

SUPPORTING STATEMENT

Notice to Account Holder

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 final rule amending a few provisions of their regulations governing the garnishment of certain Federal benefit payments that are directly deposited to accounts at financial institutions. The final rule addresses certain issues raised by commenters on the interim final rule. 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. On February 23, 2011, the Agencies issued the interim final rule to give force and effect to the Federal anti-garnishment statutes. The rule, which was effective as of May 1, 2011, addressed the hardships that recipients of federal benefit payments encountered when a financial institution placed a freeze on an account containing certain types of exempt Federal benefit payments that had been directly deposited, and the difficulties that financial institutions had in determining whether funds deposited into an account are exempt from garnishment. The primary goals of the interim final 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 collection of information in the Final Rule is found in §§ 212.6 Rules and procedures to protect benefits.

2. Use of Information Collected

In the final rule, financial institutions are required to send a notice to account holders if 1) a benefit payment was deposited into an account during the two month lookback period, 2) if the balance on the date of the account review was above zero dollars and the financial institution established a protected amount, and 3) there were funds in excess of the protected amount. The Agencies added the third condition of the notice requirement in response to comments received. 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.

3. Use of Technology to Reduce Burden

There is one information collection in the final rule: a notice from a financial institution to its account holder. In order to reduce any burden, a model notice was provided in an appendix to the interim final 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

The information collection is not duplicative within the meaning of the Paperwork Reduction Act (PRA) and OMB regulations. This 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. In the interim final rule, the Agencies provided a model notice to minimize any burden arising from a financial institution's requirement to issue a notice to the account holder. By using the model notice financial institutions should be able to minimize the time and effort necessary to provide the notice. In the final rulemaking, the Agencies are limiting the requirement to send the notice to cases in which there are funds in the account in excess of the protected amount. Under the new procedures, financial institution will send a notice to account holders when a protected amount is established and when there are funds in the account that will be frozen and turned over to the creditor. These new procedures will eliminate the cost of preparing and mailing notices for accounts in which no funds will be turned over to a creditor. In addition, financial institutions will no longer incur expenses related to responding to inquiries from customers confused by the notices. Financial institutions noted in their comments that notices sent in a situation where no account funds are frozen often result in inquires from confused account holders, many of whom may not have read the entire notice and erroneously believe that their entire account balance has been frozen.

In the interim final rule the Agencies certified that the rule would not have a significant economic impact on a substantial number of small entities. The Agencies are making changes in the final rule that will reduce the costs and burden of complying with the rule's requirements. Financial institutions will have an additional opportunity to charge a garnishment fee, and thereby recoup some costs, because the rule allows a fee to be charged against any nonprotected funds deposited to an account for up to five business days following the account review. Also,

financial institutions will not be required to send a notice to the account holder unless there are funds in the account in excess of the protected amount that are subject to garnishment. In addition to simplifying the notice requirement and allowing a garnishment processing fee to be assessed from nonprotected funds for a limited time after the account review, the Agencies made several additional revisions and clarifications to the rule as a result of comments received from financial institutions. The intent of these revisions was to clarify processes established under the rule to enable financial institutions to implement procedures that would be both cost effective and efficient. For instance, the Agencies:

- Revised the definition of the protected amount to clarify the account balance that should be used in calculating the protected amount,
- Revised the definition of benefit payment to ensure that exempt benefit payments can be accurately identified, and
- Clarified the meaning of the word account in terms of a master and a sub account.

Therefore, the Agencies certify that the final rule will not have a significant economic impact on a substantial number of small entities.

For all of the reasons stated above, the Agencies continue to believe that financial institutions will benefit from the clarity and uniformity the rule will bring to the handling of garnishment orders. 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.

7. Special Circumstances

No special circumstances are being requested.

8. Consultation with Persons Outside the Agency

On February 23, 2011, the Agencies published an interim final rule and request for public comment. The Agencies received 39 comment letters. Individuals, consumer advocacy organizations, legal services organizations, an organization of credit and collection companies, a prepaid card association and financial institutions and their trade groups submitted comments. All of the comments are thoroughly discussed in the preamble of the final rule. In March 2011, Treasury posted operational guidelines for garnishment of accounts containing federal benefit payments on the Financial Management Service website and, in response to requests for clarification on certain provisions of the interim final rule, the Agencies posted seven frequently asked questions (FAQs) on the same website in May 2011. The FAQs are informal interpretive

guidance on certain provisions of the interim final rule. During 2012 and early 2013, Treasury consulted with the Department of Health and Human Services on guidance that the Office of Child Support Enforcement will provide reiterating its policy that SSI payments are not to be garnished and urging state agencies to implement automated and manual processes to prevent improper garnishments emphasizing its policy on garnishing federal benefits specifically Supplemental Security Income (SSI) benefits.

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.

The burden estimate for the notice requirement is: 18,750 total burden hours. As in the interim final rule, the 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. The number of account holders to whom a notice must be sent is then calculated to reflect the change to the notice requirement in the final rule stating that the notice must only be sent if there are excess funds in the account that can be frozen and turned over to the creditor. It is assumed that only 15% of the accounts will have funds in excess of the protected amount. Further, as in the interim final rule, 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.

$(10,000,000 \text{ Garnishments} \times 0.05) = 500,000$ garnishments issued on accounts with direct deposit of federal benefits.

$(500,000 \times .15) = 75,000$ accounts which have funds in excess of the protected amount and to which a notice must be sent by the financial institution

$75,000 \times 15 \text{ Minutes} / 60 = \mathbf{18,750 \text{ Hours}}$

B) Burden Estimate for 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 requirement. 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 the notice section of the proposed rule.

14. Annualized cost to the Federal Government

Not applicable.

15. Reason for Change in Burden

The Agencies are reducing the burden estimate for producing the notice to reflect that fewer notices will be sent.

16. Publication

The notice requirement is a disclosure from financial institutions to account holders. The agencies are 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.