



SOCIAL SECURITY

July 2, 2008

The Honorable Herb Kohl
Chairman
Special Committee on Aging
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

I am pleased to provide you with the enclosed report addressing your August 7, 2007 letter asking that we determine whether financial institutions (FI) were deducting service fees and garnishments from beneficiaries' direct deposit, personal accounts.

Specifically, we analyzed data maintained in the Social Security Administration's (SSA) systems to identify the 12 largest FIs and a sample of 13 small-, medium- and large-sized FIs that received electronic deposit of payments to Social Security beneficiaries in the United States. Based on the information provided by the FIs reviewed, this report reflects

- the number of FIs that allowed the garnishment of Old-Age, Survivors and Disability Insurance and/or Supplemental Security Income payments;
- the number of accounts upon which garnishment-related fees were imposed and the total dollar amount of fees charged to these accounts as a result of the garnishment; and
- the types of fees these FIs charged beneficiaries.

However, because of the nature of the review and time constraints, we did not independently verify the information reported by the FIs.

A similar letter is being sent to Senators Baucus and McCaskill. If you have any questions or would like to be briefed on this issue, please call me or have your staff contact Wade Walters, Assistant Inspector General for Congressional and Intra-Governmental Liaison, at (202) 358-6319.

Sincerely,



Patrick P. O'Carroll, Jr.
Inspector General

Enclosure

cc:

Michael J. Astrue, Commissioner of Social Security



SOCIAL SECURITY

July 2, 2008

The Honorable Max Baucus
Chairman
Committee on Finance
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

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Patrick P. O'Carroll, Jr.
Inspector General

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Michael J. Astrue, Commissioner of Social Security



SOCIAL SECURITY

July 2, 2008

The Honorable Claire McCaskill
United States Senate
Washington, D.C. 20510

Dear Senator McCaskill:

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Specifically, we analyzed data maintained in the Social Security Administration's (SSA) systems to identify the 12 largest FIs and a sample of 13 small-, medium- and large-sized FIs that received electronic deposit of payments to Social Security beneficiaries in the United States. Based on the information provided by the FIs reviewed, this report reflects

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Sincerely,

Patrick P. O'Carroll, Jr.
Inspector General

Enclosure

cc:

Michael J. Astrue, Commissioner of Social Security

CONGRESSIONAL RESPONSE REPORT

***Financial Institutions Deducting
Fees and Garnishments
From Social Security Benefits***

A-15-08-28031



July 2008

Mission

By conducting independent and objective audits, evaluations and investigations, we inspire public confidence in the integrity and security of SSA's programs and operations and protect them against fraud, waste and abuse. We provide timely, useful and reliable information and advice to Administration officials, Congress and the public.

Authority

The Inspector General Act created independent audit and investigative units, called the Office of Inspector General (OIG). The mission of the OIG, as spelled out in the Act, is to:

- **Conduct and supervise independent and objective audits and investigations relating to agency programs and operations.**
- **Promote economy, effectiveness, and efficiency within the agency.**
- **Prevent and detect fraud, waste, and abuse in agency programs and operations.**
- **Review and make recommendations regarding existing and proposed legislation and regulations relating to agency programs and operations.**
- **Keep the agency head and the Congress fully and currently informed of problems in agency programs and operations.**

To ensure objectivity, the IG Act empowers the IG with:

- **Independence to determine what reviews to perform.**
- **Access to all information necessary for the reviews.**
- **Authority to publish findings and recommendations based on the reviews.**

Vision

We strive for continual improvement in SSA's programs, operations and management by proactively seeking new ways to prevent and deter fraud, waste and abuse. We commit to integrity and excellence by supporting an environment that provides a valuable public service while encouraging employee development and retention and fostering diversity and innovation.

Introduction

OBJECTIVE

The objective of our review was to determine whether financial institutions (FI) were deducting service fees and garnishments from beneficiaries' direct deposit, personal accounts. This report contains information related to the 12 largest FIs and a sample of 13 small-, medium- and large-sized FIs that received electronic deposit of payments to Social Security beneficiaries in the United States from September 1, 2006 through August 31, 2007. Specifically, this report contains information on

- the number of FIs that allowed the garnishment of Old-Age, Survivors and Disability Insurance (OASDI)¹ and/or Supplemental Security Income (SSI)² payments;
- the number of accounts upon which garnishment-related fees were imposed and the total dollar amount of fees charged to these accounts as a result of the garnishment; and
- the types of fees these FIs charged beneficiaries.

BACKGROUND

Debt Collection Improvement Act

In Fiscal Year (FY) 1995, the Social Security Administration (SSA) electronically deposited 53.5 percent of the total number of OASDI and SSI payments. In April 1996, Congress passed the *Debt Collection Improvement Act* (DCIA),³ which requires that most Federal payments, except tax refunds, be made electronically as of January 1999.⁴ In FY 1999, SSA electronically deposited 71 percent of the total OASDI and SSI payments. Each year since FY 1999, SSA has continued to increase its reliance on direct deposit as a method for issuing payments. As of December 2007, SSA had electronically deposited 81.4 percent of the total OASDI and SSI payments. A

¹ The OASDI program, established under Title II of the *Social Security Act* (Act), § 201 *et seq.*, 42 United States Code (U.S.C.) § 401 *et seq.* provides benefits to wage earners and their families in the event the wage earner retires, becomes disabled or dies. OASDI benefits are paid from the Social Security OASDI Trust Funds.

² The SSI program, established under Title XVI of the Act, § 1601 *et seq.* 42 U.S.C. § 1381 *et seq.* provides benefits to financially needy individuals who are aged, blind and/or disabled. SSI payments are financed from general tax revenues.

³ Public Law (P.L.) 104–134; Title III, Chapter 10, Sec. 31001; codified at 31 U.S.C. § 3701 *et seq.*

⁴ 31 U.S.C. §3332(f).

breakdown of direct deposit usage by program shows that 84.8 percent of OASDI payments were electronically deposited, whereas the total for SSI payments was 58.8 percent.

The Social Security Act

The Act⁵ protects the beneficiary's right to receive Social Security benefits (OASDI and SSI) directly and to use them as he/she sees fit.⁶ Specifically, Section 207(a) of the Act (42 U.S.C. §407(a)) states:

The right of any person to any future payment under this title shall not be transferable or assignable,⁷ at law or in equity, and none of the monies paid or payable or rights existing under this title shall be subject to execution, levy, attachment, garnishment, or other legal process, or to the operation of any bankruptcy or insolvency law.

However, there are five exceptions related to Social Security benefits.

1. Section 459 of the Act (42 U.S.C. §659) allows Social Security benefits to be garnished⁸ to enforce child support⁹ and/or alimony¹⁰ obligations.¹¹

⁵ Section 207 of the Act, 42 U.S.C. §407 (applicable to Title XVI benefits pursuant to section 1631(d)(1) of the Act, 42 U.S.C. §1383(d)(1)).

⁶ SSA currently recommends to beneficiaries that if a garnishment is issued against their account, the beneficiary should assert this statute as a defense, unless one of the five exceptions apply. See item 2 in "Potential Safeguards to Protect Social Security Recipients," page 10. Additionally, Federal courts have allowed Social Security benefits to be subject to a garnishment order in some instances.

⁷ SSA, Program Operations Manual System (POMS) GN 02410.001(B)(1), Assignment is the transfer of the right to, or payment of, benefits to a party other than the beneficiary.

⁸ POMS, GN 02410.001(B)(4), Garnishment is a legal process by which benefits are taken to pay a beneficiary's child support and/or alimony obligation to a third party.

⁹ POMS, GN 02410.200 (D), Child support is periodic payment of funds for the support and maintenance of a child(ren) subject to, and in accordance with, State or local law.

¹⁰ POMS, GN 02410.200 (E), Alimony is periodic payment of funds for the support and maintenance of a spouse or former spouse subject to, and in accordance with, State or local law. It includes, but is not limited to, separate maintenance and spousal support.

¹¹ By the enactment of section 459 of the Act, the United States Government consented to income withholding for enforcement of child support and alimony obligations from certain moneys owed by the United States and the District of Columbia. The implementing regulations to this section, 5 C.F.R. § 581.101, *et seq.*, provide that benefits subject to these types of garnishment include title II benefits, but not title XVI benefits. See 5 C.F.R. § 581.103(c)(1) and § 581.104(j). To initiate the process for SSA to withhold part of a Social Security benefit payment for either child support or alimony, the appropriate court order must be served on the person designated by SSA to accept service and process the court order.

2. Section 6334 (c) of the Internal Revenue Code (26 U.S.C. §6334 (c)) allows benefits to be levied¹² to collect unpaid Federal taxes.
3. Section 3402 (p) of the Internal Revenue Code (26 U.S.C. §3402(p)) allows beneficiaries to elect to have a percentage of their benefits withheld and paid to the Internal Revenue Service to satisfy their Federal income tax liability for the current year.
4. The DCIA allows benefits to be withheld and paid to another Federal agency to pay a non-tax debt the beneficiary owes to that agency.¹³
5. The *Tax Payer Relief Act of 1997* (Public Law 105-34; Title X, Subtitle C, Section 1024), (26 U.S.C. § 6331(h)) authorizes the Internal Revenue Service to collect beneficiaries' overdue Federal tax debts by levying up to 15 percent of each monthly payment until the debt is paid.

Generally, SSA's interpretation of its responsibility for protecting benefits against legal process¹⁴ and assignment ends when the beneficiary is paid. However, once paid, benefits continue to be protected under section 207 of the Act as long as they are identifiable. For example, only Social Security benefits are deposited into a particular bank account.

Financial Institutions' Garnishment of Social Security Benefits

SSA recommends, "If a creditor tries to garnish your social security check, inform them that unless one of the five exceptions apply, your benefits can not be garnished. You also may want to provide this same information to your financial institution and seek legal assistance if you believe it is needed."¹⁵

Several newspaper articles have described how FIs have frozen and assessed fees on bank accounts into which Social Security benefits were electronically deposited. An article in the April 28, 2007 issue of the Wall Street Journal cited several cases nationwide where Social Security beneficiaries received their benefits through direct deposit and had their bank accounts garnished by debt collectors. The article further stated that, in these instances, the Social Security beneficiaries did not know their benefits were exempt from garnishment or how to assert the exemption.

¹² POMS, GN 02410.001(B)(3), Levy is a type of legal process for the seizure of benefits for payment of unpaid Federal taxes.

¹³ 31 U.S.C. §3716.

¹⁴ POMS, GN 02410.001(B)(2), Legal process is the means by which a court (or agency or official authorized by law) compels compliance with its demand; generally, it is a court order.

¹⁵ <http://mwww.ba.ssa.gov/deposit/DDFAQ898.htm>.

A companion article in the same issue discussed how FIs tap into direct deposited Social Security benefits in bank accounts. The article indicated that, although Federal law exempts Social Security benefits from being garnished to repay debts, FIs assert they are not collecting debts; instead they are “setting-off” the debts.

One FI in our sample required that the account holder agree that the FI is allowed to “set-off” the debt. Specifically, the FI stated,

The security interest granted by this Agreement is consensual and is in addition to the Bank’s right of setoff. Certain federal or state laws may be interpreted to protect funds received from federal or state agencies from setoff. You agree that our right of setoff applies to all funds deposited into your account, including funds received from the Social Security Administration and other federal or state agencies. By continuing to deposit these funds into your account you agree to allow the Bank to exercise its right of setoff against these funds, and not to assert any claim or defense that these deposits are exempt from setoff based on any federal or state law, rule or regulation.

In this way, the FI collects the moneys owed it from the moneys in the beneficiary’s account.

Based on these and other articles, the Senate Special Committee on Aging and the Senate Committee on Finance, in an August 7, 2007 letter, requested that we determine whether FIs were deducting service fees and garnishments from beneficiaries’ direct deposit, personal accounts. They specifically requested that we review the 12 largest FIs and a select number of small- and medium-sized FIs that received electronic deposits of payments to Social Security beneficiaries in the last 12 months to determine the following.

1. How many of these accounts have been garnished at creditors requests?
2. The number of accounts upon which fees in relation to such garnishment were imposed, the number of times these fees were imposed, and the total dollar amount of fees charged to these accounts as a result of the garnishment. This includes all types of fees charged by the institution in relation to such garnishment, including administrative fees, fees to garnish and/or release the funds, and non-sufficient funds (NSF).

In response to the request, we selected a sample of the 12 largest sized¹⁶ FIs and 13 randomly selected small-¹⁷, medium-¹⁸ and large-sized¹⁹ FIs. Refer to Appendix C

¹⁶ Largest sized FIs are FIs with more than 20,000 beneficiaries with direct deposit.

¹⁷ Small-sized FIs are FIs with between 1 and 50 SSA beneficiaries with direct deposit.

¹⁸ Medium-sized FIs are FIs with between 51 and 100 SSA beneficiaries with direct deposit.

¹⁹ Large-sized FIs are FIs with between 101 and 20,000 SSA beneficiaries with direct deposit.

for the top 12 largest sized FI data and Appendix D for the 13 small-, medium- and large-sized FI data on the FIs included in this review.

We issued a subpoena to the FIs requesting statistical information, records and/or documents for the period September 1, 2006 through August 31, 2007. Also, we issued a follow-up letter to the FIs requesting information on the FIs “account hold” and “account freeze” process. Refer to Appendix G for the subpoena and follow-up letter questions.

Generally, the processes for holding and freezing funds are incorporated into the FIs’ garnishment processes. Therefore, our results take into account the holding and/or freezing of funds.

For example, one FI stated that “account holds” or “account freezes” are processes that may be taken on an account for various reasons, including as part of a garnishment or levy action. Depending on the applicable State or Federal law and the type of garnishment or levy involved, an “account hold” or “account freeze” may be placed on an account.

If an account has sufficient funds to cover the entire garnishment or levy amount, only those funds necessary to cover the garnishment or levy will receive an “account hold,” and no “account freeze” will occur. The remaining funds in the account will be available for use by the account holder, unless applicable law requires a larger “account hold” or an “account freeze” to be maintained for a period of time regardless of whether funds available in the account are sufficient to cover the amount of a garnishment or levy. From our review, we determined the laws of the States in this area were not uniform. Applicable law may require that an account with an insufficient balance of funds to cover the entire amount of the garnishment or levy have an “account freeze” placed on the account for a period of time to see if new deposits are received, which would also be subject to the garnishment or levy. In contrast, applicable law may only require that available funds currently in the account be seized at the time the garnishment or levy is received.

In response to the request, several FIs asserted that much of the information provided is confidential and should not be identified to a specific financial institution; therefore, we have not identified the FIs by name to protect confidentiality.

Results of Review

Although we did not independently verify the information reported by the 25 FIs,²⁰ the data indicated that some FIs deducted service fees and garnishments from beneficiaries' direct deposit, personal accounts. We have presented the aggregate FI statistics on garnishments involving accounts receiving only direct deposited Social Security benefits and those accounts where there were both direct deposited Social Security benefits and other deposits. Specifically, we aggregated the information to determine the (1) number of FIs with garnishments, (2) number of SSA account holders, (3) number and total amount of garnishments, and (4) total amount of fees. Also, we identified potential safeguards to protect Social Security recipients from garnishments.

NUMBER OF FINANCIAL INSTITUTIONS WITH GARNISHMENTS

Based on the information provided, only 19 FIs were able to provide the information in a format that was usable for our review purposes, and 7 (37 percent) of the 19 FIs included reported that they had garnished funds in accounts where only SSA benefit payments had been deposited.

Table 1 – Number of Financial Institutions Garnishing Only Direct Deposits of Social Security Benefits

Financial Institutions	Number FIs in Sample	Number of FIs Garnishing Only Social Security Deposits
Small-Sized	4	0
Medium-Sized	4	0
Large-Sized	5	1
Largest Sized	12	6
Total	25	7

Note: Refer to Appendix E for the limitation on the FI's information.

Also, two medium-sized and one large-sized FIs received garnishment orders but did not garnish the amounts due to the fact the funds were exempt (that is, Social Security funds).

With respect to accounts receiving direct deposited Social Security benefits as well as other deposits, we determined that 20 FIs were able to provide the data in a useful format, and 14 (70 percent) of the 20 FIs had garnished funds from the accounts meeting this criteria.

²⁰ The 25 FIs consists of 20 banks and 5 credit unions.

Table 2 – Number of Financial Institutions Garnishing Direct Deposited Social Security Benefits and Other Deposits

Financial Institutions	Number of FIs in Sample	Number of FIs Garnishing Both Social Security and Other Deposits
Small-Sized	4	0
Medium-Sized	4	2
Large-Sized	5	4
Largest Sized	12	8
Total	25	14

Note: Refer to Appendix E for the limitation on the FI's information.

NUMBER OF ACCOUNT HOLDERS

There were about 1.3 million account holders included in our results receiving only direct deposited Social Security benefits. Although 19 FIs were able to identify the number of garnishments with only direct deposit of Social Security benefits, only 18 were able to tell us how many account holders there were for the accounts in question.

Table 3 – Number of Account Holders with Only Direct Deposits of Social Security Benefits

Financial Institutions	Number of FIs in Sample	Number of Account Holders With Only Social Security Deposits
Small-Sized	4	491
Medium-Sized	4	3,170
Large-Sized	5	2,861
Largest Sized	12	1,282,343
Total	25	1,288,865

Note: Refer to Appendix E for the limitation on the FI's information.

Also, there were about 6.6 million account holders included in our results who were receiving direct deposited Social Security benefits and other deposits. Although 20 FIs were able to identify the number of garnishments with direct deposit of Social Security benefits and other deposits, only 17 were able to tell us how many account holders there were for the accounts in question.

**Table 4 – Number of Account Holders with
Direct Deposited Social Security Benefits and Other Deposits**

Financial Institutions	Number of FIs in Sample	Number of Account Holders With Social Security and Other Deposits
Small-Sized	4	76
Medium-Sized	4	3,894
Large-Sized	5	4,809
Largest Sized	<u>12</u>	<u>6,554,764</u>
Total	<u>25</u>	<u>6,563,543</u>

Note: Refer to Appendix E for the limitation on the FI's information.

NUMBER AND TOTAL AMOUNT OF GARNISHMENTS

Social Security Benefits

Nineteen FIs had garnished funds from 1,686 accounts receiving only direct deposited Social Security benefits for a total of about \$1.1 million.

**Table 5 – Number and Total Amount of Garnishments with
Only Direct Deposits of Social Security Benefits**

Financial Institutions	Total Number of Garnishments	Total Amount of Garnishment on Only Social Security Deposits
Small-Sized	0	\$0
Medium-Sized	0	0
Large-Sized	1	3,900
Largest Sized	<u>1,685</u>	<u>1,075,658</u>
Total	<u>1,686</u>	<u>\$1,079,558</u>

Of these 1,686 garnishments, the FIs garnished 639 accounts receiving only direct deposited Social Security benefits for a total of \$478,293 for Internal Revenue Service Tax Levy, Alimony, or Child Support.

Social Security Benefits and Other Deposits

Also, 20 FIs had garnished 12,747 accounts receiving direct deposited Social Security benefits and other deposits for a total of about \$29.3 million.

Table 6 – Number and Total Amount of Garnishments with Direct Deposited Social Security Benefits and Other Deposits

Financial Institutions	Total Number of Garnishments	Total Amount of Garnishment On Social Security and Other Deposits
Small-Sized	0	\$0
Medium-Sized	6	5,038
Large-Sized	7	50,151
Largest-Sized	<u>12,734</u>	<u>29,244,743</u>
Total	<u>12,747</u>	<u>\$29,299,932</u>

Of these 12,747 garnishments, the FIs garnished 5,142 accounts receiving direct deposited Social Security benefits and other deposits for a total of about \$9.2 million for Internal Revenue Service Tax Levy, Alimony, or Child Support.

Population Estimate²¹

The FIs garnished \$30,379,490 associated with the 7,852,408 beneficiaries in our sample. Assuming all Social Security beneficiaries and all FIs in the United States exhibit similar characteristics, we estimate about \$177.7 million in total garnishments for the population of approximately 45.9 million direct deposit beneficiaries in the United States (as of February 2008).

Also, 6,563,543 of the 7,852,408 beneficiaries received direct deposit of Social Security benefits and additional direct deposits into their accounts, and \$29,299,932 of the \$30,379,390 in garnishments (approximately 96.45 percent) was attributable to these individuals. For the remaining 1,288,865 beneficiaries whose sole direct deposit consisted of Social Security benefits, \$1,079,558 was garnished (approximately 3.55 percent).

Therefore, assuming all Social Security beneficiaries and all FIs in the United States exhibit similar characteristics, we estimate approximately \$171.4 million in garnishments could be attributable to beneficiaries receiving direct deposit of Social Security benefits and additional direct deposits, and approximately \$6.3 million could be attributable to beneficiaries whose sole direct deposit consisted of Social Security benefits.

TOTAL AMOUNT OF FEES

Based on the information received, we identified several FIs that charged several types of fees as a result of the garnishments; however, not all of the FIs had actually charged such fees. The most common fees were for legal processing and non-sufficient funds (NSF).

²¹ Although we calculated an estimate for the entire population, the estimate is for informational purposes only. The estimate is based on information provided by the FIs. We did not independently verify the information reported by the FIs.

Only 17 FIs were able to provide the information in a format that was usable for our review purposes. These FIs assessed fees of \$30,555 for accounts receiving only direct deposited Social Security benefits.

Table 7 – Total Amount of Fees with Only Direct Deposits of Social Security Benefits	
Financial Institutions	Total Amount of Fees on Only Social Security Deposits
Small-Sized	\$0
Medium-Sized	0
Large-Sized	50
Largest Sized	<u>30,505</u>
Total	<u>\$30,555</u>

Note: Refer to Appendix E for the limitation on the FI's information.

In addition, 19 FIs assessed fees of \$994,543 for accounts receiving direct deposited Social Security benefits and other deposits.

Table 8 – Total Amount of Fees with Direct Deposited Social Security Benefits and Other Deposits	
Financial Institutions	Total Amount of Fees on Social Security and Other Deposits
Small-Sized	\$0
Medium-Sized	50
Large-Sized	350
Largest-Sized	<u>994,143</u>
Total	<u>\$994,543</u>

Note: Refer to Appendix E for the limitation on the FI's information.

POTENTIAL SAFEGUARDS TO PROTECT SOCIAL SECURITY RECIPIENTS

During our review, we identified potential safeguards to protect Social Security recipients from garnishments as follows.

1. FIs stated they did not have an easy method of identifying Federal exempt electronic deposits (that is, SSA's OASDI or SSI benefits) since there was no Automated Clearing House (ACH) code for exempt electronic funds. Therefore, the Department of the Treasury (Treasury) could establish an ACH code for exempt Federal benefits to assist FIs in easily identifying exempt and non-exempt funds. Also, Treasury should ensure the dissemination of the ACH codes to the FIs.

2. The relationship between State garnishment law and Federal benefit exemptions is complex. SSA's interpretation of the garnishment exemptions appears to complicate this relationship. SSA recommends to beneficiaries that "If a creditor tries to garnish your social security check, inform them that unless one of the five exceptions apply, your benefits can not be garnished."²² In other words, it appears the exemption provision is to be treated as a defense to be raised by a beneficiary after a freeze or hold has been placed on an account pursuant to a garnishment order, rather than an absolute bar against the imposition of the freeze or hold.

Therefore, we suggest SSA revisit its interpretation of the garnishment exemption provision for Social Security benefits to determine if it should be an absolute bar against the imposition of the freeze or hold. If SSA interprets the garnishment exemption provision as an absolute bar, then FI regulators (such as Treasury, Federal Deposit Insurance Corporation, Credit Unions etc.) need to enforce SSA's interpretation.

3. FIs stated that it is difficult to distinguish exempt and non-exempt funds when the account holders' funds are co-mingled. Therefore, FIs and financial regulators should work together to establish a policy on determining an adequate method of prorating garnishments between exempt and non-exempt funds (such as, First-In, First-Out; Last-In, First-Out; or Weighted Average). Several FIs have stated they prefer States to set an amount that must be retained in a bank account and cannot be garnished when exempt funds are involved. Connecticut and California already have such a law in place.²³
4. FIs stated there is no standard length of time (that is, 1 month, 1 year, inception of personal account) to review an account holder's historical deposits to determine whether the account holder's personal account includes exempt and/or non-exempt deposits. If FIs were instructed to search a specified period of time for co-mingled exempt and non-exempt funds, each FI could consistently determine whether there are co-mingled non-exempt funds available to garnish.

Also, a FI stated that it is difficult to interact with the legacy system of another FI as a result of a merger with that FI. The legacy system makes it difficult to identify exempt funds from the merged FI.

Therefore, FIs and financial regulators should work together to establish a policy on determining a specific period of time the FIs have to search for co-mingled funds and/or maintain legacy systems.

²² <http://mwww.ba.ssa.gov/deposit/DDFAQ898.htm>.

²³ See Connecticut General Statutes §52-367b(c); California Code of Civil Procedure §704.080(b)(2), as updated by California Code of Civil Procedure §703.150.

Additionally, the American Bankers Association has developed proposed solutions to the problems that currently arise when a creditor garnishes an account at a FI that contains Federal benefits payments. The full text of the American Bankers Association's proposed solutions is included in Appendix F.

Conclusion

Millions of beneficiaries rely on Social Security benefits as their only source of income for basic needs such as housing and food. When a creditor's garnishment order is enforced and these Federal funds withheld, the lives of a vulnerable segment of the population are placed at risk. As such, additional safeguards are needed to protect beneficiaries in this situation. To that end, we believe the potential safeguards identified in this report provide a framework for decision makers as they identify strategies to protect this vulnerable population.

The U.S. Senate introduced the *Illegal Garnishment Prevention Act* (S. 2850) on April 14, 2008, a bill that would prevent Treasury from promoting the use of direct deposit for Social Security beneficiaries until they put a stop to the garnishment of Government benefits from the bank accounts of private citizens.

AGENCY COMMENTS

SSA provided specific comments on the potential safeguards discussed in our report. SSA agreed with our potential safeguards to protect Social Security recipients from garnishments. SSA also provided technical comments, which we addressed as appropriate. SSA's comments on the potential safeguards are included in Appendix H.

Other Matters

This section provides additional information about SSA and Treasury's ability to garnish Social Security Title II benefits in accordance with the exceptions to section 207 of the Act. SSA and Treasury garnished about \$781.1 million of Social Security benefits as follows.

- SSA made a total of 275,566 Court Ordered Garnishment System (COGS) payments totaling about \$417.9 million from September 1, 2006 through August 31, 2007.
- Treasury's Financial Management Service (FMS) collected from Benefit Payment Offset (BPO) of Social Security benefits about \$124.6 million for FY 2007.
- Treasury's Internal Revenue Service (IRS) collected \$238.6 million via Federal Payment Levy Program (FPLP) from Social Security benefits for FY 2007.

SOCIAL SECURITY ADMINISTRATION GARNISHES TITLE II BENEFITS

Section 459 of the Act, 42 U.S.C. § 659, contains a specific exception to section 207 so Title II benefits are generally subject to legal process (that is, writ, order, or summons) brought by an individual in a State court for the enforcement of a legal obligation to provide child support and/or make alimony payments. SSI payments are not subject to levies or garnishment.

At SSA, the manager (or designated representative) of any Social Security field office or processing center²⁴ can be "served" (that is, delivered in a manner prescribed by law) a legal process document for the enforcement of a legal obligation to provide child support and/or make alimony payments.

Therefore, SSA has implemented the COGS to process any garnishments. COGS is a national system to automate withholding from beneficiaries in compliance with State or court-ordered garnishment requests. The system will adjust Title II benefits, issue payments to the appropriate payee, as designated in the garnishment order, and issue appropriate notices to the garnished beneficiary and the Court.²⁵

COGS limits the garnishment amount to the lesser of the State maximum or the maximum under the *Consumer Credit Protection Act* (CCPA) (15 U.S.C. §1673 (b)) and is based on the law of the State where the beneficiary resides. The CCPA limits garnishment to

²⁴ POMS, GN 02410.205, *Service of a Garnishment Order*.

²⁵ POMS, SM 00832.001, *Court Order Garnishment System*.

- 50 percent, if the beneficiary is supporting a spouse and/or child other than the spouse and/or child whose support has been ordered;
- 60 percent, if the beneficiary is not supporting another spouse and/or child; or
- 55 percent or 65 percent respectively, if the garnishment order or other evidence submitted indicates the original support ordered is 12 or more weeks in arrears.²⁶

TREASURY GARNISHES TITLE II BENEFITS

Treasury garnishes Social Security Title II benefits as part of the BPO program²⁷ and the FPLP²⁸ as follows.

BPO of Federal Payments

DCIA authorized BPO. BPO is the reduction of Social Security's Title II benefit payments to recover delinquent non-tax debts owed to other Federal agencies. It is an automated process performed by FMS. By law, BPO will not reduce benefit payments below \$750 per month. Therefore, Social Security beneficiaries who have been identified by the BPO process as delinquent debtors will still receive a minimum \$750 per month.

Unpaid Federal Taxes

The *Taxpayer Relief Act of 1997* (P.L. 105-34) authorizes the IRS to collect overdue Federal tax debts of individuals who receive Federal payments, including Social Security payments. The law authorizes the IRS to levy up to 15 percent of each payment until the tax debt is paid.

In July 2000, the IRS, in conjunction with FMS, started the FPLP. The FPLP is an automated system that does not require SSA to take any action to reduce a payment. The reduction, or levy, is done by FMS after SSA certifies a payment and sends it to Treasury for disbursement. Unlike the BPO program in which the benefit payment cannot be reduced below \$750, there is no minimum amount that cannot be subjected to FPLP. Thus, Title II benefit payments can be reduced below \$750 per month to collect a tax debt, and Title II benefit payments less than \$750 a month are subject to FPLP.

²⁶ POMS GN 02410.215, *How Garnishment Withholding is Calculated*.

²⁷ 31 U.S.C. §3716; POMS GN 02410.300, *Benefit Payment Offset (BPO)*.

²⁸ 26 U.S.C. §6331(h); POMS GN 02410.305, *Federal Payment Levy Program (FPLP)*.

Appendices

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Appendix A

Acronyms

ACH	Automated Clearing House
Act	<i>Social Security Act</i>
BPO	Benefit Payment Offset
CCPA	<i>Consumer Credit Protection Act</i>
COGS	Court Order Garnishment System
DCIA	<i>Debt Collection Improvement Act</i>
FI	Financial Institution
FMS	Financial Management Service
FPLP	Federal Payment Levy Program
FY	Fiscal Year
IRS	Internal Revenue Service
NSF	Non-Sufficient Funds
OASDI	Old-Age, Survivors, and Disability Insurance
OIG	Office of the Inspector General
P.L.	Public Law
POMS	Program Operations Manual System
SSA	Social Security Administration
SSI	Supplemental Security Income
Treasury	Department of the Treasury
U.S.C.	United States Code

Scope and Methodology

On August 7, 2007, the Senate Special Committee on Aging and the Senate Committee on Finance requested that we determine whether financial institutions (FI) were deducting service fees and garnishments from beneficiaries' direct deposit, personal accounts. We did not assess, and do not express an opinion on, the overall acceptability of the FIs' internal controls or accounting systems. To complete our objective, we:

- Reviewed applicable Federal laws and regulations, pertinent parts of the Social Security Administration's (SSA) Program Operations Manual System and other relevant criteria.
- Interviewed staff and officials at SSA Headquarters and FIs.
- Obtained a data extract of one segment (Segment 18) of SSA's systems for beneficiaries with Old-Age, Survivors and Disability Insurance (OASDI)¹ and/or Supplemental Security Income (SSI)² payments receiving direct deposits from June 1, 2006 through May 31, 2007.
- Obtained the FI names and routing numbers from the Federal Reserve Financial Services website (<https://www.fededirectory.frb.org/FedACHdir.txt>).
- Compared the bank routing numbers in the data extract to the Department of the Treasury file to identify the names of the FIs. We identified 11,431 FIs in the United States with OASDI and/or SSI recipients receiving direct deposit from June 1, 2006 through May 31, 2007.
- Selected the top 12 largest sized FIs³ in the United States with OASDI and/or SSI recipients receiving direct deposit from June 1, 2006 through May 31, 2007.

¹ OASDI program established under Title II of the *Social Security Act* (Act), § 201 *et seq.*, 42 United States Code (U.S.C.) § 401 *et seq.* provides benefits to wage earners and their families in the event the wage earner retires, becomes disabled or dies. OASDI benefits are paid from the Social Security OASDI Trust Funds.

² SSI program, established under Title XVI of the Act, § 1601 *et seq.* 42 U.S.C. § 1381 *et seq.* provides benefits to financially needy individuals who are aged, blind and/or disabled. SSI payments are financed from general tax revenues.

³ Largest sized FIs are FIs with more than 20,000 beneficiaries with direct deposit in one segment of SSA's systems (that is, Segment 18).

- Statistically selected four small-sized FIs,⁴ four medium-sized FIs⁵ and four large-sized FIs in the United States with OASDI and/or SSI recipients receiving direct deposit from June 1, 2006 through May 31, 2007. However, because of the inconsistency in the bank naming conventions in the Treasury file, one of the FIs selected in our sample of four large size FIs were, in effect, two separate FIs. Therefore, our sample consisted of five large size FIs⁶.
- Issued subpoena to the FIs requesting statistical information, records and/or documents for the time period September 1, 2006 through August 31, 2007. Also, we issued a follow-up letter to the FIs requesting information on the FIs “account hold” and “account freeze” process.
- We consolidated the information received from the FIs to show the number of beneficiaries receiving (1) only direct deposits of Social Security benefits and (2) both direct deposits of Social Security benefits and other benefits. For each group, we identified the number of garnishments, total dollar amount of garnishments, amount of garnishments allowed by law, and the total amount of fees charged.

We were unable to determine the reliability of the data because of the following factors: (a) short time frame, (b) voluminous information, (c) FIs’ difficulty interacting with legacy system of another FI as a result of a merger and (d) FIs’ difficulty in providing the data due to technological issues. We believe it is reasonable to use these data because they were used for background, and we are not drawing conclusions based solely on the data. In addition, the use of these data is limited to informational purposes and should therefore not result in incorrect or unintentional conclusions.

The entity responsible for garnishments is under the Deputy Commissioner for Retirement and Disability Policy, Office of Income Security Programs, Office of Payment Policy. Our field work was conducted at SSA Headquarters from September 2007 through March 2008.

We conducted this review in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the review to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our objectives.

⁴ Small-sized FIs are FIs with between 1 and 50 SSA beneficiaries with direct deposit in one segment of SSA’s systems (that is, Segment 18).

⁵ Medium-sized FIs are FIs with between 51 and 100 SSA beneficiaries with direct deposit in one segment of SSA’s systems (that is, Segment 18).

⁶ Large-sized FIs are FIs with between 101 and 20,000 SSA beneficiaries with direct deposit in one segment of SSA’s systems (that is, Segment 18).

Top 12 Largest Sized Financial Institutions

We are presenting the top 12 largest sized financial institution (FI) data for informational purposes. We did not determine the reliability of the data provided by the FIs.

Table 9 – Top 12 Largest Sized Financial Institutions with Only Direct Deposits of Social Security Benefits						
Financial Institution	No. of Account Holders	No. of Garnishments	Total Amount of Garnishments	No. of Garnishments For Child Support, Alimony or Tax Levy	Amount of Garnishments For Child Support, Alimony or Tax Levy	Total Amount of Fees
T-02 ¹	N/A	N/A	N/A	N/A	N/A	N/A
T-04	92,745	194	\$319,396	64	\$177,129	\$12,835
T-06	60,777	59	54,078	26	22,531	2,115
T-07	267,986	156	101,790	60	32,586	14,400
T-08	252,832	759	108,266	229	47,975	N/A
T-10	347,645	333	333,533	115	61,543	1,155
T-11	177,357	0	0	0	0	0
T-12	83,001	184	158,595	144	132,629	N/A
Subtotal	<u>1,282,343</u>	<u>1,685</u>	<u>\$1,075,658</u>	<u>638</u>	<u>\$474,393</u>	<u>\$30,505</u>
N/A – Not Available						

Three largest sized FIs received garnishment orders and identified the court order amount but were unable to identify if any amounts were actually withheld due to system limitations. Therefore, we excluded these FIs from the results presented in the body of the report. In addition, one largest sized FI was unable to provide any useable information.

¹ FI does not have a way of isolating accounts that receive only direct deposited Social Security benefits.

**Table 10 – Top 12 Largest Sized Financial Institutions with
Only Direct Deposits of Social Security Benefits - Court Order Amounts**

Financial Institution	No. of Account Holders	No. of Garnishments	Court Order Garnishments	No. of Garnishments For Child Support, Alimony or Tax Levy	Amount of Garnishments For Child Support, Alimony or Tax Levy	Total Amount of Fees
T-01	590,963	1,229	\$2,418,114	N/A	N/A	\$158,612
T-03	224,543	442	733,773	N/A	N/A	25,026
T-05	N/A	N/A	N/A	N/A	N/A	N/A
T-09	N/A	N/A	N/A	N/A	N/A	N/A
Subtotal	<u>815,506</u>	<u>1,671</u>	<u>\$3,151,887</u>	<u>0</u>	<u>0</u>	<u>\$183,638</u>
N/A- Not Available						
Total	2,097,849	3,356	\$4,227,545	638	\$474,393	\$214,143

Legend:

T = Top Largest-Sized Financial Institutions

**Table 11 – Top 12 Largest Sized Financial Institutions with
Direct Deposited Social Security Benefits and Other Deposits**

Financial Institution	No. of Account Holders	No. of Garnishments	Total Amount of Garnishments	No. of Garnishments For Child Support, Alimony or Tax Levy	Amount of Garnishments For Child Support, Alimony or Tax Levy	Total Amount of Fees
T-02 ²	2,419,034	4,424	\$4,831,847	1,657	\$2,465,710	\$248,636
T-04	1,668,330	3,497	19,756,869	1,198	4,011,682	470,950
T-06	439,778	1,368	1,478,888	488	740,736	91,256
T-07	787,484	864	1,702,528	444	805,563	108,120
T-08	273,257	689	106,613	213	30,634	N/A
T-10	660,703	1,056	247,747	371	46,914	5,575
T-11	121,344	528	820,126	528	820,126	45,456
T-12	184,834	308	300,125	237	245,303	24,150
Subtotal	<u>6,554,764</u>	<u>12,734</u>	<u>\$29,244,743</u>	<u>5,136</u>	<u>\$9,166,668</u>	<u>\$994,143</u>

N/A – Not Available

Three largest sized FIs received garnishment orders and identified the court order amount but were unable to identify if any amounts were actually withheld due to system limitations. Therefore, we excluded these FIs from the results presented in the body of the report. In addition, one largest sized FI was unable to provide any useable information.

² FI does not have the database or resources to segregate the accounts which received Social Security into accounts receiving only direct deposit Social Security benefits and accounts receiving Social Security and “other deposits.” Therefore, we included the FI amounts as Social Security and “other deposits.”

**Table 12 – Top 12 Largest Sized Financial Institutions with
Direct Deposited Social Security Benefits and Other Deposits – Court Order Amounts**

Financial Institution	No. of Account Holders	No. of Garnishments	Court Order Garnishments	No. of Garnishments For Child Support, Alimony or Tax Levy	Amount of Garnishments For Child Support, Alimony or Tax Levy	Total Amount of Fees
T-01	6,775,287	19,274	\$37,976,702	N/A	N/A	\$1,960,648
T-03	1,987,118	8,651	11,482,804	N/A	N/A	479,939
T-05	N/A	N/A	N/A	N/A	N/A	N/A
T-09 ³	1,154,678	833	7,319,383	0	0	32,590
Subtotal	<u>9,917,083</u>	<u>28,758</u>	<u>\$56,778,889</u>	<u>0</u>	<u>0</u>	<u>\$2,473,177</u>
N/A – Not Available						
Total	16,471,847	41,492	\$86,023,632	5,136	\$9,166,668	\$3,467,320

³ FI stated that it is not able to identify accounts which have Social Security direct deposits as their sole source of funds. Therefore, the FI included both Social Security benefits and other deposits; as well as, only direct deposits of Social Security benefits in this figure.

Appendix D

Small-, Medium- and Large-Sized Financial Institutions

We are presenting the 13 small, medium and large-sized financial institution (FI) data for informational purposes. We did not determine the reliability of the data provided by the FIs.

**Table 13 – Small-, Medium- and Large-Sized Financial Institutions with
Only Direct Deposits of Social Security Benefits**

Financial Institution	Number of Account Holders	Number of Garnishments	Total Amount of Garnishments	No. of Garnishments For Child Support, Alimony or Tax Levy	Amount of Garnishments For Child Support, Alimony or Tax Levy	Total Amount of Fees
S-01	31	0	\$0	N/A	N/A	\$0
S-02	86	0	0	N/A	N/A	0
S-03	24	0	0	N/A	N/A	0
S-04	<u>350</u>	<u>0</u>	<u>0</u>	<u>N/A</u>	<u>N/A</u>	<u>0</u>
Small FIs	<u>491</u>	<u>0</u>	<u>\$0</u>	<u>N/A</u>	<u>N/A</u>	<u>\$0</u>
M-01	1,206	0	\$0	0	0	\$0
M-02	N/A	N/A	N/A	N/A	N/A	N/A
M-03	973	0	0	0	0	0
M-04	<u>991</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
Medium FIs	<u>3,170</u>	<u>0</u>	<u>\$0</u>	<u>0</u>	<u>0</u>	<u>\$0</u>
L-01	N/A	0	\$0	0	0	\$0
L-02	971	0	0	0	0	0
L-03	678	1	3,900	1	\$3,900	50
L-04	0	0	0	N/A	N/A	0
L-05	1,212	0	0	N/A	N/A	0
Large FIs	<u>2,861</u>	<u>1</u>	<u>\$3,900</u>	<u>1</u>	<u>\$3,900</u>	<u>\$50</u>
N/A – Not Available						

**Table 14 – Small-, Medium- and Large-Sized Financial Institutions with
Direct Deposited Social Security Benefits and Other Deposits**

Financial Institution	Number of Account Holders	Number of Garnishments	Total Amount of Garnishments	No. of Garnishments For Child Support, Alimony or Tax Levy	Amount of Garnishments For Child Support, Alimony or Tax Levy	Total Amount of Fees
S-01	18	0	\$0	N/A	N/A	\$0
S-02	N/A	0	0	N/A	N/A	0
S-03	14	0	0	N/A	N/A	0
S-04	44	0	0	N/A	N/A	0
Small FIs	<u>76</u>	<u>0</u>	<u>\$0</u>	<u>N/A</u>	<u>N/A</u>	<u>\$0</u>
M-01	2,285	4	\$4,973	3	\$2,440	\$50
M-02	N/A	N/A	N/A	N/A	N/A	N/A
M-03	265	2	65	0	0	0
M-04	1,344	0	0	0	0	0
Medium FIs	<u>3,894</u>	<u>6</u>	<u>\$5,038</u>	<u>3</u>	<u>\$2,440</u>	<u>\$50</u>
L-01	N/A	1	\$4,002	1	\$4,002	0
L-02	N/A	1	500	1	500	0
L-03	3,230	4	45,480	1	3,900	350
L-04	450	0	0	N/A	N/A	0
L-05	1,129	1	169	0	0	0
Large FIs	<u>4,809</u>	<u>7</u>	<u>\$50,151</u>	<u>3</u>	<u>\$8,402</u>	<u>\$350</u>

N/A – Not Available

Legend:

S = Small-Sized Financial Institutions

M = Medium-Sized Financial Institutions

L = Large-Sized Financial Institutions

Limitation on the Financial Institutions' Information

Although we consolidated the financial institution (FI) data for the 25 institutions (see Tables 9 through 14), the data collected were inconsistent. Several of the FIs were limited in the amount of information available as follows.

1. Two FIs did not have the ability through an automated search process to provide the requested information for the entire time period of September 1, 2006 through August 31, 2007. Instead, the FIs provided information for 1 month. Therefore, we extrapolated the figures from this month to the entire 12-month period to estimate the numbers for the covered time period.
2. Six FIs could not provide either the number of account holders who received only Social Security deposits or number of account holders who receive Social Security deposits and other deposits due to technological issues (that is, FIs' computerized system did not maintain this information). Additionally, one FI stated it had to manually research the hard copy reports to respond to our request.
3. One FI did not keep records on garnishments, such as the dollar amount that was withheld from the account. Also, three FIs were only able to provide the amount on the court order but were unable to identify if any amounts were actually withheld due to system limitations. Additionally, two FIs were unable to segregate the alimony garnishment from the third-party garnishments because of system limitations.
4. Two FIs did not keep records on the dollar amount of any fees that were charged against the account because of the garnishment.
5. One FI stated that it was difficult to interact with the legacy system of another FI as a result of a merger with that FI. The legacy system makes it difficult to identify exempt funds from the merged FI.

The lack of consistent information limits the use of this data to informational purposes.

Letter from the American Bankers Association



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May 5, 2008

Kristen Schnatterly
Audit Manager
Social Security Administration
Mail Stop 3-ME-2
6401 Security Boulevard
Baltimore, MD 21235

Re: Proposed solutions to garnishments of federal benefits payments

Dear Ms. Schnatterly,

Thank you very much for the time and attention you and the rest of the staff at the Social Security Administration have dedicated to help address issues arising in connection with the garnishment of federal benefits payments. The American Bankers Association¹ appreciates this opportunity to share our thoughts concerning possible solutions to the problems that currently arise when a creditor garnishes an account at a bank that contains federal benefits payments. The current system relies on a patchwork of state procedural laws that usually makes freezing an account the most responsible step a bank can take in order to be fair to all parties. Our members recognize that this system can result in very real hardships for some consumer depositors, and we offer the ideas below in the spirit of trying to find a better way.

I. Background

A bank finds itself caught in the middle when a consumer account containing federal benefits payments is garnished. On the one hand, a creditor, having received a court order entitling it to payment, expects a bank to comply with that order or risk incurring liability for the full amount of the judgment. On the other hand, a debtor that receives benefits payments that are exempt from garnishment expects the bank to refuse to pay to the creditor funds that are protected.

These situations typically involve commingled funds – *i.e.*, funds from more than one source combined in one account – making it impossible for a bank to know what funds on deposit in the account are exempt from garnishment and what should be paid to the creditor. Frequently the situation is complicated even further by the use of joint accounts and by laws that create exceptions to the exemption from

¹ The American Bankers Association brings together banks of all sizes and charters into one association. The ABA works to enhance the competitiveness of the nation's banking industry and strengthen America's economy and communities. Its members – the majority of which are banks with less than \$125 million in assets – represent over 95 percent of the industry's \$12.7 trillion in assets and employ over 2 million men and women.

garnishment, such as those that permit the collection of child support and alimony from any funds, including federal benefits.

These difficulties are multiplied by the sheer volume of garnishments and other legal process that banks receive on a daily basis² and by the fact that debt collection firms often blanket all banks within a given area in an attempt to locate assets of a debtor.³ Under the current system, the only response that is fair to all parties is to freeze or withdraw and hold the amount of funds affected by the garnishment and thereby provide the parties with time to work things out.

Banks would welcome clear rules that avoid hardships for benefits recipients while protecting the banks from liability to creditors. As outlined below, we believe there are solutions that would either shorten the period during which funds would be unavailable or eliminate the need for such a period altogether. However, any solution must emanate from a recognition that the problem stems from the various state laws that create conflicting obligations and substantial liability for banks.

Some states require a one-time hold, meaning that the garnishment order applies to any of the debtor's funds up to the amount of the garnishment held by the bank at the time the order is received. In such states, the bank typically removes and holds the amount of funds subject to the garnishment from the account as soon as possible in order to avoid liability to the judgment creditor for the funds being withdrawn. Other states have continuing garnishment statutes (and there are many statutory variations of continuing garnishments) that require banks to freeze the entire account in question and all subsequent deposits to the account during the continuation period. Many states impose an additional step when a garnishment involves only one party to a joint account.

If these obligations are not preempted by federal law, the problems will remain. Without preemption, any solution would simply compound the problems by layering rules on top of the existing 50 sets of unique state laws and current federal regulations. Banks would continue to be caught in the middle of disputes and subject to risks that make a freeze of the affected funds the most responsible course of action.

A solution also must balance the interests of benefits recipients and creditors. As noted above, sometimes the party seeking payment will be attempting to collect child support or alimony and therefore have a claim that trumps the protections against garnishment. Disputes to funds require the application of law to facts that are frequently complicated and often contested. Banks are not capable of resolving these disputes, nor should they be asked to. State laws clearly put that responsibility on the debtor and the courts. But banks are willing and eager to comply with rules that avoid the hardships noted above by establishing clear responsibilities and a safe harbor from liability for those who comply.

² One regional bank now receives on average around 2100 garnishments and levies per month (not including child support orders), and over half of the time (approximately 1350) there are no relevant accounts at that bank. Taking what is a very conservative estimate of 15 minutes per garnishment/levy, that comes to 525 hours per month or around 4 employees full time per month just to process these orders.

³ Despite the large number of garnishments and levies noted above, it also is worth noting that the number of instances involving garnishments of accounts containing federal benefits payments is comparatively very small. For instance, one multinational bank estimates that *only approximately 450 accounts out of over 20 million consumer checking and savings accounts at that bank were garnished last year* that contained solely Social Security benefits payments that were directly deposited.

Any solution would have to address complex issues. For instance, should the recipient of Social Security benefits payments be entitled to continued immediate access to those funds even if the judgment creditor is a former spouse, a child entitled to support, the IRS, or a student lender (all of whom are entitled to be paid notwithstanding the protection against garnishment for Social Security payments)? If not, how can a bank ensure that it is acting in a manner consistent with the rights of all creditors and other parties? Is it appropriate to preserve access to a sum of money that exceeds the amount of the benefit payment? Can any system provide a better solution when benefits payments are commingled with other deposits? How should joint accounts be handled?

Policymakers also must bear in mind that any change to the current system will impose costs that will likely be spread among all customers, including those whose accounts are not garnished. Moreover, any fix that protects recipients of some benefits payments may well prompt recipients of every state or federal benefit to seek the same protection, thus raising questions about how claims would be prioritized.

Notwithstanding these concerns, we offer the following ideas for the consideration of those who are tasked with developing laws that attempt to balance the various interests.

II. Possible solutions

Option A: Encourage resolution by accountholder and creditor

Given that the problems stem from the accountholder's temporary lack of access to benefits payments, a solution that minimizes the length of time during which funds are unavailable would help lessen the hardship currently experienced by some. One way to achieve this result could involve the following components:

- Notice of a garnishment and forms for claiming an exemption from garnishment are sent by the creditor to the accountholder at the same time the garnishment order is served on the bank. The bank places a hold on, or withdraws, the garnished amount or, in a continuing garnishment state, places a freeze on the account, pending completion of the process outlined below.
- The accountholder has a short period of time – perhaps 5 days – in which to claim an exemption by returning the forms to the bank showing the name of the paying agency and the amount of the payment that is exempt from garnishment. If no exemption is claimed in a timely manner, the bank tenders the amount garnished to the court.
- If an exemption is claimed in a timely manner, the bank notifies the creditor of this fact. The creditor then would have a short period of time – again, perhaps 5 days – in which to notify the bank that it is challenging the claim of exemption. However, no challenge would be permitted unless the creditor first contacted the paying agency, received information that refuted the claim of the accountholder, and sent a copy of the information to the bank and accountholder.
- If the creditor fails to notify the bank in a timely manner, the bank can ignore the garnishment and release the freeze, thereby permitting the accountholder to access the funds in the account. Thus, the accountholder would be able to use the funds under this circumstance within 10 days from the date the bank receives the garnishment order.

- If the creditor files a timely challenge, then the creditor and accountholder would have to resolve the dispute in court. The bank would maintain the hold/freeze until the dispute is resolved.

Option B: Protect a specified sum of money

1. Clear ACH Codes and Descriptors

As a threshold matter, agencies (at all levels of government) that issue public benefits payments that are potentially exempt from garnishment must provide depository institutions with a clear set of ACH codes and descriptors that identify those payments and transfers to transaction descriptors appearing on the receiver's periodic statements.

Currently, a bank often cannot be certain whether a payment is exempt, or the process of doing so is manual and involves educated guessing. For instance, a direct deposit from the Social Security Administration (SSA) may be a benefits payment or it may be the salary of an SSA employee; without more information, it can be difficult and time-consuming to determine which it is.

This information needs to come from the paying agencies and needs to be coordinated with the federal agency that actually makes the payments (which, in the large majority of cases, appears to be the United States Department of the Treasury). Distinctive ACH codes, rather than descriptors, would be more easily identified by bank deposit systems, but at a minimum there must be absolutely uniform descriptors to systemically identify possibly exempt benefit payments so that they can be identified without manual review. The paying agencies must have procedures to provide banks with sufficient notice of any changes to these codes or descriptors. In addition, SSA should enforce the Congressional directive that all benefits payments should be made electronically. Check deposits of social security benefits cannot be systemically distinguished from other check deposits.

2. Clear rules

In addition to providing depository institutions with clear ACH codes and descriptors, the paying agencies should change their rules to provide a safe harbor for depository institutions that expressly preempts state laws. The SSA, the Department of Veterans Affairs, and other agencies whose payments are exempt, working with the U.S. Treasury, should adopt rules that include the following elements:

- **A defined and limited “look-back” period.** If a bank is served with a garnishment order, the bank should be protected if it looks back over a specific period to determine whether the account in question has received any direct deposits of benefits payments as identified by the above-referenced codes and descriptors. A “look-back” is a manual process that needs to be limited in order to be efficient.
 - Connecticut, for example, provides a safe harbor for a bank that looks back at the 30 days prior to the bank's receipt of the garnishment order to determine if the account has had federal benefits payments directly deposited. This equitably balances the benefits and burdens of all parties.

- **No recurring obligation.** This should be a one-time look, as of the date the bank receives the garnishment order.
 - This is the approach taken, for instance, in California and Connecticut.
 - Imposing a continuing obligation on a bank to check each month to see if funds have been deposited that may be used to satisfy a judgment adds a burden that is significantly disproportionate to the benefit obtained.
- **Application only to direct deposits to initial account.** Any requirement to look for or identify benefit funds should apply only to electronic direct deposits, and not to paper deposits.
 - Deposits by check present operational issues that effectively preclude banks from being able to identify benefits payments or require manual processes that are so time-consuming that they are not feasible given the large volume of garnishments processed.
 - Focusing on direct deposits is consistent with the federal government's desire to pay federal benefits payments through direct deposits.
 - California and Connecticut both limit their rules to direct deposits.
 - The requirement should apply only to the initial direct deposit. The ACH codes and descriptors discussed above will not assist transfers of benefits payments from the account that received the funds initially and to another account. This makes it impossible for any protection of benefits payments to follow the funds once they are withdrawn from the account into which they initially were deposited.
- **Safe harbor.** If federal benefits payments have been directly deposited during the past 30 days, then the bank should be provided a safe harbor against liability if it takes the following steps:⁴
 - **Notice:** The bank's response to the garnishment order should indicate that the account in question may have benefit payments that are generally exempt from garnishment;
 - **Access:** The account holder should have access to an amount specified by the rule.
 - Examples from state laws include the following:
 - **Connecticut:** The account holder may have access to the lesser of the amount in the account on the day on which the bank is served or \$1,000.
 - **California:** The account holder is permitted access to varying amounts, depending on the type of benefit payment and how many depositors are

⁴If federal benefits payments have not been directly deposited during the preceding 30 days, then there is no issue of whether the customer has access to "exempt" benefit payments. The matter is handled according to normal bank procedures for responding to garnishments.

named as payees. In situations involving one depositor and the direct deposit of Social Security payments, for instance, the amount is \$2,700.⁵

- An accountholder can petition the court to have access to funds above the “safe harbor” amount but he or she at least will have most, if not all, of the most recent benefits payment available to live on until a court resolves any questions about entitlement to funds.
- Funds in excess of safe harbor amount: Funds in excess of the “safe harbor” amount should be handled according to normal bank procedures for responding to garnishment orders.
- Scope of safe harbor: The safe harbor must resolve competing policy considerations involving child support payments, alimony, and other claims that override the protection from garnishment that otherwise protects federal benefits payments. One approach would be to provide a bank with a safe harbor if it places a freeze on the entire account when it receives a claim from someone (such as a former spouse or child entitled to support) who asserts a right to the funds that is superior to that of the accountholder.

Whatever action is taken, the following are essential:

1. **Preemption.** One consistent uniform federal standard that preempts state laws must apply
 - Layering federal rules or guidelines on top of existing state laws that do not preempt state laws would be the worst possible result.
 - Certain states (Illinois and New York, for example) commonly use enforcement orders that require the bank to prohibit all withdrawals from the account for a period of one year or longer, and trap all deposits made in the account after service of the order. The standard must make such continuing orders ineffective as to future deposits of federal benefits payments.⁶ Otherwise, the bank has no choice but to place a hold on the account in order to prevent future deposits (which might NOT be federal benefits payments) from being withdrawn in violation of the state order.
2. **Consistency across agencies.** The standard should be consistent across all the agencies whose payments are exempt from garnishment.
 - Conflicting federal laws, like conflicting state laws, would be inefficient, unnecessary, and counterproductive.
 - For instance, the IRS has priority over the exemption from garnishment. The standard must provide a clear method for resolving competing claims.
3. **Adequate transition period.** Any standard must provide banks with adequate time to conform systems to whatever changes are required to implement the new procedures.

* * *

⁵ California Code of Civil Procedure § 704.080(b)(2), as updated by the Judicial Council, effective April 1, 2007, under CCP § 703.150(c).

⁶ There may well be other issues that lawmakers would need to address that arise in continuing garnishment states. These states have requirements that vary significantly from state to state. Any solution would need to consider fully whether steps would be required in addition to making continuing orders ineffective as to future deposits.

Thank you again for your consideration of our views. Should you wish to speak to someone further about the matters discussed in this letter, please feel free to call me at your convenience.

Sincerely,



Mark J. Tenhundfeld

Cc: Stephanie Martin
Board of Governors of the Federal Reserve System

Sally Phillips
Department of Treasury

Ken Lee
Department of Veterans Affairs

Roberta McInerney
Federal Deposit Insurance Corporation

Ross Kendall
National Credit Union Administration

Michael Bylsma
Office of the Comptroller of the Currency

Chantel Boyens
Office of Management and Budget

Montrice Yakimov
Office of Thrift Supervision

Subpoena and Follow-Up Questions

In September 2007, we issued a subpoena to the FIs requesting statistical information, records and/or documents for the time period September 1, 2006 through August 31, 2007. Specifically, we requested the following:

1. With regard to all accounts and account holders in your institution receiving only direct deposits of Social Security benefits:
 - A. Your institution's policies and procedures regarding third-party garnishments, and your own use of "set-off" to collect money your customers owe you.
 - B. The number of account holders at your financial institution receiving only Social Security and Supplemental Security Income (SSI) benefits through direct deposit.
 - C. The total number of garnishments involving bank accounts receiving only direct deposited Social Security benefits.
 - D. The total dollar amount of garnishments involving bank accounts receiving only direct deposited Social Security benefits.
 - E. The total dollar amount of all charges and fees assessed by your institution related to all garnishment activity.
 - F. A breakdown of the types of charges and fees assessed by your institution related to garnishment activity, including but not limited to: fees for imposition of a freeze on the account; fees for any resulting bounced checks; fees for short term loans; fees for release of a freeze on the account; and any other fees.
2. With regard to all accounts and account holders in your institution receiving both direct deposited Social Security benefits and other deposits:
 - A. Your institution's policies and procedures regarding third-party garnishments, and your own use of "set-off" to collect money your customers owe you.
 - B. The number of account holders at your financial institution receiving both direct deposited Social Security and SSI benefits and other deposits.
 - C. The total number of garnishments involving bank accounts receiving both direct deposited Social Security benefits and other deposits.
 - D. The total dollar amount of garnishments involving bank accounts receiving both direct deposited Social Security benefits and other deposits.

- E. The total dollar amount of all charges and fees assessed by your institution related to all garnishment activity.
- F. A breakdown of the types of charges and fees assessed by your institution related to garnishment activity, including but not limited to: fees for imposition of a freeze on the account; fees for any resulting bounced checks; fees for short term loans; fees for release of a freeze on the account; and any other fees.

Also, in January 2008 we issued a follow-up letter to the FIs requesting information on the FIs "account hold" and "account freeze" process as follows:

Account Hold and Account Freeze

Also, from analyzing the information provided, we found that in the course of a garnishment /levy, there are "account holds"¹ and "account freezes"² which are part of the process. As we have previously indicated, we are concerned as to the effect such actions may have on individuals who are receiving Social Security benefits and SSI. As a result, we have identified six additional "account hold" and "account freeze" questions to which we are requesting your response. The questions are as follows:

1. Are "account holds" and "account freezes" considered to be a process unto itself or are they considered to be part of the garnishment/levy process? Please describe when an account hold would be placed on an account and when an account freeze would be placed on an account.
2. We understand that each State has its own statute regarding the length of time within which a person has to object to a hold or freeze against their bank account. In addition, each State has varying time periods within which you, as a financial institution that has been served with a garnishment/levy, have to respond to the garnishment/levy.

We have several procedural questions as to the mechanics of the account holds and/or account freezes in relation to the garnishment/levy.

- a. If the funds in the individual's bank account exceed the amount of the garnishment/levy, does the individual have immediate access to the funds over the amount of the garnishment/levy?
- b. If the funds in the individual's bank account are less than the amount of the garnishment/levy, are subsequent deposits subject to the receipt of the garnishment/levy unavailable to be accessed by the account holder? If so, under

¹ By "account hold" we are referring to funds set aside that are not available for withdrawal.

² By "account freeze" we are referring to a bank account from which funds may not be withdrawn until a lien (e.g., garnishment/levy) is satisfied and/or a court order is received freeing the balance.

what circumstances are other funds deposited subsequent to receipt of the subject garnishment/levy available to be accessed by the account holder?

If the garnishment/levy is dismissed by agreement or court order after an account hold and/or account freeze is initiated and prior to any funds being forwarded by the financial institution to satisfy the garnishment/levy:

- c. Are any checks which may have not been honored during the period that the account hold and/or account freeze was in effect due to insufficient funds honored? If this has occurred, could you please provide the number of checks that were subsequently honored?
 - d. Are any fees assessed against the bank account due to the account hold or account freeze of funds forgiven and returned to the account holder? If this has occurred, can you please provide the total amount of fees that were returned?
3. We would like to confirm that the figure you previously provided to question 1C of the subpoena regarding the total number of garnishments (see Enclosure) includes the number of account holds and/or account freezes placed on the account.
- a. If this is incorrect, please explain what this figure represents. If account holds and account freezes are not included in the total number of garnishments, in what circumstances are these not included in the total number of garnishments? Also, please provide the number of account holds and/or account freezes placed on an account receiving only direct deposited Social Security or SSI funds for the period from September 1, 2006, through August 31, 2007.
 - b. From the total number of account holds and account freezes, please provide the number of account holds and/or account freezes that were removed without any funds being removed from the account to satisfy the garnishment/levy.
4. We would like to confirm that the figure you previously provided to question 1E of the subpoena regarding the total dollar amount of all charges and fees assessed by your institution related to garnishments (see Enclosure) includes the amounts of account holds and/or account freezes placed on an account.
- a. If this is incorrect, please explain what this figure represents. If account holds and account freezes are not included in the total dollar amount of all charges and fees related to garnishments, in what circumstances are these not included in the total dollar amount of garnishments? Also, please provide the total dollar amount of all charges and fees assessed by your institution related to the account holds and/or account freezes placed on an account receiving only direct deposited Social Security or SSI funds for the period from September 1, 2006, through August 31, 2007.

- b. From this total dollar amount of all charges and fees related to the account holds and account freezes, please provide the total dollar amount of all charges and fees assessed by your institution related to the account holds and/or account freezes that were removed without any funds being removed from the account to satisfy the garnishment/levy.
5. We would like to confirm that the figure you previously provided to question 2C of the subpoena regarding the total number of garnishments (See Enclosure) includes the number of account holds and/or account freezes placed on the account.
- If this is incorrect, please explain what this figure represents. If account holds and account freezes are not included in the total number of garnishments, in what circumstances are these not included in the total number of garnishments? Also, please provide the number of account holds and/or account freezes placed on an account receiving both direct deposited Social Security or SSI funds along with other direct deposits for the period from September 1, 2006, through August 31, 2007.
 - From the total number of account holds and account freezes, please provide the number of account holds and/or account freezes that were removed without any funds being removed from the account to satisfy the garnishment/levy.
6. We would like to confirm that the figure you previously provided to question 2E of the subpoena regarding the total dollar amount of all charges and fees assessed by your institution related to garnishments (See Enclosure) includes the amounts of account holds and/or account freezes placed on an account.
- If this is incorrect, please explain what this figure represents. If account holds and account freezes are not included in the total dollar amount of all charges and fees related to garnishments, in what circumstances are these not included in the total dollar amount of garnishments? Also, please provide the total dollar amount of all charges and fees assessed by your institution related to the account holds and/or account freezes placed on an account receiving both direct deposited Social Security and/or SSI funds along with other direct deposits for the period from September 1, 2006, through August 31, 2007.
 - From this total dollar amount of all charges and fees related to the account holds and account freezes, please provide the total dollar amount of all charges and fees assessed by your institution related to the account holds and/or account freezes that were removed without any funds being removed from the account to satisfy the garnishment/levy.

Agency Comments

RESPONSE TO REQUEST FOR COMMENTS

Office of the Inspector General's (OIG) Congressional Response Report (A-15-08-28031),
"Financial Institutions Deducting Fees and Garnishments From Social Security Benefits"

Thank you for the opportunity to review the above-subject report. We appreciate the OIG's work in exploring this issue. We believe that the report is a valuable contribution to understanding and addressing the garnishment problem.

Comments on Safeguards

With respect to recommended safeguards 1, 3, and 4, we fully support and encourage the efforts of the Treasury Department and the regulators to explore these and other safeguards.

With respect to recommended safeguard 2, we offer the following clarification. Section 207 is clearly **both** a bar against garnishment and a defense to be raised when necessary. We believe the defense should be needed only when a party attempts to garnish social security benefits despite section 207 clear prohibitions. We will review our procedures to ensure that they clearly state that the garnishment exemption is both a bar and a defense.

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