

REGULATORY ALERT

**NATIONAL CREDIT UNION ADMINISTRATION
1775 DUKE STREET, ALEXANDRIA, VA 22314**

DATE: July 2013 **NO: 13-RA-04**
TO: Federally Insured Credit Unions
SUBJ: Garnishment of Accounts Containing Federal Benefit Payments

Dear Board of Directors and Chief Executive Officer:

If your credit union receives a garnishment order against a member who receives certain federal benefit payments by direct deposit, you may need to perform an account review to identify a protected amount, and issue a detailed notice to the account holder.

On May 29, 2013, federal agencies adopted a final rule,¹ amending their regulation and the procedures governing the garnishment of certain federal benefit payments. The final rule became effective on June 28, 2013.

This Regulatory Alert supersedes and replaces NCUA's Regulatory Alert 11-RA-04 (July 2011).

Background

Many consumers receive federal benefit payments that are protected under federal law from being accessed or "garnished" by creditors, other than the United States government and certain State agencies, through a garnishment order or similar written instruction issued by a court. Despite these protections, developments in debt collection practices and technology, including the direct deposit of benefits, have led to an increase in the freezing of accounts containing federal benefit payments by financial institutions that receive a garnishment order.

As a result, several federal agencies² jointly issued an interim final rule³ (interagency regulation) that a financial institution must follow when it receives a garnishment order against an account holder who receives certain federal benefit payments by direct deposit.

This guidance is aimed at assisting your credit union in complying with the requirements. A website link to the full text of the final rule is provided at the end of this document.

¹ Final rule published in the Federal Register on May 29, 2013. Effective June 28, 2013. 78 FR 32099.

² The Department of the Treasury (Fiscal Service); Social Security Administration; Department of Veterans Affairs; Railroad Retirement Board; and Office of Personal Management.

³ Interim final rule published in the Federal Register on February 23, 2011. Effective May 1, 2011. 76 FR 9939.

What Benefits Are Covered?

The types of federal benefit payments covered include:

- Social Security and Supplemental Security Income benefits
- Veterans benefits
- Federal Railroad retirement, unemployment and sickness benefits
- Civil Service Retirement System benefits
- Federal Employee Retirement System benefits

What Actions Are Required?

Initial Action. Within two business days of receiving a garnishment order,⁴ you must determine whether the order was obtained by the United States or issued by a State child support enforcement agency.⁵ To make this determination, you may rely on the inclusion of a “Notice of Right to Garnish Federal Benefits” (see Appendix B of the interagency regulation).

For orders obtained by the United States or issued by a State child support enforcement agency, you should follow your credit union’s standard procedures for handling a garnishment order. For all other garnishment orders, you must comply with the following procedures:

Account Review. You must review your member’s account history for the two-month period prior to receipt of the garnishment order (“lookback” period).⁶ This review includes each account owned by an individual, whether a consumer or business account. The requirement to perform an account review applies to the deposit account receiving a federal benefit payment. The final rule clarifies how the requirement applies to a master account versus a sub-account.⁷

If one or more covered payments were directly deposited into an account during the “lookback period,” you must give an account holder full access to the *lesser* of (1) all benefit payments posted to the account over the two-month period; or (2) the account balance at the time the account was reviewed. This is the “protected amount”⁸ and may not be frozen or subject to any other action to gain access to the member’s funds.

⁴ The final rule revised the definition of “garnishment order” or “order” to include a levy, and orders issued by states and municipalities, as well as orders to freeze assets. 31 C.F.R. § 212.3

⁵ A State child support enforcement agency is the single and separate organizational unit in a State that has the responsibility for administering or supervising the State’s plan for child and spousal support pursuant to Title IV, Part D, of the Social Security Act, 42 U.S.C. 654.

⁶ The lookback period begins on the date preceding the date of account review and ends on the corresponding date of the month two months earlier, or on the last date of the month two months earlier if the corresponding date does not exist. For example, the lookback period that begins on November 15 would end on September 15. The lookback period that begins on April 30 would end on February 28 (or 29 in a leap year).

⁷ In cases where a payment recipient is assigned a member number that does not represent an account, but that serves as a prefix for individual sub-accounts, it is the sub-account (and not the master account) that is subject to the account review and lookback.

⁸ Examples illustrating the application of account review and determining the protected amount are included in Appendix C of the interagency regulation. 31 C.F.R. Part 212.

Generally, the account review must be completed within two business days following receipt of the order, but may be extended under certain circumstances.

The relevant account balance when determining the protected amount is the account balance when the account review is performed, including intraday items such as ATM or cash withdrawals. You should not use the Regulation CC⁹ available funds balance, but the requirement to provide access to the protected amount is subject to the usual restrictions on funds availability.

For any funds in excess of the protected amount, you must follow your credit union's standard procedures for handling garnishment orders. This may include freezing the excess funds.

Garnishment Fee. You may not charge or collect a garnishment fee from the protected amount. You may charge or collect a garnishment fee up to five business days after the account review, in the event that non-benefit funds become available. The fee may not exceed the amount of non-benefit deposited funds.

Additionally, you may collect a garnishment fee from accounts or sub-accounts that do not contain the protected amount, in accordance with the member agreement and any applicable laws.

Record Retention. You must maintain records of account activity and actions taken in handling garnishment orders sufficient to demonstrate compliance with the rule for at least two years from the date of receipt of a garnishment order.

What Disclosures May Be Required?

Account Holder Notice. Within three business days of completing the account review, you must send a notice to the account holder if a covered benefit payment was directly deposited during the lookback period and there are funds in the account in excess of the protected amount.

You may choose the means of delivery of the garnishment notice, including electronic delivery pursuant to the E-Sign Act¹⁰ requirements.

In the case of joint accounts affected by a garnishment order, you may deliver the notice to both account holders, but there is no obligation to do so.

The notice must inform the account holder that the credit union received a garnishment order, provide a succinct explanation of garnishment, and include other information regarding the account holder's rights. You may use the model notice in Appendix A of the interagency regulation to comply with the notice content requirements.

⁹ The federal regulation governing when funds deposited to an account must be made available for withdrawal by the account holder. 12 C.F.R. Part 229.

¹⁰ Electronic Signatures in Global and National Commerce Act. 15 U.S.C. 96.

What Other Provisions May Apply?

Statutory Lien. The final rule does not specifically address a federal credit union's right to offset members' financial obligations against their deposit accounts. Section 107(11) of the Federal Credit Union Act grants a federal credit union the right to enforce a lien against a member's shares and dividends equal to the amount of that member's outstanding financial obligation if the member is delinquent on a loan issued by the credit union. This provision requires compliance with section 701.39 of the NCUA Rules and Regulations.

The interagency regulation does not limit a federal credit union's right to exercise its statutory lien authority against the protected amount in an account. Additionally, the regulation does not invalidate an account agreement or preempt state law that is consistent with the final rule.

What Guidance Is Available?

The full text of the final rule published in the Federal Register is available at: <https://www.federalregister.gov/articles/2013/05/29/2013-12567/garnishment-of-accounts-containing-federal-benefit-payments>.

Additionally, the Department of the Treasury published *Guidelines for Garnishment of Accounts Containing Federal Benefit Payments* (March 2011).

If you have questions, please contact NCUA's Office of Consumer Protection (703-518-1140 or ComplianceMail@ncua.gov), your regional office, or state supervisory authority.

Sincerely,

/s/

Debbie Matz
Chairman