

JUNE 11, 2013

Publication No. 141  
Supplement 1

TO: ALL CREDIT UNIONS

FROM: COMPLIANCE & REGULATORY AFFAIRS

SUBJECT: GARNISHMENT OF ACCOUNTS RECEIVING FEDERAL BENEFITS VIA DIRECT DEPOSIT

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Main Idea:	<p>In February 2011, the U.S. Treasury Department (along with various federal agencies that pay benefits) published an <i>interim final rule</i> that established procedures for financial institutions to follow whenever someone tries to garnish an account that is receiving federal benefits via direct deposit. That interim final rule became effective in May 2011, and most financial institutions are by now very familiar with its requirements.</p> <p>On May 29, 2013, the U.S. Treasury Department and the other agencies published the <i>final rule</i>, which mostly keeps the <i>interim final rule</i> in place, with some amendments and clarifications that are discussed in more detail below. The personnel who handle incoming garnishments should review the final rule in its entirety prior to the effective date.</p>
Effective:	The final rule takes effect on June 28, 2013.
Regulation:	The regulations that govern the garnishment of accounts receiving federal benefits are found within the U.S. Treasury regulations beginning at 31 CFR 212.1. After June 28, 2013, these regulations will be updated and available online <a href="#">here</a> . Until then, you should review the final rule, which explains all of the amendments and clarifications and is available <a href="#">here</a> .
Coverage:	The rule covers any account that is receiving federal benefits via direct deposit, including: Social Security benefits, Supplemental Security Income (SSI) payments, VA benefits, Federal Railroad retirement benefits, Federal Railroad unemployment and sickness benefits, Civil Service Retirement System benefits and Federal Employees Retirement System benefits.
Overview:	<p><i>The procedures that went into effect in May 2011, as part of the interim final rule, did the following:</i></p> <ul style="list-style-type: none"><li>• Established a "protected amount" that simply cannot be garnished, which is the lesser of:<ul style="list-style-type: none"><li>○ all exempt federal benefits that were direct deposited</li></ul></li></ul>

	<p>into the account within the previous 2 months or;</p> <ul style="list-style-type: none"> <li>○ the account balance at the time of the account review</li> </ul> <ul style="list-style-type: none"> <li>• Required financial institution to provide the account holder with written notice of the garnishment. (A model notice was included in the regulation.)</li> </ul> <p>All credit unions should already be familiar with these requirements, which will remain in effect. <i>What the final rule does is add some new clarifications and amendments that take effect on June 28, 2013.</i> Credit unions should review the entire final rule to become familiar with all of the clarifications and amendments, but some of the more noteworthy ones are as follows:</p> <ul style="list-style-type: none"> <li>• <u>Clarification regarding master &amp; subaccount</u> – the final rule contains the following discussion about how to do the account review in situations where the account holder has a master account and one or more subaccounts:</li> </ul> <p style="padding-left: 40px;">The interim final rule defined an account to mean “an account, including a master account or sub account, at a financial institution and to which an electronic payment may be directly routed.” The Agencies received various requests asking for clarification of this definition. One commenter requested that the Agencies clarify that a “master” account, under which multiple sub accounts may be established and held, does not require an aggregate account review as a separate and distinct “account” for purposes of the rule. Credit unions in particular requested clarification on whether a “whole share account,” as opposed to various sub accounts, is subject to the account review and lookback.</p> <p style="padding-left: 40px;">Some credit unions commented that credit unions typically assign an individual member (or “primary”) number to each member. The member may then open multiple accounts “under” or “within” this member number with each account being designated by different “sub accounts” or “suffixes.” The member number does not denote an account per se, but rather serves as a “prefix” for all individual sub accounts of the member to or from which deposits and withdrawals may be made. For example, a new member might be given member number 9876. When the member opens a savings (or a share) account, that individual savings account might be noted as sub account “S” or “01.” Similarly, if the same member establishes a checking (or share draft) account,</p>
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	<p>that individual checking account might be noted as sub account “C” or “02.” Both are sub accounts of the member's “membership” account 9876.</p> <p>The requirement to perform an account review applies to the deposit account to which a Federal payment is routed and credited. In cases where a payment recipient is assigned a member number that doesn't represent an account per se, but that serves as a “prefix” for individual sub accounts, it is the individual sub account (and not the “master account”) that is subject to the account review and lookback.</p> <ul style="list-style-type: none"> <li> <p><u>Identifying Federal Benefits Payments</u> – the final rule amends the interim final rule to clarify how a credit union can identify an exempt federal benefit payment. Here is the final rules explanation of the change:</p> <p>Immediately following publication of the interim final rule, some financial institutions requested clarification on the definition of “benefit payment” for purposes of identifying Federal benefit payments. The interim final rule defines a benefit payment as a Federal benefit payment “with the character ‘XX’ encoded in positions 54 and 55 of the Company Entry Description field of the Batch Header Record of the direct deposit entry.” The Agencies were asked whether financial institutions may rely solely on the presence of the “XX,” without regard to whether there is a “2” in the “Originator Status Code” field of the Batch Header Record for the payment. Financial institutions pointed out that it is possible that payments other than Federal payments could contain an “XX” encoded in positions 54 or 55.</p> <p>Following the inquiry, the Agencies published guidance stating that financial institutions must verify that a payment containing an “XX” encoded in positions 54 or 55 is in fact a Federal benefit payment, which they may do by checking for a “2” in the “Originator Status Code” field of the Batch Header Record (Position 79) or by reviewing the description of the payment in the ACH Batch Header Record Company Entry Description to ensure that the payment is one of the exempt Federal benefit types listed in the guidance. The Agencies are codifying this guidance by amending the definition of benefit payment in the final rule to provide that both the “XX” and the “2” be present in the appropriate locations of the Batch Header Record.</p> </li> </ul>
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- What is meant by “garnishment order” – the rule protects exempt federal benefits from a “garnishment order.” The final rule that becomes effective June 28, 2013, expands the definition of “garnishment order” so that more types of attempted account seizures fall within the rule. The most significant changes are that the updated final rule will:

(1) protect against efforts to *freeze* an account to the same extent as efforts to *garnish or take* the funds in the account;  
(2) protect not only against orders issued by courts but also orders issued by any court clerk, attorney, state agency, or municipality; and

Here is the new definition that will become effective on June 28, 2013:

*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.

Although this definition does not explicitly mention orders issued by a “court clerk” or an “attorney,” that issue is addressed in the informal commentary that was published in the final rule. Here is the relevant part of the informal commentary:

The Agencies are revising the definition of garnishment order to include orders or levies issued by a State or State agency or municipality. To remove any doubt as to whether the rule applies to restraining orders, the Agencies are amending the definition of garnishment order to include “an order to freeze the assets in an account.” With regard to the question of whether a “garnishment order” includes an order issued by the clerk of the court or an attorney acting in his or her capacity as an officer of the court, it was not the Agencies' intention that an order “issued by a court” be so narrowly construed as to exclude such orders. The Agencies' view is an order issued by the clerk of the court or an attorney acting in his or her capacity as an officer of the court in accordance with State law

	<p>constitutes an order issued by the court. Lastly, the Agencies did intend by removing the phrase “to enforce a money judgment” from the definition of “garnishment” in the interim final rule to ensure that the rule is not limited to civil money judgments.</p> <ul style="list-style-type: none"> <li>• <u>What is the “account balance” for purposes of determining the protected amount</u> – as previously discussed, in order to determine the “protected amount,” the credit union must know the account balance on the date of the account review. Under the <i>interim final rule</i>, the relevant account balance on the date of the account review was the balance “at the open of business.” Under the <i>final rule</i> that takes effect on June 28, 2013, the relevant balance will be the balance “when the account review is performed.” The reason for the change is so that “intraday items such as ATM or cash withdrawals” can be factored in. The final rule provides some additional guidance that is worth reviewing about determining the account balance and the protected amount. It also revises some of the hypothetical situations that had been included as examples in the interim final rule.</li> <li>• <u>Can take garnishment fee from nonprotected funds deposited within 5 business days following the account review</u> – under both the <i>interim final rule</i> and the <i>final rule</i>, the credit union is prohibited from charging a garnishment fee from any of the protected funds. However, the <i>final rule</i>, which goes into effect on June 28, 2013, will allow credit unions to charge the fee against any nonprotected funds that are deposited to the account within 5 business days after the account review. Here is part of the commentary from the final rule explaining how this works:</li> </ul> <p style="padding-left: 40px;">[T]he Agencies have decided to amend the rule to provide financial institutions with an opportunity, for 5 days following the account review, to impose a garnishment fee in the event that nonprotected funds become available following the account review.</p> <p style="padding-left: 40px;">The Agencies stated in the preamble to the interim final rule that the prohibition on charging a garnishment fee after the date of account review was necessary because otherwise the rule would need to prescribe procedures that financial institutions would follow to monitor accounts in real time to track deposits and withdrawals, determine whether new deposits are exempt or not, and determine whether a garnishment fee could be imposed. In light of the comments received from financial</p>
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	<p>institutions, the Agencies have decided to establish a procedure that financial institutions may follow, if they choose, for a limited time following the account review to determine whether nonprotected funds are available to support the imposition of a garnishment fee. If funds other than a benefit payment are deposited to an account during the 5 business days following the date of the account review, the financial institution may charge or collect a fee from the additional funds. In order to impose such a fee, a financial institution could choose to check the account at any time during the 5 days after the account review to determine if funds other than benefit payments were deposited.</p> <ul style="list-style-type: none"> <li>• <u>Notice to account holder no longer required unless there are funds in excess of the protected amount</u> – the commentary to the final rule explains this change as follows:</li> </ul> <p>The interim final rule requires that a financial institution send a notice to the account holder if the balance in the account on the date of the account review is above zero dollars and the financial institution establishes a protected amount. A number of financial institutions noted that this requirement means that a financial institution must notify an account holder when a garnishment order is received for an account into which exempt benefit payments have been electronically deposited during the lookback period even in cases where no account funds are frozen. Financial institutions commented that providing a notice in this situation is of no benefit to account holders and will result in unnecessary confusion to account holders, many of whom will be unlikely to read the entire notice and will erroneously believe that their entire account balance has been frozen. These commenters stated that financial institutions will incur the expense of preparing and mailing garnishment notices for accounts in which no funds will be turned over to a creditor, as well as for responding to inquiries from account holders confused by the notices</p> <p>...</p> <p>The Agencies agree that the requirement to send a notice to account holders in cases where there are no funds in excess of the protected amount may be of little benefit and is likely to result in unnecessary confusion for some account holders. Accordingly, the Agencies are revising the rule to require a notice to an account holder</p>
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	only in cases where there are funds in the account in excess of the protected amount.
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