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Chief Regulatory Counsel

November 27, 2007

Office of the Comptroller of the Currency
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Public Information Room, Mailstop 1-5
Washington, DC 20219
regs.comments@occ.treas.gov
Attn.: Docket ID OCC-2007-0015

Mr. Robert E. Feldman
Executive Secretary
Federal Deposit Insurance Corporation
550 17th Street, NW
Washington, DC 20429
Comments@FDIC.gov

Ms. Jennifer J. Johnson, Secretary
Board of Governors of the
Federal Reserve System
20th Street and Constitution Ave., NW
Washington, DC 20551
regs.comments@federalreserve.gov
Attn.: Docket No. OP-1294

Regulation Comments
Chief Counsel's Office
Office of Thrift Supervision
1700 G Street, NW
Washington, DC 20552
regs.comments@ots.treas.gov
Attn.: ID-OTS-2007-0018

Re: Proposed Guidance on Garnishment of Exempt Federal Benefit Funds

Ladies and Gentlemen:

The PNC Financial Services Group, Inc. ("PNC"), and its principal subsidiary bank, PNC Bank, National Association ("PNC Bank"), both of Pittsburgh, Pennsylvania, are pleased to respond to the request for comments regarding the proposed guidance entitled "Garnishment of Exempt Federal Benefit Funds" ("Proposal") (72 Fed. Reg. 55273 (Sept. 28, 2007)).

PNC is one of the largest diversified financial services companies in the United States, with \$131.4 billion in assets as of September 30, 2007. PNC engages in retail banking, institutional banking, asset management and global fund processing services. PNC Bank has branches in the District of Columbia, Florida, Indiana, Kentucky, Maryland, New Jersey, Ohio, Pennsylvania and Virginia. PNC also has two other subsidiary banks, PNC Bank, Delaware, Wilmington, Delaware, which has branches in Delaware; and The Yardville National Bank, Yardville, New Jersey, which has branches in New Jersey and Pennsylvania.

PNC appreciates the opportunity to comment on the Proposal, and generally supports the intention of the federal bank regulatory agencies ("Agencies") to encourage financial institutions to minimize the hardships encountered by federal benefit funds recipients and to do so while remaining in compliance with applicable law. PNC Bank agrees that measures should be taken to benefit a customer whose bank account receives recurring electronic deposits of exempt federal benefits after the account is made subject

to the attachment process, and is limiting its comment to one of the four issues presented by the Agencies:

“Are there practices that would enable an institution to avoid freezing funds altogether by determining at the time of receipt of a garnishment order that the funds are federally protected and not subject to an exception?”

Two practices are proposed: (1) the Department of the Treasury, Financial Management Service, add a transaction code designed to identify exempt funds, and (2) the establishment of a rule to be followed to identify those funds that are exempt from attachment in an account containing both exempt and non-exempt funds.

1. Add a Transaction Code

The delivery of funds from the Department of the Treasury to financial institutions occurs by means of ACH payments. The process is set forth in great detail in “The Green Book,” which can be found at <http://www.fms.treas.gov/greenbook/index.html>. Part of the mechanics of the delivery of funds includes a textual description of the type of funds. A portion of the Green Book, including the section entitled “Identifying the Paying Agency/Payment Type for Treasury Disbursed Payments” at page 2-9, is attached to this letter.

We would recommend that a transaction code and/or text be added by means of which the Department of Treasury could unmistakably identify the ACH payment as exempt funds. Such a code might, for example, be placed in the “Field 7 Contents,” which is shown in the attached document. While the description of Social Security benefits does not provide an obstacle to allowing a financial institution to identify those payments as exempt funds, other payments do not present the same clarity. In the flow of payments through the ACH system, it is the originator of the payment, The Department of the Treasury, and not the recipient of the payment, a financial institution, that has the most information available to be able to identify funds as exempt.

2. Create a Rule Applicable to Commingled Funds

In testimony before the Senate Finance Committee, Margot Saunders of the National Consumer Law Center acknowledged that how a financial institution should handle an account that has both exempt and non-exempt funds is “[t]he more complex

issue.” Unfortunately, the issue cannot be resolved by a simple “press of a button,” which Ms. Saunders speculates should exist.¹

For the purpose at hand, state laws on garnishments can be divided into two categories. One category is state law that requires restraint of funds in an account *at the time of service of the attachment* up to the amount of the judgment. The second is state law that requires restraint of funds in an account at the time of service of the attachment *plus any funds deposited after the date of service* up to the amount of the judgment. The first category requires a freeze of funds to be made and a one-time assessment of exempt versus non-exempt funds. The second category requires a more difficult operational challenge to financial institutions, because it requires a hold to be placed not simply on funds in an account but on the account itself in order to meet the requirement to attach deposits that come in after service of the attachment.

Both categories of state law would require a need to trace both deposits and withdrawals from an account to determine at the time of an attachment the amount of the commingled funds that is exempt. A simple illustration of the problem is:

On Day One, an account is opened with \$5,000.00 consisting of two deposits of \$2,500 each. One deposit is of exempt funds and the other is of non-exempt funds.

On Day Two, \$1,500.00 is paid from the account to the customer.

On Day Three, a Writ of Execution is served requiring the financial institution to restrain up to \$3,500.00.

At the time of service of the attachment, what is the amount of exempt funds in the account: \$2,500, \$1,000, or some other amount?

The identification of exempt funds deposited after the date service would be made simple by an additional text in Field 7. The operational challenge to place a hold on an account, not just funds in an account, would affect the ability of a financial institution to make the exempt funds instantaneously available to the customer. Instead the exempt funds that were deposited after an attachment is served, although not to be turned over to a creditor, would be restrained but would also be made available to the customer on demand (except through presentation of a payment request through ACH or paper clearinghouse systems).

¹ Margot Saunders, Counsel, National Consumer Law Center. “Frozen Out: A Review of Bank Treatment of Social Security Benefits,” Testimony before the Committee on Finance, U.S. Senate (Sept. 20, 2007) at 6.

Office of the Comptroller of the Currency
Board of Governors of the Federal Reserve System
Federal Deposit Insurance Corporation
Office of Thrift Supervision
November 27, 2007
Page 4

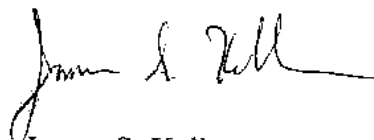
PNC Bank believes that any tracing process, having a limited application to garnished accounts holding both funds exempt under federal law and non-exempt funds, would require a manual, as opposed to an automated, process. PNC Bank believes the better approach for providing access by customers to funds that are commingled would be to impose on financial institutions an obligation to make available a certain minimum dollar amount of funds, regardless of origin.

If, for example, the minimum amount were \$3,000.00, in the example set forth above, where there would be a potential restraint on \$3,500.00 of commingled funds, \$3000.00 would be made available to the customer and \$500.00 would be subject to the attachment. The State of California uses a similar approach.² Due process under state law that provides for other types of exemptions to be claimed by a state's residents would operate to allow the customer the opportunity to petition a court for a declaration that additional funds are exempt.

Conclusion

Thank you again for the opportunity to comment on the Proposal. If you would like to discuss any aspect of this letter, please do not hesitate to call Joel B. Gold, Senior Counsel (412-762-2801) or me.

Sincerely,



James S. Keller

Attachment

cc: Michael F. Carroll
Federal Reserve Bank of Cleveland

Gary TeKolste
Office of the Comptroller of the Currency

Kathleen A. Flannery
Joel B. Gold
The PNC Financial Services Group, Inc.

² See CCP § 704.080.

Green Book

On-Line PDFs

A Guide to Federal Government
ACH Payments and Collections



www.fms.treas.gov/greenbook

2 ACH Payment Processing

Overview

This chapter provides information about how Federal government ACH payments are processed. It also contains valuable information on payment dates and information to assist in identifying Treasury disbursed payments.

In this Chapter...

| | |
|--|------------|
| A. Financial Organization Master File (FOMF) | 2-3 |
| Purpose | 2-3 |
| Financial Institution Responsibility | 2-3 |
| Changes to Financial Institution Name and Mailing Address | 2-3 |
| Changes to Routing Numbers | 2-3 |
| New Depository Institutions | 2-4 |
| B. Federal Government ACH Processing | 2-4 |
| General Flow | 2-4 |
| Prenotification | 2-4 |
| Payment Formats | 2-4 |
| Account Requirements | 2-4 |
| Payment Posting | 2-5 |
| Availability of Funds | 2-5 |
| Electronic Transfer Account (ETA) | 2-5 |
| C. Federal ACH Payment Schedule | 2-6 |
| D. Identifying Treasury Disbursed Payments | 2-6 |
| Regional Financial Center/Routing Number Table | 2-7 |
| Consumer Payment Formats | 2-8 |
| Standard Entry Class Code | 2-8 |
| Payment Types | 2-9 |
| Identifying the Paying Agency/Payment Type for Treasury Disbursed Payments | 2-9 |
| Identifying the Payee for Treasury Disbursed Payments | 2-10 |

| | |
|--|-------------|
| E. Identifying Non-Treasury Disbursed Payments | 2-11 |
| Identifying the Paying Agency/Payment Type for Non-Treasury Disbursed Payments | 2-11 |
| Identifying the Payee for Non-Treasury Disbursed Payments | 2-12 |

Green Book

Payment Types

Types of payments that utilize fall into the PPD standard entry class category include the following:

- benefit
- annuity
- travel
- salary
- allotment
- IRS tax refund
- Public Debt payments.

Identifying the Paying Agency/Payment Type for Treasury Disbursed Payments

Field 7 "Company Entry Description" (Company/Batch Header Record)

| Paying Agency/Payment Type | Field 7 Contents |
|--|---|
| Bureau of the Public <i>Debt/TreasuryDirect</i> Federal Housing Administration Debenture Payments Marketable Securities (Dills, Notes, and Bonds) | FHA/HUD PAR_AMOUNT PAR_&JNT_ INTEREST._ REFUND, AGENT_FEES Series HHH H/HHJNTST State and Local SLG_PAYMNT |
| Savings Bond Agent's Fee Payments Savings Bond Interest Payments Government Series Security Payments | |
| Central Intelligence Agency CIA Annuity | CIARDSANNU |
| Department of Veterans Affairs Compensation and Pension | VA_BENEFIT |
| Federal Salary | FED_SALARY |
| Federal Travel Payments | FED_TRAVEL |
| Office of Personnel Management Civil Service Retirement (Annuity) | CIVfi__SERV |
| Railroad Retirement Board Railroad Retirement/Annuity Unemployment/Sickness | RR_RET RR_UISI |
| Social Security Administration Social Security Supplemental Security Income | SOC_SEC SUPP_SEC_ _ |