

TREASURY ISSUES NEW RULES COVERING DIRECTLY DEPOSITED BENEFITS

Garnishment Rules Include Social Security

In spite of long-standing statutory provisions protecting Social Security and other federal benefits from creditors, judgment-creditors have routinely gotten banks to freeze accounts containing exempt funds and regularly satisfy their judgments with such funds, often leaving the account-holder destitute.

This situation changed on May 1, 2011 when new rules went into effect governing garnishment from accounts into which certain exempt federal benefits are directly deposited. The new rules are designed to assure the account holder of uninterrupted access to at least two months worth of benefits.

This is the result of an interim final rule promulgated by the Department of the Treasury, acting together with the agencies that administer the benefits. "Garnishment of Accounts Containing Federal Benefit Payments," 76 Fed. Reg. 9939 (Feb. 23, 2011). The benefits protected by the new rule include Social Security, Supplemental Security Income (SSI), VA benefits, Federal Employee Retirement System benefits, Civil Service Retirement System benefits and benefits administered by the Railroad Retirement Board. Military retirement benefits are not included in this protection at the present time, although the rule could be expanded to cover them in the future.

The new rule requires banks and other financial institutions receiving a garnishment order for an account containing directly deposited federal benefits to conduct an account review to determine the amount of such benefits deposited in the account in the two months immediately preceding receipt of the garnishment order. The bank must then assure that the account holder has unfettered access to a "protected amount," which is the lesser of the sum of such benefit deposits made during the two month look-back period or the current balance. This is a slight change from the NPRM which would have established a 60 day look-back period.

The May 1 effective date of the new rule coincides with the first step toward mandatory direct deposit of federal benefits. Anyone applying for benefits on or after that date must receive their benefits by means of direct deposit unless they qualify for a very strict hardship exception. On March 1, 2013 direct deposit will become mandatory for all individuals under the age of 90 who receive federal

benefits and do not qualify for the strict hardship exception.

Prohibits Continuing Garnishment Orders – The new rule preempts state laws which authorize continuing garnishment orders which apply not just to funds in the account when the order is served, but also apply to funds subsequently deposited into the account. Thus a continuing garnishment order would, in effect, be converted into a one-time garnishment order.

Garnishment Fees – Banks are still able to collect garnishment fees at the time of the account review, but only from funds in excess of the protected amount and then only if other account holders are customarily charged a fee of the same nature and amount. No garnishment fees can be charged after the date of the account review.

Notice to Account Holder – Within three business days of completing the account review a financial institution is required to send a notice to the account holder who is the subject of the garnishment order advising of the protected amount and providing a list of other benefits generally exempt from garnishment. The notice must also include notice of the right to claim exemption of additional amounts over and above the protected amount. This represents a change from the proposed rules which would have required sending the notice within two business days and would have required sending the notice to all owners of the account, not just the account holder for whom the garnishment order was issued. A model notice is included with the regulation.

Safe Harbor – The regulation preempts inconsistent state or local statutes and regulations and provides a safe harbor for financial institutions that comply with the new rule. However, the rule does not preempt state laws that protect amounts in excess of the protected amount under this rule.

Federal Debts and Child Support Orders – It is important to note that garnishment orders obtained by the United States or state child support agencies are not covered by this regulation.

WHAT THE NEW RULE DOES NOT DO

Setoffs Not Covered – Setoffs are outside the scope of the new rule. Thus the pervasive problem of financial institutions setting off overdrafts and other debts (e.g., credit card debt) of the account holder against exempt funds will continue.

Benefits Received By Check Not Covered – Only electronic benefit deposits are protected by this rule. This will not be a serious gap after mandatory direct deposit is fully implanted in March, 2013.

Bank Fees -- The new rule does not protect exempt funds from bank fees, other than garnishment fees.

Release of Exempt Funds in Excess of the Protected Amount – This is still covered by procedures established under state law.

Look-Back Period – Although the two month look-back period is a significant improvement over the 60 day period originally proposed in the NPRM, there will still be a small number of instances because of holidays and weekends in which the two month look-back period does not accomplish the stated goal of protecting two full months worth of benefits.