Garnishment of Accounts Containing Federal Benefit Payments

Introduction

Many consumers receive Federal benefit payments that are protected under Federal law from being accessed or "garnished" by creditors, other than the United States government and certain State agencies, through a garnishment order or similar written instruction issued by a court. Despite these protections, developments in debt collection practices and technology, including the direct deposit of benefits, have led to an increase in the freezing of accounts containing Federal benefit payments by financial institutions that receive a garnishment order. As a result, the Department of the Treasury (Fiscal Service), the Social Security Administration, the Department of Veterans Affairs, the Railroad Retirement Board, and the Office of Personnel Management have jointly issued a rule[1] (interagency regulation or regulation) that a financial institution must follow when it receives a garnishment order against an account holder who receives certain Federal benefit payments by direct deposit. The types of Federal benefit payments covered by the interagency regulation are:

- Social Security benefits;
- Supplemental Security Income benefits;
- Veterans benefits;
- Federal Railroad retirement, unemployment and sickness benefits;
- Civil Service Retirement System benefits; and
- Federal Employee Retirement System benefits.

The Federal banking agencies are responsible for enforcing compliance with this regulation.[2] Under the regulation, generally, financial institutions that receive a garnishment order are required to follow certain procedures, including the following: (1) determine whether any account held by the named account holder received exempt Federal payments by direct deposit; (2) determine the sum of protected Federal benefits deposited to each individual account during a two-month period; and (3) ensure that the account holder has access to an amount equal to that sum or to the current balance of such account(s), whichever is lower.

When a financial institution receives a garnishment order, it must first determine whether the order was obtained by the United States or issued by a State child support enforcement agency.[3] If so, the financial institution follows its customary procedures for handling the order since Federal benefit payments can generally be accessed or garnished by such agencies.

If the garnishment order was not obtained by the United States or issued by a State child support enforcement agency, the financial institution must follow the interagency regulation to protect Federal benefit payments directly deposited into a consumer's account during a two-month "lookback" period. The interagency regulation contains provisions on the timing of an account review, the determination of the protected amount, notice to the account holder (including a model form) regarding the garnishment order, and record retention. In addition, the interagency regulation allows a financial institution to rely on the presence of certain ACH identifiers (i.e., character "XX" encoded in the appropriate positions of the "Company Entry Description" field and the number "2" in the "Originator Status Code" field of the Batch Header Record) to determine whether a direct deposit payment is a Federal benefit payment for purposes of the regulation.

The financial institution must notify the account holder that the financial institution has received a garnishment order, if all of the following conditions are met: (1) a covered benefit agency deposited a benefit payment into an account during the lookback period; (2) the balance in the account on the date of account review was above zero dollars and the financial institution established a protected amount; and (3) there are funds in the account in excess of the protected amount. For an account containing a protected amount, the financial institution may not charge or collect a garnishment fee against the protected amount. The financial institution may charge or collect a garnishment fee against additional funds deposited to the account up to five business days after the account review date.

Scope (31 CFR 212.2)

The interagency regulation applies to financial institutions that hold accounts into which the following benefits have been **directly** deposited:

1. Social Security Administration
   - Social Security benefits
   - Supplemental Security Income benefits
2. Department of Veterans Affairs
   - Veterans benefits
3. Railroad Retirement Board
   - Federal Railroad retirement, unemployment and sickness benefits

[1] Final rule published in the Federal Register on May 29, 2013. Effective June 28, 2013. 78 FR at 32099. Interim final rule published in the Federal Register on February 23, 2011. Effective May 1, 2011. 76 FR at 9939.

[2] The regulation specifically defines "Federal banking agency" to include: the Federal Deposit Insurance Corporation, the Board of Governors of the Federal Reserve System, the Office of the Comptroller of the Currency, and the National Credit Union Administration. *See* 31 CFR 212.3.

[3] A State child support enforcement agency is the single and separate organizational unit in a State that has the responsibility for administering or supervising the State's plan for child and spousal support pursuant to Title IV, Part D, of the Social Security Act, 42 U.S.C. 654. *See* 31 CFR 212.3.

4. Office of Personnel Management
   - Civil Service Retirement System benefits
   - Federal Employee Retirement System benefits

Definitions (31 CFR 212.3)

"Account" means an account, including a master account or subaccount, at a financial institution to which an electronic payment may be directly routed.[4]

"Account holder" means a natural person against whom a garnishment order is issued and whose name appears in a financial institution's records as the direct or beneficial owner of an account.

"Account review" means the process of examining deposits in an account to determine if a benefit agency has deposited a benefit payment into the account during the lookback period.

"Benefit agency" means the Social Security Administration, the Department of Veterans Affairs, the Railroad Retirement Board, or the Office of Personnel Management.

"Benefit payment" means a Federal benefit payment referred to in 31 CFR 212.2(b) paid by direct deposit to an account with the character "XX" encoded in positions 54 and 55 of the Company Entry Description field and the number "2" encoded in the Originator Status Code field of the Batch Header Record of the direct deposit entry.[5]

"Freeze" or "account freeze" means an action by a financial institution to seize, withhold, or preserve funds, or to otherwise prevent an account holder from drawing on or transacting against funds in an account, in response to a garnishment order.

"Garnish" or "garnishment" means execution, levy, attachment, garnishment, or other legal process.

"Garnishment fee" means any service or legal processing fee, charged by a financial institution to an account holder, for processing a garnishment order or any associated withholding or release of funds.

"Garnishment order" or "order" means a writ, order, notice, summons, judgment, levy, or similar written instruction issued by a court, a State or State agency, a municipality or municipal corporation, or a State child support enforcement agency, including a lien arising by operation of law for overdue child support or an order to freeze the assets in an account, to effect a garnishment against a debtor.

Lookback period means the two-month period that (a) begins on the date preceding the date of account review and (b) ends on the corresponding date of the month two months earlier, or on the last date of the month two months earlier if the corresponding date does not exist.

For example, under this definition, the lookback period that begins on November 15 would end on September 15. On the other hand, the lookback period that begins on April 30 would end on February 28 (or 29 in a leap year), to reflect the fact that there are not 30 days in February.

Other examples illustrating the application of this definition are included in Appendix C of the interagency regulation.

"Protected amount" means the lesser of:

1. The sum of all benefit payments posted to an account between the close of business on the beginning date of the lookback period and the open of business on the ending date of the lookback period; or
2. The balance in an account when the account review is performed.[6]

Examples illustrating the application of this definition are included in Appendix C of the interagency regulation.

Initial Action upon Receipt of a Garnishment Order (31 CFR 212.4)

Within two business days after receiving a garnishment order, and prior to taking any other action related to the order, a financial institution must determine whether the order was obtained by the United States or issued by a State child support enforcement agency.[7] To make this determination, the financial institution may rely on a "Notice of Right to Garnish Federal Benefits" (see Appendix B of the interagency regulation). For such orders obtained by the United States or issued by a State child support enforcement agency, the financial institution should not follow the interagency regulation but instead should follow its customary procedures for handling a garnishment order.

For all other garnishment orders, the financial institution is required to follow the procedures in 31 CFR 212.5 and 212.6.

[4] An account does not include an account to which a benefit payment is subsequently transferred following its initial delivery by direct deposit to another account. See 76 FR at 9950. If a payment recipient is assigned a customer number that serves as a "prefix" for individual sub-accounts, the individual sub-account (and not the "master account") is subject to the account review and lookback. See 78 FR at 32100.

[5] For more information, see the Treasury Department's "Guidelines for Garnishment of Accounts Containing Federal Benefit Payments" (http://www.fms.treas.gov/greenbook/guidelines_garnish0311.pdf).

[6] The account balance includes intraday items such as ATM or cash withdrawals. The balance does not include any line of credit associated with the account. *See* 78 FR at 32101-32102.

[7] Financial institutions will not violate State law by utilizing the two-day period, because the rule preempts any State requirement that an order be processed on the day of receipt. *See* 78 FR at 32104.

If a financial institution will not act on a garnishment order due to the operation of State law, the financial institution need not examine the order to determine if a Notice of Right to Garnish Federal Benefits is attached or included, or take any of the additional steps required under the rule.[8]

Account Review (31 CFR 212.5)

Timing of account review

After having been served a garnishment order issued against a debtor, a financial institution must perform an account review:

1. No later than two business days following receipt of both the garnishment order and sufficient information from the creditor to determine whether the debtor is an account holder; or
2. By a later date permitted by the creditor in situations where the financial institution is served a batch of a large number of orders. The date must be consistent with the terms of the orders and the financial institution must maintain records on such batches and creditor permissions, consistent with 31 CFR 212.11(b).

No benefit payment deposited during lookback period

If the account review shows that a benefit agency did not deposit a benefit payment into the account during the lookback period, then the financial institution should follow its customary procedures for handling the garnishment order and not the procedures in 31 CFR 212.6.

Benefit payment deposited during lookback period

If the account review shows that a benefit agency deposited a benefit payment into the account during the lookback period, then the financial institution must follow the procedures in 31 CFR 212.6.

Uniform application of account review

The financial institution must perform an account review without consideration for any other attributes of the account or the garnishment order, such as:

1. The presence of other funds, from whatever source, that may be commingled in the account with funds from a benefit payment;
2. The existence of a co-owner on the account;
3. The existence of benefit payments to multiple beneficiaries, and/or under multiple programs, deposited in the account;
4. The balance in the account, provided the balance is above zero dollars on the date of account review;
5. Instructions to the contrary in the order; or
6. The nature of the debt or obligation underlying the order.

Priority of account review

The financial institution must perform the account review prior to taking any other actions related to the garnishment order that may affect funds in the account.

Rules and Procedures to Protect Benefits (31 CFR 212.6)

If an account review shows that covered Federal benefits have been directly deposited into an account during the lookback period, the financial institution must comply with the rules and procedures to protect Federal benefits set forth in 31 CFR 212.6.

Protected amount

The financial institution must calculate and establish the protected amount for an account, ensuring that the account holder has full access to the protected amount.[9] The financial institution may not freeze the protected amount in response to the garnishment order. Further, the account holder may not be required to assert any right of garnishment exemption prior to accessing the protected amount in the account.

Separate protected amounts

The financial institution must calculate and establish the protected amount separately for each account in the name of an account holder, consistent with the requirements in 31 CFR 212.5(f) to conduct distinct account reviews.

[8] State law is not inconsistent with the interagency regulation if it protects benefit payments in an account from being frozen or garnished at a higher protected amount than required under the regulation. For further discussion on preemption of State law (31 CFR 212.9), see "Comments and Analysis" section in Part II of Supplementary Information of the final rule. *See* 78 FR at 32106-32107.

[9] Where an account holder had debit card access to an account prior to the receipt of a garnishment order, the requirement to provide "full and customary" access to the protected amount means the account holder should have debit card access to that amount. See 78 FR at 32104. Also, the interagency regulation does not limit a Federal credit union's right to exercise its statutory lien authority against the protected amount in a member's account. A lien may be enforced against an account when the member fails to satisfy an outstanding financial obligation due and payable to the Federal credit union. 12 U.S.C. 1757(11) and 12 CFR 701.39.

Funds in excess of the protected amount

For any funds in an account in excess of the protected amount, the financial institution must follow its customary procedures for handling garnishment orders, including the freezing of funds, provided they are consistent with paragraphs (f) and (g) of 31 CFR 212.6.

One-time account review process

The financial institution is only required to perform the account review one time after it receives a garnishment order. The financial institution should not repeat the account review or take any other action related to the order if the same order is subsequently served again upon the financial institution. However, if the financial institution is subsequently served a new or different garnishment order against the same account holder, the financial institution must perform a separate and new account review.[10]

No continuing or periodic garnishment responsibilities

The financial institution may not continually garnish amounts deposited or credited to the account following the date of account review. It also must take no action to freeze any funds subsequently deposited or credited, unless the institution is served with a new or different garnishment order.

Impermissible garnishment fee

The financial institution may not charge or collect a garnishment fee against a protected amount. The financial institution may charge or collect a garnishment fee up to five business days after the account review if funds other than a benefit payment are deposited to the account within this period, provided that the fee may not exceed the amount of the non-benefit deposited funds.

Notice to the Account Holder (31 CFR 212.7)

A financial institution must send an account holder named in the garnishment order a notice if:

1. A covered Federal benefit payment was directly deposited into an account during the lookback period;
2. The balance in the account on the date of account review was above zero dollars and the financial institution established a protected amount; and
3. There are funds in the account in excess of the protected amount.

Notice content

The notice must contain the following information in readily understandable language:

1. The financial institution's receipt of an order against the account holder;
2. The date on which the order was served;
3. A succinct explanation of garnishment;
4. The financial institution's requirement under the interagency regulation to ensure that account balances up to the protected amount specified in 31 CFR 212.3 are protected and made available to the account holder if a benefit agency deposited a benefit payment into the account in the last two months;
5. The account subject to the order and the protected amount established by the financial institution;
6. The financial institution's requirement pursuant to State law to freeze other funds in the account to satisfy the order and the amount frozen, if applicable;
7. The amount of any garnishment fee charged to the account, consistent with 31 CFR 212.6;
8. A list of the Federal benefit payments subject to this interagency regulation, as identified in 31 CFR 212.2(b);
9. The account holder's right to assert against the creditor that initiated the order a further garnishment exemption for amounts above the protected amount, by completing exemption claim forms, contacting the court of jurisdiction, or contacting the creditor, as customarily applicable for a given jurisdiction;
10. The account holder's right to consult an attorney or legal aid service in asserting against the creditor that initiated the order a further garnishment exemption for amounts above the protected amount; and
11. The name of the creditor, and, if contact information is included in the order, means of contacting the creditor.

Optional notice content

The financial institution also may provide the account holder in readily understandable language any of the following information:

[10] A "new" garnishment order means the creditor has gone back to court and obtained a new order, as opposed to re-filing an order previously served (http:// www.fms.treas.gov/greenbook/FAQs-May-12-trsy-ver1.pdf). A garnishment order that is re-issued after the return date, under a different execution number, would not constitute a "new" garnishment order.

1. The means of contacting a local free attorney or legal aid service;

2. The means of contacting the financial institution; and

3. A disclaimer that the financial institution is not providing legal advice by sending the required notice to the account holder.

Amending notice content

The financial institution may also amend the content of the notice to integrate information about a State's garnishment rules and protections in order to avoid potential confusion or harmonize the notice with State requirements, or to provide more complete information about an account.

Notice delivery

The financial institution must issue the notice directly to the account holder, or to a fiduciary who administers the account and receives communications on behalf of the account holder. Only information and documents pertaining to the garnishment order (including other notices or forms that may be required under State or local law) may be included in the communication.

Notice timing

The financial institution must send the notice to the account holder within three business days of the date of account review.

One notice for multiple accounts

The financial institution may issue one notice with information related to multiple accounts of an account holder.

Record Retention (31 CFR 212.11)

A financial institution must maintain records of account activity and actions taken in response to a garnishment order, sufficient to demonstrate compliance with this part, for a period of not less than two years from the date on which the financial institution receives the garnishment order.[11]

Model Notice to Account Holder (31 CFR 212, Appendix A)

A financial institution may use the model notice found in Appendix A to the interagency regulation to meet the requirements of 31 CFR 212.7. Although use of the model notice is not required, a financial institution using it properly is deemed to be in compliance with 31 CFR 212.7.

Examination Procedures

Initial Action upon Receipt of a Garnishment Order (31 CFR 212.4)

1. Determine whether, prior to taking any action relating to a garnishment order, the financial institution reviewed the order within two business days of receiving the order to ascertain whether it was obtained by the United States or issued by a State child support enforcement agency.

   A. If the garnishment order was obtained by the United States or issued by a State child support enforcement agency as indicated by an attached or included Notice of Right to Garnish Federal Benefits, determine whether the financial institution followed its customary procedures to comply with the order.

   B. If the garnishment order is not accompanied by a Notice of Right to Garnish Federal Benefits, proceed with the remaining examination procedures to determine whether the institution followed the requirements of 31 CFR 212.5 and 212.6.

Account Review (31 CFR 212.5)

2. Determine whether the financial institution performed an account review:

   A. No later than two business days following receipt of both the garnishment order and sufficient information from the creditor to determine whether the debtor is an account holder; or

   C. By a later date permitted by the creditor in situations where the financial institution is served a batch of a large number of orders. The date must be consistent with the terms of the orders and the financial institution must maintain records on such batches and creditor permissions consistent with 31 CFR 212.11(b).

Rules and Procedures to Protect Benefits (31 CFR 212.6)

3. If an account review shows that a covered benefit agency deposited a benefit payment into an account during the lookback period (i.e., the preceding two-month period as defined in 31 CFR 212.3), determine whether the financial institution has appropriately calculated and established the protected amount, and has done this separately for each account in the name of the account holder, if applicable.

[11] The financial institution has discretion in deciding what documentation to retain. The appropriate documentation may vary depending on the circumstances of each situation. See 78 FR at 32107.

4. Determine that the account holder has full and customary access to the protected amount established after the account review.

5. If a garnishment fee has been assessed, determine that it was charged or collected up to five business days of the account review date and was not charged against a protected amount.

6. For any funds in an account in excess of the protected amount, determine whether the financial institution followed its customary procedures for handling garnishment orders, including the freezing of funds.

7. Determine whether the financial institution ceased to garnish amounts deposited or credited to the account following the date of account review.

8. Determine whether the financial institution performed one-time account review upon the first service of the order and only took action to freeze funds subsequently deposited or credited if the institution was served with a new or different garnishment order consistent with the interagency regulation.

Notice to the Account Holder (31 CFR 212.7)

9. If a covered benefit agency deposited a benefit payment into an account during the lookback period, the balance in the account on the date of account review was above zero dollars, the financial institution established a protected amount, and there are funds in the account in excess of the protected amount, determine whether the financial institution sent a notice to the account holder named in the garnishment order in readily understandable language within three business days of account review and included the following:

   D. The financial institution's receipt of an order against the account holder.

   E. The date on which the order was served.

   F. A succinct explanation of garnishment.

   G. The financial institution's requirement under the interagency regulation to ensure that account balances up to the protected amount specified in 31 CFR 212.3 are protected and made available to the account holder if a benefit agency deposited a benefit payment into the account in the last two months.

   H. Identification of the account subject to the order and notice of the protected amount established by the financial institution.

   I. The financial institution's requirement pursuant to State law to freeze other funds in the account to satisfy the order and the amount frozen, if applicable.

   J. The amount of any garnishment fee charged to the account, consistent with 31 CFR 212.6.

   K. A list of the Federal benefit payments subject to this interagency regulation, as identified in 31 CFR 212.2(b).

   L. The account holder's right to assert against the creditor that initiated the order a further garnishment exemption for amounts above the protected amount, by completing exemption claim forms, contacting the court of jurisdiction, or contacting the creditor, as customarily applicable for a given jurisdiction.

   M. The account holder's right to consult an attorney or legal aid service in asserting against the creditor that initiated the order a further garnishment exemption for amounts above the protected amount.

   N. The name of the creditor, and, if contact information is included in the order, means of contacting the creditor.

   A financial institution may also provide optional notice content or amend the notice content consistent with this section of the regulation.

   A financial institution may use the model notice in Appendix A of the interagency regulation to meet the requirements of 31 CFR 212.7. Although use of the model notice is not required, a financial institution that uses it properly is deemed to be in compliance with this section.

Record Retention (31 CFR 212.11)

10. Determine whether the financial institution maintains records of account activity and actions taken in response to a garnishment order for at least two years from the date on which it receives the garnishment order.

Job Aids

Garnishment of Accounts Containing Federal Benefit Payments Examination Checklist

Garnishment of Accounts Containing Federal Benefit Payments Examination Checklist	Yes	No	NA
Initial Action upon Receipt of a Garnishment Order (31 CFR 212.4)			
1. Does the financial institution, within two business days after receiving a garnishment order, review a garnishment order before taking any other action with regard to the order to ascertain whether the order is obtained by the United States or issued by a State child support enforcement agency?			
• If a garnishment order is obtained by the United States or issued by a State child support enforcement agency as indicated by an attached or included Notice of Right to Garnish Federal Benefits, does the financial institution follow its customary procedures to comply with the order?			
If a garnishment order is not accompanied by a Notice of Right to Garnish Federal Benefits, proceed with the remaining examination procedures to determine whether the institution follows the requirements of 31 CFR 212.5 and 212.6.			
Account Review (31 CFR 212.5)			
2. Does the financial institution perform an account review:			
• No later than two business days following receipt of both the garnishment order and sufficient information from the creditor to determine whether the debtor is an account holder; or			
• By a later date permitted by the creditor in situations where the financial institution is served a batch of a large number of orders? *NOTE: The date must be consistent with the terms of the orders and the financial institution must maintain records on such batches and creditor permissions consistent with 31 CFR 212.11(b).*			
Rules and Procedures to Protect Benefits (31 CFR 212.6)			
3. If an account review shows that a covered benefit agency deposited a benefit payment into an account during the lookback period (i.e., during the preceding two month period as defined in 31 CFR 212.3), does the financial institution appropriately calculate and establish the protected amount, and if applicable, do this separately for each account in the name of the account holder?			

Garnishment of Accounts Containing Federal Benefit Payments Examination Checklist	Yes	No	NA
4. Does the financial institution refrain from charging or collecting a garnishment fee against the protected amount?			
5. Does the financial institution refrain from charging or collecting a garnishment fee against additional funds deposited to the account after five business days of the account review date?			
6. For any funds in an account in excess of the protected amount, does the financial institution follow its customary procedures for handling garnishment orders, including the freezing of funds?			
7. Does the financial institution cease to garnish amounts deposited or credited to the account following the date of account review?			
8. Does the financial institution perform a one-time account review upon the first service of the order and only take action to freeze funds subsequently deposited or credited, if the institution is served with a new or different garnishment order consistent with the interagency regulation?			
Notice to the Account Holder (31 CFR 212.7)			
9. If a covered benefit agency (a) deposited a benefit payment into an account during the lookback period, (b) the balance in the account on date of account review was above zero dollars and the financial institution established a protected amount, and (c) there are funds in the account in excess of the protected amount, does the financial institution send a notice within three business days of account review to the account holder named in the garnishment order?			
10. Does the notice include the following:			
• The financial institution's receipt of an order against the account holder?			
• The date on which the order was served?			
• A succinct explanation of garnishment?			
• The financial institution's requirement under the interagency regulation to ensure that account balances up to the protected amount specified in 31 CFR 212.3 are protected and made available to the account holder, if a benefit agency deposited a benefit payment into the account in the last two months?			

Garnishment of Accounts Containing Federal Benefit Payments Examination Checklist	Yes	No	NA
• The account subject to the order and the protected amount established by the financial institution?			
• The financial institution's requirement pursuant to State law to freeze other funds in the account to satisfy the order and the amount frozen, if applicable?			
• The amount of any garnishment fee charged to the account, consistent with 31 CFR 212.6?			
• A list of the benefit payments subject to this part, as identified in 31CFR 212.2(b)?			
• The account holder's right to assert against the creditor that initiated the order a further garnishment exemption for amounts above the protected amount, by completing exemption claim forms, contacting the court of jurisdiction, or contacting the creditor, as customarily applicable for a given jurisdiction?			
• The account holder's right to consult an attorney or legal aid service in asserting against the creditor that initiated the order a further garnishment exemption for amounts above the protected amount?			
• The name of the creditor, and, if contact information is included in the order, means of contacting the creditor?			
Record Retention (31 CFR 212.11)			
11. Does the financial institution maintain records of account activity and actions taken in response to a garnishment order for at least two years from the date on which it receives the garnishment order?			

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