CUNA
Credit Union National Association
601 Pennsylvania Ave., NW | South Building, Suite 600 | Washington, DC 20004-2601 | PHONE: 202-638-5777 | FAX: 202-638-7734
cuna.org

November 27, 2007

Ms. Mary Rupp
Secretary of the Board
National Credit Union Administration
1775 Duke Street
Alexandria, VA 22314-3428

Delivered via: regcomments@ncua.gov

Re: Proposed Guidance on Garnishment of Federal Benefit Payments

Dear Ms. Rupp:

This letter responds to the request for comments from the National Credit Union Administration Board regarding Proposed Guidance on Garnishment of Exempt Federal Benefit Funds, issued in conjunction with the other federal financial institution regulatory agencies. By way of background, CUNA represents approximately 90 percent of our nation's 8,400 state and federal credit unions, which serve close to 87 million members. The positions reflected in this letter were developed under the auspices of CUNA's Federal Credit union and Consumer Protection Subcommittees.

Summary of CUNA's Position

- CUNA agrees with Members of Congress and the agencies that federal laws generally protecting federal benefit funds from garnishment should be upheld.
- However, CUNA does not support a number of the provisions of the proposed guidance which will be difficult or impossible to implement.
- We believe that garnishment is generally a state issue and is more appropriately dealt with through the development of model state statutory language that all states should be encouraged to adopt.

Discussion of CUNA's Points

The agencies' proposed guidance seeks to address the problematic situation that arises when a financial institution receives a garnishment order from a court under state law that could affect federal benefit funds, such as Social Security benefits, Supplement Security Income benefits, Veterans' benefits, Federal Civil Service retirement benefits and Federal Railroad retirement benefits, despite the fact that such funds are exempted from garnishment by federal law. While financial institutions are aware they must comply with federal law, institutions have understandably not wanted to ignore enforceable garnishment orders from state courts, particularly since in some states they may be liable for funds withdrawn by the consumer/debtor after the receipt of the order.

To address the complex intersection between state and federal law, the regulators have proposed nine best practices to guide financial institutions as they wrestle with their overlapping compliance responsibilities.

We strongly agree that financial institutions must comply with all applicable laws, including the federal statutes that exempt certain federal benefits from garnishment. We also agree that institutions should have reasonable policies to deal with the processing of garnishments. Nonetheless, we have a number of concerns about the agencies' approach to the treatment of garnishments and the nine directives that have been proposed. We discuss our issues below.

However, before we discuss the details of the guidance, we recommend the agencies consider another approach. From a public policy standpoint, we think the burden of policing garnishment orders should not be the responsibility of financial institutions, which after all are third parties to the process and are buckling under too many rules and guidelines already.

Rather, we believe this is primarily a state issue and recommend that federal policymakers coordinate with the National Conference of State Legislators to address concerns through model statutory language that all states would be encouraged to adopt, if they haven't already. We think the objectives of such language would be to encourage greater uniformity in garnishment proceedings; ensure adequate notice is provided to consumers by the courts that are reviewing the claims for garnishment; that such notices spell out the exemptions for federal benefit funds; and that the courts should work with the parties through the hearing or review process to develop garnishment orders that recognize the amount of such funds that are exempt.

In short, we believe consumers should be fully informed of their rights and the significance of the exemptions but financial institutions cannot and should not assume all of the responsibilities the best practices outline.

Regarding the specific practices the regulators are recommending, we have the following comments.

- The first practice states that financial institutions should promptly notify a consumer when it receives a garnishment order and places a freeze on the consumer's account. The second practice states the institutions should provide the consumer with information about what type of funds are exempt. We think the court issuing the order bears the responsibility for providing adequate information to the debtor that an account is subject to garnishment as well as the type of funds that are exempt, as some courts currently do.
- The third practice would require institutions to determine promptly if an account contains only exempt federal benefit funds, as feasible. Credit unions who responded to the request for comments informed us that such a determination is infeasible and would be virtually impossible to comply with because they are not able to track funds in the manner this practice assumes.
- The fourth practice would require the institution to notify the creditor, collector or state court that the account contains exempt funds in cases where the institution knows that is the case. As stated above, because institutions are not able to track these funds, it could be difficult to provide more information than the fact that exempt funds are deposited to a particular account.
- The next practice states that if a court allows an institution to forego freezing an account because it contains only exempt funds, the institution should act accordingly. We support that practice, as long as it is clear that the institution is not obligated to determine the extent to which an account contains exempt funds.
- The sixth practices calls for institutions to minimize costs to a consumer. We agree with this objective but are concerned that, although infrequent, there may be times when a fee is appropriate, such as repeated overdrafts. In light of that, we would recommend modifying the practice to recommend institutions refrain from "imposing **unreasonable**…" fees.
- The next practice directs institutions to allow consumers to have access to an amount of funds equal to the amount of the exemption as soon as it determines that none of the exceptions that would permit garnishment apply. We feel the consumer should have access as soon as possible to his or her funds but that the responsibility for determining to what extent the exemptions apply rests with the parties and the courts.
- The eighth practice is pro-consumer, and we support it as long as the responsibility for ensuring the separate account only contains federal benefit funds rests with the consumer and there is no liability for the institution should it inadvertently credit such funds to another account or non-exempt funds to this separate account.
- We also support the last practice as pro-consumer.

In closing, financial institutions should be encouraged to develop and maintain sound policies for dealing with garnishments in a pro-consumer manner, recognizing the practical constraints on their operations. However, we believe that a number of legal concerns regarding the processing of garnishments are more appropriately the purview of state courts and the parties to the garnishment proceeding, rather than the third party financial institutions. Credit unions want to uphold the law and make every effort to do so but should not be expected, even through best practices, to assume responsibilities that belong to others.

We would welcome the opportunity to discuss our views if you have questions and thank you for the opportunity to comment.

Sincerely,

Mary Mitchell Dunn
Senior Vice President
and Deputy General Counsel