



June 18, 2010

Honorable Gary Grippo
Deputy Assistant Secretary
Fiscal Operations & Policy
U.S. Department of the Treasury
1500 Pennsylvania Avenue, NW
Room 2112
Washington, DC 20220

Re: Garnishment of Accounts Containing Federal Benefit Payments

Joint Notice of Rulemaking by:
Department of the Treasury, Fiscal Service (RIN 1505-AC-20)
Social Security Administration (RIN 0960-AH180)
Department of Veterans Affairs (RIN 2900-AN67)
Railroad Retirement Board (RIN 3220-AB63)
Office of Personnel Management (RIN 3206-AM17)

Dear Mr. Grippo:

Thank you for the opportunity to submit comments to the joint notice of proposed rulemaking regarding the garnishment of accounts containing Federal benefit payments. This is an issue critical to financial institutions, Federal agencies and, most importantly, consumers reliant upon access to their Federal benefits. We appreciate and commend the significant work and analysis completed by the Department of the Treasury, Social Security Administration, Department of Veterans Affairs, Railroad Retirement Board and Office of Personnel Management (all such parties hereinafter referred to as the “Agencies”) on this important issue.

I. GENERAL COMMENTS

The Financial Services Roundtable (“Roundtable”) represents 100 of the largest integrated financial services companies providing banking, insurance, and investment products and services to the American consumer. Members of the Roundtable serve individual consumers through a variety of financial services products, including traditional deposit account services. Our members have significant experience receiving, processing and complying with garnishment orders. As well, our members therefore also have substantial and time consuming experience with the operational difficulties of attempting to both comply with court-ordered garnishments and the legal obligation to exempt Federal benefit payments from garnishment. As pointed out in the rule, federally protected benefit payments often constitute an important portion of a recipient’s income, and as such are most often exempted from garnishment. When a financial institution receives a garnishment order and subjects deposit accounts containing these exempt funds to a block, the recipient of these funds may suffer hardship. Yet, a financial institution must also protect and exempt federal benefit payments from garnishment. Roundtable members

handle millions of garnishment orders issued across the nation each year. How these garnishments are handled varies by institution, with each organization seeking to achieve the most operationally efficient, legally compliant and customer-focused results.

While the Roundtable's members feel that the proposed rule makes great strides in the handling of Federal benefit payments, we respectfully request that the Agencies consider the changes recommended herein. Of particular note, we strongly urge the Agencies to allow at least one year after the implementation of the ACH identifiers to comply with this rule.

II. SPECIFIC COMMENTS

Section 212.1 Purpose

While we agree that the rule establishes procedures that financial institutions must follow, the purpose of the rule is broader than reflected in the proposed rule. In particular, the equally important purpose of the rule is to protect Federal benefit recipients, preempt inconsistent state law and create a safe harbor for financial institutions that comply with the rule.

Section 212.3 Definitions

1. Account

We have significant concern with the broad definition of "account" in the rule. The term "account" is defined in the proposed rule as "an account at a financial institution to which benefit payments can be delivered by direct deposit." This definition does not distinguish between personal and business accounts, both of which could receive direct deposits of federal benefits. A personal account, under common practice and federal law, is used for personal, household or family purposes. From an operations perspective, if an account, such as a business account, is not held in the name of the personal customer or debtor it is not likely to be found during the search of accounts. The definition of the term "account" should be expressly limited to "a personal consumer account at a financial institution to which benefit payments can be delivered by direct deposit." This modification of the definition protects financial institutions in the event benefit payments are deposited directly to business or other representative accounts that do not reflect the name of the benefits recipient.

2. Garnishment

Under the proposed rule, the terms "garnish" and "garnishment" mean execution, levy, attachment, or other legal process to enforce a money judgment." Whether an action by a third party authority is a garnishment impacts whether a financial institution may or must freeze an account or otherwise deny access to funds in an account by a customer, and whether a provisional creditor's remedies fall within the coverage of the proposed rule. On a regular basis financial institutions process pre-judgment garnishments, which are usually continuing in nature, and orders to freeze funds in an account, such as temporary restraining orders, injunctions, and seizure orders. These pre-judgment garnishments and extraordinary processes present the same operational problems as continuing writs of garnishment. For purposes of clarity, we urge the

Agencies to adopt a definition of garnishment that expressly excludes seizure orders, restraining orders, temporary restraining orders, temporary protective orders and other similar actions by third party authorities, whether judicial or otherwise.

3. “Lookback period”

The “lookback period” is defined as the 60-calendar day period preceding the date on which a financial institution is served a garnishment order. We note that in contrast to the proposed definition, our members are able to comply with a two-calendar month, (date-to-date) period. We believe that the latter might afford a better opportunity to identify and protect two cycles of monthly payments. While we can support either a 60-day or date-to-date definition for a “lookback period,” we believe a date-to-date period brings more certainty to a determination of the time period and mitigates the possibility of an administrative or clerical mistake in computing the applicable lookback period.

4. “Protected amount”

The “protected amount” is defined as the lesser of the sum of all benefit payments deposited to an account during the lookback period or the balance in an account on the date of account review. Under the proposed rule, a financial institution will need to identify each deposit of benefit payments, add up the payments, and determine whether the total of the benefit payments exceeds the balance in the account. Furthermore, for garnishments in some states, a further step beyond the proposed calculation is necessary – the financial institution will need to determine whether additional amounts should be protected to meet state statutory requirements. In many ways, use of a fixed dollar amount, as is the current process under the laws of many states, is less of an administrative burden. Nonetheless, while it is possible to comply with the proposed definition of a protected amount, we note that it is a more complex process as it requires a calculation of varying amounts. As a result, this definition creates more opportunity for human error, especially in light of the extremely high volume of garnishment orders processed monthly by large financial institutions.

Section 212.4 Initial action upon receipt of a garnishment order

Under the proposed rule a financial institution is required to examine a garnishment order to determine if it was obtained by the United States. Issuance of a garnishment order by the United States would be by either (1) a designation of the plaintiff as “United States of America,” or “United States,” or “U.S.” or (2) the order is accompanied by a “Notice of Garnishment by the United States” as per Appendix B to the proposed rule. Financial institutions process legal orders from a variety of federal agencies, many of which may or may not include a “Notice of Garnishment by the United States.” Any order that does not include a “Notice of Garnishment” will cause uncertainty regarding whether the agency is, in fact, the “United States” under section 212.4. We request that the final rule require that each order issued by the United States state on its face that it is exempt from the requirements of sections 212.5 and 212.6. In the alternative, we suggest that each order issued by the United States be accompanied by a “Notice of Garnishment,” as set forth in Appendix B.

Section 212.5 Account Review

The Roundtable supports the provisions of this section that establish uniform processes for account review without regard for the presence of other deposits, the existence of co-owners, or the nature of the underlying debt. We commend the statement of the agencies that if an exempt payment is directly deposited into one account and funds from that account are subsequently transferred to a second account, the financial institution would have no requirement to trace funds into the second account or to establish a protected amount in the second account as a result of the transfer, as published at 75 Fed. Reg, 20301 - 20302. However, the language of the proposed rule at §212.5(f) does not codify the statement. We request that §212.5 explicitly state that transferred funds are not subject to protection.

More significant than the definition of a lookback period is the question of when the account review commences. Proposed section 212.5 requires commencement of the account review by the first business day after the garnishment is received. While financial institutions make every effort to rapidly identify and hold accounts subject to garnishment, a significant number of garnishment orders do not contain adequate information to identify the customer/debtor. Creditors may be reluctant to publish detailed consumer information – including social security numbers – when filing writs of garnishment and other legal process with the court out of concern for the privacy of the customer information. Because those parties cannot be contacted promptly, we strongly recommend that financial institutions be afforded a reasonable opportunity to act under a garnishment order instead of the strict requirement to act in a single business day in all cases. Financial institutions regularly receive garnishment orders in which only the name of a judgment debtor is provided, with no further information to identify the party subject to the garnishment order. Financial institutions must often then attempt to contact the judgment creditor or its legal counsel to secure further information, such as a taxpayer identification number of the judgment debtor. In some circumstances, the number of days needed to obtain identifying information, plus sixty days, will exceed the period for which records are readily available. We request that the lookback period commence sixty days (or the two-month period if the definition is not altered as suggested herein) preceding the date of the account review. In the alternative, the Agencies could proscribe that the account review commence no later than one business day following (i) receipt of a garnishment order issued against a natural person, and (ii) the identification of the benefit payment recipient or recipients by a financial institution.

In addition to a reasonable amount of time to identify benefit recipients, the day-to-day realities of processing garnishment orders present additional, unique circumstances that must be expressly acknowledged in the rule. For example, some states batch together large numbers of garnishments and deliver them in a single shipment. Financial institutions are not always staffed to handle these unique circumstances, over which they have no control. The final rule should recognize these exceptional circumstances and expressly allow financial institutions to commence the account review and lookback period in a time period that allows for unique circumstances beyond the financial institution's control or in accordance with the direction of the creditors.

The Roundtable also has concern about the following phrase in section 212.5(a): "...a garnishment order issued against an account...." The common practice is for a judgment

creditor through written instructions to direct a levying officer to proceed against any and all property of a judgment debtor held by a party subject to the order. A judgment creditor may not have information to identify specific deposit accounts. In relatively few orders does the creditor identify the account by number or identifier associated solely with a particular account. We urge the Agencies to amend the proposed phrase to provide for “a garnishment order issued against a natural person.”

Finally, the agencies should expressly extend the safe harbor provisions of section 212.10 to instances where financial institutions are unable to comply with the one-business day requirement of §212.5(a) due to the need to obtain additional information or to handle the exceptional circumstances referenced above.

Section 212.7 Notice to the account holder

Proposed section 212.7(d) requires that notice be sent in all cases where a benefit agency deposited a benefit payment into the account during the lookback period, including cases where the financial institution does not freeze any funds in the account. Financial institutions do provide notice to account holders with funds subject to garnishment freeze. However, where an account is overdrawn, contains a zero balance or no funds are held, most banks do not provide notice to an account holder with “nothing to report.” This practice is in accordance with protections provided under state laws. While the Roundtable has not conducted a formal survey in this regard, members report that up to one-third of all accounts subject to garnishment have “nothing to report” and, as a result, notices were not sent to those account holders. We have substantial concern that customers will be confused by a notice that details the exemption process but does not reflect any holds or impact to the pertinent accounts. Not only is this confusing for customers during what is likely a stressful financial experience, but customers receiving this notice are likely to call the bank for an explanation, requiring additional resources to handle the calls. We request that the notice requirement not apply in the cases of accounts reflecting an overdraft or zero balance, or when no funds are held.

We are also concerned with several provisions related to the content requirements of the notice itself, as discussed below.

1. Model Notice Complexity

As a general observation, we find the model notice provided in Appendix A to Part 212 to be too long and complicated to effectively explain to customers the impact on their accounts. We encourage the Agencies to consider testing provisional form(s) with consumer focus groups directly or through voluntary financial institutions. As discussed below, references to creditor and court contact information should be struck, which would both shorten and help simplify the form.

2. Contact Information

Section 212.7(a) (9) and (10) require the notice to include a means of contacting the judgment creditor and the court of jurisdiction. In some instances, the contact information for the creditor and court does not appear on the garnishment order received by financial institutions. The

financial institution would need to manually research the information, slowing the notice process. We respectfully request that this requirement instead state that the creditor and court contact information must be provided only if it is contained in the garnishment order served on the financial institution.

3. Process Related to State Law

Section 212.7(a)(8) requires the financial institution to explain the “account holder’s right to assert a further garnishment exemption for amounts above the protected amount, by completing exemption claims forms, contacting the court of jurisdiction, or contacting the judgment creditor, as customarily applicable for a given jurisdiction.” As an initial matter, this requirement likely further confuses customers regarding the role of the financial institution in the garnishment process. Secondly, this information is available to the account holder either through the information furnished by the judgment creditor directly to the account holder under state law or by the financial institution enclosing the garnishment order along with the notice. Finally, please note that this requirement will impose a considerable burden on the financial institution to keep apprised of the process for claiming exemptions in each jurisdiction (50 states, the District of Columbia, and the territories named in section 212.3) and to provide a description of the process in the notice to account holder. Not only do many states provide detailed instructions to the debtor in the garnishment order or other statutory notices, the end result of imposing this responsibility on financial institution could be the increased chance of miscommunication or additional customer confusion. Accordingly, we request that the requirement to provide this information be removed from the proposed rule and that the Agencies urge the states to incorporate into their garnishment forms the model language on the protection of Federal benefits.

4. Modifications of the Notice

Appendix A of the proposed rule provides that use of the model form by a financial institution is deemed to be in compliance with section 212.7(a). The model form references the protected amount to be included therein. However, it is common for an account holder to have additional sources of funds, such as public benefit payments, protected from levy under state law. From the perspective of the customer, the financial institution is responding to all garnishments at once. As such, where a financial institution complies with a state law requirement to hold public benefit payments it should be able to amend the notice to reference such protected public benefit payments and thereby provide full and accurate information to the customer about the account in question. Furthermore, the financial institution complying with state law in this regard and amending the model form should continue to enjoy the safe harbor afforded by using the model form.

Identifying Exempt Funds

The proposed rule offers two manners for financial institutions to identify exempt funds:

- (1) encoding an “X” in position 20 of the “Company Name” Field of the Batch Header Record for each Agency exempt benefit Automated Clearing House (ACH) payment, and

(2) publishing a list of the unique “Entry Detail Description” Fields in the Batch Header Record for all exempt benefit payments.

The Agencies will also update the Green Book, *A Guide to Federal Government ACH Payments and Collections* to reflect these mechanisms for identifying exempt Federal payments.

We commend the Agencies for these efforts and creative solutions. Without the ability to identify the benefit payments, financial institutions are unable to know whether a deposit account had received a potentially exempt benefit payment, thus perpetuating the need for financial institutions to impose a freeze on the affected account in order to ensure that the rights of all parties are preserved.

With regard to the first identification manner, encoding an “X” in position 20 can result in the “X” not being readily readable as it is the last character position of that field. The Roundtable strongly urges the Agencies to work with NACHA in order to encode an “X” in a position much closer to the front. We support efforts to move the “X” to both position 5 and position 6 of the Company Name Field to reduce the potential for false positives where a non-Federal agency company name begins with the letter “X.”

When the Agencies have decided upon the ACH coding for benefits, we request that these be incorporated into both the definition of “Benefit payment” under section 212.3 and into the safe harbor provisions of section 212.10. Without this change, a financial institution could be liable to a judgment creditor for any protected amounts, to an account holder for any frozen amounts, or for any penalties under state law for failing to honor a garnishment order in good faith reliance on the ACH encoding provided by the Agencies. Furthermore, the rule should expressly state that a deposit should not be deemed a protected benefit payment unless it bears the proper identifiers, and that a financial institution should be able to rely on the presence of the identifiers when determining whether funds are subject to the protections of part 212.

As related to this provision, we further urge the Agencies to strike the requirement of good faith compliance with part 212 as a condition precedent to the safe harbor. By having a good faith requirement, an issue of fact is surfaced before a financial institution can avail itself of this safe harbor. Furthermore, by nature of the rule, a financial institution either complies or does not comply.

Garnishment Fees

The Agencies propose to prohibit financial institutions from charging garnishment processing fees against protected amounts. Instead, financial institutions are allowed to collect garnishment fees only against funds in a deposit account in excess of the protected amount on the date of the account review. The Roundtable believes that the matter of assessing fees is both a legitimate manner of recouping substantial costs associated with the processing of garnishments and a matter of contract between the financial institution and its customer.

Processing garnishment orders involves substantial operational costs. Garnishment orders are served against a financial institution through a variety of means, often by service at a branch office or by mail. Every garnishment order requires the individual attention of an employee trained to inspect the court papers and accompanying documents. Often the orders must be routed through the organization to the right parties for further handling. Among the many varying circumstances associated with each garnishment order, it is not uncommon for an order to require further investigation to identify the correct depositor, contact the judgment creditor or its counsel of record, or otherwise resolve discrepancies. Notices must be sent and payments are initiated. If the depositor disputes the garnishment, there is usually an escalation process which may involved the time and expense of legal counsel. In sum, many employees, processes and technical systems are involved in timely and judiciously responding to garnishment orders.

Furthermore, financial institutions make clear any fees associated with garnishments in their agreements with their customers. While fees often cannot be collected, it is important to note that customers agree to pay for fees and charges associated with the maintenance of their deposit accounts. In short, the assessment of fees should not be a matter of government regulation.

Time for Compliance

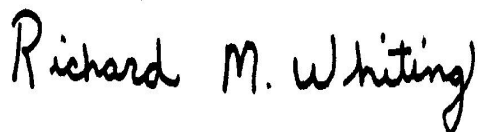
We note that the proposed rule does not establish an effective date or deadline for compliance with the rule. Many financial institutions have raised concerns to the Roundtable, estimating that it will take more than twelve months to develop and test new programming and systems. We strongly urge the Agencies to allow at least one year after the implementation of the ACH identifiers to comply with this rule.

Conclusion

The Roundtable appreciates and commends the Agencies' efforts to create rules setting forth clear procedures for financial institutions to follow. Clarity and balance in the processes associated with garnishments serves to protect Federal benefit recipients, preempt inconsistent state law and create a safe harbor for financial institutions that comply with the rule.

If you have any questions about this letter, or any of the issues raised by our comments, please call Brad Ipema at (202) 589-2424.

Sincerely,

A handwritten signature in black ink that reads "Richard M. Whiting". The signature is written in a cursive, slightly slanted style.

Executive Director and General Counsel