

**VOLUME 7B, CHAPTER 27: “GARNISHMENTS”****SUMMARY OF MAJOR CHANGES**

All changes are denoted by [blue font](#).

Substantive revisions are denoted by an asterisk (\*) symbol preceding the section, paragraph, table, or figure that includes the revision.

Unless otherwise noted, chapters referenced are contained in this volume.

Hyperlinks are denoted by [bold, italic, blue, and underlined font](#).

The previous version dated [February 2015](#) is archived.

<b>PARAGRAPH</b>	<b>EXPLANATION OF CHANGE/REVISION</b>	<b>PURPOSE</b>
270102	Added “Authoritative Guidance” paragraph and revised chapter content to comply with current administrative instructions.	Addition
2703	Updated fax number to the Defense Finance and Accounting Service, Director of Garnishment Operations.	Revision
Bibliography	Updated paragraph 270404 of the Bibliography with current statutes and references.	Revision

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## Chapter 27

GARNISHMENTS

## 2701 GENERAL

## 270101. Purpose

The purpose of this chapter is to provide information unique to the collection of child support and/or alimony from military retired pay. The provisions of Title 42, United States Code, section 659 ([42 U.S.C. § 659](#)) and Title 5, Code of Federal Regulations, part 581 ([5 CFR 581](#)) take precedence when in conflict with this chapter.

A. Pursuant to 42 U.S.C. § 659(h)(1)(A) and 5 CFR 581.103, remuneration for employment includes retired and retainer pay, including disability retired pay. These entitlements are hereafter referred to as “retired pay.”

B. The processing of garnishment orders for child support and/or alimony from the pay of individuals receiving remuneration for employment from the United States is governed by 42 U.S.C. § 659 and 5 CFR 581.

\*270102. [Authoritative Guidance](#)

[The bibliography at the end of this chapter lists the authoritative references.](#)

## 2702 DEFINITIONS

## 270201. Alimony

Alimony is defined as periodic payments of funds for the support and maintenance of a spouse or former spouse. Subject to and in accordance with state law, alimony includes separate maintenance, alimony pending legal process, maintenance, and spousal support. It also includes attorney 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 Chapters 27 and 29, excludes payments or transfers of property made in compliance with any community property settlement, equitable distribution of property, or other division of property between the spouse(s) or former spouse(s).

## 270202. Child Support

Child support is defined as periodic payments of funds for the support and maintenance of a child or children. Subject to and in accordance with state law, child support includes (but is not limited to) payments to provide for health care, education, recreation, clothing, or other specific needs. It also includes related attorney fees, interest, court costs, and other relief.

## 270203. Disposable Earnings

Disposable earnings is defined as an individual's gross retired pay less deductions for the following items:

A. Amounts withheld in payment of debts owed to the United States, except that an indebtedness based on a levy for income tax under [26 U.S.C. § 6331](#) will not be excluded in complying with legal process for the support of minor children if the legal process was entered prior to the date of the levy;

B. Deductions required by law (e.g., Survivor Benefit Plan and Retired Serviceman's Family Protection Plan cost deductions and deductions for Department of Veterans Affairs waivers); and

C. Regular Federal income tax withholding (FITW) and state income tax withholding, if required or authorized by law and amounts withheld are not greater than would be the case if the individual claimed all dependents to which he/she were entitled. A deduction for additional FITW is authorized when the individual presents evidence of a tax obligation, which supports the additional withholding.

## 270204. Legal Process

Legal process is defined as any writ, order, summons, or other similar process in the nature of garnishment. Legal process may be issued by:

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

B. A court of competent jurisdiction in any foreign country with which the United States has entered into an agreement that obligates the United States to honor such process; or

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

**\*2703 DESIGNATED AGENT**

The [Defense Finance and Accounting Service \(DFAS\)](#), Director of Garnishment Operations, or his or her representative, is responsible for receiving and implementing all legal process concerning retired members. Legal process may be served by regular mail or by fax to:

Director, Garnishment Operations  
DFAS Cleveland  
P.O. Box 998002  
Cleveland, OH 44199-8002  
Fax: 216-367-3675; Toll-Free Fax: 877-622-5930

Any legal process served on Department of Defense (DoD) entities other than the designated agent, for the purpose of enforcing payment of child support and/or alimony, **will** be forwarded to the designated agent for processing. For additional information or assistance call:

Garnishment Operations Customer Service  
Toll-Free: 888-DFAS411 (888-332-7411)

## 2704 IMPLEMENTING LEGAL PROCESS

### 270401. Legal Review

Once legal process has been served on the designated agent, the designated agent **will** review the legal process to determine that it is regular on its face, appears to conform to the laws of the jurisdiction from which it was issued, was issued to enforce a member's legal obligation to provide child support and/or alimony, and contains sufficient information to accurately identify the member.

### 270402. Written Notification

The designated agent **will** notify the member within 15 days after valid service of legal process. The written notification **will** explain the potential effect of the legal process on the member's pay, including allotments, and advise the member that the member has the burden of raising any available defenses, such as violation of the member's rights under the Servicemembers Civil Relief Act or lack of personal jurisdiction over the member, in the appropriate court. A copy of the legal process **will** be included with the written notice. The notice **will** be sent to the member's address of record in the retired pay system. Where the designated agent has the capability to make notification through electronic means such as email, the notice will be made using those electronic means.

### 270403. Response

Within 30 days of effective service, or such longer period as may be allowed by applicable state law, the designated agent **will**:

A. Determine the amount of the member's disposable earnings, as defined in paragraph 270203;

B. Where required, file an answer to the legal process with the court in which the proceeding was brought and answer any interrogatories regarding the disposable earnings due the member (the designated agent may use its standard answer form for this purpose); **and**

C. Establish deductions from the member's disposable earnings in an amount sufficient to satisfy legal process. In accordance with 5 CFR 581.305(f), governmental agencies, including DoD agencies, are not required to vary their pay or disbursing cycles to comply with **the** legal process.

## 270404. Maximum Amount of Pay Subject to Garnishment

A. Unless a lower maximum garnishment limitation is provided by applicable state or local law, the maximum part of disposable earnings for any pay period which is subject to legal process **will** not exceed:

1. Fifty percent of disposable earnings if the member concerned asserts by affidavit or other acceptable evidence that he or she is providing over half of the support for a spouse or dependent child (other than a spouse or dependent child with respect to whose support the legal process is issued);

2. Sixty percent if the member concerned is not supporting a spouse or dependent child as stated in subparagraph 270404.A.1; or

B. If it appears from the face of the legal process that the member is in arrears for a period **that** is 12 weeks prior to the beginning of that pay period, the maximum percentage under subparagraph 270404.A.1 is 55 percent and under subparagraph 270404.A.2 is 65 percent.

## 270405. Allotments to be Discontinued

If the member does not have enough net pay available to comply with **the** legal process, then one or more of the member's allotments **will** be stopped in accordance with the order of precedence for items 1 through 14 in Figure 19-1 of Chapter 19.

## 270406. Priority of Legal Obligation

If the designated official is served with legal process concerning more than one legal obligation owed by the same member, then the legal obligations **will** be satisfied from the available funds in the following order of priority:

A. Legal process to enforce current support **will** have priority over legal process to enforce support arrearages;

B. Legal process to enforce current child support **will** have priority over legal process to enforce current alimony; **and**

C. If the legal process is to enforce more than one child support obligation, and there are not enough funds available to fully satisfy all legal process served, then the available funds **will** be allocated among the obligations in proportion to the amounts of current child support due. Alimony obligations **will** be satisfied on a first-come, first-served basis.

## 2705 APPEALS

Where notice is received that the member has appealed either the legal process or the underlying alimony and/or child support order, payment of money subject to the legal process

will be suspended, i.e., money **will** continue to be withheld, but these amounts **will** be retained until the Government is ordered by the court, or other authority, to resume payments or otherwise disburse the suspended amounts. However, no suspension action will 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.

## 2706 GARNISHMENT OF RENOUNCED RETIRED PAY

### 270601. Retired Pay Subject to Garnishment

Legal process, as defined in paragraph 270204, must be honored even though the member has renounced receipt of retired pay. The member's refusal to receive retired pay does not permit the Government to deny satisfying a writ, order, summons, or other similar process in the nature of a garnishment. The entitlement to retired pay, even if renounced, continues to be treated as an amount "due from or payable by" the United States, which accrues to a member's retired pay account and is subject to garnishment.

### 270602. Waiver of Retired Pay

The right to accrue retired pay may not be waived, except as authorized by law. See Chapter 12 concerning the waiver of retired pay.

## 2707 INDEMNIFICATION

### 270701. Liability for Payment

Neither the DoD, nor any disbursing officer or employee, **will** be liable for any payment made from money due from, or payable by, the DoD to any individual pursuant to **the** legal process, if such payment is made in compliance with 42 U.S.C. § 659, 5 CFR 581, and this chapter.

### 270702. Disciplinary Action, Civil or Criminal Liability, or Penalty for Disclosure of Information

DoD employees, whose duties include responding to relevant interrogatories, **will** not be subject to any disciplinary action, civil or criminal liability, or penalty for any disclosure of information made in connection with answering such interrogatories.

### 270703. Liability for Failure to Comply with Legal Process

Neither the DoD, nor any disbursing officer or employee, **will** be liable to pay **monetary** damages for failure to comply with legal process.

## \*BIBLIOGRAPHY

## CHAPTER 27 – GARNISHMENTS

## 2701 GENERAL

5 CFR 581  
42 U.S.C. § 659

## 2702 DEFINITIONS

270203 26 U.S.C. § 6331

## 2704 IMPLEMENTING LEGAL PROCESS

270403.C 5 CFR 581.305(f)  
270404 15 U.S.C. § 1673(b)  
42 U.S.C. § 659(h)  
42 U.S.C. § 666(b)

## 2706 GARNISHMENT OF RENOUNCED RETIRED PAY

Manuscripts Comptroller General B-196839,  
April 24, 1980

## 2707 INDEMNIFICATION

270701 5 CFR 581  
42 U.S.C. § 659