

§ 581.103

5 CFR Ch. I (1-1-10 Edition)

to the extent that the same are expressly made recoverable as such pursuant to a decree, order, or judgment issued in accordance with applicable State law by a court of competent jurisdiction. *Alimony* does not include child support or any payment or transfer of property or its value by an individual to the spouse or a former spouse of the individual in compliance with any community property settlement, equitable distribution of property, or other division of property between spouses or former spouses.

(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, court ordered wage assignment, or in the case where a child support order is submitted by a child support agency using the standard Order/Notice to withhold income for child support as required by section 324 of Pub. L. 104-193 and 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.

(g) *Legal obligation* means an obligation to pay alimony and/or child support that is enforceable under appropriate State or local law. A legal obli-

gation may include current as well as past due alimony and/or child support debts depending on the law in the jurisdiction from which the legal process was issued.

(h) *Obligor* means an individual having a legal obligation to pay alimony and/or child support.

(i) *Remuneration for employment* means compensation paid or payable for personal services, 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 § 581.103.

(j) *Party* means the person or persons to whom alimony and/or child support payments should be made, or, in the case of an agency established by State or local law, the agency which has been assigned, by law or by agreement, the right to receive such payment or payments.

(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.

[45 FR 85667, Dec. 30, 1980, as amended at 48 FR 26279, June 7, 1983; 55 FR 1355, Jan. 16, 1990; 63 FR 14757, Mar. 26, 1998]

**§ 581.103 Moneys which are subject to garnishment.**

(a) For the personal service of a civilian employee obligor:

- (1) Saved pay;
- (2) Retained pay;
- (3) Night differentials;
- (4) Sunday and holiday premium pay;
- (5) Overtime pay;
- (6) Standby duty pay, administratively uncontrollable overtime pay, and availability pay;
- (7) Environmental differentials;
- (8) Hazardous duty pay;
- (9) Tropical differentials;
- (10) Recruitment incentives, recruitment and relocation bonuses and retention allowances;
- (11) Equalization allowance;
- (12) Any payment in consideration of accrued leave;
- (13) Severance pay;
- (14) Sick pay;
- (15) Physicians comparability allowances;

**Office of Personnel Management**

**§ 581.103**

(16) Special pay for physicians and dentists;

(17) Amounts paid pursuant to a personal services contract where the contractor recipient performed the services and received the payments in the capacity as a Federal employee;

(18) Merit pay;

(19) Incentive pay;

(20) Cash awards, including performance-based cash awards;

(21) Agency and Presidential incentive awards (except where such award is for making a suggestion);

(22) Senior Executive Service rank and performance awards;

(23) Moneys due for the services of a deceased employee obligor, including:

(i) Overtime or premium pay;

(ii) Amounts due as refunds of pay deductions for United States savings bonds;

(iii) Payments for accumulated and current accrued annual or vacation leave as provided for in section 5581 of title 5 of the United States Code;

(iv) Retroactive pay as provided for in section 5344(b)(2) of title 5 of the United States Code; and

(v) Amounts of checks drawn for moneys due which were not delivered by the governmental entity to the employee obligor prior to the employee obligor's death or which were not negotiated and returned to the governmental entity because of the death of the employee obligor, except those moneys due that are listed in § 581.104(i);

(24) Locality-based comparability payments or continued rate adjustments;

(25) Staffing differentials;

(26) Supervisory differentials;

(27) Special pay adjustments for law enforcement officers in selected cities;

(28) Advances in pay; and

(29) Voluntary separation incentive payments.

(b) For the personal service of an obligor in the uniformed services of the United States:

(1) Basic pay (including service academy cadet and midshipmen pay);

(2) Special pay (including enlistment and re-enlistment bonuses);

(3) Lump sum reserve bonus;

(4) Continuation pay for physicians and dentists;

(5) Special pay for physicians, dentists, optometrists, and veterinarians;

(6) Incentive pay;

(7) Variable incentive pay;

(8) Inactive duty training pay;

(9) Administrative duty pay;

(10) Academy official pay (other than personal money allowances);

(11) Any payments made in consideration of accrued leave (basic pay portion only);

(12) Readjustment pay;

(13) Disability retired pay;

(14) Severance pay (including disability severance pay);

(15) Cash awards (NOAA Corps);

(16) Special separation benefits; and

(17) Voluntary separation incentives.

(c) For obligors generally:

(1) Periodic benefits, including a periodic benefit as defined in section 428(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); 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) Amounts received under any federal program for compensation for work injuries; and

(4) Benefits received under the Longshoremen's and Harbor Workers' Compensation Act.

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

**§581.104**

**5 CFR Ch. I (1-1-10 Edition)**

(6) Any payment under any federal program established to provide “black lung” benefits;

(7) 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.

[45 FR 85667, Dec. 30, 1980, as amended at 48 FR 26279, June 7, 1983; 55 FR 1356, Jan. 16, 1990; 56 FR 36723, Aug. 1, 1991; 58 FR 35846, July 2, 1993; 59 FR 66154, Dec. 23, 1994; 61 FR 3544, Feb. 1, 1996; 63 FR 14758, Mar. 26, 1998]

**§581.104 Moneys which are not subject to garnishment.**

(a) Payments made pursuant to the provisions of the Federal Tort Claims Act, as amended, sections 1346(b) and 2671 *et seq.*, of title 28 of the United States Code;

(b) Payments or portions of payments made by the Department of Veterans Affairs pursuant to sections 501-562 of title 38 of the United States Code, in which the entitlement of the payee is based on non-service-connected disability or death, age, and need;

(c) Refunds and other payments made in connection with overpayments or erroneous payments of income tax and other taxes levied under title 26 of the United States Code;

(d) Grants;

(e) Fellowships;

(f) Education and vocational rehabilitation benefits for veterans and eligible persons under chapters 30, 31, 32, 35, and 36 of title 38, United States Code, and chapters 106 and 107 of title 10, United States Code;

(g) Contracts, except where the contractor recipient performed personal services and received payments in his/her capacity as an employee of a governmental entity; and

(h) Reimbursement for expenses incurred by an individual in connection with his/her employment, or allow-

ances in lieu thereof, and other payments and allowances, including, but not limited to:

- (1) In the case of civilian employees:
  - (i) Uniform allowances;
  - (ii) Travel and transportation expenses (including mileage allowances);
  - (iii) Relocation expenses;
  - (iv) Storage expenses;
  - (v) Post differentials;
  - (vi) Foreign areas allowances;
  - (vii) Education allowances for dependents;
  - (viii) Separate maintenance allowances;
  - (ix) Post allowances and supplementary post allowances;
  - (x) Home service transfer allowances;
  - (xi) Quarters allowances;
  - (xii) Cost-of-living allowances (COLA), when applicable to an employee in a foreign area or an employee stationed outside of the continental United States or in Alaska;
  - (xiii) Remote worksite allowance; and
  - (xiv) Per diem allowances.

(2) In the case of members of the uniformed services:

- (i) Position pay (Navy only);
- (ii) Basic allowance for quarters;
- (iii) Basic allowance for subsistence;
- (iv) Station allowances;
- (v) Armed Forces health professions scholarship stipends;
- (vi) Public Health Service scholarship stipends;
- (vii) Travel and transportation allowances;
- (viii) Dislocation allowances;
- (ix) Family separation allowances;
- (x) ROTC subsistence allowance;
- (xi) Allowance for recruiting expenses;
- (xii) Education allowances for dependents;
- (xiii) Clothing allowances for enlisted personnel;
- (xiv) Uniform allowances; and
- (xv) Personal money allowances for General and Flag officers, and for the Surgeon General of the United States.

(3) In the case of volunteers serving under either the Domestic Volunteer Service Act or the Peace Corps Act, all allowances, including, but not limited to, readjustment allowances, stipends, and reimbursements for out-of-pocket expenses.