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November 27, 2007

Jennifer J. Johnson, Secretary
Board of Governors of the Federal Reserve
20th Street and Constitution Avenue, NW
Washington, DC 20551
Attn: Docket No. OP-1294

Office of the Comptroller of the Currency
250 E Street, SW
Mail Stop 1-5
Washington, DC 20219
Attn: Docket ID OCC-2007-0015

Robert E. Feldman, Executive Secretary
Attention: Comments
Federal Deposit Insurance Corporation
550 17th Street, NW
Washington, DC 20429
Attn: Garnishment Statement

Regulation Comments
Chief Counsel's Office
Office of Thrift Supervision
1700 G Street, NW
Washington, DC 20552
Attn: ID OTS-2007-0018

Mary Rupp, Secretary of the Board
National Credit Union Administration
1775 Duke Street
Alexandria, VA 22314-3428
Attn: Proposed Guidance on Garnishment

Re: Proposed Guidance on Garnishment of Exempt Federal Benefit Funds

Dear Sir or Madam:

The Independent Community Bankers of America (ICBA)[1] appreciates the opportunity to comment on the proposed interagency guidelines on garnishment. These optional best practices

[1] The Independent Community Bankers of America represents 5,000 community banks of all sizes and charter types throughout the United States and is dedicated exclusively to representing the interests of the community banking industry and the communities and customers we serve. ICBA aggregates the power of its members to provide a voice for community banking interests in Washington, resources to enhance community bank education and marketability, and profitability options to help community banks compete in an ever-changing marketplace.

With nearly 5,000 members, representing more than 18,000 locations nationwide and employing over 268,000 Americans, ICBA members hold more than $908 billion in assets, $726 billion in deposits, and more than $619

are intended to assist financial institutions handle garnishment of customer accounts that include deposits of federal benefits since federal benefits are generally exempt from attachment.

Background

Recently, there have been a number of media articles about problems consumers face when banks freeze their account to comply with court ordered attachments. As a result, the United States Senate Finance Committee has begun investigating, especially since these accounts often include federal benefits. Simultaneously, the federal banking agencies are proposing best practices for banks.

Generally, Social Security benefits, Supplemental Security Income (SSI) benefits, Veterans' benefits, Federal Civil Service retirement benefits, and Federal Railroad retirement benefits are exempt from garnishment or attachment. However, there are exceptions. For example, the exemptions may not apply when the garnishment is for payment of alimony or child support. Neither the Social Security Administration nor the Veterans Administration has taken steps to outline the scope of the protection.

State law requires banks to comply with garnishment orders. In many states, a bank is liable for any funds a consumer withdraws after the bank receives the garnishment. While federal benefits might be exempt from attachment, the account could include other funds making it difficult for the bank to determine what portion of the account is exempt and the court order might not address exemptions for federal benefits. When a bank receives a court-ordered garnishment notice it typically freezes the account and notifies the customer. The freeze both allows the customer time to go to court to resolve the issue and also protects the bank from liability for failing to follow the court order. However, it is up to the customer – not the bank – to raise any defenses to the garnishment, including the fact that federal law exempts the funds from garnishment.

Garnishment and freezing of the account can present serious hardships for consumers, especially if this is their only source of funds. Moreover, when an account is garnished, the bank might impose an attachment fee and because the account is now frozen the customer might incur additional fees such as returned check fees. The banking agencies recognize the complexities of this issue. However, to assist banks, the agencies have proposed a set of best practices for garnishment orders to help minimize hardships on customers whose accounts may include exempt federal benefit payments.

Proposed Guidelines

The proposed best practices would encourage banks to establish policies and procedures to address garnishment orders, including procedures to expedite notice to the consumer about the garnishment and to release funds to the consumer as quickly as practical. The agencies are proposing the following as best practices:

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billion in loans to consumers, small businesses and the agricultural community. For more information, visit ICBA's website at www.icba.org.

- Promptly notify a consumer when the bank receives a garnishment order and freezes the account;
- Provide consumers with information about what federal benefits may be exempt from attachment to help them assert their rights;
- Promptly determine, if feasible, if an account contains only exempt funds;
- Notify the creditor, collection agent or court if an account includes exempt funds where the bank can determine this is the case;
- Where state law or court order permits a freeze to be avoided, act accordingly;
- Minimize costs to the consumer when an account includes exempt federal benefits by refraining from overdraft, NSF or similar fees while the account is frozen or refunding such fees when the freeze is lifted;
- Allow the consumer access to a portion of the account equal to the amount of exempt federal benefits;
- Offer consumers segregated accounts limited to federal benefits; and
- Lift the freeze on an account as soon as permitted by state law.

ICBA Comments

ICBA welcomes the guidance proposed by the federal agencies. Guidance from the banking agencies about how banks should handle garnishments and attachments is likely to be helpful, especially since this area is fraught with potential liability and complexity. However, for those same reasons, it is equally important that guidelines be both optional and flexible to let individual institutions respond to the wide variation in benefits and garnishments that exist and tailor procedures to their own unique circumstances. This is especially important because there is such a wide difference in state law that applies to garnishments and attachments.

The proposal should help banks with an increasingly awkward situation that puts banks between the customer and state courts. Currently, banks must balance complying with state law under a state court mandate – the garnishment – against complying with a federal exemption for certain benefits such as Social Security payments. Since resolving these two conflicting demands may not always be a simple task, the easiest, safest and most straightforward approach for banks is to simply freeze the funds and defer to the courts to resolve the problem.

It is important to stress that community banks are caught in the middle. As a general matter the bank is simply holding the funds. The order to garnish the customer's account is the result of a state court-ordered mandate or similar judicial process at the state level These procedures are not generally pre-empted by federal law and so all financial institutions – whether state or federally chartered – are compelled to comply with the orders. Freezing the funds and giving consumers an opportunity to dispute the garnishment in court is the established means to resolve any disputes over the funds.[2] While banking agency guidance is welcome, it important to recognize the limitations on what federal banking agencies can do and to understand that some changes will require Congressional action.[3]

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[2] Sometimes referred to as *interpleader*, this is a long-standing civil procedure that allows the bank to defer to the court to resolve the claims to the funds in question. The bank acknowledges possession but defers to the court to determine a rightful owner.

[3] ICBA is neither advocating nor opposing federal legislation.

Second, if the state court proceeded properly, the garnishment or attachment is in response to the debtor's failure to meet his or her obligations. Congress recognized this by refusing to exempt alimony and child support payments from the exceptions for garnishment or attachment of Social Security and Veterans' Administration benefits. The entire process is designed to ensure repayment of valid debts and this should be factored into the equation.

Since the exempt benefits are funded by federal agencies, it would be appropriate for each federal agency that provides benefits, such as the Social Security Administration or the Veterans' Administration, to issue specific and clear guidelines on what steps banks should take when accounts holding these funds are subject to court-ordered garnishment or attachment.[4] The agencies should also notify beneficiaries about their rights and what beneficiaries do to handle garnishment of benefits.

Garnishments and attachments are, for the most part, creatures of state law. The procedures and requirements vary from state-to-state. Any guidelines from federal banking regulators must take these variations into account and allow banks sufficient flexibility to handle the many and varied requirements.

Written Policies and Procedures

Most community banks have practices and procedures they follow when they receive a garnishment order. However, not all community banks have separate written policies and procedures. This may be due to the low volume of garnishments and attachments an individual community bank may handle during the course of the year or because procedures are dictated by state law where the bank simply complies with the state procedures and does not need separate written policies. ICBA does not believe it is necessary to require banks to create separate written procedures to handle garnishments. Doing so may be unnecessarily burdensome, especially in states where state law already specifies the procedures.

ICBA believes it is important to recognize that the process is governed by three key factors that vary considerably. First, each state has specific laws that control the garnishment or attachment. Second, the type of garnishment or attachment may differ depending on the nature of the attachment such as court-ordered garnishment to settle an outstanding debt, an attachment for child support or a tax levy. Third, there are a number of different programs and authorities that produce federal benefits and exemptions from attachment for various federal benefits are not consistent. Finally, the number of garnishments or attachments a community bank handles varies with the bank's location and market, from negligible to several thousands annually. All these varying factors mandate that the final guidance be flexible enough to allow each bank to tailor actions taken in response to garnishment orders appropriately.

Notifying Customers

Typically, as soon as a garnishment or attachment is received, community banks segregate the funds in some manner, either by freezing the funds, placing them in a special

[4] Specific guidelines outlining the steps a bank or other holder of the benefit payments should take would also be useful to determine appropriate fees, whether as part of the overall fees for an account or special fees for garnishment or attachment.

holding account or purchasing a cashier's check or money order. Once the funds have been segregated, community banks promptly notify their customers, frequently the same day the garnishment order is received. While the notice is often sent by first-class mail, in the interests of customer service, many community banks also promptly contact a customer by telephone to expedite notice.

Many community banks strive to provide the notice within 24 hours. However, ICBA cautions the agencies against mandating notice within a specific time-frame. While it is worthwhile to encourage prompt notice – a goal community banks already strive to meet – banks also need sufficient flexibility to process the order and resolve any questions. For example, as noted by the agencies in the proposal, there are instances when debt collectors will submit a CD-ROM with thousands of names on it and it may take time to resolve questions about whether a particular account-holder is the person in question. Flexibility is also needed to take into account the fact that some states mandate the format and content of the notice, possibly restricting the information that can be included to a simple notice that funds have been frozen by court order.

Generally, community banks provide their customers with as much information as they can about the garnishment or attachment, including furnishing a copy of the order with the notice where appropriate or permitted. The notice is likely to include information about who to contact with questions about the garnishment, at the court or bank or both. Some community banks also include information about whether federal benefits are exempt from garnishment or attachment.

Model notices that individual community banks can adapt to their own circumstances, whether offered by the agencies that provide the benefits or by federal banking regulators, would be helpful. For example, a federal pamphlet that could be provided to customers would be helpful. The Federal Trade Commission has developed model disclosures for furnishers and users of credit reports while the Federal Reserve has created model language for creditors for the many disclosures required by the Truth-in-Lending Act. Similar model language would be helpful for garnishments. While model language would be useful, it is important to recognize that banks may be subject to conflicting requirements under state law. Therefore, it is equally important that the banking agencies not mandate a notice that conflicts with state law.

ICBA recommends that model notices and additional guidance be provided by the agencies that furnish the benefits, especially since there are differences depending on the type of benefits and the agency that provides the benefits.[5] The agency that funds the benefits, such as the Social Security Administration, also should furnish information directly to benefit recipients about their rights. If the Social Security Administration, Veterans Administration or other federal agency that provides the benefits furnishes information about what to do in the event of an attachment or garnishment to benefit recipients, it will help ensure the information reaches recipients, especially due to restrictions in some states on what may be included with a notice about a garnishment or attachment. Moreover, it will increase the likelihood that recipients will pay attention to the information if the agency providing the benefits sends it.

[5] The information should be provided when benefits payments commence as well as on the agency's website.

Most customers will actually pay attention to information about the exempt status of benefits is when funds are garnished. Many states already include information about exempt federal benefits in their garnishment orders, but since state law controls the process it would help if states supply a notice about the garnishment or attachment that a community bank can in turn forward to the debtor. This is also true because different states use different terminology for this process. For example, in New York, the term "Restraining Notice" is used while the federal Internal Revenue Service refers to a "levy." Unless and until terminology becomes consistent, having the attaching authority provide the information will be the best way to inform consumers. Encouraging all states to provide this information, whether it comes from the agencies furnishing the benefits or from Congress, would help.

Federal Benefits

When they receive a garnishment or attachment order, some community banks review the account history to determine if federal benefits are included. However, deposit account records may not readily indicate the source of the funds in an account. Therefore, requiring this analysis will entail additional burdens and may require substantial changes by community banks and by the federal agency issuing the payments. For example, software may need to be added or reconfigured to tag federal benefit payments. To determine that funds represent federal benefit payments, the United States Treasury must have an easily applied system to clearly identify all payments – whether issued by paper check or electronically – as exempt federal benefits if banks are required to tag the funds. And, due to the costs and burdens associated with such changes, requiring community banks to clearly identify federal benefits may make it difficult for some to continue accepting direct deposits of federal benefits since segregating federal benefits from other deposits might require that all federal benefits be deposited manually. Such an approach would run counter to federal government efforts to encourage payees to migrate to electronic payments.

Commingled Funds. One element to cover in the guidance is how community banks should handle accounts where federal benefits are commingled with other funds. It is unlikely that the sole source of funds in a deposit account will be a particular type of federal benefit payment. As a result, it can be difficult – if not impossible – for a community bank to identify what segment of the account is exempt from attachment under federal law and what portion is available to satisfy a state court ordered attachment. Additional guidance from the federal government, whether from Congress or the agency providing the benefits, would be helpful. Currently, allowing the court that issued the garnishment or attachment to make this determination is the most appropriate way to proceed.

The Commonwealth of Pennsylvania exempts all funds in an account that includes federal benefits from garnishment. ICBA has reservations about this model because it easily could be manipulated by debtors to escape legitimate debt. All a debtor would need to do is place all funds into an account including a federal benefit as a means to escape all debts. An alternative model used by other states exempts a certain percentage or set dollar amount of an account from attachment. While this avoids potential manipulation to evade attachment, it may also facilitate sheltering funds from legitimate debts. The simplicity of either approach is appealing but ICBA believes it is important that all aspects be carefully explored before making a final determination on whether to apply these approaches more broadly.

Alternatives to Freezing Funds

The agencies ask whether there are alternatives to freezing the funds in account once an attachment order is received. Under current procedures, the attorney or debt collector seeking to garnish or attach the funds as well as the state court issuing the order is unlikely to know the source of the funds in the account. All that is known is that an individual has failed to pay a debt that is due. Meanwhile, the bank holding the funds may not be able to determine whether the funds are exempt federal benefits. However, there are protections in the process. Once the garnishment or attachment is ordered, the customer is notified and given the opportunity to contest the attachment and raise any other issues at one hearing. This is the most efficient and effective way to handle garnishments and attachments. As it has evolved over time, the notice and opportunity for a court hearing consolidates all matters associated with the process into one simultaneous resolution. The question of federal benefits (and exemptions) can be raised along with any other issues associated with the attachment, including the legitimacy of the debt or other mitigating factors.

Depending on variations in state law, most community banks allow customers access to funds in the account once the amount attached or garnished has been segregated or removed. Unless the attachment is a continuing one that attaches to new funds as they are deposited (depending on state law), the bank will only take the funds when it receives the court order. At that time, only the amount necessary to satisfy the court order – and only that amount – is affected. Remaining funds are available for the customer. Once the issue is resolved, banks promptly release the funds as appropriate.

ICBA recognizes that this delay can create hardships for our customers and welcomes the opportunity to explore simpler solutions to the problem. However, ICBA is not aware of an alternative that would not seriously disadvantage legitimate creditors or jeopardize banks by making them liable for funds improperly released.

Consumer Costs

Since the process of handling garnishments and attachments can be labor intensive and since it includes a risk of liability for failure to attach the funds, many community banks charge customers a fee where permitted by state law. The fees that community banks assess for an attachment or garnishment vary. For example, one state (Ohio) limits the fee to $1.00. Generally, though, community banks charge between $25.00 and $100.00. Unless set by state law, banks set the fee to cover their time and effort to process the attachment.

Generally, the fees for garnishment are slightly higher than those for checks returned for insufficient funds, though not substantially higher. For example, while the fees vary from bank to bank and across markets and geographies, one community bank which seems typical charges a $30 fee for an NSF[6] check and $50 for a garnishment.

Community banks are willing to waive the fees, depending on the circumstances of an individual case. This is not limited to the fee for placing the garnishment, but can include other fees such as NSF fees caused when funds in an account have been frozen due to a garnishment

[6] Non-sufficient funds.

order. For example, if there are insufficient funds in the account to cover the amount garnished, the bank may waive its own fee. However, that is a judgment call based on the facts and circumstances of an individual situation, and ICBA recommends that any interagency guidance continue to allow flexibility for banks to waive fees when and if appropriate. While the agencies can recommend that banks consider waiving the fees, mandating that community banks waive the fees in all cases is completely inappropriate and unjustified.

Conclusion

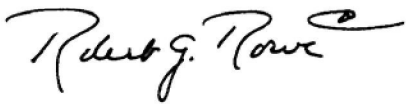
ICBA welcomes the efforts by the federal banking agencies to help banks deal with the complex and confusing situation of processing garnishment or attachment orders on accounts that may contain exempt federal benefits. Fundamentally, the process is governed by state law and if new steps are required, possible unintended consequences must be carefully explored and considered. For example, requiring special actions or responses for any accounts including federal benefit payments could become a barrier to direct deposit of benefits or could make it difficult for recipients of federal benefits to obtain credit. In addition, since garnishments and attachments are governed by a broad variety of state laws, any final guidance from the banking agencies must incorporate sufficient flexibility to let individual community banks deal with these variations in state law.

Second, since there are a variety of benefit programs, it would be appropriate for the agencies that provide the benefits, such as the Social Security Administration, to inform recipients about their rights and obligations as beneficiaries and the exempt status of the benefits. It also would be helpful if those same agencies offered guidance for banks about the rights and responsibilities associated with federal benefit payments, including how to properly handle garnishments and attachments of accounts that may contain exempt federal benefits.

Community banks want to respond to state court order in the most appropriate manner. Currently, community banks are caught between state court orders responding to legitimate debts, federal mandates and their customers. Any guidance that can help community banks respond to conflicting governmental requirements is welcome.

Thank you for the opportunity to comment. ICBA looks forward to continuing to work with the federal agencies to develop a solution. If you have any questions or would like additional information, please contact the undersigned by telephone at 202-659-8111 or by e-mail at robert.rowe@icba.org.

Sincerely,



Robert G. Rowe, III
Senior Regulatory Counsel