidence that he/she is supporting a second spouse and/or child, copies of the evidence shall be sent by ED to the garnishor or the garnishor's representative, as well as to the court together with notification that the obligor's support claim will be honored. If the garnishor disagrees with the obligor's support claim, the garnishor should immediately refer the matter to the court for resolution.

B. Maximum Garnishment Limitations for Commercial Garnishments - Pursuant to 15 U.S.C. 1673(a)(1) (the Consumer Protection Act, as amended), and the Department of Labor regulations at 29 CFR, Part 870, the following limitations are applicable:

1. Unless a lower maximum garnishment limitation is provided by applicable state or local law, the maximum part of the aggregate disposable earnings subject to garnishment to enforce any support order(s) shall not exceed twenty-five (25) percent of the employee-obligor's aggregate disposable earnings for any workweek.
2. Furthermore, the following dollar limitations, which are contained in 29 CFR, Part 870, must be applied in determining the garnishable amount of the employee's aggregate disposable earnings:
 - a. If the employee-obligator's aggregate disposable earnings for the workweek are in excess of 40 times the Fair Labor Standards Act (FLSA) minimum hourly wage, 25 percent of the employee-obligator's aggregate disposable earnings may be garnished. For example, when the FLSA minimum wage rate is \$4.25 per hour, this rate multiplied by 40 equals \$170.00, and thus, if an employee-obligator's disposable earnings are in excess of \$170.00 for a workweek, 25 percent of the employee-obligator's disposable earnings are subject to garnishment.
 - b. If the employee-obligator's aggregate disposable earnings for a workweek are less than 40 times the FLSA minimum hourly wage, garnishment may not exceed the amount by which the employee-obligator's aggregate

disposable earnings exceed 30 times the current minimum wage rate. For example, at

an FLSA minimum wage rate of \$4.25 per hour, the amount of aggregate disposable earnings which may not be garnished is \$127.50 [$\4.25×30]. Only the amount above \$127.50 is garnishable.

- c. If the employee-obligator's aggregate disposable earnings in a workweek are equal or less than 30 times the FLSA minimum hourly wage, the employee-obligator's earnings may not be garnished in any amount.
- d. There is no limit on the percentage of an employee-obligator's aggregate disposable earnings that may be garnished for a state or local tax obligation or for bankruptcy purposes.

XI. NOTIFICATION OF EMPLOYEE-OBLIGOR FOR COMMERCIAL AND NONCOMMERCIAL GARNISHMENTS ONLY)

As soon as possible, but not later than fifteen (15) calendar days after the date of valid service of legal process, ED's Designated Agent shall send to the employee-obligor, at his/her duty station or last known home address, written notice that legal process has been served on the Department including a copy of the legal process. In addition ED may provide the employee-obligor with the following additional information:

- Copies of any other documents submitted in support of or in addition to the legal process;
- Notice that neither the United States nor ED represents the interests of the employee-obligor in the pending legal proceedings; and
- Advice that the employee-obligor may wish to consult outside legal counsel regarding any defenses to the legal process that he/she may wish to assert.

XII. RESPONSE TO LEGAL PROCESS AND/OR INTERROGATORIES

- A. Whenever ED's Designated Agent is validly served with legal process, the agent shall respond within thirty (30) calendar days, or within such longer period as may be prescribed by applicable State or local law, after the date valid service is made. The agent shall also respond within this time period to interrogatories which accompany legal process.
- B. If State or local law authorizes the issuance of

interrogatories prior to or after the issuance of legal process, ED's Designated Agent shall respond to the interrogatories within 30 calendar days, or within such longer period as may be prescribed by applicable State or local law, after receipt.

XIII. NONLIABILITY FOR DISCLOSURE

- A. No agency employee whose duties include responding to interrogatories pursuant to section VIII shall be subject to any disciplinary action or civil or criminal liability or penalty for any disclosure of information made in connection with the carrying out of any duties pertaining directly or indirectly to answering such interrogatories.
- B. However, ED is not precluded from taking disciplinary action against an employee who consistently or purposefully failed to provide correct information requested by interrogatories.