

February 23, 2012

Commissioner Michael Astrue
Social Security Administration
500 E St., SW
Washington, D.C. 20254
(by email)

Dear Commissioner Astrue:

We write to ask you to withdraw the support of the Social Security Administration for the Final Rule on Garnishments (31 CFR § 212). The confluence of this Final Rule, along with Treasury's mandate for electronic deposit of benefits, and the quarterly bank matches and garnishments states are required to use to collect past-due child support, will cause *hundreds of thousands of Social Security, SSI and VA benefit recipients to be made completely destitute for months or years.*

In fact, as is illustrated by the case histories at the end of this letter, the seizure of all these benefits to pay decades-old child support orders often means that these same children – now adults – struggle to support their elderly parents.

As you know, federal law does not permit the garnishment of SSI and (most) VA funds for child support, and limits the maximum amount that can be withheld from Social Security benefits for both past due and current child support to 65% of the Social Security benefits.¹ However, states are required to establish quarterly, automatic, computerized analyses of all bank accounts in the state to determine whether any debtors who owe child support arrearages have assets in those accounts.² When an account is matched, a garnishment order is automatically issued and the account is seized. These bank sweeps and garnishments occur independently of the administrative offsets.

As a result, 65% of the recipient's Social Security benefits could be withheld and paid directly to the child support office. The remaining 35% will be deposited into the beneficiary's bank account, where it will be seized in full through a bank garnishment. Moreover, Treasury's rule also permits SSI and VA benefits to be seized from bank accounts, which is not legal.

There are important points about these child support obligors:

- According to the Federal Office of Child Support Enforcement, the majority of uncollected child support is owed by non-custodial parents with *no* quarterly earnings or annual earnings of *less than \$10,000*.³ Among this impoverished group are a large number of elderly Social Security and SSI recipients and veterans.⁴ Social Security recipients who owed child support at the time of the study had median income of only \$750 a month, and the average veteran's disability payment was about \$698 a

¹ 42 U.S.C. § 666(b)(1) (cross-referencing 15 U.S.C. §1673(b)(2)(B)).

² 42 U.S.C. § 666(a)(17).

³ U.S. DEPT OF HEALTH AND HUMAN SERVS., OFFICE OF CHILD SUPPORT ENFORCEMENT, THE STORY BEHIND THE NUMBERS: WHO OWES THE CHILD SUPPORT DEBT? 1 (2008), available at <http://www.acf.hhs.gov/programs/cse/pol/IM/2008/im-08-05a.pdf>.

⁴ THE LEWIN GRP., ENHANCING CHILD SUPPORT ENFORCEMENT EFFORTS THROUGH IMPROVED USE OF INFORMATION ON DEBTOR INCOME iii, 11 (2006); see also ELAINE SORENSEN ET AL., THE URBAN INST., ASSESSING CHILD SUPPORT ARREARS IN NINE LARGE STATES AND THE NATION (2007), available at http://www.urban.org/UploadedPDF/1001242_child_support_arrears.pdf.

month,⁵ placing them below the poverty line.⁶ The maximum federal benefit for an individual SSI recipient is now \$698 a month.⁷ Almost all of the children of these impoverished Social Security, SSI and veterans beneficiaries are now adults, so these payments will not be used to support children.⁸ Indeed, 80% of Social Security recipients are sixty-two and older, meaning their children are likely to be adults.⁹ Among the 3.3 million veterans who receive disability benefits, almost two-thirds are over fifty-five years old.¹⁰

- Much of the debt arose because the obligor never sought a “downward modification” of the original child support order when the obligor’s income decreased due to disability, job loss, or incarceration.¹¹ Further, the amount due is generally significantly inflated due to interest and penalties imposed by the applicable state.¹²
- Finally, most of the debt is owed to the state, not to the adult children. Custodial parents with children on welfare are required to assign their right to child support to the state government.¹³ Consequently, in California for example, 70% of the total child support debt is owed to the state, rather than to the custodial parent.¹⁴

As of March, 2013, all recipients of federal benefits must use electronic deposit, either through deposit directly into a bank account, or using the Treasury authorized Direct Express Card.¹⁵ Direct Express cards will provide no protection from garnishment, as the Direct Express contract indicates that child support garnishment orders will be fully processed.

This new mandate for electronic deposit is the precipitating factor for the damage. Currently, SSI, VA and Social Security beneficiaries can protect their benefits from the seizures triggered by the child support bank matches by continuing to receive paper checks. But as of March 1, 2013, paper checks will no longer be available, and recipients will have no way to protect their federal benefits deposited into bank accounts from child support garnishments – even when those benefits are what is left over after the 65% administrative offset, or when they are SSI and VA funds.

Last year Treasury issued an Interim Final garnishment rule¹⁶ which was intended to protect benefits in bank accounts from garnishment and to facilitate electronic deposit. The rule protects Social Security and other federal benefits from seizure to the extent they were electronically deposited within the two months prior to

⁵DEP’T OF VETERANS AFFAIRS, OFF. OF INSPECTOR GENERAL, REVIEW OF STATE VARIANCES IN VA DISABILITY COMPENSATION PAYMENTS REPORT iii (2005), available at <http://www.va.gov/oig/52/reports/2005/vaoig-05-00765-137.pdf>.

⁶ *Id.*

⁷ AUTOMATIC DETERMINATIONS, SSI 2012 available at <http://www.ssa.gov/oact/COLA/SSI.html>.

⁸ THE LEWIN GRP., ENHANCING CHILD SUPPORT ENFORCEMENT EFFORTS THROUGH IMPROVED USE OF INFORMATION ON DEBTOR INCOME at 24-25. (2006).

⁹ U.S. SOCIAL SECURITY ADMIN., FAST FACTS AND FIGURES ABOUT SOCIAL SECURITY 23 (2007), available at http://www.ssa.gov/policy/docs/chartbooks/fast_facts/2007/fast_facts07.pdf.

¹⁰ DEP’T OF VETERANS AFFAIRS, A STUDY OF COMPENSATION PAYMENTS FOR SERVICE CONNECTED DISABILITIES 102 (2008), available at http://www.va.gov/op3/docs/ProgramEvaluations/CompPaymentStudy/DS_VOLUME_III_Chapter_V_VI.pdf.

¹¹ ELAINE SORENSEN ET AL., THE URBAN INST., ASSESSING CHILD SUPPORT ARREARS IN NINE LARGE STATES AND THE NATION at 5 (2007), available at http://www.urban.org/UploadedPDF/1001242_child_support_arrears.pdf.

¹² *Id.* at 55.

¹³ SUSAN WILSCHKE & RICHARD BALKUS, SOCIAL SECURITY ADMIN., CHILD SUPPORT PAYMENTS AND THE SSI PROGRAM, BRIEF NO. 2004-02 (2004).

¹⁴ Kelley Weiss, *High Interest Rate Driving State’s Child Support Debt*, CAL. WATCH (Apr. 21, 2011), <http://californiawatch.org/dailyreport/high-interest-rate-driving-states-child-support-debt-9929>.

¹⁵ 31 CFR § 208.4.

¹⁶ 31 CFR § 212.

the garnishment order; all funds over this amount are subject to seizure to satisfy the garnishment order. However, the Interim Final Rule *allows* garnishment orders from state offices of child support enforcement to trigger the immediate seizure of *all* of the funds in the accounts.

We understand that a Final Rule on garnishment has been issued and is pending at OMB, and that this rule does *not* protect beneficiaries from complete impoverishment because of the automatic bank sweeps to satisfy past-due child support orders.

Two examples illustrate the harm that the Treasury rule will cause if direct deposited federal benefits are not protected from child support garnishments:

Wilbert W: *Wilbert W. is 66-years-old and blind. 20 years ago, he lost his job as a maintenance man after a strong gust of wind blew closed the metal cover of a dumpster, striking him in the face. For the first time, he was unable to support his four children. He and his wife, Hyacinth, separated. While Mr. W went back to work as a security guard, his loss of income was so large that Hyacinth and the kids went on public assistance. In turn, child support orders were entered against Mr. W which he could not afford to pay. He was unaware that he could petition the court for a more affordable payment.*

In 2010, Mr. W's wife, Hyacinth, has died. His children, now adults, are paying part of Mr. W's rent because his Social Security payment - \$775 a month – is not enough to keep their dad housed. Meantime, Mr. W still owes thousands of dollars in child support arrears.

In October, 2010, New York's Office of Child Support Enforcement (OCSE) garnished over \$200 from Mr. W's Social Security check. All of the garnished money was kept by OCSE for earlier welfare payments made for Mr. W's children.

After a few months, the garnishment proved too much. Mr. W was "borrowing" more and more from friends and his children to pay his rent. Eventually, Mr. W found a legal services lawyer who stopped the garnishment and restored the check to its full amount. New York, like most states, has a "self-support reserve" law that ensures a modicum of income for non-custodial parents who live below the poverty line.

For a few months, Mr. W regularly received his check. Then OCSE's bank match program caught him. As all states do, New York electronically searches for bank accounts belonging to fathers who owe child support, even when its decades old. When an account is matched, the child support computer automatically takes every cent.

Four months after it restored Mr. W's check to its full amount, OCSE computer again matched Mr. W's bank account and took his entire Social Security check. Chase also took \$125 in fees. Although the legal services attorney immediately intervened, it took three weeks for the account to be unfrozen. During that time, Mr. W was without any money, other than food stamps. He was unable to pay his rent and had to rely on his children for food.

In July, 2011, OCSE matched this same account a third time, triggering another \$125 in bank fees and the interception of his entire Social Security check. This time, OCSE took five weeks to return the money.

Since September 2011, Mr. W gets his check in the mail. He pays about \$7.00 to cash it at a cash checking store. He would prefer to bank as he doesn't have to worry about the check being stolen. Thus his Chase account remains open in hopes that electronic banking will become safe for low income social security recipients. But in January 2012, his Chase account was frozen a third time by OCSE's computers. Mr. W worries how he will live next year when mandatory direct deposit becomes effective.

Cirillo C: *In 1996, Cirillo C. was 39-years-old with a ninth grade education and four children, two of whom were minors. His wife and he were having problems. Subsequently, his wife went on public assistance and two child support orders were entered against him. Because Mr. C was having trouble finding and keeping a job, he did not pay any support for a number of years. But by 1999, the couple reconciled and Mr. C closed their children's public assistance case. Thereafter, Mr. C lived with and supported his family. Still, his child support order was not changed and his child support debt grew. After his kids were fully grown in the 2000's, \$10,000 was garnished from Mr. C's wages while he worked as a preparer of airplane food.*

In 2008, at age 52, Mr. C suffered a heart attack and went on Supplemental Security Income.

In December 2008 and May 2009, NY's OCSE twice garnished his bank account at Chase that contained only SSI. New York's garnishment notice instructs banks to ignore the order if the account contains only SSI, but Chase overlooked that part of the notice, as most banks do. Without any money, Mr. C and his wife turned to their adult children for food. In August 2011, his account was frozen a third time. Chase charged him \$125 for freezing the account. Two checks then bounced, triggering \$68 in fees. Three debit card purchases also were treated as overdrafts, triggering \$102 in fees. Three weeks later, the bounced checks were resubmitted by the payee's bank, triggering two more Chase NSF fees of \$68. While the account was frozen, ConEd threatened to seize Mr. C's electric meter because Mr. C had now defaulted on a payment plan. His kids paid that bill to keep their parents' apartment lit. By the time Mr. C located a lawyer to file an appeal, OCSE had taken \$848 in SSI deposits. In addition, Chase had taken \$378 in fees out of the next SSI check, leaving Mr. C with only \$314. Although an appeal was filed with OCSE, it was denied. New York gives you only 15 days to file an appeal, and Mr. C's appeal was filed 32 days after the garnishment. In its denial letter, OCSE informed Mr. C that almost all the arrears were owed to the State. Meanwhile, Mr. C's children had to skimp on their own children's needs to pay their father's rent arrears.

Since October 2011, Mr. C sends his SSI directly to a check cashing store that puts it on an Excella PrePaid Debit Card. Excella charges him \$3 every time he uses an ATM, \$2 every time he does a point of sale debit card purchase, and \$3 to write a money order. While he is careful about how and when he uses it, he still pays about \$15 a month in debit card fees, about 2% of his SSI check. At Chase, he incurred no monthly fees or check writing charges because he had direct deposit. At Mr. C's request, an attorney contacted Excella to see if it gets garnishment orders, and the company informed the attorney that it does. As if to remind Mr. C of his vulnerability, his Chase account that had only a few dollars was garnished a fourth time by OCSE's computer in January 2012.

This is wrong. While both current and past due child support orders should be paid, they should not cause the loss of 100% of Social Security or SSI and VA funds, resulting in the complete impoverishment of recipients.

We only ask that the Treasury garnishment rule apply to child support orders. This would mean that two months benefits are protected, no more; all other funds in the bank accounts would be seized to pay back-due child support.

Please withdraw your support for the rule. For more information, contact Margot Saunders, National Consumer Law Center, msaunders@nclc.org, (202) 452-6252, extension 104.

Sincerely,

National Consumer Law Center on behalf of its low-income clients
NAACP
National Veterans Legal Services Program
National Senior Citizens Law Center
Bazon Center for Mental Health Law
Sargent Shriver National Center on Poverty Law
National Law Center on Homelessness & Poverty
National Legal Aid and Defender Association
National Association of Consumer Advocates
Consumer Action
Consumers Union
Consumer Federation of America
Center for Responsible Lending

Bay Area Legal Services, San Francisco, CA
Disability Rights Legal Center, Los Angeles, CA
Elder and Health Law Clinic, Sacramento, CA
Mental Health Advocacy Project, San Jose, CA
Mental Health Advocacy Services, Los Angeles, CA
Public Counsel, Los Angeles, CA
Western Center on Law and Poverty, Sacramento, CA
Connecticut Legal Services
Greater Hartford Legal Assistance, CT
Legal Assistance Resource Center of Connecticut, Inc., Hartford, CT
New Haven Legal Assistance Association, New Haven, CT
Jacksonville Area Legal Aid, Inc., Jacksonville, FL
United Way of Tampa Bay, Tampa, FL
Georgia Legal Services Program, Atlanta, GA
Legal Assistance Foundation of Metropolitan Chicago, IL
Health & Disability Advocates, Chicago, IL
Cabrini Green Legal Aid, Chicago, IL
CARPLS Legal Aid, Chicago, IL
Economic Justice Project, Notre Dame Law Center, IN
Legal Aid of the Bluegrass, Covington, KY
Disability Law Center, Boston, MA
Civil Justice Inc. of Maryland on behalf of its low and moderate income clients
Maryland Legal Aid Bureau, Baltimore, MD
Legal Services for the Elderly, Augusta, ME
CALL, Clinton Township, MI
Lakeshore Legal Aid, Southfield, MI
Michigan Legal Services, Detroit, MI
Michigan Poverty Law Program, Ann Arbor, MI
Mid Minnesota Legal Assistance, Minneapolis, MN
Mississippi Center for Justice, Jackson, MS
MDC of Durham, NC
Financial Protection Law Center, Wilmington, NC
North Carolina Justice Center, Raleigh, NC
Resources for Seniors, Raleigh, NC
Legal Services of New Jersey, Edison, NJ
BWICA Educational Fund, New York, NY
Community Service Society of New York, NY
Fifth Avenue Committee, Inc., Brooklyn, NY
Legal Services of Central New York, Inc., Syracuse, NY
Long Term Care Community Coalition, New York, NY
MFY Legal Services, Inc., New York, NY
Neighborhood Economic Development Advocacy Project (NEDAP), New York, NY
New York State Wide Senior Action, New York, NY
Staten Island Center for Independent Living, Staten Island, NY
The Community Service Society of New York, New York, NY
The Legal Aid Bureau of Buffalo, Buffalo, NY
Ohio Poverty Law Center, Columbus, OH
Pro Seniors, Inc., Cincinnati, OH

Community Legal Services of Philadelphia, Philadelphia, PA
MidPenn Legal Services, Lebanon, PA
Northwestern Legal Services, Meadville, PA
South Carolina Appleseed Justice Center, Columbia, SC
Texas Legal Services Center, Austin, TX
Legal Aid Society of Roanoke Valley, Roanoke, VA
Virginia Citizens Consumer Council, Richmond, VA
Virginia Poverty Law Center, Richmond, VA
Law Line of Vermont, Burlington, VT
Legal Services Law Line of Vermont, Burlington, VT
Disability Rights Wisconsin, Madison, WI
Mountain State Justice, Charleston, WV

cc. Senator Max Baucus, Chairman, Senate Finance Committee
Senator Herb Kohl, Chairman Senate Special Committee on Aging
Congressman Dave Camp, Chairman, House Ways and Means Committee
Congressman Sander Levin, Ranking Member, House Ways and Means Committee
Congressman Barney Frank, Ranking Member, House Financial Services Committee

Scott Frey, Social Security Administration
Russ Young, Social Security Administration