

**PART SIX  
OTHER DEDUCTIONS AND COLLECTIONS**

**CHAPTER 1  
GARNISHMENTS**

**60101. Background**

The Social Services Amendment of 1974, Public Law 93-647, Section 459, waived the United States' sovereign immunity from suit to allow garnishment or similar process in the nature of garnishment against the United States for the enforcement of child support and alimony obligations of certain United States Government employees including active duty and retired members of the Armed Forces. The Tax Reduction and Simplification Act of 1977, Title V, Public Law 95-30, Section 509, which made substantial changes in the garnishment law, clarified congressional intent, and authorized issuance of regulations to establish procedures to carry out the provisions of the garnishment law.

**60102 Purpose**

This part prescribes guidelines for administering the garnishment law for payment of retired members.

**60103. Scope**

The Armed Forces must comply with valid legal process issued for the enforcement of child support or alimony obligations by Federal and state courts or administrative agencies when such agencies are authorized by state law to issue such legal process. The member's retired pay, based upon remuneration for employment, is subject to legal process the same as if the United States were a private person. However, DFAS Centers are not required to vary their normal pay and disbursement cycle to comply with any such legal process.

**60104. Definitions**

**a. Alimony.** Periodic payments of funds for the support and maintenance of a spouse or former spouse. It includes (subject to and in accordance with state law) separate maintenance, alimony pending legal process, maintenance, and spousal support. It also includes attorney's fees, interest, and court costs, when and to the extent that they are expressly made recoverable as such by a decree, order, or judgment issued in accordance with applicable state law by a court of competent jurisdiction. Alimony as used in this part excludes payments or transfer of property made in compliance with any community property

settlement, equitable distribution of property, or other division of property between the spouses or former spouses.

**b. Child Support.** Periodic payments of funds for the support of a child or children. Subject to and in accordance with state law, it includes but is not limited to payments to provide for health care, education, recreation, clothing or other specific needs. It also includes attorney's fees, interest, and court costs, when and to the extent that they are made recoverable as such by a decree, order, or judgment issued in accordance with applicable state law by a court of competent jurisdiction.

**c. Disposable Earnings.** That part of an individual's earnings remaining after lawful deductions. To determine disposable earnings of retired members, deduct from gross retired pay amounts:

(1) Withheld in payment of amounts owed to the United States;

(2) Required by law to be deducted from retired pay (SBP and RSFPP cost deductions, deductions for VA waiver, and dual compensation);

(3) For Federal income tax withholding (FITW), if required or authorized by law. Additional amounts for tax withholding are made from retired pay only when the member submits evidence of a tax obligation which supports the additional withholding.

(4) For state income tax withholding if authorized (retiree's state of legal residence has a withholding agreement with the Department of Defense). The withholding amount will not exceed the retiree's estimated retired pay state income tax liability.

**d. Legal Process.** Any writ, order, summons, or other similar process in the nature of garnishment issued by:

(1) A court of competent jurisdiction within any state, territory, or possession of the United States;

(2) A court of competent jurisdiction in any foreign country with which the United States has entered an agreement which required the United States to honor such process or,

(3) An authorized official according to an order of such a court of competent jurisdiction or pursuant to state or local law.

**e. Remuneration for Employment**

Includes severance pay, retirement or retired pay including disability retired pay, and RSFPP, SBP, and limited income widow's annuities. Does not include death gratuity.

**f. Wage Assignment.** An order of the court assigning a portion of the member's retired pay on a continuing basis without a recurring court order. Wage assignments are valid only if specifically authorized by state law.

**60105. Receipt of Process**

**a. Method of Service.** Legal process brought for the enforcement of an individual's obligations to provide child support or alimony is served by certified or registered mail (return receipt requested) or by personal service upon the head of the government entity having payment responsibility for the money involved or on its designee. The process should be served by a party who, under state law, is authorized to do so. The process must be accompanied by data to permit prompt identification of the individual and the monies involved and must clearly show that it is issued for child support or alimony.

**b. Designated Activity**

Director  
Defense Finance and Accounting Service  
- Cleveland Center  
Attn: Director, Retired Pay Operations  
Anthony J. Celebrezze Federal Building  
Cleveland, OH 44199-2055

**60106. Effects on Allotments**

**a.** Allotments are stopped to comply with a writ of garnishment or attachment in this order unless the member advises the services otherwise.

- (1) Charitable contributions.
- (2) Bonds.
- (3) Savings.
- (4) Loans.
- (5) Delinquent state or local income

taxes.

- (6) Dependents.
- (7) Home loans.
- (8) Commercial insurance.
- (9) Army, Navy Mutual Aid Insurance  
United States Government Life

Insurance.

**b.** Allotments for repayment of indebtedness to the United States or delinquent Federal taxes may not be garnished.

**c.** Allotments for individuals who are garnishing the pay of members are subject to garnishment or attachment. Allotments to dependents or relatives are not involuntarily cancelled if there are funds remaining for payment of the allotment after the garnishment has been honored.

**d.** Allotments discontinued to satisfy a garnishment action may be reinstated by the paying office upon request of the retiree when such amounts are no longer needed to satisfy the garnishment action.

**e.** Allotments of pay for delinquent state or local income or employment taxes will not be excluded from pay subject to garnishment.

**60107. Responsive Pleadings**

Response to interrogatories or to legal process seeking the payment of child support or alimony obligations must be made within 30 days (or a longer period if provided by applicable state law or if there is an agreement for extension of time) from the effective date of service.

**60108. Notice to Member**

The person who is served must, as soon as possible but no more than 15 days after the date of service, send written notice to the retired member whose pay is affected that the process has been served. The notice must explain the potential effect of the legal process on the member's pay and should be accompanied by a copy of the process and all pertinent documents.

**60109. Limitations**

The amount of pay subject to garnishment or similar process for child support or alimony is limited to 50 percent of disposable pay if the member is supporting a second family or 60 percent if the member is not supporting a second family. If, however, the member is more than 12 weeks in arrears, the amount subject to legal process is increased to 55 percent where the member is supporting a second family, and 65 percent where the member is not supporting a second family.

**60110. Liabilities**

**a.** Neither the United States, nor any disbursing officer, nor government entity is liable for any payment made from monies due or payable from the United States to any individual according to legal process if the payment is made

in accordance with the regulations pertaining to garnishments.

b. Federal employees whose duties include responding to relevant interrogatories made before issuance of legal process and authorized by law are not subject to any disciplinary action or civil or criminal liability or penalty for, or on account of, any disclosures of information made in connection with the answering of such interrogatories.

**60111. Priorities**

**a. Legal Process Issued From Two or More Parties**

(1) When a governmental entity is served with more than one legal process with respect to money payable to any individual, money is available on a first-come, first-served basis.

(2) The next process is satisfied out of money subject to garnishment which remains after the prior process has been satisfied.

**b. Effect of Tax Levies on Garnishment**

(1) The amount of pay being withheld in garnishment or similar legal process according to a judgment by a court of competent jurisdiction for child support or alimony may not be used to satisfy a notice of levy for unpaid Federal taxes.

(2) To take priority, legal process for collection of alimony must be served before receipt of the tax levy.

(3) If attaching process containing indebtedness for both child support and alimony is served before tax levy, both take precedence; however, if the judgment predates the tax levy but the attaching process is served after the tax

levy, only child support is entitled to exemption and the levy is entitled to priority.

**60112. Collections by Garnishments**

A garnishment procedure may not attach more than 65 percent of a retired member's disposable earnings. If the member is indebted to the United States, only so much of the indebtedness that is being withheld each month is deducted from gross earnings to calculate disposable earnings.

**EXAMPLE:** An order is served 1 June 1977 on the designated activity against pay of retiree. The member's monthly gross is \$1,500; SBP cost, \$127.50; FITW, \$205.88; and member is indebted to the United States for \$2,000. Liquidation of indebtedness has been established at the rate of \$500 per month to pay off the indebtedness to the United States. Gross earnings are thus reduced by the debt deduction (that is, \$500), SBP cost, and FITW, resulting in disposable earnings of \$666.62. The 65-percent rule limits the garnishment to \$433.30 ( $\$666.62 \times 65$  percent) and member receives \$233.32 ( $\$666.62$  minus  $\$433.30$ ).

**60113. Garnishment of Renounced Pay**

A writ of garnishment must be honored even though the member has renounced receipt of pay. Entitlement to pay continues as "due from or payable by" the United States and is subject to garnishment. The right to accrue pay may not be waived, except as authorized by law. See part three, chapter 1, concerning waiver of retired pay.

**(This page intentionally left blank.)**