

Bulletin: New federal rules change how garnishments are handled in Texas



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As of May 1, 2011, the way garnishments are handled in Texas will change. The U.S. Department of the Treasury, along with several other Federal agencies, promulgated new interim rules to protect federal benefit payments from garnishments under both Federal and state law.¹ These rules include specific procedures for banks and financial institutions to follow when processing garnishments. The new rules add significant additional duties for banks and financial institutions served with garnishment orders or writs, and they also provide that they preempt state law where conflicts exist. As a result, banks must immediately address the new rules and modify their procedures to comply.

Protection of federal benefit payments

Federal benefits are protected under federal law from garnishment, attachment, levy or assignment. This protection continues after the benefits are deposited into an individual's bank account. Traditionally, garnishment orders and writs do not distinguish between types of funds in accounts (or their sources), and banks frequently put a "freeze" on all funds in an account simply to comply with garnishment order or writ. Under many states' laws, including Texas law, customers are given the opportunity to assert rights, defenses or exemptions to garnishment orders. But, many recipients of Federal benefits lack the knowledge or means to challenge a garnishment order. So, federal benefits were garnished from time to time, often unintentionally. In light of this situation, the purpose of the new interim rules is to provide a consistent framework to be applied nationally among banks and financial institutions. The effective date of

the new interim rules is May 1, 2011, and banks are expected to comply as of that date.

Significant differences from Texas garnishment law

It is important to note that the new regulations expressly provide that they preempt state law if there is any conflict.² While this bulletin will not address all of the requirements of the new interim rules, it will focus on several important differences from Texas law that will affect the way garnishments are handled in Texas.

The first significant difference is that a bank is now required, "before taking any action on a garnishment order" to review any accounts that may be implicated and determine whether federal benefits have been deposited into the accounts.³ This review must be performed within two business days of receipt of the garnishment order or writ.⁴ The bank is required to review the two months preceding the account review as a "lookback" period.⁵

There is an apparent conflict with Texas law here, which traditionally requires a bank to hold all amounts owed to a judgment debtor upon service of the writ. While there is some lively debate about how much time a bank should be given to investigate and "freeze" an account, the interim rules expressly prevent a bank from placing a hold on the account

² 31 CFR § 212.9.

³ 31 CFR § 212.5.

⁴ *Id.*

⁵ 31 CFR § 212.3.

¹ See generally 31 CFR Part 212.

before the account review is conducted, and also provides a “safe harbor” for banks during the two business day period in which it may conduct the account review.⁶ This means that, if a customer withdraws funds during the time period during which the bank is reviewing the account, banks will have a defense and creditors may have no recourse, which is a significant departure from traditional garnishment law.

The purpose of the account review is to determine if Federal benefits were deposited into the account during the “lookback” period. If no protected funds were deposited into the account during the “lookback” period, then the bank or financial institution may handle the garnishment pursuant to its customary procedures.⁷

The second major set of differences is presented when protected funds are deposited in the account during the “lookback” period. If a bank determines that protected funds were deposited in the account, it must protect the amount of such deposits from the garnishment and maintain immediate and customary access for the customer.⁸ The bank cannot freeze the protected amounts, even temporarily.⁹ It must also send a form notice concerning the garnishment, the protected amounts and the customer’s rights within three business days of the account review.¹⁰

And, perhaps the most significant difference is that, if protected funds are found in the account, the bank can garnish the remaining funds, but cannot “continually” garnish the account.¹¹ In other words,

a bank cannot simply “freeze” an account once the protected amounts are determined to be safe. Indeed, the bank is prevented from garnishing deposits made after the account review. While the obvious purpose of this provision is to prevent an ongoing “freeze” from affecting deposits in the future or during the pendency of the garnishment proceeding, there is another apparent conflict with Texas garnishment law, which requires a garnishee to answer for amounts deposited through the date of answer.¹² Also notable is that a bank is prohibited from taking multiple account reviews, unless it is served with an entirely new order or writ, in which case it is required to perform the account review anew.¹³

⁶ “A financial institution that complies in good faith with this part shall not be liable to a creditor that initiates a garnishment order, or for any penalties under State law, contempt of court, civil procedure, or other law for failing to honor a garnishment order,” during the 2 day period. 31 CFR § 212.10(a)(1).

⁷ 31 CFR § 212.5(b).

⁸ 31 CFR § 212.6.

⁹ *Id.*

¹⁰ 31 CFR §§ 212.6(e), 212.7. The rule requires a number of specific items to be included in the notice, along with some optional items.

¹¹ 31 CFR § 212.6(g).

¹² Compare 31 CFR § 212.6(g) with TEX. R. CIV. P. 661; see also *Rome Industries, Inc. v. Intsel Southwest*, 683 S.W.2d 777, 779 (Tex. App.—Houston [14th Dist.] 1984, writ ref’d n.r.e.) (Garnishee is to hold funds at the time the writ was served and any funds that are received through the date that the Garnishee filed its answer).

¹³ 31 CFR § 212.6(f).