

§212.8

(e) *Notice delivery.* The financial institution shall issue the notice directly to the account holder, or to a fiduciary who administers the account and receives communications on behalf of the account holder, and only information and documents pertaining to the garnishment order, including other notices or forms that may be required under State or local government law, may be included in the communication.

(f) *Notice timing.* The financial institution shall send the notice to the account holder within 3 business days from the date of account review.

(g) *One notice for multiple accounts.* The financial institution may issue one notice with information related to multiple accounts of an account holder.

(h) *Not legal advice.* By issuing a notice required by this part, a financial institution creates no obligation to provide, and shall not be deemed to be offering, legal advice.

§212.8 Other rights and authorities.

(a) *Exempt status.* Nothing in this part shall be construed to limit an individual's right under Federal law to assert against a creditor a further exemption from garnishment for funds in excess of the protected amount, or to alter the exempt status of funds that may be protected from garnishment under Federal law.

(b) *Account agreements.* Nothing in this part shall be construed to invalidate any term or condition of an account agreement between a financial institution and an account holder that is not inconsistent with this part.

§212.9 Preemption of State law.

(a) *Inconsistent law preempted.* Any State or local government law or regulation that is inconsistent with a provision of this part is preempted to the extent of the inconsistency. A State law or regulation is inconsistent with this part if it requires a financial institution to take actions or make disclosures that contradict or conflict with the requirements of this part or if a financial institution cannot comply with the State law or regulation without violating this part.

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(b) *Consistent law not preempted.* This regulation does not annul, alter, affect, or exempt any financial institution from complying with the laws of any State with respect to garnishment practices, except to the extent of an inconsistency. A requirement under State law to protect benefit payments in an account from freezing or garnishment at a higher protected amount than is required under this part is not inconsistent with this part if the financial institution can comply with both this part and the State law requirement.

§212.10 Safe harbor.

(a) *Protection during examination and pending review.* A financial institution that complies in good faith with this part shall not be liable to a creditor that initiates a garnishment order, or for any penalties under State law, contempt of court, civil procedure, or other law for failing to honor a garnishment order, for account activity during:

(1) The two business days following the financial institution's receipt of a garnishment order during which the financial institution must determine if the United States or a State child support enforcement agency has attached or included a Notice of Right to Garnish Federal Benefits, as set forth in §212.4; or

(2) The time between the financial institution's receipt of the garnishment order and the date by which the financial institution must perform the account review, as set forth in §212.5.

(b) *Protection when protecting or freezing funds.* A financial institution that complies in good faith with this part shall not be liable to a creditor that initiates a garnishment order for any protected amounts, to an account holder for any frozen amounts, or for any penalties under State law, contempt of court, civil procedure, or other law for failing to honor a garnishment order in cases where:

(1) A benefit agency has deposited a benefit payment into an account during the lookback period, or

(2) The financial institution has determined that the order was obtained by the United States or issued by a

State child support enforcement agency by following the procedures in §212.4.

(c) *Protection for providing additional information to account holder.* A financial institution shall not be liable for providing in good faith any optional information in the notice to the account holder, as set forth in §212.7(c) and (d).

(d) *Protection for financial institutions from other potential liabilities.* A financial institution that complies in good faith with this part shall not be liable for:

(1) Bona fide errors that occur despite reasonable procedures maintained by the financial institution to prevent such errors in complying with the provisions of this part;

(2) Customary clearing and settlement adjustments that affect the balance in an account, including a protected amount, such as deposit reversals caused by the return of unpaid items, or debit card transactions settled for amounts higher than the amounts originally authorized; or

(3) Honoring an account holder's express written instruction, that is both dated and provided by the account holder to the financial institution following the date on which it has been served a particular garnishment order, to use an otherwise protected amount to satisfy the order.

§212.11 Compliance and record retention.

(a) *Enforcement.* Federal banking agencies will enforce compliance with this part.

(b) *Record retention.* A financial institution shall maintain records of account activity and actions taken in response to a garnishment order, sufficient to demonstrate compliance with this part, for a period of not less than two years from the date on which the financial institution receives the garnishment order.

§212.12 Amendment of this part.

This part may be amended only by a rulemaking issued jointly by Treasury and all of the benefit agencies as defined in §212.3.

APPENDIX A TO PART 212—MODEL NOTICE TO ACCOUNT HOLDER

A financial institution may use the following model notice to meet the requirements of §212.7. Although use of the model notice is not required, a financial institution using it properly is deemed to be in compliance with §212.7.

Information in brackets should be completed by the financial institution. Where the bracketed information indicates a choice of words, as indicated by a slash, the financial institution 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 financial institution and should not be printed with the notice. In most cases, this wording indicates that the model language either is optional for the financial institution, or should only be included if some condition is met.

MODEL NOTICE:

[Financial institution 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 was served], [Name of financial institution] received a garnishment order from a court to [freeze/remove] funds in your account. The amount of the garnishment order was for \$[amount of garnishment order]. We are sending you this notice to let you know what we have done in response to the garnishment order.

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