



For Immediate Release  
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**Hearing Statement of Senator Max Baucus (D-Mont.)  
Regarding Bank Treatment of Social Security Benefits**

The Book of Leviticus teaches: "You must not cheat your neighbor or rob him. You must not keep a hired worker's salary all night until morning."

Our hearing today will look at a modern application to this ancient rule. We will examine the case where banks are keeping Social Security beneficiaries' payments far longer than all night, far longer than until morning.

The Social Security law sets forth a rule much like that in Leviticus. The Social Security law says: "[N]one of the moneys paid . . . under this subchapter shall be subject to execution, levy, attachment, garnishment, or other legal process."

In other words: Social Security benefits are protected. No one can garnish your Social Security check. And that goes for Social Security benefits deposited electronically in bank accounts: Those benefits are protected, too.

But here is what's happening: A creditor alleges that a Social Security beneficiary owes the creditor money. The creditor goes to court. Sometimes the beneficiary really owes the debt. Sometimes the beneficiary does not. But it is not always easy for old or disabled people to get to court to fight the creditor.

State courts routinely issue orders allowing creditors to freeze assets, prior to garnishing funds to repay an alleged debt. The creditor then sends the court order to every bank in the state. The order instructs the bank to freeze some or all of the beneficiary's bank deposits as a first step towards garnishing the funds at a later date.

Generally banks will not give the beneficiary a chance to prove that the funds in the bank account are from Social Security or another protected benefit. So the bank freezes the money. And to make matters worse, the bank will often charge the beneficiary an extra fee for the privilege of freezing the beneficiary's money.

As a result, these beneficiaries cannot get their Social Security benefits out of their accounts. These beneficiaries are often retirees or individuals with disabilities who need every penny of each month's benefit. And these freezes and fees have devastating results.

Many Social Security beneficiaries rely on their Social Security benefits to pay for their basic needs. Social Security is the only source of income for one out of five people over age 65. And for two-thirds of people over 65, Social Security is more than half of their income.

And the same thing is happening to recipients of Supplemental Security Income or SSI. SSI is a means-tested program. All of its beneficiaries are poor. They cannot afford to have any of their benefits taken away.

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And the same thing is happening to recipients of Railroad Retirement benefits and Veterans' benefits. There are recipients of these benefits who rely principally on these benefits. They cannot afford to lose them.

For beneficiaries to "un-freeze" funds in the account, they must go to court. They usually need a lawyer. They have to prove that the funds in the account are from one of the protected programs. They have to get an order from the court to the bank to un-freeze the money. And they have to take the order to the bank.

Accomplishing all of these tasks can be very difficult. These tasks can take a lot of time. These tasks can prove all too much for many elderly or disabled beneficiaries.

To make matters worse, once the funds are frozen, the bank often starts charging fees to the beneficiary. The bank takes the fees right out of the beneficiary's account.

Banks often charge a \$100 or \$150 fee for having the account frozen. Once frozen, checks start bouncing. Banks charge \$25 or \$35 for every check or debit received while the account is frozen.

And fees like that can add up quickly. Even when the beneficiary gets the account un-frozen, the beneficiary will still have lost a significant portion of the Social Security benefits to the fees the banks charged.

I am not singling out any bank or financial institution for criticism. My concern about the banking system lies broadly across the system.

Five banking regulatory agencies regulate banks. These agencies have been working together to come up with common guidance for their banks regarding freezes of Federal benefits. I had high hopes for this effort. But I was disappointed yesterday with the draft guidance that they released for public comment.

The fundamental question is: Do banks have to follow court orders to freeze Social Security and other benefits, even though Federal law says that garnishment of such funds is not permitted? The answer should be "no, they do not have to follow the court orders." But the answer in the guidance is "go ahead and freeze the accounts."

The Supremacy Clause of the Constitution dictates that Federal law trumps state courts. Even if a state court wants a bank to freeze Social Security or other protected funds, the bank should not do so, because Federal law bans such garnishments. And that's what the guidance from the banking regulators should have said.

I am going to explore this issue with several of our witnesses. And I hope that the five agencies will change this guidance to recognize that the Federal law protecting Social Security benefits controls here.

Banks must stop freezing the benefits of people who have limited resources. Banks must stop charging fees as a result of these freezes. Banks must stop depriving our neighbors of the Social Security and other benefits that they have earned.

Before I turn to Senator Grassley, I want to acknowledge the help of Senator McCaskill. She has been working with the Aging Committee leadership on this issue. She and her staff helped us in many ways to prepare for today's hearing.

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