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Statement of

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Office of Thrift Supervision

concerning

A Review of Bank Treatment of Social Security Benefits

before the

Committee on Finance
United States Senate

September 20, 2007

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Department of the Treasury

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I. Introduction

Good morning Chairman Baucus, Ranking Member Grassley, and Members of the Committee. Thank you for the opportunity to present the views of the Office of Thrift Supervision (OTS) on issues related to financial institution's treatment of the garnishment of federal benefits.

In my testimony today, I will describe the various types of federal benefits that are exempt from garnishment under federal law. I will also address the efforts of the federal banking agencies (FBAs) to finalize Interagency Guidance on Garnishments to address current issues involving customer accounts that receive federal benefits, and the OTS's advance notice of proposed rulemaking (ANPR) on unfair or deceptive acts or practices. I appreciate the opportunity to appear today on behalf of the Director of the Office of Thrift Supervision and we are most appreciative of the efforts and attention of your staff on the issues we will discuss today.

II. Background

Social Security benefits, Supplemental Security Income benefits, Veterans' benefits, Federal Civil Service retirement benefits, and Federal Railroad retirement benefits often constitute an important part, and sometimes all of an individual's income. Social security recipients are the largest group to receive government payments.¹ According to the Social Security Administration's Master Beneficiary Record from July 2007, over 54 million beneficiaries received Social Security, Supplemental Security Income or both totaling more than \$51 billion. Nine out of ten individuals age 65 and older receive Social Security benefits, which represents 41 percent of their total income.

According to the Financial Management Service (FMS), a bureau of the United States Treasury Department, the government mails more than 150 million benefit checks annually, at a cost of about \$120 million more than the cost of direct deposit. Today,

¹ As of 6/30/07, the Department of Veterans Affairs reported that 2.8 million veterans received VA benefits (including disability compensation and pension).



about 80 percent of federal benefit payments are made by direct deposit. That means more than 12 million Americans still get their benefit payments through the United States Postal Service. Of these 12 million Americans, FMS estimates that about 4.5 million don't have bank or credit union accounts.

Federal law currently provides that the following types of federal payments are exempt from garnishment:

- Old-Age, Survivors, and Disability Insurance (OASDI) benefits (42 U.S.C. § 407) and Supplemental Security Income (SSI) paid by the Social Security Administration (42 U.S.C. § 1381);
- Veterans benefits paid by the Department of Veterans Affairs (38 U.S.C. § 5301);
- Federal Civil Service pension benefits (5 U.S.C. § 8346); and
- Federal Railroad Retirement benefits (45 U.S.C. § 231m).

These protections from garnishment are subject to certain exceptions, such as garnishment orders relating to alimony or child support payments (42 U.S.C. § 659). In addition, state courts issue garnishment orders and may provide that financial institutions are liable for any funds that are withdrawn by a consumer after the institution has received a garnishment order for a particular account. As a result, financial institutions receiving these orders often freeze accounts until the matter can be resolved by the courts.

The OTS issued guidance to savings associations on the issue of garnishment of federal benefit payments on September 14, 1999. The guidance, OTS Transmittal No. TR-222, involves a Treasury Department notice concerning Electronic Transfer Accounts, or ETA accounts (64 Fed. Reg. 38510). The notice advised institutions that most federal benefit payments deposited to an account at a financial institution are protected from attachment and the claims of judgment creditors by federal law, subject to certain limited exceptions. The notice also informed savings associations of the requirements for ETA accounts including consumer disclosures that covered federal benefit payments are protected from attachment under federal law (again, with limited exceptions such as child support). The Treasury notice was limited to ETA accounts.

III. Industry Practices and Consumer Complaints

Notwithstanding existing federal law that protects certain federal benefits from garnishment, attachment and levy, as noted above, state courts also issue garnishment orders and may impose liability on financial institutions for funds withdrawn by a consumer after an institution receives the order. As a result, financial institutions



frequently freeze accounts upon receipt of a court order to garnish, while they contact their customer and the relevant issues are resolved.

Federal laws that protect federal benefits listed above do not specifically prohibit a financial institution from freezing an individual's account during the period when a garnishment order is challenged by the recipient of the federal benefits. However, the OTS believes that there are best practices that institutions should follow when they receive a garnishment order for a customer that deposits protected federal benefit payments in an account at an institution. Pursuant to this, the FBAs are discussing finalizing proposed interagency guidance for public comment that identifies best practices in this area. Many of the issues included in the draft guidance relate to questions, addressed below, for today's hearing.

While we have received few consumer complaints regarding institution abuses with respect to federally protected benefits, we understand that this is a real concern for many Americans. As such, we will work with the institutions that we regulate to identify and pursue sound best practices in this area.

IV. Solutions and Best Practices

You have asked whether financial institutions should determine, before freezing, attaching, or garnishing an account pursuant to a state court order, whether funds in the account include electronically deposited protected federal benefits. The proposed interagency guidance recently issued by the federal banking agencies for public comment encourages institutions to determine, as feasible, if an account contains only exempt federal benefit funds, such as Social Security or Veterans benefits. We have solicited comment on this practice and will carefully consider all comments received on the issue.

You also ask whether financial institutions should be allowed to charge fees against protected federal benefits electronically deposited in a bank account that has been frozen, attached or garnished. Specifically, you ask about fees for implementing an account freeze, attachment or garnishment; for restoring frozen funds; or for returning checks or debits because there are insufficient funds in the account resulting from the freeze, attachment or garnishment. The proposed interagency guidance indicates that it is a best practice to minimize the cost to a consumer when an account containing exempt federal benefit funds is frozen. This would involve, for example, refraining from imposing overdraft, NSF, or similar fees while the account is frozen or refunding such fees when a freeze has been lifted. We will carefully consider all comments received on the issue.

Finally, you inquire whether the OTS has the authority to issue guidance and/or regulations that would require banks to identify funds protected by Federal law and exempt those funds from a freeze and subsequent garnishment or attachment, rather than relying on the account holder to seek such protection in court.



The FBAs have authority to provide guidance to the institutions we regulate regarding supervisory expectations relating to compliance with federal law or regulations. The proposed guidance on garnishments is an example of our authority in this area. The OTS stands ready to work with the other FBAs and with other federal authorities responsible for the provision of the various protected federal benefits to provide greater clarity to the institutions we regulate regarding practices such as account freezes and related fees. These issues impact millions of Americans, including those with modest incomes who rely heavily on their federal benefits. OTS is committed to ensuring that customers of the nation's savings associations receive the protections intended by federal law.

Pursuant to the proposed interagency guidance, several best practices address the issue of identifying federally protected funds and exempting those funds from a freeze and subsequent garnishment or attachment. These practices include:

- Prompt notification to the creditor, collection agent, or relevant state court that the account contains exempt funds in cases in which the financial institution is aware that the account contains exempt funds.
- Exercising flexibility to avoid placing a freeze on an account that contains only exempt funds if that is permitted by state law or court order.
- Allowing consumers access to a portion of the account equivalent to the documented amount of exempt federal benefit funds as soon as the financial institution determines that none of the exceptions to the federal protections against garnishment of exempt federal benefit funds are triggered by the garnishment order.
- Lifting the freeze on an account as soon as permissible under state law.

The federal banking agencies are aware of the hardship that recipients of exempt federal benefit funds may face when a freeze is placed on their accounts. Proposed interagency guidance issued by the FBAs would minimize the hardship by encouraging institutions to have policies and procedures in place to address garnishment orders. This includes procedures designed to expedite notice to the consumer of the garnishment process and release funds to the consumer as quickly as possible. Toward that end, the proposed guidance encourages institutions to:

- provide the consumer with information about what types of federal benefits are exempt, including Social Security Act and Veterans benefits, in order to aid the consumer in asserting federal protections; and
- offer consumers segregated accounts that contain only federal benefits funds without commingling of other funds.



Again, we are soliciting comment on these practices pursuant to the proposed interagency guidance.

V. OTS Proposed Rulemaking on Unfair or Deceptive Acts or Practices

While the proposed Interagency Statement on Garnishment currently under review would address best practices, the OTS is also addressing related issues on a separate track. On August 6, 2007, OTS issued an ANPR on Unfair or Deceptive Acts or Practices (72 FR 43570). The ANPR solicits comment on a wide variety of acts or practices that the OTS could consider prohibiting as unfair or deceptive under section 5 of the Federal Trade Commission (FTC) Act. These include issues relating to the practice of freezing accounts upon receipt of court orders to garnish an account. The comment period on the ANPR ends November 5, 2007.

Pursuant to the ANPR, the OTS solicits comment on whether we should use our authority to promulgate rules under the FTC Act and the Home Owners' Loan Act to issue additional UDAP rules; identifies existing prohibited practices; solicits input on various approaches the OTS could consider in a UDAP rule, including the FTC approach, approaches taken by various states through anti-predatory lending laws, and various models other federal agencies have taken to define and prohibit unfair or abusive lending practices. The ANPR also solicits comment on the principles the OTS should consider in determining whether a product or practice is unfair or deceptive and whether the agency should consider various practices unfair or deceptive.

Finally, we recognize that the financial services industry and consumers benefit from consistent rules and guidance in the oversight of similar areas and activities. The FBAs have adopted uniform or similar rules in many areas, and we hope to solicit comment in the ANPR regarding the application of consistent interagency UDAP standards among the FBAs. We believe the comments we receive will be helpful as OTS reviews this important issue. We plan to share comments on this subject and all others we receive in connection with the ANPR with the other FBAs toward the goal of interagency consistency.

VI. Conclusion and Recommendations

The OTS is aware that there are many Americans who heavily rely upon federal benefit payments as their primary or sole source of income. OTS is committed to working with policy makers, consumer advocacy organizations, the federal agencies responsible for administering protected benefit payments, the banking industry, and others on this important issue. Clear statutory requirements and communication of



supervisory expectations from the banking agencies help to ensure that federal consumer protections on garnishments and related practices are followed and fully implemented.

To achieve this objective, the OTS strongly supports continued discussion by the appropriate federal banking agencies and clear interpretations by responsible federal agencies that administer protected federal benefits on interpreting statutes that preclude garnishments, levies and attachments. OTS also recommends that policy makers reach out to affected parties to consider whether to undertake legislation that would provide financial institutions with protections from liability for failing to comply with a state court order, provided the institution acted responsibly under the affected statutes when trying to maximize access to funds for individuals who receive protected benefits.

The OTS is aware that compliance with prohibitions in the Social Security Act and other federal benefits can be challenging for financial institutions. There are many nuances to the application of existing precedent and exceptions to the garnishment of federal benefits. We are hopeful that the comments we receive in response to the proposed interagency guidance and in conjunction with our pending ANPR may provide useful information to policymakers and regulators in this area. Please be assured that Director Reich and OTS stand ready to discuss challenges, address questions and identify steps that policymakers and regulators can take to address this important consumer protection issue.

Thank you, Mr. Chairman, Ranking Member Grassley, and Members of the Committee for the opportunity to present the views of the OTS. I look forward to your questions.