

DEPARTMENT OF THE TREASURY
INTERIM FINAL RULE
GARNISHMENT OF ACCOUNTS CONTAINING FEDERAL BENEFIT PAYMENTS
31 CFR Part 212

Frequently Asked Questions and Answers

1. **After establishing a protected amount, can a financial institution deduct its garnishment fee from the nonprotected funds before sending funds to the court, or only from what's left over? What if charging a garnishment fee would create an overdraft?** *Under the rule, a garnishment fee can be charged or collected only on the date of the account review. If a protected amount is established, a garnishment fee can be charged or collected if there are nonprotected funds against which the fee can be charged.*

Section 212.6(h) of the rule states that a “financial institution may not charge or collect a garnishment fee against a protected amount, and may not charge or collect a garnishment fee after the date of account review.” The creation of an overdraft to apply a fee necessarily involves the collection of that fee after the date of account review, which the rule prohibits.

2. **Are tax levies subject to the rule?** *Currently, the requirements of the rule are triggered by the receipt of a “garnishment order,” which is defined as an order issued by a court or a state child support enforcement agency. Accordingly, Federal or State tax levies issued directly by a taxing authority are not subject to the rule. Treasury is seeking public comment on all aspects of the rule, including whether levies should be included in the definition of “garnishment order.” The comment period for the rule extends through May 24, 2011.*
3. **Are other levies issued by a state agency or division without a court order subject to the rule?** *See answer to question #2.*
4. **If a financial institution has a policy not to act on certain garnishment orders (such as out-of state orders) or not to freeze or garnish certain accounts (such as accounts held jointly by the debtor and a nonspouse), must the financial institution perform an account review to determine if a protected amount should be established?** *If a financial institution will not be freezing or removing funds from an account in response to a garnishment order, then the bank should not perform an account review to determine if a protected amount should be established.*

5. **When the rule refers to an account balance, does that mean the ledger balance, memo ledger balance, available funds balance or memo available funds balance?** *When the rule refers to the account balance, it means the ledger balance. However, financial institutions should note that the requirement to provide access to funds is subject to the usual restrictions on funds availability.*

6. **Are exempt federal benefit payments electronically deposited to an account maintained at a brokerage firm covered by the protections in the Interim Final Rule?** *The answer to this question depends on the nature of the account. The protections established under the Interim Final Rule apply to accounts maintained at financial institutions. The definition of financial institution applies to entities chartered under Federal or State Law to engage in the business of banking. Please refer to Section 212.3 Definitions. Specifically, the Interim Final Rule defines account to mean “an account, including a master account or sub account, at a financial institution and to which an electronic payment may be directly routed.” Later in this section financial institution is defined to mean “a bank, savings association, credit union, or other entity chartered under Federal or State Law to engage in the business of banking.”*

7. **What does Treasury mean by a new garnishment?** *A new garnishment order means that the creditor has gone back to court and obtained a new order, as opposed to re-serving an order that was previously served. In the case of an order from a state child support enforcement agency, a new order would be an order that is not simply the re-delivery of the same order.*