

SUPPORTING STATEMENT
Notice to Account Holder and Record Retention
OMB Control No.

A. JUSTIFICATION

1. Circumstances and Need

The Department of the Treasury, Social Security Administration, Department of Veterans Affairs, Railroad Retirement Board and the Office of Personnel Management (Agencies) are publishing a regulation to implement statutory restrictions on the garnishment of Federal benefit payments. Social Security benefits, Supplemental Security Income benefits, VA benefits, Federal Railroad retirement benefits, Civil Service Retirement System and Federal Employee Retirement System benefits are exempt under Federal Law from garnishment orders. The Agencies are proposing this new regulation to give force and effect to the Federal anti-garnishment statutes. The rule is designed to address the hardships that recipients of federal benefit payments are encountering when a financial institution places a freeze on an account containing certain types of exempt Federal benefit payments that have been directly deposited, and the difficulties that financial institutions have in determining whether funds deposited into an account are exempt from garnishment. The primary goals of the proposed rule are (1) to ensure that benefit recipients have full and customary access to exempt funds; (2) to protect financial institutions from liability when, having received a garnishment order for an account holder receiving exempt Federal benefit payments, they allow the account holder access to exempt funds in the account; and (3) to establish straightforward, uniform, cost effective procedures addressing the extent to which financial institutions may, pursuant to garnishment orders, freeze or seize funds in accounts that contain Federal benefits.

The interim final rule requires financial institutions that receive a garnishment order against an account holder to determine whether certain types of federal benefit payments were deposited to the account and, if so, to ensure that the account holder has access to an amount equal to the sum of such payments in the account or to the current balance of the account, whichever is lower. The first step that a financial institution must take when it receives a garnishment order is to determine whether the United States or a State child support enforcement agency is the plaintiff that obtained or issued the order. If so, the financial institution follows its customary procedures for handling the order. If not, the financial institution must review the account history for the prior two- month period to determine whether during this “lookback period,” one or more exempt payments were directly deposited to the account. The financial institution may rely on the presence of certain garnishment exemption indicators in the direct deposit record to determine whether a payment is an exempt benefit payment for the purpose the rule. The financial institution must allow the account holder to have access to an amount equal to the lesser of the sum of all benefit payments deposited to the account during the lookback period or the balance of the account on the date of the account review (the “protected amount”). Once the account review is completed and if the balance in the account on the date of the account review was above zero dollars the financial institution must issue a notice to the account holder that briefly explains what the financial institution has done in response to the order and that also

includes other information regarding the account holder's rights. There is no requirement to send a notice if the balance in the account is zero or negative on the date of the account review. In addition, a financial institution must maintain certain records of account activity and actions taken in response to garnishment orders sufficient to demonstrate compliance with the rule for a period of not less than two years.

The collection of information in the Interim Final Rule are found in §§ 212.6 Rules and procedures to protect benefits and 212.11 Compliance and record retention as well as in Appendices A Model Notice to Account Holder and B Form of Notice to Garnish Federal Benefits.

2. Use of Information Collected

Financial institutions are required to send a notice to account holders if a benefit payment was deposited into an account during the two month "lookback period" and if the balance on the date of the account review was above zero dollars. The notice tells the account holder that the financial institution has received a garnishment order; briefly explains what a garnishment is; provides information on the account subject to the garnishment order, the "protected amount" established by the financial institution, and the garnishment fee charged to the account if any; and includes information regarding the account holder's rights. The intent of the notice is to provide useful and relevant information to the account holder on a timely basis and in a clear and direct manner.

Financial institutions must maintain records of account activity and actions taken in handling a garnishment order sufficient to demonstrate compliance with the rule, which will be enforced by Federal banking regulators.

A State child support enforcement agency certifying its right to garnish Federal benefits must attach or include with a garnishment order sent to a financial institution a Notice of Right to Garnish Federal Benefits.

3. Use of Technology to Reduce Burden

There are two information collections: 1) a notice from a financial institution to its account holder and, 2) internal financial institution records of account activity and actions taken in response to the receipt of the garnishment order. In order to reduce any burden, a model notice is provided in an appendix to the rule. Financial institutions are not required to use the model notice, but those that do so would be deemed in compliance with the notice content of the rule. Institutions are not prohibited from using any technology that permits review of the account, identification of exempt federal benefit payments, or record keeping.

4. Efforts to Identify Duplication

These information collections are not duplicative within the meaning of the PRA and

OMB regulations. Each collection is unique and pertains only to the recipient of a directly deposited exempt Federal benefit payment and against whom a specific garnishment order has been served.

5. Minimizing the Burden on Small Banks

In order to 1) ensure that all benefit recipients have full and customary access to exempt federal benefits, and 2) establish simple procedures that apply nationwide, the rule would affect all financial institutions regardless of size. The Agencies have provided in the interim final rule a model notice to minimize any burden arising from a financial institution's requirement to issue a notice to the account holder. Using the model notice is not mandated by the rule, but those institutions that use the model notice would be deemed in compliance with the notice requirements. By using the model notice financial institutions should be able to minimize the time and effort necessary to provide the notice.

The record keeping requirement of actions taken as a result of a garnishment order can be accomplished electronically by using a simple record naming convention of the financial institution's choice consistent with customary business practices already in place.

Having thoroughly analyzed all of the comments received on the proposed rule, the Agencies believe that there will be no undue burden placed on small institutions as a result of the notice requirement or because of the record retention requirement. Therefore, in the interim final rule the Agencies certify that rule will not have a significant economic impact on a substantial number of small entities.

The Agencies believe that financial institutions will benefit from the clarity and uniformity the rule will bring to the handling of garnishment orders, and from the safe harbor protections against liability. In addition, the rule should result in fewer customer service issues arising from account freezes and garnishment orders generally.

6. Consequences of Less Frequent Collections

The notice to the account holder is sent within three business days of the account review by the financial institution to provide the account holder with timely notification of useful and relevant financial information, and rights and protections. The notice requirement is a one-time requirement.

The record keeping requirement must be sufficient to demonstrate compliance with the proposed rule. A copy of the notice, for example, can be saved electronically at the completion of the notice production and should be easily retrievable.

7. Special Circumstances

No special circumstances are being requested.

8. Consultation with Persons Outside the Agency

On April 19, 2010 the Agencies published a joint notice of proposed rulemaking to address concerns associated with the garnishment of certain exempt Federal benefit payments. In general individuals, consumer groups, legal aid organizations and state attorneys general were supportive of the proposed rule and urged that it be finalized subject to a number of changes. Banks and banking industry trade groups generally acknowledged the need for the rule, but were critical of various aspects of the rule and, in particular, offered numerous suggestions for streamlining and simplifying a variety of the rule's requirements. Credit unions and some, but not all, credit union trade groups opposed the rule, objecting to various provisions as time-intensive and burdensome particularly for smaller credit unions.

Numerous comments were received on the requirement to provide notice to account holders. Generally, commenters suggested that the model notice be rewritten to be more easily understandable, and that the Agencies should have the notice reviewed and tested by a literacy expert. Financial institutions asked for longer periods of time to send the notice in light of the burden that sending the notice imposes. Financial institution trade groups recommended that the notice requirement not apply in situations where the account review shows an overdraft or zero balance, or where there are no funds in the customer's account that exceed the protected amount. They expressed concerns that sending a notice when an account had no funds might confuse the account holder, and would result in calls to financial institutions seeking explanations. Because of the additional resources needed to manage the projected number of account holder inquiries, financial institutions indicated that requiring notice in these cases would be a significant burden.

A number of financial institutions requested the removal or the revision of the requirement that the notice explain the account holder's right to assert a further garnishment exemption for amounts above the protected amount by completing exemption claims forms. They maintain that this requirement imposes a considerable burden on the financial institution to keep apprised of the process for claiming exemptions in each jurisdiction in which the financial institution operates. One large bank expressed concern that by providing guidance on the statutory processes, a bank risks creating the perception that it is providing legal advice.

Some financial institutions requested that the requirement to provide contact information for the bank be deleted, and that contact information for the judgment creditor and the court only be provided if that information is contained in the garnishment order served on the financial institution.

Many banks noted that although the proposed rule required that records be maintained to demonstrate compliance with the rule, the proposed rule did not specify a time period for the requirement to maintain records. Most banks that commented on this issue recommended that a time period of one year following the account review be stipulated.

No small entity submitted comments specifically quantifying its projected costs or provided the number of court ordered garnishments received against account holders. All comments from entities of all sizes on the burden of the proposed rule were qualitative or subjective, in that no commenter offered empirical data or statistical evidence to quantify the economic impact.

The interim final rule contains a number of changes to the notice provision and to the model notice itself reflecting the comments received and designed to reduce administrative burden. The agencies also revised the record retention requirement. The changes made by the Agencies related to the notice and record retention requirements include:

- Eliminating the requirement to issue a notice to the account holder in cases where the balance in the account is zero or negative on the date of the account review.
- Increasing the amount of time required to issue the notice from two business days to three business days from the date of the account review.
- Eliminating the requirement that the notice must contain a means of contacting the financial institution, thereby reducing the incidence of customer service calls.
- Eliminating the requirement that the notice must contain a means of contacting the court.
- Qualifying the requirement that the notice include a means of contacting the creditor only if the order includes that information.
- Revising the rule to state that in providing notice, a financial institution shall not be deemed to be providing legal advice to the account holder.
- Limiting record retention to two years, in lieu of an open ended requirement to retain records to demonstrate compliance with the regulation.

9. Payment or Gift to Respondents

Not applicable.

10. Confidentiality

Not applicable.

11. Questions of a Sensitive Nature

No questions of a sensitive nature are involved.

12. Estimates of Annualized Hour Burden and Associated Cost

- A) Burden Estimate for Section 212.6 which requires the financial institution to send a notice to the account holder and Section 212.11 which requires that financial institutions must maintain records of actions taken in handling garnishments. Sample notice is found in Appendix A

The burden estimate for the notice and record keeping requirements are: 125,000 total burden hours. This estimate is based on 10 million garnishments and assumes that 5% of the recipients have accounts into which exempt benefit payments have been directly deposited. Further, we are assuming that the time needed to produce a notice to the account holder (12 minutes), and save the notice electronically (3 minutes) for retrieval in the future if necessary is a total of 15 minutes

10,000,000 Garnishments x 0.05 = 500,000 Respondents

500,000 x 15 Minutes / 60 = **125,000 Hours**

B) Burden Estimate for Appendix B Notice of Right to Garnish Federal Benefits

The burden estimate for the Notice of Right to Garnish Federal Benefits is: 5,417 burden hours. This estimate is based on 1,300,000 child support orders established annually and assumes that 5% of the total orders established are sent to financial institutions by the Child Support Enforcement Agencies. Further, we are assuming that the time needed to affix the notice to an order is a total of 5 minutes.

1,300,000 Child Support Orders x 0.05 = 65,000 orders sent with notices attached

65,000 x 5 Minutes / 60 = **5,417 Hours**

13. Capital/Start-up and Operation/Maintenance Costs

All financial institutions should be able to use readily available equipment to comply with the notice and record keeping requirements. The model notice can be produced using existing word processing software and equipment. Any cost would be a part of usual and customary business practices.

In the notice of proposed rulemaking the agencies requested specific estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services. Financial institutions did not include any cost information or projections when commenting on either the notice or record retention sections of the proposed rule.

14. Annualized cost to the Federal Government

Not applicable.

15. Reason for Change in Burden

Not applicable. The Agencies are not making any changes to the burden estimate for the notice or record keeping requirements.

16. Publication

The notice requirement is a disclosure from financial institutions to account holders. The agencies not collecting data; therefore, there is no information to publish and no plans to publish any data for statistical or other purposes.

17. Display of Expiration Dates

Not applicable.

18. Exceptions to Certification

Not applicable.

B. STATISTICAL METHODS

Not applicable.