

LEGAL BASE

Social Security Act, Sections 459 and 462
5CFR 581, Subparts A-D.

AGENCY POLICY

Pursuant to the Social Security Act, legal process may be brought against the United States for enforcement of child support and spousal support obligations owed by employees of the federal government. The law permits garnishment of all payments for employment, which includes salaries, retirement payments, Social Security benefits, and compensation for work injuries. (Payments made by the Veteran's administration are not subject to legal process unless the individual waived a portion of retirement pay to qualify for VA payments.)

As an enforcement tool, this law has several advantages over URESA:

1. There is a greater possibility of obtaining the full amount of support as originally ordered;
2. The process allows for recovery of accumulated arrearages; and
3. Incentive money is paid to the Michigan county rather than another state.

The term "legal process" has been defined as "any writ, order, summons or other similar process in the nature of a garnishment, which may include an attachment, writ of execution, or court ordered wage assignment." This allows federal employees to be subject to state law governing garnishment and wage assignment proceedings for enforcement of child support obligations (e.g., Granger Act, MCLA 552.203).

A child support obligation may include payments to provide for health care, education, recreation, clothing, or other specific needs of the child. For both spousal and child support obligations, attorney's fees, interest and court costs may be included if they are expressly recoverable by court order under state law. However, obligations related to property or property settlements cannot be included in this process.

In accordance with the Consumer Credit Protection act, there are restrictions on the amount of earning that can be withheld for the support of any person. These restrictions are as follows:

1. 50% of the disposable income when the individual is supporting another spouse or dependent child;
2. 55% of the disposable income if the individual is supporting another spouse or dependent child and is more than 12 weeks behind in payments;
3. 60% of the disposable income if the individual is not supporting another spouse or dependent child; and

4. 65% of the disposable income if the individual is not supporting another spouse or dependent child and is more than 12 weeks behind in payments.

When there is more than one court order for support against an individual, the federal government will accept a legal process for each court order. However, legal process will be accepted and complied with on a first come, first served basis until the amount of money that can be withheld is exhausted. For example, if the maximum that can be withheld is 55% of the disposable income, and the first legal process received requires 30% of the disposable income, only 25% is available to the second legal process.

AGENCY PROCEDURES

Whenever there is a Michigan court order for which payment is delinquent, enforcement efforts have been unsuccessful, and the obligor is a federal employee (including active, reserve and retired members of the military), the possibility of garnishment or wage assignment should be explored. If the support specialist is aware of this type of situation, the case should be brought to the attention of the friend of the court.

Each federal agency is responsible for establishing procedures and appointing a representative to handle service of process. Service of process must be accomplished by certified or registered mail, return receipt requested, or by personal service upon the designated representative.

The legal process must name the specific agency as the third party debtor. A certified copy of the court order that establishes the legal obligation to support should be included. If the individual is more than 12 weeks behind in payments, that fact must appear on the face of the legal process or other evidence acceptable to the agency head must be submitted to allow withholding of 55% or 65% of the disposable income.

In addition, sufficient information must be provided to identify the obligor. Therefore, the following information, if known, is to be provided”

1. Full name;
2. Date of birth;
3. Social security number, employment number, Veteran’s Administration claim number, or civil service retirement claim number;
4. Section of the agency for which the obligor works and the official duty station or worksite; and
5. Status of the obligor, e.g., employee, former employee, or annuitant.

The designated representative must respond to the service of process within 30 days of receipt, unless state law allows for a longer response period. In addition, the representative must provide a written notice to the obligor within 15 days after service. The notice must include:

1. A copy of the legal process and any attachments;
2. An explanation of the Consumer Credit Protection Act and a request that the obligor submit the documentation necessary to determine the correct percentage limitation;
3. That copies of any documentation submitted will be forwarded to the obligee and the court; and
4. The percentage of income that will be deducted if no documentation is submitted.

The agency may also provide the obligor with the following information:

1. Copies of any documents received in support of the legal process;
2. That the United States does not represent the obligor in the pending legal proceedings;
3. That the obligor may wish to consult legal counsel;
4. That obligors in the uniformed services may use sections 520, 521 and 523 of the Soldier's and Sailor's Civil Relief Act of 1940 as a defense against the legal process.

Note: Though the defendant may claim protection under the Soldier's and Sailor's Civil Relief Act, the issuing judge has the authority to determine the applicability of such a claim.

Agencies are not required to alter or disrupt their normal payment schedule to comply with the terms provided in the legal process. For example, if the court order requires weekly payments but the agency's payroll is based on a biweekly schedule, payments in the appropriate amount will be forwarded biweekly.

An agency will not honor a legal process if:

1. It does not appear to conform to the laws of the jurisdiction from which it was issued; or
2. It would require withholding monies other than those payable by the United States for employment; or
3. It attempts to enforce an obligation other than the legal obligation for child support or spousal support; or

4. A court of competent jurisdiction enjoins or suspends the operation of the legal process; or
5. Notice is received that the obligor has appealed the support order that the legal process is attempting to enforce.