

The Department of Treasury, the Social Security Administration, the Department of Veterans Affairs, the Railroad Retirement Board, and the Office of Personnel Management have issued a joint rule establishing procedures that financial institutions must follow when a garnishment order is received on direct deposit benefit payments --- the rule applies ONLY to direct deposit ACH benefit payments and not to check payments.

Upon receipt of a garnishment order, the institution will have two business days from the date of receipt to determine if the United States or a state child support enforcement agency has included in the order a Notice of Right to Garnish Federal Benefits. *If the notice is included*, the process for handling exempt federal payments under the May 1 rule do not apply and the credit union would process the order following its normal procedures. If the notice is not included in the order, the credit union must review the account history during the two month period prior to receiving the garnishment order. If during this look back period one or more exempt payments were directly deposited into the account, the account holder must be given “full and customary” access to the lesser of the exempt payments in the account or the account balance as of the date of review. This is referred to as the protected amount. The credit union may not simply freeze the account, nor require an account holder to assert any right to a garnishment exemption or take any other action as a condition of gaining access to the protected amount.

Each account owned by an individual whether business or consumer account against whom a garnishment order has been issued must be reviewed separately and protected amounts calculated separately and applied for each account. The credit union must then send notice to the account holder or fiduciary for the account within three business days. One notice for multiple accounts may be issued. Notice does not have to be sent to a co-owner on the account. Notice does not have to be by registered mail or personally served.

#### Content of Notices:

1. Fact that the credit union has received an order against the account holder
2. Date the order was served
3. Explanation of the garnishment
4. The credit union’s requirement to protect and make available directly deposited federal benefit payments within the last two months
5. The protected amount subject to the order
6. The credit union’s requirement under state law to freeze other unprotected funds to satisfy the order and the amount frozen, if applicable
7. Amount of any fee charged
8. List of federal benefit payments protected
9. How to assert against the levying creditor for further garnishment exemptions
10. Account holder’s right to consult an attorney or legal aid in asserting against the creditor that initiated the order
11. The name of the creditor and contact information if available

The institutions response to a garnishment order is a one-time event. It may not repeat the review subsequently, including in cases where the same order is served again. However, if a new or different order is served against the same account, it must perform a new account review. State laws are preempted that require continuing garnishments.

Exemptions---- the rule does not apply to garnishment orders obtained by the United States or by state child support enforcement agencies.

The interim rule does not address a credit union's right to take a security interest in its deposit accounts or to exercise a contractual right to deduct fees or a right of offset against funds that are not exempt from garnishment, except for deducting a garnishment fee.

This New Garnishment Exemption for Federal Benefit Payments under the May 1, 2011 interim rule is intended as an overview and does not take into consideration all aspects of the rule or potential state law issues.

*The information contained in this notice is provided with the understanding that the author and company are not engaged in rendering legal advice. As such, information should not be used as a substitution for consultation with credit union legal counsel*