CCPA

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[redacted]

Thank you for your letter, referred to this office for reply by the Pension and Welfare Benefit Programs Administration, regarding the application of Title III of the Consumer Credit Protection Act to pension payments.

You state your client, who administers an employee pension benefit trust fund covered by the Employment Retirement Income Security Act (ERISA), is joined as a party claimant in a marital dissolution proceeding in the State of California. The Domestic Relations Court has entered a supplementary judgment in the action finding that a pension is a community asset. Thus, as California is a community property State, the pension recipient's spouse was awarded one-half of the monthly pension payment. Inasmuch as it was your opinion that Title I of ERISA superseded State law, your client did not believe it proper to make any payments to the nonparticipant or non-beneficiary of the fund. However, the court subsequently ruled that the pension was not exempt from execution for the recovery of the court-ordered spousal support payment. Hence, your client commenced payment to the spouse of one-half of the monthly pension payment.

The supplementary judgment also ordered that an additional $200 per month as spousal support be paid by the pensioner to this spouse. When those monthly payments were not paid, the spouse obtained a support garnishment levy against the pensioner's half of the monthly pension payment. As the pensioner had remarried the court ordered your client to withhold 55% of the monthly pension, i.e., $141.21, to satisfy the unpaid spousal support. You believe that since the spouse is already receiving 50% of the pensioner's disposable earnings, Title III of the Consumer Credit Protection Act prohibits withholding more than an additional 5% of the monthly pension payment.

It is our opinion that the court ruled correctly in determining that the portion of Mr. Evans' pension awarded to his spouse as her separate property was thereafter not a part of Mr. Evans' disposable earnings under Title III of the Consumer Credit Protection Act. Consequently, the order to withhold 55% ($141.21) of the remaining monthly pension benefit does not violate the Federal garnishment restrictions.

Sincerely,

Henry T. White, Jr.

Henry T. White, Jr.
Deputy Administrator