

SUBJECT: Non-Earnings Garnishment

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INTRODUCTION

This release applies to all credit unions, state and federal. It describes federal rules that require credit unions to follow specific procedures when they get a garnishment order or summons against an account holder who has received certain types of federal benefit payments by direct deposit. It also describes Wisconsin law on the garnishment of credit union members’ accounts.

EXECUTIVE SUMMARY

Credit unions are generally familiar with “earnings” or “wage” garnishments – where a creditor tries to collect on a judgment it has against a debtor by intercepting some of that person’s wages. Credit union collections staff sometimes must garnish a debtor’s wages, or a creditor might garnish a credit union employee’s wages.

But creditors can also try to seize other property the debtor owns, including the debtor’s credit union accounts. This is called a “non-earnings” or “non-wage” garnishment. Non-earnings garnishments have their own rules, limits and exemptions.

This release summarizes federal and state garnishment laws. Always review both set of laws. They may both apply, and their requirements are different.

Federal Rules

With every garnishment summons or order a credit union receives, it should first go through the following steps to determine whether the account includes directly deposited federal benefits.

Step 1: A credit union must first determine whether it has received a garnishment summons or garnishment order (as defined in the rules.) If so, then it must examine the order to determine whether the United States or a state child support enforcement agency has attached or included a “Notice of Right to Garnish Federal Benefits.” If so, then the credit union does not need to take further steps under the federal rules. It should follow its usual procedures for handling the garnishment.

Step 2: If no “Notice of Right to Garnish Federal Benefits” is provided with the garnishment order or summons, then the credit union has two business days to review the account history for the last two months (called the “lookback period”) to see whether exempt benefit payments were directly deposited to the account.

Step 3: If a benefit payment was deposited into the account during the lookback period, then the credit union must let the account holder have access to the “protected amount.” That term is defined in the rules, and it means the lesser of:

- The sum of all benefit payments posted to an account between the close of business on the beginning date of the lookback period and the open of business on the ending date of the lookback period, or
- The balance in an account when the account review is performed.

Step 4: If a benefit payment was deposited into the account during the lookback period, then within three business days from the date of account review, the credit union must notify the account holder that it has received a garnishment order or summons. The notice is not needed if the balance in the account is zero or negative on the date of account review.

Credit unions may choose to use a model notice from the rules. Using the model notice is optional, but The League strongly encourages it, since the rules say that if the credit union uses the model notice it will be deemed to be in compliance with notice requirements. A model notice is attached as an exhibit to this release.

In addition to these steps, the federal rules say that the credit union may not collect a garnishment fee from a protected amount. The credit union may only charge a garnishment fee up to the amount of other funds deposited up to five business days after the account review.

Finally, the federal rules require a credit union to maintain records of account activity and actions taken in handling a garnishment order or summons (to demonstrate compliance with these rules) for at least two years after it gets the garnishment order or summons.

Wisconsin Law

After a creditor gets a judgment against a debtor, the creditor can start a garnishment action by filing a Garnishment Summons and Complaint with the court. This is served on the debtor (referred to as the defendant in the pleadings) and on a third party – called a “garnishee defendant” – that may be holding money or other assets belonging to the debtor. Often, the garnishee defendant is a financial institution, and the creditor wants to garnish the debtor’s accounts.

This release focuses on how credit unions should respond when they receive a summons from someone trying to garnish a member’s account(s). Here are some of the key points:

- Once the credit union is served with a non-earnings garnishment, it is critical to file a timely answer. If the credit union fails to do so, the court can declare that the credit union is liable for the debt, meaning the credit union would have to pay it and then try to collect from the debtor.
- The amount that is in the account when the garnishment complaint is served on the credit union is the amount that is subject to the garnishment, not money that is deposited later.
- Certain funds may not be garnished, such as Social Security benefits or child support. If the member has protected benefits deposited into his/her account, the credit union should ask its attorney for an opinion on what funds should/should not be subject to the garnishment.
- Under state law, an aggregate of \$5,000 in a consumer’s depository accounts is exempt from garnishment. The exemption only applies to an account that is for the debtor’s personal use and is not used as a business account.
- The garnishment will only reach accounts held by the person or entity named as the debtor/defendant in the garnishment pleadings.
- If any party to a joint account could withdraw the funds from it, then the entire balance can be garnished by a creditor of any account holder.
- If the credit union has a lien on the shares on deposit, consult with the credit union’s attorney about the status of your lien on the account. The answer should state any defense or right to set-off that the credit union claims against the member’s funds.
- The credit union’s answer will show the “total amount subject to garnishment.” The credit union can pay the amount to the clerk of court before a hearing. The creditor can also request that the funds be turned over to the clerk. Unless the creditor requests otherwise, the credit union can instead hold the amounts pending until a court determines what should be done with them.

FEDERAL GARNISHMENT RULES

Under federal regulations, credit unions must follow specific procedures when they get a garnishment order or summons against an account holder who has received certain types of federal benefit payments by direct deposit. Credit unions must determine the sum of such deposits during a two-month “lookback” period and be sure that the account holder has access to that amount or to the current balance of the account, whichever is less.

After completing the steps outlined in this portion of the release, please review the material that explains Wisconsin law on non-earnings garnishments. Both sets of laws may apply, and their requirements are different.

Federal resources

The U.S. Treasury's "*Guidelines for Garnishment of Accounts Containing Federal Benefit Payments*" summarizes the requirements for financial institutions when a garnishment order is received for an account into which federal benefit payments have been directly deposited.

Treasury also offers a set of "*frequently asked questions.*"

Background

Federal law protects many kinds of benefits from garnishment and the claims of creditors with judgments:

- Social Security benefits,
- Supplemental Security Income benefits,
- Veterans Administration benefits,
- Federal Railroad retirement benefits,
- Federal Railroad unemployment and sickness benefits,
- Civil Service Retirement System benefits, and
- Federal Employee Retirement System benefits.

The funds are protected even after benefits are deposited to a person's credit union account. Nevertheless, creditors and collectors can often get court orders garnishing funds in a member's account. To comply with garnishment procedures, credit unions may need to temporarily freeze accounts or deposit the funds with the court. Although state law lets the account's owner(s) assert their rights to protect the money, the funds may be frozen until the court decides whether the funds can or cannot be garnished, causing significant hardship.

These federal rules are meant to prevent such hardships by stopping credit unions and other financial institutions from limiting access to certain funds.

With every garnishment summons or order a credit union receives, it should follow the following steps to determine whether the account includes directly deposited federal benefits. The credit union can then take the steps explained in the second half of this release, under the heading "Wisconsin Law."

Step 1: Look for a "Notice of Right to Garnish Federal Benefits"

A credit union must first determine whether it has received a garnishment summons or garnishment order (as defined below). If so, then it must examine the order to determine whether the United States or a state child support enforcement agency has attached or included a "Notice of Right to Garnish Federal Benefits." If so, then the credit union does not need to take further steps under the federal rules. It should follow its usual procedures for handling the garnishment (as explained in the second half of this release)

The rules require the United States, or a state child support enforcement agency, to certify its right to garnish federal benefits by attaching or including the notice (on official organizational letterhead) with a garnishment order or summons. The rules include a model notice, which says:

Date:

[Garnishment order or summons Number]/[State Case ID]: _____

The attached garnishment order or summons was [obtained by the United States, pursuant to the Federal Debt Collection Procedures Act, 28 U.S.C. § 3205, or the Mandatory Victims Restitution Act, 18 U.S.C. § 3613, or other Federal statute]/ [issued by (name of the State child support enforcement agency), pursuant to authority to attach or seize assets of noncustodial parents in credit unions in the State of (name of State), 42 U.S.C. § 666].

Accordingly, the garnishee is hereby notified that the procedures established under 31 CFR Part 212 for identifying and protecting Federal benefits deposited to accounts at credit unions do not apply to this garnishment order or summons. The garnishee should comply with the terms of this order, including instructions for withholding and retaining any funds deposited to any account(s) covered by this order, pending further order of [name of the court]/[the name of the State child support enforcement agency].

“Garnishment Order” definition

The rules define the term “garnishment order” broadly, as 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, a Wisconsin Department of Revenue tax levy, or an order to freeze the assets in an account. IRS or other federal levies are not subject to the federal garnishment rules.

“Garnishment orders” and tax levies

Given the broad definition of “garnishment order,” it is clear that levies issued by state revenue departments are subject to these federal garnishment rules.

However, the term “garnishment order” as defined in the rule does not include an IRS levy. As a result, the procedures that credit unions must follow under the federal rules do not apply to IRS levies. For example, an IRS levy may be executed against all funds in an account, and it does not have to be accompanied by a “Notice of Right to Garnish Federal Benefits.” The credit union could be liable if it fails to honor the levy. However, nothing in the rule would stop an account holder from challenging in court the IRS’s right to garnish benefit payments deposited to an account.

For general information on tax levies, see The League’s *ii Release No. 0136*, as well as the *America’s Credit Unions e-Guide on “IRS Summons and Levies.”*

Step 2: Within two days, review two months of account history

If no “Notice of Right to Garnish Federal Benefits” is provided with the garnishment order or summons, then the credit union has two business days to review the account history for the last two months (called the “lookback period”) to see whether exempt benefit payments were directly deposited to the account.

If no benefit payments were deposited to the account during the lookback period, then the credit union does not need to take further steps under these federal rules. It should follow its usual procedures for handling the garnishment (as explained in the second half of this release).

Definitions

To review the account history correctly, the credit union needs to understand how the rules define certain terms.

“*Account holder*” means a natural person against whom a garnishment order or summons is issued and whose name appears in the credit union’s records as the direct or beneficial owner of an account.

“*Account*” means any account at a credit union that an electronic payment may be directly routed to.

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 credit union has a primary account number with corresponding sub-accounts, it is the individual “sub account” (and not the “master account”) that is subject to the account review.

The rules require a separate account review for each account owned by a person the garnishment is against, even if that person has more than one account at the credit union. For example, if someone maintains two accounts, and payments issued under two different federal benefit programs are directly deposited to each account, both accounts must be separately reviewed and a separate protected amount must be calculated and applied for each account.

The term “account” does not include an account that a benefit payment is later transferred to after it is first directly deposited to another account. Requiring the credit union to examine all account transfers after a federal benefit payment has been identified would impose a significant burden, federal regulators have said. They add, however, that nothing in the rule restricts or prevents an individual from asserting that the benefit retained its exempt status through the transfer to the other account and would not be subject to garnishment.

“*Benefit payment*” means direct deposits that include an “XX” in positions 54 and 55 of the Company Entry Description field and the number “2” encoded in the Originator Status field, both in the Batch Header Record of the direct deposit entry. Exhibit C to this release is a table, from the U.S. Treasury’s “Guidelines for Garnishment of Accounts Containing Federal Benefits,” that identifies which payments are exempt, the Company Entry Description in the ACH Batch Header Record, and a description of the payment type.

Because benefit recipients can cash checks rather than deposit them and take the risk that the funds will be garnished, credit unions do not need to examine accounts to see whether benefit checks have been deposited, just direct deposits.

A benefit payment that is directly deposited to one account and then transferred to another account is not treated as a benefit payment for purposes of the second account. For example, if a benefit payment is directly deposited to a member's checking account and then transferred to that member's savings account, the credit union should treat the payment as a benefit payment for purposes of the checking account, but not for purposes of the savings account.

"Lookback period" means the two-month period that (i) begins on the day before the date of account review and (ii) ends on the corresponding date of the month two months earlier (or on the last date of the month two months earlier if the corresponding date does not exist). For example, the lookback period that begins on November 15 would end on September 15. On the other hand, the lookback period that begins on April 30 would end on February 28 (or 29 in a leap year), to reflect the fact that there are not 30 days in February.

The regulators have provided examples to help illustrate how the lookback period is defined. The examples are attached to this release as Exhibit A.

Deadline

Generally, the account review must be finished within two business days after the garnishment is received. There are two exceptions:

- If the garnishment papers do not have enough information to determine whether the debtor holds an account, the deadline is extended until the credit union can get the information.
- If the credit union is served a batch of a large number of orders, the deadline is extended to whatever date is permitted under the terms of the garnishment order or summons. This only applies to a single batch with multiple garnishment order or summons; the credit union cannot extend the deadline simply because it receives a large number of garnishments at one time.

Irrelevant issues

The rules list several factors that are not relevant when the credit union does its account review:

- It does not matter whether exempt benefits have been mingled with non non-exempt funds.
 - It does not matter whether there is a co-owner on the account; the rules still apply.
- The fact that benefit payments to multiple beneficiaries may have been deposited to an account during the lookback period is not relevant, as could happen if an individual gets payments on behalf of several beneficiaries.
- Any instructions or information in a garnishment order or summons are not relevant, including information about the nature of the debt or obligation underlying the order.

Multiple garnishments

If the credit union is later served with a new or different garnishment order or summons against the same account, it must do a new account review. (However, if the same garnishment order or summons is served on the credit union again, it does not have to do another account review.)

"Account balance"

The "account balance" when the review is performed includes intraday items such as ATM or cash withdrawals. Credit unions should not use the Reg. CC available funds balance when determining the account balance, nor should any line of credit associated with the account be considered.

Step 3: Let account holder access "protected amount"

If a benefit payment was deposited into the account during the lookback period, then the credit union must let the account holder have access to the "protected amount." That term is defined in the rules, and it means the lesser of:

- The sum of all benefit payments posted to an account between the close of business on the beginning date of the lookback period and the open of business on the ending date of the lookback period, or
- The balance in an account when the account review is performed.

The regulators have provided examples to help illustrate how the "protected amount" is calculated. The examples are attached as Exhibit A to this release.

A credit union cannot freeze or otherwise restrict the account holder's access to the protected amount. It must give the account holder "full and customary access" to the protected amount. Regulators say they used this broad language to ensure that the account holder continues to have the same degree of access to the protected funds that he/she had before the garnishment.

The protection against freezing funds is automatic. A credit union cannot require an account holder to make a claim for the protected amount or to do anything else before he/she can access the funds.

Under the rules, a protected amount calculated and established by a credit union is conclusively considered to be exempt from garnishment.

Reg. CC and Reg. D

The requirement to be sure that the account holder has access to the protected amount is subject to any limit on funds availability that applies. For example, if funds are subject to a hold under Reg. CC or a limit on withdrawals applicable to a time deposit, the garnishment rules do not override or affect those limits. For more on Reg. CC funds availability rules, see The League's *ii Release No. 0100*. For more on early withdrawal limits that may apply to time deposits, see The League's *ii Release No. 0132*.

Member can agree to release protected amount

An account holder can tell the credit union, in written instructions dated *after* the date of service of the garnishment, to use exempt funds to satisfy the garnishment. Beyond that limited exception, these garnishment rules cannot be changed by agreement. So, for example, the credit union's account terms cannot be written to get around these rules.

Member can claim additional protections

The rule does not limit any rights a member may have under federal law to claim an exemption from garnishment, and it does not change the exempt status of funds in the account. For example, although a credit union does not have to identify federal benefit checks that a member deposited, those funds are still protected under federal law, and the account holder can still assert a claim for that protection with the court.

In addition, an account holder could have exempt funds on deposit in excess of the protected amount. In that case, he/she could assert a claim for that protection with the court.

Step 4: Send notice within three days of review

In certain cases, the credit union must notify the account holder that it has received a garnishment order. Send the notice if all three of the following conditions are met:

- A benefit agency deposited a benefit payment into an account during the lookback period;
- The balance in the account on the date of the account review was above zero dollars and the credit union established a protected amount; and
- There are funds in the account in excess of the protected amount.

The notice must briefly explain what a garnishment is and must also include other information regarding the account holder's rights.

The credit union must issue the notice directly to the account holder (or, if appropriate, to someone who handles the account for that person, such as a guardian or power of attorney).

Do not include other information with the notice, only information and documents pertaining to the garnishment.

If the account holder has multiple accounts, the credit union can send one notice with information about all the accounts.

Model notice

Credit unions may choose to use a model notice from the rules. Using the model notice is optional, but The League strongly encourages it, since the rules say that if the credit union uses the model notice it will be deemed to be in compliance with notice requirements.

A copy is attached as Exhibit B to this release.

Modifying the model notice

The rules allow (but don't require) a credit union to include the following additional information in the notice:

- How the member can contact a local free attorney or legal aid service;
- How the member can contact the credit union; and
- A statement that the credit union is not providing legal advice by issuing the notice.

The rules also let the credit union modify the notice to add information about a state's garnishment rules and protections, to avoid confusion regarding the interplay of the federal rule with state requirements, or to provide more information about an account.

Garnishment Fees

The credit union may not charge or collect a garnishment fee against a protected amount.

The credit union may charge or collect a garnishment fee up to five (5) business days after the account review if funds other than a federal benefit payment are deposited to the account within this period – provided that the fee may not exceed the amount of the non-benefit deposited funds.

For example, an account contains a protected amount of \$500 on the date of the account review, which constitutes the entire balance of the account. Two (2) business days later \$50 in non-benefit funds are deposited in the account. The credit union institution can impose a garnishment fee not exceeding that amount.

Safe Harbor

Credit unions that comply with these rules in good faith have a "safe harbor" against liability. For example:

- If a credit union makes what it believes is the protected amount available to an account holder in accordance with these rules, it will not be liable even if a judgment creditor later establishes in court that the funds were not, in fact, exempt from garnishment.
- If a credit union performs an account review within the two-business-day deadline, but funds are withdrawn from the account during this time, the credit union is not liable to a creditor or court for failing to keep the funds in the account, even if there was no protected amount (even if bona fide error or a settlement adjustment occurs).

Record Retention

A credit union must maintain records of account activity and actions taken in handling a garnishment order or summons (to demonstrate compliance with these rules) for at least two years after it gets the garnishment order or summons.

State Exemptions

These federal garnishment rules preempt any inconsistent state laws, but state laws that don't conflict with these rules are allowed. For example, Wisconsin law protects funds other than benefit payments from garnishment. In those cases, the credit union needs to satisfy the federal rule and then determine what, if any, additional obligations exist under state law.

No "Continuous" Garnishment

The federal rules say that the credit union cannot continually garnish amounts deposited or credited to the account following the date of account review, and may not take any action to freeze any amounts subsequently deposited or credited unless it is served a new or different garnishment order or summons. A small number of states (and Wisconsin is not among them) authorize "continuing" garnishments, an order requiring the turn over funds that come into the member's account on an ongoing basis. The federal rules prohibit a credit union that is served with a continuing garnishment from complying with the order's ongoing requirements.

WISCONSIN GARNISHMENT LAW

After a credit union has taken the steps outlined in the first half of this release, it should review the material in the second half, which explores Wisconsin law on non-earnings garnishments. Both sets of laws may apply, and their requirements are different.

Filing a Timely Answer is Critical

Once the credit union is served with a non-earnings garnishment, it is critical to file a timely answer. If the credit union fails to do so, the court can declare that the credit union is liable for the debt, meaning the credit union would have to pay it and then try to collect from the debtor!

In circuit court garnishment cases, the credit union only has 20 days to answer the garnishment summons and complaint. In small claims garnishment cases, the credit union is required to answer within the time set out in the garnishment summons.

It's always a good idea to have the credit union's attorney handle the answer, especially if the credit union is unfamiliar with garnishment procedures

The answer should be done using the Wisconsin Courts' standard *"Non-Earnings Garnishment Garnishee Answer"* form.

In addition to details about the amount(s) the credit union held in the debtor's accounts when the garnishment summons was served, the answer must allege whether the credit union claims any setoff or defense or a lien on the account(s). The credit union may also state any claim of exemption its account holder may have or any other objection it knows of against the creditor's right to the funds.

Funds Subject to Garnishment

Your answer should show whether the credit union "was, at the time of the service of the garnishee summons, indebted or under any liability to the defendant ..." In other words, the time of service determines what is caught in a non-earnings garnishment. The amount that is in the account when the garnishment complaint is served on the credit union is the amount that is subject to the garnishment, not money that is deposited later.

Protected funds

Certain funds may not be garnished. The first half of this release discussed federal laws that protect certain kinds of federal benefits from garnishment. In addition, state law has its own protections for many other kinds of benefits. These exemptions are not available for an association, a corporation, a partnership, a cooperative, an unincorporated cooperative association, or a political body.

A Wisconsin Statute (§815.18) lists various categories of property that cannot be garnished. Below is a partial list that generally describes those categories. The statute details exactly what the categories do and do not include. For example, "retirement benefits" means:

Assets held or amounts payable under any retirement, pension, disability, death benefit, stock bonus, profit sharing plan, annuity, individual retirement account, individual retirement annuity, Keogh, 401-K or similar plan or contract providing benefits by reason of age, illness, disability, death or length of service and payments made to the debtor therefrom.

Also, the statute says that "Property traceable to property that would be exempt under this section in the form of cash proceeds or otherwise is not exempt unless expressly provided for in this section." In other words, funds deposited in a credit union account are not necessarily exempt just because they were paid out from a source that was exempt. For example, retirement plans are exempt, but if they pay benefits to a member, who deposits them into a credit union account, the funds are no longer protected by the Wisconsin Statute (though federal rules explained earlier in the release do protect many kinds of federal benefit payments after deposit to an account).

If you believe that a member's funds fall within any of these categories of exempt property, ask the credit union's attorney to examine the statutes and give an opinion on what funds should/should not be subject to the garnishment under Wisconsin law.

These are the categories of funds exempt under Wis. Stats. 815.18:

- Provisions for burial (which would include funeral trust accounts);
- Business and farm property;
- Child support, family support or maintenance payments;
- Federal disability insurance benefits;
- Proceeds from fire and casualty insurance;
- Fire and police pension funds;
- Life insurance claims, personal injury or wrongful death claims;
- Retirement benefits;
- Depository accounts in the aggregate value of \$5,000 (discussed in detail in the next sub-section);

- War pensions;
- “Tuition units”; and
- College savings accounts.

\$5,000 exemption

Of particular importance to credit unions is the exemption for an aggregate of \$5,000 in the consumer’s depository accounts. “Depository account” means a share certificate, savings, share or other similar account at a bank, credit union, insurance company, savings bank, securities broker/dealer or similar organization. The term does not include a safe deposit box or property deposited in a safe deposit box. The exemption only applies to an account that is for the debtor’s personal use and is not used as a business account

A 1986 order from the U.S. District Court for Eastern District of Wisconsin required every garnishment summons to include a notice about this exemption, but this is often overlooked. Regardless, when the credit union completes a “Garnishee

Answer for Non-Earnings” form, it will prompt the credit union to enter the gross value of the debtor’s account(s) “less exemption, if any, required by law.”

Accounts Subject to Garnishment

The garnishment will only reach accounts held by the person or entity named as the debtor/defendant in the garnishment pleadings.

Keep in mind that an individual debtor/defendant may have access to other accounts, but if he/she is not a holder of those accounts, the accounts are not subject to the garnishment. For example, if the debtor/defendant is an authorized signer on an account held by a separate legal entity (like a corporation or a limited liability company), the garnishment will not attach to those funds (unless it names the company as a party, as well). Likewise, if the debtor/defendant is an agent for someone else under a power of attorney, or a guardian or a representative payee for someone else, the garnishment should not reach that other person’s funds.

Joint accounts

If any party to a joint account could withdraw the funds from it, then the entire balance can be garnished by a creditor of any account holder.

However, if the rights of an account holder to withdraw funds are somehow limited (e.g., where both account holders have to sign for withdrawals), then a section of the Wisconsin Statutes says that the account holder being garnished can protect the other party’s contributions from garnishment. Wis. Stats. § 705.07(1) says:

Only the creditors of any living party to an account may subject the entire sums on deposit to their claims, as if such sums resulted solely from contributions made by the debtor party. If a joint or POD account requires the signatures of all of the parties for purposes of withdrawal, such account shall not be subject to the claims of creditors of a debtor party to the extent of the net contributions of the other parties to the account. Such other parties shall have the burden of proving their net contributions by clear and convincing evidence.

Double-check your credit union’s account agreement language, but it should say that either party has a right to withdraw funds and that either part is jointly and severally liable for any fees, overdrafts, etc., even if the other owner caused them. If you use The League’s “Your Account Agreement” brochure (WCUL #82004), it says:

Garnishment/Legal Process. If we are served with any legal process (i.e., garnishment, tax levy) which seeks to attach or in some manner prevent you from freely using your account, we reserve the right to hold and refuse to payout any portion of your account during any period of time necessary to finally determine who has the legal right to the funds and pay any balance in the account to the proper authorities. The Credit Union may reveal information relating to your accounts necessary to comply with subpoenas, summonses, search warrants, requests from governmental agencies or whenever required by law.

Saver’s Sweepstakes accounts

Saver’s Sweepstakes is The League’s prize-linked savings program.

Garnishments generally can reach any account balances that the named debtor owns, and that includes Saver’s Sweepstakes accounts.

Withdrawals of any kind can impact Saver's Sweepstakes prize drawing entries, including withdrawals caused by garnishments or levies against accounts.

For details, see The League's *ii Release No. 0184 – "Saver's Sweepstakes™ Compliance FAQs."*

Credit Union's Lien

If the credit union has a lien on the shares on deposit, consult with the credit union's attorney about the status of your lien on the account. The answer should state any defense or right to set-off that the credit union claims against the member's funds.

Which has priority, a garnishment or the credit union's lien? That probably depends on the facts. For example, other creditors might not be able to reach accounts that have been pledged to secure a credit union loan if the member has been restricted from withdrawing the funds. On the other hand, if the member has not been restricted from withdrawing the funds – for example, where the credit union has only a general lien on shares but no specific account has been pledged to secure a member's loan – then other creditors probably can garnish the credit union member's account.

The garnishment statutes allow the credit union to add additional information when it files an answer, to try to explain the status of any lien on the shares. Wis. Stats. § 812.11 says, "When the garnishee is in doubt respecting any liability or indebtedness to the defendant, the garnishee may set forth the facts concerning the possible liability or indebtedness."

Payment by the Credit Union

The credit union's answer will show the "total amount subject to garnishment." The credit union has two choices for those funds:

1. It can pay the amount to the clerk of court before a hearing. The creditor can also request that the funds be turned over to the clerk. If so, the credit union has five days after getting the request to turn the funds over to the clerk. If it fails to turn over the funds in time, the court can declare that the credit union is liable for the debt. Payment to the clerk "shall discharge the [credit union] of all liability for the amount paid. Wis. Stats. § 812.13(1).
2. Unless the creditor requests otherwise, the credit union can hold the amounts pending determination by the court. Wis. Stats. § 812.13(4). Sometimes, the court issues its order relatively quickly. In other cases, such as where a debtor objects to a garnishment, the process may take longer and involve court hearings. The credit union should freeze funds subject to garnishment until the court decides what should be done with the funds.

Wisconsin law (Wis. Stats. sec. 812.06) requires the creditor to pay the credit union a \$3 "garnishee fee," and it says the credit union "shall not be required to answer unless such fee is first paid." The statute does not address the credit union charging additional fees to its member, such as "legal process fees," which might be imposed if the credit union's account terms and fee schedule provide for them.

* * * * *

League publications are designed to provide accurate information with regard to the subject matter covered, with the understanding that The League does not render legal services. If you have general questions regarding this release, please call The League at (608) 640-4050 if local; or (800) 242-0833. For specific legal advice, please consult your credit union's attorney.

Legal Affairs Department

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EXHIBITS

Exhibit A: Examples of the "Lookback Period" and "Protected Amount" under Federal Garnishment Rules

Exhibit B: Model Notice under Federal Rules

Exhibit C: Federal Benefit Payments that Are Protected

EXHIBIT A: EXAMPLES OF THE “LOOKBACK PERIOD” AND “PROTECTED AMOUNT” UNDER FEDERAL GARNISHMENT RULES

The following examples illustrate the definition of “lookback period.”

Example 1: Account review performed same day garnishment order or summons is served.

A credit union receives garnishment order or summons on Wednesday, March 17. The credit union performs account review the same day on Wednesday, March 17. The lookback period begins on Tuesday, March 16, the date preceding the date of account review. The lookback period ends on Saturday, January 16, the corresponding date two months earlier.

Example 2: Account review performed the day after garnishment order or summons is served.

A credit union receives garnishment order or summons on Wednesday, November 17. The credit union performs account review next business day on

Thursday, November 18. The lookback period begins on Wednesday, November 17, the date preceding the date of account review. The lookback period ends on Friday, September 17, the corresponding date two months earlier.

Example 3: No corresponding date two months earlier.

A credit union receives garnishment order or summons on Tuesday, August 30.

The credit union performs the account review two business days later on Thursday, September 1. The lookback period begins on Wednesday, August 31, the date preceding the date of account review. The lookback period ends on Wednesday, June 30, the last date of the month two months earlier, since June 31 does not exist to correspond with August 31.

Example 4: Weekend between receipt of garnishment order or summons and account review.

A credit union receives garnishment order or summons on Friday, December 10. The credit union performs the account review two business days later on Tuesday, December 14. The lookback period begins on Monday, December 13, the date preceding the date of account review. The lookback period ends on Wednesday, October 13, the corresponding date two months earlier.

The following examples illustrate the definition of “protected amount.”

Example 1: Account balance less than sum of benefit payments.

A credit union receives a garnishment order or summons against an account holder for \$2,000 on May 20. The date of account review is the same day, May 20, when the review is performed is \$1,000. The lookback period begins on May 19, the date preceding the date of account review, and ends on March 19, the corresponding date two months earlier. The account review shows that two Federal benefit payments were deposited to the account during the lookback period totaling \$2,500, one for \$1,250 on Friday, April 30 and one for \$1,250 on Tuesday, April 1. Since the \$1,000 balance in the account when the account review is performed is less than the \$2,500 sum of benefit payments posted to the account during the lookback period, the credit union establishes the protected amount at \$1,000. The credit union is not required to send a notice to the account holder.

Example 2: Three benefit payments during lookback period.

A credit union receives a garnishment order or summons against an account holder for \$8,000 on December 2. The date of account review is the same day, December 2, when the account review is performed is \$5,000. The lookback period begins on December 1, the date preceding the date of account review, and ends on October 1, the corresponding date two months earlier. The account review shows that three Federal benefit payments were deposited to the account during the lookback period totaling \$4,500, one for \$1,500 on December 1, another for \$1,500 on November 1, and a third for \$1,500 on October 1. Since the \$4,500 sum of the three benefit payments posted to the account during the lookback period is less than the \$5,000 balance in the account when the account review is performed, the credit union establishes the protected amount at \$4,500 and seizes the remaining \$500 in the account consistent with State law. The credit union is required to send a notice to the account holder.

Example 3: Intraday transactions.

A credit union receives a garnishment order or summons against an account holder for \$4,000 on Friday, September 10. The date of account review is Monday, September 13, when the opening balance in the account is \$6,000. A cash withdrawal for \$1,000 is processed after the open of business on September 13, but before the financial institution has

performed the account review, and the balance in the account is \$5,000 when the credit union initiates an automated program to conduct the account review. The lookback period begins on Sunday, September 12, the date preceding the date of account review, and ends on Monday, July 12, the corresponding date two months earlier. The account review shows that two Federal benefit payments were deposited to the account during the lookback period totaling \$3,000, one for \$1,500 on Wednesday, July 21, and the other for \$1,500 on Wednesday, August 18. Since the \$3,000 sum of the two benefit payments posted to the account during the lookback period is less than the \$6,000 balance in the account when the account review is performed, the credit union establishes the protected amount at \$3,000 and, consistent with State law, freezes the \$2,000 remaining in the account after the cash withdrawal. The credit union is required to send a notice to the account holder.

Example 4: Benefit payment on date of account review.

A credit union receives a garnishment order or summons against an account holder for \$5,000 on Thursday, July 1. The date of account review is the same day, July 1, when the opening balance in the account is \$3,000, and reflects a Federal benefit payment of \$1,000 posted that day. The lookback period begins on Wednesday, June 30, the date preceding the date of account review, and ends on Friday, April 30, the corresponding date two months earlier. The account review shows that two Federal benefit payments were deposited to the account during the lookback period totaling \$2,000, one for \$1,000 on Friday, April 30 and one for \$1,000 on Tuesday, June 1. Since the \$2,000 sum of the two benefit payments posted to the account during the lookback period is less than the \$3,000 balance in the account at the open of business on the date of account review when the account review is performed, notwithstanding the third Federal benefit payment posted on the date of account review, the credit union establishes the protected amount at \$2,000 and places a hold on the remaining \$1,000 in the account in accordance with State law. The credit union is required to send a notice to the account holder.

Example 5: Account co-owners with benefit payments.

A credit union receives a garnishment order or summons against an account holder for \$3,800 on March 22. The date of account review is the same day, March 22, when the opening balance in the account is \$7,000. The lookback period begins on March 21, the date preceding the date of account review, and ends on January 21, the corresponding date two months earlier. The account review shows that four Federal benefit payments were deposited to the account during the lookback period totaling \$7,000. Two of these benefit payments, totaling \$3,000, were made to the account holder against whom the garnishment order or summons was issued. The other two payments, totaling \$4,000, were made to a co-owner of the account. Since the financial institution must perform the account review based only on the presence of benefit payments, without regard to the existence of co-owners on the account or payments to multiple beneficiaries or under multiple programs, the credit union establishes the protected amount at \$7,000, equal to the sum of the four benefit payments posted to the account during the lookback period. Since \$7,000 is also the balance in the account when the account review is performed, there are no additional funds in the account which can be frozen. The credit union is not required to send a notice to the account holder.

EXHIBIT B: MODEL NOTICE UNDER FEDERAL RULES

A credit union may use the following model notice to meet the requirements of the federal garnishment rules. Although use of the model notice is not required, a financial institution using it properly is deemed to be in compliance with the notice requirements.

Information in brackets should be completed by the credit union. Where the bracketed information indicates a choice of words, as indicated by a slash, the credit union should either select the appropriate words or provide substitute words suitable to the garnishment process in a given jurisdiction.

Parenthetical wording in italics represents instructions to the credit union and should not be printed with the notice. In most cases, this wording indicates that the model language either is optional for the credit union, or should only be included if some condition is met.

MODEL NOTICE:

[Credit union name, city, and State, shown as letterhead or otherwise printed at the beginning of the notice]

IMPORTANT INFORMATION ABOUT YOUR ACCOUNT

Date:

Notice to:

Account Number:

Why am I receiving this notice?

On [date on which garnishment order or summons was served], [Name of credit union] received a garnishment order or summons from a court to [freeze/remove] funds in your account. The amount of the garnishment order or summons was for \$[amount of garnishment order or summons]. We are sending you this notice to let you know what we have done in response to the garnishment order or summons.

What is garnishment?

Garnishment is a legal process that allows a creditor to remove funds from your [bank]/[credit union] account to satisfy a debt that you have not paid. In other words, if you owe money to a person or company, they can obtain a court order directing your [bank]/ [credit union] to take money out of your account to pay off your debt. If this happens, you cannot use that money in your account.

What has happened to my account?

On [date of account review], we researched your account and identified one or more

Federal benefit payments deposited in the last 2 months. In most cases, Federal benefit payments are protected from garnishment. As required by Federal regulations, therefore, we have established a “protected amount” of funds that will remain available to you and that will not be [frozen/removed] from your account in response to the garnishment order or summons.

(Conditional paragraph if funds have been frozen) Your account contained additional money that may not be protected from garnishment. As required by law, we have [placed a hold on/removed] these funds in the amount of \$[amount frozen] and may have to turn these funds over to your creditor as directed by the garnishment order or summons.

The chart below summarizes this information about your account(s):

ACCOUNT SUMMARY AS OF [DATE OF ACCOUNT REVIEW]

Account number	Amount in account	Amount protected	Amount subject to garnishment (now [frozen/removed])	Garnishment fee charged

(If the account holder has multiple accounts, add a row for each account.)

Please note that these amount(s) may be affected by deposits or withdrawals after the protected amount was calculated on [date of account review].

Do I need to do anything to access my protected funds?

You may use the “protected amount” of money in your account as you normally would. There is nothing else that you need to do to make sure that the “protected amount” is safe.

Who garnished my account?

The creditor who obtained a garnishment order or summons against you is [name of creditor].

What types of Federal benefit payments are protected from garnishment?

In most cases, you have protections from garnishment if the funds in your account include one or more of the following Federal benefit payments:

- Social Security benefits
- Supplemental Security Income benefits
- Veterans benefits
- Railroad retirement benefits
- Railroad Unemployment Insurance benefits
- Civil Service Retirement System benefits
- Federal Employees Retirement System benefits

(Conditional section if funds have been frozen) What should I do if I think that additional funds in my account are from Federal benefit payments?

If you believe that additional funds in your account(s) are from Federal benefit payments and should not have been [frozen/removed], there are several things you can do.

(Conditional sentence if applicable for the jurisdiction) You can fill out a garnishment exemption form and submit it to the court. You may contact the creditor that garnished your account and explain that additional funds are from Federal benefit payments and should be released back to you. *(Conditional sentence if contact information is in the garnishment order or summons)* The creditor may be contacted at [contact information included in the garnishment order or summons].

You may also consult an attorney (lawyer) to help you prove to the creditor who garnished your account that additional funds are from Federal benefit payments and cannot be taken. If you cannot afford an attorney, you can seek assistance from a free attorney or a legal aid society. *(Optional sentences)* [Name of State, local, or independent legal aid service] is an organization that provides free legal aid and can be reached at [contact information]. You can find information about other free legal aid programs at [insert “www.lawhelp.org” or other legal aid programs website].

(Optional section) How to contact [name of credit union].

This notice contains all the information that we have about the garnishment order or summons. However, if you have a question about your account, you may contact us at [contact number].

EXHIBIT C: FEDERAL BENEFIT PAYMENTS THAT ARE PROTECTED

Below is a table, which was prepared in consultation with paying agencies, that identifies which payments are exempt, the Company Entry Description in the ACH Batch Header Record, and a description of the payment type.

Federal Benefit Payment Types Statutorily Exempt from Garnishment	Company Entry Description (Positions 54-63) - PRIOR TO NEW GARNISHMENT	Company Entry Description (Positions 54-63) - WITH NEW	Payment Type Description
VA Benefit	VA ~~B~~ BENEFIT	XXVA ~~B~~ BENEF	VA Benefit (Comp and Pension, DIC, Burial)
	VA ~~B~~ ED ~~B~~ CH30	XXVA ~~B~~ CH30 ~~B~~	VA Education
	VA ~~B~~ MGIBSR ~~B~~	XXVA ~~B~~ MGIBS	VA Montgomery GI Bill, Select Reserve
	VA ~~B~~ CH18 ~~B~~ ~~B~~ ~~B~~	XXVA ~~B~~ CH18 ~~B~~	VA Spina Bifida, Birth Defects
	VA ~~B~~ CH31 ~~B~~ ~~B~~ ~~B~~	XXVA ~~B~~ CH31 ~~B~~	VA Vocational Rehabilitation (Retroactive)
	VA ~~B~~ REAP ~~B~~ ~~B~~ ~~B~~	XXVA ~~B~~ REAP ~~B~~	VA Reservist Education Assistance Program
	VA ~~B~~ 31RECUR	XXVA ~~B~~ 31REC	VA Vocational Rehabilitation (Recurring)
	VA ~~B~~ ED ~~B~~ 1607	XXVA ~~B~~ 1607 ~~B~~	VA Reservist Education Assistance Program, VA Dependents' Educational Assistance (Ch. 35), VA Education (Ch. 32)
	VA ~~B~~ ED ~~B~~ CH33	XXVA ~~B~~ CH33 ~~B~~	VA Education Ch 33
VA Insurance	FEDVAINSUR	XXVA ~~B~~ INSUR	VA Insurance
Railroad Retirement Benefit	RR ~~B~~ UISI ~~B~~ ~~B~~ ~~B~~	XXRR ~~B~~ UISI ~~B~~	Railroad Retirement Board Unemployment Insurance
	RR ~~B~~ RETH ~~B~~ ~~B~~ ~~B~~	XXRR ~~B~~ RETH ~~B~~	Railroad Retirement Benefit
Social Security Benefit	SOC ~~B~~ SEC ~~B~~ ~~B~~ ~~B~~	XXSOC ~~B~~ SEC ~~B~~	Social Security Benefit
	MISC ~~B~~ PAY2 ~~B~~	XXMISC ~~B~~ PAY	Social Security Child Support and Alimony (SSA Garnishment)
	INTL ~~B~~ PYMT	XXINTL ~~B~~ PMT	International Direct Deposit – Recurring
	INTL ~~B~~ PYMT	XXINTL ~~B~~ PMT	International Direct Deposit - Daily
Supplemental Security Income	SUPP ~~B~~ SEC ~~B~~ ~~B~~	XXSUPP ~~B~~ SEC	Supplemental Security Income Benefit
Office of Personnel Management (Civil Service Retirement)	CIVIL ~~B~~ SERV	XXCIV ~~B~~ SERV	Civil Service Retirement Benefit

NOTE: The payment descriptions shown below are changing to contain blanks in Positions 54 and 55 of the Company Entry Description Field. This enables Treasury/FMS to be positioned for future use of the “XX” identifier for other payments, should additional authority be acquired.

OTHER PAYMENTS

Agency	Current Company Entry Description, (Without Blanks in Positions 54-63)	Future Company Entry Description (With Blanks in Positions 54-63)	Payment Type Description
Any agency - Including SSA, RRB, VA, OPM, etc.	FEDANNUITY	~~bb~~ FED ~~bb~~ ANNU	Annuity
	FED ~~bb~~ SALARY	~~bb~~ FED ~~bb~~ SAL ~~bb~~	Salary
	FED ~~bb~~ TRAVEL	~~bb~~ FED ~~bb~~ TVL ~~bb~~	Travel
	FED ~~bb~~ TSP ~~bbb~~	~~bb~~ FED ~~bb~~ TSP ~~bb~~	Thrift Savings
	FEDPREAUTH	NA	Preauthorized Debits
	MISC ~~bb~~ PAY ~~bb~~	~~bb~~ MISC ~~bb~~ PAY	Vendor Misc
	EDI ~~bb~~ MISC ~~bb~~	~~bb~~ EDI ~~bb~~ MISC	CTX
IRS	TAX ~~bb~~ REFUND	~~bb~~ TAX ~~bb~~ REF ~~bb~~	TAX - IMF / BMF (Local, Consolidated, or CADE)
Any ERP payment - Including SSA, RRB, VA, OPM, etc.	VA ~~bb~~ ERP ~~bbb~~	~~bb~~ VA ~~bb~~ ERP ~~bb~~	ERP Payment
	RRB ~~bb~~ ERP ~~bbb~~	~~bb~~ RRB ~~bb~~ ERP ~~bb~~	ERP Payment
	SSA ~~bb~~ ERP ~~bbb~~	~~bb~~ SSA ~~bb~~ ERP ~~bb~~	ERP Payment
	SSI ~~bb~~ ERP ~~bbb~~	~~bb~~ SSI ~~bb~~ ERP ~~bb~~	ERP Payment