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DAVID WALTON AND TOM CASE IN BANKER'S DIGEST EXPLORE LIMITS ON WRITS OF GARNISHMENT

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Bell Nunnally Partner David A. Walton and Of Counsel Thomas L. Case authored the Banker's Digest article titled, "Protecting Banks Against Writ of Garnishment Actions." The piece explores protections provided to financial institutions attempting to safeguard federal retirement benefits in garnishment proceedings. As federal regulations have been codified to exclude federal benefits from garnishment – based on the likelihood of causing extreme financial hardship – those regulations also provide a safe harbor to financial institutions faced with any inconsistent state garnishment laws. As Walton and Case detail, many state garnishment laws require financial institutions to immediately freeze accounts upon service of a writ of garnishment, not providing the financial institution any opportunity to identify such federally protected benefits. Therefore, it is important for financial institutions to know and utilize these federal regulations and their preemption of state garnishment laws in order to identify federally protected funds and avoid liability to creditors for non-protected funds withdrawn after service of the writ of garnishment.

Full text of the article is below, and can be viewed on *Banker's Digest*'s website by clicking here.

Protecting Banks Against Writ of Garnishment Actions

Protection of federal retirement benefits has changed the landscape for financial institutions served with writs of garnishment. The statutes that create Social Security and retirement benefits for veterans and railroad, civil service and federal employees, as well as railroad unemployment and sickness benefits,

prohibit garnishment and attachment of those benefits because doing so can cause extreme financial hardship to those receiving the benefits.

While such funds are not subject to garnishment proceedings, the advent of direct-deposit banking has led to an increase in the number of accounts containing protected benefits being frozen by financial institutions due to garnishment orders. As a result, the federal agencies responsible for paying the benefits issued an interagency regulation addressing the issue in 31 CFR. pt. 212—or Part 212. It obligates financial institutions to protect their account holders' benefits while simultaneously providing the institutions certain protections to limit their liability exposure when meeting the legal obligations imposed by writs of garnishment.

Under the garnishment laws of many states—including Arizona, Arkansas, Louisiana, Mississippi, New Mexico, Oklahoma and Texas—a financial institution served with a garnishment order must freeze the account immediately. If the financial institution pays money out of the account after the date on which it is served with the order, it incurs liability to the judgment creditor.

When frozen accounts contain federally protected benefits, the financial institution is caught between two competing and diametrically opposed interests, as well as the potential for liability: on one hand, the federal government's interest in protecting the benefits of its retirees and employees, and on the other hand, state laws that favor the ability of creditors to collect judgments by freezing garnished accounts.

Part 212 dictates a procedure for financial institutions to determine if the garnished accounts contain federally protected benefits. Moreover, it creates a safe harbor, protecting financial institutions from liability to the garnishing creditor for good-faith compliance with those procedures. To address the potential inconsistency between Part 212 and certain state laws, section 212.9 expressly preempts the application of any state laws that impose liability upon the financial institutions for not freezing the garnished accounts immediately. This preemption is of great importance if and when funds are withdrawn from the accounts after service of the garnishment order, but before the financial institutioncompletes the required account review. Under Part 212, a financial institution must perform this review before taking any other action that may affect funds in the account, regardless of any inconsistent state law requiring the bank to freeze the garnished account immediately.

Prior to taking any other action with respect to the garnishment order, including freezing the garnished account, a financial institution served with an order must perform a review to determine whether the account received protected federal benefit payments during a two-month look-back period. Part 212 requires a separate review for each account of the debtor no later than two business days following receipt of (a) the garnishment order, and (b) sufficient information from the creditor to determine whether the debtor is an account holder. After the financial institution determines the protected amount, that amount is exempt from garnishment.

In conducting the account review, the financial institution can rely upon certain ACH identifiers to determine whether the account has any protected benefit payments deposited to it during the two-month look-back period. If the account contains protected funds, then the financial institution must notify

the account holder of (a) its receipt of the garnishment order, (b) the balance, if any, in the account on the day the review was conducted, (c) the protected amount in the account, and (d) the amount of funds in the account in excess of the protected amount. It also has to ensure that the account holder has full access to the protected amount in the account.

The financial institution cannot charge or collect a garnishment fee from the protected amount, but can do so with respect to funds in excess of the protected amount. If the account has funds in excess of the protected amount, then the financial institution has to follow its normal procedures for handling garnishment orders, including freezing those funds and not allowing their withdrawal.

Part 212 mandates that a financial institution shall not be liable to a creditor that initiates a garnishment proceeding for any penalties under state law, contempt of court or other law for failing to honor a garnishment order because it complied in good faith with Part 212. With the baby boomer generation entering its retirement years, garnishment of accounts in financial institutions will likely increase exponentially. Consequently, financial institutions must familiarize themselves with the obligations and protections of Part 212.

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