

CCPA-41

November 20, 1970

This is in reply to your letter of September 22, 1970. Your inquiry concerns the application of the garnishment restrictions of Title III of the Consumer Credit Protection Act in two situations.

(1) An employee is paid on a biweekly basis and his disposable earnings for the biweekly pay period are \$200. A garnishment is served half way through the pay period; that is, at the end of the first week of the two-week pay period. The employee's earnings at that point are \$100, and under the facts given the garnishment of future earnings is not permitted. On these facts you were advised by the regional office that only the disposable earnings in excess of \$96 (\$4) could be garnished for that pay period. (\$96 is the floor established under the applicable rules in 29 CFR 870.10(b) for a biweekly pay period.) You ask whether it is permissible to consider also the \$100 of disposable earnings for the last half of the immediately preceding biweekly pay period, assuming that none of such earnings were previously garnished and thus apply the \$96 floor against \$200. If this could be done, the excess over \$96 would be \$104, and thus resort would have to be made to the 25 percent formula under which \$50 (25% of \$200) would be subject to garnishment.

(2) The second situation is a modification of the first. It is assumed that the employee has not yet received the \$200 for the immediately preceding pay period so that a total of \$300 in disposable earnings is due him at the time of garnishment. Consistently, you suggest that the percentage formula should be applied to the disposable earnings.

We read the text of Title III and its legislative history as establishing a clear Congressional purpose to establish a "floor" of \$48 in disposable earnings as being exempt from garnishment for a "workweek". See, for example, the comments of Congresswoman Sullivan at 114 Cong. Rec. H4123 (Daily ed., May 22, 1968) concerning the establishment of the "floor". Note further that Title III speaks expressly of a "workweek" rather than a calendar week and to other "pay periods" rather than to other calendar periods. Further, the Congress delegated to the Secretary of Labor the duty of issuing substantive rules prescribing a "multiple" of the \$48 floor (which is a product of the FLSA formula) for pay periods other than a week.

We consider such a multiple as applicable to pay periods longer than a week such as monthly, semi-monthly or biweekly pay periods. However, the \$48 per workweek restriction may not be prorated or reduced in the case of a partial week's earnings or of pay periods of less than a week. Also, no wages may be garnished in the case of pay periods longer than a week when the disposable earnings are less than the multiple applicable to that pay period. Similarly, it is clear that there may be no combining of earnings for more than one payroll period in applying the garnishment restrictions as this would negate the "workweek" or "pay period" protection of the Act.

The multiple prescribed in section 870.10(c)(2) for a biweekly or 2-week pay period is \$96. Thus, when disposable earnings in a biweekly pay period are \$96 or less no portion may be garnished. When disposable earnings are more than \$96 and no more than \$128 per pay period,

section 303(a)(2) is controlling and only the amount in excess of \$96 may be made subject to garnishment. When the disposable earnings are in excess of \$128, the restriction on garnishment in section 303(a)(1) limiting garnishment to not more than 25% of disposable earnings is applicable. The same rule would hold for semimonthly and monthly pay periods except that the multiple of the exemption formula would vary with the pay period. Please see 29 CFR 870.10(c), a copy of which is enclosed.

Thus it is clear that the full \$96 is to be applied in determining the amount of earnings which are subject to garnishment under situation (1). If another garnishment order is served at the end of the pay period, the garnishment amount will be recomputed based on all the wages for the pay period. For example, in situation (1) at the end of the bi-weekly payroll period, there would appear available for other possible garnishments \$46 (25% of the \$200 minus the \$4 earlier subjected to garnishment). In situation (2), there would be \$54 subject to garnishment at the time the order is served (\$50 from the preceding pay period plus \$4 from the current period).

Sincerely,

Robert D. Moran
Administrator