

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

FEDERAL RESERVE SYSTEM

FEDERAL DEPOSIT INSURANCE CORPORATION

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

NATIONAL CREDIT UNION ADMINISTRATION

Proposed Guidance on Garnishment of Exempt Federal Benefit Funds

AGENCIES: Office of the Comptroller of the Currency, Treasury (OCC); Board of Governors of the Federal Reserve System (Board); Federal Deposit Insurance Corporation (FDIC); Office of Thrift Supervision, Treasury (OTS); and National Credit Union Administration (NCUA) (collectively, the Agencies).

ACTION: Request for comment.

SUMMARY: The Agencies are proposing guidance entitled Garnishment of Exempt Federal Benefit Funds. This proposed guidance has been developed to encourage financial institutions to have policies and procedures in place with respect to handling garnishment orders and sets forth

best practices, including procedures designed to expedite notice to the consumer of the garnishment process and release of funds to the consumer as quickly as possible.

DATES: Comments must be submitted on or before [INSERT DATE 60 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: The Agencies will jointly review all of the comments submitted. Therefore, interested parties may send comments to any of the Agencies and need not send comments (or copies) to all of the Agencies. Please consider submitting your comments by e-mail or fax, since paper mail in the Washington area and at the Agencies is subject to delay. Interested parties are invited to submit comments to:

OCC: You may submit comments by any of the following methods:

- E-mail: regs.comments@occ.treas.gov.
- Fax: (202) 874-4448.
- Mail: Office of the Comptroller of the Currency, 250 E Street, SW., Mail Stop 1-5, Washington, DC 20219.
- Hand Delivery/Courier: 250 E Street, SW., Attn: Public Information Room, Mail Stop 1-5, Washington, DC 20219.

Instructions: You must include “OCC” as the agency name and “Docket ID OCC-___” in your comment. In general, OCC will enter all comments received into the docket without change, including any business or personal information that you provide such as name and address information, e-mail addresses, or phone numbers. Comments, including attachments and other supporting materials, received are part of the public record and subject to public disclosure.

Do not enclose any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

You may review comments and other related materials by any of the following methods:

- Viewing Comments Personally: You may personally inspect and photocopy comments at the OCC's Public Information Room, 250 E Street, SW., Washington, DC. For security reasons, the OCC requires that visitors make an appointment to inspect comments. You may do so by calling (202) 874-5043. Upon arrival, visitors will be required to present valid government-issued photo identification and submit to security screening in order to inspect and photocopy comments.

Docket: You may also view or request available background documents and project summaries using the methods described above.

Board: You may submit comments, identified by Docket No. OP-___, by any of the following methods:

- Agency Web Site: <http://www.federalreserve.gov>. Follow the instructions for submitting comments at <http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm>.
- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.
- E-mail: regs.comments@federalreserve.gov. Include the docket number in the subject line of the message.
- FAX: 202/452-3819 or 202/452-3102.
- Mail: Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551.

All public comments are available from the Board's Web site at www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm as submitted, unless modified for technical reasons. Accordingly, your comments will not be edited to remove any identifying or contact information. Public comments may also be viewed in electronic or paper form in Room MP-500 of the Board's Martin Building (20th and C Streets, NW.) between 9 a.m. and 5 p.m. on weekdays.

FDIC: You may submit comments by any of the following methods:

- Agency Web Site: <http://www.fdic.gov/regulations/laws/federal>. Follow instructions for submitting comments on the Agency Web Site.
- E-mail: Comments@FDIC.gov. Include "Garnishment Statement" in the subject line of the message.
- Mail: Robert E. Feldman, Executive Secretary, Attention: Comments, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.
- Hand Delivery/Courier: Guard station at the rear of the 550 17th Street Building (located on F Street) on business days between 7 a.m. and 5 p.m. (EST).
- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.

Public Inspection: All comments received will be posted without change to <http://www.fdic.gov/regulations/laws/federal> including any personal information provided.

Comments may be inspected and photocopied in the FDIC Public Information Center, 3501 North Fairfax Drive, Room E-1002, Arlington, VA 22226, between 9 a.m. and 5 p.m. (EST) on business days. Paper copies of public comments may be ordered from the Public Information Center by telephone at (877) 275-3342 or (703) 562-2200.

OTS: You may submit comments, identified by ID OTS-___, by any of the following methods:

- E-mail: regs.comments@ots.treas.gov. Please include ID OTS-___ in the subject line of the message and include your name and telephone number in the message.
- Fax: (202) 906-6518.
- Mail: Regulation Comments, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, Attention: ID OTS-___.
- Hand Delivery/Courier: Guard's Desk, East Lobby Entrance, 1700 G Street, NW., from 9 a.m. to 4 p.m. on business days. Address envelope as follows: Attention: Regulation Comments, Chief Counsel's Office, Attention: ID OTS-___.

Instructions: All submissions received must include the agency name and docket number for this proposed Guidance. All comments received will be posted without change to the OTS Internet Site at <http://www.ots.treas.gov/pagehtml.cfm?catNumber=67&an=1>, including any personal information provided.

Docket: For access to the docket to read background documents or comments received, go to <http://www.ots.treas.gov/pagehtml.cfm?catNumber=67&an=1>.

In addition, you may inspect comments at the Public Reading Room, 1700 G Street, NW., by appointment. To make an appointment for access, call (202) 906-5922, send an e-mail to public.info@ots.treas.gov, or send a facsimile transmission to (202) 906-7755. (Prior notice identifying the materials you will be requesting will assist us in serving you.) We schedule appointments on business days between 10 a.m. and 4 p.m. In most cases, appointments will be available the next business day following the date we receive a request.

NCUA: You may submit comments by any of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.
- NCUA Web Site:
http://www.ncua.gov/RegulationsOpinionsLaws/proposed_regs/proposed_regs.html. Follow the instructions for submitting comments.
- E-mail: Address to regcomments@ncua.gov. Include “[Your name] Comments on Proposed Guidance (Garnishment of Federal Benefit Payments)” in the e-mail subject line.
- Fax: (703) 518-6319. Use the subject line described above for e-mail.
- Mail: Address to Mary Rupp, Secretary of the Board, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314-3428.
- Hand Delivery/Courier: Same as mail address.

FOR FURTHER INFORMATION CONTACT:

OCC: Michael Bylsma, Director, Community and Consumer Law Division, (202) 874-5750 or Ann Jaedicke, Deputy Comptroller, Compliance, (202) 874-4428, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

Board: Legal Division: Kara L. Handzlik, Attorney (202) 452-3852, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551. Users of Telecommunication Device for Deaf only, call (202) 263-4869.

FDIC: Patricia Cashman, Senior Policy Analyst, Division of Supervision and Consumer Protection, (202) 898-6534, Mark Mellon, Counsel, Legal Division, (202) 898-3884 or Patricia Colohan, Senior Examination Specialist, Division of Supervision and Consumer Protection, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.

OTS: Stacy Messett, Senior Project Manager, Compliance and Consumer Protection, (202) 906-6241 or Richard Bennett, Senior Compliance Counsel, Regulations and Legislation Division, (202) 906-7409, Office of Thrift Supervision, 1700 G Street, NW, Washington, DC 20552.

NCUA: Ross Kendall, Staff Attorney, Office of General Counsel, (703) 518-6540 or Matthew Biliouris, Program Officer, Office of Examination and Insurance, (703) 518-6360, National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314-3428.

SUPPLEMENTARY INFORMATION:

I. Background

The Agencies developed this proposed guidance, Garnishment of Exempt Federal Benefits Funds, to address concerns associated with garnishment of exempt federal benefit payments, such as Social Security benefits, Supplemental Security Income benefits, Veterans' benefits, Federal Civil Service retirement benefits, and Federal Railroad retirement benefits. These benefits, which are generally exempt under federal law from garnishment orders and the claims of judgment creditors, often constitute an important part, and sometimes all of an individual's income. As a result, when financial institutions receive garnishment orders and place freezes on accounts containing exempt federal benefit funds, the recipients of these funds can face significant hardship. At the same time, financial institutions are required by state law to comply with garnishment orders, which may necessitate placing a freeze on an account that contains federal benefit payments. The agencies have developed this proposed guidance to encourage financial institutions to minimize the hardships encountered by federal benefit funds recipients and to do so while remaining in compliance with applicable law.

II. Request for Comment

The Agencies request comment on all aspects of the proposed guidance.

In addition, the Agencies seek comment on the following issues:

1. Are there practices that would enable an institution to avoid freezing funds altogether by determining at the time of receipt of a garnishment order that the funds are federally protected and not subject to an exception?
2. Are there other permissible practices that would better serve the interests of consumers who have accounts containing federal benefit payments? Are there ways to provide consumers with reasonable access to their funds during the garnishment process?
3. Are customers adequately informed of their rights when a creditor attempts to garnish their funds? What could be done to provide consumers with better information?
4. Institutions often charge customers a fee for freezing an account. How do these fees compare to those charged separately when an account holds insufficient funds to cover a check presented for payment? Are there operational justifications for both types of fees to be assessed?

III. Text of Proposed Joint Guidance

Garnishment of Exempt Federal Benefit Funds

Social Security benefits, Supplemental Security Income benefits, Veterans' benefits, Federal Civil Service retirement benefits, and Federal Railroad retirement benefits often constitute an important part, and sometimes all of an individual's income. Consequently, federal law protects these benefit payments from garnishment orders and the claims of judgment creditors.¹ For example, Section 207 of the Social Security Act provides that, with certain exceptions, moneys paid or payable as Old-Age, Survivors, and Disability Insurance (OASDI) benefits are not "subject to execution, levy, attachment, garnishment, or other legal process."² Similarly, Veterans' benefits are exempt, in most cases, from "attachment, levy, or seizure by or under any legal or equitable process whatever, either before or after receipt by the beneficiary" under a separate section of the United States Code.³ Federal Civil Service pension benefits are similarly protected under federal law.⁴ These federal provisions are subject to certain exceptions, such as garnishment orders relating to alimony or child support payments.⁵

The Social Security Administration (SSA) and Department of Veterans Affairs (VA) have not to date specified rules outlining the scope of these protections. However, a number of court decisions have addressed aspects of these protections. This statement, issued by the Board of Governors of the Federal Reserve System, Federal Deposit Insurance Corporation, Office of the Comptroller of the Currency, Office of Thrift Supervision, and National Credit Union Administration (Agencies), represents guidance on best practices for financial institutions to

¹ See 42 U.S.C. § 407(a); 42 U.S.C. § 1383(d)(1); 38 U.S.C. § 5301; 5 U.S.C. § 8346(a); and 45 U.S.C. § 231m(a).

² 42 U.S.C. § 407.

³ 38 U.S.C. § 5301.

⁴ 5 U.S.C. § 8346.

⁵ See, e.g., 42 U.S.C. § 659.

protect consumers' funds while remaining in compliance with state laws and court orders governing garnishment, attachment, and other legal process.

Creditors and debt collectors are often able to obtain enforceable orders from state courts on an ex parte basis garnishing funds in a consumer's account. To comply with state court garnishment orders, financial institutions often place a temporary freeze or hold on an account upon receipt of a garnishment order. Although the freeze will preserve the funds in the account and provide the account owner with an opportunity to assert any rights, exemptions, and challenges to the garnishment order, including the exemptions under applicable federal benefits laws, the freeze can also cause significant hardship for the account owner. This is especially true when, as is often the case, the recipients of federal benefits, such as SSA and VA benefits, depend on these funds as their primary source of income.

At the same time, financial institutions are required by state law to comply with garnishment orders, and in many states, are liable for any funds that are withdrawn by a consumer after the financial institution has received a garnishment order for a particular account. State garnishment orders may not provide sufficient information to allow financial institutions to know if the order is subject to one of the exceptions in federal law allowing garnishment of federal benefit funds. Moreover, consumer accounts may include both funds that may be protected by federal law from garnishment and other funds that are not protected.

The interplay of federal law and state garnishment laws raises difficult and complex issues. A freeze is designed to preserve the funds in an account until the legal status of the funds

can be determined. The Agencies are aware, however, of the hardship that recipients of exempt federal benefit funds may face when a freeze is placed on their accounts. In order to minimize this hardship and ensure compliance with applicable law, the Agencies encourage financial institutions to have policies and procedures in place to address garnishment orders, including procedures designed to expedite notice to the consumer of the garnishment process and release funds to the consumer as quickly as possible.

Among the best practices in this area are the following:

- promptly notify a consumer when a financial institution receives a garnishment order and places a freeze on the consumer's account;
- provide the consumer with information about what types of federal benefit funds are exempt, including SSA and VA benefits, in order to aid the consumer in asserting federal protections;
- promptly determine, as feasible, if an account contains only exempt federal benefit funds such as SSA or VA benefits;
- notify the creditor, collection agent, or relevant state court that the account contains exempt funds in cases in which the financial institution is aware that the account contains exempt funds;
- if state law or the court order will permit a freeze not to be imposed if the account is determined to contain only exempt federal benefit funds, act accordingly if that determination is made;
- minimize the cost to a consumer when the consumer's account containing exempt federal benefit funds is frozen, such as by refraining from imposing overdraft, NSF,

or similar fees while the account is frozen or refunding such fees when the freeze has been lifted;

- allow the consumer access to a portion of the account equivalent to the documented amount of exempt federal benefit funds as soon as the financial institution determines that none of the exceptions to the federal protections against garnishment of exempt federal benefit funds are triggered by the garnishment order;
- offer consumers segregated accounts that contain only federal benefit funds without commingling of other funds; and
- lift the freeze on an account as soon as permissible under state law.

The Agencies encourage financial institutions to stay apprised of any future guidance issued by the SSA or VA regarding garnishment practices and of developments in the courts in their jurisdiction regarding garnishment practices.

[THIS SIGNATURE PAGE RELATES TO THE PROPOSED GUIDANCE TITLED
“GARNISHMENT OF EXEMPT FEDERAL BENEFIT FUNDS”]

Dated:

John C. Dugan,

Comptroller of the Currency

[THIS SIGNATURE PAGE RELATES TO THE PROPOSED GUIDANCE TITLED
“GARNISHMENT OF EXEMPT FEDERAL BENEFIT FUNDS”]

By order of the Board of Governors of the Federal Reserve System, [DATE]

Jennifer J. Johnson

Secretary of the Board

[THIS SIGNATURE PAGE RELATES TO THE PROPOSED GUIDANCE TITLED
“GARNISHMENT OF EXEMPT FEDERAL BENEFIT FUNDS”]

Dated at Washington, D.C., the ____ day of _____, 2007

By order of the Federal Deposit Insurance Corporation

Robert E. Feldman,

Executive Secretary

[THIS SIGNATURE PAGE RELATES TO THE PROPOSED GUIDANCE TITLED
“GARNISHMENT OF EXEMPT FEDERAL BENEFIT FUNDS”]

Dated: [_____]

By the Office of Thrift Supervision

John Reich,

Director

[THIS SIGNATURE PAGE RELATES TO THE PROPOSED GUIDANCE TITLED
“GARNISHMENT OF EXEMPT FEDERAL BENEFIT FUNDS”]

Dated: [_____]

By the National Credit Union Administration

JoAnn M. Johnson,

Chairman