

Proposed Statement of Best Practices in Connection with Garnishment of Exempt Federal Benefit Funds- meeting between federal agencies and banks at American Bankers Association

On January 24, 2008, the American Bankers Association hosted a meeting with representatives from various banks and federal regulatory agencies. The agencies included the Department of Treasury, Office of Management and Budget, Social Security Administration, Department of Veterans Affairs, Federal Reserve Board, Federal Deposit Insurance Corporation, Office of the Comptroller of the Currency, Office of Thrift Supervision, and National Credit Union Administration. The banks included Bank of America, BB&T, Chevy Chase, Citibank, Huntington Bancshares, Inc., JPMorgan Chase, Regions, and Wells Fargo. The meeting was arranged to provide the agencies with additional information regarding the banks' current garnishment procedures and to address bankers' concerns with the best practices set forth in the proposed statement. The following outlines the main points discussed at the meeting:

- Processing garnishment orders can often be a difficult, complex and labor-intensive procedure for banks.
- There are two primary types of garnishment orders. The first is a one-time garnishment where the garnishment only applies to those funds that are in the account at the time the garnishment order is served, even if those funds are not sufficient to satisfy the judgment. Funds deposited after receipt of the garnishment order are not subject to that garnishment proceeding. The second is a continuous garnishment order where, if the funds in the account are not sufficient to satisfy the judgment, the account is frozen for a certain period of time and incoming funds may be garnished to satisfy the judgment.
- Banks often have difficulty identifying exempt federal benefit funds because the electronic funds transfer (EFT) codes used by the paying agencies do not clearly identify which deposits are exempt. Moreover, even in situations where the bank can readily identify exempt funds, if an account contains commingled exempt and non-exempt funds, the bank does not have clear rules it can follow to determine which portion of the funds are exempt, or to determine whether previously deposited exempt funds are still deemed to be in the account.
- There are multiple problems stemming from conflict between federal and state law. Banks would benefit by having a rule that preempted state law and provided clarity and certainty. The California approach, whereby a set dollar amount is exempt from garnishment whenever an account contains exempt funds, was suggested by banks as a reasonable, easy-to-apply approach that the paying agencies could implement by regulation.