

**\*VOLUME 8, CHAPTER 8: “UNDERPAYMENTS, COLLECTION OF NON-DEPARTMENT OF DEFENSE (DOD) DEBTS, BANKRUPTCY ACTION, GARNISHMENTS, AND TAX LEVIES”**

**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 [September 2012](#) is archived.

<b>PARAGRAPH</b>	<b>EXPLANATION OF CHANGE/REVISION</b>	<b>PURPOSE</b>
All	Updated to comply with current format guidance.	Revision
Multiple	Updated hyperlinks.	Revision
Multiple	Renumbered paragraphs and figure where applicable.	Revision
Title	Changed title of Chapter from “Underpayments and Indebtedness” to “Underpayments, Collection of Non-Department of Defense (DoD) Debts, Bankruptcy Action, Garnishments, and Tax Levies.”	Revision
0801	Added “General” section, which includes “Purpose” and “Authoritative Guidance” paragraphs.	Addition
080201	Revised section for clarity.	Revision
080202	Revised section for clarity and updated with current information.	Revision
080301.A	Added information about an employee’s debts transferring from a non-DoD agency to a DoD agency.	Addition
080301.B	Updated information regarding the “Statute of Limitations.”	Revision
080302.C.1.a	Added address for the “Salary Offset Project Office.”	Addition
080303.A	Added information regarding voluntary “State Tax Levies.”	Addition
0804	Renamed section “Recovery of Court-Ordered Indebtedness, Including Judgements and Garnishment.”	Revision
080402.E	Changed the address and fax numbers for Salary Offset Project Office.	Revision
080403	Added address and fax number for commercial debts and procedures the payroll office should take.	Addition
080501.C	Added information regarding “Post-Petition Debt.”	Addition

<b>PARAGRAPH</b>	<b>EXPLANATION OF CHANGE/REVISION</b>	<b>PURPOSE</b>
080502	Added information regarding "Chapter 13."	Addition
0807	Renamed section due to the addition of tax guidance. Updated section with current information.	Revision
080704.B.2	Changed form to Internal Revenue Service (IRS) Form 941-X since it has replaced IRS Form 941c.	Revision
Figures 8-1 through 8-8	Deleted figures due to the information provided has been moved to Volume 16.	Deletion
Figure 8-9	Deleted Figure due to information being outdated.	Deletion
Previous 0802-080606, 080608-080811	Deleted sections due to the information provided pertaining to debt owed to the DoD was moved to Volume 16.	Deletion
Previous 080812	Deleted paragraph, "Military Pay of Reserve or National Guard Members for Duty to Aid Law Enforcement" due to it being covered in Chapter 5.	Deletion
Previous 080813	Deleted paragraph since "Collection of Dishonored Checks" is in Volume 5, Chapter 4.	Deletion

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## CHAPTER 8

**\*UNDERPAYMENTS, COLLECTION OF NON-DEPARTMENT OF DEFENSE (DOD) DEBTS, GARNISHMENTS, BANKRUPTCY ACTION, AND TAX LEVIES**

## \*0801 GENERAL

## \*080101. Purpose

This chapter establishes policy and procedures pertaining to underpayments, special payments, collection of non-DoD debts, processing garnishments, bankruptcy actions, tax levies, and processing and reporting pay corrections. For regulations governing the collection of debts owed to the DoD, see Volume 16.

## \*080102. Authoritative Guidance

Statutes, regulations, and other guidance are referenced under each section of this chapter.

## 0802 UNDERPAYMENTS

## \*080201. General

Salary underpayments to employees or former employees may be the result of the following:

A. Computation Errors. Underpayments may be the result of computation errors involving Federal withholding tax, retirement deductions, Social Security/Medicare tax, or the rate of pay. Every effort should be made to correct the underpayments by increasing or decreasing the pay factors affected on the first payroll prepared after the error is discovered.

B. Time and Attendance Errors. Underpayments may also be the result of time and attendance errors. All salary payments to employees must be paid in accordance with the time and attendance reported and certified by the employee's supervisor. Reported time and attendance, which is less than an employee's normal work schedule, is presumed to accurately reflect the employee's hours of work and non-work. Any errors in time and attendance must be corrected and certified in order to adjust underpayments.

C. Claims. Employees or former employees who believe they have not been credited with the proper amount of pay may follow the claims procedures prescribed in Chapter 6, section 0604.

## \*080202. Special Payments

Special payments may be made to employees in order to correct salary underpayments. Special payments are made outside of the normal payroll processing schedule. The issuance of a

special payment is an off-line process and employees do not receive a regular Leave and Earnings Statement (LES) at the time of the special payment. The civilian payroll office (PRO) must provide the employee with information regarding the special payment. A subsequent LES is issued reflecting information pertaining to the gross amount of the special pay and all applicable deductions upon processing the special pay through the Defense Civilian Pay System (DCPS). PROs report special salary payments on the Department of Defense [\(DD\) Form 592](#), Payroll for Personal Services Certification and Summary.

#### A. Guidelines for Special Payments

The PRO will process a special payment under the following circumstances when requested by the employing activity and determined appropriate by the PRO:

1. [90 Percent Guideline](#). To correct a salary underpayment where an employee has received less than 90 percent of their regular biweekly pay and allowances. The PRO Directors may waive the 90 percent rule for making special payments when extenuating circumstances exist.

2. [Erroneous Payroll Omissions](#). To pay employees who are erroneously omitted from the payroll;

3. [Employees on Leave Without Pay \(LWOP\)](#). To pay employees placed in a LWOP status for payroll processing, and LWOP has been approved for conversion to advanced annual, sick, and/or donated leave. The commanding officer/director, after reviewing each case for hardship, may request a special payment provided the employee meets the 90 percent guideline.

4. [Special Payments to Beneficiaries](#). To pay a beneficiary entitled to receive a deceased employee's unpaid compensation under Title 5, United States Code (U.S.C.), section [5582](#). See Chapter 10, section 1005.

#### B. Required Supporting Documentation for Special Payments.

Required documentation for a special payment request submitted to the PRO is as follows:

1. [Biweekly Payment of Less Than 90 Percent](#). For an employee paid for less than 90 percent of his or her regular biweekly pay and allowances, a copy of the time and attendance report (or corrected time and attendance report) and a request by the commanding officer/director are required to support the special payment.

2. [Erroneous Payroll Omission](#). If an employee is erroneously omitted from the payroll, a [Standard Form \(SF\) 50](#), Notification of Personnel Action, should be used to verify the individual's employment. Before the special payment is processed, the PRO must obtain a copy of the employee's certified time and attendance report, a request by the commanding officer/director for special payment, and any necessary source documents to support deductions.

3. Employee on LWOP. For an employee placed in an LWOP status, the time and attendance certifier must provide the PRO a corrected time and attendance report along with the commanding officer's/director's special payment request.

4. Special Payments to Beneficiaries. Beneficiaries of deceased employees may request a special payment by sending a letter to the PRO identifying the need for payment is to defray expenses. The PRO must issue the special payment if sufficient documentation to support the claim is received from the employing activity human resources office.

#### C. Disbursements of Special Payments

Employees must receive special payment disbursements in the same manner as they receive their net pay, typically by an electronic funds transfer (EFT). If the employee has received a waiver of the EFT requirement for payroll disbursements, the PRO will send the employee a Treasury check via express mail to the employee's address of record. Release of payment will normally be within 3 business days following the PRO's receipt of any special payment request and any required supporting documentation.

#### D. Computation of Special Payments

The PRO must compute the special payments using the "gross-to-net" method. Gross-to-net payments represent the regular biweekly pay and allowances normally due the employee (plus unpaid premium pay for the corresponding pay period, if applicable), less any required deductions and withholdings which are withheld from the employee's biweekly pay. The following procedures are applicable for gross-to-net special payment processing:

1. Biweekly Payment of Less than 90 Percent. The employee is entitled to the difference between what was paid and what should have been paid. The PRO will deduct additional amounts for applicable items listed in subparagraph 080202.F, unless previous payroll processing has satisfied the deductions. The employee is responsible for any existing voluntary allotments not deducted during the previous processing. All deductions and withholdings must resume the following pay cycle.

2. No Pay Received. The gross entitlements less any applicable deductions and withholdings are payable to the employee. The PRO must exclude deductions for voluntary allotments. The employee is responsible for any existing voluntary allotments. All deductions and withholdings must resume on the following pay cycle, including voluntary allotments.

3. Final Pay as Special Payment. An employee who receives their final pay as a special payment will receive pay for gross entitlements less all required deductions and withholdings of items listed in subparagraph 080202.E. The employee is responsible for voluntary allotments. The employee's final pay is subject to withholdings to liquidate any unsatisfied government indebtedness.

4. Special Payments to Beneficiaries. Unpaid compensation is computed pursuant to Chapter 10, section 100504.

E. Processing Special Payments Made After the Last Regular Pay Period of the Tax Year, But Prior to the End of the Calendar Year

1. Federal, State, and Local Taxes and Social Security/Medicare. For special payments made after the last regular pay period of the tax year, but prior to the end of the calendar year, the PRO must withhold any Federal, state, and local taxes, and Social Security/Medicare from the special payments. The PRO must forward the withholdings to the applicable offices as soon as possible. Note: When computing or making deductions for Social Security, the PRO will ensure the employee has not reached maximum withholdings for the year. In completing the supplemental DD 592 for any canceled checks or special payments, the PRO will include all deductions and contributions for Social Security/Medicare, Federal, state, and local taxes.

2. Internal Revenue Service (IRS) Form W-2, Wage and Tax Statement. The PRO will process updates to ensure special payments or canceled checks are included in the history totals. After the final pay period of the tax year, if the PRO identifies incorrect reporting on the W-2, the PRO will issue an IRS Form W-2c, Corrected Wage and Tax Statement, in accordance with IRS Circular E, Employer's Tax Guide, and IRS Form 941-X, Adjusted Employer's Quarterly Federal Tax Return or Claim for Refund.

3. Thrift Savings Plan (TSP). Special payments for TSP participants are subject to TSP deductions provided the employee has not reached the maximum contribution level established by law. TSP deductions withheld from special payments after the last regular pay period in the tax year, but before the end of the calendar year, will be combined with the next pay cycle for reporting and submission to the Federal Retirement Thrift Investment Board.

F. Taxation of Retroactive Payments

1. Time and Attendance. The PRO must use the tax rate associated with the current IRS Form W-4, Employee's Withholding Allowance Certificate, when processing all time and attendance retroactive transactions. The PRO must combine the retroactive wages with the wages from the last pay period (i.e. the pay period prior to the current pay period) to determine the basis for recomputing tax withholdings. The PRO must recompute the taxes and determine the retroactive tax withholdings by subtracting the taxes withheld during the last pay period from the recomputed taxes.

2. Retroactive Wage Increases. In most cases, retroactive wage increases are considered supplemental wages and taxed at a flat 25 percent tax rate. The flat 25 percent rate will apply to Federal tax withheld from regular wages during the last preceding payroll period for wages paid within the same calendar year. If those regular wages do not have taxes withheld, the PRO must then use the rate associated with the current W-4.

## G. Special Payments Not Authorized.

The following special payments requests are not authorized:

1. Partial Payment of Salary. PRO will not honor a request for partial payment of salary before the regular payday.

2. Special Payments of Premium Pay. The PRO will not process a request for special payments for overtime or other premium pay earned but not reported and, therefore, not paid in the corresponding pay period. However, authorization for a special payment for other reasons will include the payment of any unpaid premium pay for the corresponding pay period.

## 0803 COLLECTION OF NON-DoD DEBTS

## \*080301. Salary Offset Requests From Non-DoD Federal Creditor Agencies

\* A. Request for Salary Offset. A non-DoD Federal creditor agency is a non-DoD agency to which an employee owes a debt. When non-DoD Federal creditor agencies (except the IRS or U.S. Courts) identify DoD employees as having outstanding debts, those agencies must address their salary offset requests to the Secretary of Defense designee for such collection, which is the Defense Finance and Accounting Service-Cleveland (DFAS-CL):

DFAS-AHADC/CL  
1240 East 9th Street  
Cleveland, OH 44199

A request for offset must include certification that due process rights have been afforded to an indebted employee by the non-DoD creditor agency. Debts established in DCPS for collection from non-DoD employees serviced by DFAS, who later transfer and become DoD employees, should be transferred systematically to the employing DoD agency for continued collection.

\* B. Statute of Limitations. There is no statute of limitations for collection of a debt by salary or administrative offset. Debts more than 10 years delinquent as of December 31, 2009, that were previously ineligible for collection may now be collected by administrative offset. Additional notice and due process requirements must be met. For further information, see Volume 16, Chapter 2.

## \*080302. Salary Offset Requests From the Travel Charge Card Contractor

A. Authority. Public Law (P.L.) 105-264 authorizes Federal agencies to collect undisputed delinquent amounts incurred on an individually billed travel charge card issued to an employee from that individual's disposable pay. For further information, see Requiring Use of Travel Charge Card at 5 U.S.C. § 5701. The amount deducted may not exceed 15 percent of an employee's disposable pay for each pay period, unless the employee has provided written consent for a greater amount. For further information, see the Federal Travel

Regulation (FTR), [Part 301-54](#); [FTR, Part 301-76](#); and Title 41, Code of Federal Regulations (C.F.R.), [part 301-76](#).

B. Request for Collection. After undisputed debts become 90 days delinquent, the travel charge card contractor **must** send a 90-day demand letter to the **employee that includes** all due process requirements for initiating salary offset. If the debt is not disputed **or** paid, or arrangements are not made for payment by installment agreement within the 30-day period following the final debt letter, then the travel charge card contractor may request initiation of the salary offset process through payroll deduction.

C. Responsibilities

1. Travel Charge Card Contractor

\* a. Request for Offset. The travel charge card contractor **must** forward delinquent debts to the Salary Offset Project Office at:

DFAS-AHADC/CL  
1240 E. 9th Street  
Cleveland, OH 44199-8002

b. Record of Charges, Late Fees, and Costs. The undisputed 120-day old delinquent accounts referred for salary offset **must** contain the full balance of the account, regardless of whether some of the individual charges relate to an official travel document. In addition to the delinquent charges, the amount referred for salary offset **must** include any late fees assessed and costs of collection.

c. Financial Institution Information. The file **must** include the travel charge card contractor's financial institution and account routing information to facilitate electronic transmission of delinquent amounts collected.

d. Private Collection Agency Referrals. Any delinquent debt the travel charge card contractor has already forwarded to a private collection agency for collection **must** not be included in the salary offset process. **Likewise, a travel charge card contractor must not refer any delinquent debt already submitted to DFAS for collection by salary offset to a private collection agency.**

2. Salary Offset Project Office

a. Processing Requests. The Salary Offset Project Office (DFAS-AHADC/CL) **must** process the request for initiation of travel charge card delinquent debt salary offset in the same manner as is done for Federal salary offset requests from other Federal agencies.

b. Debt Balance. The Salary Offset Project Office (DFAS-AHADC/CL) **must** manage the debt balance during the salary offset process. If for any reason

changes to the debt balance occur, the travel charge card contractor **must** immediately advise the Salary Offset Project Office of those changes.

c. Reports from the PRO. The PROs **must** provide reports listing the collection transactions to the Salary Offset Project Office for each collection file in order to monitor amounts collected and remaining debt balances due.

3. Due Process - Inquiries, Disputes, and Hearing Process. Any inquiries or disputes regarding the debt and the 90-day demand notice, which are received by the travel charge card contractor prior to forwarding the debt to DFAS for collection, will be handled and resolved by the travel charge card contractor. If the **employee** wants to negotiate an installment agreement prior to the referral of the debt for salary offset, the employee will make any such agreement with the travel charge card contractor. If the **employee** is not satisfied with the travel charge card contractor's disposition of the dispute, he or she may submit a petition to the travel charge card contractor for a debt hearing.

\*080303. Collection of State Debts

\* A. State Tax Levies. The PRO **must** forward **involuntary** state tax levies to:

DFAS-Cleveland  
Garnishment Operations  
P.O. Box 998002  
Cleveland, OH 44199-8002

Toll free fax (877) 622-5930  
Commercial fax (216) 367-3675

The levies will be processed under the commercial garnishment section. The PRO can establish voluntary state tax levies as an allotment.

B. Other State Debts. Under 31 U.S.C. § 3716(h) and 31 C.F.R. 285.6, a state may enter into a reciprocal agreement with the Department of Treasury to collect unpaid state debt by offset of Federal non-tax payments. Under the same agreement, the Federal government may collect delinquent Federal non-tax debt by offset of state payments. DFAS does not offset non-tax state debts from Federal employee salaries.

**\*0804 RECOVERY OF COURT-ORDERED INDEBTEDNESS, INCLUDING JUDGEMENTS AND GARNISHMENTS**

080401. Judgment **Against an Employee**

When a court of the U.S., in an action or suit brought against a Federal employee by the U.S., determines the employee is indebted to the U.S. and enters a judgment against the employee, section 124 of P.L. 97-276 (published as a note to 5 U.S.C. § 5514) allows collection of the debt by deduction from the employee's current pay account. The employee's consent is not required. Any

Federal agency requesting salary offset under this authority **must** send a letter **requesting** offset to **the PRO** with a copy of the judgment entered against the employee. **The PRO may request the DFAS Office of General Counsel review the judgment if questions arise.** After confirmation of the validity or interpretation of the judgment, **the PRO** will:

A. Compute the amount **to be** collected each pay period using the percentage specified in the offset request. The maximum amount deducted for a pay period may not exceed 25 percent of the employee's disposable pay, unless a greater percentage is necessary to recover the amount owed within the time of the anticipated employment. Deductions may be made from basic pay, special pay, incentive pay, or in the case of an individual not entitled to basic pay, other authorized pay.

B. Collect the total unpaid balance as specified in the offset request. This amount may include accumulated interest and administrative charges. The agency requesting offset should notify **the PRO** approximately 90 days before completion of the judgment offset with the final judgment amount, which includes the balance of accrued interest charges.

C. Forward a copy of the offset request to the employee with written notification advising the employee of the deduction amount and pay period the deduction will start.

D. Apply final pay (salary and lump sum leave) to any unliquidated debt balance if the employee retires, resigns, dies, or if employment otherwise ends.

E. Forward payment each pay period to the agency requesting salary offset.

**\*080402. Child Support and Alimony Garnishments**

A. **Authority.** [Title 42, U.S.C. § 659](#) provides consent by the U.S. to garnishment and similar proceedings for enforcement of child support and alimony obligations against employees. **The PRO must deduct court-ordered garnishment under this section from the employee's pay in accordance with [5 C.F.R. part 581](#).**

B. **Pay Subject to Garnishment.** All moneys due employees, the entitlement to which is based upon "remuneration for employment," are subject to court-order garnishment. The term "remuneration for employment" means all compensation paid or payable for personal services performed by an individual, whether such compensation is denominated as wages, salary, commission, bonus, pay, or otherwise, and includes, but is not limited to, those items set forth in [5 C.F.R. 581.103](#).

C. **Pay Not Subject to Garnishment and Exclusions.** Moneys paid as reimbursement (normally defined by law or regulations as allowances, awards paid for making suggestions, and injury compensation payments) are not deemed "remuneration for employment" and, therefore, are not subject to garnishment. Amounts not subject to garnishment are identified in [5 C.F.R. 581.104](#). Deductions, as identified in [5 C.F.R. 581.105](#), that will be excluded from garnishment are:

1. Civil Service Retirement System (CSRS)/Federal Employees Retirement System (FERS);
2. Social Security/Medicare;
3. TSP contributions;
4. Federal, state, or city/local income taxes (not including additional withholdings unless the employee presents evidence of a tax obligation which supports the additional withholding);
5. Federal Employees Health Benefits (FEHB);
6. Federal Employees' Group Life Insurance (FEGLI) (basic only);
7. Indebtedness due the U.S. Government, except where the employee's debt is for child support and the amount owed the U.S. results from an income tax lien or levy;
8. Other deductions required by law or regulations to be withheld.

D. Maximum Garnishment Limitations. Aggregate disposable earnings means the amount of any pay that is due or payable to an employee as "remuneration for employment" minus the deductions that are listed as exclusions. Unless a lower maximum garnishment limitation is provided by applicable state or local law, the maximum part of the aggregate disposable earnings subject to garnishment to enforce a support order (5 C.F.R. 581.402) will not exceed the percentages specified in the following subparagraphs:

1. Fifty percent of the employee's aggregate disposable earnings for any workweek if the employee is supporting a spouse, a dependent child, or both, other than the former spouse, child, or both for whose support is required by the garnishment order. An additional 5 percent of the employee's disposable earnings is subject to garnishment in each case if the outstanding arrearages are over 12 weeks old.

2. Sixty percent of the employee's aggregate disposable earnings for any workweek if the employee is not supporting a spouse, dependent child, or both, other than the former spouse, child or both for whose support is required by the garnishment order. An additional 5 percent of the employee's disposable earnings is subject to garnishment in each case if the outstanding arrearages are over 12 weeks old.

\* E. Procedures. Send all court orders for child support and alimony to:

DFAS-Cleveland  
Garnishment Operations  
P.O. Box 998002  
Cleveland, OH 44199-8002

Toll free fax (877) 622-5930  
Commercial fax (216) 367-3675

Upon review of the court order, DFAS-CL will process the garnishment deduction in DCPS. A cancellation to the order will be automatic on the date of separation from DoD, upon death of the employee, or upon notification from the court that the garnishment is terminated. The employee cannot voluntarily stop these court ordered deductions.

\*080403. Commercial Garnishments

A. Authority. [Title 5, U.S.C. § 5520a](#) authorizes the garnishment of Federal employees' wages for commercial debts. The PRO must deduct commercial garnishments under this section from the employee's pay in accordance with [5 C.F.R. part 582](#).

B. Pay Subject to Commercial Garnishment. Pay due to employees, as defined in 5 U.S.C. § 5520a, is subject to [commercial garnishment](#).

C. Pay Not Subject to Commercial Garnishment and Exclusions. Suggestion awards and injury compensation payments are not subject to garnishment. As identified in [5 C.F.R. 582.103](#), deductions that will be excluded from garnishment are:

1. CSRS/FERS;
2. Social Security/Medicare;
3. TSP contributions;
4. Federal, state, or city/local income taxes (not including additional withholdings unless the employee presents evidence of a tax obligation which supports the additional withholding);
5. FEHB;
6. FEGLI (basic only);
7. Indebtedness due the U.S. Government; and
8. Other deductions required by law or regulations to be withheld.

D. Maximum Garnishment Limitations. A maximum of 25 percent of an employee's disposable pay may be [withheld](#) to satisfy garnishments for commercial debts. The term disposable pay means the amount of any pay due or payable to an employee as remuneration for employment, minus the deductions listed in subparagraph 080403.C. If the employee already has a child support or alimony withholding order in effect, and the total deduction for child support and alimony equal or exceeds 25 percent of an employee's disposable pay, then do not process a deduction for a commercial debt. Further, limitations on the amount to be garnished are found

in [5 C.F.R. 582.402](#). There is no limit on the percentage amount for garnishment for Federal, state, or local tax obligations, or for bankruptcy court orders.

\* E. [Procedures](#). Send all court orders for commercial debts to:

DFAS-Cleveland  
Garnishment Operations  
P.O. Box 998002  
Cleveland, OH 44199-8002

Toll free fax (877) 622-5930

Commercial fax (216) 367-3675

Upon review of the court order, DFAS-CL will process the commercial garnishment deduction information in DCPS. A cancellation to the court order will be automatic on the date of separation from DoD, upon death of the employee, or upon notification from the court that the garnishment is terminated. The employee cannot voluntarily stop court ordered deductions.

F. [Administrative Fee](#). A \$75.00 administrative fee will be added to the garnishment amount and collected from the employee. The administrative fee will be collected in full before any payments are remitted to the creditor. The \$75.00 administrative fee will be assessed for each [commercial garnishment](#) that is received and processed.

## 0805 BANKRUPTCIES

\*080501. General

This section applies to DoD employees who have filed a bankruptcy petition under [Chapter 7](#) or [Chapter 13](#) of Title 11 of the United States Code (Bankruptcy Code). The law waives the U.S. Government's sovereign immunity for purposes of compliance with payroll deduction orders issued by the bankruptcy courts. Accordingly, DFAS will process the collection in accordance with the instructions on the court order.

A. [Automatic Stay Provisions](#). Collecting an amount of indebtedness owed to the U.S. that was incurred prior to the filing date of the petition is described as a prepetition debt. [Collecting debts by offset from the employee's pay account is authorized only through the day prior to the date the bankruptcy petition is filed.](#) Continuing deductions from the employee's pay after the filing of a petition in a bankruptcy is improper and violates the automatic stay provisions of the bankruptcy statute. Amounts withheld after the date the bankruptcy petition is filed must be refunded to the employee. [The automatic stay provisions of the Bankruptcy Code do not preclude continued deductions based on court-ordered child support and spousal support obligations.](#) Coordinate with the DFAS office of General Counsel (OGC), Garnishment Operations if there are any questions about collecting a debt when a debtor has filed bankruptcy.

B. [Proof of Claim](#). Upon notice or actual knowledge of the filing of a bankruptcy petition, when the employee has listed the U.S. Government as a creditor, the PRO

files a proof of claim with the bankruptcy court concerned for all Chapter 13 filings and, if requested by the bankruptcy trustee, for Chapter 7 cases.

\* C. Post-Petition Debt. If the bankruptcy is completed and the employee receives a discharge, then generally, the listed indebtedness to the United States is discharged with few exceptions. Any new debt that was incurred after the filing of the bankruptcy petition is known as a post-petition debt. The bankruptcy proceedings do not affect post-petition debts. However, prior to taking any collection action on post-petition debts, the matter should be coordinated with the DFAS Office of General Counsel, Garnishment Operations.

D. Court Dismissal. If the court subsequently dismisses a bankruptcy case, then collection of the previously suspended debt is permitted by offset if otherwise authorized.

E. Procedures

1. Submit or fax bankruptcy notices and Chapter 13 withholding orders to:

DFAS-Cleveland  
Garnishment Operations  
P. O. Box 998002  
Cleveland, OH 44199-8002

Toll free fax (877) 622-5390  
Commercial Fax (216) 367-3675

a. The employee's full name and full Social Security Number must be included with the bankruptcy order.

b. The bankruptcy notice is effective when it is signed by the court and the provisions of the automatic stay are effective on the date that the bankruptcy petition is filed.

c. When the notice does not sufficiently identify the employee, return it directly to the person who submitted the order with an explanation of the deficiency.

2. Upon receipt of an effective bankruptcy order, together with all the required information, Garnishment Operations will review the case to determine if there are any commercial garnishments that need to be terminated as a result of the automatic stay (child support, alimony, child support arrears, and alimony arrears are not terminated unless the bankruptcy order specifically so states). Garnishment Operations will then establish the withholding against the employee's pay to comply with the bankruptcy order within 30 days. Withholdings will continue until the amount specified in the order is collected, or the order is canceled or suspended.

a. Within 30 calendar days after the date of receipt of the order, the designated official will send notice to the employee.

b. The letter will inform the employee the date that the withholding is scheduled to begin and the amount or percentage that will be deducted.

c. When the employee identified in the order is found not to be entitled to money due from or payable by DFAS, the designated official will return the order to the person who submitted it and advise him or her that no money is due from or payable by DFAS to the named individual. When it appears that amounts are exhausted temporarily, or otherwise unavailable, the authorized person shall be told why and for how long any money is unavailable, if known.

\*080502. [Adjustment of Debts of an Individual With Regular Income - Chapter 13 \(The Plan\)](#)

A. [Under the Bankruptcy Code](#), an employee may file a petition with the court to enter into a “Chapter 13 Plan.” [Title 11, U.S.C. § 1325](#) permits an indebted individual who has a regular income to file a Plan with the bankruptcy court designed to liquidate all or part of the creditor's claim. When a Plan has been approved, the court may order DoD to pay all or part of the employee’s wages to a trustee for the employee.

B. When the court confirms the Plan, its provisions are binding upon the employee and all creditors of the employee, regardless of whether they are affected by the Plan or have been included in the Plan.

C. Once the bankruptcy court confirms a Plan, it usually orders the employer to pay a specific amount of an employee’s income to the trustee named in the order.

D. The pay of an employee is subject to payment to the trustee appointed by the court pursuant to Chapter 13 of the Bankruptcy Code. Compliance with such a court order gives the government a valid acquittance against the employee since the court order is binding on the employee.

E. If the U.S. is both the employer and creditor when the individual files a Chapter 13 Plan, then the government’s priority under [31 U.S.C. § 3713](#) may be asserted in the absence of a judicial determination to the contrary. This is done through a filing of the proof of claim by the appropriate PRO. [The proof of claim is filed with the bankruptcy court Official Form B 410, Proof of Claim.](#)

0806 TAX LEVY FOR UNPAID FEDERAL INCOME TAX

\*080601. Authority

The IRS District Directors are authorized under [26 U.S.C. § 6331](#) to collect delinquent Federal income taxes by levy on the salary or wages of any U.S. or Washington,

District of Columbia employee. When the employee fails to pay Federal income tax due within 30 days after the IRS issues a notice and payment demand, a levy against the employee's wages may be issued. The levy is served against the take home pay of the employee and attaches only to the salary check or cash disbursement the employee would receive on payday if it were not for the levy.

A. Allotments. After the PRO receives a levy, the PRO must not allow employees to increase or add any voluntary allotments. Changes that increase existing voluntary allotments are only authorized after the total tax liability is paid or arrangements are made with the IRS.

B. Time Limits. The IRS has the authority to collect outstanding Federal taxes for 10 years from the date the tax liability was assessed. However, the 10-year collection period can be suspended and the amount of time the suspension is in effect will be added to the time remaining in the 10-year period. For example, if the 10-year period is suspended for 6 months, the time left in the period the IRS will have to collect will increase by 6 months.

#### 080602. Procedures

When the IRS serves the Form 668-W(c), Notice of Levy on Wages, Salary, and Other Income, the PRO will take immediate action to implement the levy. Once the PRO processes the levy, the levy will continue in effect until the collection is complete or until the IRS releases the levy.

A. Notice to Employee. The PRO must follow instructions as indicated on Form 668-W(c) and provide notice to the employee that a levy has been received.

B. Claiming of Exemptions. Employees are permitted to claim a biweekly personal exemption and a biweekly exemption for each dependent. The IRS changes the exemption amounts each year. The PRO must use the IRS Publication 1494 schedule issued with the Form 668-W(c) for the current exemption amounts.

1. Employee Responsibilities. The employee must certify exemptions and provide the information to the PRO on Form 668-W(c) under "Statement of Exemptions and Filing Status." The employee must return the completed form to the PRO for processing. If the employee fails to provide exemption information to the PRO, a dependency exemption will not be allowed and only the minimum personal exemption for each pay period will be allowed. An employee may provide a new statement to the PRO at a later date to have the exempt amount recomputed. The employee does not have to return the form if they have no dependency exemptions to claim.

2. Court Judgment. If the employee is required by a court judgment (made before the date of the levy) to contribute to the support of minor children, that amount of salary, wages, or other income is already exempt from the levy and the employee may not claim the minor children as exemptions.

C. Computing Take Home Pay. The levy attaches to the employee's take home pay minus the allowable exceptions. Unless otherwise instructed by the IRS, the employee's payroll deductions in effect when the levy was received will be allowed when determining the employee's take home pay. However, a voluntary allotment may be disallowed if the deduction is so large it defeats the levy. The IRS may notify the PRO when different procedures should be followed for specific employees. To determine the employee's take home pay, the levy attaches to the gross amount of the employee's accrued wages or salary, less the following deductions:

1. Social Security/Medicare;
2. Retirement;
3. FEHB;
4. FEGLI;
5. Pay attached or garnished for child support or alimony;
6. Overpayments due the U.S. Government; and
7. Allowable personal exemptions, certified by the employee on

Form 668-W(c).

D. Return Form 668-W(c) to the IRS. After the PRO makes the first deduction for the levy against the employee's pay, the PRO must follow instructions on the Form 668-W(c) and return Part 3 of the form to the IRS.

E. Employee Transfers or Separation

1. Transfers Within DoD. If the employee has been reassigned to an organization serviced by another PRO, then the losing PRO must inform the IRS District Director of the employee's new address. The losing PRO must mail the complete levy package to the new PRO for processing.

2. Other Employee Transfers or Separation. If the employee has moved from overseas, transferred to another Federal agency, separated or retired, then PRO will return the levy to the IRS District Director and provide the employee's new address, if known, on Form 668-W(c).

F. No Employee Record Found. If the PRO receiving the levy has no record that payroll service has been furnished for the employee, the PRO must annotate that fact on the bottom of the levy and return the levy to the IRS District Director.

## 080603. Voluntary Deductions for Unpaid Federal Income Tax

An employee may arrange with the IRS to liquidate a delinquent Federal income tax debt through voluntary biweekly payroll deductions. [IRS Form 2159](#), Payroll Deduction Agreement must be submitted to the PRO to initiate the deduction process.

## \*0807 PAY CORRECTIONS AND TAX REPORTING

## 080701. General

A. Purpose. This section provides guidance on how to process pay corrections and the corresponding tax reporting when an employee has been overpaid or underpaid earnings.

B. Authoritative Guidance. The authority used to derive procedures for this section includes IRS Circular E and corresponding statutes and regulations.

## 080702. Corrections for Underpayment of Earnings

For active or separated employees, there is no distinction between a payment for the current or prior calendar year. The adjusting payment is reported as wages at the time the payment is made. No correction on the [IRS Form 941](#) is required.

A. Active Employees. For active employees, the PRO must:

1. Process the payment in the next regular pay cycle;
2. Report the gross wages subject to Social Security/Medicare taxes withheld as current quarterly earnings on the IRS Form 941; and
3. Include the earnings and Social Security/Medicare taxes withheld on the W-2 for the current year.

B. Separated Employees. For separated employees, the PRO must:

1. Reestablish the employee on the payroll and process the payment in the current pay cycle;
2. Report the gross wages subject to Social Security/Medicare taxes withheld as current quarterly earnings on Form 941; and
3. Prepare W-2c if a W-2 was issued.

## 080703. Corrections for Overpayment of Earnings in the Current Year

A. Active Employees. For active employees, the PRO should:

1. Instruct the employee to refund the overpayment in accordance with due process procedures; and

2. Record the amount as a reversal in the base pay, gross pay, net pay, or other pay as applicable, after receipt of the refund or returned check from the employee.

B. Separated Employees. For separated employees, the PRO will follow debt collection procedures as outlined in Volume 16, Chapter 3.

1. Reestablish the employee on the payroll and process the reversals in the current pay cycle.

2. Prepare W-2c if W-2 was issued.

\*080704. Corrections for Overpayment of Earnings for a Prior Year

If the overpayment occurred in a previous calendar year, then no correction of earnings for Federal, state, or local withholding taxes will be made for the current calendar year.

A. Active Employees. For active employees, the PRO will:

1. Prepare a W-2c in accordance with IRS Circular E for the prior year to reduce the gross wages subject to Social Security/Medicare and Social Security/Medicare taxes withheld if the year of repayment is still within the 3-year statute of limitations for Social Security and/or Medicare tax refunds. Send copies to the employee and copy A to the Social Security Administration (SSA). Upon completion of the correction procedures, send a separate IRS Form W-3, Transmittal of Wage and Tax Statements, with the corrected W-2 to the SSA. If the repayment is beyond the 3-year statute of limitations, then do not make corrections to prior year W-2 and Form 941;

2. Attach the employer's copy of the W-2c to the retained W-2 previously issued for the prior year;

3. Prepare Form 941-X, to correct errors made on IRS Form 941;

4. Retain copies of the forms in the PRO;

5. Prepare a tax certificate for the employee after collection of the amount due from the employee. The amount entered on the certificate is the total amount of the reverse deductions plus the amount the employee repaid. The employee may be entitled to a deduction (or credit in some cases) for the repaid wages on the employee's income tax return for the year of repayment. See 26 U.S.C. 1341 and IRS Publication 525.

6. Manually note the amount of the correction and the date of the collection on the employee's prior year individual pay record.

B. Separated Employees. For separated employees, the PRO will:

1. Follow procedures outlined in subparagraphs 080704.A, and

2. Keep a copy of the W-2c and Form 941-X to balance the annual

Federal tax deposits.