Compass Bank

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General Counsel/Secretary

November 27, 2007

VIA E-MAIL
(regs.comments@federalreserve.gov)
Attention: Jennifer J. Johnson
Secretary, Board of Governors
of the Federal Reserve System

RE: Proposed Guidance on Garnishment of Exempt Federal Benefit Funds – Docket No. OP-1294

Dear Ms. Johnson:

Compass Bank ("Compass") thanks you for the opportunity to comment on the interagency Proposed Guidance on Garnishment of Exempt Federal Benefit Funds. While the guidance does bring to light certain problems related to the garnishment of accounts that contain exempt funds and the inconvenience this places on the account holder, it is our opinion that the proposed resolutions are not feasible as a whole. Our comment is divided into three portions. First, we provide general comments regarding the proposed guidance as a whole. Second, we provide comments on the areas specifically requested. Third, we give our conclusion and offer alternative suggestions.

General Comments

The guidance notes that creditors and debt collectors are often able to obtain a writ of garnishment on an "ex parte basis." This statement suggests that the party being garnished is blindsided when his or her account is placed on hold. While the writ of garnishment may be issued without the presence of the account owner, this statement does not accurately represent the full garnishment process. Before a court can enter a post-judgment writ of garnishment (by far the most common type of garnishment), a judgment against the account owner must be entered. That judgment can only be obtained after the commencement of a legal proceeding. Due process requires that proper notice be provided to all defendants. Accordingly, before a defendant can have a judgment entered against him or her and a subsequent writ of garnishment issued, the defendant must have received sufficient notice as required by the United States Constitution and applicable state laws. Although the final writ may be issued without prior knowledge by the account owner, the judgment from which the writ of garnishment issues can only be obtained after the account owner had an opportunity to participate in the proceeding and assert his or her rights. In addition, state garnishment laws in the states in which our institution operates require the garnishing creditor to notify the account owner/judgment debtor of the issuance of the writ of garnishment.

The proposed guidance would create a duty on financial institutions to provide customers information about what types of federal benefits are exempt in order to aid the customer in asserting federal protections. In essence, this would require financial institutions to become a substitute for an attorney for their customers. The burden of keeping up with changes to the exemption laws and educating our customers as to their legal rights in a specific situation should not fall upon financial institutions. It would seem that the agencies issuing the benefits in question and/or licensed attorneys are in the best position to educate the recipients of their rights with respect to exemptions from garnishment.

Garnishments create an obligation under state law for the garnished financial institution to retain whatever funds in its possession that may be subject to the writ of garnishment until the funds are condemned or a release is issued by the court. If a financial institution fails to promptly hold any funds in it possession, the financial institution may be liable for the amount of funds that leave the financial institution and, in some case, may be liable for the entire amount of the judgment regardless of the amount of funds that were held at the financial institution.[1]

Most significantly, the proposed guidance would require financial institutions to immediately determine whether the funds in an account are exempt under federal law and whether the funds in an account may fit into an exception to the federal exemption. The financial institution would have to make this determination (i) immediately (ii) on its own based on whatever information could be gleaned from the writ of garnishment and a manual examination of the account history and (iii) without the benefit of additional information from either the customer or the creditor. If the financial institution reaches the wrong conclusion (or a different conclusion from that reached by a subsequent court after receiving more complete information and the ability to carefully consider that information in a court proceeding), the financial institution will itself become liable to either the customer or the creditor, perhaps for the full amount of the judgment. By asking financial institutions to take such action, the proposed guidance places the financial institution at a significant risk for loss. This portion of the guidance forces the financial institution to take on the role of a fact finder while offering no protection if the financial institution's determination is challenged. A forum (the state court issuing the writ of garnishment) already exists for the account owner to challenge the propriety of the garnishment and to assert any applicable exemptions. It is more feasible to encourage state courts to hold emergency hearings to address consumer rights in relation to federal benefits exempt from garnishment.

In addition, the proposed guidance does not identify how a financial institution should resolve exemption issues where there are commingled deposits in a deposit account. Such a determination would be a labor-intensive manual process in any event and a burden that should not be imposed on the financial institution who is not involved in the underlying court process or the issuance of the writ of garnishment. In the absence of specific requirements on how that determination should be made, the proposed guidance opens financial institutions to potential liability and litigation regarding each garnishment where there may be exempt funds.

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[1] See ALA. CODE §6-6-457 (1975)

In order to alleviate the burden of a garnishment on exempt funds, the proposed guidance suggests that financial institutions should notify customers when a hold is placed on the account, minimize the cost by reducing NSF or similar fees and lift any holds as soon as permissible under state law. As a general rule, it is our opinion that most financial institutions already use these suggested best practices. Compass routinely refunds any NSF or similar fees when a customer has a writ of garnishment quashed or otherwise modified. In addition, Compass releases accounts as soon as possible following the conclusion of the garnishment proceeding. Finally, Compass would not object to giving notice to customers of any writ of garnishment it receives, although such notice is already required to be provided by the judgment creditor or its attorney.

Requested Comments to Specific Issues

The following comments respond specifically to the numbered items in Section II of the proposed guidance.

1. In order for an institution to make an independent decision regarding whether or not particular funds are exempt, a federal law would need to exist that preempts the ability of both the judgment creditor and the account owner to seek damages from the institution if an exemption is wrongfully interpreted or applied. As noted in our general comments, many states allow a judgment creditor to obtain a full judgment against a financial institution that does not properly comply with a garnishment order. Accordingly, without additional protection, an independent determination by an institution could create a significant risk of loss.

2. If a customer relies on federal benefits as their primary income and knows that a judgment has been entered against them, they can take certain steps to alleviate the burdens of a garnishment. First, after the judgment is entered, they should file notice with the court that their income is exempt from garnishment. This will allow the court to have notice at the time a writ of garnishment is requested by the judgment creditor. Second, the customer can avoid commingling other funds with any exempt benefits that are received. The institution's customers are in the best position to control what monies are deposited into their account. By insuring that only exempt funds are deposited into a certain account, the customer can greatly reduce the evidence burden needed to have the garnishment quashed or modified.

3. Whether or not customers are adequately informed of their rights when a creditor attempts to garnish their funds depends on the state court's notice provisions and the information provided by the agency supplying the benefit. As noted in the general comments, all states require some type of notice once a lawsuit in commenced. Accordingly, the customer would have knowledge that someone is seeking a judgment against them. In addition, most states require that notice or a copy of the writ of garnishment must be sent to the account owner. The timing and substance of such notice is controlled by state law.

It is our opinion that the agencies providing the benefits in question are in the best position to routinely educate the recipients as to their rights. If a customer is educated as to his or her rights, they can request protection from the court or relief from the judgment creditor in the most timely manner possible.

4. Many institutions, including Compass, do charge a fee upon the receipt of a garnishment. It should be noted that many states require institutions to retain counsel to answer garnishment orders. The fees charged by Compass are proportional to and sometimes less than the cost incurred by the bank in answering the writ of garnishment.

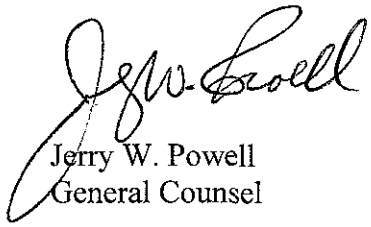
Conclusion and Alternative Guidance

Although Compass empathizes with the customer that is caught off guard by a writ of garnishment and has to spend time and money to prove that his or her funds are exempt, it is our belief that such customers are the exception not the rule. As a whole, due to the notice process in the legal system, customers are well aware when judgments have been entered against them and when a writ of garnishment is issued. The current proposed guidance places financial institutions in the position of acting as both legal counselor and judge with respect to which funds are exempt and which funds are not. State garnishment law requires the financial institution to make an immediate decision when the garnishment is received. Without providing institutions protection from liability for making such judgments and specific rules to follow in making such determinations, the proposed guidance places institutions at risk for significant losses. If the financial institution has no interest in the dispute that leads to the writ of garnishment, it should not be asked to bear a substantial burden after the writ of garnishment is issued.

As an alternative to the current guidance, it is our opinion that the interagency focus should be placed on judgment creditors and state courts that wrongfully garnish exempt funds. As noted in section 2 of our Requested Comments, we think it is beneficial for defendants to give notice to the court and the judgment creditor that certain assets are exempt from garnishment. Once this notice has been provided, it is our opinion that the risk should rest on the party seeking to collect and the court issuing the writ of garnishment to make sure exempt benefits are not targeted for collection. We understand that the interplay between state and federal laws makes taking such action difficult. However, it would seem that the burden should rest on the parties creating the writ of garnishment not on a third party trying to respond.

Thank you again for the opportunity to comment on the proposed guidance. If you have questions, please feel free to contact me at 205.297.3960.

Sincerely,



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