

MEMORANDUM

To: Drafting Committee
Uniform Wage Garnishment Act
From: Steve Willborn
Date: October 1, 2015
Re: Issues

Beyond Employees?

We need to talk about the issue of whether to extend the Act to workers who are not technically employees. The current draft of the Act covers only employees and makes that determination very transparent and efficient by deferring to the employer's classification of the worker for federal tax purposes. This has several advantages: (1) it's a bright line rule which will be very easy for employers to apply and, hence, contribute to the efficiency of the garnishment system; (2) it will largely remove debates (and litigation) about proper classification from garnishment proceedings; (3) it avoids the need to analyze how workers who are not treated as employees by an employer would have been compensated had they been treated as employees (e.g., to determine their disposable earnings); and (4) it should not skew employer classification decisions as they are likely to be driven by issues other than garnishment.

But there are downsides to this narrow approach, too. For example: (1) the consumer protections of the garnishment laws would not be extended to either misclassified workers¹ or workers who, although properly classified, seem to fit within the policy of garnishment protections;² and (2) the garnishment systems for these other types of workers will still be stuck in old, inefficient systems and will not be able to enjoy the savings of the new and better procedures we are developing.

¹ Misclassification of workers as independent contractors rather than employees has become a common claim in employment litigation. In a recent high-profile example, FedEx re-arranged its relationship with delivery drivers in an attempt to convert them from "employees" to "independent contractors." The courts have been split on whether FedEx was successful in this re-classification effort. *Compare* Slayman v. FedEx Ground Package System, 765 F.3d 1033 (9th Cir. 2014)(holding that the drivers were employees and, therefore, entitled to overtime premiums) *with* FedEx Home Delivery v. NLRB, 563 F.3d 492 (D.C. Cir. 2009)(holding that the drivers were independent contractors and, therefore, not able to unionize under the NLRA). For another high-profile example, try googling "Uber independent contractors."

² In *In Re Pruss*, for example, the court found that a lawyer's accounts receivable were earnings subject to the protections of the Nebraska garnishment statute. The Court held that the policy of the Act was to protect "periodic payments needed to support the wage earner and his family on a week-to-week, month-to-month basis." 235 B.R. 430, 436 (D. Neb. 1999)(later vacated for mootness)(quoting *Kokoszka v. Belford*, 417 U.S. 642 (1974)). That policy meant that these amounts should be protected even though the attorney was not an employee. However, it should be noted that *In Re Pruss* is an outlier. The general approach of the CCPA and state garnishment laws is not to extend protections to the earnings of independent contractors and other non-employees. *See, e.g., In Re Galvez*, 115 Nev. 417 (Nev. S. Ct. 1999)(real estate commission earned by independent contractor was not earnings under state garnishment law); *Coward v. Smith*, 6 Kan. App.2d 863 (1981)(amounts due an independent contractor under a construction contract were not earnings).

To facilitate a discussion of this, I have prepared an outline of the changes to the Act that would be necessary were we to extend it to other types of workers, such as independent contractors or members of LLCs. That outline is at the end of this memo as Appendix A.

Beyond Employers?

We need to talk about whether we should extend the Act's protections to wages deposited into bank accounts. We have talked about this at prior meetings, but only in general terms and very briefly.

In general, the principal argument in favor of extending protections to bank accounts is that this is a necessary adjunct to the protections provided in the Act. Without such protections, in theory, creditors could grab all of the wages protected by the Act as soon as the employer deposits them into the debtor's bank account by garnishing that account. On the other hand, extending the protections is complicated and may lead to enactability problems.

For discussion purposes, we have provided two options in Appendix B. Alternative One was suggested by Jack and, in essence, permits banks to offer (or not to offer) this kind of protected account. The general idea here is that employees will have an option for protecting wages from garnishment and banks should not object since they will have the option of offering or not offering such accounts.

Alternative Two is based on a current exemption contained in Florida law. Flor. Stat. Ann. § 222.11(3). It permits wages to be protected from bank garnishment to the extent they came from previously garnished wages.

Finally, we have included as Appendix C regulations from the Code of Federal Regulations on an analogous exemption contained in federal law. Federal law currently protects certain federal payments in bank accounts from garnishment (social security payments, veterans' benefits, railroad retirement benefits, and certain payments from the Office of Personnel Management). We provide this for your information and because it could be another model we could follow, although it's more complicated than either of the ones we have provided. An almost plain-language explanation of the regulations can be found here: https://www.fms.treas.gov/greenbook/guidelines_garnish0311.pdf.

Notice Form in Other Languages.

At the annual meeting, we were asked about the need to have these forms in languages other than English. Bill and I have talked about this and agree that it would be beyond our committee's capabilities to actually produce such forms. But we should attend to the concern in some way. As a minimalist approach, we might simply have a reporter's or legislative note telling States that they should consider translating the forms on their own and making them available. But we could do more. For example, we could require states to produce forms in languages known to be used by a substantial number of

their citizens and we could provide some rules about when a non-English form should be sent instead of the English-language one. If we did these kinds of things, we'd have lots of sticky issues to address. We might want to talk about this at our meeting.

Appendix A: Extension of the Act Beyond Employees to Independent Contractors and Others

In general, two approaches to this issue are possible: (1) to generalize the definition of “employee” in the Act to make it cover independent contractors and others, and then to make a number of other changes to the Act to make it general enough to cover both “true” employees and others, or (2) to have separate sections of the Act cover the non-employee category. The first approach would have the advantage of creating one procedure for all potential garnishees, so it would probably be most efficient. But the second approach would permit greater tailoring of the procedures and notices for these other categories of workers.

I have not worked through all the issues related to these two general approaches, but I hope to present you with enough information to give you a sense of the issues we would have to address were we to proceed in this direction. The goal is to have an overview that will equip us to make a yes-or-no decision on whether to continue working on this, or to abandon the effort.

Alternative One: Generalizing the Definition of Employee

New Definitions:

(1X) “Earnings”³ means:

(A) For an employee defined in Section 2X(A), the total wages, tips, and other compensation subject to federal income tax owed by an employer to an employee plus any amount the employee earns but is not owed because the employee elected to contribute the amount to a tax-deferred account, and

(B) For an employee defined in Section 2X(B), compensation owed by an employer to the employee for personal services. The term includes salary, commissions, bonuses, profit-sharing distributions, severance payments, and periodic pension and disability payments.

(2X) “Employee” means:

(A) An individual treated by an employer as an employee for federal income tax purposes, and

(B) An individual who performs personal services for an employer which are paid for through periodic payments.

The term includes a former employee who is owed earnings.

³ This substitutes for the definition of “wages” in the current draft. The language has been expanded to cover the non-wage earnings of non-employees. This is the first example of the kind of adjustments that would need to be made under this approach.

(3X) “Periodic payments” means regular payments on time intervals of one month or shorter.

Other Necessary Changes:

1. Current definitions of “wage garnishment” and “wage garnishment” action would have to be changed to broaden them to include garnishment of payments other than wages.
2. The notice form in Section 10 would need to be modified to accommodate these different types of garnishees.
3. The calculation worksheet in Section 11 would also need to be modified. The main change here would be that there would be no deductions for amounts withheld for taxes since taxes are not generally withheld from payments for these workers.
4. Section 12 would need to be changed to clarify how these protections would apply to these different types of garnishees. Since the principal idea here is to try to capture workers who are similar to true employees, my sense is that we would want to extend the exemptions and limits to them.

Alternative Two: Separate Sections to Cover Non-Employees

New Definitions:

(1X) “Earnings”⁴ means compensation owed by an employer to a worker for personal services. The term includes salary, commissions, bonuses, profit-sharing distributions, severance payments, and periodic pension and disability payments.

(2X) “Employee” means an individual treated by an employer as an employee for federal income tax purposes. The term includes a former employee who is owed wages.

(3X) “Periodic payments” means regular payments on time intervals of one month or shorter.

(4X) “Worker”⁵ means an individual other than an employee who performs personal services for an employer which are paid for through periodic payments. The term includes a former worker who is owed earnings.

⁴ For this alternative, the current definition of “wages” would remain in the Act and this definition of “earnings” would be added. Thus, “employees” would be paid “wages” and “workers” would be paid “earnings.” .

⁵ We’d need to think about what to call these people. “Worker” doesn’t seem quite right.

Other Necessary Changes:

1. Current definitions of “wage garnishment” and “wage garnishment” action would have to be changed to broaden them to include garnishment of payments other than wages.
2. We would need to change the procedure to have the creditor provide an appropriate notice form, or two if the creditor isn’t sure if the person is an employee or worker.
2. We would need to add a notice form for workers that is analogous to the current notice form in Section 10 but that would apply particularly to workers.
3. We would need to provide a separate calculation worksheet analogous to the one in Section 11, but tailored for workers rather than employees.
4. Section 12 would need to be changed (or a new section added) to clarify how these protections would apply to workers.

Appendix B: Extending the Protections of the Act to Bank Accounts

We would expect (a) that the substantive provisions providing protection against bank garnishment would be placed in a new section (probably) or within current section 12 on exemptions and limits and (b) that this protection would require some extra definitions. For now, we're just dividing this into two general sections: substantive protection and definitions. We could figure out the precise placement within the Act later, if we decide to pursue this.

Alternative One

Substantive Protection

A protected deposit account is exempt from garnishment.

Definitions

"Account holder" means an individual whose name appears in a bank's records as the owner of a deposit account.

"Bank" means an organization engaged in the business of banking. The term includes savings banks, savings and loan associations, credit unions and trust companies.

"Deposit account" means a demand, time, savings, passbook, or similar account maintained with a bank.

"Protected deposit account" means a deposit account which contains only funds directly deposited by an employer of the account holder. The term is limited to a deposit account that is specially designated by the bank with which it is maintained as a protected deposit account.

Alternative Two

Substantive Protection

(a) Wages that are exempt under section 12 and are deposited in a deposit account are exempt from bank garnishment for [6] months after the wages are received by the bank.

(b) The amount exempt from garnishment under subsection (a) is the lesser of the total amount of exempt wages deposited in the account within the preceding [6] months or the amount in the account.

(c) An account holder subject to a bank garnishment action must notify the bank within [15] days of receiving notice of the action that amounts in the deposit account are exempt under subsection (a). The notice must specifically identify the deposits that are exempt.

(d) A bank that complies in good faith with this [section] shall not be liable to the creditor that filed the bank garnishment action or for any penalties under state law for failure to commence a bank garnishment.

Definitions

“Account holder” means an individual whose name appears in a bank’s records as the owner of a deposit account.

“Bank” means an organization engaged in the business of banking. The term includes savings banks, savings and loan associations, credit unions and trust companies.

“Bank garnishment” means a transfer of funds from a bank to a creditor pursuant to a bank garnishment action.

“Bank garnishment action” means a legal proceeding for a bank garnishment.

“Deposit account” means a demand, time, savings, passbook, or similar account maintained with a bank.

Appendix C: Federal Regulation on Garnishment of Accounts Containing Federal Benefit Payments

§ 212.1. Purpose.

The purpose of this part is to implement statutory provisions that protect Federal benefits from garnishment by establishing procedures that a financial institution must follow when served a garnishment order against an account holder into whose account a Federal benefit payment has been directly deposited.

§ 212.2. Scope.

This part applies to:

- (a) Entities. All financial institutions, as defined in [§ 212.3](#).
- (b) Funds. Federal benefit payments protected from garnishment pursuant to the following authorities:
 - (1) SSA benefit payments protected under [42 U.S.C. 407](#) and [42 U.S.C. 1383\(d\)\(1\)](#);
 - (2) VA benefit payments protected under [38 U.S.C. 5301\(a\)](#);
 - (3) RRB benefit payments protected under [45 U.S.C. 231m\(a\)](#) and [45 U.S.C. 352\(e\)](#); and
 - (4) OPM benefit payments protected under [5 U.S.C. 8346](#) and [5 U.S.C. 8470](#).

§ 212.3. Definitions.

For the purposes of this part, the following definitions apply.

Account means an account, including a master account or sub account, at a financial institution and to which an electronic payment may be directly routed.

Account holder means a natural person against whom a garnishment order is issued and whose name appears in a financial institution's records as the direct or beneficial owner of an account.

Account review means the process of examining deposits in an account to determine if a benefit agency has deposited a benefit payment into the account during the lookback period.

Benefit agency means the Social Security Administration (SSA), the Department of Veterans Affairs (VA), the Office of Personnel Management (OPM), or the Railroad Retirement Board (RRB).

Benefit payment means a Federal benefit payment referred to in [§ 212.2\(b\)](#) paid by direct deposit to an account with the character “XX” encoded in positions 54 and 55 of the Company Entry Description field and the number “2” encoded in the Originator Status Code field of the Batch Header Record of the direct deposit entry.

Federal banking agency means the Federal Deposit Insurance Corporation, the Board of Governors of the Federal Reserve System, the Office of the Comptroller of the Currency, the Office of Thrift Supervision, or the National Credit Union Administration.

Financial institution means a bank, savings association, credit union, or other entity chartered under Federal or State law to engage in the business of banking.

Freeze or account freeze means an action by a financial institution to seize, withhold, or preserve funds, or to otherwise prevent an account holder from drawing on or transacting against funds in an account, in response to a garnishment order.

Garnish or garnishment means execution, levy, attachment, garnishment, or other legal process.

Garnishment fee means any service or legal processing fee, charged by a financial institution to an account holder, for processing a garnishment order or any associated withholding or release of funds.

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.

Lookback period means the two month period that 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. Examples illustrating the application of this definition are included in appendix C to this part.

Protected amount means the lesser of the sum of all benefit payments posted to an account between the close of business on the beginning date of the lookback period and the open of business on the ending date of the lookback period, or the balance in an account when the account review is performed. Examples illustrating the application of this definition are included in Appendix C to this part.

State means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, or the United States Virgin Islands.

State child support enforcement agency means 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](#).

United States means:

- (1) A Federal corporation,
- (2) An agency, department, commission, board, or other entity of the United States, or
- (3) An instrumentality of the United States, as set forth in [28 U.S.C. 3002\(15\)](#).

§ 212.4. Initial action upon receipt of a garnishment order.

- (a) Examination of order for Notice of Right to Garnish Federal Benefits. Prior to taking any other action related to a garnishment order issued against a debtor, and no later than two business days following receipt of the order, a financial institution shall examine the order to determine if the United States or a State child support enforcement agency has attached or included a Notice of Right to Garnish Federal Benefits, as set forth in Appendix B to this part.
- (b) Notice of Right to Garnish Federal Benefits is attached to or included with the order. If a Notice of Right to Garnish Federal Benefits is attached to or included with the garnishment order, then the financial institution shall follow its otherwise customary procedures for handling the order and shall not follow the procedures in [§ 212.5](#) and [§ 212.6](#).
- (c) No Notice of Right to Garnish Federal Benefits. If a Notice of Right to Garnish Federal Benefits is not attached to or included with the garnishment order, then the financial institution shall follow the procedures in [§ 212.5](#) and [§ 212.6](#).

§ 212.5 Account review.

- (a) Timing of account review. When served a garnishment order issued against a debtor, a financial institution shall perform an account review:
 - (1) No later than two business days following receipt of (A) the order, and (B) sufficient information from the creditor that initiated the order to determine whether the debtor is an account holder, if such information is not already included in the

order; or

(2) In cases where the financial institution is served a batch of a large number of orders, by a later date that may be permitted by the creditor that initiated the orders, consistent with the terms of the orders. The financial institution shall maintain records on such batches and creditor permissions, consistent with [§ 212.11\(b\)](#).

(b) No benefit payment deposited during lookback period. If the account review shows that a benefit agency did not deposit a benefit payment into the account during the lookback period, then the financial institution shall follow its otherwise customary procedures for handling the garnishment order and shall not follow the procedures in [§ 212.6](#).

(c) Benefit payment deposited during lookback period. If the account review shows that a benefit agency deposited a benefit payment into the account during the lookback period, then the financial institution shall follow the procedures in [§ 212.6](#).

(d) Uniform application of account review. The financial institution shall perform an account review without consideration for any other attributes of the account or the garnishment order, including but not limited to:

(1) The presence of other funds, from whatever source, that may be commingled in the account with funds from a benefit payment;

(2) The existence of a co-owner on the account;

(3) The existence of benefit payments to multiple beneficiaries, and/or under multiple programs, deposited in the account;

(4) The balance in the account, provided the balance is above zero dollars on the date of account review;

(5) Instructions to the contrary in the order; or

(6) The nature of the debt or obligation underlying the order.

(e) Priority of account review. The financial institution shall perform the account review prior to taking any other actions related to the garnishment order that may affect funds in the account.

(f) Separate account reviews. The financial institution shall perform the account review separately for each account in the name of an account holder against whom a garnishment order has been issued. In performing account reviews for multiple accounts in the name of one account holder, a financial institution shall not trace the movement of funds between accounts by attempting to associate funds from a benefit payment deposited into one account with amounts subsequently transferred to another account.

§ 212.6. Rules and procedures to protect benefits.

The following provisions apply if an account review shows that a benefit agency deposited a benefit payment into an account during the lookback period.

(a) Protected amount. The financial institution shall immediately calculate and establish the protected amount for an account. The financial institution shall ensure that the account holder has full and customary access to the protected amount, which the financial institution shall not freeze in response to the garnishment order. An account holder shall have no requirement to assert any right of garnishment exemption prior to accessing the protected amount in the account.

(b) Separate protected amounts. The financial institution shall calculate and establish the protected amount separately for each account in the name of an account holder, consistent with the requirements in [§ 212.5\(f\)](#) to conduct distinct account reviews.

(c) No challenge of protection. A protected amount calculated and established by a financial institution pursuant to this section shall be conclusively considered to be exempt from garnishment under law.

(d) Funds in excess of the protected amount. For any funds in an account in excess of the protected amount, the financial institution shall follow its otherwise customary procedures for handling garnishment orders, including the freezing of funds, but consistent with paragraphs (f) and (g) of this section.

(e) Notice. The financial institution shall issue a notice to the account holder named in the garnishment order, in accordance with [§ 212.7](#).

(f) One-time account review process. The financial institution shall perform the account review only one time upon the first service of a given garnishment order. The financial institution shall not repeat the account review or take any other action related to the order if the same order is subsequently served again upon the financial institution. If the financial institution is subsequently served a new or different garnishment order against the same account holder, the financial institution shall perform a separate and new account review.

(g) No continuing or periodic garnishment responsibilities. The financial institution shall not continually garnish amounts deposited or credited to the account following the date of account review, and shall take no action to freeze any funds subsequently deposited or credited, unless the institution is served with a new or different garnishment order, consistent with the requirements of this part.

(h) Impermissible garnishment fee. The financial institution may not charge or collect a garnishment fee against a protected amount. The financial institution may charge or collect a garnishment fee up to five business days after the account review if funds other than a benefit payment are deposited to the account within this period, provided that the fee may not exceed the amount of the non-benefit

deposited funds.

§ 212.7. Notice to the account holder.

A financial institution shall issue the notice required by [§ 212.6\(e\)](#) in accordance with the following provisions.

(a) Notice requirement. The financial institution shall send the notice in cases where:

- (1) A benefit agency deposited a benefit payment into an account during the lookback period;
- (2) The balance in the account on the date of account review was above zero dollars and the financial institution established a protected amount; and
- (3) There are funds in the account in excess of the protected amount.

(b) Notice content. The financial institution shall notify the account holder named in the garnishment order of the following facts and events in readily understandable language.

- (1) The financial institution's receipt of an order against the account holder.
- (2) The date on which the order was served.
- (3) A succinct explanation of garnishment.
- (4) The financial institution's requirement under Federal regulation to ensure that account balances up to the protected amount specified in [§ 212.3](#) are protected and made available to the account holder if a benefit agency deposited a benefit payment into the account in the last two months.
- (5) The account subject to the order and the protected amount established by the financial institution.
- (6) The financial institution's requirement pursuant to State law to freeze other funds in the account to satisfy the order and the amount frozen, if applicable.
- (7) The amount of any garnishment fee charged to the account, consistent with [§ 212.6](#).
- (8) A list of the Federal benefit payments subject to this part, as identified in [§ 212.2\(b\)](#).
- (9) The account holder's right to assert against the creditor that initiated the order a further garnishment exemption for amounts above the protected amount, by completing exemption claim forms, contacting the court of jurisdiction, or contacting the creditor, as customarily applicable for a given jurisdiction.
- (10) The account holder's right to consult an attorney or legal aid service in asserting against the creditor that initiated the order a further garnishment exemption for

amounts above the protected amount.

(11) The name of the creditor, and, if contact information is included in the order, means of contacting the creditor.

(c) Optional notice content. The financial institution may notify the account holder named in the garnishment order of the following facts and events in readily understandable language.

(1) Means of contacting a local free attorney or legal aid service.

(2) Means of contacting the financial institution,

(3) By issuing the notice required by this part, the financial institution is not providing legal advice.

(d) Amending notice content. The financial institution may amend the content of the notice to integrate information about a State's garnishment rules and protections, for the purposes of avoiding potential confusion or harmonizing the notice with State requirements, or providing more complete information about an account.

(e) Notice delivery. The financial institution shall issue the notice directly to the account holder, or to a fiduciary who administers the account and receives communications on behalf of the account holder, and only information and documents pertaining to the garnishment order, including other notices or forms that may be required under State or local government law, may be included in the communication.

(f) Notice timing. The financial institution shall send the notice to the account holder within 3 business days from the date of account review.

(g) One notice for multiple accounts. The financial institution may issue one notice with information related to multiple accounts of an account holder.

(h) Not legal advice. By issuing a notice required by this part, a financial institution creates no obligation to provide, and shall not be deemed to be offering, legal advice.

§ 212.8. Other rights and authorities.

(a) Exempt status. Nothing in this part shall be construed to limit an individual's right under Federal law to assert against a creditor a further exemption from garnishment for funds in excess of the protected amount, or to alter the exempt status of funds that may be protected from garnishment under Federal law.

(b) Account agreements. Nothing in this part shall be construed to invalidate any term or condition of an account agreement between a financial institution and an account holder that is not inconsistent with this part.

§ 212.9. Preemption of State law.

(a) Inconsistent law preempted. Any State or local government law or regulation that is inconsistent with a provision of this part is preempted to the extent of the inconsistency. A State law or regulation is inconsistent with this part if it requires a financial institution to take actions or make disclosures that contradict or conflict with the requirements of this part or if a financial institution cannot comply with the State law or regulation without violating this part.

(b) Consistent law not preempted. This regulation does not annul, alter, affect, or exempt any financial institution from complying with the laws of any State with respect to garnishment practices, except to the extent of an inconsistency. A requirement under State law to protect benefit payments in an account from freezing or garnishment at a higher protected amount than is required under this part is not inconsistent with this part if the financial institution can comply with both this part and the State law requirement.

§ 212.10. Safe harbor.

(a) Protection during examination and pending review. A financial institution that complies in good faith with this part shall not be liable to a creditor that initiates a garnishment order, or for any penalties under State law, contempt of court, civil procedure, or other law for failing to honor a garnishment order, for account activity during:

(1) The two business days following the financial institution's receipt of a garnishment order during which the financial institution must determine if the United States or a State child support enforcement agency has attached or included a Notice of Right to Garnish Federal Benefits, as set forth in [§ 212.4](#); or

(2) The time between the financial institution's receipt of the garnishment order and the date by which the financial institution must perform the account review, as set forth in [§ 212.5](#).

(b) Protection when protecting or freezing funds. A financial institution that complies in good faith with this part shall not be liable to a creditor that initiates a garnishment order for any protected amounts, to an account holder for any frozen amounts, or for any penalties under State law, contempt of court, civil procedure, or other law for failing to honor a garnishment order in cases where:

(1) A benefit agency has deposited a benefit payment into an account during the lookback period, or

(2) The financial institution has determined that the order was obtained by the United States or issued by a State child support enforcement agency by following the procedures in [§ 212.4](#).

(c) Protection for providing additional information to account holder. A financial institution shall not be liable for providing in good faith any optional information in the notice to the account holder, as set forth in [§ 212.7\(c\)](#) and [\(d\)](#).

(d) Protection for financial institutions from other potential liabilities. A financial institution that complies in good faith with this part shall not be liable for:

- (1) Bona fide errors that occur despite reasonable procedures maintained by the financial institution to prevent such errors in complying with the provisions of this part;
- (2) Customary clearing and settlement adjustments that affect the balance in an account, including a protected amount, such as deposit reversals caused by the return of unpaid items, or debit card transactions settled for amounts higher than the amounts originally authorized; or
- (3) Honoring an account holder's express written instruction, that is both dated and provided by the account holder to the financial institution following the date on which it has been served a particular garnishment order, to use an otherwise protected amount to satisfy the order.

§ 212.11. Compliance and record retention.

(a) Enforcement. Federal banking agencies will enforce compliance with this part.

(b) Record retention. A financial institution shall maintain records of account activity and actions taken in response to a garnishment order, sufficient to demonstrate compliance with this part, for a period of not less than two years from the date on which the financial institution receives the garnishment order.

§ 212.12. Amendment of this part.

This part may be amended only by a rulemaking issued jointly by Treasury and all of the benefit agencies as defined in [§ 212.3](#).

APPENDIX A TO PART 212—MODEL NOTICE TO ACCOUNT HOLDER

A financial institution may use the following model notice to meet the requirements of [§ 212.7](#). Although use of the model notice is not required, a financial institution using it properly is deemed to be in compliance with [§ 212.7](#).

Information in brackets should be completed by the financial institution. Where the bracketed information indicates a choice of words, as indicated by a slash, the financial institution should either select the appropriate words or provide substitute words suitable to the garnishment process in a given jurisdiction.

Parenthetical wording in italics represents instructions to the financial institution and

should not be printed with the notice. In most cases, this wording indicates that the model language either is optional for the financial institution, or should only be included if some condition is met.

MODEL NOTICE:

[Financial institution name, city, and State, shown as letterhead or otherwise printed at the beginning of the notice]

IMPORTANT INFORMATION ABOUT YOUR ACCOUNT

Date:

Notice to:

Account Number:

Why am I receiving this notice?

On [date on which garnishment order was served], [Name of financial institution] received a garnishment order from a court to [freeze/remove] funds in your account. The amount of the garnishment order was for \$[amount of garnishment order]. We are sending you this notice to let you know what we have done in response to the garnishment order.

What is garnishment?

Garnishment is a legal process that allows a creditor to remove funds from your [bank]/[credit union] account to satisfy a debt that you have not paid. In other words, if you owe money to a person or company, they can obtain a court order directing your [bank]/[credit union] to take money out of your account to pay off your debt. If this happens, you cannot use that money in your account.

What has happened to my account?

On [date of account review], we researched your account and identified one or more Federal benefit payments deposited in the last 2 months. In most cases, Federal benefit payments are protected from garnishment. As required by Federal regulations, therefore, we have established a “protected amount” of funds that will remain available to you and that will not be [frozen/removed] from your account in response to the garnishment order.

(Conditional paragraph if funds have been frozen) Your account contained additional money that may not be protected from garnishment. As required by law, we have [placed a hold on/removed] these funds in the amount of \$[amount frozen] and may have to turn

these funds over to your creditor as directed by the garnishment order.

The chart below summarizes this information about your account(s):

Account Summary as of [date of account review]

Account number	Amount in account	Amount protected	Amount subject to garnishment (now [frozen/removed])	Garnishment fee charged
.....				

Please note that these amount(s) may be affected by deposits or withdrawals after the protected amount was calculated on [date of account review].

Do I need to do anything to access my protected funds?

You may use the “protected amount” of money in your account as you normally would. There is nothing else that you need to do to make sure that the “protected amount” is safe.

Who garnished my account?

The creditor who obtained a garnishment order against you is [name of creditor].

What types of Federal benefit payments are protected from garnishment?

In most cases, you have protections from garnishment if the funds in your account include one or more of the following Federal benefit payments:

- Social Security benefits
- Supplemental Security Income benefits
- Veterans benefits
- Railroad retirement benefits
- Railroad Unemployment Insurance benefits
- Civil Service Retirement System benefits
- Federal Employees Retirement System benefits

(Conditional section if funds have been frozen) What should I do if I think that additional funds in my account are from Federal benefit payments?

If you believe that additional funds in your account(s) are from Federal benefit payments and should not have been [frozen/removed], there are several things you can do.

(Conditional sentence if applicable for the jurisdiction) You can fill out a garnishment exemption form and submit it to the court.

You may contact the creditor that garnished your account and explain that additional funds are from Federal benefit payments and should be released back to you. (Conditional sentence if contact information is in the garnishment order) The creditor may be contacted at [contact information included in the garnishment order].

You may also consult an attorney (lawyer) to help you prove to the creditor who garnished your account that additional funds are from Federal benefit payments and cannot be taken. If you cannot afford an attorney, you can seek assistance from a free attorney or a legal aid society. (Optional sentences) [Name of State, local, or independent legal aid service] is an organization that provides free legal aid and can be reached at [contact information]. You can find information about other free legal aid programs at [insert “<http://www.lawhelp.org>” or other legal aid programs website].

(Optional section) How to contact [name of financial institution].

This notice contains all the information that we have about the garnishment order. However, if you have a question about your account, you may contact us at [contact number].

APPENDIX B TO PART 212—FORM OF NOTICE OF RIGHT TO GARNISH FEDERAL BENEFITS

The United States, or a State child support enforcement agency, certifying its right to garnish Federal benefits shall attach or include with a garnishment order the following Notice, on official organizational letterhead.

Information in brackets should be completed by the United States or a State child support enforcement agency, as applicable. Where the bracketed information indicates a choice of words, as indicated by a slash, the appropriate words should be selected from the options.

Notice of Right to Garnish Federal Benefits

Date:

[Garnishment Order Number]/[State Case ID]: _____

The attached garnishment order was [obtained by the United States, pursuant to the Federal Debt Collection Procedures Act, [28 U.S.C. § 3205](#), or the Mandatory Victims Restitution Act, [18 U.S.C. § 3613](#), or other Federal statute]/[issued by (name of the State child support enforcement agency), pursuant to authority to attach or seize assets of

noncustodial parents in financial institutions in the State of (name of State), [42 U.S.C. § 666](#)].

Accordingly, the garnishee is hereby notified that the procedures established under 31 CFR part 212 for identifying and protecting Federal benefits deposited to accounts at financial institutions do not apply to this garnishment order.

The garnishee should comply with the terms of this order, including instructions for withholding and retaining any funds deposited to any account(s) covered by this order, pending further order of [name of the court]/[the name of the State child support enforcement agency].

APPENDIX C TO PART 212—EXAMPLES OF THE LOOKBACK PERIOD AND PROTECTED AMOUNT

The following examples illustrate this definition of lookback period.

Example 1: Account review performed same day garnishment order is served.

A financial institution receives garnishment order on Wednesday, March 17. The financial institution performs account review the same day on Wednesday, March 17. The lookback period begins on Tuesday, March 16, the date preceding the date of account review. The lookback period ends on Saturday, January 16, the corresponding date two months earlier.

Example 2: Account review performed the day after garnishment order is served.

A financial institution receives garnishment order on Wednesday, November 17. The financial institution performs account review next business day on Thursday, November 18. The lookback period begins on Wednesday, November 17, the date preceding the date of account review. The lookback period ends on Friday, September 17, the corresponding date two months earlier.

Example 3: No corresponding date two months earlier.

A financial institution receives garnishment order on Tuesday, August 30. The financial institution performs the account review two business days later on Thursday, September 1. The lookback period begins on Wednesday, August 31, the date preceding the date of account review. The lookback period ends on Wednesday, June 30, the last date of the month two months earlier, since June 31 does not exist to correspond with August 31.

Example 4: Weekend between receipt of garnishment order and account review.

A financial institution receives garnishment order on Friday, December 10. The financial institution performs the account review two business days later on Tuesday, December 14. The lookback period begins on Monday, December 13, the date preceding the date of account review. The lookback period ends on

Wednesday, October 13, the corresponding date two months earlier.

The following examples illustrate the definition of protected amount.

Example 1: Account balance less than sum of benefit payments.

A financial institution receives a garnishment order against an account holder for \$2,000 on May 20. The date of account review is the same day, May 20, and the balance in the account when the review is performed is \$1,000. The lookback period begins on May 19, the date preceding the date of account review, and ends on March 19, the corresponding date two months earlier. The account review shows that two Federal benefit payments were deposited to the account during the lookback period totaling \$2,500, one for \$1,250 on Friday, April 30 and one for \$1,250 on Tuesday, April 1. Since the \$1,000 balance in the account when the account review is performed is less than the \$2,500 sum of benefit payments posted to the account during the lookback period, the financial institution establishes the protected amount at \$1,000. The financial institution is not required to send a notice to the account holder.

Example 2: Three benefit payments during lookback period.

A financial institution receives a garnishment order against an account holder for \$8,000 on December 2. The date of account review is the same day, December 2, and the balance in the account when the account review is performed is \$5,000. The lookback period begins on December 1, the date preceding the date of account review, and ends on October 1, the corresponding date two months earlier. The account review shows that three Federal benefit payments were deposited to the account during the lookback period totaling \$4,500, one for \$1,500 on December 1, another for \$1,500 on November 1, and a third for \$1,500 on October 1. Since the \$4,500 sum of the three benefit payments posted to the account during the lookback period is less than the \$5,000 balance in the account when the account review is performed, the financial institution establishes the protected amount at \$4,500 and seizes the remaining \$500 in the account consistent with State law. The financial institution is required to send a notice to the account holder.

Example 3: Intraday transactions.

A financial institution receives a garnishment order against an account holder for \$4,000 on Friday, September 10. The date of account review is Monday, September 13, when the opening balance in the account is \$6,000. A cash withdrawal for \$1,000 is processed after the open of business on September 13, but before the financial institution has performed the account review, so that the balance in the account is \$5,000 when the financial institution initiates an automated program to conduct the account review. The lookback period begins on Sunday, September 12, the date preceding the date of account review, and ends on

Monday, July 12, the corresponding date two months earlier. The account review shows that two Federal benefit payments were deposited to the account during the lookback period totaling \$3,000, one for \$1,500 on Wednesday, July 21, and the other for \$1,500 on Wednesday, August 18. Since the \$3,000 sum of the two benefit payments posted to the account during the lookback period is less than the \$5,000 balance in the account when the account review is performed, the financial institution establishes the protected amount at \$3,000 and, consistent with State law, freezes the \$2,000 remaining in the account after the cash withdrawal. The financial institution is required to send a notice to the account holder.

Example 4: Benefit payment on date of account review.

A financial institution receives a garnishment order against an account holder for \$5,000 on Thursday, July 1. The date of account review is the same day, July 1, when the opening balance in the account is \$3,000, and reflects a Federal benefit payment of \$1,000 posted that day. The lookback period begins on Wednesday, June 30, the date preceding the date of account review, and ends on Friday, April 30, the corresponding date two months earlier. The account review shows that two Federal benefit payments were deposited to the account during the lookback period totaling \$2,000, one for \$1,000 on Friday, April 30 and one for \$1,000 on Tuesday, June 1. Since the \$2,000 sum of the two benefit payments posted to the account during the lookback period is less than the \$3,000 balance in the account when the account review is performed, the financial institution establishes the protected amount at \$2,000 and places a hold on the remaining \$1,000 in the account in accordance with State law. The financial institution is required to send a notice to the account holder.

Example 5: Account co-owners with benefit payments.

A financial institution receives a garnishment order against an account holder for \$3,800 on March 22. The date of account review is the same day, March 22, and the balance in the account is \$7,000. The lookback period begins on March 21, the date preceding the date of account review, and ends on January 21, the corresponding date two months earlier. The account review shows that four Federal benefit payments were deposited to the account during the lookback period totaling \$7,000. Two of these benefit payments, totaling \$3,000, were made to the account holder against whom the garnishment order was issued. The other two payments, totaling \$4,000, were made to a co-owner of the account. Since the financial institution must perform the account review based only on the presence of benefit payments, without regard to the existence of co-owners on the account or payments to multiple beneficiaries or under multiple programs, the financial institution establishes the protected amount at \$7,000, equal to the sum of the four benefit payments posted to the account during the lookback period. Since \$7,000 is also the balance in the account at the time of the account review, there are no additional funds in the account which can be frozen. The financial institution is not required to send a notice to the account holder.