

By E-mail to regs.comments@federalreserve.gov November 7, 2007

Jennifer J. Johnson, Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, N.W.
Washington, D.C. 20551

Re: OP-1294

Dear Ms. Johnson:

Comerica Bank, Dallas, Texas, is writing to comment in response to the Board's request for comment on proposed Guidance on Garnishment of Exempt Federal Benefit Funds. Comerica Bank operates 406 branch offices in Michigan, California, Texas, Florida, and Arizona and holds assets of more than \$58 billion and deposits of more than \$41 billion. Those deposits and other assets it holds for customers are subject to garnishment laws, and some of those customers are recipients of federal benefits. Thus, the bank would be directly affected by your adoption of the proposed Guidance.

We already comply with most of the proposed best practices (with the exceptions of allowing access to portions of garnished accounts or offering segregated accounts). The real issue we experience in this area is learning that an account contains the proceeds of government benefits. If a customer tells us that, it is noted in the account records and that fact is honored. However, it is quite conceivable that long-time account holders retire and direct the federal government to pay benefits into their accounts without telling the bank. Unfortunately, our systems are not at this time able to communicate to account records that incoming ACH payments derive from federal government benefit payors.

We would like to provide you some insight into how the garnishment process works at the bank by responding to the specific questions set forth in your request for comment.

1. Are there practices that would enable an institution to avoid freezing funds altogether by determining at the time of receipt of a garnishment order that the funds are federally protected and not subject to an exception?

When Comerica Bank receives a garnishment order, the bank first determines whether the customer has any accounts with the bank. During this research, some account records have Account Comments stating that the customer is receiving direct deposit of Social Security benefits. The bank then researches the history of the account

to determine whether the only source of deposits is direct deposit of Social Security benefits. If this is determined to be the case, the bank prepares a Garnishee Disclosure (see attached exhibit D) with a Rider (see attached exhibit E) indicating direct deposit Social Security deposits are exempt from garnishment. At no point are any funds frozen or held in this case.

However, if the account contains commingled funds including Social Security benefits, the bank holds all the funds in the account up to the amount of the garnishment. Comerica Bank mails the customer a copy of the garnishment (see attached exhibit A), a customer notice informing the customer of any funds held (see attached exhibit B), and a letter instructing the customer to file objections to the garnishment since exempt income may be involved (see attach exhibit F). These documents are mailed together by first class U.S. mail the day that the garnishment is processed. The back of the State of Michigan garnishment form specifically lists “Examples of Income Exempt from Garnishment” and tells the customer what actions to take if the customer thinks that any funds in the account are exempt from garnishment (See attached exhibit C).

If there are no Account Comments in an account’s records, the bank holds all the funds in the account up to the amount of the garnishment. Comerica Bank mails the customer a copy of the garnishment (see attached exhibit A) along with a customer notice informing the customer of any funds held (see attached exhibit B). These documents are mailed together by first class U.S. mail the day that the garnishment is processed. The back of the State of Michigan garnishment form specifically lists “Examples of Income Exempt from Garnishment” and tells the customer what actions to take if the customer thinks that any funds in the account are exempt from garnishment (see attached exhibit C).

The use of Account Comments indicating that an account is receiving direct deposit Social Security benefits is a manual practice at Comerica Bank which means comments are not placed on every account receiving direct deposit Social Security benefits. Oftentimes an account has been open for a number of years before the customer starts receiving direct deposit Social Security benefits.

In the existing environment, it is extremely time-consuming, and thus costly, to review an account to determine if the account is receiving direct deposit Social Security benefits. Multiple months of transaction history must be reviewed. The complexity increases dramatically for a jointly held account with multiple sources of deposits.

What perhaps could be developed is linkage between a bank’s ACH system and the bank’s DDA system so that the ACH system could tell the DDA system when an account is getting direct deposit Social Security benefits. A flag could be set on the DDA system indicating that the direct deposit was taking place for that account, thus alerting the bank that additional research needed to be done.

2. Are there other permissible practices that would better serve the interests of consumers who have accounts containing federal benefit payments? Are there ways

to provide consumers with reasonable access to their funds during the garnishment process?

If a customer who has had funds held due to a garnishment contacts the bank and indicates that the account contains direct deposit Social Security benefits, the bank researches the account history. If the only source of deposits is direct deposit Social Security benefits, the bank immediately releases the funds back to the account and discloses to the court that the funds are exempt.

However, if the account contains commingled funds, the customer has to file objections with the court.

One proposed best practice is offering accounts that only receive direct deposit Social Security benefits. From a practical standpoint, this would be hard to monitor since it would be difficult to prevent a customer from making a deposit to the account from another source. Additionally, many customers have accounts open for years before the accounts start receiving Social Security benefits; would we then have to have those customers open up new accounts?

Since it is extremely time-consuming, and thus costly, to review an account that is a jointly held account or has multiple sources of deposits, customers could be encouraged to open accounts which only receive direct deposit Social Security benefits and to have Account Comments updated to indicate that the account is receiving direct deposit Social Security benefits. Customers could be discouraged from commingling any other type of deposit with the funds in this account.

3. Are customers adequately informed of their rights when a creditor attempts to garnish their funds? What could be done to provide consumers with better information?

Comerica Bank mails the customer a copy of the garnishment (see attached exhibit A) along with a customer notice informing the customer of any funds held (see attached exhibit B). These documents are mailed together by first class U.S. mail the day that the garnishment is processed.

The back of the State of Michigan garnishment form specifically lists “Examples of Income Exempt from Garnishment” and tells the customer what actions to take if the customer thinks that any funds in the account are exempt from garnishment (see attached exhibit C).

4. Institutions often charge customers a fee for freezing an account. How do these fees compare to those charged separately when an account holds insufficient funds to cover a check presented for payment? Are there operational justifications for both types of fees to be assessed?

Comerica Bank charges a customer \$75 for any legal process including garnishments no matter how many accounts the customer has. Comerica Bank is currently charging retail accounts \$25 for the first overdraft, \$32 for the second thru fourth occurrence, and \$36 for the fifth or greater occurrence.

The garnishment fee may not fully recompense the bank for the amount of work that must be done. The garnishment form must be reviewed to determine if service is proper; customer records must be searched which can include multiple accounts; available funds must be held; disclosure documentation must be prepared; and, finally, funds must be remitted to the proper authority. This is a labor-intensive process. If a customer notifies the bank that exempt funds (Social Security benefits for instance) are in an account subject to garnishment, the bank must do additional research.

If the bank would be required to review all accounts for exempt funds prior to holding funds, the effort involved would substantially increase requiring additional staff which would necessitate the bank charging higher fees.

It should be noted that Comerica Bank immediately refunds any fees charged to an account that is found to contain only direct deposit Social Security benefits. Any other fees associated with the funds being held such as NSF/OD fees are also refunded.

Thank you for the opportunity to comment on the proposed Guidance.

Best wishes,

Julius L. Loeser, Senior Vice President

Carl E. Spradlin, Jr., Senior Vice President

Enclosures

bcc: Douglas Souder
Darlene Vajda