

Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Parts 581 and 582

RIN 3206-AH43

Processing Garnishment Orders for Child Support and Alimony and Commercial Garnishment of Federal Employees' Pay

AGENCY: Office of Personnel
Management.

ACTION: Proposed rulemaking.

SUMMARY: The Office of Personnel Management (OPM) proposes to amend the rules for processing garnishment orders for child support and alimony and the rules for processing commercial garnishment orders. The majority of the amendments to the child support and alimony garnishment regulations ("support regulations") are mandated by the provisions of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996.

In addition, OPM proposes to amend both the support regulations and the commercial garnishment regulations to provide that while the Federal Government's sovereign immunity has been waived to allow for processing garnishment orders, this waiver necessarily limited and that the Federal Government is not liable to pay money damages for failure to comply with legal process.

DATES: Comments should be received by August 11, 1997.

ADDRESSES: Send or deliver comments to Lorraine Lewis, General Counsel, Office of Personnel Management, Room 7355, 1900 E Street NW., Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT: Murray M. Meeker, Senior Attorney, Office of the General Counsel, (202) 606-1701.

SUPPLEMENTARY INFORMATION: In accordance with the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Public Law 104-193, enacted on August 22, 1996,

OPM proposes to revise the definition of "child support" to permit the garnishment of attorney fees relating to the garnishment action. OPM also proposes to include three more types of Federal payments, that will be subject to garnishment: pension payments disbursed by the Department of Veterans Affairs; compensation for death payments; and "black lung" benefits payable under any Federal program.

While not expressly mandated by Public Law 104-193, OPM believes that it was the intent of Congress in enacting this law, that awards for making suggestions as authorized by 5 U.S.C. 4503 be subject to support garnishment. OPM is, therefore, proposing to delete the exception for suggestion awards in section 581.104(j). These awards remain exempt from commercial garnishment orders.

OPM proposes amendments to clarify section 581.105 concerning the precedence of tax levies and section 581.402 concerning the applicability of the maximum limitation of the Consumer Credit Protection Act, 15 U.S.C. 1673, in the unusual situation where an employee-obligor receives remuneration from more than one governmental entity.

In compliance with the National Defense Authorization Act (NDAA) for Fiscal Year 1996, Public Law 104-106, enacted on February 10, 1996, OPM proposes to amend section 582.305(k) to require employing agencies to deduct the agency's administrative costs incurred in complying with commercial garnishment orders. In accordance with the intent of Congress as evidenced by the applicable legislative history of the NDAA, the creditor will be required to pay these costs.

As requested by the Department of Justice, OPM is also proposing to amend section 582.305(c) where an appeal of a commercial garnishment action is filed and to amend section 582.305(g) in response to an issue raised in a recent judicial decision, *First Virginia Bank v. Randolph*, 920 F.Supp. 213 (D.D.C. 1996), *rev'd*, No. 96-5205 (D.C. Cir. April 11, 1997). Section 582.305(g) currently provides that where an employing agency initially determines that legal process should not be honored, if it subsequently determines that the initial determination was erroneous, the agency may correct its

initial determination and honor the legal process. The district court indicated that the current section 582.305(g) supported the court's holding that Congress had waived the Federal Government's immunity in instances where an employing agency failed to comply with a commercial garnishment order. OPM's regulations are neither intended, nor may they be properly constructed, as support for the conclusion that Congress has waived the Federal Government's sovereign immunity in a manner that would make the Federal Government liable for damages as a result of a failure to comply with legal process. The proposed amendment to section 582.305(g) would delete both that portion of the paragraph that discusses an agency's authority to correct an error and the conclusion that under no circumstances will an agency be required to pay more than if it had originally honored the legal process, as this provision may be mistakenly construed as acknowledging Government liability and a concomitant waiver of sovereign immunity.

OPM also proposed, in accordance with a request from the Justice Department, to amend section 581.305(e) to state the Government's similar absence of liability in the context of improperly effectuated support garnishment orders. It is the Federal Government's position that the support garnishment statute did not waive sovereign immunity in a manner that would make the Federal Government liable for damages as a result of failure to comply with legal process. This amendment to the support garnishment regulations alters regulatory language that has been in effect since 1980. The current regulatory language is incorrect as a matter of law. This amendment is in accordance with several important judicial decisions concerning sovereign immunity, including the decision recently announced by the United States Court of Appeals for the District of Columbia Circuit in *Department of the Army v. Federal Labor Relations Authority*, 56 F.3d 273 (1995).

In accordance with the Minimum Wage Increase Act of 1996, section 2104 of Public Law 104-188, OPM is amending section 582.402. Effective October 1, 1996, section 2104 set the minimum hourly wage at \$4.75, and

effective September 1, 1997, the minimum hourly wage will be \$5.15.

Regulatory Flexibility Act

I certify that these regulations will not have significant economic impact on a substantial number of small entities because their effects are limited to Federal employees and their creditors.

Executive Order 12866, Regulatory Review

This rule has been reviewed by the Office of Management and Budget in accordance with Executive Order 12866.

List of Subjects in 5 CFR Parts 581 and 582

Alimony, Child support, Claims, Government employees, and Wages.

U.S. Office of Personnel Management.

James B. King,

Director.

Accordingly, OPM is proposing to amend parts 581 and 582 of Title 5, Code of Federal Regulations, as follows:

PART 581—PROCESSING GARNISHMENT ORDERS FOR CHILD SUPPORT AND ALIMONY

1. The authority citation for part 581 is revised as follows:

Authority: 42 U.S.C. 659; 15 U.S.C. 1673; E.O. 12105 43 FR 59465 and 3 CFR, 1979 Comp., p. 262.

2. Section 581.101 is revised to read as follows:

§ 581.101 Purpose.

(a) Notwithstanding any other provision of law (including section 407 of title 42, United States Code, section 5301 of title 38, United States Code, and sections 8346 and 8470 of title 5, United States Code), section 659 of title 42, United States Code, as amended, provides that moneys, the entitlement to which is based upon remuneration for employment, due from, or payable by, the United States or the District of Columbia to any individual, shall be subject, in like manner and to the same extent as if the United States or the District of Columbia were a private person:

(1) To legal process for the enforcement of an obligor's legal obligations to provide child support, alimony, or both, resulting from an action brought by an individual obligee; and

(2) To withholding in accordance with State law enacted pursuant to subsections (a)(1) and (b) of section 666 of title 42, United States Code, and to regulations of the Secretary of Health and Human Services under such

subsections, and to any other legal process brought by a State agency subject to regulations of the Secretary of Health and Human Services that is administering a program under an approved State plan to enforce the legal obligations of obligors to provide child support and alimony.

(b) Section 659 of title 42, United States Code, as amended, provides further that each governmental entity shall be subject to the same requirements as would apply if the governmental entity were a private person, except as set forth in this part.

3. In § 581.102, paragraphs (d) and (f) are revised and paragraph (k) is added to read as follows:

§ 581.102 Definitions.

* * * * *

(d) *Child support* means the amounts required to be paid for the support and maintenance of a child, including 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, who provides for 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.

* * * * *

(f) *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 the nature of garnishment, which may include an attachment, writ of execution, or court ordered wage assignment, which—

(1) Is issued by:
(i) A court of competent jurisdiction, including Indian tribal courts, within any State, territory, or possession of the United States, or the District of Columbia;
(ii) 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
(iii) An authorized official pursuant to an order of a court of competent jurisdiction or pursuant to State or local law; or

(iv) A State agency authorized to issue income withholding notices pursuant to State or local law or pursuant to the requirements of section 666(b) to title 42 of the United States Code; and

(2) 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

* * * * *

(k) *Individual obligee* means any individual or entity other than a State agency authorized to issue income withholding notices pursuant to the requirements of section 666(b) to title 42 of the United States Code.

4. In § 581.103, paragraph (c) is revised to read as follows:

§ 581.103 Moneys which are subject to garnishment.

* * * * *

(c) For obligors generally:

(1) Periodic benefits, including a periodic benefit as defined in section 429(h)(3) of title 42 of the United States Code, title II of the Social Security Act, to include a benefit payable in a lump sum if it is commutation of, or a substitute for, periodic payments; or other payments to these individuals under the programs established by subchapter II of chapter 7 of title 42 of the United States Code (Social Security Act); pension payments made by the Department of Veterans Affairs; and payments under chapter 9 of title 45 of the United States Code (Railroad Retirement Act) or any other system, plan, or fund established by the United States (as defined in section 662(a) of title 42 of the United States Code) which provides for the payment of:

(i) Pensions;
(ii) Retirement benefits;
(iii) Retired/retainer pay;
(iv) Annuities; and
(v) Dependents' or survivors' benefits when payable to the obligor;
(2) Refunds of retirement contributions where an application has been filed;
(3) Employee contributions and Government contributions to the obligor's Thrift Savings Fund account in accordance with section 8437(e) of title 5 of the United States Code;
(4) Amounts received under any Federal program for compensation for work injuries; and
(5) Benefits received under the Longshoremen's and Harbor Workers' Compensation Act.

(6) Compensation for death under any Federal program, including death gratuities authorized under 5 U.S.C. 8133(f); 5 U.S.C. 8134(a); Public Law 103-332, section 312; and Public Law 104-208, section 651.

(7) Any payment under any Federal program established to provide "black lung" benefits;

(8) Any payment by the Secretary of Veterans Affairs as compensation for a service-connected disability paid by the Secretary to a former member of the

Armed Forces who is in receipt of retired or retainer pay if the former member has waived either the entire amount or a portion of the retired or retainer pay in order to receive such compensation. In such cases, only that part of the Department of Veterans Affairs payment that is in lieu of the waived retired pay or waived retainer pay is subject to garnishment.

§ 581.104 [Amended]

5. In § 581.104, paragraph (j) is removed and paragraph (k) is redesignated as paragraph (j).

6. In § 581.105, paragraph (a) is revised to read as follows:

§ 581.105 Exclusions.

* * * * *

(a) Are owed by the individual to the United States, except that an indebtedness based on a levy for income tax under section 6331 of title 26 of the United States Code, shall 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;

* * * * *

7. In § 581.202, paragraphs (a) and (b) are revised to read as follows:

§ 581.202 Service of process.

(a) A party using this part shall serve legal process on the agent designated in appendix A to this part, or if no agent has been designated for the governmental entity having payment responsibility for the moneys involved, then upon the head of that governmental entity, which has moneys due and payable to the obligor. Where the legal process is directed to, and the purpose of the legal process is to compel a governmental entity which holds moneys which are otherwise payable to an individual, to make a payment from such moneys in order to satisfy a legal obligation of such individual to provide child support or make alimony payments, the legal process need not expressly name the governmental entity as a garnishee.

(b) Service shall be accomplished pursuant to State procedures in effect pursuant to subsection (a)(1) or (b) of section 666 of title 42 of the United States Code. The designated agent shall note the date and time of receipt on the legal process. The governmental entity shall make every reasonable effort to facilitate proper service of process on its designated agent(s). If legal process is not directed to any particular official within the entity, or if it is addressed to the wrong individual, the recipient shall, nonetheless, forward the legal process to the designated agent.

However, valid service is not accomplished until the legal process is received in the office of the designated agent.

* * * * *

8. In § 581.303, paragraph (a) is revised to read as follows:

§ 581.303 Response to legal process or interrogatories.

(a) Whenever the designated agent is validly served with legal process pursuant to State procedures in effect pursuant to subsection (a)(1) or (b) of section 666 of title 42, United States Code, within 30 calendar days, or within such longer period as may be prescribed by applicable State law, the agent shall comply with all applicable provisions of section 666, including as follows:

(1) If an agent is served with notice concerning amounts owed by an obligor to more than one person, the agent shall comply with section 666(b)(7);

(2) Allocation of moneys due and payable to an individual under section 666(b) shall be governed by section 666(b) and the regulations prescribed under such section by the Secretary of Health and Human Services;

(3) Such moneys as remain after compliance with paragraphs (a)(1) and (a)(2) of this section shall be available to satisfy any other such legal process on a first-come, first-served basis, with any such legal process being satisfied out of such moneys as remain after the satisfaction of all such legal process which have been previously served.

(4) The agent shall also respond within 30 days to interrogatories which accompany legal process.

* * * * *

9. In § 581.305, paragraphs (d) and (e) are revised to read as follows:

§ 581.305 Honoring legal process.

* * * * *

(d) If a governmental entity is served with more than one legal process for the same moneys due or payable to an individual, the entity shall comply with § 581.303(a). *Provided*, That in no event will the total amount garnished for any pay or disbursement cycle exceed the applicable limitation set forth in § 581.402.

(e)(1) Neither the United States, any disbursing officer, nor any governmental entity shall be liable for any payment made from moneys due from, or payable by, the United States to any individual pursuant to legal process regular on its face, if such payment is made in accordance with this part.

(2) Neither the United States, any disbursing officer, nor any governmental entity shall be liable under this part to

pay money damages for failure to comply with legal process.

* * * * *

10. In subpart D, § 581.402 is revised to read as follows:

§ 581.402 Maximum garnishment limitations.

(a) Except as provided in paragraph (b) of this section, pursuant to section 1673(b)(2) (A) and (B) of title 15 of the United States Code (the Consumer Credit Protection Act, as amended), 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 any support order(s) shall not exceed:

(1) Fifty percent of the obligor's aggregate disposable earnings for any workweek, where the obligor asserts by affidavit, or by other acceptable evidence, that he or she is supporting a spouse, a dependent child, or both, other than the former spouse, child, or both, for whose support such order is issued, except that an additional five percent will apply if it appears on the face of the legal process, or from other evidence submitted in accordance with § 581.202(d), that such earnings are to enforce a support order for a period which is 12 weeks prior to that workweek. An obligor shall be considered to be supporting a spouse, dependent child, or both, only if the obligor provides over half of the support for a spouse, dependent child or both.

(2) Sixty percent of the obligor's aggregate disposable earnings for any workweek, where the obligor fails to assert by affidavit or establishes by other acceptable evidence, that he or she is supporting a spouse, dependent child, or both, other than a former spouse, child, or both, with respect to whose support such order is issued, except that an additional five percent will apply if it appears on the face of the legal process, or from other evidence submitted in accordance with § 581.202(d), that such earnings are to enforce a support order for period which is 12 weeks prior to that workweek.

(3) Where, under § 581.302(a)(2), an obligor submits evidence that he or she is supporting a second spouse, child, or both a second spouse and dependent child, copies of the evidence shall be sent by the governmental entity to the garnishor, or the garnishor's representative, as well as the court, or other authority as specified in § 581.102(f)(1), together with notification that the obligor's support claim will be honored. If the garnishor disagrees with the obligor's support

claim, the garnishor should immediately refer the matter to the court, or other authority, for resolution.

(b) In instances where an obligor is receiving remuneration from more than one governmental entity, an authority described in § 581.102(f)(1) may apply the limitations described in paragraph (a) of this section to the total remuneration, i.e., to the combined aggregate disposable earnings received by the obligor.

PART 582—COMMERCIAL GARNISHMENT OF FEDERAL EMPLOYEES' PAY

11. The authority citation for part 582 is revised as follows:

Authority: 5 U.S.C. 5520a; 15 U.S.C. 1673; Pub. L. 104-106, section 643; E.O. 12897, 3 CFR, 1995 Comp., p. 858.

12. In § 582.305, paragraphs (c), (g), and (k) are revised to read as follows:

§ 582.305 Honoring legal process.

(c) (1) The filing of an appeal by an employee-obligor will not generally delay the processing of a garnishment action. If the employee-obligor establishes to the satisfaction of the employee-obligor's agency that the law of the jurisdiction which issued the legal process provides that the processing of the garnishment action shall be suspended during an appeal, and if the employee-obligor establishes that he or she has filed an appeal, the employing agency shall comply with the applicable law of the jurisdiction and delay or suspend the processing of the garnishment action.

(2) Notwithstanding paragraph (c)(1) of this section, the employing agency shall not be required to establish an escrow account to comply with legal process even if the applicable law of the jurisdiction requires private employers to do so.

(g) (1) Neither the United States, an executive agency, nor any disbursing officer shall be liable for any payment made from moneys due from, or payable by, the United States to any individual pursuant to legal process regular on its face, if such payment is made in accordance with this part.

(2) Neither the United States, an executive agency, nor any disbursing officer shall be liable under this part to pay money damages for failure to comply with legal process.

(k) The agency's administrative costs incurred in executing a garnishment shall be paid by the creditor. The amount garnished, including the

amount deducted as a administrative costs, may not exceed the limitations in § 582.401

[Example to paragraph (k): Where the employee-obligor's aggregate disposable earnings are \$1,000; the commercial garnishment is at the 25% maximum percentage; and the cost of processing the commercial garnishment order is \$25 per garnishment action: \$225 would be remitted in compliance with the order and \$25 would be deducted as the administrative cost for a deduction total of \$250. However, while only \$225 would be remitted, the agency would reduce the balance due as if \$250 had been remitted.]

13. In § 582.402, paragraph (a) is revised to read as follows:

§ 582.402 Maximum garnishment limitations.

(a) Unless a lower maximum limitation is provided by applicable State or local law, the maximum part of an employee-obligor's aggregate disposable earnings 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 as provided for in § 582.305(k), shall not exceed 25 percent of the employee-obligor's aggregate disposable earnings for any workweek. As appropriate, State or local law should be construed as providing a lower maximum limitation where legal process may only be processed on a one at a time basis. Where an agency is garnishing 25 percent or more of an employee-obligor's aggregate disposable earnings for any workweek in compliance with legal process to which an agency is subject under sections 459, 461, and 462 of the Social Security Act, no additional amount may be garnished in compliance with legal process under this part. Furthermore, the following dollar limitations, which are contained in title 29 of the Code of Federal Regulations, part 870, must be applied in determining the garnishable amount of the employee's aggregate disposable earnings:

(1) If the employee-obligor's aggregate disposable earnings for the workweek are in excess of 40 times the Fair Labor Standard Act (FLSA) minimum hourly wage, 25 percent of the employee-obligor's aggregate disposable earnings may be garnished. For example, effective September 1, 1997, when the FLSA minimum wage rate is \$5.15 per hour, this rate multiplied by 40 equals \$206.00 and thus, if an employee-obligor's aggregate disposable earnings are in excess of \$206.00 for a workweek, 25 percent of the employee-obligor's

aggregate disposable earnings are subject to garnishment.

(2) If the employee-obligor'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-obligor's aggregate disposable earnings exceed 30 times the current minimum wage rate. For example, at an FLSA minimum wage rate of \$5.15 per hour, the amount of aggregate disposable earnings which may not be garnished is \$154.50 [\$5.15 x 30]. Only the amount above \$154.50 is garnishable.

(3) If the employee-obligor's aggregate disposable earnings in a workweek are equal to or less than 30 times the FLSA minimum hourly wage, the employee-obligor's earnings may not be garnished in any amount.

[FR Doc. 97-15182 Filed 6-10-97; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 96-CE-58-AD]

RIN 2120-AA64

Airworthiness Directives; Fairchild Aircraft Incorporated Models SA226-TC, SA226-T, SA226-T(B), and SA226-AT Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt a new airworthiness directive (AD) that would apply to certain Fairchild Aircraft Incorporated (Fairchild) Models SA226-TC, SA226-T, SA226-T(B), and SA226-AT airplanes. The proposed AD would require inspecting the center flap hinge and wing trailing edge ribs at the flap actuator attach brackets for cracks and if no cracks are found, installing a doubler on the rib, or replacing a cracked rib with a new rib assembly that is reinforced with a doubler. Fatigue cracks at the center flap hinge and the support link has resulted in concentrated stress on the wing trailing edge ribs which prompted the proposed action. The actions specified by the proposed AD are intended to prevent asymmetrical flap deflection forcing the airplane into an uncommanded roll and