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OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 582

RIN 3206—AF83

Commercial Garnishment of Federal Employees' Pay

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management (OPM) is finalizing its interim regulations for processing garnishment actions affecting Federal employees' pay for commercial indebtednesses and tax obligations due to State and local governments. This part provides procedures and guidance for Executive Branch agencies of the Federal Government, not including the Postal Service or the Postal Rate Commission, to process commercial garnishment orders affecting the pay of civilian employees.

EFFECTIVE DATE: April 10, 1995.

FOR FURTHER INFORMATION CONTACT: Murray M. Meeker, Attorney, Office of the General Counsel, (202) 606-1980.

SUPPLEMENTARY INFORMATION: On October 6, 1993, Congress enacted the Hatch Act Reform Amendments of 1993, Public Law 103-94, section 9, 5 U.S.C. 5520a, which waived the Federal Government's sovereign immunity to permit compliance with garnishment orders for commercial debts and tax indebtednesses to State and local governments. On February 3, 1994, the President signed Executive Order Number 12897 which delegated responsibility to OPM to issue implementing regulations for most of the Executive Branch, and on March 29, 1994, OPM issued an interim rule with request for comments. (59 FR 14541) In addition to receiving comments from more than twenty Federal agencies,

private organizations, and individuals in response to this publication, OPM expressly elicited additional guidance from the Office of Management and Budget, the Department of Justice, the Department of Labor, the Federal Retirement Thrift Investment Board, and the United States Postal Service.

Several commenters requested clarification concerning whether moneys payable to contractors would be subject to garnishment. In response to these requests, we have amended the definition of employee in § 582.102(2). The amended definition provides that an individual whose employment is based on a contract is not an *employee* under this part. This amendment is consistent with judicial decisions which have recognized that Federal employment is not contractual. See, e.g., *United States v. The Citizens & Southern National Bank*, 889 F.2d 1067 (Fed. Cir. 1989). An employee organization was concerned that reemployed annuitants had been excluded from the definition of *employee*. In fact, reemployed annuitants are included in the definition of *employee* in § 582.102(2). However, we have amended the definition of *employee* to clarify that the pay of reemployed annuitants and reemployed retired members of the uniformed services is subject to garnishment.

An employee organization suggested that OPM's regulations indicate that regulations pertaining to the garnishment of the salaries of members of the uniformed services were to be promulgated by a separate authority. In response to this suggestion, we have added two additional sentences to the definition of agency in § 582.102(1). This employee organization also suggested that the definition of *person* be amended to include courts. In response to this suggestion, we have amended the definition of *person* in § 582.102(4) to include courts and other entities that are authorized to issue *legal process*.

Two commenters suggested that Federal agencies be permitted to use commercial garnishment as a method to collect debts due the United States. OPM has determined that as enacted, Public Law 103-94 does not provide for commercial garnishment actions by Federal agencies. OPM's determination is based on several factors. The primary

reason being that Public Law 103-94 does not expressly provide for garnishment by the Federal Government, and there is no legislative history reflecting such an intent. Additionally, the principles of statutory interpretation require that all of the provisions of a statute be read together. See *United States v. Fausto*, 484 U.S. 439, 453 (1988). In accordance with this principle, OPM is mindful that in processing commercial garnishment orders, Congress has provided that debts due the United States are to be treated quite differently than commercial indebtednesses. To appreciate this difference, compare the exclusion provision in section 462(g) of the Social Security Act as incorporated in 5 U.S.C. 5520a(g) with the limitation provisions of section 1673 of title 15 of the United States Code (section 303 of the Consumer Credit Protection Act, as amended) as incorporated in 5 U.S.C. 5520a(b). In addition, there are several recent United States Supreme Court decisions which recognize a rebuttable presumption that the term *person* does not include the sovereign. See *International Primate Protection League v. Tulane Educ. Fund*, 111 S.Ct. 1700, 1707-1708 (1991); *Will v. Michigan Department of State Police*, 491 U.S. 58, 64 (1989); and *Mesa v. California*, 489 U.S. 121, 136 (1989). In an effort to clarify the matter, OPM has amended the definition of *person* in § 582.102(4) to expressly exclude the United States or an agency of the United States.

OPM has considered, but rejected a labor organizations' comment that the definition of *pay* in § 582.102(5) not include sick pay. We believe that the inclusion of sick pay is mandated by express language of 5 U.S.C. 5520a(a)(4) which expressly defines *pay* to include sick pay. In accordance with guidance received from the Department of Labor, we have expressly excluded "amounts received under any Federal program for compensation for work injuries" from the definition of *pay* in § 582.102(5).

One of the Federal agencies that provides payroll services to a host of Federal agencies advised OPM that they were treating support garnishment orders as exclusions under § 582.103. We have amended § 582.103 to clarify that amounts withheld in compliance with garnishment orders based on child and/or alimony obligations are *not* exclusions under this part.

One agency requested clarification concerning the exclusion in § 582.103(b)(1) of amounts withheld for benefits payable under title II of the Social Security Act. After consulting with the Social Security Administration, we have deleted that provision and renumbered the section.

Two commenters noted the exclusion in § 582.103(e) of all amounts contributed to the Thrift Savings Fund and asked whether amounts deducted for Thrift Savings Fund loan repayments were also to be excluded. In response to this comment, OPM requested guidance from the Federal Retirement Thrift Investment Board. OPM concurs with the Board's conclusion that these repayment amounts should not be added to the list of exclusions in § 582.103.

One agency commented that some of its employees were attempting to reduce their liability for garnishment orders by increasing their voluntary allotments. We would emphasize that only the items listed as exclusions in § 582.103 may be deducted from an employee-obligor's pay before a garnishment is processed. It may, therefore, be necessary to terminate a voluntary allotment in order to comply with a commercial garnishment order.

While one agency correctly noted that our exclusion for debts due the United States in § 582.103(a) does not list the various types of debts due the United States or the order of precedence for such debts, the General Accounting Office already maintains such a list.

While three Federal agencies expressed disagreement with the statement in § 582.202(a) that legal process need not expressly name the agency as a garnishee, this statement is mandated by the decision of the United States Court of Appeals for the Federal Circuit that was announced in *Millard v. United States*, 916 F.2d 1 (Fed. Cir. 1990). We have amended § 582.202(a) in response to one agency's comment to expressly include interrogatories.

One commenter noted that the interim regulations permitted State courts to garnish the salaries of persons who live and work in a different State and concluded that this raised "a possible constitutional question" as to the legality of the regulations. In fact, the Federal Government has been honoring garnishment orders based on child support and alimony obligations that extended beyond State boundaries for many years and OPM disagrees with any suggestion that such orders or the regulations that provide for the processing of such orders might be unconstitutional merely because they effect employee-obligors who live and/

or work in other States. More importantly, OPM believes that this is another area where the Federal Government's responsibilities as an employer are limited and that an employing Federal agency is not required to review each order to determine whether the court that issued the order had lawfully acquired jurisdiction over the out-of-State obligor. See *United States v. Morton*, 467 U.S. 822, 828-830 (1984). This same commenter also suggested that the regulations be amended to require that in addition to providing the employee-obligor with a copy of the legal process, Federal agencies should be required to provide employee-obligors with copies of any other documents submitted with the legal process. OPM is confident that Federal agencies will use their discretion to provide their employees with copies of any accompanying documents that will be helpful or informative to the employee. However, to require that employing agencies provide all documentation regardless of relevance or potential value to the employee-obligor would, we believe, place an undue burden on Federal agencies.

Two agencies commented on the fact that § 582.202(b) does not mandate service by certified or registered mail. This provision is in accordance with the express language of 5 U.S.C. 5520a(c)(1) and does reflect a change from the provisions applicable to service of process for garnishment of child support and alimony obligations. OPM emphasizes that agencies may not construe *may* to mean *must*; it was the clear intent of Congress to permit less restrictive service of process under this part.

Several commenters, including an employee organization and a law firm that wrote on behalf of a collectors association, expressed a need to clarify the fact that a creditor need not necessarily know or provide all of the information listed in § 582.203(a), particularly the employee-obligor's date of birth or social security number, in order to have a garnishment order processed by a Federal agency. In an effort to clarify this fact, we have amended § 582.203(a). In response to a request from the Treasury Department, we have added a new section, § 582.204, concerning electronic disbursement.

Several commenters noted that two provisions in the interim regulations—§ 582.303(a) which reiterates the requirement in 5 U.S.C. 5520a(d) that agencies respond to interrogatories and § 582.306(c) which states that agencies shall provide information concerning subsequent employment—may conflict

with the Privacy Act, 5 U.S.C. 552a, as implemented by numerous Federal regulations including OPM's own disclosure regulations codified at 5 CFR 297.402, which permit disclosure in response to legal process only where the legal process is signed by a judge. While it might be argued that 5 U.S.C. 5520a(d) should be construed as an implicit exception to the Privacy Act and to the regulations that agencies have promulgated to implement the Privacy Act, OPM strongly recommends that agencies establish routine uses that will enable them to respond to interrogatories served in accordance with this part and, where appropriate, to provide subsequent employment information, notwithstanding the absence of a judge's signature or some other omission otherwise barred by the agency's disclosure restrictions.

An employee organization commented that OPM exceeded its statutory authority by providing in § 582.303(a) that agencies may respond to garnishment orders after 30 days where a longer period is provided by local law as well as by State law as expressly stated in 5 U.S.C. 5520a(d). While OPM concurs that section 5520a(d) expressly refers only to State law, references to State law have historically included both State and local law. See, e.g., *Ex parte Virginia*, 100 U.S. 339 (1879), as discussed in *Civil Rights Cases*, 109 U.S. 3, 57-58 (1883) (Harlan, J., dissenting). For the same reason, we have declined to amend § 582.402 to exclude references to local law.

One agency suggested that § 582.303(a) be amended to clarify that agencies need only respond once to legal process. We have amended § 582.303(a) in response to this suggestion.

One agency commenter noted that § 582.303 was redundant and suggested that the word *effectively* be replaced with the word *validly*. We have amended this section in response to these comments.

OPM received conflicting agency recommendations concerning the action to be taken where an employee-obligor appeals a garnishment action, and we have decided not to amend § 582.305(c) at this time.

An association of collection attorneys commented that in the collection world there are two major areas: *commercial* and *retail* with *commercial* referring to the collection of debts from firms and *retail* referring to collection from consumers. While we appreciate the fact that our terminology is not consistent with the nomenclature used by some private attorneys, we have determined

that no other term would be as generally understood as the term *commercial* for the purpose of distinguishing garnishment actions under this part from garnishment actions based on child support and alimony obligations.

Several commenters requested that the regulations clarify the effect of a garnishment order for child support and/or alimony on the processing of a commercial garnishment order. In response to these requests, we have amended §§ 582.305(f) and 582.402(a) to better explain the interrelationship between the two types of legal process.

One commenter requested that OPM delete § 582.305(k) because by permitting Federal agencies to charge fees in commercial garnishment actions while not having a similar provision relating to support garnishment actions, OPM's regulations were possibly discriminatory against women. OPM would emphasize that while the child support and alimony garnishment provisions in the Social Security Act do not provide for administrative costs or processing fees, Congress has expressly provided for such fees in the processing of commercial garnishment actions. See 5 U.S.C. 5520a(j)(2).

In response to an employee organization's suggestion, we have amended § 582.305(k) concerning the administrative fees. Three commenters suggested that OPM establish uniform administrative fees. Instead, OPM has deferred to individual agencies to determine whether administrative fees should be assessed and in what amounts based on their own cost figures. OPM has been advised that several agencies have established and have begun to assess administrative fees based on their costs in processing commercial garnishment orders.

While 5 U.S.C. 5520a(h)(1) provides that legal process shall be processed on a first come, first served basis, the laws in several jurisdictions, including California and the District of Columbia, provide that legal process may only be satisfied on a "one at a time" basis. Based on this information, we have amended § 582.402(a) in an effort to eliminate any confusion that may exist in these jurisdictions. In accordance with guidance received from the Department of Labor, we have also amended § 582.402(a) to provide that administrative costs or fees provided under § 582.305(k) must be included in the amounts subject to the garnishment restrictions of the Consumer Credit Protection Act. In other words, an agency may not withhold more than 25% of an employee-obligor's aggregate disposable earnings in order to offset administrative costs. Rather, the amount

to be withheld in compliance with the legal process would have to be reduced in order that the administrative costs could be recovered without exceeding the maximum garnishment limitations.

OPM received comments from two Federal agencies concerning the processing of garnishment orders where the employee-obligor has filed a bankruptcy petition. We have amended § 582.305(l) in accordance with these recommendations. One individual commented that the regulations failed to recognize exemptions which employees may be entitled to under various provisions of State law. We would direct the commenter to § 582.402(a) which encompasses these exemption provisions.

However, we would also emphasize that it is primarily the employee-obligor's responsibility and not the employee-obligor's employer's responsibility to ensure that the debtor is allowed all of the exemptions to which the employee-obligor is entitled under State law.

Four commenters recommended that § 582.402(b) be amended to apply only where the bankruptcy action is under Chapter 13, and one agency commented that § 582.402(b) should also include Federal tax levies. In response to these comments and after conferring with the Department of Labor which administers the Consumer Credit Protection Act, we have amended § 582.402(b) to incorporate these recommendations.

While OPM is sympathetic to agencies and individuals who complained that the time limitations, particularly with regard to notifying employees stationed overseas, are too short, these time limitations are statutory and OPM's implementing time limit provisions only repeat these statutory limits. See 5 U.S.C. 5520a(d). OPM does not believe that it has the authority to extend these time limits even where the garnishment order being processed will affect the pay of an employee stationed overseas. See *Federal Election Commission v. Democratic Senatorial Campaign Committee*, 454 U.S. 27, 32 (1981).

Two commenters expressed concern regarding whether any time limit existed concerning the age of the underlying judgment that the garnishment order was attempting to enforce. Because Public Law 103-94 does not address this issue, we believe that the answer would depend on the law of the jurisdiction from which the garnishment order was issued and that, in any event, as long as the order was "regular on its face," it would not be the employing agency's burden to determine whether the garnishment order had been issued in accordance

with the limitation provisions of the jurisdiction from which the order was issued. See *United States v. Morton*, *supra*, at 828-830 (the Federal Government need only ascertain that legal process is "regular on its face"). In other words, this is an issue that the employee-obligor would be responsible for contesting rather than the employing agency. Similarly, we do not believe that the agency bears the burden of determining when garnishment orders themselves expire, except, of course, where the order, on its face, indicates when it will expire.

While most of the comments focused on the interim regulations, several commenters stressed the need for a garnishment application form. In response to these requests, OPM sought and obtained approval from the Office of Management and Budget to issue a voluntary garnishment application form. In addition, OPM has elicited suggestions from several other Federal agencies concerning a voluntary application form and is currently reviewing those suggestions.

One agency requested additional guidance concerning what action should be taken where an agency is advised that the garnishment action should either be terminated or that the amount being garnished should be reduced as a result of a payment having been made or an agreement having been reached between the parties. While OPM has not attempted at this time to promulgate regulations that would dictate the actions that must be taken in such situations, OPM urges agencies to exercise their discretion in determining when a garnishment action should be terminated or modified as a result of such payments or agreements between the parties.

An issue that provoked numerous comments concerned the payment of interest. For the most part, it is our understanding that agencies have had no particular difficulty in garnishing amounts for interest that were included in the judgment total or judgment amount provided in the garnishment order, but several States, including Maryland and Hawaii, issue orders that do not expressly state a dollar figure for all of the interest that may be subject to garnishment. While 5 U.S.C. 5520a(b) provides that Federal agencies will be "subject to legal process in the same manner and to the same extent as if the agency were a private person," section 5520a(a)(3)(B) defines *legal process*, in pertinent part, as a writ, order, or summons that orders the employing agency to withhold "an amount" from the employee-obligor's pay. There is, therefore, an ambiguity in the statute as

concerns the garnishment of sums such as interest that are not expressly included in the order, and absent clearer statutory language, OPM declines at this time to promulgate a regulation that would require agencies to compute and pay interest that is not included in the amount specified in the garnishment order.

A process serving company in the District of Columbia advised OPM that while some agencies facilitate service of process on their employees, other agencies did not. In response to this information, OPM requested guidance from the Justice Department and was advised that when it comes to gaining access to restricted Governmental worksites, process servers have no more rights than anyone else and that a regulatory provision concerning this matter would be inappropriate.

Executive Order 12866, Regulatory Review

This rule has been reviewed by the Office of Management and Budget in accordance with Executive Order 12866.

Regulatory Flexibility Act

I certify that these regulations will not have significant economic impact on a substantial number of small entities because their effects are limited to Federal employees and their creditors.

List of Subjects in 5 CFR Part 582

Claims.

Office of Personnel Management.

Lorraine A. Green,

Deputy Director.

Accordingly, OPM is revising part 582 of title 5, Code of Federal Regulations as follows:

PART 582—COMMERCIAL GARNISHMENT OF FEDERAL EMPLOYEES' PAY

Subpart A—Purpose, Definitions, and Exclusions

Sec.

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Appendix A to part 582—List of Agents Designated to Accept Legal Process

Authority: 5 U.S.C. 5520a; 15 U.S.C. 1673; E.O. 12897

Subpart A—Purpose, Definitions, and Exclusions

§ 582.101 Purpose.

Section 5520a of title 5 of the United States Code provides that with certain exceptions set forth in this part, pay from an agency to an employee is subject to legal process in the same manner and to the same extent as if the agency were a private person. The purpose of this part is to implement the objectives of section 5520a as they pertain to each executive agency of the United States Government, except with regard to employees of the United States Postal Service, the Postal Rate Commission, and the General Accounting Office.

§ 582.102 Definitions.

In this part—(1) *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. (Section 5520a(j)(1) of title 5 of the United States Code provides that separate implementing regulations shall be promulgated by the legislative branch and the judicial branch; section 5520a(k) provides that separate implementing regulations shall be promulgated with regard to members of the uniformed services; and Executive Order 12897 provides that separate implementing regulations shall be promulgated with regard to employees of the United States Postal Service. The regulations promulgated for employees of the United States Postal Service also apply to employees of the Postal Rate Commission.)

(2) *Employee* or *employee-obligor* means an individual who is employed by an *agency* as defined in this section, including 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, a retired member of the uniformed services, or an individual whose service is based on a contract, including individuals who provide personal services based on a contract with an agency.

(3) *Legal process* means any writ, order, summons, or other similar process in the nature of garnishment, which may include an attachment, writ of execution, court ordered wage assignment, or tax levy from a State or local government, which—

(i) Is issued by:

(A) A court of competent jurisdiction, including Indian tribal courts, within any State, territory, or possession of the United States, or the District of Columbia. As stated in § 582.101, pay is subject to legal process in the same manner and to the same extent as if the agency 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

(ii) Orders an agency to withhold an amount from the pay of an employee-obligor and to make a payment of such withholding to a *person*, for a specifically described satisfaction of a legal debt of the employee-obligor, or recovery of attorney fees, interest, or court costs;

(4) *Person* may include an individual, partnership, corporation, association, joint venture, private organization or other legal entity, and includes the plural of that term; *person* may include any of the entities that may issue *legal process* as set forth in § 582.102(3)(i) (A), (B), and (C), and a State or local government as well as a foreign entity or a foreign governmental unit, but does not include the United States or an agency of the United States.

(5) In conformance with 5 U.S.C. 5520a, *pay* means basic pay; premium pay paid under chapter 55, subchapter V, of title 5 of the United States Code; any payment received under chapter 55, subchapters VI, VII, or VIII, of title 5 of the United States Code; severance pay and back pay under chapter 55, subchapter IX, of title 5 of the United States Code; sick pay, and any other paid leave; incentive pay; locality pay (including interim geographic adjustments, special pay adjustments for law enforcement officers, and locality-based comparability payments); back pay awards; and any other

compensation paid or payable for personal services, whether such compensation is demoninated as pay, wages, salary, lump-sum leave payments, commission, bonus, award, or otherwise; but does not include amounts received under any Federal program for compensation for work injuries; awards for making suggestions, reimbursement for expenses incurred by an individual in connection with employment, or allowances in lieu thereof as determined by the employing agency.

§ 582.103 Exclusions.

In determining the amount of pay subject to garnishment under this part, there shall be excluded amounts which:

(a) Are owed by the employee-obligor to the United States;

(b) Are required by law to be deducted from the employee-obligor's pay, including, but not limited to amounts deducted in compliance with the Federal Insurance and Contributions Act (FICA), including amounts deducted for Medicare and for Old Age, Survivor, and Disability Insurance (OASDI);

(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 employee-obligor claimed all dependents to which the employee-obligor 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 employee-obligor presents evidence of a tax obligation which supports the additional withholding;

(d) Are deducted as health insurance premiums;

(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. Except as provided in this paragraph, amounts voluntarily contributed toward additional retirement benefits are considered to be supplementary;

(f) Are deducted as normal life insurance premiums from salary or other remuneration for employment, not including amounts deducted for supplementary 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 any life insurance premiums paid for by allotment are considered to be supplementary.

(g) Amounts withheld in compliance with legal process based on child support and/or alimony indebtedness are not exclusions.

Subpart B—Service of Legal Process

§ 582.201 Agent to receive process.

(a) Except as provided in appendix A to this part, appendix A to 5 CFR part 581 lists agents designated to accept service of process under part 581 and this part.

(b) United States Attorneys are not considered appropriate agents to accept service of process.

§ 582.202 Service of legal process.

(a) A person using this part shall serve interrogatories and legal process on the agent to receive process as explained in § 582.201. Where the legal process is directed to an agency, and the purpose of the legal process is to compel an agency to garnish an employee's pay, the legal process need not expressly name the agency as a garnishee.

(b) Service of legal process may be accomplished by certified or registered mail, return receipt requested, or by personal service only upon the agent to receive process as explained in § 582.201, or if no agent has been designated, then upon the head of the employee-obligor's employing agency. The designated agent shall note the date and time of receipt on the legal process.

(c) Parties bringing garnishment actions shall comply with the service of process provisions in this section. Service will not be effective where parties fail to comply with the service of process provisions of this section, notwithstanding whether the person bringing the garnishment action has complied with the service of process requirements of the jurisdiction issuing the legal process.

§ 582.203 Information minimally required to accompany legal process.

(a) Sufficient identifying information must accompany the legal process in order to enable processing by the agency. Parties seeking garnishment actions, therefore, should provide as many of the following identifying pieces of information concerning the employee-obligor as possible:

(1) Full name;

(2) Date of birth;

(3) Employment number or social security number;

(4) Component of the agency for which the employee-obligor works;

(5) Official duty station or worksite; and

(6) Home address or current mailing address.

(b) 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 the legal process, if there is sufficient time prior to the time limits imposed in § 582.303, an attempt should be made to inform the person who caused the legal process to be served, or the person's representative, that it will not be honored unless adequate identifying information is supplied.

§ 582.204 Electronic disbursement.

The party designated to receive the garnished funds may forward a written request to the garnishing agency to have the funds remitted by electronic funds transfer, rather than by paper check. The request shall include the designated party's name, address, and deposit account number, and the name, address, and 9-digit routing transit number of the designated party's financial institution. Written requests accompanying service of process will be honored beginning with the first remission of garnished funds. Written requests received by the agency subsequent to service of process will be honored in as timely a manner as the agency deems feasible.

Subpart C—Compliance With Legal Process

§ 582.301 Suspension of payment.

Upon proper service of legal process as specified in §§ 582.202 and 582.203, the agency shall suspend, i.e., withhold, payment of such moneys for the amount necessary to permit compliance with the legal process in accordance with this part.

§ 582.302 Notification of employee-obligor.

(a) As soon as possible, but not later than 15 calendar days after the date of valid service of legal process, the agent designated to accept legal process shall send to the employee-obligor, at his or her duty station or last known home address, written notice that such process has been served, including a copy of the legal process;

(b) The agency may provide the employee-obligor with the following additional information:

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

(2) Notice that the United States does not represent the interests of the employee-obligor in the pending legal proceedings; and

(3) Advice that the employee-obligor may wish to consult legal counsel regarding defenses to the legal process that he or she may wish to assert.

§ 582.303 Response to legal process or interrogatories.

(a) Whenever the designated agent is validly served with legal process, the agent shall respond within 30 calendar days after receipt, or within such longer period as may be prescribed by applicable State or local law. The agent shall also respond within this time period to interrogatories which accompany legal process.

Notwithstanding State law, an agent need only respond once to legal process.

(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 30 calendar days after being validly served, or within such longer period as may be prescribed by applicable State or local law.

§ 582.304 Nonliability for disclosure.

(a) No agency employee whose duties include responding to interrogatories pursuant to § 582.303(b), 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, an agency would not be precluded from taking disciplinary action against an employee who consistently or purposely failed to provide correct information requested by interrogatories.

§ 582.305 Honoring legal process.

(a) The agency 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 the withholding of funds not deemed pay as described in § 582.102(a)(5).

(3) It does not comply with section 5520a of title 5 of the United States Code or with the mandatory provisions of this part; or

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

(b) While an agency 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 section 5520a of title 5 of the United States Code.

(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 to the satisfaction of the employee-obligor's agency 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 or she has filed an appeal, the employing agency shall comply with the applicable law of the jurisdiction and delay or suspend the processing of the garnishment action.

(d) Under the circumstances set forth in § 582.305 (a) or (b), or where the agency is directed by the Justice Department not to comply with the legal process, the agency shall respond directly to the court, or other authority, setting forth its reasons for non-compliance with the legal process. In addition, the agency shall inform the person who caused the legal process to be served, or the person's representative, that the legal process will not be honored. Thereafter, if litigation is initiated or appears imminent, the agency 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, agencies which have statutory authority to represent themselves in court shall coordinate their representation with the United States Attorney.

(e) In the event that an agency is served with more than one legal process or garnishment order with respect to the same payments due or payable to the same employee, the agency shall satisfy such processes in priority based on the time of service: *Provided*, That in no event will the total amount garnished for any pay or disbursement cycle exceed the applicable limitation set forth in § 582.402. *Provided further*, That processes which are not limited in time shall preserve their priority based on time of service until fully satisfied. Generally, a modified order will retain its original priority while a time limited order will lose its priority after it has expired.

(f) 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 662) for the enforcement of an employee's legal obligation to provide child support or to make alimony payments, including child support or alimony arrearages, shall have priority over any legal process to which an agency is subject under this part. In addition to having priority, compliance with legal process to which

an agency is subject under sections 459, 461, and 462 of the Social Security Act may exhaust the moneys available for compliance with legal process under this part. See § 582.402(a).

(g) Neither the United States, an executive agency, nor any disbursing officer 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. Where an agency initially determines that legal process should not be honored, if it subsequently determines that its initial determination was erroneous, it may correct its initial determination and honor the legal process. If an agency corrects an error or is required to do so by a court or other authority, under no circumstances will the agency be required to pay more than if it had originally honored the legal process.

(h) Agencies 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 § 582.402. The fact that the legal process may have expired during this period would not relieve the agency 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, the agency shall follow the procedures set forth in § 582.306.

(i) Agencies need not establish escrow accounts in order to comply with legal process. Therefore, even if the amount garnished by an agency in one disbursement cycle is not sufficient to satisfy the entire indebtedness, the agency need not retain those funds until the amount retained would satisfy the entire indebtedness. On the contrary, agencies will, in most instances, remit the garnished amount after each disbursement cycle. Agencies need not pro-rate payments for less than a full disbursement cycle.

(j) If an agency receives legal process which is regular on its face, the agency shall not be required to ascertain whether the authority which issued the legal process had obtained personal jurisdiction over the employee-obligor.

(k) At the discretion of the executive agency, the agency's administrative costs in executing a garnishment may be

added to the garnishment amount and the agency may retain costs recovered as offsetting collections. To facilitate recovery of these administrative costs, an administrative fee may be assessed for each legal process that is received and processed by an agency, provided that the fee constitutes the agency's administrative costs in executing the garnishment action.

(l) Where an employee-obligor has filed a bankruptcy petition under section 301 or 302 of title 11 of the United States Code, or is the debtor named in an involuntary petition filed under section 303 of title 11, the agency must cease garnishment proceedings affected by the automatic stay provision, section 362(a) of title 11. Upon filing a petition in bankruptcy or upon learning that he or she is the debtor named in an involuntary petition, the employee-obligor should immediately notify the agency. To enable the agency to determine if the automatic stay applies, the employee-obligor should provide the agency with a copy of the filing or a letter from counsel stating that the petition was filed and indicating the court and the case number, the chapter under which the petition was filed, whether State or federal exemptions were elected, and the nature of the claim underlying the garnishment order.

§ 582.306 Lack of entitlement by the employee-obligor to pay from the agency served with legal process.

(a) When legal process is served on an agency and the individual identified in the legal process as the employee-obligor is found not to be entitled to pay from the agency, the agency shall follow the procedures set forth in the legal process for that contingency or, if no procedures are set forth therein, the agency 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 the agency, 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 the agency and if disclosure of that information would not be prohibited.

(c) In instances where an employee-obligor separates from employment with an agency that had been honoring a continuing legal process, the agency shall inform the person who caused the legal process to be served, or the person's representative, and the issuing court, or other authority, that the

garnishment action is being discontinued. In cases where the employee-obligor has been employed by either another agency or by a private employer, and where this information is known by the agency, the agency shall provide the person with the designated agent for the new employing agency or with the name and address of the private employer.

Subpart D—Consumer Credit Protection Act Restrictions

§ 582.401 Aggregate disposable earnings.

In accordance with the Consumer Credit Protection Act, the *aggregate disposable earnings* under this part are the employee-obligor's pay less those amounts excluded in accordance with § 582.103.

582.402 Maximum garnishment limitations.

Pursuant to section 1673(a)(1) of title 15 of the United States Code (the Consumer Credit Protection Act, as amended) and the Department of Labor regulations to title 29, Code of Federal Regulations, part 870, the following limitations are applicable:

(a) Unless a lower maximum limitation is provided by applicable State or local law, the maximum part of an employee-obligor's aggregate disposable earnings subject to garnishment to enforce any legal debt other than an order for child support or alimony, including any amounts withheld to offset administrative costs as provided for in § 582.305(k), shall not exceed 25 percent of the employee-obligor's aggregate disposable earnings for any workweek. As appropriate, State or local law should be construed as providing a lower maximum limitation where legal process may only be processed on a one at a time basis. Where an agency is garnishing 25 percent or more of an employee-obligor's aggregate disposable earnings for any workweek in compliance with legal process to which an agency is subject under sections 459, 461, and 462 of the Social Security Act, no additional amount may be garnished in compliance with legal process under this part. Furthermore, the following dollar limitations, which are contained in title 29 of the Code of Federal Regulations, part 870, must be applied in determining the garnishable amount of the employee's aggregate disposable earnings:

(1) If the employee-obligor'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-

obligor'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-obligor's disposable earnings are in excess of \$170.00 for a workweek, 25 percent of the employee-obligor's disposable earnings are subject to garnishment.

(2) If the employee-obligor'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-obligor'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.

(3) If the employee-obligor's aggregate disposable earnings in a workweek are equal to or less than 30 times the FLSA minimum hourly wage, the employee-obligor's earnings may not be garnished in any amount.

(b) There is no limit on the percentage of an employee-obligor's aggregate disposable earnings that may be garnished for a Federal, State or local tax obligation or in compliance with an order of any court of the United States having jurisdiction over bankruptcy cases under Chapter 13 of title 11 of the United States Code. Orders from courts having jurisdiction over bankruptcy cases under Chapter 7 or Chapter 11 of the United States Code are subject to the maximum garnishment restrictions in § 582.402(a).

Subpart E—Implementation by Agencies

§ 582.501 Rules, regulations, and directives by agencies.

Appropriate officials of all agencies shall, to the extent necessary, issue implementing rules, regulations, and/or directives that are consistent with this part.

Appendix A to Part 582—List of Agents Designated To Accept Legal Process

Note: The agents designated to accept legal process are listed in appendix A to part 581 of this chapter. This appendix A to part 582 provides listings only for those executive agencies where the designations differ from those found in appendix A to part 581 of this chapter.

I. Departments

Department of Defense. Defense Finance and Accounting Service, Cleveland Center, Office of General Counsel,

Attention: Code L, P.O. Box 998002, Cleveland, OH 44199-8002, (216) 522-5301.

Agents for receipt of all legal process for all Department of Defense civilian employees except where another agent has been designated as set forth below.

For requests that apply to employees of the Army and Air Force Exchange Service or to civilian employees of the Defense Contract Audit Agency (DCAA) and the Defense Logistics Agency (DLA) who are employed outside the United States: See appendix A to part 581 of this chapter.

For requests that apply to civilian employees of the Army Corps of Engineers, the National Security Agency, the Defense Intelligence Agency, and non-appropriated fund civilian employees of the Air Force, serve the following offices:

Army Corps of Engineers. U.S. Army Corps of Engineers, Omaha District, Central Payroll Office, Attn: Garnishments, P.O. Box 1439 DTS, Omaha, NE 68101-1439, (402) 221-4060.

Army Nonappropriated Fund Employees in Europe. Commander, 266th Theater Finance Command, NAF Payroll, Unit #29001-07, APO AE 09007-0137, 011-49-6221-57-7752, DSN 379-7752.

National Security Agency. General Counsel, National Security Agency/Central Security Service, 9800 Savage Rd., Ft. George G. Meade, MD 20755-6000, (301) 688-6705.

Defense Intelligence Agency. Office of General Counsel, Defense Intelligence Agency, Pentagon, 2E238, Washington, DC 20340-1029, (202) 697-3945.

Air Force Nonappropriated Fund Employees. Office of General Counsel, Air Force Services Agency, 10100 Reunion Place, Suite 503, San Antonio, TX 78216-4138, (210) 652-7051.

For civilian employees of the Army, Navy and Marine Corps who are employed outside the United States, serve the following offices:

Army Civilian Employees in Europe. Commander, 266th Theater Finance Command, ATTN: AEUCF-CPF, APO AE 09007-0137, 011-49-6221-57-6303/2136, DSN 370-6303/2136.

Army Civilian Employees in Japan. Commander, U.S. Army Finance and Accounting Office, Japan, ATTN: APAJ-RM-FA-E-CP, Unit 45005, APO AP 96343-0087, DSN 233-3362.

Army Civilian Employees in Korea. Commander, 175th Finance and Accounting Office, Korea, ATTN: EAFC-FO (Civilian Pay), Unit 15300,

APO AP 96205-0073, 011-822-791-4599, DSN 723-4599.

Army Civilian Employees in Panama. DCSRM Finance & Accounting Office, ATTN: SORM-FAP-C, Unit 7153, APO AA 34004-5000, 011-507-287-6766, DSN 287-5312.

Navy and Marine Corps Civilian Employees Overseas. Director of the Office of Civilian Personnel Management, Office of Counsel, Office of Civilian Personnel Management (OCPM-OL), Department of the Navy, 800 N. Quincy Street, Arlington, VA 22203-1990, (703) 696-4717.

Navy and Marine Corps Nonappropriated Fund Employees. The agents are the same as those designated to receive garnishment orders of Navy and Marine Corps nonappropriated fund personnel for the collection of child support and alimony, published at 32 CFR part 734 (1994 ed.), except as follows:

For non-civil service civilian personnel of the Navy Exchanges or related nonappropriated fund instrumentalities administered by the Navy Exchange Service Command: Commander, Navy Exchange Service Command, ATTN: Human Resources Beverly Building, 3280 Virginia Beach Boulevard, Virginia Beach, VA 23453-5274, (804) 631-3675.

For non-civil service civilian personnel of Marine Corps nonappropriated fund instrumentalities, process may be served on the Commanding Officer of the employing activity ATTN: Morale, Welfare and Recreation Director.

Department of the Interior. Chief, Payroll Operations Division Attn: Code: D-2605, Bureau of Reclamation, Administrative Service Center, Department of the Interior, P.O. Box 272030, 7201 West Mansfield Avenue, Denver, CO 80227-9030, (303) 969-7739.

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5 CFR Part 843

RIN 3206-AF91

Federal Employees Retirement System—Computation of the Basic Employee Death Benefit for Customer Officers

AGENCY: Office of Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management (OPM) is issuing final regulations concerning the use of

overtime and premium pay in determining the final annual rate of basic pay of customs officers under the Federal Employees Retirement System (FERS). These regulations establish the methodology (similar to the one that OPM uses for other flexible schedule employees) that the employing agency will use to compute customs officers' "final annual rate of basic pay" for determining FERS "basic employee death benefit." The regulations are necessary to implement the changes in the statutory definition of basic pay under FERS made by the Omnibus Budget Reconciliation Act of 1993.

EFFECTIVE DATE: April 10, 1995.

FOR FURTHER INFORMATION CONTACT: Harold L. Siegelman, (202) 606-0299.

SUPPLEMENTARY INFORMATION: On October 5, 1994, we published (at 59 FR 50705) proposed regulations to implement section 13812 of the Omnibus Budget Reconciliation Act of 1993, Pub. L. 103-66, concerning the use of overtime and premium pay in determining the final annual rate of basic pay of customs officers under the Federal Employees Retirement System (FERS). Section 13812 of Pub. L. 103-66 amended section 8331(3) of title 5, United States Code, the definition of basic pay under the Civil Service Retirement System (CSRS), to include, as basic pay for CSRS computations, certain overtime pay for customs officers. Section 8401(4) of title 5, United States Code, provides that the CSRS definition of basic pay in section 8331(3) applies to FERS. For customs officers, basic pay includes the regular pay under the general schedule, any applicable locality pay, and allowable overtime pay up to \$12,500 per *fiscal* year. Basic pay is used to compute final salary for the basic employee death benefit under FERS.

We proposed a methodology for determining final salary similar to the one used for determining the "final annual rate of basic pay" of intermittent employees for the FERS basic employee death benefit established in section 843.102 of Title 5, Code of Federal Regulations. We received no comments on the proposed regulations. We are now issuing final regulations to adopt that methodology.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because the regulation will only affect Federal employees and agencies and retirement payments to retired Government employees and their survivors.