

## LEGAL AID SOCIETY OF ROANOKE VALLEY

132 CAMPBELL AVENUE SW, SUITE 200

ROANOKE, VIRGINIA 24011-1206

TELEPHONE (540) 344-2088

FACSIMILE (540) 342-3064

GENERAL COUNSEL  
HENRY L. WOODWARDADMINISTRATOR  
SUSAN M. SMEDLEY

November 26, 2007

ATTORNEYS  
DAVID D. BEIDLER  
RACHEL H. MACKNIGHT  
EMILY FAYE JEWETT

By facsimile only to (202) 906-6518 (4 pages)

Regulation Comments  
Chief Counsel's Office  
Office of Thrift Supervision  
1700 G Street NW  
Washington DC 20552

Attention ID-OTS-6720-01-P 20%

Comments on Proposed Guidance on Garnishment of Exempt Federal Benefits

Dear OTS:

I submit these comments as General Counsel (executive director) of a state-funded legal services program of four lawyers which shares primary responsibility with a federally-funded office of one lawyer for meeting the civil legal needs of 32,053 low income people in a five-county area around the city of Roanoke, Virginia.

I believe that the proposed guidance as to best practices is so weak a response to the problems identified that it should be considered only as a temporary measure until controlling regulations can be proposed and adopted. The regulatory bodies proposing this guidance need not defer to the Social Security Administration and Department of Veteran's Affairs to describe how financial institutions should respond to existing exemption law. As to the issues on which the agencies specifically seek comment, I concur with the analysis of the National Consumer Law Center whose comments are separately submitted.

I would add this information addressing the issue of the reasonableness of fees charges charged by most banks to Virginia customers for giving away their customers' exempt funds in response to garnishment. The standard practice for Wachovia, SunTrust, BB&T, and Bank of America seems to be to charge \$100 on each single shot garnishment for this misdirection of exempt benefits. In contrast, a Virginia employer which is required to administer a Virginia wage garnishment **must by law calculate the extent of the employee's wage exemption every pay period of the garnishment, Virginia Code § 34-29; and may by law, charge no more than one \$10 fee for each garnishment summons for the entire garnishment period of up to six months duration, Virginia Code § 8.01-512.2.**

Our experience upon which these comments are based is summarized as follows:

1. The Legal Aid Society in the twelve months ending June 30, 2007 served 388 clients with representation, advice, or referral in matters of debt relief and consumer defense. About half of these were disabled or retired former workers or their dependents who had no earned income or earning potential, but were at best dependent upon Social Security disability, retirement, survivor's or dependent benefits; Supplemental Security Income (SSI); Veteran's benefits; Railroad Retirement; Black Lung; Temporary Assistance to Needy Families (TANF); Worker's Compensation; or other federal or state benefits exempted by law from levy or garnishment by creditors.
2. Most of our clients with these forms of benefit income receive it by direct deposit each month from the U.S. Treasury or state source into their individual bank accounts. This method is advantageous in that saves them from the cost of cashing their checks, safeguards their money until it is needed, provides regular statements documenting their accounts, and gives them the capacity to pay landlords, utility providers, grocery stores, and other creditors by check, which is less costly than money order and furnishes better proof of payment.
3. Most of our clients who are elderly or disabled have in their earlier lives prided themselves on keeping their bills paid and their credit clean. For many it is a source of humiliation and anxiety when their reduced income no longer allows them to pay such major debts as medical bills or credit card accounts swollen beyond recognition with assorted charges and mushrooming interest. Many go hungry or without daily essentials in the effort to keep up with obligations they can no longer realistically afford to pay.
4. An average of about two disabled or elderly clients per month come to Legal Aid with the complaint that their Social Security or other federal benefits have been frozen by creditor garnishment of the bank account into which they were directly deposited. The client is never aware that this is happening until after the freeze is in effect. I believe the debtors who come to us with this problem are just the tip of a large iceberg of affected persons.
5. Sometimes these frozen benefits are the only funds in the account, and the only source of income for the subsistence of the client. Often, however, our clients have withdrawn and re-deposited a portion of their benefits, or deposited trivial amounts of other funds such as refunds from purchases or gifts from relatives. The banks claim that this ordinary use of accounts makes it difficult to isolate the exempt benefits and they can't tell what's exempt and what's not. I do not believe this to be true in fact, as computerized bank records instantly show the nature and deposit date of available benefits.

6. Virginia statutes provide that a garnished person must be notified of possible exemptions and given an opportunity to claim them. This process requires gathering of bank statements and award letters, application to the issuing court, notice to the creditor, and a real-world minimum of two weeks after filing to get to court. In our experience the courts hearing such exemption claims are sympathetic and generally order release of exempt benefits that can be proved. Another week or ten days is often required before the release order is actually implemented by the financial institution holding the exempt funds.

7. By the time of their release, however, substantial damage has been done. Mortgage or rent payment checks have bounced, placing shelter at risk. Utility providers may have shut off vital heat or lights or gas. For each bounced check there is a fee to be paid to the frustrated payee, a fee to be paid to the bank, and the risk of criminal prosecution if all is not taken care of immediately. The fees are rarely refunded despite court order for release of the exempt funds.

8. Almost by definition our clients receiving exempt benefits have some degree of impairment or disadvantage (mobility or mental or educational or all three) which makes it difficult for them, without help, to thread the needle of application for their garnishment exemption to be recognized. Frequently the experience of losing income they thought was safe triggers anxiety and panic, leaving a traumatizing effect often as serious as the loss itself.

9. Most benefit recipients who experience this sad sequence of events choose to switch their benefit payments to direct mailing to their homes instead of direct deposit to their bank accounts. Often another month of benefits is frozen before the request for home delivery can be processed. Those who give up direct deposit place themselves in the slippery hands of exploitative check cashers and corner store money order merchants, and become easier marks for purse snatchers and conniving relatives.

10. In 2006 we represented disabled client John Wheeler to challenge garnishment of his Social Security from Wachovia Bank. The bank never even responded to our motion for contempt for freezing exempt funds. The court held Wachovia in contempt and imposed sanctions. When this result came to the attention of the banking community, they successfully lobbied Virginia's Administrative Office of the Courts to change the form garnishment order which had previously compelled a garnished bank to honor the exemption.

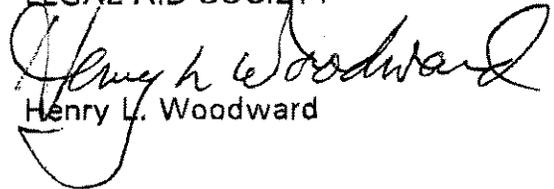
11. The answer form which Virginia courts furnish to a garnishee still permits the garnished bank to respond to the garnishment by checking a box which says "The funds held by the garnishee consist solely of direct deposited federal benefits and are statutorily exempted from garnishment." We are not aware of any

bank serving our clients which regularly makes use of this answer in appropriate cases.

12. Instead the four major banks serving this part of Virginia (Wachovia, SunTrust, Bank of America, and BB&T) all appear to maintain multi-state policies of freezing and, if not ordered otherwise, turning over the exempt benefits to the court for distribution to the garnishing creditor. Each of them also, as a matter of policy, charges its customer a fee of \$100 for the "service" of surrendering their customer's exempt funds to the garnishment. This fee is not regulated by state law, and is generally not restored to the account even if a court orders release of the exempt funds.

Thank you for consideration of these comments.

Respectfully yours,  
LEGAL AID SOCIETY



Henry L. Woodward