information is accurate, relevant, timely, and least of all complete. With the passage of time, seemingly irrelevant or untimely information may acquire new significance as further investigation brings new details to light.

(8) From subsection (e)(8) because the notice requirements of this provision could present a serious impediment to law enforcement by revealing investigative techniques, procedures, and existence of confidential investigations.

(9) From subsection (f) because the agency's rules are inapplicable to those portions of the system that are exempt and would place the burden on the agency of either confirming or denying the existence of a record pertaining to a requesting individual, which might in itself provide an answer to that individual relating to an ongoing investigation. The conduct of a successful investigation leading to the indictment of a criminal offender precludes the applicability of established agency rules relating to verification of record, disclosure of the record to that individual, and record amendment procedures for this record system.

(10) For comparability with the exemption claimed from subsection (f), the civil remedies provisions of subsection (g) must be suspended for this record system. Because of the nature of criminal investigations, standards of accuracy, relevance, timeliness, and completeness cannot apply to this record system. Information gathered in an investigation is often fragmentary, and leads relating to an individual in the context of one investigation may instead pertain to a second investigation.

(c) *Specific systems of records exempted under (k)(2) and (k)(5).* The Board exempts the RATB Fraud Hotline Program Files (RATB—12) system of records from the following provisions of 5 U.S.C. 552a:

(1) From subsection (c)(3) because disclosures from this system could interfere with the just, thorough and timely resolution of the complaint or inquiry, and possibly enable individuals to conceal their wrongdoing or mislead the course of the investigation by concealing, destroying or fabricating evidence or documents.

(2) From subsection (d) because disclosures from this system could interfere with the just, thorough and timely resolution of the complaint or inquiry, and possibly enable individuals to conceal their wrongdoing or mislead the course of the investigation by concealing, destroying or fabricating evidence or documents. Disclosures could also subject sources and witnesses to harassment or intimidation which jeopardize the safety and well-being of themselves and their families.

(3) From subsection (e)(1) because the nature of the investigatory function creates unique problems in prescribing specific parameters in a particular case as to what information is relevant or necessary. Due to close working relationships with other Federal, state and local law enforcement agencies, information may be received which may relate to a case under the investigative jurisdiction of another government agency. It is necessary to maintain this information in order to provide leads for appropriate law enforcement purposes and to establish patterns of activity which may relate to the jurisdiction of other cooperating agencies.

(4) From subsection (e)(4)(G)–(H) because this system of records is exempt from the access provisions of subsection (d).

(5) From subsection (f) because the agency's rules are inapplicable to those portions of the system that are exempt and would place the burden on the agency of either confirming or denying the existence of a record pertaining to a requesting individual might in itself provide an answer to that individual relating to an on-going investigation. The conduct of a successful investigation leading to the indictment of a criminal offender precludes the applicability of established agency rules relating to verification of record, disclosure of the record to that individual, and record amendment procedures for this record system.

Ivan J. Flores,

Paralegal Specialist, Recovery Accountability and Transparency Board.

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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

Garnishment of Accounts Containing Federal Benefit Payments

AGENCY: Department of the Treasury, Fiscal Service (Treasury); Social Security Administration (SSA); Department of Veterans Affairs (VA); Railroad Retirement Board (RRB); Office of Personnel Management (OPM).

ACTION: Joint notice of proposed rulemaking.

SUMMARY: Treasury, SSA, VA, RRB and OPM (Agencies) are publishing for comment a proposed rule to implement statutory restrictions on the garnishment of Federal benefit payments. The Agencies are taking this action in response to recent developments in technology and debt collection practices that have led to an increase in the freezing of accounts containing Federal benefit payments. The proposed rule would establish procedures that financial institutions must follow when a garnishment order is received for an account into which Federal benefit payments have been directly deposited. The proposed rule would require financial institutions that receive a garnishment order for an account to determine whether any Federal benefit payments were deposited to the account within 60 calendar days prior to receipt of the order and, if so, would require the financial institution to ensure that the account holder has access to an amount equal to the sum of such payments in

the account or to the current balance of the account, whichever is lower.

DATES: Comments must be received on or before June 18, 2010.

ADDRESSES: The Agencies invite comments on all aspects of this proposed rule. In accordance with the U.S. government's eRulemaking Initiative, the Agencies publish rulemaking information on *http://www.regulations.gov.* Regulations.gov offers the public the ability to comment on, search, and view publicly available rulemaking materials, including comments received on rules.

The Agencies will jointly review all of the comments submitted. Comments on this rule must only be submitted using the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions on the Web site for submitting comments.
- *Mail:* Gary Grippo, Deputy Assistant Secretary, Fiscal Operations and Policy, U.S. Department of the Treasury, 1500 Pennsylvania Avenue, NW., Room 2112, Washington, DC 20220.

Instructions: All submissions received must include the Agencies' names and RIN numbers 3206–AM17, 3220–AB63, 0960–AH18, 1505–AC20, and 2900–AN67 for this rulemaking. In general, comments received will be published on Regulations.gov without change, including any business or personal information provided. Treasury will also make such comments available for public inspection and copying in Treasury's Library, Room 1428, Department of the Treasury, 1500 Pennsylvania Avenue, NW., Washington, DC 20220, on official business days between the hours of 10 a.m. and 5 p.m. Eastern Time. You can make an appointment to inspect comments by telephoning (202) 622–0990. Comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not include any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

FOR FURTHER INFORMATION CONTACT: Gary Grippo, Deputy Assistant Secretary, Fiscal Operations and Policy, U.S. Department of the Treasury, at (202) 622–6222, or e-mail questions to *garnishment@do.treas.gov.*

SUPPLEMENTARY INFORMATION: The Agencies are proposing to adopt a rule to address concerns associated with the garnishment of exempt Federal benefit payments, including Social Security benefits, Supplemental Security Income (SSI) benefits, VA benefits, Federal Railroad retirement benefits, Federal Railroad unemployment and sickness benefits, Civil Service Retirement System benefits and Federal Employees Retirement System benefits. These benefits, which are generally exempt under Federal law from garnishment orders and the claims of judgment creditors, often constitute a major portion, and sometimes all, of an individual's income. As a result, when financial institutions receive garnishment orders and place freezes on accounts containing exempt Federal benefit payments, the recipients of these funds can face significant hardship. At the same time, financial institutions are required by law to comply with garnishment orders, which may necessitate placing a freeze on an account that contains Federal benefit payments. The Agencies are proposing to adopt a rule that would set forth straightforward, uniform procedures for financial institutions to follow in order to minimize the hardships encountered by Federal benefit payment recipients whose accounts are frozen pursuant to a garnishment order.

I. Background

Social Security benefits, SSI benefits, VA benefits, Federal Railroad Retirement benefits, Federal Railroad unemployment and sickness benefits, Civil Service Retirement System benefits and Federal Employees Retirement System benefits are protected under Federal law from garnishment and the claims of judgment creditors.[1] For example, Section 207 of the Social Security Act provides that moneys paid or payable as Old-Age, Survivors, and Disability Insurance (OASDI) benefits are not "subject to execution, levy, attachment, garnishment, or other legal process."[2] Similarly, VA benefits are exempt, in most cases, from "attachment, levy, or seizure by or under any legal or equitable process whatever, either before or after receipt by the beneficiary" under a separate section of the United States Code.[3] Federal Railroad Retirement benefits, Federal Railroad unemployment and sickness benefits, Civil Service Retirement System benefits and Federal Employees Retirement System benefits are similarly protected under Federal law.[4]

Creditors and debt collectors are often able to obtain court orders garnishing funds in an individual's account at a financial institution. Neither the creditor nor the court issuing the order may know whether an account contains Federal benefit payments. To comply with court garnishment orders and preserve funds subject to the orders, financial institutions often place a temporary freeze on an account upon receipt of a garnishment order. Although state laws provide account owners with an opportunity to assert any rights, exemptions, and challenges to the garnishment order, including the exemptions under applicable Federal benefits laws, the freezing of funds during the time it takes to file and adjudicate such a claim can cause significant hardship for account owners. This is especially true when, as is often the case, the recipient of Federal benefits depends on these funds as his or her primary or sole source of income. Recent statistics show that 32 percent of Social Security beneficiary married couples or nonmarried persons age 65 or older reported receiving 90 percent or more of their income from Social Security. In addition, Social Security benefits are the primary source of income (representing 50 percent or more of total income) for 64 percent of beneficiary married couples or nonmarried persons age 65 or older.[5] If their accounts are frozen, these individuals may find themselves without access to the funds in their account unless and until they contest the garnishment order in court, a process that can be confusing, protracted and expensive.

At the same time, financial institutions are required by law to comply with garnishment orders. A financial institution that fails to preserve and remit funds may be at risk of being held in contempt of court. In many cases, a financial institution would be liable for any funds that are withdrawn by an account holder after the financial institution has received a garnishment order for the account.

It can be difficult for a financial institution to determine whether an account contains Federal benefit payments that are exempt from garnishment ("exempt funds" or "exempt payments"). A financial institution may not understand the

[1] *See* 42 U.S.C. 407(a); 42 U.S.C. 1383(d)(1); 38 U.S.C. 5301(a); 45 U.S.C. 231m(a); 45 U.S.C. 352(e); 5 U.S.C. 8346(a) and 5 U.S.C. 8470.

[2] 42 U.S.C. 407.

[3] 38 U.S.C. 5301(a)(1).

[4] 45 U.S.C. 231m(a); 45 U.S.C. 352(e); 5 U.S.C. 8346; 5 U.S.C. 8470.

[5] Annual Statistical Supplement to the Social Security Bulletin, 2008 Social Security Administration Office of Retirement and Disability Policy Office of Research, Evaluation, and Statistics SSA Publication No. 13–11700. Released: March 2009.

Automated Clearing House[6] (ACH) batch header fields that accompany direct deposit payments and identify different Federal benefit programs, and thus the institution will not necessarily conclude from the information available to it that a direct deposit payment is an exempt payment. Identifying exempt payments can be even more challenging when an account holder deposits checks representing benefit payments to an account. To determine whether a check representing exempt funds was deposited to an account, a financial institution would have to review images of the deposit tickets and the checks deposited to the account—a manual, time-consuming, and costly process.

One of the biggest obstacles to determining whether an account contains exempt funds arises when both exempt funds and non-exempt funds have been deposited to an account. In such cases, there is no single, consistently applied accounting standard to determine the proportion of the commingled funds that should be protected from garnishment. For example, if a $1000 exempt payment is deposited to John Doe's account on May 1, followed by a $300 withdrawal on May 2, a $200 deposit of non-exempt funds on May 3, and a $400 withdrawal on May 4, it is not clear what amount of money is exempt from a garnishment order received on May 5. If a first-in, first-out method of identifying funds is used, $300 would be exempt.[7] An alternative approach would result in the determination that $500 would be exempt.[8] Yet a third approach would result in a determination that $389 would be exempt.[9]

In addition, garnishment orders may not provide sufficient information to allow financial institutions to know if an order is subject to one of the exceptions allowing garnishment of Federal benefit payments.

As a result of these complexities, many financial institutions have concluded that they are not in a position to evaluate the extent to which funds in an account are protected from garnishment, and that attempting to do so may expose them to liability. The account holder is thus left to assert in court any Federal law protections that may be available to exempt funds in an account, resulting in the hardships discussed above.

II. Overview of Proposed Rule

To address the foregoing problems, the Agencies are proposing to adopt a new rule. The primary goals of the proposed rule are (1) to ensure that benefit recipients have access to exempt funds while garnishment orders are complied with, adjudicated, or otherwise resolved; (2) to protect financial institutions from liability when, having received a garnishment order for an account receiving Federal benefit payments, they allow the account holder access to exempt funds in the account; and (3) to establish straightforward, uniform, cost effective procedures addressing the extent to which financial institutions may, pursuant to garnishment orders, freeze or seize funds in accounts that contain Federal benefits. The rule would protect financial institutions that follow specified procedures from the risk of liability, contempt of court, or civil penalties when they permit account holders to access funds in the account in accordance with the requisite procedures. The rule would not limit an account holder's right to assert any additional protections against garnishment that might be available under Federal or state law. The Agencies seek comment on all aspects of the proposed rule.

Procedural Instructions for Financial Institutions

The proposed rule is largely structured as a series of straightforward actions that a financial institution must carry out upon receipt of a garnishment order. The first step in the sequence is to determine if the United States is the plaintiff that obtained the order against an account holder. For the reasons discussed in more detail below, the proposed rule has an exclusion for those cases where a Federal entity is the creditor.

Account Review and Lookback Period

The second step for a financial institution that receives a garnishment order for an account would be to review the account history during the 60-day period that precedes the receipt of the garnishment order. If, during this "lookback period," one or more exempt payments were directly deposited to the account, the financial institution must allow the account holder to have access to an amount equal to the lesser of the sum of such exempt payments or the balance of the account on the date of the account review (the "protected amount"). The financial institution must notify the account holder of the protections from garnishment that apply to exempt funds. The Agencies are proposing that the lookback period be 60 calendar days to provide financial institutions with a reasonable and easily applied boundary for the account review, and so that the last two cycles of benefit payments under any of the Agencies' programs are generally covered. The Agencies welcome comment on the definition and effects of the proposed lookback period.

The Agencies considered using a uniform, flat amount in the definition of the protected amount that would apply in all cases where a benefit payment was deposited to an account during the lookback period. For example, the Agencies considered a policy that the protected amount would mean the lesser of (i) $2,200 or (ii) the balance in the account on the date of account review. This approach of establishing a standard protected amount of $2,200 would provide certainty, clarity, and administrative simplicity for all parties. However, the Agencies are concerned that such a definition may go beyond the underlying statutory authorities to protect "moneys paid" and would result in the unauthorized over-protection of funds when benefit payments were less than the flat amount, or when the funds in the account could not be reasonably traced back to earlier benefit payments. The Agencies welcome comment on the underlying statutory authority and the definition of the protected amount.

If an individual has multiple accounts at a financial institution, the proposed rule would require a separate account review, and the establishment of a separate protected amount, for each account. Further, in some cases an individual with multiple accounts may make one-time or recurring transfers between accounts. If an exempt payment is directly deposited into one

[6] The Automated Clearing House is the nationwide electronic fund transfer system that provides for the inter-bank clearing of direct deposit transactions and for the exchange of payment-related information among participating financial institutions.

[7] There are $1000 in exempt funds at end of May 1; $700 in exempt funds at end of May 2; and $700 in exempt funds and $200 in non-exempt funds at end of May 3. On May 4, the $400 withdrawal is applied against the first funds that were deposited to the account, *i.e.,* the remaining $700 exempt amount. Under this approach, there would be an exempt amount of $300 on May 5.

[8] There are $1000 in exempt funds at end of May 1; $700 in exempt funds at end of May 2; and $700 in exempt funds and $200 in non-exempt funds at end of May 3. The May 4 $400 withdrawal is allocated equally to the exempt and non-exempt funds, *i.e.,* $200 is treated as being withdrawn from the exempt funds and $200 is treated as being withdrawn from the non-exempt funds, for an exempt amount of $500 on May 5.

[9] There are $1000 in exempt funds at end of May 1; $700 in exempt funds at end of May 2; $700 in exempt funds and $200 in non-exempt funds at end of May 3. On May 4, the $400 withdrawal is treated as occurring in proportion to the nature of the funds in the account, i.e., 7/9 of the withdrawal, or $311, is treated as withdrawn from the exempt funds and 2/9 of the withdrawal, or $89, is treated as withdrawn from the non-exempt funds. Under this approach, $389 would be exempt on May 5.

account and funds from that account are subsequently transferred to a second account, the financial institution would have no requirement to trace funds into the second account or to establish a protected amount in the second account as a result of the transfer. The account review on the second account would be performed independent of the first account based on an examination for directly deposited Federal benefit payments, not account transfers. The Agencies request comment on this aspect of the proposed rule.

Process for Identifying Exempt Funds

The Agencies will do two things to assist financial institutions to determine whether exempt funds were directly deposited during the lookback period. First, Treasury will encode an "X" in position 20 of the "Company Name" Field of the Batch Header Record for each Agency exempt benefit Automated Clearing House (ACH) payment. For example, a typical Social Security benefit payment would have a company name of "US TREASURY 303X." This encoding, along with the current practice of encoding a "2" in the "Originator Status Code" Field in the Batch Header Record to designate payments originated from the Federal government, will allow financial institutions to identify Federal exempt payments through either manual or systems inspection.

Second, the Agencies will publish a list of the unique "Entry Detail Description" Fields in the Batch Header Record for all of their exempt benefit payments. For example, the "SUPP SEC" entry denotes an exempt Supplemental Security Income benefit payment, and "VA CH31" denotes an exempt VA Vocational Rehabilitation & Education benefit payment.

Because information in the "Company Name" and the "Entry Detail Description" Fields is typically included on the account holder's bank statement, financial institutions should also be able to visually identify an exempt payment using a standard customer service or account maintenance screen.

Treasury will update the Green Book, *A Guide to Federal Government ACH Payments and Collections,* to reflect these mechanisms for identifying exempt Federal payments, and financial institutions will be able to rely on this combination of identifiers to determine whether exempt payments were deposited to an account during the lookback period.

Financial institutions would not be required to research checks to determine whether a Treasury check representing an exempt payment was deposited to an account. The Agencies are not proposing to address checks within the rule for two reasons. First, checks do not appear to raise the same concerns raised by the direct deposit of exempt funds. A benefit recipient who receives a Treasury check representing exempt funds can choose to cash the check rather than to deposit the check and take on the risk that the funds will be garnished. In contrast, direct deposit by its very definition involves the depositing of the payment to an account without the intermediate step in which the payment beneficiary receives the payment instrument and has physical control of its disposition through endorsement and negotiation. Second, there is no way currently for financial institutions to readily identify whether a Treasury check that was deposited to an account represents exempt funds. Whereas the Agencies are proposing the inclusion of identifiers for directly deposited payments, there is no equivalent approach that would make it possible for financial institutions to determine whether a Treasury check represents an exempt payment. Even if the Agencies could develop a way for an identifier to be included on a Treasury check, a financial institution would need to manually pull up images or copies of recent items to find Treasury checks and visually inspect them.

The fact that the rule would not address Treasury checks in no way affects an individual's right to assert or receive an exemption from garnishment by following the procedures specified under the applicable law. Indeed, nothing in the proposed rule in any way limits or restricts an account holder's right to assert a claim that any or all funds in an account are protected from garnishment under Federal or state law, including funds deposited by check or a balance in the account in excess of the protected amount.

Discretionary Account Freezes

The Agencies are aware that a minority of jurisdictions may permit, but not require, financial institutions to respond to a garnishment order by placing a freeze on the judgment debtor's entire account or on an amount of account funds greater than that which the financial institution is directed to sequester by court order. The proposed rule would preclude financial institutions from placing freezes on protected funds in all circumstances, even when the freeze is discretionary in the sense of not being compelled by court order or state statute or regulation. Financial institutions may undertake such "discretionary" freezes covering amounts in excess of the judgment debt as a protective measure to limit the financial institution's liability for releasing other funds to the account holder, or because the financial institution is unaware of which funds in the account are exempt from garnishment.

As already discussed, Federal law protects Federal benefits payments from garnishment, seizure, or other legal process.[10] Some federal and state courts have found that in certain circumstances a temporary freeze on an account containing exempt funds may violate Federal anti-garnishment statutes. *See, e.g., Finberg* v. *Sullivan,* 634 F.2d 50 (3d Cir. 1980); *Mayers* v. *N.Y. Cmty. Bancorp, Inc.,* No. CV–03–5837, 2005 U.S. Dist. LEXIS 20279 (E.D.N.Y. Aug. 13, 2005); *Brosamer* v. *Mark,* 540 N.E.2d 652 (Ind. Ct. App. 1989). Although the Agencies considered limiting the rule to only those freezes mandated by court order or state statute or regulation, there is concern that in light of the legal uncertainty such a limited rule could not be fashioned in a manner that would protect exempt funds from being frozen. The Agencies have therefore determined that the only way to protect exempt funds from being subjected to garnishment, seizure, or other legal process is to preclude financial institutions from placing freezes on protected funds in all circumstances.

Direct Service on Agencies for Alimony and Child Support Obligations

Under the proposed rule, financial institutions would not be responsible for determining the purpose of a garnishment order, including whether the order seeks to collect child support or alimony obligations. Financial institutions would calculate the protected amount and ensure that the protected amount is not frozen, and would be protected from any liability for taking this action.

Parties seeking to garnish Federal benefit payments for alimony or child support obligations would not be foreclosed from recovering these amounts, however, as they can pursue these benefits directly by garnishing benefit payments before they are made by the Agency issuing the payment. *See* 42 U.S.C. 659. SSA, VA, RRB and OPM each accept service of process of garnishment orders for child support and alimony, and will give effect to such orders if the payments that are the

[10] *See* 42 U.S.C. 407(a); 42 U.S.C. 1383(d)(1); 38 U.S.C. 5301(a); 45 U.S.C. 231m(a); 45 U.S.C. 352(e); 5 U.S.C. 8346(a) and 5 U.S.C. 8470.

subject of the order can legally be garnished for these purposes.[11]

Protected Amount

The Agencies are proposing that the protected amount be the lesser of (1) the sum of all benefit payments directly deposited to the account during the lookback period, or (2) the balance in the account on the day when the financial institution reviews the account history.[12] As described above, the intent of the 60-day lookback period is to ensure that two benefit payment cycles are generally captured and thus produce in most cases a protected amount equal to twice the monthly benefit amounts. The Agencies welcome comment on this definition of the protected amount.

It is important to note that the protected amount is not the same as the amount of funds that may ultimately be exempt from garnishment. The proposed rule would not prevent or limit a benefit recipient from challenging a garnishment order; it would simply prevent the freezing of a lifeline amount of exempt funds. Thus, if a benefit recipient believed that an account contained exempt funds in excess of the protected amount, the recipient could follow the procedures established under the applicable law to contest the garnishment.

Continuing Garnishments

A small number of states authorize the issuance of a "continuing" garnishment order, *i.e.,* an order requiring the garnishee to monitor, preserve and remit funds coming into the garnishee's custody on an ongoing basis.[13] Under the proposed rule, a financial institution that receives a garnishment order for an account containing a protected amount would have no continuing obligation to garnish amounts deposited or credited to the account following the date of account review, and would not be permitted to take any action to freeze any amounts subsequently deposited or credited unless served a new or different garnishment order. In effect, the proposed rule would partially preempt state law by converting an ongoing garnishment order into a one-time garnishment order and prohibiting the financial institution from complying with the order's ongoing requirements.

This partial preemption is necessary to give effect to the protections in the anti-garnishment statutes, since it is not feasible to implement both a protected amount and to permit continuing garnishment. Unlike one-time garnishment orders, with respect to which a financial institution may comply by reviewing prior deposits in an accounting system during a defined lookback period, continuing garnishment orders would require financial institutions to take action on each future deposit. That is, a benefit payment could be protected only if financial institutions monitored new deposits in real time, or at least daily, to assess which are exempt and which are not exempt from garnishment, to be sure that exempt funds are never frozen. The Agencies believe that a policy of requiring financial institutions to monitor deposits daily would be neither operationally nor economically feasible, and would put financial institutions in the untenable position of having to choose between noncompliance with the rule, by freezing accounts, or noncompliance with the continuing garnishment order, by allowing the account holder access to all funds. Even if it were possible to implement such a policy in a manner consistent with the anti-garnishment statutes, its costs and burdens could result in benefit recipients finding it difficult to obtain banking services. Accordingly, the proposed rule necessarily preempts the requirements of continuing garnishment in cases where a benefit payment was deposited into an account during the lookback period. The Agencies note, however, that while the proposed rule preempts the continuing garnishment of an account pursuant to one court order, creditors are not restricted from obtaining, and courts are not prohibited from issuing, discrete new garnishment orders against the same account over time.

Garnishment Fees

The proposed rule would prohibit financial institutions from charging garnishment fees against protected amounts. For an account that contains a protected amount, the financial institution would be permitted to collect a garnishment fee only against funds in the account in excess of the protected amount on the date of the account review, and only if the financial institution customarily charges its other account holders a garnishment fee of the same nature and in the same amount. Financial institutions would not be permitted to charge garnishment fees that are specific to accounts to which exempt payments are deposited. In addition, for accounts containing a protected amount, a financial institution would not be permitted to charge or collect a garnishment fee after the date of account review. Thus, a financial institution could not defer a garnishment fee until future deposits are received in the account.

Notice to Account Owner

To ensure that recipients are aware of their rights to challenge a garnishment order, financial institutions would be required to deliver a notice explaining these rights to the owner of any account for which the financial institution conducted an account review and to which an exempt payment was directly deposited during the lookback period. The notice, which would have to include certain information set forth in the proposed rule, would be required to be sent within two business days of the completion of the account review. The proposed rule contains a model notice. Financial institutions would not be required to use the model notice, but those that choose to do so would be deemed to be in compliance with the notice content requirements set forth in the rule.

Safe Harbor for Financial Institutions

The proposed rule would provide a safe harbor for financial institutions that comply with the required procedures. A financial institution that makes available the protected amount to an account holder in accordance with the rule's requirements would not be at risk of contempt of court or liability to a judgment creditor. The proposed rule would preempt any state or local government law or regulation that is inconsistent with the proposed rule, but only to the extent that an inconsistency would prevent a financial institution from complying with the requirements of the proposed rule. Some state laws, for example, may protect from garnishment funds in a bank account in an amount that exceeds the protected amount. The proposed rule does not displace or supersede such a state law requirement.

Treatment of Garnishment Orders Obtained by the United States

As described above, in cases where the United States is the plaintiff that has obtained a garnishment order against an account holder, the proposed rule would not require the financial institution to perform an account review or establish a protected amount. The Agencies are adopting this categorical exclusion of garnishment orders

[11] *See* 5 CFR part 581; *see also,* 20 CFR 404.1820; SSA Program Operations Manual System GN 02410.200–.210; 20 CFR part 350; and VA Veterans Benefits Administration Manual Rewrite M21–1MR, part III, subpart v, chapter 3, section C.13.

[12] If the balance in the account is zero or if the account balance is negative, there would be no protected amount.

[13] *See, e.g.,* NY Civil Prac L & R 5222(b); Pa. R. Civil P. 3111(c).

obtained by the United States for two reasons.

First, while the statutes that prohibit the garnishment of Federal benefit payments apply in some instances when the United States is a creditor, there are several Federal statutes that expressly permit the United States to garnish such payments in other instances. These statutes permitting the United States to garnish Federal benefits payments include 18 U.S.C. 3613(a), 26 U.S.C. 6334(c), 31 U.S.C. 3716(c)(3)(A)(i), and 42 U.S.C. 1320a–8(e)(1)(C). Absent a carve-out for all garnishment orders obtained by the United States, financial institutions would face uncertainty and the burden of determining which authority applied in a given instance.

Second, garnishments obtained by the United States are already governed by a comprehensive Federal statute that would overlap with certain provisions in the proposed rule and conflict with others. The Federal Debt Collection Procedures Act (FDCPA), 28 U.S.C. 3001 *et seq.,* establishes a uniform framework with exclusive civil procedures for the collection of all judgments due the United States, including cases where the United States is prohibited from garnishing Federal benefit payments as well as cases where it is expressly allowed to garnish such payments. *See* H.R. Rep. No. 101–736, at 32 (1990) ("the purpose of [the FDCPA] is to create a comprehensive statutory framework for the collection of debts owed to the United States government. Creation of a uniform Federal framework for the collection of Federal debts in the Federal Courts will improve the efficiency and speed in collection of those debts* * *").

While the proposed rule is needed to address the problems of garnishing exempt funds, it would both overlap and conflict with the framework of the FDCPA unless garnishment orders obtained by the United States are excluded. For example, the FDCPA includes numerous procedural protections for debtors who owe money to the United States that are intended to achieve similar goals as the proposed rule. It allows a debtor to exempt certain property from a money judgment based on either bankruptcy law or other non-bankruptcy Federal, State and local law, including the debtor's right to receive various benefits, maintenance payments, and pensions and annuities. *See* 28 U.S.C. 3014 and 11 U.S.C. 552(d). In addition, section 212.6(f) of the proposed rule would conflict with the FDCPA by providing that financial institutions shall have no continuing or periodic garnishment responsibilities. The FDCPA requires garnishment orders to be continuing. *See* 28 U.S.C. 3104(a), 3205(a). If both the FDCPA and the proposed rule applied to the same garnishment orders, confusion would likely arise from the overlapping and conflicting provisions. Additional procedural steps are needed to harmonize the two authorities.

Therefore, in light of the express authority of the United States to garnish Federal benefit payments in certain instances, the protections already guaranteed debtors under the FDCPA in all instances, and the confusion that would arise from having a rule with exceptions to comply with conflicting Federal statutes, the Agencies have chosen to establish a bright-line, procedural exclusion for garnishment orders obtained by the United States.

With such orders, financial institutions would not be required to perform an account review or take actions otherwise required by the proposed rule. Rather, the proposed rule would direct financial institutions to follow their customary procedures for garnishment orders and treat the relevant account(s) as if no Federal benefit payment were present. Financial institutions could rely on the naming of the "United States of America," "United States," or "U.S." as the plaintiff in the caption of the order, or on a standard certification that a Federal entity attaches to the order, to easily determine if the garnishment order was obtained by the United States. The proposed rule would provide a safe harbor for financial institutions that comply with the procedures required by the proposed rule.

Finally, the Agencies note that the United States obtains all garnishment orders in Federal court. Thus, although the proposed rule establishes an exclusion for garnishment orders obtained by the United States, it still fulfills the goal of providing financial institutions with a uniform national policy for handling garnishment orders issued by all state courts. The Agencies invite comments on all aspects of this policy on garnishment orders obtained by the United States.

Notwithstanding the need for this exclusion, to the extent that a Federal benefit payment is exempt from a garnishment order obtained by the United States, this exclusion does not alter such exempt status, or an individual's right to assert an exemption, that may exist under Federal law.

Enforcement

The Federal banking agencies (the Comptroller of the Currency, Federal Deposit Insurance Corporation, Federal Reserve Board, and Office of Thrift Supervision) and the National Credit Union Administration have authority under the Federal Deposit Insurance Act (12 U.S.C. 1818) and the Federal Credit Union Act (12 U.S.C. 1786), respectively, to pursue enforcement actions against insured depository institutions and insured credit unions for violations of law, rule or regulation. The provisions of the rule that would be applicable to insured depository institutions and insured credit unions would be subject to such enforcement authority.

III. Section-by-Section Analysis for 31 CFR Part 212

The provisions of the proposed rule would be set forth in a new part 212 to 31 CFR. SSA, VA, RRB and OPM are each proposing to amend their existing regulations to include a cross-reference to 31 CFR Part 212.

Section 212.1

Section 212.1 sets forth the purposes of the proposed rule.

Section 212.2

The proposed rule would apply to every entity defined as a financial institution, if the financial institution holds accounts to which benefit payments are directly deposited by one or more of the Agencies.

Section 212.3

Various terms used in the proposed regulation are defined in section 212.3. "Account" is defined to mean any account held by a financial institution to which benefit payments can be delivered by direct deposit. If a financial institution holds an account that does not have the capability to receive direct deposit payments, then that account would not fall within the definition, and the proposed rule would not apply to the financial institution's handling of the order.

For the reasons discussed above, "benefit payment" is defined as a direct deposit payment, and not a check payment. Accordingly, financial institutions would not need to identify benefit checks deposited to an account, and any such deposits would not be considered in determining whether there is a protected amount.

"Financial institution" is defined as a bank, savings association, credit union or other entity chartered under Federal or state law to engage in the business of banking. The definition is intended to be very broad, in order to capture any financial institution that might hold an account to which Federal benefits may be directly deposited. The Agencies

request comment on whether the proposed definition is appropriate.

The definition of "garnish" and "garnishment" are based on the wording of Agency statutes establishing the exemption of certain Federal benefit payments from garnishment. "Garnishment fee" is broadly defined to mean any kind of a fee that a financial institution charges to an account holder related to the receipt or processing of a garnishment order. "Garnishment order" and "order" are defined to mean a writ, order notice, summons, or similar written instruction issued by a court to effect a garnishment.

"Lookback period" is defined to mean the 60 calendar-day period preceding the date on which a financial institution is served a garnishment order. The Agencies are proposing that the lookback period be 60 calendar days long in order to generally cover the last two cycles of benefits paid under any of the Agencies' programs.

"Protected amount" is defined as the lesser of (i) the sum of all benefit payments deposited to the account during the lookback period or (ii) the balance in an account on the date of account review. Under this definition, there would not be a protected amount if the account balance is zero or the account is overdrawn.

"State" is defined to mean 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.

Section 212.4

Section 212.4 of the proposed rule sets forth the first action that a financial institution must take when it receives a garnishment order, which is to determine whether the order was obtained by the United States. In most cases, garnishment orders obtained by the United States will be readily identifiable by the caption on the first page of the order, which will read "United States of America," or "United States," or "U.S." In some cases, however, this will not be the case. Accordingly, financial institutions must also check to see whether the order is accompanied by a Notice of Garnishment by the United States, as set forth in Appendix B. Financial institutions may rely on this two-step test to determine if an order was obtained by the United States. For orders obtained by the United States, the financial institution would follow its otherwise customary procedures for handling the order. For all other orders, the financial institutions would be required to follow the procedures in sections 212.5 and 212.6.

Section 212.5

Proposed section 212.5 outlines the account review a financial institution must conduct if it has determined, pursuant to section 212.4, that a garnishment order was not obtained by the United States. In such cases, a financial institution must review the history of the account being garnished to determine if a benefit payment was deposited into the account during the lookback period. If no benefit payments were deposited to the account during the lookback period, then the financial institution would follow its otherwise customary procedures for handling the order. If a benefit payment was deposited into the account during the lookback period, then the financial institution must follow the procedures set forth in section 212.6.

Proposed section 212.5(d) lists factors that are not relevant to a financial institution's account review. The commingling of exempt and nonexempt funds in the account is not relevant to the account review, and neither is the existence of a co-owner on the account. Similarly, the fact that benefit payments to multiple beneficiaries may have been deposited to an account during the lookback period is not relevant, as could occur if an individual receives payments on behalf of several beneficiaries. Finally, any instructions or information in a garnishment order are not relevant, including information about the nature of the debt or obligation underlying the order, such as alimony or child support obligations.

Section 212.5(e) makes it clear that financial institutions must perform the account review before taking any action related to the garnishment order that may affect funds in an account. Section 212.5(f) requires a separate account review for each account against which a garnishment order has been issued, even if an individual holds more than one account at a financial institution. For example, if an individual maintains two accounts at the same financial institution, and payments issued under two different benefit programs are directly deposited to each account, both accounts must be separately reviewed and a separate protected amount must be calculated and applied for each account.

Section 212.6

Proposed section 212.6 contains the provisions that apply if a financial institution determines that one or more benefit payments were deposited to an account during the lookback period. In such a case, the financial institution must calculate the protected amount, as defined in proposed section 212.3. A financial institution may not freeze, or otherwise restrict the account holder's access to, the protected amount. The protection against freezing triggered by the depositing of exempt funds during the lookback period is automatic. A financial institution may not require an account holder to assert any right to a garnishment exemption or take any other action prior to accessing the protected amount.

Section 212.6(c) requires the financial institution to send a notice to the account holder. The content and timing required for the notice are set forth in section 212.7.

Section 212.6(d) addresses the situation in which a financial institution receives service of the same garnishment order more than once. The financial institution must execute the account review one time upon the first service of a given garnishment order. If the same garnishment order is subsequently served again upon the financial institution, the financial institution is not required to perform another account review and is restricted from taking any action on the account. If the financial institution is subsequently served a new or different garnishment order against the same account, the financial institution must execute a new account review.

Section 212.6(e) provides that a financial institution has no continuing obligation to garnish amounts deposited or credited to the account following the date of account review, and may not take any action to freeze any amounts subsequently deposited or credited unless served a new or different garnishment order. A small number of states authorize the issuance of a "continuing" garnishment order, *i.e.,* an order requiring the garnishee to monitor, preserve and remit funds coming into the garnishee's custody on an ongoing basis. The proposed rule would operate to prohibit a financial institution that is served with a continuing garnishment from complying with the order's ongoing requirements.

Section 212.6(f) provides that a financial institution may collect a garnishment fee only against funds in the account in excess of the protected amount on the date of account review. Such a fee may be charged only if the financial institution generally imposes a fee of this nature and amount for its accounts. The fee may not be imposed only on accounts to which benefit payments are deposited.

Section 212.6(g) prohibits a financial institution from charging a garnishment

fee against a protected amount, and further prohibits a financial institution from charging or collecting such a fee after the date of account review, *i.e.,* retroactively.

Section 212.7

Proposed section 212.7(a) sets forth the content of the notice that financial institutions are required to send to account holders. The financial institution must notify the account holder that the financial institution has received a garnishment order and must briefly explain what a garnishment is. The notice must also include other information regarding the account holder's rights. Financial institutions may choose to use the model notice in Appendix A to the proposed rule, in which case they will be deemed to be in compliance with the requirements of section 212.7(a). However, use of the model notice is optional.

The financial institution must deliver the notice separately from the account holder's periodic account statement. This is to ensure that the account holder does not inadvertently disregard the notice. However, the financial institution may deliver the notice concurrently with other garnishment notices or forms required under state or local law. The notice must be sent within two business days from the date of account review. The notice must be sent in any case where a benefit payment was deposited into the account during the lookback period, even if the financial institution does not freeze any funds in the account. This could be the case where the account balance is zero.

Section 212.8

Proposed section 212.8 makes it clear that the rule is not to be interpreted as limiting any rights an individual may have under Federal law to assert an exemption from garnishment, or as altering the exempt status of funds in the account. For example, although the proposed rule does not require a financial institution to review and identify Federal benefits deposited by check to an account, those funds are protected under Federal law and the account holder may assert a claim for that protection in accordance with the procedures specified under the applicable law. In addition, it is possible that an account holder could have exempt funds on deposit in excess of the protected amount. In that case, the account holder could assert the protection available under Federal law for those funds. The proposed rule does not limit or change the protected status of those funds.

Proposed section 212.8 provides that the rule is not to be construed to invalidate any term or condition of an account agreement between a financial institution and an account holder, as long as the term or condition is not inconsistent with the proposed rule. The requirements of the proposed rule may not be changed by agreement, except in the narrow circumstance permitted under proposed section 212.10(c), *i.e.,* where an account holder expressly instructs a financial institution to use exempt funds to satisfy a garnishment order after being notified of the order and the account holder's rights. Thus, a financial institution may not require an account holder to waive any protection available under the rule, nor may it include in an account agreement terms inconsistent with the requirements of the proposed rule. However, the section 212.6(b) requirement that a financial institution ensure that the account holder has access to the protected amount would be subject to any limitation on funds availability to which the account is subject. For example, if funds on deposit are subject to a hold consistent with Regulation CC,[14] or a limitation on withdrawal applicable to a time deposit, the proposed rule would not override or affect those limitations.

Section 212.9

Proposed section 212.9 preempts any State or local government law or regulation that is inconsistent with any provision of the proposed rule. Section 212.9(b) makes it clear that such a preemption occurs only to the extent that an inconsistency between the proposed rule and state law would prevent a financial institution from complying with the requirements of the proposed rule. Some state laws, for example, may protect from garnishment funds in a bank account in an amount that exceeds the protected amount. The proposed rule does not displace or supersede such a state law requirement. Section 212.9(c) allows a state to protect funds in an account from freezing or garnishment to a greater extent than is required under the proposed rule.

Section 212.10

Proposed section 212.10 provides a safe harbor for financial institutions that comply in good faith with the rule. Thus, for example, if a financial institution made available the protected amount to an account holder in accordance with the rule, the financial institution would not be liable even if a judgment creditor were able to establish in court that funds in the account at the time the garnishment order was served were attributable to nonexempt deposits. In addition, if a financial institution performed an account review within the one business day deadline, and funds were withdrawn from the account during this time, the financial institution would not be liable to a creditor or court for failure to preserve the funds in the account, even if there was no protected amount for the account. Under proposed section 212.10(c), this protection exists for a financial institution despite the occurrence of a bona fide error or a settlement adjustment.

Proposed section 212.10(c) allows a financial institution to follow an account holder's express instruction to use an otherwise protected amount to satisfy the garnishment order. The instruction must be in writing and must be delivered after the date on which the financial institution received the garnishment order. This provision would not permit an account holder to instruct a financial institution, in advance or in a standing agreement, to use exempt funds to satisfy a garnishment order.

Section 212.11

Under proposed section 212.11, compliance with the rule will be enforced by the Federal banking agencies. Financial institutions must maintain records of account activity and actions taken in handling garnishment orders sufficient to demonstrate compliance with the rule.

Section 212.12

Proposed section 212.12 provides that the proposed rule may be amended only by a joint rulemaking issued by Treasury, SSA, VA, RRB and OPM.

Appendix A to Part 212

Appendix A sets forth proposed model language that would satisfy the notice requirements of section 212.7(a). Financial institutions are not required to use this model language. However, financial institutions that use the model notice would be deemed to be in compliance with the requirements of section 212.7(a).

Appendix B to Part 212

Appendix B contains the form of Notice of Garnishment by the United States which is referred to in section 212.4(a)(2).

[14] Regulation CC, 12 CFR part 229, is the Federal Reserve's regulation establishing rules covering the collection and return of checks by banks.

IV. Regulatory Analysis

A. Executive Order 12866

It has been determined that this rule is a significant regulatory action as defined in E.O. 12866. The Office of Management and Budget has reviewed this regulation.

B. Joint Regulatory Flexibility Act Analysis

The Regulatory Flexibility Act (5 U.S.C. 601–612) (RFA) requires agencies either to provide an Initial Regulatory Flexibility Analysis with a proposed rule or to certify that the proposed rule will not have a significant economic impact on a substantial number of small entities. In accordance with section 3(a) of the RFA, the Agencies have reviewed the proposed regulation, which affects all financial institutions, regardless of size. While the Agencies believe that the proposed rule likely would not have a significant economic impact on financial institutions (5 U.S.C. 605(b)), the Agencies do not have complete data at this time to make this determination. Therefore, a joint Initial Regulatory Flexibility Analysis has been prepared in accordance with 5 U.S.C. 603. The Agencies request comment on the rule's impact on small entities. The Agencies will, if necessary, conduct a final regulatory flexibility analysis after consideration of comments received during the public comment period.

1. Reasons for Proposed Rule

As discussed above, the Agencies are publishing the proposed rule to implement statutory restrictions on the garnishment of exempt Federal benefit payments. Social Security benefits, Supplemental Security Income benefits, VA benefits, Federal Railroad retirement benefits, Federal railroad unemployment and sickness benefits, and Civil Service Retirement System benefits and Federal Employees Retirement System benefits are generally exempt under Federal law from garnishment orders. These benefits often constitute a major portion and sometimes all of an individual's income. As a result, when financial institutions receive garnishment orders and place freezes on accounts containing exempt Federal benefit payments, the recipients of these funds can face significant hardship. At the same time, financial institutions are required by law to comply with garnishment orders and may be at risk of being held in contempt of court if they fail to preserve and remit funds according to the order. In many cases a financial institution would be liable for any funds that are withdrawn by an account holder after the financial institution has received a garnishment order for the account.

Furthermore, it can be difficult for a financial institution to determine whether or the extent to which an account contains Federal benefit payments that are exempt for garnishment. If, for instance, an account contains deposits of both exempt and non-exempt funds, there may be no established accounting rules to determine the proportion of the comingled funds that should be protected from garnishment.

2. Statement of Objectives and Legal Basis

The Agencies are proposing this new rule to give force and effect to the Federal anti-garnishment statutes and to provide financial institutions with straightforward rules on the handling of garnishment orders. The rule is designed to address the hardships that recipients of Federal benefit payments are encountering when a financial institution places a freeze on an account and the difficulties that financial institutions have in determining whether funds deposited into an account are exempt from garnishment. As discussed above, the primary goals of the proposed rule are (1) to ensure that benefit recipients have access to exempt funds while garnishment orders are complied with, adjudicated, or otherwise resolved; (2) to protect financial institutions from liability when, having received a garnishment order for an account receiving Federal benefit payments, they allow the account holder access to exempt funds in the account; and (3) to establish straightforward, uniform, cost effective procedures addressing the extent to which financial institutions may, pursuant to garnishment orders, freeze or seize funds in accounts that contain Federal benefits.

3. Description and Estimate of Small Entities Affected by the Proposed Rule

The proposed rule would apply to financial institutions, including national banks, savings associations, state member banks, and Federal and state credit unions. The proposed rule would affect all financial institutions, regardless of size, that might hold an account to which Federal benefits may be directly deposited. For purposes of the RFA, a "small entity" is a national bank, savings association, State member bank, or State or Federal credit union with assets of $175 million or less. The Agencies estimate that there are 8,082 national banks, savings associations, and state member banks, of which 56% have assets equal or less than $175 million.[15] In addition, the Agencies estimate that there are 7,689 National and State credit unions of which 88% have assets equal or less than $175 million. The proposed rule would apply to all of these institutions.

4. Projected Recordkeeping, Reporting, and Other Compliance Requirements

Financial institutions currently administer and respond to garnishment orders, and already maintain records related to the actions they take in response to garnishment orders, and so the basic requirements embodied in the proposed rule do not represent new activities. Furthermore, the proposed rule would not require investments in new equipment or modification to systems. Financial institutions would, however, have new requirements under the rule. They will need to modify their garnishment operating procedures to determine whether orders are obtained by the United States and ascertain whether benefit payments were deposited to an account within 60 calendar days of receiving a garnishment order. If so, they would be required to establish a protected amount which cannot be frozen and to issue a notice to the account holder disclosing facts and information about the garnishment order.

Financial institutions would be able to utilize existing systems to comply with the rule. As discussed above in the Overview of this proposed rule, Treasury will encode an "X" in position 20 of the "Company Name" Field of the Batch Header Record for each Agency exempt benefit Automated Clearing House (ACH) payment. This encoding, along with the current practice of encoding a "2" in the "Originator Status Code" Field in the Batch Header Record to designate payments originated from the Federal government, will allow financial institutions to readily identify Federal exempt payments through either manual or systems inspection without additional resources or equipment. In addition, the Agencies will publish a list of the unique "Entry Detail Description" Fields in the Batch Header Record that can be used to identify exempt benefit payments.

Given the existing burden under law to handle garnishment orders, coupled with the simplicity, uniformity, and certainty of the requirement to establish a protected amount under the proposed rule, the Agencies conclude that

[15] *See* FDIC Bank Find (Number of Small Banks), *http://www2.fdic.gov/idasp/main_bankfind.asp* (last visited Nov. 19, 2009); *see also* NCUA, Credit Union Data (Number of Small Credit Unions), *http://webapps.ncua.gov/customquery/* (last visited Nov. 19, 2009).

modifications to financial institution operating procedures represent a one-time administrative change that would require new internal documentation and employee training but would not result in substantive additional on-going activities. The requirement to issue a notice entails mailing a one-page standard document and the Agencies conclude that this requirement entails minimal resources.

Therefore, the Agencies believe that any costs incurred as a result of the proposed rule will be minimal. Furthermore, the Agencies believe that financial institutions will benefit from the clarity and uniformity the proposed rule will bring to the handling of garnishment orders, and from the safe harbor protections against liability. In addition, the rule should result in fewer customer service issues arising from account freezes and garnishment orders generally. Finally, the Agencies are aware that, for a variety of reasons, some financial institutions already attempt to review account histories and issue notices to account holders upon receipt of a garnishment order. To the extent that these activities already occur, the proposed rule should have little or no impact.

The Agencies seek information and comment on any costs, compliance requirements, or changes in operating procedures arising from the application of the proposed rule and the extent to which those costs, requirements, or changes are in addition to or different from those arising from current processes in effect when a court ordered garnishment is served. The Agencies invite comment and data on the size of the incremental burden on small financial institutions in instituting procedures not currently part of the institution's practices. In addition, the Agencies are interested in knowing whether particular aspects of the proposed rule would be especially costly or burdensome. We also invite comment on Treasury's plans to encode its ACH entries with a garnishment identifier in the "Company Name" Field and to publish a list of unique "Entry Detail Description" Fields to facilitate the identification of exempt Federal benefit payments.

The Agencies anticipate contacting trade groups representing participants that qualify as small entities and encouraging them to provide comments during the comment period to ascertain, among other things the costs imposed on the regulated small entities.

5. Identification of Duplicative, Overlapping, or Conflicting Federal Rules

The Agencies reviewed current law and have constructed the proposed rule so that no Federal statutes or rules would overlap or conflict with the proposed rule. The Agencies seek comment and information about any such statutes or rules, as well as any other State, local, or industry rules or policies that require a financial institution to implement business practices that would conflict with the requirements of the proposed rule.

6. Discussion of Significant Alternatives

The proposed rule would apply to all financial institutions that maintain accounts to which Federal benefit payments may be deposited. One approach to minimizing the burden on small entities would be to provide a specific exemption for small institutions. The Agencies propose that the requirements in this rule be applicable to all entities regardless of size, because an exemption for small entities would diminish the usefulness of the policies and procedures laid out to ensure that all benefit recipients nationwide have access to a certain amount of lifeline funds. An exemption might result in the continuation of the current practice of account freezes for some recipients.

On behalf of the Agencies, Treasury has worked over the past two years with major trade associations and various Federal regulators to devise a balanced, uniform rule that will resolve the problems surrounding garnishment and Federal benefits. In consultation with these organizations, the Agencies have attempted to minimize burden by proposing a single rule that would apply to all types of exempt Federal benefit payments and establish a consistent set of practices for all financial institutions to follow. In addition, the Agencies have attempted to ensure that financial institutions will not incur legal liability including in the proposed rule a safe harbor provision and an express preemption of inconsistent state law. The result should be a straightforward rule that can be implemented in a cost-effective manner. The Agencies welcome comments on any significant alternatives to the proposed rule.

C. Executive Order 13132 Determination

Executive Order 13132 outlines fundamental principles of Federalism, and requires the adherence to specific criteria by Federal agencies in the process of their formulation and implementation of policies that have "substantial direct effects" on the states, the relationship between the national government and states, or on the distribution of power and responsibilities among the various levels of government. Federal agencies promulgating regulations that have these Federalism implications must consult with state and local officials, and describe the extent of their consultation and the nature of the concerns of state and local officials in the preamble to the regulation.

In the Agencies' view, the proposed rule may have Federalism implications, because it has direct, although not substantial, effects on the States, the relationship between the national government and states, or on the distribution of power and responsibilities among various levels of government. The provision in the rule (§ 212.4) where the Agencies establish a process for financial institutions' treatment of accounts upon the receipt of a garnishment order could potentially conflict with State garnishment laws prescribing a formula for financial institutions to pay such claims.

The proposed rule's central provision requiring a financial institution to establish a protected amount will affect only a very small percentage of all garnishment orders issued by State courts, since in the vast majority of cases an account will not contain an exempt Federal benefit payment. Moreover, states may choose to provide stronger protections against garnishment, and the proposed regulation will only override state law to the minimum extent necessary to protect Federal benefits payments from garnishment.

Under 42 U.S.C. 407(a) and 42 U.S.C. 1383(d)(1), Federal Old-Age, Survivors, and Disability Insurance benefits and Supplemental Security Income payments are generally exempt from garnishment. 42 U.S.C. 405(a) provides the Commissioner of Social Security with the authority to make rules and regulations concerning Federal Old-Age, Survivors, and Disability Insurance benefits. The Social Security Act does not require State law to apply in the event of conflict between State and Federal law.

Under 38 U.S.C. 5301(a), benefits administered by VA are generally exempt from garnishment. 38 U.S.C. 501(a) provides the Secretary of Veterans Affairs with the authority to make rules and regulations concerning VA benefits. The statutes governing VA benefits do not require State law to apply in the event of conflict between State and Federal law.

Under 45 U.S.C. 231m(a), Federal railroad retirement benefits are generally exempt from garnishment. 45 U.S.C. 231f(b)(5) provides the RRB with rulemaking authority over issues rising from the administration of Federal Railroad retirement benefits. The Railroad Retirement Act of 1974 does not require State law to apply in the event of conflict between State and Federal law.

Under 45 U.S.C. 352(e), Federal railroad unemployment and sickness benefits are generally exempt from garnishment. 45 U.S.C. 362(1) provides the RRB with rulemaking authority over issues rising from the administration of Federal railroad unemployment and sickness benefits. The Railroad Unemployment Insurance Act does not require State law to apply in the event of a conflict between State and Federal law.

Under 5 U.S.C. 8346, for the Civil Service Retirement System (CSRS) and under 5 U.S.C. 8470, for the Federal Employees Retirement Systems (FERS), Federal retirement benefits are generally exempt from garnishment. 5 U.S.C. 8347 and 5 U.S.C. 8461, respectively, provide the Director of OPM with the authority to make rules and regulations concerning CSRS and FERS benefits. OPM benefits statutes do not require State law to apply in the event of conflict between State and Federal law.

In accordance with the principles of Federalism outlined in Executive Order 13132, the Agencies consulted with State officials on issues addressed in this rulemaking. Specifically, the Agencies sought perspective on those matters where Federalism implications could potentially conflict with State garnishment laws. The proposed rule establishes certain processes that provide a financial institution protection from liability when a Federal benefit payment exempt from garnishment is directly deposited into an account and the financial institution provides a certain amount of lifeline funds to the benefit recipient.

D. Unfunded Mandates Reform Act of 1995 Determinations

Section 202 of the Unfunded Mandates Reform Act of 1995, Public Law 104–4 (Unfunded Mandates Act) requires that an agency prepare a budgetary impact statement before promulgating a rule that includes a Federal mandate that may result in expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. If a budgetary impact statement is required, section 205 of the Unfunded Mandates Act also requires an agency to identify and consider a reasonable number of regulatory alternatives before promulgating a rule. The Agencies have determined that this proposed rule will not result in expenditures by state, local, and tribal governments, or by the private sector, of $100 million or more. Accordingly, the Agencies have not prepared a budgetary impact statement or specifically addressed the regulatory alternatives considered.

E. Plain Language

In 1998, the President issued a memorandum directing each agency in the Executive branch to use plain language for all new proposed and final rulemaking documents issued on or after January 1, 1999. The Agencies specifically invite your comments on how to make this proposal easier to understand. For example:

- Have we organized the material to suit your needs? If not, how could this material be better organized?
- Are the requirements in the proposed rule clearly stated? If not, how could the rule be more clearly stated?
- Does the proposed rule contain language or jargon that is not clear? If so, which language requires clarification?
- Would a different format (grouping and order of sections, use of headings, paragraphing) make the rule easier to understand? If so, what changes to the format would make them easier to understand?
- What else could we do to make the rule easier to understand?

F. Paperwork Reduction Act

The collection of information contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Comments on the collection of information should be sent to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Office of the Deputy Assistant Secretary, Fiscal Operations and Policy, Department of the Treasury, 1500 Pennsylvania Avenue, NW., Room 2112, Washington, DC 20220. Comments on the collection of information must be received by June 18, 2010. Comments are specifically requested concerning:

Whether the proposed collection of information is necessary for the proper performance of the functions of the Agencies, including whether the information will have practical utility;

The accuracy of the estimated burden associated with the proposed collection of information;

How the quality, utility, and clarity of the information to be collected may be enhanced;

How the burden of complying with the proposed collection of information may be minimized, including through the application of automated collection techniques or other forms of information technology; and

Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

The collection of information in these proposed regulations are found in §§ 212.5 and 212.9.

Estimated total annual reporting burden: 125,000 hours.

Estimated average annual burden per respondent: 8 hours.

Estimated number of respondents: 15,771.

Estimated frequency of responses: As needed.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget.

List of Subjects

5 CFR Part 831

Administrative practice and procedure, alimony, benefit payments, claims, disability benefits, exempt payments, financial institutions, firefighters, garnishment, government employees, income taxes, intergovernmental relations, law enforcement officers, pensions, preemption, reporting and recordkeeping requirements, retirement.

5 CFR Part 841

Administrative practice and procedure, air traffic controllers, benefit payments, claims, disability benefits, exempt payments, financial institutions, firefighters, garnishment, government employees, income taxes, intergovernmental relations, law enforcement officers, pensions, preemption, retirement.

20 CFR Part 350

Alimony, benefit payments, child support, exempt payments, financial institutions, garnishment, preemption, railroad retirement, railroad unemployment insurance, recordkeeping.

20 CFR Part 404

Administrative practice and procedure, aged, alimony, benefit

payments, blind, disability benefits, exempt payments, financial institutions, garnishment, government employees, income taxes, insurance, investigations, old-age, preemption, Survivors and Disability Insurance, penalties, railroad retirement, reporting and recordkeeping requirements, Social Security, travel and transportation expenses, treaties, veterans, vocational rehabilitation.

20 CFR Part 416

Administrative practice and procedure, alcoholism, benefit payments, drug abuse, exempt payments, financial institutions, garnishment, investigations, Medicaid, penalties, preemption, reporting and recordkeeping requirements, Supplemental Security Income (SSI), travel and transportation expenses, vocational rehabilitation.

31 CFR Part 212

Benefit payments, exempt payments, financial institutions, garnishment, preemption, recordkeeping.

38 CFR Part 1

Administrative practice and procedure, archives and records, benefit payments, cemeteries, claims, courts, crime, flags, exempt payments, financial institutions, freedom of information, garnishment, government contracts, government employees, government property, infants and children, inventions and patents, parking, penalties, preemption, privacy, reporting and recordkeeping requirements, seals and insignia, security measures, wages.

Department of the Treasury, Fiscal Service (Treasury)

Authority and Issuance

For the reasons set forth in the preamble, Treasury proposes to add a new part 212 to Title 31 of the Code of Federal Regulations, to read as follows:

PART 212—GARNISHMENT OF ACCOUNTS CONTAINING FEDERAL BENEFIT PAYMENTS

Sec.

212.1 Purpose.
212.2 Scope.
212.3 Definitions.
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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).

§ 212.1 Purpose.

The purpose of this part is to implement statutory provisions that protect Federal benefits from garnishment by establishing procedures that financial institutions must follow when a garnishment order is received for an account into which Federal benefit payments have been directly deposited.

§ 212.2 Scope.

This part applies to:

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

(b) *Funds.* Benefit payments issued under the following Federal programs:

(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

(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 at a financial institution to which benefit payments can be delivered by direct deposit.

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 direct deposit payment made by a benefit agency to a natural person or to a representative payee receiving payments on behalf of a natural person under a Federal program listed in § 212.2(b).

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, or other legal process to enforce a money judgment.

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, or similar written instruction issued by a court to effect a garnishment.

Lookback period means the 60-calendar-day period preceding the date on which a financial institution is served a garnishment order.

Protected amount means the lesser of the sum of all benefit payments deposited to an account during the lookback period or the balance in an account on the date of account review.

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.

§ 212.4 Initial action upon receipt of a garnishment order.

(a) *Examination for orders obtained by the United States.* Prior to taking any other action related to a garnishment order issued against an account, and no later than one business day following receipt of the order, a financial institution shall examine the order to determine if it was obtained by the United States. A garnishment order shall conclusively be considered to have been obtained by the United States if:

(1) The plaintiff named in the caption on the front page of the order is "United States of America," or "United States," or "U.S."; or

(2) The order is served on the financial institution accompanied by a Notice of Garnishment by the United States, as set forth in Appendix B.

(b) *United States obtained the order.* If an order meets either of the criteria set forth in § 212.4(a)(1) or (2), then the financial institution shall follow its otherwise customary procedures for handling the garnishment order and

shall not follow the procedures in § 212.5 and § 212.6.

(c) *United States did not obtain the order.* If an order does not meet either of the criteria set forth in § 212.4(a)(1) or (2), then the financial institution shall follow the procedures in § 212.5 and § 212.6.

§ 212.5 Account review.

(a) *Review for benefit payment.* No later than one business day following receipt of a garnishment order issued against an account, a financial institution shall perform an account review.

(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 garnishment order; or

(6) The nature of the debt or obligation underlying the garnishment order, including whether the order seeks to collect alimony or child support obligations.

(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.

§ 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 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.

(b) *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 (e) and (f) of this section.

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

(d) *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 garnishment order if the same garnishment 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.

(e) *No continuing or periodic garnishment responsibilities.* The financial institution shall have no continuing obligation to 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.

(f) *Permissible garnishment fee.* The financial institution may collect a garnishment fee only against funds in the account in excess of the protected amount on the date of account review, provided that the nature and amount of the fee is customary for the financial institution's accounts generally and is not specific to accounts with benefit payments.

(g) *Impermissible garnishment fee.* The 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.

§ 212.7 Notice to the account holder.

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

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

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

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

(3) A succinct explanation of garnishment orders.

(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 60 calendar days.

(5) The protected amount, if any, established by the financial institution.

(6) The financial institution's potential requirement pursuant to other law to freeze other amounts in the account to satisfy the garnishment order.

(7) An exemplary list of Federal, State, and other benefits generally exempt from garnishment.

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

(9) Means of contacting the judgment creditor.

(10) Means of contacting the court of jurisdiction.

(11) Means of contacting the financial institution.

(b) *Notice delivery.* The financial institution shall not include the notice with the delivery of a periodic account statement, but must deliver it under separate cover. The financial institution may deliver the notice concurrently with other garnishment notices or forms pursuant to State or local government law.

(c) *Notice timing.* The financial institution shall send the notice to the account holder within 2 business days from the date of account review.

(d) *Notice requirement.* The financial institution shall send the notice in all cases where a benefit agency deposited

a benefit payment into the account during the lookback period, including cases where the financial institution does not freeze any funds in the account.

§ 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 an 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.* To the extent that any state or local government law or regulation is inconsistent with a provision of this part, it is hereby preempted.

(b) *Consistent law not preempted.* Nothing in this part shall be construed to preempt any state or local government law or regulation in the field of garnishment that is not inconsistent with this part, including but not limited to procedures to determine the disposition of funds in excess of a protected amount.

(c) *Higher protected amount.* Notwithstanding any provision of this part, a state may by law or regulation protect funds in an account from freezing or garnishment at a higher protected amount than is required under this part, provided that such law or regulation is not inconsistent with any other provision of this part.

§ 212.10 Safe harbor.

(a) *Protection during examination and review.* A financial institution that complies in good faith with this part shall not be liable to a judgment creditor 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 for account activity during the one business day following the financial institution's receipt of a garnishment order.

(b) *General protection for financial institutions.* A financial institution that complies in good faith with this part shall not be liable to a judgment creditor 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 an order was obtained by the United States by following the procedures in § 212.4(a)(1) and (2).

(c) *Protection for financial institution from other potential liabilities.* A financial institution that complies in good faith with this part shall not 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

(3) Honoring an account holder's express written instructions, received by 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 garnishment 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 garnishment orders sufficient to demonstrate compliance with this part.

§ 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.

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(a). Although use of this model is not required, a financial institution using it properly is deemed to be in compliance with § 212.7(a).

Notice of Garnishment

On [insert date of garnishment order receipt], [insert financial institution name] received an order of garnishment to freeze or remove funds from your account.

If you owe money to a creditor, garnishment is the legal process that allows your creditor to obtain a court order directing your financial institution to freeze or turn over funds in your account to pay the debt you owe the creditor.

However, you have certain protections from garnishment if the funds in your account include Federal benefit payments such as Social Security benefits, Supplemental Security Income benefits, benefits administered by the Department of Veterans Affairs, Railroad retirement benefits, Railroad Unemployment Insurance benefits, Civil Service Retirement System benefits or Federal Employees Retirement System benefits. We are required by Federal regulation to review your account and determine whether any such benefits were directly deposited to your account within 60 calendar days preceding our receipt of the garnishment order. If so, the sum of all such benefits (or your full account balance, if it is less than that amount) cannot be turned over to your creditor or frozen, and you may withdraw or use these funds as you normally would.

If your account contains funds in excess of the sum of the benefits directly deposited during the 60-day period, those funds are subject to the garnishment order and may be frozen or turned over to your creditors.

Protected Funds in Your Account

We have determined that one or more Federal benefit payments were deposited to your account within 60 calendar days preceding our receipt of the garnishment order. The balance in your account when we conducted our review was $____. Of this amount, [insert protected amount] is protected under Federal law from garnishment or freezing. You may continue to access these funds as usual.

[Additional Funds in Your Account

Your account also contains additional funds. We have placed a hold on these funds and may turn them over to your creditor as directed by the garnishment order. If you believe that some or all of these additional funds are also Federal benefit payments, you may have additional rights to protect these funds. In addition, you may have rights to protect other funds in your account from garnishment, such as public assistance (welfare), disability benefits, workers' compensation benefits, and pension benefits.

You can make a claim for these rights by (insert, as applicable and required for the jurisdiction, a standard instruction or a reference to the jurisdiction's notice for completing an exemption claim form, process for contacting the court, or process for contacting the judgment creditor).]

Contact Information

The creditor that obtained the garnishment order against your account is [insert name] and may be contracted at [insert phone number].

The court that issued the garnishment order is [insert name] and their general information line is [insert phone number].

You may call us at [insert phone number].

Appendix B to Part 212—Form of Notice of Garnishment by the United States

Notice of Garnishment by the United States

The attached garnishment order was obtained by the United States.

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 the court.

I, the undersigned, certify that my organization is part of the United States, as defined in 28 U.S.C. 3002(15), and has authority to conduct litigation for the collection of debts on behalf of the United States.

Signature: _____

Title: _____

Organization: _____

Date: _____

Social Security Administration

20 CFR Parts 404 and 416

Authority and Issuance

For the reasons set forth in the preamble, the Social Security Administration proposes to amend Parts 404 and 416 of Title 20 of the Code of Federal Regulations as follows:

PART 404—FEDERAL OLD–AGE, SURVIVORS AND DISABILITY INSURANCE (1950–)

Subpart S—Payment Procedures

1. The authority citation for subpart S of Part 404 continues to read as follows:

Authority: Secs. 205(a) and (n), 207, 702(a)(5) and 708(a) of the Social Security Act (42 U.S.C. 405(a) and (n), 407, 902(a)(5) and 909(a)).

2. Add § 404.1821 to read as follows:

§ 404.1821 Garnishment of Payments After Disbursement.

(a) Payments that are covered by section 207 of the Social Security Act and made by direct deposit are subject to 31 CFR Part 212, Garnishment of Accounts Containing Federal Benefit Payments.

(b) This section may be amended only by a rulemaking issued jointly by the Department of Treasury, the Social Security Administration, the Department of Veterans Affairs, the Railroad Retirement Board, and the Office of Personnel Management.

PART 416—SUPPLEMENTAL SECURITY INCOME FOR THE AGED, BLIND, AND DISABLED

Subpart E—Payment of Benefits, Overpayments, and Underpayments

3. The authority citation for subpart E of Part 416 continues to read as follows:

Authority: Secs. 702(a)(5), 1147, 1601, 1602, 1611(c) and (e), and 1631(a)–(d) and (g) of the Social Security Act (42 U.S.C. 902(a)(5), 1320b–17, 1381, 1381a, 1382(c) and (e), and 1383(a)–(d) and (g)); 31 U.S.C. 3720A.

4. Add § 416.534 to read as follows:

§ 416.534 Garnishment of Payments After Disbursement.

(a) Payments that are covered by section 1631(d)(1) of the Social Security Act and made by direct deposit are subject to 31 CFR Part 212, Garnishment of Accounts Containing Federal Benefit Payments.

(b) This section may be amended only by a rulemaking issued jointly by the Department of Treasury, the Social Security Administration, the Department of Veterans Affairs, the Railroad Retirement Board, and the Office of Personnel Management.

Department of Veterans Affairs

Authority and Issuance

For the reasons set forth in the preamble, the Department of Veterans Affairs proposes to amend Part 1 of Title 38 of the Code of Federal Regulations as follows:

PART 1—GENERAL PROVISIONS

1. The authority citation for part 1 continues to read as follows:

Authority: 38 U.S.C. 501(a), and as noted in specific sections.

2. Add § 1.1000 and a new undesignated center heading preceding the section to read as follows:

Procedures for Financial Institutions Regarding Garnishment of Benefit Payments After Disbursement

§ 1.1000 Garnishment of payments after disbursement.

(a) Payments of benefits due under any law administered by the Secretary that are protected by 38 U.S.C. 5301(a) and made by direct deposit to a financial institution are subject to 31 CFR part 212, Garnishment of Accounts Containing Federal Benefit Payments.

(b) This section may be amended only by a rulemaking issued jointly by the Department of the Treasury, the Social Security Administration, the Department of Veterans Affairs, the Railroad Retirement Board and the Office of Personnel Management.

Railroad Retirement Board

Authority and Issuance

For the reasons set forth in the preamble, the Railroad Retirement Board proposes to amend Part 350 of Title 20 of the Code of Federal Regulations as follows:

PART 350—GARNISHMENT OF BENEFITS PAID UNDER THE RAILROAD RETIREMENT ACT, THE RAILROAD UNEMPLOYMENT INSURANCE ACT, AND UNDER ANY OTHER ACT ADMINISTERED BY THE BOARD

1. Revise the authority citation to read as follows:

Authority: 15 U.S.C. 1673(b)(2); 42 U.S.C. 659; and 45 U.S.C. 231f(b)(5), 231m, 352(e), and 362(l).

2. Add a new § 350.6 to read as follows:

§ 350.6. Garnishment of payments after disbursement.

Payments that are covered by 45 U.S.C. 231m or 45 U.S.C. 352(e) and that are made by direct deposit are subject to 31 CFR part 212, Garnishment of Accounts Containing Federal Benefit Payments. This section may be amended only by a rulemaking issued jointly by the Department of the Treasury, the Social Security Administration, the Department of Veterans Affairs, the Railroad Retirement Board and the Office of Personnel Management.

Office of Personnel Management

Authority and Issuance

For the reasons set forth in the preamble, the Office of Personnel Management proposes to amend parts 831 and 841 of Title 5 of the Code of Federal Regulations as follows:

PART 831—RETIREMENT

1. The authority citation for part 831 is revised to read as follows:

Authority: Sec. 831.2203 also issued under section 7001(a)(4) of Pub. L. 101–508, 104 Stat. 1388–328; Secs. 831.115 and 831.116 also issued under 5 U.S.C. 8346(a).

2. Add a new § 831.115 to Subpart A to read as follows:

§ 831.115 Garnishment of CSRS payments.

CSRS payments are not subject to execution, levy, attachment, garnishment or other legal process except as expressly provided by Federal law.

3. Add a new section 831.116 to read as follows:

§ 831.116 Garnishment of payments after disbursement.

(a) Payments that are covered by 5 U.S.C. 8346(a) and made by direct deposit are subject to 31 CFR part 212, Garnishment of Accounts Containing Federal Benefit Payments.

(b) This section may be amended only by a rulemaking issued jointly by the Department of the Treasury, the Social

Security Administration, the Department of Veterans Affairs, the Railroad Retirement Board and the Office of Personnel Management.

PART 841—FEDERAL EMPLOYEES RETIREMENT SYSTEM—GENERAL ADMINISTRATION

1. The authority citation for part 841 is revised to read as follows:

Authority: 5 U.S.C. 8461; Sec. 841.108 also issued under 5 U.S.C. 552a; subpart D also issued under 5 U.S.C. 8423; Sec. 841.504 also issued under 5 U.S.C. 8422; Sec. 841.507 also issued under section 505 of Pub. L. 99–335; subpart J also issued under 5 U.S.C. 8469; Sec. 841.506 also issued under 5 U.S.C. 7701(b)(2); Sec. 841.508 also issued under section 505 of Pub. L. 99–335; Sec. 841.604 also issued under Title II, Pub. L. 106–265, 114 Stat. 780; Secs. 841.110 and 841.111 also issued under 5 U.S.C. 8470(a).

2. Add new § 841.110 to read as follows:

§ 841.110 Garnishment of FERS payments.

FERS payments are not subject to execution, levy, attachment, garnishment or other legal process except as expressly provided by Federal law.

3. Add a new § 841.111 to read as follows:

§ 841.111 Garnishment of payments after disbursement.

(a) Payments that are covered by 5 U.S.C. 8470(a) and made by direct deposit are subject to 31 CFR part 212, Garnishment of Accounts Containing Federal Benefit Payments.

(b) This section may be amended only by a rulemaking issued jointly by the Department of the Treasury, the Social Security Administration, the Department of Veterans Affairs, the Railroad Retirement Board and the Office of Personnel Management.

By the Department of the Treasury.

Richard L. Gregg,

Acting Fiscal Assistant Secretary.

By the Social Security Administration.

Michael J. Astrue,

Commissioner of Social Security.

Dated: April 9, 2010.

By the Department of Veterans Affairs.

John R. Gingrich,

Chief of Staff.

Dated: April 6, 2010.

By the Railroad Retirement Board.

Beatrice Ezerski,

Secretary to the Board.

By the Office of Personnel Management.

John Berry,

Director.

[FR Doc. 2010–8899 Filed 4–14–10; 4:15 pm]

BILLING CODE 4810–25–P

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Parts 890 and 892

RIN 3206–AL95

Federal Employees Health Benefits Program; Miscellaneous Changes

AGENCY: U.S. Office of Personnel Management.

ACTION: Proposed rule.

SUMMARY: The U.S. Office of Personnel Management is proposing to amend its regulations to provide for continuation of Federal Employees Health Benefits (FEHB) coverage for certain former Senate Restaurant employees who transferred to employment with a private contractor. We are also proposing to change the annual FEHB Program Open Season from the Monday of the second full workweek in November through the Monday of the second full workweek in December, to November 1st through November 30th of each year. We are also adding a new opportunity for eligible employees to enroll in the FEHB Program or to change enrollment from self only to self and family under the Children's Health Insurance Program Reauthorization Act of 2009. Finally, we are proposing to allow FEHB plans to offer three options, without the requirement that one of the options be a high deductible health plan.

DATES: OPM must receive comments on or before June 18, 2010.

ADDRESSES: Send written comments to Ronald L. Brown, Healthy Policy, Planning & Policy Analysis, Office of Personnel Management, 1900 E Street NW., Washington, DC 20415–3666; or deliver to OPM, Room 3425, 1900 E Street NW., Washington, DC or FAX to (202) 606–0633.

Comments may also be sent through the Federal eRulemaking Portal at: *http://www.regulations.gov.* All submissions received through the Portal must include the agency name and docket number or Regulation Identifier Number (RIN) for this rulemaking.

FOR FURTHER INFORMATION CONTACT: Ron Brown, (202) 606–0004, or e-mail at *ronald.brown@opm.gov.*

SUPPLEMENTARY INFORMATION:

Background

Senate Restaurants Employees

Public Law 110–279, enacted July 17, 2008, provides for certain Federal employee benefits to be continued for certain employees of the Senate Restaurants after the operations of the Senate Restaurants are contracted to be performed by a private business concern. The law provides that a Senate Restaurants employee who was an employee of the Architect of the Capitol on the date of enactment and who accepted employment by the private business concern as part of the transition, may elect to continue Federal benefits during continuous employment with the business concern. We are proposing to conform the regulations to these provisions of Public Law 110–279.

Change in Dates of Open Season

The current regulations provide for the FEHB Program Open Season to be held from the Monday of the second full workweek in November through the Monday of the second full workweek in December of each year. We are revising the regulations to change these dates to the month of November. Therefore, beginning in 2010, the Open Season dates will be November 1st through November 30th of each year. This will simplify the annual announcement of the time period for Open Season and allow agencies and employees to better plan for the enrollment opportunity since they will know well in advance when it will occur each year.

New Enrollment Opportunities

Public Law 111–3, the Children's Health Insurance Program (CHIP) Reauthorization Act of 2009 (the Act), enacted on February 4, 2009, allows States to subsidize health insurance premium payments for certain low-income children who have access to qualified employer-sponsored health insurance coverage. FEHB-eligible enrollees who meet the criteria for child health assistance are eligible to receive State premium subsidy assistance payments to help them pay for their FEHB plan premiums. Current FEHB Program regulations already allow an eligible enrollee who loses coverage under the FEHB Program or another group health plan, including loss of eligibility or assistance under Medicaid or CHIP, to enroll or change enrollment from self only to self and family within the period beginning 31 days before and ending 60 days after the date of loss of coverage. The Act provides new opportunities for eligible employees to enroll in the FEHB Program or to change enrollment from self only to self and family when the employee or an eligible family member becomes eligible for premium assistance under CHIP. Employees must request the change in enrollment within 60 days after the date the employee or eligible family member is determined to be eligible for assistance. Employees may make these