CU policy PRO Newsletter

June 2013

Dear CU PolicyPro Clients,

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Content FAQ

Q: What changes were made in the final rule that are effective on June 28th?

A: The most significant change is related to the definition of “garnishment order” which has been revised to include a levy issued by a state, state agency, or municipality. Another revision includes an exception to the prohibition against charging or collecting a garnishment fee after the date of account review, if funds other than benefit payments are deposited to the account at any time within 5 business days following the date of the account review. There was also a revision to require that the credit union send a notice to an account holder only where the credit union has established a protected amount and there are funds in the account in excess of the protected amount. Lastly, there were revisions related to the definition of “benefit payment” and “protected amount”.

Q: What levies are now subject to the final rule?

A: The Agencies revised the definition of a garnishment order in the rulemaking to include levies and orders issued by a State or State agency or municipality. Tax levies issued by the Internal Revenue Service are not subject to the final rule.

For additional FAQs from the Treasury Department on Garnishment Final Rule Frequently Asked Questions visit the Financial Management Services FAQs.

Technical FAQ

Q: Is there anything in CU PolicyPro that I can use to track when our board needs to review our policies?

A: There is a user defined date field available for “Board Approved Date” at the policy level which can be used to help keep track of which policies need to be reviewed.

In the Working Manual, under REPORTS, is a report called the Working Manual Report. This will show you a listing of all of the policies in the Working Manual, and various dates associated with each policy. The Board Approved Date is part of this report, and you can sort on the Board Approved date to see which policies have been most recently (or least recently) reviewed by the board. You can print the report as well and use this to guide you as to which policies are in need of review by the board.

For more frequently asked questions, visit The CU PolicyPro FAQs page which includes all FAQs featured in previous newsletters, as well as many others!

Content Update Reminder

This is a reminder that a new content update was released this month, which included updates to twenty seven policies.

The full text of the updated policies as well as the tracked changes version of each update can be found in the LIBRARY section of the online manual. It is important to note that when updates are made to the Master Manual, these updates **do not automatically go into your Working Manual.** We do not want to take the chance of overwriting your content, or putting in content that may not apply to your credit union.

Click here for more information on the update, including a summary of the policies updated and full instructions on how to incorporate the updates into your Working Manual.

Monthly OPS Notes Release: Garnishment of Accounts Containing Federal Benefit Payments

In May of 2011 the Department of Veterans Affairs, Office of Personnel Management, Railroad Retirement Board, Social Security Administration, and the Treasury Department (the Agencies) established garnishment protections for members receiving Federal benefit payments. On May 29, 2013 the Agencies amended Title 31 Part 212. The amended rule for the Garnishment of Accounts Containing Federal Benefit Payments addresses concerns associated with the garnishment of certain exempt Federal benefit payments, including:

- Social Security benefits,
- Supplemental Security Income payments,
- VA benefits,
- Federal Railroad retirement benefits,
- Federal Railroad unemployment and sickness benefits,
- Civil Service Retirement System benefits, and
- Federal Employees Retirement System benefits.

The amended rule includes several significant changes to a credit unions review and treatment of garnishment orders. Some of the most significant changes occurred with revisions to the definition contained in the rule:

- The definition of **benefit payment** has been revised to mean a direct deposit payment that includes not only an ‘‘XX’’ in positions 54 and 55 of the Company Entry Description field for the Automatic Clearing House (ACH) transaction, but also the number ‘‘2’’ encoded in the Originator Status Code field of the Batch Header Record of the direct deposit entry.

- The definition of **garnishment order** and **order** are revised to include a levy, and also orders issued by States and municipalities, as well as orders to freeze assets. In the past federal benefit payments have not been protected from these orders, but going forward credit unions will need to follow the Garnishment of Federal Benefit Payments Rule when they receive these orders.

  The official definition now states that:

  > *A Garnishment order means a writ, order, notice, summons, judgment, levy or similar written instruction issued by a court, a State or State agency, a municipality or municipal corporation, or a State child support enforcement agency, including a lien arising by operation of law for overdue child support or an order to freeze the assets in an account, to effect a garnishment against a debtor.*

  The Agencies also removed the phrase “to enforce a money judgment” from the definition of “garnishment” to ensure that the rule is not limited to civil money judgments.

- The definition of **protected amount** now refers to the balance in an account when the account review is performed. This change means that the balance will include intraday items such as ATM or cash withdrawals. It is important to note that Credit Unions should not use the Regulation CC available funds balance when determining garnishment amounts, but should be aware that the requirement to provide access to the protected amount is subject to the usual restrictions on funds availability under Regulation CC. In addition, the Agencies do not intend that any line of credit associated with the account be considered a part of the “account balance”.

The garnishment of federal benefit payments rule establishes procedures that credit unions must follow when they receive a

garnishment order for a member. When a credit union receives a garnishment order they must first determine if the United States or a State child support enforcement agency is the plaintiff that obtained the order and if a Notice of Right to Garnish Federal Benefits is attached or included. If so, the credit union follows its customary procedures for handling the order.

If not, the credit union must review the account history for the prior two-month period to determine whether, during this “lookback period,” one or more exempt benefit payments were directly deposited through Automated Clearing House (ACH) to the members account. The protected benefit payments deposited through ACH during the “lookback period” are exempt from garnishment. The Treasury Department has provided Guidelines for Garnishment of Accounts Containing Federal Benefit Payments that can assist you in determining how to calculate the protected balance in a members account.

Based on the account review requirements the Agencies retained the provision that funds transferred from one account to another are excluded from the account review and the establishment of the protected amount. As a part of the revision the Agencies considered this provision and stated that they understand that exempt funds may be transferred to other accounts following the initial deposit; however, requiring the examination of all account transfers after a Federal benefit payment has been identified would impose a significant burden on financial institutions, since they would not be able to rely on a transaction indicator, like the ACH identifier, in searching account histories to determine whether transferred funds should be classified as exempt.

Commentary in the final rules also specifically addresses the credit union structure of sub-accounts in conjunction with the account review and garnishment. The Agencies stated that the requirement to perform an account review applies to the deposit account to which a Federal payment is routed and credited. In cases where a payment recipient is assigned a member number that doesn't represent an account per se, but that serves as a “prefix” for individual sub accounts, it is the individual sub account where the Federal benefit payment was credited (and not the “master account”) that is subject to the account review and lookback.

It will be important to note that the notice requirement for garnishment of accounts with Federal benefit payments has also been amended. Credit unions should now issue the required notice when:

1. A benefit agency deposited a benefit payment into an account during the lookback period;
2. The balance in the account on the date of account review was above zero dollars and the financial institution established a protected amount; **and**
3. There are funds in the account in excess of the protected amount.

The final change from the amended rule allows a credit union to charge a garnishment fee after the date of account review; however the credit union may not charge or collect a garnishment fee against a protected amount. The Agencies decided to amend the rule to provide credit unions with an opportunity, for 5 days following the account review, to impose a garnishment fee in the event that non-protected funds become available following the account review. If funds other than a benefit payment are deposited to an account during the 5 business days following the date of the account review, the financial institution may charge or collect a fee from the additional funds.

The new Garnishment of Accounts Containing Federal Benefit Payments rule is effective June 28, 2013.

This edition of OPS NOTES was prepared by the Michigan Credit Union League.

Questions?

If you have any questions regarding the CU PolicyPro content, or questions on how to use the system, please contact hrsupport@cusolutionsgroup.com.

If this information was forwarded to you, and you'd like to be on the distribution list to receive information and updates related to CU PolicyPro, contact hrsupport@cusolutionsgroup.com.

Thanks and have a great week!