



Proposed Regulations on Garnishments and Exempt Funds

Texas Bankers Association
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Webinar • September 9, 2010, 1:30-3:30 CT

Several federal agencies have proposed a regulation that would require banks to research customer accounts before processing a garnishment. This webinar outlines the proposal and its possible effects.

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Under federal law, certain federal payments to individuals are exempt from levy, garnishment, or attachment. However, under state law, banks are often required to freeze accounts in response to a court order. Generally, neither the creditor nor the court knows whether the account contains federal benefit payments. Historically, the banks' perspective has been that it is up to customers to assert any defense they may have that their funds are not subject to levy; banks normally do not review prior deposits to determine the presence of exempt funds before implementing a court ordered freeze unless required by state law.

Why Participate?

If finalized, this proposal will require the bank to perform a "lookback" and to calculate a "protected amount" which shall be exempt from the court ordered freeze. Banks will be required to implement new research processes to identify accounts receiving federal payments and determine whether they are exempt. The changes will be significant and will require as much advance preparation as possible. **The program is about the proposed regulation, not third party claims in general.**

Highlights

- The "Interagency Guidance" proposed in 2007
- Payments exempt from third party claims
- Handling payments deposited via ACH vs. by check
- Identifying exempt payments by ACH batch header fields
- Handling commingled funds; i.e. combined deposits of exempt and non exempt items
- Determining the "protected amount"
- Fee prohibitions
- Required notice to account holder
- Deference to more protective state laws
- Safe harbor for compliance with federal regulation when in conflict with state requirements
- What to do when the U.S. has obtained the garnishment order
- Enforcement by the federal functional regulatory agencies

Presenter

Ken Gollhofer is a principal with Pegasus Educational Services, LLC. Prior to becoming a full time trainer, he was a community banker and then General Counsel for a regional consulting firm for financial institutions. He presents schools and seminars in over 25 states and has served on Compliance Schools sponsored by the OTS and the FDIC.

Audience

Personnel responsible for designing and implementing procedures for processing third party claims against customer funds and bank compliance officers. Attendees should have thorough knowledge of their state's laws and terminology regarding the processing of third party claims. **This program does not encompass the laws of any particular state; questions regarding state law are not addressed.**

CE Applied: 2.5 hrs. CRCM/CFSSP/CPB/CCSR with the ICB
CE Awarded: 2 hrs. with the Texas State Board of Public Accountancy

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