

**DEPARTMENT OF THE TREASURY
Office of the Comptroller Currency
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**FEDERAL RESERVE SYSTEM
Docket No. OP-1294**

FEDERAL DEPOSIT INSURANCE CORPORATION

**DEPARTMENT OF THE TREASURY
Office of Thrift Supervision
ID OTS-2007-0018**

NATIONAL CREDIT UNION ADMINISTRATION

**COMMENTS OF ACA INTERNATIONAL ON INTERAGENCY PROPOSED
GUIDANCE ON GARNISHMENT OF EXEMPT FEDERAL BENEFIT FUNDS**

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I. Introduction.

The following comments are submitted on behalf of ACA International (“ACA”) in response to the Interagency Proposed Guidance on Garnishment of Exempt Federal Benefits Funds (“Proposed Guidance”). ACA’s comments respond to requests from the five administrative agencies jointly issuing the notice with request for comment (“Agencies”), 72 Fed. Reg. 55273 (Sept. 28, 2007).

II. Background On ACA International.

ACA International is an international trade organization originally formed in 1939 and composed of credit and collection companies that provide a wide variety of accounts receivable management services. Headquartered in Minneapolis, Minnesota, ACA represents approximately 6,000 members based in more than 55 countries and ranging from credit grantors, third-party collection agencies, attorneys, and vendor affiliates. ACA has numerous divisions or sections accommodating the specific compliance and regulatory issues of its members’ business practices.

The company-members of ACA are subject to applicable Federal and state laws and regulations regarding debt collection, as well as ethical standards and guidelines established by ACA. Specifically, the collection activity of ACA members is regulated primarily by the Commission under the Federal Trade Commission Act, 15 U.S.C. § 45 et seq., the FDCPA, the Fair Credit Reporting Act, 15 U.S.C. § 1681 et seq., and the Gramm-Leach-Bliley Act, 15

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U.S.C. § 6801 et seq., in addition to numerous other Federal and state laws. Indeed, the accounts receivable management industry is unique if only because it is one of the few industries in which Congress enacted a specific statute governing all manner of communications with consumers when recovering payments.

ACA members range in size from small businesses with a few employees to large, publicly held corporations. Together, ACA members employ in excess of 150,000 workers. These members include the very smallest of businesses that operate within a limited geographic range of a single town, city or state, and the very largest of national corporations doing business in every state. The majority of ACA members, however, are small businesses. Approximately 2,000 of the company members maintain fewer than ten employees, and more than 2,500 of the members employ fewer than twenty persons.

ACA serves members and represents the industry by developing timely information based on sound research and disseminating it through innovative education, training, and communications. The Association also promotes professional and ethical conduct in the global marketplace; acts as the members' voice in critical business, legislative, legal, regulatory and public arenas; and provides quality products and services to its members.

To help members stay current on regulatory and business developments, as well as industry practices, ACA provides more than 130 educational and training workshops to its members each year, with nearly 1,000 industry professionals completing ACA's collector

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credentialing program annually. As discussed in detailed herein, ACA is the industry leader in providing compliance information and education to its members, and education to consumers to encourage financial literacy. ACA provides consumers with valuable information about their rights under the FDCPA and the Fair Credit Reporting Act.

In addition, ACA has a Code of Ethics and Code of Operations (Ethics Code). Upon becoming a member of ACA and as a condition of membership renewal, each member agrees to abide by the Association's Ethics Code. In addition, ACA members must comply with all Federal and state laws and regulations governing the credit and collection industry. In fact, ACA's commitment to compliance is reflected in the fact that consumers are encouraged to file complaints with ACA. If a complaint is filed regarding an ACA member, ACA investigates the complaint and, if it finds that a member company has violated the Association's standards and ethics guidelines, it will impose sanctions ranging from a private letter of admonition to suspension to expulsion. ACA's five core values are:

1. Respect – for diverse customers, clients, colleagues and the global workforce.
2. Leadership – by uniting members to advance a successful, service-oriented and professional credit and collection industry.
3. Service – by providing quality products and services to members while meeting the highest professional standards.

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4. Innovation – by exploring new ways to achieve excellence.

5. Fiscal Responsibility – by operating the Association in a prudent manner while creating and maintaining a financial reserve to meet future member needs.

III. ACA Members Are A Critical Part Of The Economy.

The credit and collections industry in general, and ACA members in specific, play a crucial role in safeguarding the health of the economy. Uncollected consumer debt threatens the economy. According to a 2006 economic impact study of the collections industry conducted by PricewaterhouseCoopers LLP, third party collection agencies returned \$39.3 billion to creditors measured on a commission basis in 2005. This represents a savings of \$351 per household each year, which equates to 129 days of electricity payments attributed to households.

Outstanding credit card debt has doubled in the past decade and now exceeds one trillion dollars. Total consumer debt, including home mortgages, exceeds \$9 trillion. Moreover, the greatest increases in consumer debt are traced to consumers with the least amount of disposable income to repay their obligations.

As part of the process of attempting to recover outstanding payments, ACA members are an extension of practically every community's businesses. For example, ACA members represent the local hardware store, the retailer down the street, and the local physician. The collection industry works with these businesses, large and small, to obtain payment for the

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goods and services received by consumers.

ACA members also partner with federal, state, and local governments to assist in the recovery of public debts. Each year, federal agencies refer billions of non-tax debts to the Department of Treasury's Financial Management Service (FMS) pursuant to the Debt Collection Improvement Act of 1996. FMS contracts with third-party debt collectors to recover these non-tax debts. Without an effective collection process, the economic viability of these businesses, as well as public debt recovery programs, is threatened. At the very least, Americans would be forced to pay higher prices to compensate for uncollected debt.

IV. Comments on Proposed Guidance.

The Agencies have developed the Proposed Guidance to encourage financial institutions to adopt and implement policies and procedures that respond to court-issued garnishment orders that may impact exempt federal benefits. The professed objective of the Proposed Guidance is to effectuate compliance with state-statutory and court-ordered processes while minimizing consumer hardship due to the temporary or permanent loss of federal funds.

ACA generally agrees with the Proposed Guidance and the need to require financial institutions to better inform their clients as to the garnishment rights and obligations. As the Agencies are aware, garnishment is a legal procedure used by creditors and debt collectors to collect debts owed by consumers. Garnishment exists in one form or another in nearly every

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state, excluding only North Carolina, Pennsylvania, South Carolina and Texas (Texas does permit the garnishing of bank accounts). Federal and state laws regulate the amount of wages or assets that may be subject to garnishment.

The most common form of garnishment is wage garnishment. Wage garnishment is a legal procedure in which a person's earnings are required by court order to be withheld by an employer for the payment of a debt. Wage garnishment generally does not impact federal benefit funds and therefore it is not subject to an exemption.¹

Another form of garnishment involves the withholding of non-wage funds in a consumer's account with a financial institution. Consumers often commingle federal benefit funds with non-benefit funds. As the Agencies are aware, commingled federal benefit and non-benefit assets presents complex problems for financial institutions that are required to comply with state garnishment orders. This is because certain assets of a consumer are exempt from garnishment. These exemptions include, but are not limited to, Social Security benefits, veterans and disability insurance benefits and state unemployment insurance. For this reason, account freezes are commonly utilized to preserve the assets until the legal status is resolved,

¹ Federal and state law determines the amount of wages that may be subject to garnishment. The Consumer Credit Protection Act (CCPA) sets the maximum amount that may be garnished in any workweek or pay period. The weekly amount that may be garnished cannot exceed the lesser of two figures: 25 percent of the employee's disposable earnings, or the amount by which an employee's disposable earnings are greater than 30 times the federal minimum wage. Although many state statutes track the CCPA exemption provision described above, if a state wage garnishment law differs, the law resulting in the greatest amount of

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that is, a determination whether the assets are protected from or subject to garnishment.

It is important to emphasize that a garnishment order is issued by a court subject to the Rules of Civil Procedure that afford the judgment debtor and judgment creditor due process protections to make sure that appropriate funds are garnished. To the extent that exempt property may be implicated, statutory law affords judgment debtors the right to claim an exemption. A claim of exemption must be asserted within the statutorily prescribed period of time or waived.

The Agencies request comment as to whether judgment debtors are adequately informed of their rights when a judgment creditor attempts to garnish funds. ACA believes debtors are adequately informed based on the statutory requirements in state laws controlling the process and procedure for obtaining a garnishment. Although the procedure for garnishment varies by state, generally the following steps must be taken by the creditor or debt collector in order to carry out a garnishment:

1. The creditor or debt collector (garnishor) must provide a written notice of the garnishment order (writ of garnishment) to both the consumer and the party holding the consumer's assets—the employer or bank (garnishee).
2. Because the writ of garnishment is a court ordered process, the garnishee is required by law to withhold the garnished wages or freeze the bank account and

exemptions for the consumer must be followed by the creditor or debt collector.

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provide such funds to the garnishor—even if such funds are later found to be exempt from garnishment.

3. In addition to providing the writ of garnishment to the consumer, the garnishor must also provide the consumer with a notice of exemption which explains certain wages or funds in his bank account are exempt from garnishment, as described above.
4. Within the time prescribed by law as provided in the notice of exemption, the consumer has the right to object to the garnishment by claiming the funds withheld are exempt. It is the consumer who is responsible for claiming the appropriate exemptions. The notice of exemption details the procedure the consumer must follow in order to claim the appropriate exemptions.
5. Upon receipt of the notice of exemption, the garnishor may contest the consumer's claim that the funds were exempt. A contested exemption claim is adjudicated in court. If the court decides the garnished funds are exempt, the garnishor is required by law to return the funds.

In addition, state law limits the length of time a consumer's wages or bank account may be garnished. Some states allow for continuous garnishment of assets until the judgment is satisfied. Other states restrict the garnishment to a specified period of time. If the garnishment order expires before the judgment is paid in full, the garnishor may be able to

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extend the garnishment by petitioning the court and providing notice to the consumer.

ACA believes that more detailed information should be given to financial institutions in order to implement the best practices. For example, the Proposed Guidance should provide state-specific information to financial institutions so that the institution can evaluate whether the underlying account contains federal funds that are not subject to garnishment. Not all federal funds are exempted, and a major challenge for financial institutions is to discern which federal funds are exempt and whether the funds are commingled.

It is a significant failing of the Proposed Guidance that the Agencies do not inform the financial institution how to carry out the best practice of determining “if an account contains only exempt federal benefit funds such as SSA or VA benefits.” In light of statutory mandates generally requiring a court to undertake this type of mixed fact-based and law-based inquiry, what criteria is the financial institution to apply in making this determination? The Proposed Guidance does not address this point. Moreover, the best practices embodied in the Proposed Guidance suggest that a financial institution should act to deny an asset freeze on an account subject to a garnishment order “if the account is determined [by the financial institution] to contain only exempt federal benefits.” ACA respectfully submits that this best practice cannot be reconciled with state laws that require financial institutions to comply with garnishment orders and impose liability for withdrawn assets.

Finally, ACA agrees that financial institutions should offer to consumers segregated

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accounts that do not commingle federal benefit and non-federal benefit funds. Inasmuch as this is a constructive idea, in practical application it is difficult to understand why consumers would agree to separate accounts and incur yet another set of bank fees simply as a way to avoid the exemption complexities of a garnishment in the future.

ACA appreciates the opportunity to comment on the issues raised in the Proposed Guidance.

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Respectfully submitted,

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