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United States General Accounting Office

Fact Sheet for the Honorable
Andy Jacobs, Jr., House of
Representatives

February 1988

FEDERAL PERSONNEL

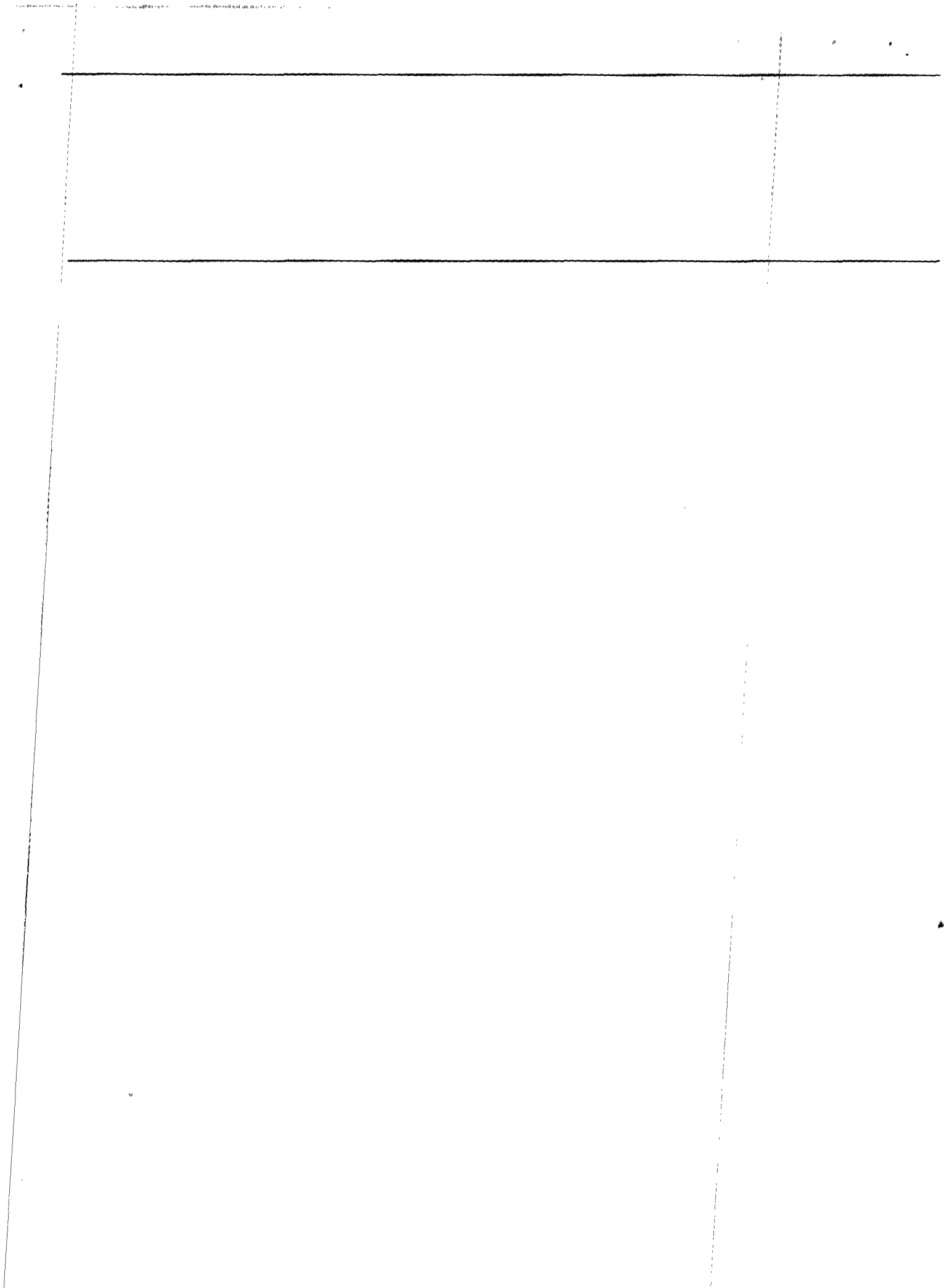
Garnishment of Wages for Commercial and Domestic Debts



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United States
General Accounting Office
Washington, D.C. 20548

General Government Division

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February 17, 1988

The Honorable Andy Jacobs, Jr.
House of Representatives

Dear Mr. Jacobs:

This fact sheet responds to your request for information on garnishment of federal employees' wages.¹ We agreed with you to gather available data on the extent to which federal agencies honor and deny orders to garnish civilian employees' wages and the cost of processing garnishment orders.

Generally, federal civilian employees and members of the Armed Forces are protected from garnishment of their wages for commercial debt because of the doctrine of sovereign immunity.² The common-law rule has been that the sovereign (i.e., the federal government) may be sued only if it consents, and that the sovereign may specify the terms and conditions under which such a suit may be filed. An action to garnish a federal employee's wages is considered to be an action against the federal government and cannot be maintained unless sovereign immunity is waived.

A governmentwide waiver of sovereign immunity has been granted for enforcing child support or alimony obligations, i.e., domestic debts. The waiver effected by the Social Service Amendments of 1974 (P.L. 93-647) provided that the federal government is to be treated for this purpose as if it were a private person. The courts have held this to be a limited waiver of sovereign immunity.³ The waiver of sovereign immunity for domestic debt garnishment orders applies to current pay, retirement pay, and annuities of federal civilian employees and members of the Armed Forces.

¹Garnishment generally means any legal procedure through which earnings of any individual are required to be withheld for the payment of any debt. Most garnishments are made by court orders under which a creditor seeks to attach an employee's earnings before they are paid so they may be applied to the satisfaction of a claim against the employee.

²Buchanan v. Alexander, 45 U.S. (4 How.) 20 (1846).
Applegate v. Applegate, 39 F. Supp. 887 (E.D. Va. 1941).

³Overman v. United States, 563 F. 2d 1287 (8th Cir. 1977).

None of the departments and agencies we contacted maintained actual cost information on their processing of garnishment orders.

GARNISHMENT FOR COMMERCIAL DEBT

Federal employees in 18 of 21 departments and agencies we contacted have their wages protected from garnishment for commercial debt based on the doctrine of sovereign immunity.

Some government organizations have received general waivers of sovereign immunity. For example, the Postal Service is granted a general waiver of sovereign immunity by 39 U.S.C. 401(1), which provides that the Postal Service may sue and be sued in its own name. This general waiver of sovereign immunity has been judicially interpreted to be sufficient to permit garnishment of employees' wages for all purposes, including commercial debt. According to Postal Service officials, as of December 1987, 2,708 postal employees' wages were being garnished for commercial debts through its central payroll system. This represents about .3 percent of the Service's employees (797,851) as of the end of fiscal year 1987. The Postal Service has no aggregate data on the number of one-time garnishments processed at the local level.

Employees at the Federal Deposit Insurance Corporation and certain employees at the Department of Housing and Urban Development (HUD) also are subject to garnishment orders for commercial debts. An attorney from the Federal Deposit Insurance Corporation said that this governmental corporation has the general authority to sue and be sued in its own name; thus, under the reasoning of a U.S. Supreme Court decision,⁴ the Corporation's employees' wages are available for commercial debt garnishments. The Corporation had 9,219 employees as of the end of fiscal year 1987, and he estimated that about 50 employees had commercial debt garnishments during 1987. According to a HUD attorney, the same U.S. Supreme Court decision held that employees paid from the Federal Housing Administration (FHA) Fund within HUD are subject to garnishment for commercial debt. He said that FHA was authorized to sue and be sued in its own name, thus establishing a waiver of sovereign immunity. A HUD personnel official said that as of January 1988, four FHA-funded employees' wages were being garnished for commercial debt. HUD had a total of 13,033 employees as of the end of fiscal year 1987.

⁴FHA v. Burr, 309 U.S. 242 (1940).

For the departments and agencies in our sample, including the balance of HUD, that do not honor garnishment orders for commercial debt, we asked how many such orders have been denied. We contacted a personnel official or attorney at each of the departments and agencies and were provided the following responses through a telephone survey.

- Four departments and agencies could not recollect receiving any garnishment orders for commercial debts.
- Eight departments and agencies volunteered estimates that they denied from 1 to 207 commercial debt garnishment orders per year.
- Two Department of Defense components, the Army and Navy, and other Defense agencies except Air Force were unable to provide data because their personnel systems are decentralized.
- Four other agencies did not know how many commercial debt garnishment orders they have denied and did not volunteer an estimate. (See app. I.)

GARNISHMENTS FOR DOMESTIC DEBT

Personnel officials or attorneys at each of the 21 departments and agencies we contacted said their organizations honor court orders for domestic debt garnishments. At 15 departments and agencies the number of employees' wages being garnished for child support and alimony accounted for 1 percent or less of the department's or agency's total civilian workforce. Here as with commercial debt garnishments, two Department of Defense components, the Army and Navy, and other Defense agencies except Air Force could not provide the data because their civilian personnel systems are decentralized. (See app. II.)

COST OF PROCESSING GARNISHMENT ORDERS

No data on the cost of processing domestic or commercial debt garnishment orders were available at the selected departments and agencies. However, the Postal Service officials we met with said that two key costs were the initial costs of computer programming for including garnishment actions in its automated central payroll system and the ongoing costs of its employees' time spent processing garnishment actions. The officials estimated that Postal Service employees spend at least 3 hours processing each commercial garnishment.

The Postal Service's experience in processing garnishments for commercial debt seems to shed some light on the administrative burden other federal agencies could face if they are required to honor such garnishments. In fact, other agencies could face an even greater burden if their size makes it impractical for them to computerize garnishment processing to the same extent as the Postal Service. According to Postal Service officials:

- Differing state laws and regulations governing commercial debt garnishments preclude standardized processing of garnishment orders, thereby affecting the time and cost associated with administrative processing. For example, states have varying limits on the amount of an employee's wages that may be garnished, and the Consumer Credit Protection Act (P.L. 90-321) contains restrictions applicable to all garnishments. Federal agency personnel must be knowledgeable of these requirements in computing amounts to be deducted. When conflicts between state and federal laws exist, the law resulting in the smaller garnishment must be observed.
- In some states, court officers can make on-the-spot demands for garnishment of employees' wages. In these cases, Postal Service employees on site must process the garnishment. This would affect their ability to carry out other duties.
- Courts require the Postal Service to provide different information or relatively similar information in different formats on employees whose wages are being garnished. These differences preclude standardized, computer-generated responses, thus necessitating manual preparation.

Postal Service officials also said that garnishments for alimony and child support are easier to process because the federal law waiving sovereign immunity imposes conditions on that waiver that allow more uniform processing.

SCOPE AND METHODOLOGY

We collected the requested information from the 13 cabinet level departments, the departments of Army, Navy, and Air Force, the Federal Reserve Board, the Office of Personnel Management, the Federal Home Loan Bank Board, the Postal Service, and the Federal Deposit Insurance Corporation. These departments and agencies employ about 85 percent of all federal civilian employees.

We used a telephone survey to determine which of the 21 departments and agencies (1) garnish civilian employees' wages for commercial debt and the number of individual garnishment requests that have been honored and denied and (2) garnish civilian employees' wages for child support and alimony and the number honored. We also asked for available data on the cost of processing garnishment orders. We obtained information from officials in department and agency personnel offices and/or their attorneys who were identified as having the information by agency liaison officials. We obtained each department's and agency's total number of civilian employees from the Office of Personnel Management's Federal Civilian Workforce Statistics, Employment and Trends as of September 1987. We did not verify the accuracy of the garnishment information provided by the departments and agencies, nor the Office of Personnel Management's civilian workforce statistics. We did, however, visit the Postal Service to obtain additional information on administrative steps necessary to process commercial garnishments.

As agreed with you, we plan no further distribution of this report until 5 days after the date of issuance, unless you publicly announce its contents earlier. At that time, we will send copies to interested parties and make copies available to others upon request. If we can be of further assistance, please call me on 275-6204.

Sincerely yours,


Rosslyn S. Kleeman
Senior Associate Director

COMMERCIAL DEBT GARNISHMENT OF FEDERAL EMPLOYEES
AT THE EXECUTIVE DEPARTMENTS AND OTHER SELECTED AGENCIES
 (for 1987--see notes)

<u>DEPARTMENT/ AGENCY</u>	<u>TOTAL NUMBER OF EMPLOYEES^a</u>	<u>ALLOW COMMERCIAL DEBT GARNISHMENTS</u>	<u>NUMBER OF COMMERCIAL DEBT GARNISHMENTS HONORED</u>	<u>NUMBER OF COMMERCIAL DEBT GARNISHMENTS DENIED</u>
Agriculture	116,993	No	--	b
Commerce	34,826	No	--	b
Defense:				
Air Force	254,446	No	--	207 ^c
Army	393,803	No	--	d
Navy	347,915	No	--	d
Other Defense	93,854	No	--	d
Education	4,738	No	--	e
Energy	16,749	No	--	e
Federal Deposit				
Insurance Corp.	9,219	Yes	50 ^c	--
Federal Home Loan				
Bank Board	941	No	--	5 ^c
Federal Reserve Board	1,487	No	--	1 ^c
Health and Human				
Services	127,039	No	--	15 ^c
Housing and Urban				
Development	13,033	Yes ^h	4 ^{f,h}	25 ^c
Interior	74,409	No	--	6 ^c
Justice	70,696	No	--	b
Labor	17,976	No	--	6 ^c
Office of Personnel				
Management	6,078	No	--	4 ^c
Postal Service	797,851	Yes	2,708 ^g	--
State	25,483	No	--	b
Transportation	62,488	No	--	e
Treasury	149,187	No	--	e

^aObtained from Federal Civilian Workforce Statistics, Employment and Trends as of September 1987, Office of Personnel Management.

^bDepartment did not know how many commercial garnishment orders have been denied and did not volunteer an estimate.

^cAnnual estimate for calendar year 1987.

^dDepartment was unable to provide data because the personnel system is decentralized.

^eDepartment could not recollect receiving any garnishment orders for commercial debts.

^fNumber of garnishment orders being honored as of January 1988.

^gNumber of garnishment orders being honored as of December 1987 through the Postal Service's central payroll system.

^hFor HUD employees paid through the FHA Fund.

DOMESTIC DEBT GARNISHMENT OF FEDERAL EMPLOYEES
AT THE EXECUTIVE DEPARTMENTS AND OTHER SELECTED AGENCIES
(for 1987--see notes)

<u>DEPARTMENT/ AGENCY</u>	<u>TOTAL NUMBER OF EMPLOYEES^a</u>	<u>HONOR DOMESTIC DEBT GARNISHMENTS</u>	<u>NUMBER OF DOMESTIC DEBT GARNISHMENTS HONORED</u>
Agriculture	116,993	Yes	352 ^b
Commerce	34,826	Yes	89 ^d
Defense:			
Air Force	254,446	Yes	b
Army	393,803	Yes	c
Navy	347,915	Yes	c
Other Defense	93,854	Yes	c
Education	4,738	Yes	42 ^e
Energy	16,749	Yes	72 ^e
Federal Deposit			
Insurance Corp.	9,219	Yes	20 ^f
Federal Home Loan			
Bank Board	941	Yes	1 ^f
Federal Reserve Board	1,487	Yes	15 ^b
Health and Human			
Services	127,039	Yes	219 ^e
Housing and Urban			
Development	13,033	Yes	50 ^d
Interior	74,409	Yes	560 ^e
Justice	70,696	Yes	460 ^e
Labor	17,976	Yes	88 ^e
Office of Personnel			
Management	6,078	Yes	6 ^b
Postal Service	797,851	Yes	19,439 ^f
State	25,483	Yes	10 ^f
Transportation	62,488	Yes	454 ^e
Treasury	149,187	Yes	768 ^e

^aObtained from Federal Civilian Workforce Statistics, Employment and Trends as of September 1987, Office of Personnel Management.

^bAnnual estimate for calendar year 1987. (The estimate for Air Force was 15,805 total domestic debt garnishments including civilian, active duty and retired military personnel. Air Force could not provide separate figures for each category.)

^cDepartment was unable to provide data because the personnel system is decentralized.

^dNumber of garnishment orders honored as of January 1988.

^eNumber of garnishment orders honored as of November 1987.

^fNumber of garnishment orders honored as of December 1987. (For Postal Service, the number is for those garnishments processed through its central payroll system.)

