

November 26, 2007

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

Dear Mr. Feldman:

Branch Banking and Trust Company and its affiliated banks and subsidiaries of BB&T Corporation (BB&T) appreciate the opportunity to comment on the Proposed Guidance on Garnishment of Exempt Federal Benefit Funds issued jointly by the Office of the Comptroller of the Currency, Federal Reserve System, Federal Deposit Insurance Corporation, Office of Thrift Supervision and National Credit Union Administration (“the Agencies”).

BB&T, with more than \$130 billion in assets, is the nation’s fourteenth largest financial holding company and operates more than 1,500 financial centers in the Carolinas, Virginia, Maryland, West Virginia, Kentucky, Tennessee, Georgia, Florida, Alabama, Indiana and Washington, D.C.

BB&T commends the Agencies for their efforts to provide guidelines for financial institutions to follow in dealing with garnishment orders on accounts with exempt federal benefits, and we share their desire to inform depositors of applicable protections and limit restrictions on access to their accounts. However, as noted in more detail below, we believe that this is a problem that the Agencies cannot solve on their own, and that their attempt to do so will only serve to make matters worse, by creating expectations that cannot be achieved. Accordingly, we recommend that the proposed Guidelines not be adopted.

Current Environment

Perhaps the most significant challenge banks face in responding to garnishment orders is that the great majority of deposit accounts in which exempt benefit funds are deposited also receive deposits of non-exempt funds (mixed accounts). Money is a fungible good – there is no generally accepted formula for determining how much of the balance in a mixed account is exempt, or any automated method of calculating a mixed account’s exempt funds balance. Because of this uncertainty, when a bank receives a court order to garnish a mixed account, it generally has only three options, none of which is completely satisfactory to all of the parties involved:

1. Garnish the account, and risk violating state or federal laws exempting certain benefit funds from garnishment.
2. Disobey the court order, and risk being held in contempt of court and becoming liable for the full amount of the debt.

3. Place a hold on the account until the parties involved resolve the issue, thereby restricting the depositor's access to the account funds and requiring the bank to devote often considerable time and resources mediating between the parties.

Because of the potential liability associated with the first two options, BB&T's practice is to place a hold on mixed account balances until the exemption issues are resolved.

Comments on Proposed Best Practices

- **Promptly notify a consumer when a financial institution receives a garnishment order and places a freeze on the consumer's account.**

We support this proposal. BB&T's current practice is to promptly notify consumers in writing upon receipt of a garnishment order; we do not generally freeze the consumer's account, but rather, place a hold on the account for the amount of the garnishment order.

- **Provide the consumer with information about what types of federal benefit funds are exempt, including SSA and VA benefits, in order to aid the consumer in asserting federal protections.**

We do not believe banks are the appropriate entities to assume this responsibility. Banks are ill-equipped to serve as experts on these matters, and should not be put in the position of determining and informing the consumer of the consumer's rights in what is primarily a non-banking matter. Further, assigning banks this responsibility would inevitably put them in the position of mediating exemption claims and disputes between the creditors and consumers. We believe the responsibility for providing this information to consumers should logically and most practically be assigned to the Federal entities providing the exempt benefits. They are the most qualified to fully understand and interpret the exemption protections for the specific benefits they provide, and are best able to notify all of the recipients of their benefit payments of these protections.

- **Promptly determine, as feasible, if an account contains only exempt federal benefit funds such as SSA or VA benefits.**

BB&T devotes considerable resources to efficient processing of the tens of thousand of garnishment orders it receives each year. Unfortunately, the great majority of accounts receive deposits of both exempt and non-exempt funds, and there is no generally accepted formula or method for determining how much of an account's balance is composed of exempt funds. In our opinion, this proposed best practice would only serve to set unreasonable expectations that cannot be met in most cases.

- **Notify the creditor, collection agent, or relevant state court that the account contains exempt funds in cases in which the financial institution is aware that the account contains exempt funds.**

To adopt this best practice, the bank must be able to determine that the account contains exempt funds, and as noted previously, it is typically not possible to make this determination with a reasonable degree of certainty. In our opinion, the best practice would be for the Federal entities paying exempt benefits to educate recipients about their rights, and for the consumer to submit an exemption claim directly to the court or creditor.

- **If state law or the court order will permit a freeze not to be imposed if the account is determined to contain only exempt federal benefit funds, act according if that determination is made.**

BB&T's practice is to immediately remove any hold associated with a garnishment order upon determination that the funds held are exempt from garnishment. However, as noted above, BB&T is generally not able to make this determination.

- **Minimize the cost to a consumer when the consumer's account containing exempt federal benefit funds is frozen, such as by refraining from imposing overdraft, NSF or similar fees while the account is frozen or refunding such fees when the freeze has been lifted.**

BB&T provides prompt notice to depositors when a garnishment order is received on their account. In some cases, despite receiving notice of the garnishment, depositors will continue to write checks against funds that have been held, resulting in NSF fees being assessed. BB&T will refund any NSF fees resulting from bank errors in processing the garnishment and otherwise on a case by case basis when requested by the depositor. Banks should be allowed to determine when to waive fees consistent with their client service policies, safe and sound banking principles and with their fiduciary responsibilities to their shareholders. By characterizing a waiver of fees as a "best practice," the Agencies would effectively be supplanting their judgment for that of the banks.

- **Allow the consumer access to a portion of the account equivalent to the documented amount of exempt federal benefit funds as soon as the financial institution determines that none of the exceptions to the federal protections against garnishment of exempt federal benefit funds are triggered by the garnishment order.**

As previously noted, banks cannot determine with any certainty which funds, if any, in an account are exempt, and this is a determination best left to the courts. At BB&T, only those funds specified in the garnishment order are held, with any remaining balance available to the depositor. Additionally, upon notification from the court or creditor that the consumer's funds are exempt, it is our practice to immediately release the hold on the account.

If states were encouraged to enact a uniform act based on Connecticut's statute that provides that if an account is garnished that has received a direct deposit of "readily identifiable" federal benefit payments within 30 days before the garnishment order is served, a bank is authorized to freeze the lesser of the amount in the account or \$1,000. To facilitate this determination, federal benefit agencies would need to utilize a unique identifying code for exempt benefit payments that the receiving bank can map to a bank operating system flag. To minimize conflict, the bank under the uniform act would be authorized to pay the contested funds into the Clerk of Court.

- **Offer consumers segregated accounts that contain only federal benefits funds without commingling of other funds.**

We see no clear benefits from this proposed practice. First, in our experience, very few consumers open a deposit relationship with the anticipation that the account will at some point be subject to a garnishment order, and few of them would be willing to assume the additional burden of managing two separate accounts, one for federal benefit funds and the second for other funds, for this sole purpose. There is also the question of responsibility for ensuring that only federal benefits were deposited in the federal benefits accounts. It would be unreasonable to expect banks to assume this monitoring and enforcement burden, and equally unreasonable to rely on depositors to properly segregate their deposits on a consistent basis over the life of their accounts.

- **Lift the freeze on an account as soon as permissible under state law.**

BB&T's practice is to release holds on accounts subject to garnishment orders as soon as permissible.

We also provide the following responses to the questions raised by the Agencies:

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?

We are not aware of any practical method. As noted above, deposited funds are fungible and there is no generally accepted method of calculating, or automated method of tracking, the amount of exempt funds remaining in an account that has received deposits of both exempt and non-exempt funds. Even determining if an account has received both exempt and non-exempt deposits can require extensive manual effort, conceivably necessitating the review of all the deposits, and each of the checks deposited, since the account's inception.

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?

Garnishment notices issued by creditors and courts could include information on the consumer's rights regarding the exemption of federal benefit funds. It would be helpful if standard notice language, and safe harbor provisions for those adopting the language, could be adopted by Federal authorities. BB&T's practice upon receipt of a garnishment order is to forward a copy of the order to the depositor. Additionally, rather than "freezing" the entire account, BB&T's practice is to place a hold for only the amount specified in the order; the depositor continues to have access to any additional funds available in the 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? We do not believe consumers are informed of their rights on a consistent basis. Some garnishment notices include information regarding the consumer's rights, but this is not always the case. As noted above, consistent language that would be required in all garnishment order notices would be a more effective method of informing consumers. We also believe the Federal entities that issue exempt benefit payments should consider adopting consumer education programs to better inform recipients of their rights.

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?

As stated above, BB&T does not generally freeze accounts in response to a garnishment order. We do charge a fee for processing garnishment orders. The fee is intended to cover the frequently extensive time and effort involved in responding to these orders,

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including research, responding to court, creditor and depositor inquiries, handling correspondence, remittances and other paperwork, as well as support from legal staff where needed. BB&T has a staff of seven processors who will handle approximately 50,000 garnishment orders in 2007. The garnishment processing fee is higher than the fee for NSF checks.

Conclusion

BB&T appreciates the Agencies' efforts to deal with what is today a difficult and often frustrating process for the parties involved in garnishment orders that may involve accounts with exempt benefit funds. However, we believe that the tools available to the Agencies are not sufficient to adequately resolve the basic problems, which result from often inconsistent state and federal laws that require banks to make decisions about exempt funds without providing clear or practical rules for making these decisions. In our opinion, the proposed guidelines would likely exacerbate the current situation by defining best practices that are not feasible for banks to adopt, and we recommend that the guidelines not be adopted.

Sincerely,

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