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Date: 01/06/2004**Category:** 20 - Human Resources **OPR:** HR**Title:** AR 20-4 (U) GARNISHMENT ORDERS**REVISION SUMMARY:** 06 January 2004

This regulation supersedes AR 20-4, dated 25 June 2002.

AR 20-4 formerly titled *Garnishment Orders for Child Support And/Or Alimony* is retitled *Garnishment Orders*. This revision also reflects a change to the Agency's Agent to receive process and to include guidance on processing commercial garnishments.

Because this regulation has been extensively revised boldfaced text has not been used to indicate revisions.

This regulation was written by the Policy Branch, Centralized and Deployed Human Resources, Chief Human Resources Office (HR Policy@DA).

4. (U) GARNISHMENT ORDERS

(U) SYNOPSIS. This regulation describes Agency policy and responsibilities governing the receipt and dispensation of legal process pertaining to financial responsibilities on child support, alimony, and commercial debt obligations. The law makes certain distinctions on child support and alimony payments as opposed to commercial debt obligations and these distinctions are appropriately noted in this regulation. Unless otherwise specifically stated, information cited is applicable to child support, alimony, and commercial debt obligations.

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a. **(U) AUTHORITY.** 5 CFR Part 581, 5 CFR Part 582, 5 U.S.C. 8437(e), 15 U.S.C. 1673, 26 U.S.C. 6331, 42 U.S.C. 659 and 666, E.O. 12105, E.O. 12953, Public Law 104 -193, Section 324, Central Intelligence Act of 1949, National Security Act of 1947, and 1993 Hatch Act Reform Law (P.L. 103-94).

b. **(U) POLICY**

- (1) The Agency complies with any valid legal process served upon it for the enforcement of legal obligations to provide child support, make alimony payments, and/or to support commercial garnishments. All garnishment orders are honored regardless of cover status, but with due regard for the protection of that status.
- (2) If the Agency is served with more than one legal process for an individual, orders for child support and/or alimony take priority over any other legal process under State law including orders for collecting private debts. Otherwise, if more than one writ is served, the first one served takes priority.
- (3) Questions regarding whether particular moneys or payments are or are not subject to garnishment that cannot be determined on the basis of information contained within this regulation, should be referred to the Office of General Counsel (OGC) for resolution. OGC should also be consulted on any other issues on the Agency's role/obligation in compliance with the service of legal process.

c. **(U) DEFINITIONS**

- (1) **AGENT TO RECEIVE PROCESS.** The agent to receive process is the Agency representative designated in the Code of Federal Regulations to receive service of legal process on behalf of the Agency for enforcement of an employee's obligation to provide child support, to make alimony payments, and/or to make a commercial payment obligation.
- (2) **AGGREGATE DISPOSABLE EARNINGS.** Aggregate disposable earnings means the employee's pay for employment less those amounts deducted in accordance with

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exclusions as specified in this regulation.

- (3) **ALIMONY.** Alimony means periodic payments of funds for the support and maintenance of a spouse (or former spouse) of the individual, and (subject to and in accordance with State law) includes separate maintenance, alimony pendente lite, maintenance, and spousal support, and includes attorney's fees, interest, and court costs when and to the extent that the same are expressly made recoverable as such pursuant to a decree, order, or judgment issued in accordance with applicable State law by a court of competent jurisdiction. Alimony does not include child support or any payment or transfer of property or its value by an individual to the spouse or a former spouse of the individual in compliance with any community property settlement, equitable distribution of property, or other division of property between spouses or former spouses.
- (4) **CHILD SUPPORT.** Child support means the amounts required to be paid for the support and maintenance of a child, to include a child who has attained the age of majority under the law of the issuing State, or a child and the parent with whom the child is living, which provides monetary support, health care, arrearages or reimbursement, and which may include other related costs and fees, interest and penalties, income withholding, attorney's fees, and other relief.
- (5) **COMMERCIAL GARNISHMENT.** A commercial garnishment refers to pay for an employee that can be garnished to satisfy debts to private parties, and Federal, State and local governments. This type of garnishment applies to active employees and reemployed annuitants, but does not include retired employees.
- (6) **EMPLOYEE.** Employee, for purposes of garnishment orders for child support and/or alimony, includes an actively employed or retired employee who receives an annuity from the Agency. An employee for purposes of commercial garnishments includes an actively employed individual or reemployed annuitant employed by the Agency, but does not include a retired employee.
- (7) **INTERROGATORIES.** Interrogatories are a series of written questions concerning the employee that are served on the "agent to receive process" for Agency response.
- (8) **LEGAL OBLIGATION.** Legal obligation means a responsibility to pay alimony and/or, child support that is enforceable under appropriate State or local law. A legal obligation may include current as well as past due alimony and/or child support debts depending on the law in the jurisdiction from which the legal process was issued.
- (9) **LEGAL PROCESS.** Legal process means any writ, order, summons, notice to withhold income pursuant to subsection (a)(1) or (b) of section 666 of title 42, United States Code, or other similar process in nature of garnishment, which may include an attachment, writ of execution, court ordered wage assignment, or in the case where a child support order is submitted by a child support agency using the standard Order/Notice to withhold income for child support as required by section 324 of Pub. L. 104-193 and which is:
 - (a) issued by:
 - (1) A court of competent jurisdiction, including Indian tribal courts, within any State,

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territory, or possession of the United States, or the District of Columbia;

- (2) A court of competent jurisdiction in any foreign country with which the United States has entered into an agreement that requires the United States to honor such process; or
- (3) An authorized official pursuant to an order of a court of competent jurisdiction or pursuant to State or local law; or
- (4) A State agency authorized to issue income withholding notices pursuant to State or local law pursuant to the requirements of section 666(b) to title 4 of the United States code; and

(b) Is directed to, and the purpose of which is to compel, a governmental entity, to make a payment from moneys otherwise payable to an individual, to another party to satisfy a legal obligation of the individual to provide child support, alimony or both.

(10) **PARTY.** Party means the person or persons to whom alimony and/or child support payments should be made, or, in the case of an agency established by State or local law, the agency that has been assigned, by law or by agreement, the right to receive such payment or payments.

(11) **REMUNERATION FOR EMPLOYMENT.** Remuneration for employment means compensation paid or payable for personal services, whether such compensation is denominated as wages, salary, commission, bonus, pay or otherwise, and includes but is not necessarily limited to those items described in the paragraph on "moneys subject to garnishment"

d. (U) **AGENT TO RECEIVE PROCESS.** The Chief, Biweekly Payroll Division (C/BPD) is the agent designated in the Code of Federal Regulations to receive service of legal process on behalf of the Agency for the enforcement of an employee's obligation to provide child support, to make alimony payments, and/or to comply with commercial debt payments.

Special Activities Staff, Office of Security Notification. The C/BPD is responsible for notifying the Chief, Special Activities Staff, Office of Security of all garnishments.

e. (U) **MONEYS SUBJECT TO GARNISHMENT FOR SUPPORT.** All remuneration for employment is subject to garnishment except as otherwise prohibited by law.

(1) **CHILD SUPPORT/ALIMONY.** Moneys subject to garnishment include, but are not limited to the following:

- (a) Basic pay,
- (b) Night differentials,
- (c) Premium pay,
- (d) Overtime pay,
- (e) Physician's comparability allowances,
- (f) Recruitment bonuses,

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- (g) Relocation bonuses,
- (h) Performance-based cash awards, and
- (i) Other moneys as described in 5 CFR Part 581.

Certain periodic or lump sum payments (if the lump sum payments are a substitute for periodic payments), are considered remuneration for employment and therefore subject to garnishment. These payments include, but are not necessarily limited to, amounts received under any of the following:

- (a) A Federal program for compensation of work injuries,
- (b) Pensions (except Department of Veterans Affairs pensions),
- (c) Retirement benefits,
- (d) Annuities,
- (e) Dependents' or survivors' benefits when payable to the employee, and
- (f) Any other payment as further described in 5 C.F.R. Part 581.

(2) MONEYS NOT SUBJECT TO GARNISHMENT FOR ALIMONY OR CHILD SUPPORT. In instances of garnishments for Alimony or Child Support, certain moneys are not subject to garnishment, including, but not limited to moneys payable under the following:

- (a) Educational or training grants and fellowships,
- (b) Separate maintenance allowances,
- (c) Post allowances,
- (d) Quarters allowance,
- (e) Cost-of-living allowances when applicable to employees in foreign areas or employees outside the continental United States or in Alaska or Hawaii,
- (f) Cash awards for employee suggestions, and
- (g) Other payments as specified by applicable law or regulations as described in 5 C.F.R. Part 581.

f. (U//AIUO) MONEYS SUBJECT TO GARNISHMENT FOR COMMERCIAL DEBTS

(1) COMMERCIAL DEBTS. Moneys subject to garnishment include, but are not necessarily limited to the following:

- (a) Basic pay,
- (b) Night differentials,
- (c) Premium pay,
- (d) Overtime pay,

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- (e) Physician's comparability allowances,
- (f) Recruitment bonuses,
- (g) Relocation bonuses,
- (h) Performance-based cash awards, and
- (i) Other moneys as described in 5 C.F.R. Part 582.

(2) **MONEYS NOT SUBJECT TO GARNISHMENT FOR ALIMONY OR CHILD SUPPORT.** Moneys that are not subject to garnishment include those stated in paragraph e(2)(a) - (f) above in addition to the following:

- (a) Any Federal program for compensation of work injuries and
- (b) Any other payments as specified by applicable law or regulations as described in 5 C.F.R. Part 582.

g. (U) **EXCLUSIONS.** In determining the amount of money due or payable to an employee, certain amounts are excluded. These excluded amounts include the following that are applicable to child support, alimony, and commercial debt obligations as specified below.

- (1) Excluded is an amount owed by the employee to the U.S. except for a debt based on a levy (charge) for income tax under 26 U.S.C. section 6331 shall not be excluded in complying with legal process for the support of minor children if the legal process for child support was entered prior to the date of the levy.
- (2) Excluded is any amount required by law to be deducted from an employee's compensation that includes, but is not necessarily limited to the following:
 - (a) Amounts withheld from benefits payable under Title II of the Social Security Act where the withholding is required by law; this also includes amounts deducted for Medicare.
 - (b) Amounts withheld for Federal, State, or local income tax purposes if the amounts withheld are not greater than would be the case if the employee claimed all dependents to which he or she is entitled.
 - (c) Amounts deducted as health insurance premiums, including, but not limited to, amounts deducted from annuities for Medicare where the Health Care Financing Administration requests such deductions.
 - (d) Amounts deducted as normal retirement contributions including all amounts contributed to the Thrift Savings Plan, but not including amounts deducted for supplementary coverage.
 - (e) Amounts deducted as normal life insurance premiums from salary or other compensation for employment, not including amounts deducted for supplementary coverage.

h. (U) **FUTURE PAYMENTS.** Moneys paid by a governmental entity which may be due and payable to an employee at some future date will not be considered due unless and until all of

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the conditions necessary for payment of the moneys have been met. It includes, but is not limited to, conditions such as:

- (1) Retirement,
- (2) Resignation, and/or
- (3) Application for payment of moneys by an employee.

i. **(U//AIUO) SERVICE OF PROCESS.** Service of legal process brought for the enforcement of an obligation to provide child support, alimony, and/or commercial garnishment payments is accomplished by personal service or by certified or registered mail, return receipt requested to the C/BPD.

- (1) **Legal Process by Mail.** For legal process by certified or registered mail, C/BPD will note the date and time of receipt and the fact that he or she is acting in a representative capacity only on the legal process.
- (2) **Legal Process Addressed to Wrong Individual.** If legal process is addressed to the wrong individual at the Agency, the recipient shall forward the legal process to C/BPD. Valid service is not accomplished until it is received in C/BPD office.
- (3) **Documentation to Establish Legal Obligation.** If it does not appear that process is brought to enforce a legal obligation to support garnishment of wages, a certified copy of the court order or other document establishing such legal obligation must be provided. If State or local law provides for the issuance of legal process without a support order, documentation must be submitted establishing enforcement of a legal obligation to garnish wages.
- (4) **OGC Role. When required,** OGC will make determinations on the validity of any garnishment or similar order, on the validity of the service of process, and on the sufficiency of process.
 - (a) Unless specifically expressed elsewhere in this regulation, any communication on behalf of the Agency on any legal matter inclusive of those stated in the preceding paragraph will be handled solely by OGC. Communication on behalf of the Agency includes that with the following individuals or entities:
 - (1) A court or other judicial authority,
 - (2) An employee and/or employee's attorney, or
 - (3) Another legally interested person or entity or attorney of such person or entity.
 - (b) If the process cannot be complied with for reasons set forth under 5 C.F.R. section 581.305 or 582.305 as applicable, OGC will respond directly to the court or other authority. This response will describe its objection to legal process. OGC will inform the party who caused the legal process to be served or the party's representative that the legal process will not be honored.
 - (c) In cases involving covert employees, OGC will work closely with the appropriate directorate or mission support office, attorneys, and the courts to ensure cover

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protection in garnishment proceedings.

j. (U) INFORMATION REQUIRED TO ACCOMPANY LEGAL PROCESS

- (1) **Identifying Information.** Sufficient identifying information must accompany the legal process to enable processing by the Agency. This information includes the following:
 - (a) Full name,
 - (b) Date of birth,
 - (c) Social security number, and
 - (d) Employee status (employee, former employee, or retired employee).
- (2) **Insufficient Information.** If the information submitted is not sufficient to identify the employee, the legal process will be returned to the court or other authority with an explanation by OGC of the deficiency. Prior to returning the legal process, OGC will attempt to inform the party who caused the legal process to be served, or the party's representative, that it will not be honored unless adequate identifying information is supplied.
- (3) **Non-liability for Failure to Comply with Process.** The Agency shall not be liable to pay monetary damages for failure to comply with legal process.
- (4) **Non-Liability for Disclosure.** No employee whose duties include responding to interrogatories may 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 these interrogatories. However, the Agency is not precluded from taking disciplinary action against an employee who consistently or purposely fails to provide correct information requested by interrogatories.

- k. (U) COMPLIANCE WITH PROCESS.** Upon proper service of sufficient legal process, together with all supplementary documents and required information, Chief, Pay & Benefits (C/P&B) will authorize C/BPD to effect withholdings. Authorization will be in writing and will include all supplementary garnishment documents and information. Upon receipt, and after determining the maximum aggregate disposable remuneration subject to garnishment, the C/BPD will withhold payment of the amount necessary to permit compliance with the legal process. C/BPD is not required to vary normal pay or disbursement cycles to comply with the legal process.

l. NOT USED

- m. (U) Notification to the Employee.** As soon as possible, but not later than 15 calendar days after the date of valid service of adequate legal process, the C/BPD will send to the employee, at his or her duty station or last known home address, written notice:
- (1) That such process has been served, including a copy of the legal process and any supporting documents received.
 - (2) Of the maximum garnishment limitations (see paragraph o below), with a request that the employee submit to C/BPD supporting affidavits or other documentation necessary for

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determining the applicable percentage limitation.

- (3) That by submitting supporting affidavits or other necessary documentation, the employee consents to the disclosure of such information to the garnisher.
- (4) Of the percentage that will be deducted if the employee fails to submit the documentation necessary to enable the Agency to respond to the legal process within the time limits set forth in paragraph n below.
- (5) That the Agency does not represent the employee in the pending legal proceeding.

n. (U) RESPONSE TO LEGAL PROCESS OR INTERROGATORIES

- (1) After being validly served with sufficient legal process, C/BPD will respond to the legal process within 30 calendar days or within such longer period as prescribed by applicable State or local law. C/BPD will also respond within this time period to interrogatories that accompany legal process.
- (2) If State or local law authorizes the issuance of interrogatories prior to or after the issuance of legal process, C/BPD will respond to the interrogatories within 30 calendar days after receipt provided that the documentation required by paragraph i above has been presented properly.
- (3) Determinations as to whether State or local law authorizes the issuances of interrogatories at the time issued are made by OGC. Any response to interrogatories must be coordinated with, reviewed, and approved by OGC.

o. (U) MAXIMUM GARNISHMENT LIMITATIONS

- (1) **Child Support/Alimony.** Unless applicable State or local law provides a lower maximum garnishment limitation, the maximum part of the aggregate disposable earnings subject to garnishment to enforce any support order will not exceed:
 - (a) Fifty percent of the employee's aggregate disposable earnings for any workweek where the employee asserts by affidavit or other acceptable evidence that the employee is providing over half of the support for a spouse, dependent child or both, other than the former spouse, dependent child, or both for whose support the order is issued. Copies of the evidence shall be sent to the party who caused legal process to be served or the party's representative as well as to the court or other authority together with notification that the employee support claim will be honored; or
 - (b) Sixty percent where the employee fails to make such assertion by affidavit or other acceptable evidence.

In either case, an additional five percent will apply if it appears on the face of the legal process or from other evidence submitted that such earnings are to enforce a support order for a period that is 12 weeks prior to that workweek. An employee is considered to be supporting a spouse or dependent child only if he or she provides over half of the spouse's or dependent child's support.

- (2) **Commercial debts.** Unless a lower maximum limitation is provided by applicable State or local law, the maximum part of an employee-obligor's aggregate disposable earnings

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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 shall not exceed 25 percent of the employee-obligor's aggregate disposable earnings for any workweek.

- (a) If the employee's aggregate disposable earnings for a workweek are in excess of 40 times the Fair Labor Standards Act (FLSA) minimum hourly wage, 25 percent of the employee's aggregate disposable earnings may be garnished.
- (b) If the employee'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's aggregate disposable earnings exceed 30 times the current minimum wage rate.
- (c) If the employee's aggregate disposable earnings for a workweek are equal to or less than 30 times the FLSA minimum hourly wage, the employee's earnings may not be garnished for any amount.

There is no limit on the percentage of an employee'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 paragraph o(2) above.

- p. **(U) TERMINATION OF EMPLOYMENT.** In the event that an employee terminates gainful employment with the Agency during a time the Agency is honoring a continuing legal process, C/BPD will inform the court or other authority and the party who caused the legal process to be served or the party's representative. In cases where the employee has separated and requested a refund of retirement contributions, or transferred, or is receiving benefits under the Federal Employees' Compensation Act, and where this information is known by the Agency, the Agency will provide the party with the designated agent for the new disbursing governmental entity. If the employee will be employed in the private sector and the Agency knows the name and/or address of the new employer, the Agency will provide the party with this information.

q. **(U) RESPONSIBILITIES**

(1) The Office of General Counsel (OGC)

- (a) When their assistance is required [as discussed in Paragraph i(4) above], the OGC is responsible for making determinations on the validity of any garnishment or similar order, on the validity of the service of process, and on the sufficiency of process. The OGC provides communication in support of such determinations or on any other legal matter to courts, employees, attorneys, or other legally interested persons or entities.
- (b) The OGC reviews and approves responses made to interrogatories that accompany the legal process.

(2) Chief, Biweekly Payroll Division (C/BPD)

- (a) The C/BPD is the agent designated in the Code of Federal Regulations to receive

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service of legal process on behalf of the Agency for the enforcement of an employee's obligation to provide child support, to make alimony payment, and/or to comply with commercial debt obligations.

- (b) The C/BPD makes withholdings for garnishment of employee wages upon authorization by C/P&B.
 - (c) After being validly served with sufficient legal process, C/BPD will respond, in coordination with OGC, to the legal process or to any interrogatories that accompany the legal process, within 30 calendar days or within the period as prescribed by law.
 - (d) The C/BPD provides written notice to the employee of service of legal process to include the information stipulated in paragraph m.
 - (e) The C/BPD informs the court or other authority and the party who caused the legal process to be served in the event of an employee's termination during a time when the Agency is honoring a continuing legal process.
 - (f) The C/BPD is responsible for notifying the Chief, Special Activities Staff, Office of Security of all garnishments.
- (3) **Employee.** The employee is responsible for submitting to C/BPD any supporting affidavits or other documentation necessary as requested for compliance with the legal process.