

November 23, 2007

FDIC

Attn: Robert Feldman  
550 17<sup>th</sup> Street, NW  
Washington, DC 20429

RE: Garnishment Statement

Dear FDIC:

Thank you for the opportunity to comment on the proposed guidance on garnishment of exempt Federal benefit funds. Please see my comments below.

**1. Are there practices that would enable an institution to avoid freezing funds altogether?**

Answer: We have no option other than to follow court instructions. As your narrative suggested, this may cause consumers unnecessary hardship when their funds are temporarily frozen.

It would be very helpful if the courts trusted the judgment of bank personnel in executing an order. Perhaps the courts would be agreeable to including the following in garnishment orders:

- Procedures to follow in the event a significant portion of an account's balance is from protected sources and phone number to call.
- The length of time a bank should use in determining the percentage of unprotected funds in an account. For example, 30 days prior to receipt of the garnishment or levy.
- The percentage threshold of protected funds that cause an account to become untouchable.

**2. Are there other permissible practices that would better serve the interest of consumers who have accounts containing Federal Benefit Payments?**

**Answer:** I do NOT recommend a separate account exclusively for consumers with income from protected sources. This would cost the bank about \$25 to open each account, and about \$15 per year to maintain. It would also create ill-will and confusion among consumers who discover that they cannot deposit funds from non-exempt sources into the account.

If the statistics I was able to gather at our community bank (\$550 million assets) apply to other financial institutions, creating such a Federal Benefit account would benefit very few consumers. We average an annual garnishment/levy rate of 75

per 10,000 accounts. We looked at the past 150 garnishments before finding one directed toward an individual who relied 100% upon exempt income. Assuming that 20% of our customers receive Federal benefits, we would create about 2000 separate accounts for each 10,000 customers – all for the protection of the one or two who are garnished.

Is a short-term, small-dollar loan a solution? I doubt it. The borrower is already in trouble for writing bad checks or missing several payments. Moreover, he or she could claim the same legal defense that keeps other creditors at bay – protected income cannot be taken involuntarily. If such a loan were made, however, it might be based upon past income up to an amount that would cover outstanding checks and prevent NSF fees. Other requirements for such a solution would include the following:

- Fast lending decision process.
- Require no application from the consumer.
- Be exempted from Fair Lending laws.
- Be based entirely upon a banker's judgment and discretion.

### **3. Are customers adequately informed of their rights when a creditor attempts to garnish their funds?**

**Answer:** We often get calls from consumers after their accounts are garnished with the complaint, "They can't take that money. It's Social Security!" Well, yes it is Social Security, but it also is IRA distributions, gifts and part-time job income, money from savings and income from other unprotected sources. The law protects *only* certain income, not everything that happens to be mixed with it.

Moreover, the paperwork the bank passes along to the consumer after the garnishment is executed is very clear in identifying exempt funds.

In my opinion consumers are adequately informed of their rights although they may not understand the exact limits.

### **4. How do garnishment fees compare with NSF fees?**

**Answer:** We don't charge a garnishment fee at our community bank. If the garnishment or levy exceeds available funds in an account, the account is closed to prevent the buildup of NSF fees. We try to avoid actions that may make a bad situation worse. Checks may be returned 'Account Closed', but no additional NSF fees are incurred.

### **Final thought:**

I have had the opportunity to speak with both consumers whose accounts were garnished and with the collectors who initiate the court-orders. I am shocked by the number of consumers who ignore collection letters or who do not respond to the

collectors in meaningful ways. I believe a class of consumer is emerging that uses the protected-funds for an excuse to commit fraud or ignore financial obligations. I am shocked, too, by the number of collectors who refuse to work with consumers after the case has progressed to the point of garnishment. Perhaps they no longer believe what the consumer says after so much futile effort has been poured into a case.

Consumers are not innocent in a process that started with a bounced check or several missed payments. They become their own worst enemy when they refuse to negotiate with the collectors early in the process or make promises that, for whatever reasons, they do not keep.

This discussion should really include collectors. They are clearly part of the problem and should be part of the solution as well.

Sincerely,

Kirk Jones  
SVP Operations  
State Bank of Southern Utah  
377 N Main  
Cedar City, UT 84720