

SUPPORTING STATEMENT

Notice to Account Holder for Garnishment of Accounts Containing Federal Benefit Payments

OMB Control No. 1505-0230

A. JUSTIFICATION

1. Circumstances and Need

On May 29, 2013, the Department of the Treasury, Social Security Administration, Department of Veterans Affairs, Railroad Retirement Board and the Office of Personnel Management (Agencies) published a final rule, which governed the garnishment of certain federal benefit payments that are directly deposited to accounts at financial institutions. 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 final rule gave force and effect to the federal anti-garnishment statutes. The rule also 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 rule were (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 and is authorized under 12 U.S.C. 1786 and 12 U.S.C. 1818.

2. Use of Information Collected

In the 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 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 rule: a notice from a financial institution to its account holder. To reduce burden, a model notice was provided in an appendix to 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

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 affects all financial institutions regardless of size. 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 rule, the Agencies limited the requirement to send the notice to cases in which there are funds in the account in excess of the protected amount. Under the rule, financial institutions 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 procedures eliminate any cost of preparing and mailing notices for accounts in which no funds will be turned over to a creditor. Therefore, financial institutions do not incur expenses related to responding to inquiries from customers confused by the notices. In the past, financial institutions noted that notices sent in a situation where no account funds were frozen resulted in inquiries from confused account holders, many of whom may not have read the entire notice and erroneously believe that their entire account balance had been frozen.

In the interim final rule published in February 2011, the Agencies certified that the rule would not have a significant economic impact on a substantial number of small entities. The Agencies made changes in the final rule to reduce the costs and burden of complying with the rule's requirements. The final rule gave financial institutions an 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. Financial institutions are not 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 revisions and clarifications to the rule. 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.

The Agencies certified in the final rule would not have a significant economic impact on a substantial number of small entities.

The Agencies continue to believe that financial institutions benefit from the clarity and uniformity the rule brings 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

Treasury did not receive any comments on the Federal Register notice published on July 7, 2023 (88 FR 43419).

9. Payment or Gift to Respondents

No payment or gift to respondents is being made.

10. Confidentiality

No confidential information is being requested.

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: 72,083 total burden hours. The estimate is based on 865 million accounts, of which 0.25% involve garnishments issued on accounts with direct deposit of federal benefits, for a total of 2,162,500 garnishments issued on accounts with direct deposit of federal benefits. The number of account holders to whom a notice must be sent is then calculated to reflect 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 20% of the accounts will have funds in excess of the protected amount. Further, we are assuming that the time needed to produce a notice to the account holder (8 minutes) and save the notice electronically (2 minutes) for retrieval in the future if necessary is a total of 10 minutes.

865,000,000 accounts, of which 0.25% involve garnishments issued on accounts with direct deposit of federal benefits = 2,162,500 garnishments issued on accounts with direct deposit of federal benefits.

2,162,500 accounts, of which 20% have funds in excess of the protected amount = 432,500 accounts which have funds in excess of the protected amount (and to which a notice must be sent by the financial institution)

432,500 x 10 minutes per notice / 60 minutes = **72,083 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: 4,605 burden hours. This estimate is based on 1,105,000 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.

1,105,000 Child Support Orders x 0.05 = 55,250 orders sent with notices attached

55,250 x 5 Minutes / 60 = **4,604 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

As the information requirements consist solely of third-party disclosures, there are no costs to the federal government.

15. Reason for Change in Burden

There are no program changes, however the estimated burden for Sections 212.6 and 212.11 has increased due to updated methodology for calculating burden. The new methodology presumes there are 865 million FDIC insured accounts (as stated in FDIC's 2022 Annual Report) and estimates that 0.25% of these involve garnishments issued on accounts with direct deposit of federal benefits (derived and estimated upwards from data in a July 2008 Social Security Office of Inspector General Congressional Response Report, A-15-08-28031). The methodology also increases the percentage of accounts estimated to have funds in excess of the protected amount (due to inflation) but decreases the length of time to process the notices (due to improvements in information technology).

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

As the information requirements consist solely of third-party disclosures, display of the expiration date is inapplicable.

18. Exceptions to Certification

There are no exceptions to the certification statement.

B. STATISTICAL METHODS

Inapplicable.