

# To the Point!

legal, operations, and strategy briefs for financial institutions

July 2, 2013



## Rule Governing Garnishment of Deposit Accounts Containing Federal Benefit Payments

The Treasury Department, the Social Security Administration and other federal agencies issued a final rule governing the obligations of a depository institution when it receives a garnishment order. The rule establishes procedures that a financial institution must follow when it receives a garnishment order for an account into which benefit payments are directly deposited. The rule does not apply when benefit payments are deposited by check. The final rule is effective June 28, 2013, and amends the interim rule that has been in effect since May 2011.

Under the final rule, financial institutions are only required to provide a notice to an account holder when there are funds in the account in excess of the “protected amount.” The “protected amount” is the lesser of the sum of benefits payments deposited to the account during the two-month lookback period and the balance in the account at the time an account review is performed. In addition, financial institutions are now permitted to charge a garnishment fee up to five business days after the account review has been conducted. The garnishment fee is limited to the amount of excess benefit funds and non-benefit funds in the account on the day the fee is assessed.

The Treasury Department has updated its *Guidelines for Garnishment of Accounts Containing Federal Benefit Payments* to assist financial institutions in compliance. We encourage financial institutions to review the final rule and their policies and procedures for handling garnishments and make appropriate revisions.



## Updates to the Mortgage Rules

On June 24th the CFPB issued proposed revisions and clarifications to the new mortgage rules. The proposal addresses a number of issues including clarifying who is a loan originator and the items included in points and fees under the ability-to-repay rule. The CFPB has not extended the effective date for the mortgage rules, and in fact has proposed changing the effective date for portions of the loan originator rule from January 10, 2014 to January 1, 2014.

In a recent speech Director Cordray noted that the agency will continue to work with the mortgage industry on revisions to the official interpretations and the rules, if necessary, but that the deadline for compliance which was mandated by Congress will not change. We plan to provide a more detailed analysis of this proposal in a future *To the Point!* publication. Institutions should review the proposal to begin identifying how the proposal, if adopted, will require changes to their implementation plans. Comments on the proposal are due July 22, 2013.



## Senate Hearing on Private Student Loans

The Senate Committee on Banking, Housing and Urban Affairs held a hearing on private student loans last week. Representatives from the FDIC, OCC, FRB and the CFPB provided testimony. Chairman Johnson acknowledged favorably the CFPB's activities in this arena, including its recent proposal to regulate student loan servicers.

Both the OCC and the FDIC noted that the banks they regulate currently have the ability to offer loss mitigation options to troubled private student loan borrowers and that banks were expected to do so consistent with safe and sound lending practices. The agencies specifically rebutted the concern raised by some banks that the treatment of a loan restructuring as a troubled debt restructuring (TDR) prevented banks from engaging in prudent workout arrangements with student borrowers during periods of hardship. They noted that banks have an obligation to accurately report restructured loans, including those that result in a TDR designation, and that this obligation and the obligation to assist troubled borrowers were not mutually exclusive.

The agencies also expressed concern that borrowers may not be aware of workout programs and associated eligibility criteria and encouraged banks to provide accurate and complete guidance to troubled borrowers. Finally, the FDIC commented that it was in the process of issuing a statement clarifying its expectations regarding student loan modifications for those banks it regulates.

Banks and servicers engaged in the student loan market should become familiar with the comments made by the regulators in their testimony and determine how they can improve access to loss mitigation options for distressed student loan borrowers. Banks should also confirm that they accurately report restructured student loans.

## Chapman and Cutler LLP

Attorneys at Law • Focused on Finance®

To the Point! is a summary of items of interest and current issues for financial institutions with primary focus on regulatory, consumer, and corporate issues. Chapman and Cutler LLP maintains a dedicated practice group with expertise to counsel on these issues and other enterprise risk management matters facing financial institutions. If you would like to discuss any of the items contained in these briefings or other legal, regulatory, or compliance issues facing your institution, please contact one of the partners in our Bank Regulatory Group:

[Marc Franson](#) • 312.845.2988  
[Scott Fryzel](#) • 312.845.3784  
[Heather Hansche](#) • 312.845.3714  
[Doug Hoffman](#) • 312.845.3794  
[John Martin](#) • 312.845.3474  
[David Worsley](#) • 312.845.3896  
[Dianne Rist](#) • 312.845.3404

This document has been prepared by Chapman and Cutler LLP attorneys for informational purposes only. It is general in nature and based on authorities that are subject to change. It is not intended as legal advice. Accordingly, readers should consult with, and seek the advice of, their own counsel with respect to any individual situation that involves the material contained in this document, the application of such material to their specific circumstances, or any questions relating to their own affairs that may be raised by such material.

© Chapman and Cutler LLP, 2013. All Rights Reserved. Attorney advertising material.

Chapman and Cutler LLP | 312.845.3000 | 111 West Monroe Street | Chicago | IL | 60603