



CCPA-38

October 26, 1970

This is in further reference to your letter of April 2, 1970, concerning the application of Title III, Restriction on Garnishment, of the Consumer Credit Protection Act. The questions you asked will be answered in the order in which they were presented.

Your first question asks what is meant by "subjected to garnishment". In our opinion an individual's earnings are "subjected to garnishment" within the meaning of section 304(a) of the CCPA when the employer (garnishee) is bound to withhold compensation from an employee and would be liable to the judgment creditor if he disregards any order of the court to this effect. There would be no subjection to garnishment before this time. For example, if a judgment debtor obtains a release from the judgment creditor before the actual entry of the order directing that an execution issue against the earnings of an employee, there is no subjection of his earnings to his garnishment.

Your second question is, "Does the prohibition against discharge apply to a case in which one garnishment proceeding was instituted prior to the effective date of the Act and a second one was instituted subsequent to such date?" In enforcing section 304 in civil actions contemplated by section 306 of the CCPA, we would consider a discharge from employment because of two garnishments for two debts to violate section 304 if one of the two garnishments was fully executed before July 1, 1970, the effective date of Title III. From our study we are convinced that there was a Congressional purpose to afford simultaneous and uniform protection to all wage earners as of the effective date with respect to the restrictions contained in both sections 303 and 304. This can only be achieved by excluding all garnishments having no force and effect as of the effective date in applying the restrictions of not only section 303 but also those of section 304.

Your third question is, does the definition of the term "garnishment" embrace a wage assignment in a State in which wage assignments are enforceable against the assignor's employer -- enforceable in the sense that the creditor may recover against the employer whatever amount he failed to withhold from wages and remit to the creditor?

The term "garnishment" is defined in section 302(c) of the Act to mean "any legal or equitable procedure through which the earnings of any individual are required to be withheld for payment of any debt". It is our opinion that a "garnishment" refers to a court proceeding through which a creditor seeks to reach an individual's earnings before they are paid to him, so that they may be applied to the satisfaction of a claim against the individual. On the other hand, an assignment of wages is a transfer of the right to receive wages ordinarily effected by means of a contract. As a private transaction, a wage assignment is not included in the definition of garnishment prior to legal proceedings.

Sincerely,

Robert D. Moran
Administrator