

Dear Colleagues,

As you'll recall, at the last drafting committee meeting there was some dissatisfaction with the limitation of the bank garnishment protections to earnings that are directly deposited. Even after the meeting, some committee members continued to express a desire to find a way to expand the act's protections. Steve and I gave a great deal of thought to the matter and developed an alternative version of the bank garnishment provisions. We have shared the alternative version with the banking community and are cautiously optimistic that it will not generate opposition (in fact, it might be more acceptable than the current version but that remains to be seen).

Because time is short, I am distributing a copy of the alternative version for informational purposes. We are not yet ready to decide whether to substitute it for the provisions in the current draft and we may never reach that point, but I want everyone to be aware of the effort. I am placing the issue on the agenda for our conference call on March 24 so that Steve and I can bring you up to date on the reaction of the bankers. The material immediately below my signature is taken from the cover memo to the bankers and describes the alternative version. After that, you'll find the relevant definitions and substantive provisions of the alternative version.

Bill

Under the alternative version, a bank served with a garnishment order will perform the account review required by federal law and will not have the task of looking for direct deposits during the lookback period. If the account review shows that there are federal benefits in the account, the bank will follow its customary procedures with regard to those benefits and will freeze the balance of funds in the account. If there are no federal benefits, the bank will freeze all the funds in the account. In either event, the bank will send a notification to the account holder advising that there is an exemption for earnings that have already been subjected to garnishment (our term is "ordered deduction"). The notification requirement in the alternative version is essentially the same as the notification requirement in the original version (the difference is in the language describing the exemption and how the account holder claims it).

Under the original version, the bank would receive two communications from an account holder wishing to take advantage of the exception – a notification back to the bank of the intent to do so, followed by a submission of pay records. In the alternative version, we have reduced this to a single step – the submission of pay records. If the bank does not receive pay records from the account holder within 15 days after sending the notification, there is no exempt amount and the bank has no further obligations under our act. If it does receive pay records, it will examine them to determine whether they show that the earnings were subject to an ordered deduction and whether they correspond with a deposit, direct or otherwise, made during the lookback period. The sum of the deposited earnings meeting those two requirements (made during the lookback period and subjected to an ordered deduction) is exempt; the remaining funds are not. The alternative version

contains the expanded safe-harbor protections for banks that we included in the latest draft of the original version.

Boiling it down, the bank's steps are as follows:

1. After performing the federally required account review, send a notification to the account holder.
2. Wait 15 days to see if any pay records are submitted.
3. Examine submitted pay records to determine the exempt amount, if any.

Our great hope is that this simplified procedure will reduce the cost to banks while increasing the protection for account holders.

UNIFORM WAGE GARNISHMENT ACT
Alternative Version - Bank Garnishment Procedures

SECTION 102. DEFINITIONS. In this [act]:

(1) “Account” means an account of an individual maintained by a bank. The term includes a demand, time, savings, passbook, or similar account.

(2) “Account holder” means the individual whose name appears in a bank’s records as the owner of an account.

(3) “Account review” means the process of examining direct deposits in an account to determine if the account contains a federally protected amount or an exempt amount.

(4) “Bank” means an entity engaged in the business of banking. The term includes a bank, savings association, savings and loan association, and a credit union.

(5) “Bank garnishment” means a deduction of funds from an account for payment to another person pursuant to a bank garnishment order.

(6) “Bank garnishment order” means a legally enforceable order to effect a bank garnishment.

(15) “Exempt amount” means the funds in an account that are determined to be exempt from bank garnishment under [Article 3].

(16) “Federally protected amount” means the amount determined by a bank to be exempt from bank garnishment under the Regulation on Garnishment of Accounts Containing Federal Benefit Payments, Code of Federal Regulations, title 31, part 212.3[, as amended].

(20) “Lookback period” means the two-month period that begins on the day preceding the day of an account review and ends on the corresponding day of the month two months earlier or on the last day of the month two months earlier if the corresponding day does not exist.

(21) “Notice of right to garnish federal benefits” means the form provided at Appendix B of the Regulation on Garnishment of Accounts Containing Federal Benefit Payments, Code of Federal Regulations, title 31, part 212.3[, as amended].

(22) “Ordered deduction” means a deduction by an employer from the earnings of an employee for payment to another person under a garnishment, support order, order to recover federal, state, or local taxes, or administrative order issued by a federal [or state] agency. The term does not include a deduction from earnings with the consent of the employee or for current tax obligations.

(24) “Pay record” means a record provided to an employee that includes a statement of the employee’s total earnings on a payday and a listing of the amount and purpose of each deduction, if any.

[ARTICLE] 3

GARNISHMENT OF BANK ACCOUNTS

Reporter’s Notes

This article arose out of concern that debtors would be little better off if the garnishment statute protected part of their wages, but then the creditor could immediately grab the rest by garnishing the debtor’s bank account. Our consumer and banker representatives noted that if that were a possibility it would also discourage employees from participating in the banking system.

The article is structured to follow the federal regulation on garnishment of bank accounts containing federal benefit payments, such as social security and railroad retirement benefits. Garnishment of Accounts Containing Federal Benefit Payments, 31 C.F.R. §§ 212.1 *et seq.* That regulation requires banks to do an “account review” and protects federal benefits deposited into accounts during a “lookback period.” The definitions of those terms in this act follow the definitions in the federal regulations. The procedures of Sections 302 and 303 also closely track the federal regulation. The federal regulation is non-preemptive and specifically recognizes the validity of state laws that are consistent with federal law and more protective. *Id.* at § 212.9(b). As a result, the procedure and concepts here should be both permissible under federal law and familiar to banks.

We have structured the article to closely align with our primary mission, which is regulation of employer garnishment. As a result, the exemption only applies if the account contains earnings that have already been subjected to some type of prior garnishment within the lookback period, including garnishments governed by Article 2. Similarly, the amount protected in this article is closely tied to those earnings.

Thirty-five states currently provide some type of garnishment protection for bank depositors. But the nature and scope of the protection varies considerably between states. *See* National Consumer Law Center, No Fresh Start, at 23-26, 39-40 (2013), available at www.nclc.org/images/pdf/pr-reports/report-no-fresh-start.pdf. This section would provide needed uniformity.

SECTION 301. BANK OBLIGATION WHEN ORDER IS ACCOMPANIED BY NOTICE. If a bank is served with a bank garnishment order from the United States or a state child support enforcement agency which is accompanied by a notice of right to garnish federal benefits, it shall follow its customary procedures for handling the order and has no obligation under this [article].

SECTION 302. FREEZING OF FUNDS; ACCOUNT REVIEW.

(a) If Section 301 does not apply, a bank served with a bank garnishment order shall perform an account review for each account subject to the order not later than two business days after being served with the order.

(b) A bank shall follow its customary procedures for handling a bank garnishment order and has no further obligation under this [article] if the bank determines from an account review that the funds in the account are equal to or less than the federally protected amount.

(c) If subsection (b) does not apply and the account contains a federally protected amount, the bank shall provide the account holder full and customary access to the federally protected amount and shall freeze the remaining funds in the account.

(d) If subsection (b) does not apply and the account does not contain a federally protected amount, the bank shall freeze all funds in the account.

(e) If subsection (c) or (d) applies, the bank shall send the notice required by Section 303(a)(1) or (2).

Reporter's Notes

The timing of the freezing of the account follows the federal regulation. That regulation requires that financial institutions perform the account review prior to taking “any other actions” related to the garnishment that may affect funds in the account. Garnishment of Accounts Containing Federal Benefit Payments, 31 C.F.R. § 212.5(e). Thus, under federal law, as under this act as currently drafted, the account is only frozen after the initial (and quick) account review. The federally protected amount in an account, if any, is never frozen.

The federal regulation permits one exception to the time limit of two business days. It permits an unspecified longer period of time in cases where the financial institution receives “a batch of a large number of orders,” provided that the creditor who initiated the orders permits the longer review period and it is consistent with the terms of the garnishment orders. *Id.* at 212.5(a)(2). The federal regulation provides no guidance on the meaning of a “batch of a large number of orders,” but the exception appears to be designed to address orders that come from government agencies, such as state child support agencies, which might be inclined for comity reasons to permit a longer time period. *See* Ted Teruo Kitada, *The Updated Federal Garnishment Rule*, at 12 (Jan. 7, 2014). Since the exception requires creditor approval, it would be unlikely to apply to debt garnishment orders. Thus, we have not included it in this article.

SECTION 303. NOTICE TO ACCOUNT HOLDER.

(a) Not later than three business days after the account review required by Section 302(a), the bank shall:

(1) if Section 302(c) applies, send to the account holder the notice required by federal law, amended to include the following information:

(A) a statement of the account holder's right to claim an exempt amount under this [article];

(B) an explanation of the process for claiming the amount; and

(C) the beginning date of the lookback period; or

(2) if Section 302(d) applies, send to the account holder a notice that contains the following information:

(A) a statement that the bank has been served with a bank garnishment order;

(B) the date on which the order was served;

(C) a succinct explanation of garnishment;

(D) the account subject to the order;

(E) a statement that the bank is required by state law to freeze funds in the account to satisfy the order and of the amount frozen, if any;

(F) the amount of the garnishment fee, if any, charged to the account;

(G) a statement of the account holder's right to claim an exempt amount under this [article];

(H) an explanation of the process for claiming the amount;

(I) the beginning date of the lookback period;

(J) the right of the account holder to consult an attorney or legal aid service;

(K) the name of the creditor and, if contact information is included in the bank garnishment order, the means of contacting the creditor; and

(L) the means of contacting the bank.

(b) A notice complies with subsection (a)(1)(A) through (C) or subsection (a)(2)(G) through (I) if it states substantially as follows:

Are any earnings from work that were deposited into my account protected from garnishment?

Earnings from work that have been deposited into your account are exempt from garnishment if:

(1) the company you work for deducted money from the earnings to pay a creditor, and

(2) the deposit was made on or after [bank to insert beginning date of lookback period.

[Bank to add the following sentence if the notice is issued pursuant to subsection (a)(1): Any amounts protected from garnishment for this reason would be in addition to amounts protected from garnishment because they are federal benefit payments.]

What do I have to do to show that funds in my account are protected from garnishment?

To claim this protection, you must send us copies of pay records for deposits made on or after [bank to insert beginning date of lookback period]. The pay records must show that the deposits were made after [bank to insert beginning date of lookback period] and that money was deducted to pay a creditor.

We must receive the copies of your pay records not later than [15] business days after the date this notice was sent to you. We will review the pay records to determine if any of the amounts in your account are protected from garnishment.

If you do not send us your pay records, your funds will remain frozen and may be paid to your creditor. If you send us your pay records, we may unfreeze some or all of the funds and make them available for your use.

Reporter's Notes

This section closely follows the notice requirements contained in the federal regulation. Garnishment of Accounts Containing Federal Benefit Payments, 31 C.F.R. § 212.7. This will make it easy for banks to comply.

For subsection (a)(1), banks are directed to use the federal notice form that is included as Appendix A to the federal regulation. The federal rules explicitly permit the form to be amended to integrate information about a state's bank garnishment rules and protections. *Id.* at § 212.7(d).

Subsection (a)(2) is required in situations where federal law does not require the federal form to be sent (because there is no federally protected amount). But the requirements of (a)(2) closely follow the requirements of the federal form, omitting only the parts that are specific to the federally protected amount. The general idea is that banks will still be able to comply easily by copying the federal form, while omitting a paragraph or two to eliminate the references to the federally protected amount and adding a paragraph or two to integrate the state-based information.

To avoid confusion about our intention, we have copied the federal format even in circumstances where our own preferences (and normal Uniform Law Commission practice) might ordinarily push us in a different direction. For example:

- Subparagraph (a)(2)(C) calls for a “succinct explanation” of garnishment. Ordinarily, we would be tempted to say a bit more to flesh out the meaning of “succinct.” But we left the statement as it was because (a) that's how it appears in the federal regulation; (b) the form that's a part of the federal regulation provides a very good succinct explanation of garnishment so using precisely the same language in the act will permit banks to copy that part of the form with confidence that it will satisfy this requirement; and (c) if we expanded on the language in this subparagraph, it would call into question our

treatment of other subparagraphs where we did not change the federal language.

- The notice form of subsection (b) is in a question-and-answer format. WE may not have done that otherwise, but the idea here is that this language can be inserted into the federal form. The federal form uses a question-and-answer format.

SECTION 304. PROCESS FOR CLAIMING EXEMPT AMOUNT.

(a) An account holder may claim an exempt amount by sending the bank with which the account is maintained pay records that relate to deposits made during the lookback period.

(b) There is no exempt amount if the bank fails to receive the pay records required by subsection (a) not later than [15] business days after the bank sends the notice required by Section 303(a)(1) or (2).

(c) If there is no exempt amount, the bank shall follow its customary procedures for handling the bank garnishment order and has no further obligations under this [article].

SECTION 305. BANK'S DETERMINATION OF EXEMPT AMOUNT; ACCOUNT HOLDER'S RIGHT TO EXEMPT AMOUNT.

(a) If a bank receives the pay records required by Section 304(a) within the time limit of Section 304(b), the bank shall within [five] business days after receipt examine each pay record to determine if:

(1) the pay record reports an ordered deduction; and

(2) a deposit was made during the lookback period that corresponds with the amount indicated by the pay record.

(b) The exempt amount is equal to the sum of all deposits reported on pay records that satisfy subsections (a)(1) and (2).

(c) If a bank determines that an account contains an exempt amount, the bank shall within [two] business days release the freeze required by Section 302(c) or (d) and provide the account holder with full and customary access to that amount.

(d) An account holder is entitled to an exempt amount in addition to any federally protected amount.

SECTION 306. FUNDS DEPOSITED OR CREDITED TO ACCOUNT AFTER ACCOUNT REVIEW. A bank garnishment order does not apply to funds deposited or credited to an account after the date of an account review and the bank must not take any action with respect to these funds unless it is served with a new or different bank garnishment order.

SECTION 307. SAFE HARBORS.

(a) A bank's good-faith determination of an exempt amount is not subject to review.

(b) A bank that complies in good faith with this [article] shall not be liable:

(1) to a creditor that serves a bank garnishment order on the bank for failing to honor the order with respect to the amount the bank determines to be the exempt amount;

(2) to an account holder for lack of access to frozen funds or customary clearing and settling adjustments caused by the freezing of funds;

(3) for any penalties under law of this state other than this [act] for failing to honor the bank garnishment order; or

(4) for bona fide errors that occur in complying with this [article] despite reasonable procedures maintained by the bank to prevent such errors.

Reporter's Notes

The provisions of this section closely track the protections provided by federal law to banks dealing with federal benefit payments. 31 C.F.R. § 212.10.