

# REGULATORY ALERT

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

**DATE:** July 2011 **NO:** 11-RA-04  
**TO:** Federally Insured Credit Unions  
**SUBJ:** Garnishment of Accounts Containing Federal Benefit Payments

Dear Board of Directors:

This NCUA guidance is aimed at assisting credit unions in complying with an interim final rule issued jointly by several other federal agencies.<sup>1</sup>

The rule – *Garnishment of Accounts Containing Federal Benefit Payments* – establishes procedures that credit unions must follow when they receive a garnishment order against an account holder who receives certain federal benefit payments by direct deposit.

## Summary

**A federally insured credit union must follow procedures outlined in 31 C.F.R. Part 212 when it receives a garnishment order against an account holder who receives a covered federal benefit payment by direct deposit. If applicable, the credit union must determine the amount of federal benefits deposited into an account during a two-month period, and ensure the account holder has access to the lesser of those funds or the current balance of the account.**

## Scope

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 Employees Retirement System benefits

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<sup>1</sup> Department of the Treasury, Social Security Administration, Department of Veterans Affairs, Railroad Retirement Board, and Office of Personnel Management.

## Initial Action

Within two days after receiving a garnishment order, a credit union must determine whether the order was obtained by the United States or a state child support enforcement agency. To make this determination, the credit union may rely on the “Notice of Right to Garnish Federal Benefits” it receives. An example of the notice can be found at 31 C.F.R. Part 212, Appendix B.

For orders obtained by the United States or a state child support enforcement agency, the credit union should follow its standard procedures for handling a garnishment order.

For all other garnishment orders, the credit union must comply with the following procedures:

**Account Review.** A credit union must review its member’s account history for the two-month period prior to receipt of the garnishment order. Each account owned by an individual, whether a consumer or business account, must be reviewed.

If one or more covered payments were directly deposited during this “lookback period,”<sup>2</sup> the account holder must be given 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 beginning of the business day on the date the account was reviewed. This is considered the “protected amount” and may not be frozen or subject to any other action to gain access to the member’s funds, other than exercise of statutory lien authority.<sup>3</sup>

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

A credit union may not charge or collect a garnishment fee against a protected amount, and may not charge or collect a garnishment fee after the date of account review. This prohibition extends to the creation of an overdraft to apply a fee, which necessarily involves collection of that fee after the date of the account review.

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<sup>2</sup> 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).

<sup>3</sup> Examples illustrating the application of account review and determining the protected amount are included in 31 C.F.R. Part 212, Appendix C.

**Notice.** Within three business days of completing the account review, a credit union must send a notice to the account holder if a covered benefit payment was directly deposited into an account during the lookback period and the balance in the account on the date of account review was above zero dollars. Only one notice is required for an account holder with multiple accounts.

The notice must inform the account holder that a garnishment order has been received, provide a succinct explanation of garnishment, and include other information about the account holder's rights. A credit union may use the model notice in 31 C.F.R. Part 212, Appendix A to provide the notice. A credit union may also modify the content of the model notice to integrate information about a state's garnishment rules and protections, avoid confusion, or provide more complete information about an account.

## **Other Provisions**

**Statutory Lien.** The rule does not specifically address a federal credit union's right to set off obligations of an account holder against member shares. Section 107(11) of the Federal Credit Union Act<sup>4</sup> grants a federal credit union the right to enforce a lien against a member's shares 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 garnishment rule does not limit a federal credit union's right to exercise its statutory lien authority against the protected amount in an account. Additionally, the rule does not invalidate an account agreement or preempt state law that is consistent with the rule.

**Records Retention.** Credit unions 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.

The full text of the rule published in the Federal Register can be found at: <http://edocket.access.gpo.gov/2011/pdf/2011-3782.pdf>.

The Department of the Treasury's recently published *Guidelines for Garnishment of Accounts Containing Federal Benefit Payments* (March 2011) are available at: [http://www.fms.treas.gov/greenbook/guidelines\\_garnish0311.pdf](http://www.fms.treas.gov/greenbook/guidelines_garnish0311.pdf).

If you have any questions regarding this guidance, please contact NCUA's Office of Consumer Protection or your State Supervisory Authority.

Sincerely,

/s/  
Debbie Matz  
Chairman

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<sup>4</sup> See 12 U.S.C. §1757(11).