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Attn: Regulation Comments
Chief Counsel's Office
No. 2007-18
regs.comments@ots.treas.gov

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Board of Governors of the
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Robert E. Feldman
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Attention: Comments
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Re: Notice of Proposed Guidance on Garnishment of Exempt Federal Benefit Funds
OCC Docket ID No. OCC-2007-0015
FRB Docket No. OP-1294
OTS No. 2007-18
NCUA (No Docket Number)

Ladies and Gentlemen:

The Office of the Comptroller of the Currency, the Federal Reserve Board, the Federal Deposit Insurance Corporation, the Office of Thrift Supervision and the National Credit Union Administration (the "Agencies") have requested comments on their proposed guidance entitled

Garnishment of Exempt Federal Benefit Funds. JPMorgan Chase & Co., on behalf of JPMorgan Chase Bank, National Association, its lead subsidiary bank, Chase Bank USA, National Association, its credit card bank, and its other subsidiaries, appreciates the opportunity to submit this response.

JPMorgan Chase & Co. (NYSE: JPM) (“Chase”) is a leading global financial services firm with assets of \$1.2 trillion and operations in more than 50 countries. The firm is a leader in financial services for consumers and businesses, investment banking, commercial banking, asset and wealth management and private equity. Under the JPMorgan and Chase brands, the firm serves millions of consumers in the United States and many of the world’s most prominent corporate, institutional and government clients. Information about the firm is available on the Internet at www.jpmorganchase.com.

SUMMARY

Chase appreciates the opportunity to comment on this difficult and complex issue involving the garnishment of exempt federal benefit payments, such as Social Security benefits, Supplemental Security Income (SSI) benefits, veterans’ benefits, federal civil service retirement benefits and federal railroad retirement benefits. We believe that the best long-term solution would include new federal regulations from the Social Security Administration, the Department of Veterans Affairs and the other federal agencies that make payments of exempt federal benefits, to provide for (i) automatic exemptions of a specified amount of exempt federal benefits that are direct deposited into bank accounts, even if the benefits are commingled with other funds, and (ii) preemption of conflicting state garnishment laws that expose banks to liability for releasing federal benefit funds. We believe that the California and Connecticut garnishment laws provide good examples of a workable scheme for automatic exemptions, and we would support federal regulations with a similar approach.

Another important part of the solution is for the Social Security Administration, the Department of Veterans Affairs and the other federal agencies that distribute these benefits to insure that the payments of exempt benefits that are made as direct deposits through the ACH system include clear identifying information that allows financial institutions to easily identify the payments as exempt federal benefits. These direct deposit payments cannot always be identified today.

Finally, we support the Agencies’ effort to issue guidance to financial institutions on this issue, but we urge the Agencies to recognize that financial institutions are currently required to take certain actions under state laws and violating those laws would create significant potential liability for financial institutions.

The recommended practices, and our related concerns, are set forth below.

Recommended Practice: Promptly notify a consumer when a bank receives a garnishment order and places a freeze on the consumer's account.

We agree that it is important for a consumer to receive notice of a freeze on his account as soon as possible, so that the consumer is aware of the action taken and the effect on the available balance in the account. Early notice of a freeze will help consumers avoid overdrafts on the account and any related fees.

Chase sends a notice to its accountholder upon placing a freeze on an account due to a garnishment or other collection order, unless prohibited by law.¹ In addition, since a freeze reduces the available balance of the account, the effect of a freeze will show up immediately when a Chase customer checks his available balance by calling telephone banking, accessing online banking, using a Chase ATM or inquiring in a branch. By giving the consumer more information about the status of his account, the consumer will have a better opportunity to avoid transactions that will overdraw the account and cause the customer to incur overdraft, NSF or other types of fees.

A consumer will generally receive notice of a garnishment order directly from the judgment creditor at the same time that the financial institution receives the garnishment order. The garnishment laws of many states require a judgment creditor to send a written notice to the judgment debtor that a garnishment order has been issued against the debtor's assets at a particular bank. Some state laws require that these notices include information about exempt funds. This notice from a judgment creditor provides the consumer with even earlier notice that his or her bank account is at risk of being frozen.

Recommended Practice: 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.

We agree that a financial institution can help its accountholders by providing some general information about exempt federal benefit payments, but we believe that a financial institution is not in a position to give its accountholders legal advice about these complex issues. Accordingly, any information about exempt federal benefits should be general in nature and should recommend that the accountholder seek further legal advice from an attorney.

When Chase places a garnishment hold on a customer's account, we send a letter notifying the customer of the hold, unless such a notice is prohibited by law. The notice includes the following general description of exempt funds:

You may be able to get your money back. Federal and state laws protect certain property or money (such as social security, supplemental social security (SSI) and veterans' benefits) from being used to pay most judgments or orders. Depending on the state where you live, exempt funds may also include funds derived from public assistance

¹ Some seizure warrants and forfeiture notices issued on behalf of federal or state authorities are filed under seal and the financial institution is prohibited from notifying the accountholder of the seizure.

(welfare), alimony or child support, unemployment benefits, disability benefits, public or private pensions and workers' compensation benefits. Exemptions generally do not apply to business accounts.

We frequently cannot tell whether or to what extent funds in your account may be exempt from collection, and in many states only you can ask the court to release your funds. If you think that your funds that have been held or taken may be exempt, you may want to immediately contact the attorney for the judgment creditor and advise him/her of your belief. If you believe that you need legal advice, you will need to consult your own attorney, or a Legal Aid or Legal Services attorney (if you qualify for such assistance).²

Whether any particular funds in an account are exempt often requires a fact-specific and deposit-by-deposit analysis, for which a generalized communication or notice is not well-suited. In addition, a bank may not have access to all of the relevant information necessary for the analysis. Hence, we believe the better approach is for the account holder to consult with his or her own legal advisor if he or she believes that further advice would be useful regarding the potential exempt status of the funds in the account.

Recommended Practice: Promptly determine, as feasible, if an account contains only exempt federal benefit funds such as SSA or VA benefits.

We agree with the recommendation, but suggest that it should be clarified to require reasonable efforts to identify direct deposits of federal benefit funds, but not check deposits of such funds. In addition, the recommendation should acknowledge that banks should only be required to look at transaction history for a reasonable period prior to the garnishment date. We note, however, that many banks may not even have the systems capability to readily identify direct deposits of exempt federal benefits. Banks also need better guidance from the Social Security Administration, the Department of Veterans Affairs and the other federal agencies that make these benefit payments on how to identify exempt federal benefit payments through ACH code information.

When Chase receives a garnishment order, a Chase employee identifies all accounts of the judgment debtor and reviews the account history for the previous 90-day period. We attempt to identify direct deposits of Social Security benefits and veterans' benefits by reference to the ACH code number and description, if any, accompanying the direct deposit.

We associate ACH code numbers 303, 310 and 312 with payments issued by the Social Security Administration and ACH code number 220 with payments issued by the Department of Veterans Affairs, but we understand that these numbers refer to the Regional Center issuing the payments, and do not necessarily indicate that the payments are exempt Social Security or veterans' benefits. Therefore, we have no reliable method of identifying direct deposits of exempt federal

² The language in this Chase notice is very similar to the language required in the levy notice that judgment creditors are required to send to judgment debtors under New York state law. NY CPLR §5222.

benefit payments. We have informed the Social Security Administration of our concern, and have requested that they give us guidance on how to identify these exempt direct deposit payments.

We cannot identify deposits made via check as Social Security or veterans' benefits by reviewing the online account history, so we must treat all check deposits as non-exempt funds.

If, after reviewing the past 90 days of account history, we conclude that all of the deposits are direct deposits with ACH code numbers 303, 310, 312 or 220, and there are no other types of deposits during the 90 days, then we will not place a hold as a result of the garnishment. We send a letter to the judgment creditor stating that we will not place the hold because all of the deposits in the account appear to be exempt federal benefits.

If Chase confirms that an account received direct deposits of exempt federal benefit payments during the previous 90 days, but the account also received other types of deposits or check deposits that cannot be identified during that period ("commingled funds"), we will place the garnishment hold, unless otherwise directed by state law. Chase may request a turnover order from the judgment creditor in those instances, or may take other similar steps to obtain direction from the court, depending on applicable state law. As a general matter, under the laws of most states, a bank faces a significant risk of loss if it fails to place a hold or attempts to unilaterally determine what portion of the account constitutes exempt funds as compared to non-exempt funds. We support the approach taken under California and Connecticut garnishment laws, which include a provision for an automatic exemption of a certain dollar amount for accounts with any direct deposits of exempt federal benefits. This approach permits a consumer access to a portion of his or her commingled funds for daily living expenses, and doesn't require the bank to make decisions about the status of potentially-exempt funds which could place the bank in violation of state garnishment laws.

Recommended Practice: Notify the creditor, collection agent, or relevant state court that the account contains exempt funds in cases in which the bank is aware that the account contains exempt funds.

It is important to distinguish between (1) accounts that appear to contain only direct deposits of exempt federal benefits and (2) accounts that appear to contain commingled funds (some direct deposits of exempt federal benefits and other non-exempt deposits or deposits that cannot be identified as exempt).

As discussed above, when Chase identifies an account in the name of the judgment debtor that appears to have received only direct deposits of exempt federal benefits over the previous 90 days, we generally notify the judgment creditor or its representative that we have not placed a freeze on the account because it appears to contain only exempt federal benefits.

When Chase identifies an account in the name of the judgment debtor that appears to contain commingled funds, we generally place a freeze on the account and notify the judgment creditor

or its representative that the account appears to contain some exempt federal benefits. In most states, the judgment creditor must obtain a court order directing the bank to turn over the funds as the final step in obtaining the funds. Our notice to the judgment creditor puts the creditor on notice of the existence of exempt funds in the account.

Recommended Practice: 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.

We have no objection to this recommendation, if it applies only to accounts that appear to contain only direct deposits of exempt federal benefits that can readily be identified as exempt, and specifically excludes accounts with commingled funds or accounts with deposits that cannot reasonably be identified (e.g., deposits made by check or direct deposits that do not contain an ACH code that identifies the deposits as exempt federal benefits).

Recommended Practice: Minimize the cost to a consumer when the consumer's account containing exempt federal benefit funds is frozen, such as refraining from imposing overdraft, NSF, or similar fees while the account is frozen or refunding such fees when the freeze has been lifted.

The processing of garnishment orders by a bank is a manual and expensive process. It is typically performed by specially-trained personnel, often in consultation with attorneys. The process includes:

- Examining the court papers to insure they are in proper order under the appropriate state law and that they name the proper bank.
- Conducting a search of the bank's records to determine if the judgment debtor maintains a deposit account with the bank, which may involve additional research if no taxpayer identification number is included with the order.
- Reviewing the account history to determine whether all of the recent deposits can be identified as exempt federal benefits.
- If all of the recent deposits can be identified as exempt federal benefits, sending a letter to the judgment creditor stating the reasons that the bank will not place a hold.
- Placing a hold on the deposit account, if required under state law.
- Sending a letter to the accountholder notifying him/her of the account hold.
- If the accountholder disputes the garnishment, involving the bank's attorneys as needed.

- Remitting the garnished amount to the state court, as required by state law.
- Fielding calls from the accountholder and/or the judgment creditor regarding the garnishment process.

Banks generally assess a garnishment fee to help defray the costs of the garnishment process. We believe this is a reasonable approach, and such costs should be borne by the accountholders whose accounts are garnished, rather than spread across all accountholders of the bank.

Overdraft or NSF fees are assessed when a check or other item is presented against an account that does not have sufficient available funds to pay the check (and the depositor does not have available funds under an overdraft protection program). A garnishment hold reduces the available balance in the garnished account. Hence, there is no justification for treating accountholders with a garnishment hold any differently than another accountholder who has written checks against an insufficient available balance. Under the laws of most states, before an account is garnished, the accountholder should have received written notice of the creditor's initial action in court for the unpaid debt, written notice of the judgment entered by the court for the unpaid debts, and written notice of the issuance of a garnishment order against the accountholder's accounts at a particular bank. These notices provide early warning to the accountholder that his or her bank account is at risk of having a garnishment hold placed on it. In addition, Chase notifies the accountholder by letter, unless prohibited by law, that a garnishment hold has been placed on the account and that the available balance has been reduced by the amount of the hold. The accountholder can also check his available balance at any Chase branch, any Chase ATM, by calling telephone banking or by accessing our website at chase.com.

We believe that the best way to reduce overdraft fees incurred at the time of a garnishment hold is to provide the customer with ready access to information about the available balance in his account, and to educate customers about the effect of a garnishment hold on available balance.

Recommended Practice: Allow the consumer access to a portion of the account equivalent to the documented amount of exempt federal benefit funds as soon as the bank determines that none of the exceptions to the federal protections against garnishment of exempt federal benefit funds are triggered by the garnishment order.

We strongly object to this recommendation. When an account appears to contain commingled funds (exempt federal benefits and other non-exempt deposits made during the previous 90 days), we place a hold on the account so that a court may determine which funds are exempt and which are not. We are not in a position to attempt to determine which funds are exempt and which are not. Funds in an account are fungible and dynamic, and to try to make such a determination on our own without specific direction from a state court or state statute is to invite significant potential liability for the bank. Therefore, we cannot allow a consumer access to a portion of the account based solely on our own determination of which funds are exempt and which are not.

Connecticut and California both have passed state garnishment statutes that provide for an automatic exemption of a certain dollar amount for accounts with any direct deposits of exempt federal benefits, even when the benefits are commingled with other funds.³ This approach provides consumers with some funds for daily living expenses while a garnishment dispute is continuing, and also provides direction and certainty for banks. We strongly endorse this type of approach via federal preemptive regulation from the Social Security Administration, the Department of Veterans Affairs and the other federal agencies that make exempt federal benefit payments.

We note that some state orders (such as a Restraining Notice in New York and a Citation to Discover Assets in Illinois) require a bank to hold all future deposits in an account for a period of time, or sometimes indefinitely. Since it is impossible to know what types of funds may be deposited in an account in the future, these orders force the bank to place a hold on any funds deposited into the account in the future, as well as current funds.

Recommended Practice: Offer consumers segregated accounts that contain only federal benefit funds without commingling of other funds.

We don't believe that this is a workable or necessary solution. Consumers have the opportunity today to open multiple checking accounts and to segregate their exempt federal benefits into a separate account. This solution may not be ideal for some consumers, however, because they would likely incur the additional fees and administrative burdens associated with maintaining multiple checking accounts.

Many banks have worked with government agencies in the past to offer limited purpose deposit accounts that accept only government benefits, such as EBT (electronic benefit transfer) accounts. These accounts have not been popular with consumers, especially those who qualify for a general purpose checking account. Consumers clearly prefer the convenience and flexibility of an account that allows all types of deposits.

Recommended Practice: Lift the freeze on an account as soon as permissible under state law.

We have no objection to the spirit of this recommendation. Removing a freeze, however, is a manual process and cannot happen instantaneously. Accordingly, we suggest that the recommendation be modified slightly to refer to lifting a freeze "as soon as reasonably possible" rather than "as soon as permissible".

³ Conn. Gen. Stat. §52-367b(2007); Cal. Civ. Proc. §704.080 (2004)

Conclusion

We urge the Agencies to strike an appropriate balance between the need for consumers to retain access to exempt federal benefits while a garnishment process is continuing and the potential liability to banks of failing to comply with state garnishment laws. Honoring garnishment orders is a requirement imposed by state authorities in order to facilitate the orderly collection of debts. Banks are merely third party stakeholders seeking to comply with all applicable laws, and would like clear rules directing the banks how to respond. Unfortunately, the interplay among multiple state laws, federal laws and the needs of consumers has created a complex patchwork of rules. In the final analysis, the solution must come from new regulations preempting state laws issued by those governmental agencies that make payments of exempt federal benefits, such as the Social Security Administration and the Department of Veterans Affairs.

We appreciate the opportunity to comment on the proposed guidance. If you would like to discuss any of our comments in more detail, please contact the undersigned at 312-732-5345.

Very truly yours,

Andrea Beggs
Senior Vice President

garnishment.comment.ltr.5.doc