

§211.2

(d) Powers of attorney for the receipt or collection of checks or warrants or for the proceeds of checks or warrants included within the determination of the Secretary of the Treasury set forth in paragraph (a) of this section will not be recognized.

[41 FR 15847, Apr. 15, 1976, as amended at 44 FR 51568, Sept. 4, 1979; 45 FR 47678, July 16, 1980; 61 FR 41739, Aug. 12, 1996; 66 FR 63623, Dec. 10, 2001]

§211.2 Claims for the release of withheld checks or for the proceeds thereof.

Claims for the release of checks or warrants withheld from delivery or for the proceeds thereof, shall be filed with the administrative agency which would have originally authorized such issuance, e.g., claims arising out of checks or warrants representing payments under laws administered by the Department of Veterans Affairs shall be filed with the Secretary of Veterans Affairs, Department of Veterans Affairs, Washington, DC 20420.

[61 FR 41739, Aug. 12, 1996]

§211.3 Exceptions.

The regulations of this part do not apply to payments to foreign governments, nor to checks or warrants issued in payment of salaries or wages, or for goods or services purchased by the Government of the United States in foreign countries, unless such payments are subject to the Foreign Funds Control Regulations (31 CFR part 520), the Foreign Assets Control Regulations (31 CFR part 500), the Cuban Assets Control Regulations (31 CFR part 515), or the Iranian Assets Control Regulations (31 CFR part 535).

[45 FR 47678, July 16, 1980]

§211.4 Implementing instructions.

Implementing instructions will be issued in Part IV, "Disbursing," of the Treasury Fiscal Requirements Manual for Guidance of Departments and Agencies.

[41 FR 15847, Apr. 15, 1976]

31 CFR Ch. II (7–1–25 Edition)

PART 212—GARNISHMENT OF ACCOUNTS CONTAINING FEDERAL BENEFIT PAYMENTS

Sec.

212.1 Purpose.

212.2 Scope.

212.3 Definitions.

212.4 Initial action upon receipt of a garnishment order.

212.5 Account review.

212.6 Rules and procedures to protect benefits.

212.7 Notice to the account holder.

212.8 Other rights and authorities.

212.9 Preemption of State law.

212.10 Safe harbor.

212.11 Compliance and record retention.

212.12 Amendment of this part.

APPENDIX A TO PART 212—MODEL NOTICE TO ACCOUNT HOLDER

APPENDIX B TO PART 212—FORM OF NOTICE OF RIGHT TO GARNISH FEDERAL BENEFITS

APPENDIX C TO PART 212—EXAMPLES OF THE LOOKBACK PERIOD AND PROTECTED AMOUNT

AUTHORITY: 5 U.S.C. 8346; 5 U.S.C. 8470; 5 U.S.C. 1103; 31 U.S.C. 321; 31 U.S.C. 3321; 31 U.S.C. 3332; 38 U.S.C. 5301(a); 38 U.S.C. 501(a); 42 U.S.C. 405(a); 42 U.S.C. 407; 42 U.S.C. 659; 42 U.S.C. 1383(d)(1); 45 U.S.C. 231f(b); 45 U.S.C. 231m; 45 U.S.C. 352(e); 45 U.S.C. 362(1).

SOURCE: 76 FR 9955, Feb. 23, 2011, unless otherwise noted.

§212.1 Purpose.

The purpose of this part is to implement statutory provisions that protect Federal benefits from garnishment by establishing procedures that a financial institution must follow when served a garnishment order against an account holder into whose account a Federal benefit payment has been directly deposited.

§212.2 Scope.

This part applies to:

(a) *Entities*. All financial institutions, as defined in §212.3.

(b) *Funds*. Federal benefit payments protected from garnishment pursuant to the following authorities:

(1) SSA benefit payments protected under 42 U.S.C. 407 and 42 U.S.C. 1383(d)(1);

(2) VA benefit payments protected under 38 U.S.C. 5301(a);

(3) RRB benefit payments protected under 45 U.S.C. 231m(a) and 45 U.S.C. 352(e); and

Fiscal Service, Treasury

§ 212.3

(4) OPM benefit payments protected under 5 U.S.C. 8346 and 5 U.S.C. 8470.

§ 212.3 Definitions.

For the purposes of this part, the following definitions apply.

Account means an account, including a master account or sub account, at a financial institution and to which an electronic payment may be directly routed.

Account holder means a natural person against whom a garnishment order is issued and whose name appears in a financial institution's records as the direct or beneficial owner of an account.

Account review means the process of examining deposits in an account to determine if a benefit agency has deposited a benefit payment into the account during the lookback period.

Benefit agency means the Social Security Administration (SSA), the Department of Veterans Affairs (VA), the Office of Personnel Management (OPM), or the Railroad Retirement Board (RRB).

Benefit payment means a Federal benefit payment referred to in § 212.2(b) paid by direct deposit to an account with the character "XX" encoded in positions 54 and 55 of the Company Entry Description field and the number "2" encoded in the Originator Status Code field of the Batch Header Record of the direct deposit entry.

Federal banking agency means the Federal Deposit Insurance Corporation, the Board of Governors of the Federal Reserve System, the Office of the Comptroller of the Currency, the Office of Thrift Supervision, or the National Credit Union Administration.

Financial institution means a bank, savings association, credit union, or other entity chartered under Federal or State law to engage in the business of banking.

Freeze or account freeze means an action by a financial institution to seize, withhold, or preserve funds, or to otherwise prevent an account holder from drawing on or transacting against funds in an account, in response to a garnishment order.

Garnish or garnishment means execution, levy, attachment, garnishment, or other legal process.

Garnishment fee means any service or legal processing fee, charged by a financial institution to an account holder, for processing a garnishment order or any associated withholding or release of funds.

Garnishment order or 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.

Lookback period means the two month period that begins on the date preceding the date of account review and 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. Examples illustrating the application of this definition are included in appendix C to this part.

Protected amount 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. Examples illustrating the application of this definition are included in Appendix C to this part.

State means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, or the United States Virgin Islands.

State child support enforcement agency means the single and separate organizational unit in a State that has the responsibility for administering or supervising the State's plan for child and spousal support pursuant to Title IV, Part D, of the Social Security Act, 42 U.S.C. 654.

United States means:

(1) A Federal corporation,

(2) An agency, department, commission, board, or other entity of the United States, or

§ 212.4

31 CFR Ch. II (7–1–25 Edition)

(3) An instrumentality of the United States, as set forth in 28 U.S.C. 3002(15).

[76 FR 9955, Feb. 23, 2011, as amended at 78 FR 32109, May 29, 2013]

§ 212.4 Initial action upon receipt of a garnishment order.

(a) *Examination of order for Notice of Right to Garnish Federal Benefits.* Prior to taking any other action related to a garnishment order issued against a debtor, and no later than two business days following receipt of the order, a financial institution shall examine the order to 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 Appendix B to this part.

(b) *Notice of Right to Garnish Federal Benefits is attached to or included with the order.* If a Notice of Right to Garnish Federal Benefits is attached to or included with the garnishment order, then the financial institution shall follow its otherwise customary procedures for handling the order and shall not follow the procedures in § 212.5 and § 212.6.

(c) *No Notice of Right to Garnish Federal Benefits.* If a Notice of Right to Garnish Federal Benefits is not attached to or included with the garnishment order, then the financial institution shall follow the procedures in § 212.5 and § 212.6.

§ 212.5 Account review.

(a) *Timing of account review.* When served a garnishment order issued against a debtor, a financial institution shall perform an account review:

(1) No later than two business days following receipt of (A) the order, and (B) sufficient information from the creditor that initiated the order to determine whether the debtor is an account holder, if such information is not already included in the order; or

(2) In cases where the financial institution is served a batch of a large number of orders, by a later date that may be permitted by the creditor that initiated the orders, consistent with the terms of the orders. The financial institution shall maintain records on such batches and creditor permissions, consistent with § 212.11(b),

(b) *No benefit payment deposited during lookback period.* If the account review shows that a benefit agency did not deposit a benefit payment into the account during the lookback period, then the financial institution shall follow its otherwise customary procedures for handling the garnishment order and shall not follow the procedures in § 212.6.

(c) *Benefit payment deposited during lookback period.* If the account review shows that a benefit agency deposited a benefit payment into the account during the lookback period, then the financial institution shall follow the procedures in § 212.6.

(d) *Uniform application of account review.* The financial institution shall perform an account review without consideration for any other attributes of the account or the garnishment order, including but not limited to:

(1) The presence of other funds, from whatever source, that may be commingled in the account with funds from a benefit payment;

(2) The existence of a co-owner on the account;

(3) The existence of benefit payments to multiple beneficiaries, and/or under multiple programs, deposited in the account;

(4) The balance in the account, provided the balance is above zero dollars on the date of account review;

(5) Instructions to the contrary in the order; or

(6) The nature of the debt or obligation underlying the order.

(e) *Priority of account review.* The financial institution shall perform the account review prior to taking any other actions related to the garnishment order that may affect funds in the account.

(f) *Separate account reviews.* The financial institution shall perform the account review separately for each account in the name of an account holder against whom a garnishment order has been issued. In performing account reviews for multiple accounts in the name of one account holder, a financial institution shall not trace the movement of funds between accounts by attempting to associate funds from a

Fiscal Service, Treasury

§ 212.7

benefit payment deposited into one account with amounts subsequently transferred to another account.

§ 212.6 Rules and procedures to protect benefits.

The following provisions apply if an account review shows that a benefit agency deposited a benefit payment into an account during the lookback period.

(a) *Protected amount.* The financial institution shall immediately calculate and establish the protected amount for an account. The financial institution shall ensure that the account holder has full and customary access to the protected amount, which the financial institution shall not freeze in response to the garnishment order. An account holder shall have no requirement to assert any right of garnishment exemption prior to accessing the protected amount in the account.

(b) *Separate protected amounts.* The financial institution shall calculate and establish the protected amount separately for each account in the name of an account holder, consistent with the requirements in § 212.5(f) to conduct distinct account reviews.

(c) *No challenge of protection.* A protected amount calculated and established by a financial institution pursuant to this section shall be conclusively considered to be exempt from garnishment under law.

(d) *Funds in excess of the protected amount.* For any funds in an account in excess of the protected amount, the financial institution shall follow its otherwise customary procedures for handling garnishment orders, including the freezing of funds, but consistent with paragraphs (f) and (g) of this section.

(e) *Notice.* The financial institution shall issue a notice to the account holder named in the garnishment order, in accordance with § 212.7.

(f) *One-time account review process.* The financial institution shall perform the account review only one time upon the first service of a given garnishment order. The financial institution shall not repeat the account review or take any other action related to the order if the same order is subsequently served again upon the financial institution. If

the financial institution is subsequently served a new or different garnishment order against the same account holder, the financial institution shall perform a separate and new account review.

(g) *No continuing or periodic garnishment responsibilities.* The financial institution shall not continually garnish amounts deposited or credited to the account following the date of account review, and shall take no action to freeze any funds subsequently deposited or credited, unless the institution is served with a new or different garnishment order, consistent with the requirements of this part.

(h) *Impermissible garnishment fee.* The financial institution may not charge or collect a garnishment fee against a protected amount. The financial institution may charge or collect a garnishment fee up to five business days after the account review if funds other than a 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.

[76 FR 9955, Feb. 23, 2011, as amended at 78 FR 32109, May 29, 2013]

§ 212.7 Notice to the account holder.

A financial institution shall issue the notice required by § 212.6(e) in accordance with the following provisions.

(a) *Notice requirement.* The financial institution shall send the notice in cases where:

(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.

(b) *Notice content.* The financial institution shall notify the account holder named in the garnishment order of the following facts and events in readily understandable language.

(1) The financial institution's receipt of an order against the account holder.

(2) The date on which the order was served.

(3) A succinct explanation of garnishment.

§ 212.8

31 CFR Ch. II (7–1–25 Edition)

(4) The financial institution's requirement under Federal regulation to ensure that account balances up to the protected amount specified in § 212.3 are protected and made available to the account holder if a benefit agency deposited a benefit payment into the account in the last two months.

(5) The account subject to the order and the protected amount established by the financial institution.

(6) The financial institution's requirement pursuant to State law to freeze other funds in the account to satisfy the order and the amount frozen, if applicable.

(7) The amount of any garnishment fee charged to the account, consistent with § 212.6.

(8) A list of the Federal benefit payments subject to this part, as identified in § 212.2(b).

(9) The account holder's right to assert against the creditor that initiated the order a further garnishment exemption for amounts above the protected amount, by completing exemption claim forms, contacting the court of jurisdiction, or contacting the creditor, as customarily applicable for a given jurisdiction.

(10) The account holder's right to consult an attorney or legal aid service in asserting against the creditor that initiated the order a further garnishment exemption for amounts above the protected amount.

(11) The name of the creditor, and, if contact information is included in the order, means of contacting the creditor.

(c) *Optional notice content.* The financial institution may notify the account holder named in the garnishment order of the following facts and events in readily understandable language.

(1) Means of contacting a local free attorney or legal aid service.

(2) Means of contacting the financial institution.

(3) By issuing the notice required by this part, the financial institution is not providing legal advice.

(d) *Amending notice content.* The financial institution may amend the content of the notice to integrate information about a State's garnishment rules and protections, for the purposes of avoiding potential confusion or har-

monizing the notice with State requirements, or providing more complete information about an account.

(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.

[76 FR 9955, Feb. 23, 2011, as amended at 78 FR 32109, May 29, 2013]

§ 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

Fiscal Service, Treasury

§ 212.12

the requirements of this part or if a financial institution cannot comply with the State law or regulation without violating this part.

(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] re-

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.*

ceived 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 funds that will remain available to you and that will not be [frozen/removed] from your account in response to the garnishment order.

(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.

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

Who garnished my account?

The creditor who obtained a garnishment order 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

Fiscal Service, Treasury

Pt. 212, App. C

- 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) The creditor may be contacted at [contact information included in the garnishment order].

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 “<http://www.lawhelp.org>” or other legal aid programs website].

(Optional section) How to contact [name of financial institution].

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

APPENDIX B TO PART 212—FORM OF NOTICE OF RIGHT TO GARNISH FEDERAL BENEFITS

The United States, or a State child support enforcement agency, certifying its right to garnish Federal benefits shall attach or include with a garnishment order the following Notice, on official organizational letterhead.

Information in brackets should be completed by the United States or a State child support enforcement agency, as applicable. Where the bracketed information indicates a choice of words, as indicated by a slash, the appropriate words should be selected from the options.

NOTICE OF RIGHT TO GARNISH FEDERAL BENEFITS

Date: _____

[Garnishment Order Number]/[State Case ID]: _____

The attached garnishment order 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 non-custodial parents in financial institutions 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 financial institutions do not apply to this garnishment order.

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].

APPENDIX C TO PART 212—EXAMPLES OF THE LOOKBACK PERIOD AND PROTECTED AMOUNT

The following examples illustrate this definition of *lookback period*.

Example 1: Account review performed same day garnishment order is served. A financial institution receives garnishment order on Wednesday, March 17. The financial institution 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 is served. A financial institution receives garnishment order on Wednesday, November 17. The financial institution 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 financial institution receives garnishment order on Tuesday, August 30. The financial institution 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 and account review. A financial institution receives garnishment order on Friday, December 10. The financial institution 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 financial institution receives a garnishment order against an account holder for \$2,000 on May 20. The date of account review is the same day, May 20, and the balance in the account 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 financial institution establishes the protected amount at \$1,000. The financial institution is not required to send a notice to the account holder.

Example 2: Three benefit payments during lookback period. A financial institution receives a garnishment order against an account holder for \$8,000 on December 2. The date of account review is the same day, December 2, and the balance in the account 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 financial institution establishes the protected amount at \$4,500 and seizes the remaining \$500 in the account consistent with State law. The financial institution is required to send a notice to the account holder.

Example 3: Intraday transactions. A financial institution receives a garnishment order against an account holder for \$4,000 on Friday, September 10. The date of account re-

view 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, so that the balance in the account is \$5,000 when the financial institution 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 \$5,000 balance in the account when the account review is performed, the financial institution 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 financial institution is required to send a notice to the account holder.

Example 4: Benefit payment on date of account review. A financial institution receives a garnishment order 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 when the account review is performed, the financial institution 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 financial institution is required to send a notice to the account holder.

Example 5: Account co-owners with benefit payments. A financial institution receives a garnishment order against an account holder for \$3,800 on March 22. The date of account review is the same day, March 22, and the 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

Fiscal Service, Treasury

§ 215.2

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 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 financial institution 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 at the time of the account review, there are no additional funds in the account which can be frozen. The financial institution is not required to send a notice to the account holder.

[76 FR 9955, Feb. 23, 2011, as amended at 78 FR 32109, May 29, 2013]

PART 215—WITHHOLDING OF DISTRICT OF COLUMBIA, STATE, CITY AND COUNTY INCOME OR EMPLOYMENT TAXES BY FEDERAL AGENCIES

Subpart A—General Information

Sec.

215.1 Scope of part.

215.2 Definitions.

Subpart B—Procedures

215.3 Procedures for entering into a Withholding Agreement.

215.4 Relationship of Withholding Agreement to prior agreements.

Subpart C—Withholding Agreement

215.5 In general.

215.6 Parties.

215.7 Compliance by agencies.

215.8 Withholding certificates.

215.9 Change of legal residence by members of the Armed Forces.

215.10 Agency withholding procedures.

215.11 Miscellaneous provisions.

215.12 Supersession, amendment and termination provisions.

AUTHORITY: 5 U.S.C. 5516, 5517, 5520; E.O. 11997, 42 FR 31759.

SOURCE: 42 FR 33731, July 1, 1977, unless otherwise noted.

Subpart A—General Information

§ 215.1 Scope of part.

This part relates to agreements between the Secretary of the Treasury and States (including the District of Columbia), cities or counties for withholding of State, city or county income or employment taxes from the compensation of civilian Federal employees, and for the withholding of State income taxes from the compensation of members of the Armed Forces. Subpart A contains general information and definitions. Subpart B prescribes the procedures to be followed in entering into an agreement for the withholding of State, city or county income or employment taxes. Subpart C is the Withholding Agreement which the Secretary will enter into with any State, city or county which qualifies to have the tax withheld.

[71 FR 2150, Jan. 13, 2006]

§ 215.2 Definitions.

As used in this part:

(a) *Agency* means each of the executive agencies and military departments (as defined in 5 U.S.C. 105 and 102, respectively) and the United States Postal Service; and in addition, for city or county withholding purposes only, all elements of the judicial branch.

(b) *City* means any unit of general local government.

(1) Which:

(A) Is classified as a municipality by the United States Bureau of the Census, or

(B) Is a town or township which, in the determination of the Secretary of the Treasury,

(i) Possesses powers and performs functions comparable to those associated with municipalities,

(ii) Is closely settled, and

(iii) Contains within its boundaries no incorporated places as defined by the United States Bureau of the Census; and

(2) Within the political boundaries of which five hundred or more persons are regularly employed by all agencies of the Federal Government.

(c) *City income or employment taxes* means any form of tax for which, under a city ordinance: