

## Consumer Compliance (CC)

# Garnishment of Accounts Containing Federal Benefit Payments

Version 1.0, April 2014

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# Introduction

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The Office of the Comptroller of the Currency’s (OCC) *Comptroller’s Handbook* booklet, “Garnishment of Accounts Containing Federal Benefit Payments,” provides background information and expanded examination procedures for the “Garnishment of Accounts Containing Federal Benefit Payments” regulation. Examiners decide which of these procedures are necessary, if any, after completing a compliance core assessment as outlined in the “Large Bank Supervision,” “Community Bank Supervision,” or “Federal Branches and Agencies Supervision” booklet of the *Comptroller’s Handbook*. Throughout the “Garnishment of Accounts Containing Federal Benefit Payments” booklet, national banks and federal savings associations are referred to collectively as financial institutions or banks, except when it is necessary to distinguish between the two.

## Background and Summary

Many consumers receive federal benefit payments that are protected under federal law from being accessed or “garnished” by creditors, other than the U.S. government and certain state agencies, through a garnishment order or similar written instruction issued by a court. Despite these protections, developments in debt collection practices and technology, including the direct deposit of benefits, have led to an increase in the freezing of accounts containing federal benefit payments by financial institutions that receive a garnishment order. As a result, the U.S. Department of the Treasury (Bureau of the Fiscal Service), the Social Security Administration, the U.S. Department of Veterans Affairs, the U.S. Railroad Retirement Board, and the U.S. Office of Personnel Management have jointly issued a regulation<sup>1</sup> (interagency regulation or regulation) that a financial institution must follow when it receives a garnishment order against an account holder who receives certain federal benefit payments by direct deposit. The types of federal payments covered by the interagency regulation are the following:

- Social Security benefits
- Supplemental Security Income benefits
- Veterans benefits
- Federal Railroad retirement, unemployment, and sickness benefits
- Civil Service Retirement System benefits
- Federal Employee Retirement System benefits

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<sup>1</sup> The interim final rule was published in the *Federal Register* on February 23, 2011, and was effective May 1, 2011. See 76 Fed. Reg. 9939. The interim final rule, subject to certain amendments, was adopted as final and published in the *Federal Register* on May 29, 2013, and was effective June 28, 2013. See 78 Fed. Reg. 32109.

The federal banking agencies are responsible for enforcing compliance with this regulation.<sup>2</sup> Under the regulation, generally, financial institutions that receive a garnishment order are required to follow certain procedures, including the following: (1) Determine whether any account held by the named account holder received exempt federal payments by direct deposit. (2) Determine the sum of protected federal benefits deposited to each individual account during a two-month period. (3) Ensure that the account holder has access to an amount equal to that sum or to the current balance of such account(s), whichever is lower.

When a financial institution receives a garnishment order, it must first determine whether the order was obtained by the United States or issued by a state child support enforcement agency.<sup>3</sup> In both cases, the financial institution follows its customary procedures for handling the order since federal benefit payments can generally be accessed or garnished by such agencies.

If the garnishment order was not obtained by the United States and not issued by a state child support enforcement agency, the financial institution must follow the interagency regulation to protect federal benefit payments directly deposited into a consumer's account during a two-month "lookback" period. The interagency regulation contains provisions on the timing of an account review, the determination of the protected amount, notice to the account holder (including a model form) regarding the garnishment order, and record retention. In addition, the interagency regulation allows a financial institution to rely on the presence of certain Automated Clearinghouse (ACH) identifiers (i.e., character "XX" encoded in the appropriate positions of the Company Entry Description field and the number "2" in the Originator Status Code field of the Batch Header Record) to determine whether a direct deposit payment is a federal benefit payment for purposes of the regulation.

The financial institution must notify the account holder that the financial institution has received a garnishment order, if all of the following conditions are met: (1) A covered benefit agency deposited a benefit payment into an account during the lookback period. (2) The balance in the account on the date of the account review was above zero dollars, and the financial institution established a protected amount. (3) There are funds in the account in excess of the protected amount. For an account containing a protected amount, the financial institution may not charge or collect a garnishment fee against the protected amount. The financial institution may charge or collect a garnishment fee against additional funds deposited to the account up to five business days past the account review date.

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<sup>2</sup> The regulation specifically defines federal banking agency to include the Office of the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the Board of Governors of the Federal Reserve System, and the National Credit Union Administration. See 31 CFR 212.3.

<sup>3</sup> A state child support enforcement agency is the single and separate organizational unit in a state that has the responsibility for administering or supervising the state's plan for child and spousal support pursuant to title IV, part D, of the Social Security Act, 42 USC 654. See 31 CFR 212.3.

## Scope (31 CFR 212.2)

The interagency regulation applies to financial institutions that hold accounts into which the following benefits have been *directly* deposited:

- Social Security Administration
  - Social Security benefits
  - Supplemental Security Income benefits
- Department of Veterans Affairs
  - Veterans benefits
- Railroad Retirement Board
  - Federal Railroad retirement, unemployment, and sickness benefits
- Office of Personnel Management
  - Civil Service Retirement System benefits
  - Federal Employee Retirement System benefits

## Definitions (31 CFR 212.3)

**Account:** An account, including a master account or sub account, at a financial institution to which an electronic payment may be directly routed.<sup>4</sup>

**Account holder:** A natural person against whom a garnishment order is issued and whose name appears in a financial institution’s records as the direct or beneficial owner of an account.

**Account review:** 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:** The Social Security Administration, the Department of Veterans Affairs, the Railroad Retirement Board, or the Office of Personnel Management.

**Benefit payment:** A federal benefit payment referred to in 31 CFR 212.2(b) paid by direct deposit to an account with the character “XX” encoded in positions 54 and 55 of the Company Entry Description field and the number “2” encoded in the Originator Status Code field of the Batch Header Record of the direct deposit entry.<sup>5</sup>

**Freeze or account freeze:** 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.

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<sup>4</sup> An account does not include an account to which a benefit payment is subsequently transferred following its initial delivery by direct deposit to another account. See 76 Fed. Reg. 9950. If a payment recipient is assigned a customer number that serves as a “prefix” for individual sub accounts, the individual sub account (and not the “master account”) is subject to the account review lookback. See 78 Fed. Reg. 32100.

<sup>5</sup> For more information, see the Treasury Department’s “Guidelines for Garnishment of Accounts Containing Federal Benefit Payments” (<http://fms.treas.gov/greenbook/Garnishment-Guideline-06-13.pdf>).

**Garnish or garnishment:** Execution, levy, attachment, garnishment, or other legal process.

**Garnishment fee:** 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:** A writ, order, notice, summons, judgment, levy, or similar written instruction issued by a court, a state or state agency, a municipality or municipal corporation, or a state child support enforcement agency, including a lien arising by operation of law for overdue child support or an order to freeze the assets in an account, to effect a garnishment against a debtor.

**Lookback period:** The two-month period that (a) begins on the date preceding the date of account review and (b) ends on the corresponding date of the month two months earlier, or on the last date of the month two months earlier if the corresponding date does not exist.

For example, under this definition, the lookback period that begins on November 15 ends on September 15. On the other hand, the lookback period that begins on April 30 ends on February 28 (or 29 in a leap year) to reflect the fact that February does not have 30 days.

Appendix C of the regulation includes other examples illustrating the application of this definition.

**Protected amount:** The lesser of the following: The sum of all benefit payments posted to an account between the close of business on the beginning date of the lookback period and the open of business on the ending date of the lookback period, or the balance in an account when the account review is performed.<sup>6</sup>

Appendix C of the regulation includes examples illustrating the application of this definition.

## **Initial Action Upon Receipt of a Garnishment Order (31 CFR 212.4)**

Within two business days after receiving a garnishment order, and before taking any other action related to the order, a financial institution must determine whether the order was obtained by the United States or issued by a state child support enforcement agency.<sup>7</sup> To make this determination, the financial institution may rely on a Notice of Right to Garnish Federal Benefits (see appendix B of the interagency regulation). For such orders obtained by

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<sup>6</sup> The account balance includes intraday items such as automated teller machine or cash withdrawals. The balance does not include any line of credit associated with the account. See 78 Fed. Reg. 32099, 32101-32102.

<sup>7</sup> Financial institutions will not violate state law by utilizing the two-day period, because the rule preempts any state requirement that an order be processed on the date of receipt. See 78 Fed. Reg. 32104.

the United States or issued by a state child support enforcement agency, the financial institution should not follow the interagency regulation but instead should follow its customary procedures for handling a garnishment order.

For all other garnishment orders, the financial institution is required to follow the procedures in 31 CFR 212.5 and 212.6.

If a financial institution will not act on a garnishment order due to the operation of state law, the financial institution need not examine the order to determine if a Notice of Right to Garnish Federal Benefits is attached or included, or take any of the additional steps required under the rule.<sup>8</sup>

## Account Review (31 CFR 212.5)

**Timing of account review:** After having been served a garnishment order issued against a debtor, a financial institution must perform an account review:

1. No later than two business days following receipt of both the garnishment order and sufficient information from the creditor to determine whether the debtor is an account holder; or
2. By a later date permitted by the creditor in situations when the financial institution is served a batch of a large number of orders. The date must be consistent with the terms of the orders and the financial institution must maintain records on such batches and creditor permissions, consistent with 31 CFR 212.11(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 should follow its customary procedures for handling the garnishment order and not the procedures in 31 CFR 212.6.

**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 must follow the procedures in 31 CFR 212.6.

**Uniform application of account review:** The financial institution must perform an account review without consideration for any other attributes of the account or the garnishment order, such as the following:

- The presence of other funds, from whatever source, that may be comingled in the account with funds from a benefit payment.
- The existence of a co-owner on the account.

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<sup>8</sup> State law is not inconsistent with the interagency regulation if it protects benefit payments in an account from being frozen or garnished at a higher protected amount than required under the regulation. For further discussion on preemption of state law (31 CFR 212.9), see “Comments and Analysis” section in part II of Supplementary Information of the final rule. See 78 Fed. Reg. 32099, 32106-32107.

- The existence of benefit payments to multiple beneficiaries, or under multiple programs, deposited in the account.
- The balance in the account, provided the balance is above zero dollars on the date of account review.
- Instructions to the contrary in the order.
- The nature of the debt or obligation underlying the order.

**Priority of account review:** The financial institution must perform the account review before taking any other actions related to the garnishment order that may affect funds in the account.

**Separate account reviews:** The financial institution must perform an account review separately for each account in the name of an account holder against whom a garnishment order has been issued. In performing account reviews for multiple accounts in the name of one account holder, a financial institution must not trace the movement of funds between accounts by attempting to associate funds from a benefit payment deposited into one account with amounts subsequently transferred to another account.

## Rules and Procedures to Protect Benefits (31 CFR 212.6)

If an account review shows that covered federal benefits have been directly deposited into an account during the lookback period, the financial institution must comply with the rules and procedures to protect federal benefits set forth in 31 CFR 212.6.

**Protected amount:** The financial institution must calculate and establish the protected amount for an account, ensuring that the account holder has full access to the protected amount.<sup>9</sup> The financial institution may not freeze the protected amount in response to the garnishment order. Further, the account holder may not be required to assert any right of garnishment exemption before accessing the protected amount in the account.

**Separate protected amounts:** The financial institution must calculate and establish the protected amount separately for each account in the name of an account holder consistent with the requirements in 31 CFR 212.5(f) to conduct distinct account reviews.

**Funds in excess of the protected amount:** For any funds in an account in excess of the protected amount, the financial institution must follow its customary procedures for handling garnishment orders, including the freezing of funds, provided they are consistent with paragraphs (f) and (g) of 31 CFR 212.6.

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<sup>9</sup> Where an account holder had debit card access to an account before receipt of a garnishment order, the requirement to provide “full and customary” access to the protected amount means the account holder should have debit card access to that amount. See 78 Fed. Reg. 32099, 32104. Also, the interagency regulation does not limit a federal credit union’s right to exercise its statutory lien authority against the protected amount in a member’s account. A lien may be enforced against an account when the member fails to satisfy an outstanding financial obligation due and payable to the federal credit union. 12 USC 1757(11) and 12 CFR 701.39.



**One-time account review process:** The financial institution is only required to perform the account review one time after it receives a garnishment order. The financial institution should not repeat the account review or take any other action related to the order if the same 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, however, the financial institution must perform a separate and new account review.<sup>10</sup>

**No continuing or periodic garnishment responsibilities:** The financial institution may not continually garnish amounts deposited or credited to the account following the date of account review. It also must take no action to freeze any funds subsequently deposited or credited, unless the institution is served with a new or different garnishment order.

**Impermissible garnishment fee:** The financial institution may not charge or collect a garnishment fee against a protected amount. The financial institution may charge or collect a garnishment fee up to five business days after the account review if funds other than a benefit payment are deposited to the account within this period, provided that the fee may not exceed the amount of the non-benefit deposited funds.

## Notice to the Account Holder (31 CFR 212.7)

A financial institution must send an account holder a notice if

- a covered federal benefit payment was directly deposited into an account during the lookback period;
- the balance in the account on the date of account review was above zero dollars and the financial institution established a protected amount; and
- there are funds in the account in excess of the protected amount.

**Notice content:** The notice must contain the following information in readily understandable language:

- The financial institution's receipt of an order against the account holder.
- The date on which the order was served.
- A succinct explanation of garnishment.
- The financial institution's requirement under the interagency regulation to ensure that account balances up to the protected amount specified in 31 CFR 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 two months.
- The account subject to the order and the protected amount established by the financial institution.

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<sup>10</sup> Refer to <https://www.fiscal.treasury.gov/fsservices/gov/pmt/eft/Garnishment-Guideline-06-13.pdf>, p. 11.

- The financial institution's requirement pursuant to state law to freeze other funds in the account to satisfy the order and the amount frozen, if applicable.
- The amount of any garnishment fee charged to the account, consistent with 31 CFR 212.6.
- A list of the federal benefit payments subject to this part, as identified in 31 CFR 212.2(b).
- The account holder's right to assert against the creditor that initiated the order a further garnishment exemption for amounts above the protected amount, by completing exemption claim forms, contacting the court of jurisdiction, or contacting the creditor, as customarily applicable for a given jurisdiction.
- The account holder's right to consult an attorney or legal aid service in asserting against the creditor that initiated the order a further garnishment exemption for amounts above the protected amount.
- The name of the creditor, and, if contact information is included in the order, means of contacting the creditor.

**Optional notice content:** The financial institution also may provide the account holder in readily understandable language the following information:

- The means of contacting a local free attorney or legal aid service.
- The means of contacting the financial institution.
- A disclaimer that the financial institution is not providing legal advice by sending the required notice to the account holder.

**Amending notice content:** The financial institution may also amend the content of the notice to integrate information about a state's garnishment rules and protections in order to avoid potential confusion or harmonize the notice with state requirements, or to provide more complete information about an account.

**Notice delivery:** The financial institution must issue the notice directly to the account holder, or to a fiduciary who administers the account and receives communications on behalf of the account holder. Only information and documents pertaining to the garnishment order (including other notices or forms that may be required under state or local law) may be included in the communication.

**Notice timing:** The financial institution must send the notice to the account holder within three business days from the date of account review.

**One notice for multiple accounts:** The financial institution may issue one notice with information related to multiple accounts of an account holder.

## **Record Retention (31 CFR 212.11)**

A financial institution must maintain records of account activity and actions taken in response to a garnishment order, sufficient to demonstrate compliance with this part, for a period of not less than two years from the date on which the financial institution receives the garnishment order.<sup>11</sup>

## **Model Notice to Account Holder (31 CFR 212, Appendix A)**

A financial institution may use the model notice found in appendix A to the interagency regulation to meet the requirements of 31 CFR 212.7. Although use of the model notice is not required, a financial institution using it properly is deemed to be in compliance with 31 CFR 212.7.

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<sup>11</sup> The financial institution has discretion in deciding what documentation to retain. The appropriate documentation may vary depending on the circumstances of each situation. See 78 Fed. Reg. 32107.

## Examination Procedures

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This booklet contains objectives and expanded procedures for examining compliance with the “Garnishment of Accounts Containing Federal Benefit Payments” regulation. Examiners decide which of these objectives and procedures are relevant to the scope of the examination during examination planning or after drawing preliminary conclusions during the compliance core assessment as outlined in the “Community Bank Supervision,” “Large Bank Supervision,” or “Federal Branches and Agencies Supervision” booklet of the *Comptroller’s Handbook*.

**Objective:** To determine whether the bank has policies and procedures designed to ensure compliance with the “Garnishment of Accounts Containing Federal Benefit Payments” regulation.

Review the adequacy of the bank’s policies and procedures by using the Garnishment of Accounts Worksheet.

**Objective:** To determine the bank’s level of compliance with the “Garnishment of Accounts Containing Federal Benefit Payments” regulation.

Determine the bank’s level of compliance by using the Garnishment of Accounts Worksheet.

## Garnishment of Accounts Worksheet

This worksheet can be used for reviewing audit work papers, evaluating bank policies, performing expanded procedures, and training, as appropriate. Complete only those sections of the worksheet that specifically relate to the issue being reviewed, evaluated, or tested, and retain those completed sections in the work papers.

When reviewing audit or evaluating bank policies, a “no” answer indicates a possible exception or deficiency and should be explained in the work papers. When performing expanded procedures, a “no” answer indicates a violation and should be explained in the work papers. If a line item is not applicable within the area you are reviewing, indicate “NA.”

Underline the applicable use:            **Audit**            **Bank Policies**            **Expanded Procedures**

| <b>Initial Action Upon Receipt of a Garnishment Order (31 CFR 212.4)</b>   | <b>Yes</b> | <b>No</b> | <b>NA</b> |
|--|------------|-----------|-----------|
| <p>1. Does the financial institution, within two business days after receiving a garnishment order, review a garnishment order before taking any other action with regard to the order to ascertain whether the order is obtained by the United States or issued by a state child support enforcement agency?</p> <p>If a garnishment order is obtained by the United States or issued by a state child support enforcement agency as indicated by an attached or included Notice of Right to Garnish Federal Benefits, does the financial institution follow its customary procedures to comply with the order?</p> <p>If a garnishment order is not accompanied by a Notice of Right to Garnish Federal Benefits, proceed with the remaining examination procedures to determine whether the institution follows the requirements of 31 CFR 212.5 and 31 CFR 212.6</p> |            |           |           |
| <b>Account Review (31 CFR 212.5)</b>   | <b>Yes</b> | <b>No</b> | <b>NA</b> |
| <p>2. Does the financial institution perform an account review:</p> <ul style="list-style-type: none"> <li>• No later than two business days following receipt of both the garnishment order and sufficient information from the creditor to determine whether the debtor is an account holder;</li> <li>or</li> <li>• By a later date permitted by the creditor in situations when the financial institution is served a batch of a large number of orders?</li> </ul> <p><b>Note:</b> The date must be consistent with the terms of the orders and the financial institution must maintain records on such batches and creditor permissions consistent with 31 CFR 212.11(b).</p>  |            |           |           |
| <b>Rules and Procedures to Protect Benefits (31 CFR 212.6)</b>   | <b>Yes</b> | <b>No</b> | <b>NA</b> |
| <p>3. Does the financial institution appropriately calculate and establish the protected amount for an account if an account review shows that a covered benefit agency deposited a benefit payment into an account during the lookback period (i.e., during the preceding two-month period as defined in 31 CFR 212.3)?</p>   |            |           |           |
| <p>4. Does the financial institution refrain from charging or collecting a garnishment fee against the protected amount?</p>   |            |           |           |

|   |            |           |           |
|---|------------|-----------|-----------|
| 5. Does the financial institution refrain from charging or collecting a garnishment fee against additional funds deposited to the account after five business days past the account review date?  |            |           |           |
| 6. Does the financial institution follow its customary procedures for handling garnishment orders, including the freezing of funds, for any funds in an account in excess of the protected amount?  |            |           |           |
| 7. Does the financial institution cease to garnish amounts deposited or credited to the account following the date of account review?   |            |           |           |
| 8. Does the financial institution perform a one-time account review upon the first service of the order and only take action to freeze funds subsequently deposited or credited, if the institution is served with a new or different garnishment order consistent with the interagency regulation?   |            |           |           |
| <b>Notice to the Account Holder (31 CFR 212.7)</b>  | <b>Yes</b> | <b>No</b> | <b>NA</b> |
| 9. Does the financial institution send a notice within three business days of account review to the account holder named in the garnishment order if (a) a covered benefit agency deposited a benefit payment into an account during the lookback period; (b) the balance in the account on the date of account review was above zero dollars and the financial institution established a protected amount; and (c) there are funds in the account in excess of the protected amount? |            |           |           |
| 10. Does the notice include the following:  |            |           |           |
| • The financial institution's receipt of an order against the account holder?   |            |           |           |
| • The date on which the order was served?   |            |           |           |
| • A succinct explanation of garnishment?  |            |           |           |
| • The financial institution's requirement under the interagency regulation to ensure that account balances up to the protected amount specified in 31 CFR 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 two months?  |            |           |           |
| • The account subject to the order and the protected amount established by the financial institution?   |            |           |           |
| • The financial institution's requirement pursuant to state law to freeze other funds in the account to satisfy the order and the amount frozen, if applicable?   |            |           |           |
| • The amount of any garnishment fee charged to the account, consistent with 31 CFR 212.6?   |            |           |           |
| • A list of the benefit payments subject to this part, as identified in 31 CFR 212.2(b)?  |            |           |           |
| • The account holder's right to assert against the creditor that initiated the order a further garnishment exemption for amounts above the protected amount, by completing exemption claim forms, contacting the court of jurisdiction, or contacting the creditor, as customarily applicable for a given jurisdiction?   |            |           |           |
| • The account holder's right to consult an attorney or legal aid service in asserting against the creditor that initiated the order a further garnishment exemption for amounts above the protected amount?   |            |           |           |
| • The name of the creditor, and, if contact information is included in the order, means of contacting the creditor?   |            |           |           |
| <b>Record Retention (31 CFR 212.11)</b>   | <b>Yes</b> | <b>No</b> | <b>NA</b> |
| 11. Does the financial institution maintain records of account activity and actions taken in response to a garnishment order for at least two years from the date on which it receives the garnishment order?   |            |           |           |

## Conclusions

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**Conclusion:** The aggregate level of compliance risk is (low, moderate, or high).  
The direction of compliance risk is (increasing, stable, or decreasing).

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**Objective:** To determine, document, and communicate overall findings and conclusions regarding the examination of “Garnishment of Accounts Containing Federal Benefit Payments” regulation.

1. Determine preliminary examination findings and conclusions and discuss with the examiner-in-charge (EIC), including
  - quantity of compliance risk.
  - quality of risk management.
  - aggregate level and direction of compliance risk.
  - overall risk in the “Garnishment of Accounts Containing Federal Benefit Payments” regulation.
  - violations and other concerns.
2. Discuss examination findings with bank management, including violations, recommendations, and conclusions about risks and risk management practices. If necessary, obtain commitments for corrective action.
3. Compose conclusion comments, highlighting any issues that should be included in the report of examination. If necessary, compose a matters requiring attention (MRA) comment.
4. Provide final examination findings and conclusions to the EIC.
5. Update the OCC’s information system and any applicable report of examination schedules or tables.
6. Write a memorandum specifically setting out what the OCC should do in the future to effectively supervise the “Garnishment of Accounts Containing Federal Benefit Payments” regulation, including time periods, staffing, and workdays required.
7. Update, organize, and reference work papers in accordance with OCC policy.
8. Ensure any paper or electronic media that contain sensitive bank or customer information are appropriately disposed of or secured.

# References

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## Regulation

31 CFR 212, “Garnishment of Accounts Containing Federal Benefit Payments”