## **Rules and Regulations**

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## OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 582

RIN 3206-AF83

## Commercial Garnishment of Federal Employees' Pay

**AGENCY:** Office of Personnel

Management.

ACTION: Final rule.

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

**EFFECTIVE DATE:** April 10, 1995. **FOR FURTHER INFORMATION CONTACT:** Murray M. Meeker, Attorney, Office of the General Counsel, (202) 606–1980.

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

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

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

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

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

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

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

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