

**COMMENTS**

*of the*

**CENTER FOR RESPONSIBLE LENDING**

*on*

*the Garnishment of Accounts Containing Federal Benefit Payments*

Office of Personnel Management  
5 CFR Parts 831, 841  
RIN 3206-AM17

Railroad Retirement Board  
20 CFR Part 350  
RIN 3220-AB63

Social Security Administration  
20 CFR Parts 404, 416  
RIN 0960-AH18

Department of the Treasury  
Fiscal Service  
31 CFR Part 212  
RIN 1505-AC20

Department of Veterans Affairs  
38 CFR Part 1  
RIN 2900-AN67

June 18, 2010

VIA ELECTRONIC SUBMISSION

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U.S. Department of Treasury  
1500 Pennsylvania Avenue, NW Room 2112  
Washington DC 20220

The Center for Responsible Lending provides the following comments regarding the proposed rule to implement statutory restrictions on the garnishment of Federal benefit payments.

The Center for Responsible Lending (CRL) is a not-for-profit, non-partisan research and policy organization dedicated to protecting homeownership and family wealth by working to eliminate abusive financial practices. CRL is an affiliate of Self-Help, which consists of a state-chartered credit union (Self-Help Credit Union (SHCU)), a federally-chartered credit union (Self-Help Federal Credit Union (SHFCU)), and a non-profit loan fund.

SHCU has operated a North Carolina-chartered credit union since the early 1980s. Beginning in 2004, SHCU began merging with community credit unions that offer a full range of retail products. In 2008, Self-Help founded SHFCU to expand Self-Help's mission. CRL has consulted with Self-Help's credit unions, which will be subject to these regulations, in formulating comments.

We commend the Department of Treasury and other participating agencies for providing much-needed requirements for how financial institutions deal with garnishments when their customers' receive protected funds. This is an important rule since Federal benefit recipients, such as those receiving Social Security, rely on these funds for food, medication, housing, and other necessities. Because Federal benefit recipients are currently at risk of having an account temporarily frozen, cutting off access to this vital source of funds, it is crucial that the agencies adopt this rule.

There are, however, a few provisions in the proposed rule which could be improved upon to further ensure that Federal benefits are protected. Comments filed by the National Consumer Law Center (NCLC), of which we are a signatory, outline these concerns and the necessary revisions in detail. We hope that NCLC's recommendations can be taken into account to enhance the regulation in its final form.

One aspect of the proposed rule that we would like to highlight is the restriction on the taking of fees related to the garnishment process from protected income.<sup>1</sup> Currently, financial institutions may charge their customers a garnishment fee to defray the costs associated with the processing a garnishment order. While not within the scope of this current proposal, CRL believes that the restriction on the collection of fees from protected income is an important precedent that should not only be adopted in the rule under consideration with this comment, but that an extension of this restriction as a general principle to other fees generated by financial institutions in which protected funds are automatically taken should be considered in the future. As Treasury moves more recipients toward direct deposit, such a rule protecting exempt funds from overreaching fees should be a necessary corollary.

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<sup>1</sup> 75 Fed. Reg. 20303.

Perhaps the most prominent example of this is overdraft fees. Federally-protected income from Social Security and other benefits should not be permitted to be automatically taken to repay fees assessed when a recipient's account becomes overdrawn. We estimate that Social Security recipients who are dependent on this benefit for at least half of their total income paid \$1.4 billion in overdraft fees to banks and credit unions in 2008.<sup>2</sup> Since financial institutions can charge several of these fees, averaging \$34 per incident, in a single day, hundreds of dollars may be siphoned off from protected monthly income to cover small transactions.<sup>3</sup> This taking of protected income to automatically repay fees can trap recipients in cycle of debt, where they are left with limited funds after a significant share of protected income is taken to repay overdraft fees. This in turn leaves them more likely to run out of money in the following month, thus causing yet another round of overdraft fees.

We can model this outcome using a proprietary database of checking account transactions which allows us to recreate periods of time in a consumer's account activity, to provide snapshots of the broad trends in the data. The figure below, which is part of a case study in our 2008 *Shredded Security* report, tracks the checking account activity of a panelist (aka "Mary") from our database who was entirely dependent on Social Security income.<sup>4</sup>

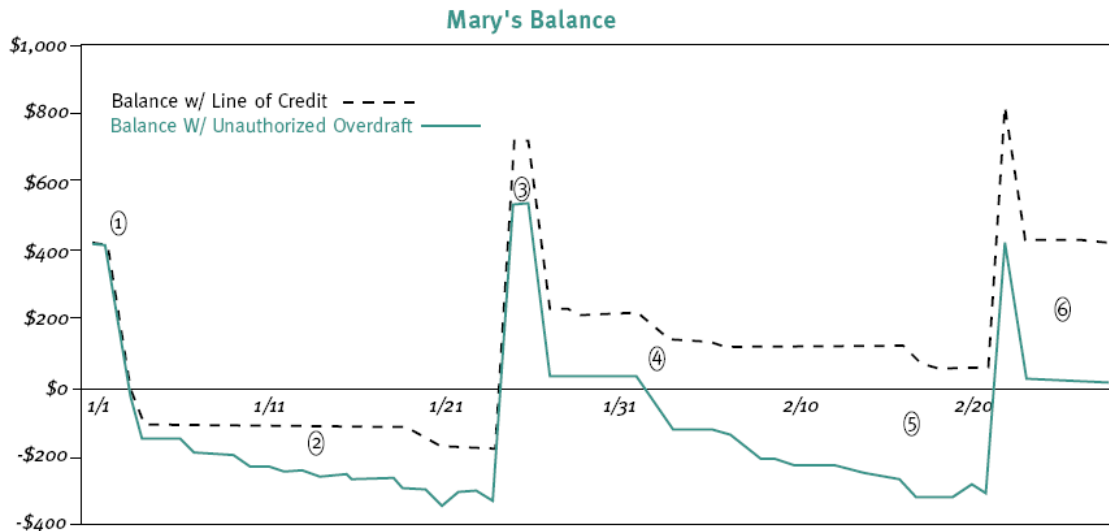
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<sup>2</sup> CRL first estimated the costs of overdraft fees to Americans age 55 and older, and those in this age group that depend on Social Security benefits for at least half their income in Leslie Parrish and Peter Smith, *Shredded Security: Overdraft practices drain fees from older Americans*, Center for Responsible Lending (June 18, 2008), available at [www.responsiblelending.org/overdraft-loans/research-analysis/shredded-security.pdf](http://www.responsiblelending.org/overdraft-loans/research-analysis/shredded-security.pdf). The figures in this comment are estimated using similar methodology while taking into account that total overdraft fees assessed on all accountholders rose from \$17.5 billion in 2006 to \$23.7 billion in 2008.

<sup>3</sup> For example, an analysis of the overdraft practices at the largest national banks found that these institutions' allow three to ten overdraft fees to be assessed per day. Even if only three overdraft fees are charged, a customer would incur over \$100 in fees in a single day (\$34 average overdraft fee \* 3 = \$102). In addition, many financial institutions also charge sustained overdraft fees if the customer continues to be overdrawn for several days. See *National Bank Regulator Enabled Overdraft Abuses*, Center for Responsible Lending (February 2010), available at [www.responsiblelending.org/overdraft-loans/policy-legislation/regulators/national-bank-regulator-enabled-overdraft-abuses.pdf](http://www.responsiblelending.org/overdraft-loans/policy-legislation/regulators/national-bank-regulator-enabled-overdraft-abuses.pdf).

<sup>4</sup> The original case study begins on page 9 of Leslie Parrish and Peter Smith, *Shredded Security: Overdraft practices drain fees from older Americans*, Center for Responsible Lending (June 18, 2008).

Figure: Representation of account balance of panelist “Mary” January–February 2006



The solid line represents Mary’s account balance, which is replenished on a monthly basis with Social Security—her only source of income.<sup>5</sup> In January, Mary becomes hundreds of dollars overdrawn due to several overdraft incidents and daily “sustained” overdraft fees. About a third of her next Social Security check is taken to repay these fees and bring her account back above zero. With reduced funds for her expenses in the month ahead, Mary quickly falls back to a negative balance. Towards the end of February when she receives another infusion of Social Security benefits, she has even more of these funds taken to repay overdraft fees, drastically reducing her available funds again.

Because her bank continues to charge cascading overdraft fees and then repay itself in full from her next direct deposit, Mary’s financial position steadily weakens throughout this time period. Protections are needed against the taking of significant amounts of protected income to repay fees for overdraft coverage a bank chose to offer in lieu of more affordable options. Protected income, funded by taxpayer dollars, should not be used to further a downward spiral of debt. So, while not the goal of this proposed rule, we hope that the agencies will consider restrictions on the taking of protected income as it relates to overdraft and other similar bank fees in the future, particularly since Treasury aims to deliver most benefit payments via direct deposit by 2013.

We again thank the Treasury Department and other participating agencies for their attention on this important matter of protecting Federal benefits deposited into bank accounts. Our hope is that these agencies will take NCLC’s recommendations into account when formulating the final rule and keep the proposed restriction on the taking of protected funds to pay garnishment fees intact. We hope that the Treasury and other agencies will consider as a follow-up to this rule the implications of other types of bank fees, especially overdraft fees, on protected income such as Federal benefit payments.

<sup>5</sup> A second dashed line represents what Mary’s account balance would be if she had a lower-cost overdraft line of credit, rather than being assessed a per-item overdraft fee.