

## Office of Personnel Management

## § 581.305

request that the obligor submit supporting affidavits or other documentation necessary for determining the applicable percentage limitation;

(3) That by submitting supporting affidavits or other necessary documentation, the obligor consents to the disclosure of such information to the garnishor; and

(4) Of the percentage that will be deducted if he/she fails to submit the documentation necessary to enable the governmental entity to respond to the legal process within the time limits set forth in § 581.303.

(b) The governmental entity may provide the obligor with the following additional information:

(1) Copies of any other documents submitted in support of the legal process;

(2) That the United States does not represent the interests of the obligor in the pending legal proceedings;

(3) That the obligor may wish to consult legal counsel regarding defenses to the legal process that he or she may wish to assert; and

(4) That obligors in the uniformed services may avail themselves of the protections provided in sections 520, 521, and 523 of the Soldiers' and Sailors' Civil Relief Act of 1940 (50 U.S. Code App. 501 *et seq.*).

### § 581.303 Response to legal process or interrogatories.

(a) Whenever the designated agent is validly served with legal process pursuant to State procedures in effect pursuant to subsection (a)(1) or (b) of section 666 of title 42, United States Code, within 30 calendar days, or within such longer period as may be prescribed by applicable State law, the agent shall comply with all applicable provisions of section 666, including as follows:

(1) If an agent is served with notice concerning amounts owed by an obligor to more than one person, the agent shall comply with section 666(b)(7);

(2) Allocation of moneys due and payable to an individual under section 666(b) shall be governed by section 666(b) and the regulations prescribed under such section by the Secretary of Health and Human Services;

(3) Such moneys as remain after compliance with paragraphs (a)(1) and

(a)(2) of this section shall be available to satisfy any other such legal process on a first-come, first-served basis, with any such legal process being satisfied out of such moneys as remain after the satisfaction of all such legal process which have been previously served.

(4) The agent or the agent's counsel or other designee shall respond within 30 calendar days to interrogatories which accompany legal process if the information sought in the interrogatory is not available to the entity to which it was sent, and the proper entity is known, the recipient shall forward the interrogatory to the appropriate entity in sufficient time to allow for a timely response.

(b) If State or local law authorizes the issuance of interrogatories prior to or after the issuance of legal process, the agent shall respond to the interrogatories within thirty (30) calendar days after receipt: *Provided*, That the document(s) required by § 581.202(c) have been presented.

[45 FR 85667, Dec. 30, 1980, as amended at 63 FR 14759, Mar. 26, 1998]

### § 581.304 Nonliability for disclosure.

(a) No Federal employee whose duties include responding to interrogatories pursuant to § 581.303(b), shall be subject to any disciplinary action or civil or criminal liability or penalty for any disclosure of information made by him/her in connection with the carrying out of any duties pertaining directly or indirectly to answering such interrogatories.

(b) However, a governmental entity would not be precluded from taking disciplinary action against an employee who consistently or purposely failed to provide correct information requested by interrogatories.

[45 FR 85667, Dec. 30, 1980, as amended at 48 FR 26280, June 7, 1983]

### § 581.305 Honoring legal process.

(a) The governmental entity shall comply with legal process, except where the process cannot be complied with because:

(1) It does not, on its face, conform to the laws of the jurisdiction from which it was issued;

**§ 581.305**

**5 CFR Ch. I (1-1-02 Edition)**

(2) The legal process would require the withholding of funds not deemed moneys due from, or payable by, the United States as remuneration for employment;

(3) The legal process is not brought to enforce legal obligation(s) for alimony and/or child support;

(4) It does not comply with the mandatory provisions of this part; or

(5) An order of a court of competent jurisdiction enjoining or suspending the operation of the legal process has been served on the governmental entity.

(b) Where notice is received that the obligor has appealed either the legal process or the underlying alimony and/or child support order, payment of moneys subject to the legal process shall be suspended; i.e., moneys shall continue to be withheld, but these amounts shall be retained by the governmental entity until the entity is ordered by the court, or other authority, to resume payments or otherwise disburse the suspended amounts. However, no suspension action shall be taken where the applicable law of the jurisdiction wherein the appeal is filed requires compliance with the legal process while an appeal is pending. Where the legal process has been issued by a court in the District of Columbia, a motion to quash shall be deemed equivalent to an appeal.

(c) Under the circumstances set forth in § 581.305 (a) or (b), or where the governmental entity is directed by the Justice Department not to comply with the legal process, the entity shall respond directly to the court, or other authority, setting forth its objections to compliance with the legal process. In addition, the governmental entity 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 threatened, the entity shall immediately refer the matter to the United States Attorney for the district from which the legal process issued. To ensure uniformity in the executive branch, governmental entities which have statutory authority to represent themselves in court shall coordinate their representation with the United States Attorney.

(d) If a governmental entity is served with more than one legal process for the same moneys due or payable to an individual, the entity shall comply with § 581.303(a). *Provided*, That in no event will the total amount garnished for any pay or disbursement cycle exceed the applicable limitation set forth in § 581.402.

(e)(1) Neither the United States, any disbursing officer, nor any governmental entity shall be liable for any payment made from moneys due from, or payable by, the United States to any individual pursuant to legal process regular on its face, if such payment is made in accordance with this part.

(2) Neither the United States, any disbursing officer, nor any governmental entity shall be liable under this part to pay money damages for failure to comply with legal process.

(f) Governmental entities affected by legal process served under this part shall not be required to vary their normal pay 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 set forth in § 581.402. The fact that the legal process may have expired during this period would not relieve the governmental entity 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 entity to the obligor, the entity shall follow the procedures set forth in § 581.306.

(g) If a governmental entity receives legal process which, on its face, appears to conform to the laws of the jurisdiction from which it was issued, the entity shall not be required to ascertain whether the authority which issued the legal process had obtained personal jurisdiction over the obligor.

(h) A failure by the party bringing the garnishment action to comply with the provisions of the Uniform Reciprocal Enforcement of Support Act (URESA) or the Revised Uniform Reciprocal Enforcement of Support Act by itself shall not be a valid basis for a

## Office of Personnel Management

## § 581.402

governmental entity to refuse to comply with legal process.

[45 FR 85667, Dec. 30, 1980, as amended at 48 FR 26280, June 7, 1983; 55 FR 1357, Jan. 16, 1990; 63 FR 14759, Mar. 26, 1998]

### **§ 581.306 Lack of moneys due from, or payable by, a governmental entity served with legal process.**

(a) When legal process is served on a governmental entity, and the individual identified in the legal process as the obligor is found not to be entitled to moneys (the entitlement to which is based upon remuneration for employment) due from, or payable by, the governmental entity, the entity shall follow the procedures set forth in the legal process for that contingency or, if no procedures are set forth therein, shall return the legal process to the court, or other authority from which it was issued, and advise the court, or other authority, that no moneys, the entitlement to which is based upon remuneration for employment, are due from, or payable by, the governmental entity to the named individual.

(b) Where it appears that remuneration for employment is only temporarily exhausted or otherwise unavailable, the court, or other authority, shall be fully advised as to why, and for how long, the remuneration will be unavailable, if that information is known by the governmental entity.

(c) In instances where an employee obligor separates from his/her employment with a governmental entity which is presently honoring a continuing legal process, the entity shall inform the party who caused the legal process to be served, or the party's representative, and the court, or other authority, that the payments are being discontinued. In cases where the obligor has a Thrift Savings Fund account, or has retired, or has separated and requested a refund of retirement contributions, or transferred, or is receiving benefits under the Federal Employees' Compensation Act, or where the employee obligor has been employed by either another governmental entity or by a private employer, and where this information is known by the governmental entity, the governmental entity shall provide the party with the designated agent for the new disbursing

governmental entity or with the name and address of the private employer.

[45 FR 85667, Dec. 30, 1980, as amended at 48 FR 26281, June 7, 1983; 55 FR 1357, Jan. 16, 1990; 58 FR 35846, July 2, 1993]

### **§ 581.307 Compliance with legal process requiring the payment of attorney fees, interest, and/or court costs.**

Before complying with legal process that requires withholding for the payment of attorney fees, interest, and/or court costs, the governmental entity must determine that the legal process meets both of the following requirements:

(a) The legal process must expressly provide for inclusion of attorney fees, interest, and/or court costs as (rather than in addition to) child support and/or alimony payments;

(b) The awarding of attorney fees, interest, and/or court costs as child support and/or alimony must be within the authority of the court, authorized official, or authorized State agency that issued the legal process. It will be deemed to be within the authority of the court, authorized official, or authorized State agency to award attorney fees as child support and/or alimony if such order is not in violation of or inconsistent with State or local law, even if State or local law does not expressly provide for such an award.

[55 FR 1357, Jan. 16, 1990]

## **Subpart D—Consumer Credit Protection Act Restrictions**

### **§ 581.401 Aggregate disposable earnings.**

The "aggregate disposable earnings", when used in reference to the amounts due from, or payable by, the United States or the District of Columbia which are garnishable under the Consumer Credit Protection Act for child support and/or alimony, are the obligor's remuneration for employment less those amounts deducted in accordance with § 581.105.

### **§ 581.402 Maximum garnishment limitations.**

(a) Except as provided in paragraph (b) of this section, pursuant to section