

Garnishments of Accounts Containing Federal Benefit Payments

plus

Liens & Levies

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Department of Treasury: Final Rule

- Effective June 28, 2013
- **Only ACH DIRECT DEPOSIT Federal income is protected**
- The objective is to identify whether or not federal benefits payments have been deposited...not who has ownership
- Each of multiple accounts must have a separate review and calculation of protected funds
- The Bank is not responsible for tracing funds between accounts, i.e. once funds from a benefit payment are transferred to another account, the funds no longer meet the definition of benefit payments

Federal Benefit Payment Definition

- **Only ACH DIRECT DEPOSIT Federal income is protected**
- ACH with XX notification encoded in positions 54 or 55 AND “2” in position 79 of Originator Status Code of ACH Batch Header Record to identify a protected Federal benefit payment
- Includes: Social Security benefits, SSI benefits, VA benefits, Federal Railroad retirement benefits, Federal Railroad unemployment and sickness benefits, Civil Service Retirement System benefits and Federal Employee Retirement System benefits including Office of personnel management benefits

3

Account Holder and Account

- An “Account Holder” is a “natural person against whom a garnishment order is issued and whose name appears in a financial institution’s records as **direct or beneficial owner** of an account”
- An “Account” includes a master account or sub account at a financial institution to which an electronic payment may be directly routed
 - Garnishee could be a co-owner, beneficiary of a trust account, one of multiple joint owners

4

Garnishment Order Definition

- “A writ, order, notice, summons, judgment or similar written instruction issued by a court or a State child support enforcement agency”
- “Orders or levies issued by a state or state agency or municipality as well as “an order to freeze an account”, which includes restraining orders”
- May be issued by someone other than a court, including clerk of court, attorney acting as an officer of a court
- IRS tax levies ARE NOT garnishment orders because they can garnish anyone’s wages – these garnishment protection rules do not apply to IRS tax levies!!

5

Account Review

- The rule allows 2 business days to identify garnishment orders received and conduct the mandatory account review
 - No action on funds can be taken until the review is done
- WORD OF CAUTION: While Federal Regs provide for a two-business day delay in processing ALL garnishments, a local judge may believe a delay was only permissible if federal benefit payments were actually involved
 - Don’t delay...process ASAP

6

Lookback Period

- The “lookback period” is the two-month period beginning on the date preceding the date of the account review and ending on either the corresponding date of the month two months earlier or the last date of the month two months earlier if the corresponding date does not exist.
- For example, if an institution begins the account review on October 15, 2016, the lookback period would run from August 14, 2016, through October 14, 2016.

7

Protected Amount

- Federal Benefit Payment Funds are included in the “protected amount”
- Also included, intraday transactions like ATM or cash withdrawal
- Excluded:
 - Reg CC available funds,
 - Line of credit associated with account,
 - Asset accounts holding securities,
 - Alternative instruments,
 - Real estate or
 - Other assets purchased with federal benefit payments

8

Protected Amount Calculation

- Protected Amount is the **lesser of**:
 - Sum of all ACH direct deposit benefit payments posted to an account between the
 - **Close of business** on beginning date of the lookback period and
 - **Open of business** on the ending date of the lookback period, or
 - Balance in account when the account review is performed

IF Benefit Pymts < Acct Balance, THEN Protected Amount = Benefit Pmnt
IF Benefit Pymts > Acct Balance, THEN Protected Amount = Acct Balance

9

Balance Available for Garnishment

- Protected Amount may not be frozen, it must remain liquid and available to account owner
 - Garnishment rules often refer to “debtor” since the garnishment is owed by the account owner
- Amounts **over** the Protected Amount are frozen up to the amount of garnishment

IF Acct Bal > Protected Amt, THEN Amt Frozen
=
Excess over the Protected Amount up to Garnishment Claim
IF Acct Bal \leq Protected Amount, THEN Amt Frozen = Zero

10

Example 1: Protected Amount Account Balance < Benefit Payments

- Garnishment order received for \$2,000 on May 20
- Account reviewed same day, May 20, with \$1,000 opening balance
- Lookback period begins May 19, the date preceding the date of account review, and ends Mar 19, the corresponding date two months earlier
- Account review shows 2 Federal benefit payments deposited to account during lookback period totaling \$2,500
 - One for \$1,250 on Fri, Apr 30 & another for \$1,250 on Tue, Apr 1
- Since the \$1,000 account balance at the open of business on the date of account review 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

11

Example 2: Protected Amount 3 Benefit Payments in Lookback Period

- Garnishment order received for \$8,000 on Dec 2
- Account reviewed same day, Dec 2, with \$5,000 opening balance
- Lookback period begins Dec 1, date preceding date of account review, & ends Oct 1, the corresponding date two months earlier
- Account review shows 3 Federal benefit payments deposited to account during lookback period totaling \$4,500, one for \$1,500 on Dec 1, one for \$1,500 on Nov 1, & a third for \$1,500 on Oct 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 at the open of business on the date of account review, the financial institution establishes the protected amount at \$4,500 and seizes the remaining \$500 in the account consistent with State law

12

Example 3:

Protected Amount Intraday Transactions

- Garnishment order received for \$4,000 on Fri, Sep 10.
- Account review is Mon, Sep 13, with \$6,000 opening balance
- Cash withdrawal for \$1,000 is processed after the open of business on Sep 13, but before bank performed account review, and balance in account is \$5,000 when bank initiates automated program to conduct the account review
- Lookback period begins Sun, Sep 12, date preceding date of account review, and ends on Mon, Jul 12, the corresponding date two months earlier

13

Example 3:

Protected Amount Intraday Transactions, continued

- Account review shows two Federal benefit payments deposited during lookback period totaling \$3,000, one for \$1,500 on Wed, Jul 21, and one for \$1,500 on Wed, Aug 18
- Since the \$3,000 sum of the two benefit payments posted to the account during the lookback period is **less than** the \$6,000 account balance at the open of business on the date of account review, the bank establishes the Protected Amount at \$3,000 and, consistent with State law, freezes the \$2,000 remaining in the account after the cash withdrawal

14

Example 4: Protected Amount Benefit Payment on Account Review Date

- Garnishment order received for \$5,000 on Thu, Jul 1.
- Account review is same day, Jul 1, with \$3,000 opening balance, and reflects Federal benefit payment of \$1,000 posted that day
- Lookback period begins Wed, Jun 30, date preceding date of account review, and ends on Fri Apr 30, the corresponding date two months earlier

15

Example 4: Protected Amount, continued

- Account review shows 2 Federal benefit payments deposited during lookback period totaling \$2,000, one for \$1,000 Fri Apr 30 and one for \$1,000 Tue, Jun 1
- Since \$2,000 sum of the two benefit payments posted to account during lookback period is less than \$3,000 balance in account at open of business on date of account review, notwithstanding the third Federal benefit payment posted on the date of account review, 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

16

Example 5: Protected Amount

Joint Account with Benefit Payments

- Garnishment order received for \$3,800 on Mar 22
 - Account review is same day, Mar 22, with \$7,000 opening balance
 - Lookback period begins Mar 21, date preceding date of account review, and ends Jan 21, corresponding date two months earlier
 - Account review shows 4 Federal benefit payments deposited to account during lookback period totaling \$7,000
 - Two benefit payments, totaling \$3,000, were made to account holder against whom the garnishment order was issued
 - Other two payments, totaling \$4,000, made to acct co-owner

17

Example 5: Protected Amount, continued

- 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 on the date of account review, there are no additional funds in the account which can be frozen

18

Account Review, continued

- If creditor is United States government or a State child support enforcement agency **AND** submits a “Notice of Right to Garnish Federal Benefits”:
 - Bank follows customary procedures and tenders funds in account, as these creditors have rights that trump general protection from garnishment. No funds in the account are protected from garnishment!
- If creditor is **NOT** US government or State child support agency:
 - Bank is to review activity for prior 60-days “Lookback Period” to identify Federal benefit payment direct deposits and calculate the protected amount.

19

Notice of Right to Garnish Federal Benefits

- When the required notice is present
 - NOT required to perform an account review, and must follow customary procedures for garnishment and treats account as if **no** Federal benefit payment was present
- When the required notice is not present
 - Follow the garnishment procedures
 - Bank is not required to inquire as to reasons why no notice
 - Creditor’s error...the “Notice” is either attached or not!

20

Example 1: Lookback Period & Protected Amount

- Account review performed same day garnishment order is served
 - Garnishment order received Wed, Mar 17
 - Account review conducted Wed, Mar 17
 - Lookback begins Tue, Mar 16 (date preceding date of account review)
 - Lookback ends Sat, Jan 16 (corresponding date 2 months earlier)

21

Example 2: Lookback Period & Protected Amount

- Example 2: Account review performed the day after garnishment order is served
 - Garnishment order received Wed, Nov 17
 - Account review performed next business day on Thu, Nov 18
 - Lookback period begins Wed, Nov 17 (date preceding date of account review)
 - Lookback period ends Fri, Sept 17 (corresponding date 2 months earlier)

22

Example 3:

Lookback Period & Protected Amount

- Example 3: No corresponding date two months earlier
 - Garnishment order received Tue, Aug 30
 - Account review performed two business days later on Thu, Sept 1
 - Lookback period begins Wed, Aug 31, (date preceding the date of account review)
 - Lookback period ends Wed, Jun 30 (last date of month two months earlier, since Jun 31 does not exist to correspond with Aug 31)

23

Example 4:

Lookback Period & Protected Amount

- Example 4: Weekend between garnishment order receipt and account review
 - Garnishment order received Fri, Dec 10
 - Account review performed 2 business days later on Tue, Dec 14
 - Lookback period begins Mon, Dec 13 (date preceding the date of account review)
 - Lookback period ends Wed, Oct 13 (corresponding date 2 months earlier)

24

One-Time Account Review Process

- Bank shall perform the account review only 1 time upon the 1st garnishment order
- Do not repeat account review or take any action related to order if the SAME order is resubmitted or re-filed
- A NEW or DIFFERENT garnishment order requires a new review

25

Notice to Account Holder

Notices required if:

- Benefit agency deposited a benefit payment into an account during the lookback period
- Balance in account on date of account review is above zero dollars and institution established a "Protected Amount"
- There are funds in the account exceeding "Protected Amount"

26

Notice to Account Holder Upon Completion of Review

- Upon completion of review, Notice must be provided within 3 business days to include:
 - Bank's receipt of an order against account holder
 - Date order was served
 - Explanation of garnishment
 - Financial institution's requirement under Federal regulation to ensure account balances up to the Protected Amount are protected and made available to account holder if a benefit agency deposited a benefit payment into the account in the last 2 months

27

Notice to Account Holder Upon Completion of Review, continued

- Account subject to the order and the protected amount
- Bank's requirement pursuant to State law to freeze other funds in account to satisfy order and amount frozen, if any
- Amount of any garnishment fee charged to the account consistent with §212.6
- List of the Federal benefit payments subject to this part, as identified in §212.2(b)

28

Notice to Account Holder Upon Completion of Review, continued

- Account holder has the right to request the creditor that initiated the order to grant a garnishment exemption for amounts above the protected amount
- Account holder has right to consult an attorney or legal aid service in asserting the claim against the creditor
 - Optional notice content: May notify account holder of following:
 - Means of contacting a local free attorney or legal aid service
 - Means of contacting the financial institution to discuss amount requested

29

Notice Delivery and Timing

- Issue notice directly to account holder, or
- Fiduciary who administers the account and receives communications on behalf of account holder
 - Only info and docs pertaining to the garnishment order, including other notices or forms that may be required under State or local government law, may be included in communication
- One notice for multiple accounts
 - Financial institution may issue one notice with information related to multiple accounts of account holder
- Financial institution must send notice to account holder within 3 business days from date of account review

30

Garnishment Fees Non-Protected Funds

- IF there are non-protected funds, funds available to garnish:
 - Financial institution may charge normal and customary garnishment fees as allowed by the customer agreement and state law
 - If non-benefit funds are deposited into account during the five (5) business days following the account review, institution may collect its normal garnishment fee as long as the fee does not exceed the amount of the non-benefit funds (i.e. cannot overdraw account)
 - Collection of garnishment fee is PROHIBITED from “protected amount”
 - State courts oftentimes say, financial institution may only take its fees from amounts left after the garnishment is satisfied

31

Account Closure

- Financial institutions have been known to close accounts subject to repeated third party claims
 - Correspondence closing the account should cite contract terms allowing the action and state a specific date by which consume must close the account of institution will close it
 - Account closure can be a preferred risk management tool, as institution may not be allowed to recoup costs
 - Suggested notice of closing, 30 days from day following the next expected ACH credit

32

Record Retention

- For compliance purposes, records should be retained 2 years; imaged or electronic copies
- Record retention requirements should be framed around “evidence of compliance”, similar to procedures under consumer protection laws
 - Establish the day the account review took place
 - Define the lookback period
 - Verify the presence (or absence of benefit payments)
 - Calculate a “protected amount”
 - Distribute the notice to the debtor/account holder

33

Noncompliance & Violations

- The Regs do not provide for specific penalties for violation, but are covered by FIRREA penalties
- Noncompliance could involve:
 - Regulatory Risk – Criticism and mandate to correct
 - Reputational Risk – Bad press
 - Financial risks should be minimal if your bank can demonstrate good faith efforts at compliance, but failing that...financial risks could be extreme

34

Extra Resources



Guidelines for Garnishment of Accounts Containing Federal Benefit Payments

In accordance with Title 31 of the Code of
Federal Regulations, Part 212

Garnishments, Liens and Levies

Federal Benefit Payment Types Statutorily Exempt from Garnishment	Company Entry Description (Positions 54-63) - PRIOR TO NEW GARNISHMENT RULE	Company Entry Description (Positions 54-63) - WITH NEW GARNISHMENT RULE	Payment Type Description
VA Benefit	VAbBENEFIT	XXVAbBENEF	VA Benefit (Comp and Pension, DIC, Burial)
	VAbEDbCH30	XXVAbCH30b	VA Education
	VAbMGIBSRb	XXVAbMGIBS	VA Montgomery GI Bill, Select Reserve
	VAbCH18bbb	XXVAbCH18b	VA Spina Bifida, Birth Defects
	VAbCH31bbb	XXVAbCH31b	VA Vocational Rehabilitation (Retroactive)
	VAbREAPbbb	XXVAbREAPb	VA Reservist Education Assistance Program
	VAb31RECUR	XXVAb31REC	VA Vocational Rehabilitation (Recurring)
	VAbEDb1607	XXVAb1607b	VA Reservist Education Assistance Program, VA Dependents' Educational Assistance (Ch. 35), VA Education (Ch. 32)
VAbEDbCH33	XXVAbCH33b	VA Education Ch 33	
VA Insurance	FEDVAINSUR	XXVAbINSUR	VA Insurance
Railroad Retirement Benefit	RRbUISIbbb	XXRRbUISIb	Railroad Retirement Board Unemployment Insurance
	RRbRE1bbb	XXRRbRE1bb	Railroad Retirement Benefit
Social Security Benefit	SOcbSECbbb	XXSOcbSECb	Social Security Benefit
	MISCbPAY2b	XXMISCbPAY	Social Security Child Support and Alimony (SSA Garnishment)
	INTLbPYMT	XXINTLbPMT	International Direct Deposit - Recurring
	INTLbPYMT	XXINTLbPMT	International Direct Deposit - Daily
Supplemental Security Income	SUPPbSECbb	XXSUPPbSEC	Supplemental Security Income Benefit
Office of Personnel Management (Civil Service Retirement)	CIVILbSERV	XXCIVbSERV	Civil Service Retirement Benefit

NOTE: The payment descriptions shown below are changing to contain blanks in Positions 54 and 55 of the Company Entry Description Field. This enables Fiscal Service to be positioned for future use of the "XX" identifier for other payments, should additional authority be acquired.

OTHER PAYMENTS

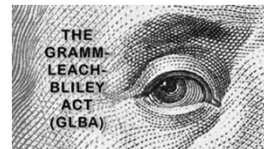
Agency	Current Company Entry Description, (Without Blanks in Positions 54-63)	Future Company Entry Description (With Blanks in Positions 54-63)	Payment Type Description
Any agency - Including SSA, RRB, VA, OPM, etc.	FEDANNUIITY	bbFEDbANN U	Annuity
	FEDbSALARY	bbFEDbSALb	Salary
	FEDbTRAVEL	bbFEDbTVLb	Travel
	FEDbTSPbbb	bbFEDbTSPb	Thrift Savings
	FEDPREAUTH	NA	Preauthorized Debits
	MISCbPAYbb	bbMISCbPAY	Vendor Misc
	EDlMbMISCb	bbEDlMbMISC	CTX
IRS	TAXbREFUND	bbTAXbREFb	TAX - IMF / BMF (Local, Consolidated, or CADE)
Any ERP payment - Including SSA, RRB, VA, OPM, etc.	VAbERPbbb	bbVAbERPbb	ERP Payment
	RRbERPbbb	bbRRbERPb	ERP Payment
	SSAbERPbbb	bbSSAbERPb	ERP Payment
	SSlERPbbb	bbSSlERPb	ERP Payment



Liens and Levies

39

Financial Privacy Rules



- Prohibits a bank from disclosing customer financial information
- Federal Right to Privacy Act – prohibits banks from disclosing customer’s information to federal government unless:
 - Customer consent
 - Subpoena
 - Search warrant
 - Written request regarding law enforcement investigation of crime
- Gramm Leach Bliley Act - restricts the conditions under which bank may disclose non-public personal information about consumers to non-affiliates
- Common Law – implied duty of confidentiality

40

Financial Privacy Rules (continued)



- Three big exceptions to non-disclosure of customer information:
 - Information is provided to help complete a customer-initiated transaction (i.e., customer consent);
 - Disclosure is required by/or allowed by law (i.e., subpoena, search warrant, investigation of crime); or
 - Bank's regulator requests information under supervisory authority.
- Third parties do not have access to financial records unless specifically authorized by customer or law!
- Bank is responsible for preventing unauthorized disclosures.

41

Customer Authorized Disclosure

- A customer may authorize disclosure if he furnishes to the financial institution and to the government agency seeking authority to obtain such a disclosure, a signed and dated statement which—
 - Authorizes such a disclosure for a period not in excess of 3 months;
 - States that the customer may revoke such authorization at any time before the financial records are disclosed;
 - Identifies the financial records which are authorized to be disclosed;
 - Specifies the purposes for which, and the government authority to which, such records may be disclosed; and
 - States the customer's rights under the RFPA.
- No such authorization can be required as a condition of doing business with any financial institution.

42

Advance Notice Required

- The RFPA requires that the requesting federal government agency must give the customer advance notice of the requested disclosure from the financial institution, thus giving the customer opportunity to challenge the government's access to the records before the disclosure takes place.
- The government agency must serve the customer with a copy of its request or order, or mail a copy to the customer on or before the date which it serves the order or delivers or mails the request to the financial institution maintaining the records. The customer has 10 days from the date of service, or 14 days from the date of mailing, to challenge the requested disclosure.

43

RFPA and State Law

- The RFPA does not apply to request for orders for information by state and local government entities. The RFPA does not contain explicit provisions regarding its effect on state law, the RFPA legislative history indicates that Congress intended to regulate access to customer records by federal agencies and departments only, without precluding states from regulating access of state and local agencies to such records.
- Be advised, though, that many states have laws that are virtually the same as the RFPA which cover inquiries made by state and local government agencies. These states are: Alabama, Alaska, Connecticut, Illinois, Louisiana, Maine, Maryland, New Hampshire, North Carolina, North Dakota, Oklahoma, Oregon, Utah, and Vermont.
- Some states, though, have adopted laws that permit banks to provide financial information to state agencies that cover customers who are past due on child support payments, or are recipients of state public assistance.

44

Subpoena



- A legal document that commands a person to appear before a court and/or that commands a person to produce documents.
- Usually issued by a court, although some states permit an attorney to issue a subpoena in limited circumstances.
- There are 2 types of subpoenas commonly issued to financial institutions:
 - Subpoena ad testificandum (appear and give testimony)
 - Subpoena duces tecum (appear and bring documents with you)

45

Key Questions When Processing Subpoenas

- Does the issuing court have jurisdiction?
- Is the subpoena overly broad or burdensome?
- Is there time to comply?
- Is the subpoena confidential?
- Was it issued by a court?
- Bank Rights
 - You could file motion to “quash”
 - You have right to reasonable reimbursement in most states
 - You can normally request subpoenaing party to arrange delivery of requested records

46

Subpoena Examples

- Kris and Karrie Doe are getting a divorce. Karrie's attorney serves the bank with a subpoena for all records of Kris' and Karrie's checking account for last three years.
- The IRS is investigating John Doe for suspected money laundering and tax fraud. The IRS serves the bank with a subpoena for all records regarding John Doe's bank accounts.

47

Risk to Bank



- Bank liable for contempt of court if doesn't properly respond to subpoena
- Bank liable to customer for breach of financial privacy if bank discloses customer information and documents when shouldn't have
- Since the bank has no way of knowing whether a RFPA waiting period is required or whether an exception to the waiting period applies, the bank should follow the instructions on the formal document served
- Deliver records upon receipt of certificate of compliance

48

Sample Subpoena

IN THE DISTRICT COURT OF JOHNSON COUNTY, KANSAS

Plaintiff/Petitioner _____ CASE NO. _____
 DIVISION _____
 K.S.A. NO. _____

vs

Defendant/Respondent _____

SUBPOENA

TO: _____

You are commanded to appear before _____ at _____ on the _____ day of _____, 20____, at _____ M. to testify on behalf of the _____ in the above entitled action.

Bring with you the following:

(SEAL) _____ Clerk of the District Court
 DATED: _____ BY: _____
 Attorney: _____

IN THE DISTRICT COURT OF JOHNSON COUNTY, KANSAS

 (Plaintiff/Petitioner) Case No. _____
 Div. No. _____
 K.S.A. No. _____

vs

 (Defendant/Respondent)

SUBPOENA OF BUSINESS RECORDS

To: _____

You are commanded to produce the records listed below before the Clerk of District Court on the _____ day of _____, at _____ a.m./p.m. and to testify on behalf of the above named parties. Failure to comply with this subpoena may be deemed a contempt of the court.

Records to be produced: _____

You may make written objection to the production of any or all of the records listed above by serving such written objection upon _____, attorney, at _____, within 14 days after service of this subpoena, on or before _____ If such objection is made, the records need not be produced except upon order of the court. (K.S.A. 60-245)

Instead of appearing at the time and place listed above, it is sufficient compliance with this subpoena if a custodian of the business records delivers to the clerk of the court by mail or otherwise a true and correct copy of all the records described above and mails a copy of the affidavit below to _____ at _____ within 14 days after the receipt of this subpoena.

The copy of the records shall be separately enclosed in a sealed envelope or wrapper on which the title and number of the action, name and address of the witness and the date of this subpoena are clearly inscribed. The affidavit needs to be attached to the outside of the package. If return of the copy is desired, the words "return requested" must be inscribed clearly on the sealed envelope or wrapper. The sealed envelope or wrapper shall be delivered to the clerk of the court.

The records described in this subpoena shall be accompanied by the affidavit of a custodian of the records, a form for which is attached to this subpoena.

If the business has none of the records described in this subpoena, or only part thereof, the affidavit shall so state, and the custodian shall send only those records of which the custodian has custody. When more than one person has knowledge of the facts required to be stated in the affidavit, more than one affidavit may be made.

The reasonable costs of copying the records may be demanded of the party causing this subpoena to be issued. If the costs are demanded, the records need not be produced until the costs of copying are advanced.

The copy of the records will not be returned unless requested by the witness.

DATED: _____ BY: _____ Deputy

Business Records Subpoena

Affidavit of Records Custodian

- Bank rather

IN THE DISTRICT COURT OF JOHNSON COUNTY, KANSAS

 Plaintiff/Petitioner Case No. _____
 Div. No. _____
 K.S.A. _____

vs

 Defendant/Respondent

AFFIDAVIT OF CUSTODIAN OF BUSINESS RECORDS

I, _____, being first duly sworn, on oath, depose and say that: I am a duly authorized custodian of the business records of _____ and have the authority to certify those records.

The copy of the records attached to this affidavit is a true copy of the records described in the subpoena.

The records were prepared by the personnel or staff of the business, or persons acting under their control, in the regular course of the business at or about the time of the act, condition or event recorded.

 (Signature of Custodian)

Subscribed and sworn to before the undersigned on the _____ day of _____, _____
 My appointment Expires: _____

 (Notary Public)

CERTIFICATE OF MAILING

I hereby certify that on _____, I mailed a copy of the above affidavit to _____ at _____ by depositing it with the United States Postal Service for delivery with postage prepaid.

 (Signature of Custodian)

Subscribed and sworn to before the undersigned on _____, _____
 My Appointment Expires: _____

 (Notary Public)

ian Records whenever possible – position



Federal Grand Jury Subpoena

- The federal grand jury is made up of 23 members. It takes 12 of the 23 to find a basis for charging the defendant with a crime.
- Federal grand jury has extraordinary powers to investigate, and the investigations are directed by the prosecutor (US Attorney's Office).
- Typically, grand jury subpoenas are confidential. A financial institution will be prohibited from notifying the customer if such a subpoena is received. Warnings of confidentiality are usually included with the subpoena instructions.
- If you do not fully comply with a grand jury request, and your failure to comply is not excused, multiple grand jury subpoenas can be served on the financial institution, and perhaps a search warrant will be used as an alternative.

51

Summons

- Summons is an instrument used to commence a civil action or special proceeding against a person or entity.
- Person or entity is required to appear at such time and place listed to answer the complaint.
- Example: The IRS may obtain information from a financial institution about a customer without the use of a summons or notice because the Internal Revenue Codes has its own individual privacy protections.

52

Processing Summons

- A summons will be used where the bank itself is a party to the action, such as in foreclosure or forfeiture actions where the bank has a collateral interest. Summons can also be used where the bank is the defendant in lender liability, discrimination or other breach of contract or tort actions.
 - Note the time, date of service and initials of the person receiving service. This is extremely important because the bank will be required to appear and answer the plaintiff's petition or will be permitted to file an answer in order to preserve its standing in a specific amount of time based on the date of service;
 - If no answer or appearance is made as directed, a default judgment will be rendered against the financial institution.
 - In some instances a court will set aside a default judgment if the defaulting party had a valid reason or excuse for failing to answer or appear. Ignoring or misplacing the summons will not be considered valid excuses.

53

Copying Costs



- Law permits bank to require the issuing party to pay for copying charges plus staff time. Copy and staff costs should be listed on bank's schedule of fees and charges.
- Bank isn't required to produce records unless costs are paid. Gather required information and then contact the requesting party stating that:
 - The information has been gathered and copied, and
 - Copies will be delivered upon payment of copying costs.
- Some government requests limit the amount of copy expenses, and bank must submit expenses after turning over copies.

54

Notice to Customer

- Question: Is bank legally obligated to notify customer of subpoena?
- Answer:
 - Legally – No
 - Practically – Yes
- Grand Jury Subpoena – Never disclose to customer or anyone else
- Make sure customer is a party in the litigation
- Bank is entitled to reasonable period of time to respond to subpoena

55

Garnishment



- Question: What is a garnishment?
- Answer: A garnishment is a legal method by which a creditor can seize funds and property of a debtor that are in the hands of a third party. The creditor is seizing the deposits of the debtor held by your bank.

56

Garnishment Examples

- ABC Bank makes unsecured loan to John Smith. John Smith does not pay loan so ABC Bank sues John Smith and obtains a judgment. ABC Bank is judgment creditor and John Smith is judgment debtor. Court orders garnishment of all funds that John Smith has at your bank.
- John Smith gets divorced and court orders him to pay monthly child support payments. John Smith does not pay child support payments so former wife (or the State) obtains court order to garnish his accounts at your bank in an attempt to collect past-due child support.
- John Smith causes a car accident. Injured person sues John Smith & obtains \$100,000 judgment against John Smith. He does not pay \$100,000 judgment. The court orders garnishment against John Smith's accounts at your bank.

57

Garnishment Examples (continued)

- Usual situation is where bank holds funds of deposit customers
- Bank may receive a wage garnishment on an employee
- Bank may owe funds to vendor for services
- Example: Your bank receives garnishment on ABC Construction Company. You check the bank's records and ABC is not a customer of your bank. But, last month ABC finished construction of a new drive-up facility for the bank and the bank owes \$10,000 to ABC for that work.

58

Risk to Bank

- When garnishment is served upon the bank, the bank becomes directly responsible for the funds, wages or other property of the debtor held by the bank
- The bank acts at its peril in selecting whether or not to hold the funds
 - If the bank doesn't hold funds but it should have held the funds, the bank is liable to the garnishor for the funds that weren't properly held pursuant to the garnishment
 - If the bank holds the funds but it shouldn't have held the funds, the bank is liable to its customer for wrongful dishonor of items that are returned NSF or for damaging its customer's reputation

59

Garnishment Process



Court order

- The court orders the garnishment (it is a signed by the court clerk).
- The Order of Garnishment is served on the bank.
- Upon receiving Order of Garnishment, bank determines whether it holds applicable deposits, wages or other property.
- The bank freezes accounts of depositor up to the amount of the Order of Garnishment.
- The bank reports information on the Answer of Garnishment which must be sent to the court.
- The bank does not actually send the "frozen" amount to the court until bank receives an Order to Pay issued by the court.

60

Bank's Procedures

- Designate department or person to process all garnishments
- Record on the garnishment the date and time it was served on the bank
- Research bank information systems for debtor
 - it isn't only the first named owner on account
- Alert account officer
- Put hold on account and file answer with court

61

Notice to Customer

- Question: Is the bank required to notify its customer that the account has been garnished/frozen?
- Answer:
 - Legally – No
 - Practically – Yes
- The party seeking garnishment should mail the depositor a notice containing the following information:
 - Garnishment Order has been issued;
 - Customer may have right to claim an exemption; and
 - Customer has a right to a hearing on any exemption claimed.

62

Answer Period & Subsequent Deposits

- Question: How long does the bank have to answer an Order of Garnishment and freeze the garnished account funds?
- Answer: It depends on your State. Read the Order of Garnishment. Usually, bank must file answer with court within 10 days from date of service on bank.
- Question: Where the defendant (bank customer) deposits money into his/her/its account after the bank prepares the Answer of Garnishment, is the bank responsible for holding and reporting that additional deposit?
- Answer: The bank is responsible for only amounts deposited into the account UP TO THE TIME THE ANSWER IS SIGNED by a representative of the bank.
 - Funds deposited AFTER the Answer is signed are NOT subject to the Order of Garnishment.

63

Amount of Garnishment Blanket Garnishment



- Question: What if the account funds exceed the amount of the garnishment claim? Does the bank have to garnish the whole amount?
- Answer: No – Order of Garnishment specifically limits garnishment amount to amount of plaintiff's claim. Some Orders require garnishment of 110% of the claim.
 - The amount will be indicated on Order of Garnishment.
- Question: How can the bank stop "blanket garnishments" – repeated garnishments for a person who has no account at the bank?
- Answer: When a garnished person has no account at the bank, the bank needs to make that very clear in the Answer. Otherwise, the garnishor thinks the debtor has an account at the bank but there is no money at that time.

64

Exemptions

- Question: Is the bank required to determine whether garnished funds are exempt from garnishment?
- Answer: Banks have no obligation to determine the source of account funds when answering an Order of Garnishment – the account holder is supposed to make any exemption claims. But, in obvious cases (i.e., only deposits are social security), the bank should report this exemption for the depositor.

65

Proposed Federal Statement on Exemptions

- A proposed Statement of Best Practices and Request for Comment was issued by the federal regulatory agencies encouraging banks to follow “best practices” to protect federal benefit payments from garnishment orders.
- The agencies invited comments on:
 - Are there practices that would enable a bank to avoid freezing funds by determining that the funds are federally protected and not subject to an exception?
 - Are there ways to provide consumers with reasonable access to their funds during the garnishment process?
 - Are customers adequately informed of their rights when a creditor attempts to garnish?

66

Garnishments – Which Account Should be Garnished?

Garnishment Against	Account Title	Subject to Garnishment?
John Doe	John Doe	Yes
John Doe	John Doe, but account only has Social Security Benefits	Yes, or bank can raise customer's exemption rights
John Doe	John Doe, IRA	Yes, or bank can raise customer's exemption rights
John Doe	John Doe or Jane Doe, JTWROS	Yes
John Doe	John Doe or Jane Doe, tenants in common	Yes
John Doe	John Doe and Jane Doe, tenants by entirety	No

67

Garnishments – Which Account Should be Garnished? (continued)

Garnishment Against	Account Title	Subject to Garnishment?
John Doe	John's Auto Sales, Inc. (or any other legal entity)	No
John Doe	John Doe, d/b/a John's Auto Sales	Yes
Jane Doe	John Doe, d/b/a John's Auto Sales, Jane is an authorized signer	No
John Doe	John Doe Family Trust, John Doe, Trustee	No
John Doe	Jane Doe, POD to John Doe	No

68

Sole Proprietorship



- Example: An individual (John Smith) is garnished. The bank has two accounts: One personal account (John Smith) and one sole proprietorship business account (John Smith D/B/A John's Auto Parts). Which account(s) should be garnished?
- Answer: The bank must garnish both accounts.
 - The sole proprietorship account is not a separate legal entity; the sole proprietorship account is the same as an individual account.

69

Corporation



- Example: An individual (John Smith) is garnished. In addition to John Smith's personal account, the bank has a corporate account in the name of John Smith, Inc. John Smith is the only director, stockholder and signer on the corporate account. The personal account should be garnished. Should the corporate account be garnished also?
- Answer: No – the corporation is a separate entity.
 - The personal account & corporate account will have different TIN (unless sole member LLC).

70

Partnership

- Example: An individual, John Smith, is garnished. The bank has an account for a partnership (Smith and Jones Partnership) and the bank knows that John Smith is a partner. Should the bank garnish the partnership account?
- Answer: No, a partnership is not liable for a partner's individual debt. The partnership is a separate legal entity.



71

Joint Accounts

- Example: An individual (John Smith) is garnished. The bank has an account owned jointly by John Smith and another person (Mary Smith, his mother). What should the bank do?
- Answer: The bank must freeze and report ALL FUNDS of a joint account even if just one owner is garnished.
 - 100% freeze rule applies without regard to:
 - Number of owners
 - Whether account is in joint tenancy or tenancy in common
 - Ages and relationships of the account owners
 - Exemption if account expressly states percentage of ownership by each owner

72

Social Security Deposits and State Based Exemptions

- Social Security deposits and State-based exemptions- Social Security benefits and certain other deposits (such as Individual Retirement Accounts) are frequently exempt from garnishment.
- The bank is not obligated to raise the exemptions on behalf of the judgment debtor. If the only deposits to the account in question are social security deposits (or the only account is an exempt asset, such as an IRA), then the bank can normally safely raise the exemption on behalf of the judgment debtor.

73

Safe Deposit Box

- A financial institution is normally not charged with knowing the contents of a safe deposit box. As a result, it is pretty much impossible for the financial institution to answer that it is holding property of the judgment debtor, since the judgment debtor who owns access rights to the safe deposit box, does not necessarily have property inside the box.
- To be safe, though, the should answer that it has a safe deposit box in the name of the judgment debtor and that it is NOT holding the property since it has no way of knowing if there is property inside the box subject to the garnishment. Discuss with your attorney, if necessary.

74

Payment of Checks & Uncollected Deposits

- **Payment of Checks:** The garnishment should be processed before checks presented on the same date are paid, unless:
 - Certified
 - Cash settlement
 - Clearing house settlement has been made
 - The midnight deadline has passed
 - The cutoff deadline has passed
- **Uncollected Deposits:** The prudent rule to apply when dealing with uncollected deposits added to an account balance is to garnish funds that would have been available for withdrawal by the judgment debtor (because the bank did not place a Reg CC hold on the deposit, or could not now place such hold). Since the judgment debtor could have withdrawn the funds without restriction, the funds will be considered subject to the garnishment.

75

Setoff & Liens on Accounts

- **Setoff:** States differ on whether a bank can exercise setoff prior to processing a garnishment request. Local counsel should be contacted. Generally, a bank will be permitted to exercise setoff as long as the debt owed has matured (or there is a default on the obligation). Use caution when dealing with consumer debt. The bank will normally have to prove that there has either been a default or that the prospect for payment or realization of collateral has been significantly impaired. States allowing setoff to occur will normally require the bank to physically apply the account proceeds to the debt owed when answering the garnishment.
- **Liens on Accounts:** If the bank has a valid lien on the account in question (i.e. has taken the appropriate steps to perfect the lien either with a control agreement, by possession or with a financing statement, as required by law) then the bank should be able to claim the funds in the account prior to answering the garnishment. However, most state laws will require "default" to be declared and the funds to be applied to the loan secured by the deposit account.

76

Trusts & POD Accounts

- Example: An individual (John Smith) is garnished. John Smith is trustee of John Smith Family Trust. Should the trust account be garnished?
- Answer: No – the trust is a separate legal entity.
- Example: An individual (John Smith) is garnished. Your bank has an account titled “Jane Doe, POD John Smith.” Should this account be garnished?
- Answer: No – POD beneficiary is not effective until Jane’s death.

77

Security Interest in Deposit Account



- Question: If your bank has a security interest in the deposit account being garnished, will your bank lose those funds to the garnishing plaintiff?
- Answer: No, your bank’s security interest has priority over the garnishment.
- Example: A bank customer assigns his \$5,000 certificate of deposit to the bank as security for a loan. A creditor of the bank’s customer obtains a \$10,000 judgment against the bank’s customer, and the court serves a garnishment on the bank. Does the bank have to pay over the funds from the CD?
- Answer: No. The CD is not subject to the garnishment because the CD has been pledged to the bank. The judgment creditor’s rights can’t be greater than the debtor’s rights.

78

Checks vs. Garnishment

- Example: What if your bank is served with garnishment on a day it is processing checks already drawn on garnished account. Which claim has priority? The garnishment or the check?
- Answer: UCC requires banks to satisfy garnishment unless one of the following has occurred or will occur before the garnishment can reasonably be handled:
 - The bank has certified the check;
 - The bank has paid the check in cash;
 - The bank has “settled” for check under its clearing house rules and no longer has a right to revoke the settlement;
 - The bank’s midnight deadline has passed; or
 - The bank’s special priority-determining cut-off hour has passed.

79

Pre-Judgment Attachment

- Creditor attaches property of debtor before a judgment has been entered
- Creditor wants to ensure that property will not be wasted or transferred by debtor before judgment obtained by creditor
- Creditor has burden to prove to the court that this type of extraordinary action is needed and creditor must post bond with court
- Bank handles pre-judgment attachment in the same manner as a garnishment – there will be a court order

80

Levies



- Question: What is levy?
- Answer: A levy is a legal method used by the IRS and other taxing authorities to collect unpaid back taxes.
- A levy is a proceeding in which money is obtained for payment of past due taxes. The proceeding can also involve the issuance of a “tax warrant” which allows the collector of taxes to empower an agent to seize money or taxpayer property under control of a third party.
- Only the District Director of the issuing IRS office has the authority to release the levy.

81

Risks to Bank

- Bank liable to IRS for value of property that bank failed to turn over to IRS plus, if bank acted without reasonable cause, bank could be subjected to additional penalty equal to 50% of value of property that bank failed to turn over
- Bank liable to customer if it honors levy when it shouldn't have

82

Major Differences Between Garnishments and Levies



- Levy is a one-time seizure of funds in account on given day; Levy does not run for given length of time like garnishment does
- Bank required to give notice to customer for levy
- The Federal Taxpayers Bill of Rights requires bank to hold funds seized under a federal tax levy for a 21-day period, during which the customer can attempt to resolve matter and avoid having funds sent to IRS
 - If bank hasn't received release of levy within 21-day period, the bank forwards the funds to the IRS after the 21-day period
 - IRS agents sometimes pressure banks to send funds before 21-days expired – Don't listen to them
 - Bank has to include any interest earned during the 21-day period (if funds held are not sufficient to satisfy levy)
 - IRS levy can attach tenancy-by-entirety property
 - Arguably, bank only has right of setoff if it exercised setoff prior to service of levy – bank should claim perfected security interest in account

83

IRS Notice to Levy



- Treas. Reg. 301.6331-1(c) authorizes IRS to mail notices of levy to banks. The reg does not preclude IRS from in-person delivery of Notice of Levy to the bank. The bank cannot require delivery to head office only.
 - Can receive by mail or in-person;
 - Any branch can receive it.
- Question: Is bank required to notify customer of IRS levy?
- Answer: Yes – the bank must mail “part three” of the four-part form to the customer within 2 business days after bank receives Notice of Levy. (This differs from garnishments where bank is not legally required to notify the customer!)

84

Amount of Levy/21-Day Period

- Question: Are monies that are subsequently deposited into the account subject to the levy?
- Answer: No –levy is a one point in time levy. Bank doesn't turn over funds until after 21 days, but amount deposited into account during those 21 days are not subject to the levy.

85

State Tax Warrants

- The State is levying on an account to pay past due taxes
- Each State Dept. of Revenue has different processes
- Sheriff may try to take the funds “that minute”
- Bank has reasonable period of time to act on warrant



86

Informal Requests for Information

- Always use caution. If there is a question as to the legitimacy of the request, ask for a statute or regulation which provides for the release of the information, or a properly prepared customer authorization. The requesting agency or party should be able to show why such a request is permissible.
- Common informal requests occur for the following:
 - To determine if a deceased account holder had funds on hand to reimburse state benefit programs or taxes;
 - To report the exploitation of elderly customers;
 - Social Security Administration inquiries used to confirm names and addresses of applicants;
 - To report account assets of those persons owing past due child support obligations.

87

Notice of Property Attachment

NOTICE TO DEFENDANT WHERE ORDER ISSUED TO ATTACH PROPERTY OTHER THAN EARNINGS OF DEFENDANT

In the District Court of _____ County, Kansas

A.B., Plaintiff,

v.

C.D., Defendant,

Case No. _____

and

E.F., Garnishee

TO BE DELIVERED BY THE CLERK TO THE DEFENDANT BY FIRST CLASS MAIL WITHIN 10 DAYS AFTER FILING OF THE GARNISHEE'S ANSWER.

NOTICE TO DEFENDANT

(nonearnings garnishment)

You are hereby notified that the court has issued an order in the above case in favor of (name and address of plaintiff), the plaintiff in this proceeding, directing that some of your money, property or credits now in the possession of (name and address of garnishee), the garnishee in this proceeding, be used to satisfy your debt to the plaintiff. This order was issued to enforce the judgment obtained by the plaintiff against you in this case on (date). This order prohibits the garnishee from releasing all or part of your money or property to you, and the court will order that this money or property be turned over to the plaintiff unless it finds that there is some reason why this money or property should not be used to satisfy the judgment.

The law of Kansas and the United States provides that certain benefit payments cannot be taken from you to pay a debt, even if they are deposited in a bank, saving and loan, or credit union. Such payments are commonly referred to as exempt property. Examples of exempt benefit payments which cannot be attached or executed upon by a creditor are:

- (1) Social Security disability and retirement benefits;
- (2) Supplemental Security Income (SSI) benefits;
- (3) Veteran's benefits;
- (4) Black lung benefits;
- (5) Cash assistance payments under the Temporary Assistance for Families (TAF) program;
- (6) Cash assistance payments under the General Assistance (GA) program;
- (7) Unemployment compensation payments;
- (8) Workers compensation payments;
- (9) Certain pension benefits and retirement funds, including KPERs.

This is not an exclusive list. Other state and federal exemptions may apply to you. Certain exemptions may not apply to support orders or to back taxes. An attorney can assist you in determining which benefit payments are exempt.

If the court order affects property other than money which belongs to you, some or all of this property may also be exempt. Examples of exempt personal property are:

- (1) Furnishings, equipment and supplies in your possession and reasonably necessary at your principal residence;
- (2) Personal jewelry and other ornaments up to \$1,000 in value;
- (3) One vehicle regularly used for transportation up to \$20,000 in value;
- (4) Tools and equipment used in your principal trade or business up to \$7,500 in value.

If you believe that the money or property being held by the garnishee is exempt and should not be given to the plaintiff, you may request a hearing before the court to assert this claim. In order to request a hearing, you should fill out the form at the bottom of this notice and obtain from the clerk or court a date and time for the hearing, and file the form with the clerk at (address of court). Immediately after the request for hearing is filed, you shall hand-deliver a copy of the request for hearing to the plaintiff or plaintiff's attorney, if plaintiff is represented by an attorney, by first-class mail at the plaintiff's, or plaintiff's attorney's, last known address. You should ask for this hearing as soon as possible, but no later than 10 days after this notice is served on you. If you ask for a hearing to claim that your money or property is exempt, the court will hold a hearing within 10 days after it receives your request. At the hearing you should present any evidence you have to show that your money or property is exempt. The burden is on you to prove that some or all of your property subject to garnishment is exempt. You may wish to consult an attorney to represent you at this hearing.

88

Notice of Levy

**SECTION 10: VENDORS
EXHIBIT 10B: IRS NOTICE OF LEVY**

Form 668-A(ICS) (Rev. Jan. 2003) Department of the Treasury - Internal Revenue Service
Notice of Levy

DATE: **January 09, 2004** TELEPHONE NUMBER
REPLY TO: **Internal Revenue Service** OF IRS OFFICE: **999-999-9999**
Revenue Officer

TO: **SOA Department of Administration** NAME AND ADDRESS OF TAXPAYER:
John Smith
DBA The Business Co.
123 Main Street
Juneau, AK 99801

PO Box 110200 IDENTIFYING NUMBER(S): 12-3456789
Juneau, AK 99811-0200 987-65-4321

THIS ISN'T A BILL FOR TAXES YOU OWE. THIS IS A NOTICE OF LEVY WE ARE USING TO COLLECT MONEY OWED BY THE TAXPAYER NAMED ABOVE.

Kind of Tax	Tax Period Ended	Unpaid Balance of Assessment	Statutory Additions	Total
1040	12/31/2000	\$500.00	\$ 100.00	\$600.00
				T \$ 600.00

THIS LEVY WON'T ATTACH FUNDS IN IRAs, SELF-EMPLOYED INDIVIDUALS' RETIREMENT PLANS, OR ANY OTHER RETIREMENT PLANS IN YOUR POSSESSION OR CONTROL, UNLESS IT IS SIGNED IN THE BLOCK TO THE RIGHT.

We figured the interest and late payment penalty to **12/31/2004**.

The Internal Revenue Code provides that there is a lien for the amount that is owed. Although we have given the notice and demand required by the Code, the amount owed hasn't been paid. This levy requires you to turn over to us this person's property and rights to property (such as money, credit, and bank deposits that you have or which you are already obligated to pay this person. However, don't send us more than the "Total Amount Due."

Money in banks, credit unions, savings and loans, and similar institutions described in section 408(n) of the Internal Revenue Code must be held for 21 calendar days from the day you receive this levy before you send us the money. Include any interest the person earns during the 21 days. Turn over any other money, property, credits, etc. that you have or are already obligated to pay the taxpayer, when you would have paid it if this person asked for payment.

Make a reasonable effort to identify all property and rights to property belonging to this person. At a minimum, search your records using the taxpayer's name, address, and identifying numbers shown on this form. Don't offset money this person owes you without contacting us at the telephone number shown above for instructions. You may not subtract a processing fee from the amount you send us.

To respond to this levy —

1. Make your check or money order payable to **United States Treasury**.
2. Write the taxpayer's name, identifying number(s), kind of tax and tax period shown on this form, and "LEVY PROCEEDS" on your check or money order (not on a detachable stub.)
3. Complete the back of Part 3 of this form and mail it to us with your payment in the enclosed envelope.
4. Keep Part 1 of this form for your records and give the taxpayer Part 2 within 2 days.

If you don't owe any money to the taxpayer, please complete the back of Part 3, and mail that part back to us in the enclosed envelope.

Signature of Service Representative _____ Title
Revenue Officer

Part 1 - For Addressee Catalog No. 15704T www.irs.gov Form 668-A(ICS) (Rev. 1-2003)

Accounting Procedures Manual, Financial Transactions
01/04 (Revised 01/04)

Financial Solutions
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