



November 26, 2007

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

Re: Proposed Guidance on Garnishment of Exempt Federal Benefit Funds

Dear Ms. Rupp:

On behalf of the California and Nevada Credit Union Leagues, I appreciate the opportunity to comment on the proposed guidance on garnishment of exempt federal benefit funds issued by the National Credit Union Administration (NCUA) and other banking agencies (the Agencies). By way of background, the California and Nevada Credit Union Leagues (the Leagues) are the largest state trade associations for credit unions in the United States, representing the interests of more than 400 credit unions and their 9 million members.

Background

As a result of concerns raised by consumer groups, as well as a recent Senate Finance Committee hearing on the issue, the Agencies have issued proposed guidance on best practices regarding garnishment of exempt federal benefit payments. These benefit payments include Social Security benefits, Supplemental Security Income benefits, Veterans' benefits, Federal Civil Service retirement benefits, and Federal retirement benefits. Due to concerns about the legality of issuing regulations to address the issue—since these benefits are exempt under federal law, which is beyond the purview of federal regulators—the Agencies have issued proposed guidance containing nine “best practices” to assist financial institutions in addressing the issues that arise when dealing with garnishments on accounts containing government benefit funds. These best practices include procedures designed to expedite notice to the consumer of the garnishment process and release of funds to the consumer as quickly as possible.

The Leagues' Position

We commend the Agencies for attempting to minimize the hardship that recipients of exempt federal benefit funds may face when a freeze is placed on their accounts due to a garnishment. We also appreciate the Agencies' acknowledgement that financial institutions must balance these consumer concerns against compliance with applicable state laws governing legal processes. The Leagues wholeheartedly

agree that consumers should be provided with prompt notification when a financial institution receives a garnishment order, including notice that a freeze has been placed on the consumer's account. We also believe that lifting of the freeze should be done as soon as permissible under state law, and are of the opinion that a vast majority of credit unions faithfully and efficiently follow state laws in regards to these aspects of garnishments. In fact, we would like to point out that credit unions were not the subject of the recent Congressional hearing or of consumer complaints related to this issue.

However, we strongly disagree with the Agencies' approach regarding several of the other best practices. It appears that several of them, if issued, would have the effect of unfairly shifting greater compliance burdens—and potential legal liability—to credit unions and other financial institutions, without providing a rationale for doing so. Further, the proposal does not address any other options (i.e., ones which do not involve financial institutions' responsibilities) that could more effectively and fairly address consumer and Congressional concerns.

Our Concerns

First, we fail to understand why financial institutions should be responsible for providing a consumer with information about what types of federal benefit funds are exempt, in order to aid the consumer in asserting federal protections. Ideally, this information should come from the agency providing the consumer with the federal benefit, or from the state court as part of the proceeding leading to the garnishment. If the Agencies believe that credit unions and other financial institutions should furnish this information to consumers, we recommend that a safe-harbor model form be developed and provided as part of the guidance.

Further, we are very troubled with the proposal's reliance on financial institutions to 1) determine if an account contains exempt funds; 2) to inform creditors, collection agents, or relevant state courts of this information; and, most significantly, 3) to determine how much of the funds in an account are exempt, and allow consumers access to that amount. We view this approach as unreasonable, as seldom are the funds in an account entirely exempt. Indeed, the large variety of income sources and deposit methods (e.g., direct deposit, mail deposits, cash deposits, etc.) found on consumers' accounts makes an accurate determination extremely difficult and costly. This leaves credit unions and other financial institutions potentially liable for making an incorrect determination, exposes them to possible financial losses, and unfairly inserts them into any disputes arising between the parties involved in the legal action.

The shortcomings of this approach are made more obvious when compared with some state laws which address enforcement of money judgments, such as California Code of Civil Procedure §704.080. This provision of California law provides judgment debtors/account owners with an automatic exemption from certain types of levies—up to certain dollar amounts—for accounts that receive direct deposits of Social Security benefits (and for accounts that receive direct deposits of public benefit funds). If an account levied receives direct deposit payments from the Social Security Administration for one recipient, then the first \$2,425 in the account is exempt from the enforcement of that money judgment. If there are two Social Security recipients receiving funds, then the exemption increases to \$3,650.

These exemptions apply regardless of how much of the account balance is actually made up of the benefit payments, and are available to the account owner without making a claim of exemption. This method helps to ensure that hardship for consumers—as well as liability for financial institutions in determining what funds in an account are exempt—is minimized. However, it is limited to accounts that receive Social Security payments via direct deposit; other exempt federal benefit funds are not included, nor are exempt funds deposited via check. This brings us back to our concern that the proposed guidance makes no distinction as to how the benefit payment is deposited, making identification of a benefit deposit laborious and potentially inaccurate. (And, again, identification of what funds in an account are exempt, given multiple deposit sources, is highly complicated and unrealistic.)

Finally, while we understand concerns about charging excessive or unconscionable fees as part of a garnishment process, we believe that credit unions are no less entitled to collect reasonable and appropriately-disclosed fees related to garnishment (including overdraft and NSF) than they are for fees charged for other services. Processing and monitoring accounts that have been garnished can be time consuming; charging fees permit credit unions to recover a portion of the costs involved in performing these services—services, we might add, which are required to be done under state law.

Our Recommendations

While the Leagues recognize the importance of addressing the issues contained in the proposed guidance, on balance we believe that it falls short of effectively, efficiently, and fairly doing so. Therefore, we respectfully request that the Agencies withdraw the proposal, so that more thorough study and collaboration can be done with Congress, state legislatures, regulators, and other parties (e.g., National Conference of State Legislatures, National Association of State Credit Union Supervisors). The focus of such collaboration should be the encouraging of

legislatures to adopt laws similar to California's outlined earlier. In this way, we feel a more equitable solution to both consumers and financial institutions can be found.

In conclusion, the Leagues would like to thank the NCUA and other banking agencies for the opportunity to comment on this matter. We look forward to working with the Agencies to further study this issue. Please contact me if I can provide additional information or insights.

Regards,

A handwritten signature in black ink, appearing to read "Bill Cheney", with a long, sweeping underline that extends to the right.

Bill Cheney
President/CEO
California and Nevada Credit Union Leagues