

## SUBCHAPTER D—GARNISHMENT OF EARNINGS

### PART 870—RESTRICTION ON GARNISHMENT

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AUTHORITY: Secs. 303, 305, 306, 82 Stat. 163, 164; 15 U.S.C. 1673, 1675, 1676, unless otherwise noted.

SOURCE: 35 FR 8226, May 26, 1970, unless otherwise noted.

#### Subpart A—General

##### § 870.1 Purpose and scope.

(a) This part sets forth the procedures and any policies, determinations, and interpretations of general application whereby the Secretary of Labor carries out his duties under section 303 of the CCPA dealing with restrictions on garnishment of earnings, and section 305 permitting exemptions for State-regulated garnishments in certain situations. While the Secretary's duties under section 303 include insuring that certain amounts of earnings are protected, such duties do not include establishing priorities among multiple garnishments, as such prior-

ities are determined by other Federal statutes or by State law.

(b) Functions of the Secretary under the CCPA to be performed as provided in this part are assigned to the Administrator of the Wage and Hour Division (hereinafter referred to as the Administrator), who, under the general direction and control of the Assistant Secretary, Wage and Labor Standards Administration, shall be empowered to take final and binding actions in administering the provisions of this part. The Administrator is empowered to subdelegate any of his duties under this part. Any legal advice and assistance required for administration of this part shall be provided by the Solicitor of Labor.

[35 FR 8226, May 26, 1970, as amended at 44 FR 30684, May 29, 1979]

##### § 870.2 Amendments to this part.

The Administrator may, at any time upon his own motion or upon written request of any interested person setting forth reasonable grounds therefor, amend any rules in this part.

#### Subpart B—Determinations and Interpretations

##### § 870.10 Maximum part of aggregate disposable earnings subject to garnishment under section 303(a).

(a) *Statutory provision.* Section 303 (a) of the CCPA provides that, with some exceptions,

the maximum part of the aggregate disposable earnings of an individual for any workweek which is subjected to garnishment may not exceed

(1) 25 per centum of his disposable earnings for that week, or

(2) the amount by which his disposable earnings for that week exceed thirty times the Federal minimum hourly wage prescribed by section 6(a)(1) of the Fair Labor Standards Act of 1938, in effect at the time the earnings are payable.

whichever is less. In the case of earnings for any pay period other than a week, the Secretary of Labor shall by

regulation prescribe a multiple of the Federal minimum hourly wage equivalent in effect to that set forth in paragraph (2).

(b) *Weekly pay period.* The statutory exemption formula applies directly to the aggregate disposable earnings paid or payable for a pay period of 1 workweek, or a lesser period. Its intent is to protect from garnishment and save to an individual earner the specified amount of compensation for his personal services rendered in the workweek, or a lesser period. Thus:

(1) The amount of an individual's disposable earnings for a workweek or lesser period which may not be garnished is 30 times the Fair Labor Standards Act minimum wage. If an individual's disposable earnings for such a period are equal to or less than 30 times the minimum wage, the individual's earnings may not be garnished in any amount. (When the minimum wage increases, the proportionate amount of earnings which may not be garnished also increases.) On April 1, 1991, the minimum wage increased to \$4.25. Accordingly, the amount of disposable weekly earnings which may not be garnished is \$127.50 effective April 1, 1991. (For the period April 1, 1990 through March 31, 1991, the amount that may not be garnished is \$114 (30×\$3.80).)

(2) For earnings payable on or after April 1, 1991, if an individual's disposable earnings for a workweek or lesser period are more than \$127.50, but less than \$170.00, only the amount above \$127.50 is subject to garnishment. (For earnings payable during the period April 1, 1990, through March 31, 1991, when the Fair Labor Standards Act minimum wage was \$3.80, this range computes to more than \$114.00, but less than \$152.00.)

(3) For earnings payable on or after April 1, 1991, if an individual's disposable earnings for a workweek or lesser period are \$170.00 or more, 25 percent of his/her disposable earnings is subject to garnishment. (The weekly figure was \$152.00 (40×\$3.80) for the period April 1, 1990 through March 31, 1991.)

(c) *Pay for a period longer than 1 week.* In the case of disposable earnings which compensate for personal services rendered in a pay period longer than 1

workweek, the weekly statutory exemption formula must be transformed to a formula applicable to such earnings providing equivalent restrictions on wage garnishment.

(1) The 25 percent part of the formula would apply to the aggregate disposable earnings for all the workweeks or fractions thereof compensated by the pay for such pay period.

(2) The following formula should be used to calculate the dollar amount of disposable earnings which would not be subject to garnishment: The number of workweeks, or fractions thereof, should be multiplied times the applicable Federal minimum wage and that amount should be multiplied by 30. For example, for the period April 1, 1990 through March 31, 1991 when the Federal minimum wage was \$3.80 per hour, the formula should be calculated based on a minimum wage of \$3.80 (\$3.80 multiplied by 30 equals \$114; \$114 multiplied by the number of workweeks (or fractions thereof) equals the amount that cannot be garnished). As of April 1, 1991, the \$4.25 Federal minimum wage replaces \$3.80 in the formula (and the amount which cannot be garnished would then be \$127.50 multiplied by the number of workweeks (or fractions thereof)). For purposes of this formula, a calendar month is considered to consist of  $4\frac{1}{3}$  workweeks. Thus, during the period April 1, 1990 through March 31, 1991 when the Federal minimum hourly wage was \$3.80 an hour, the amount of disposable earnings for a 2-week period is \$228.00 (2×30×\$3.80); for a monthly period, \$494.00 ( $4\frac{1}{3}$ ×30×\$3.80). Effective April 1, 1991, such amounts increased as follows: for a two-week period, \$255.00 (2×30×\$4.25); for a monthly period, \$552.50 ( $4\frac{1}{3}$ ×30×\$4.25). The amount of disposable earnings for any other pay period longer than 1 week shall be computed in a manner consistent with section 303(a) of the act and with this paragraph.

(3) Absent any changes to the rate set forth in section 6(a)(1) of the Fair Labor Standards Act, disposable earnings for individuals paid weekly, bi-weekly, semimonthly, and monthly may not be garnished unless they are in excess of the following amounts:

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Date	Minimum amount	Weekly amount	Biweekly amount	Semi-monthly amount	Monthly rate
Jan. 1, 1981 .....	\$3.35	\$100.50	\$201.00	\$217.75	\$435.50
Apr. 1, 1990 .....	3.80	114.00	228.00	247.00	494.00
Apr. 1, 1991 .....	4.25	127.50	255.00	276.25	552.50

(4) Absent any changes to the rate set forth in section 6(a)(1) of the Fair Labor Standards Act, if the disposable earnings are less than the following figures, only the difference between the

appropriate figures set forth in paragraph (c)(3) of this section and the individual's disposable earnings may be garnished.

Date	Minimum amount	Weekly amount	Biweekly amount	Semi-monthly amount	Monthly rate
Jan. 1, 1981 .....	\$3.35	\$134.00	\$268.00	\$290.33	\$580.67
Apr. 1, 1990 .....	3.80	152.00	304.00	329.33	658.67
Apr. 1, 1991 .....	4.25	170.00	340.00	368.33	736.67

For example, in April of 1990, if an individual's disposable earnings for a biweekly pay period are \$274.00, the difference between \$228.00 and \$274.00 (i.e., \$46.00) may be garnished.

(5) If disposable earnings are in excess of the figures stated in paragraph (c)(4) of this section, 25% of the disposable earnings may be garnished.

(d) *Date wages paid or payable controlling.* The date that disposable earnings are paid or payable, and not the date the Court issues the garnishment order, is controlling in determining the amount of disposable earnings that may be garnished. Thus, a garnishment order in November 1990, providing for withholding from wages over a period of time, based on exemptions computed at the \$3.80 per hour minimum wage then in effect, would be modified by operation of the change in the law so that wages paid after April 1, 1991, are subject to garnishment to the extent described in paragraphs (b) and (c) of this section on the basis of a minimum rate of \$4.25 per hour. This principle is applicable at the time of the enactment of any further increase in the minimum wage.

(Sec. 2, Pub. L. 93-259, 84 Stat 55)

[35 FR 8226, May 26, 1970, as amended at 40 FR 52610, Nov. 11, 1975; 43 FR 28471, June 30, 1978; 43 FR 30276, July 14, 1978; 44 FR 30685, May 29, 1979; 56 FR 32254, July 15, 1991; 56 FR 40660, Aug. 15, 1991]

**§ 870.11 Exceptions to the restrictions provided by section 303(a) of the CCPA and priorities among garnishments.**

(a)(1) Section 303(b) of the Consumer Credit Protection Act provides that the restrictions in section 303(a) do not apply to:

(i) Any debt due for any State or Federal tax, or

(ii) Any order of any court of bankruptcy under Chapter XIII of the Bankruptcy Act.

(2) Accordingly the Consumer Credit Protection Act does not restrict in any way the amount which may be withheld for State or Federal taxes or in Chapter XIII Bankruptcy Act proceedings.

(b)(1) Section 303(b) provides the following restrictions on the amount that may be withheld for the support of any person (e.g. alimony or child support):

(A) Where such individual is supporting his spouse or dependent child (other than a spouse or child with respect to whose support such order is issued), 50 per centum of such individual's disposable earnings for that week; and

(B) Where such individual is not supporting such a spouse or dependent child described in clause (A), 60 per centum of such individual's disposable earnings for that week; except that, with respect to the disposable earnings of any individual for any workweek, the 50 per centum specified in clause (A) shall be deemed to be 55 per centum and the 60 per centum specified in clause (B) shall be

deemed to be 65 per centum, if and to the extent that such earnings are subject to garnishment to enforce a support order with respect to a period which is prior to the twelve week period which ends with the beginning of such workweek.

(2) Compliance with the provisions of section 303(a) and (b) may offer problems when there is more than one garnishment. In that event the priority is determined by State law or other Federal laws as the CCPA contains no provisions controlling the priorities of garnishments. However, in no event may the amount of any individual's disposable earnings which may be garnished exceed the percentages specified in section 303. To illustrate:

(i) If 45% of an individual's disposable earnings were garnished for taxes, and this garnishment has priority, the Consumer Credit Protection Act permits garnishment for the support of any person of only the difference between 45% and the applicable percentage (50 to 65%) in the above quoted section 303(b).

(ii) If 70% of an individual's disposable earnings were garnished for taxes and/or a Title XIII Bankruptcy debt, and these garnishments have priority, the Consumer Credit Protection Act does not permit garnishment either for the support of any person or for other debts.

(iii) If 25% of an individual's disposable earnings were withheld pursuant to an ordinary garnishment which is subject to the restrictions of section 303(a), and the garnishment has priority in accordance with State law, the Consumer Credit Protection Act permits the additional garnishment for the support of any person of only the difference between 25% and the applicable percentage (50-65%) in the above quoted section 303(b).

(iv) If 25% or more of an individual's disposable earnings were withheld pursuant to a garnishment for support, and the support garnishment has priority in accordance with State law, the Consumer Credit Protection Act does not permit the withholding of any additional amounts pursuant to an ordinary garnishment which is subject to the restrictions of section 303(a).

[44 FR 30685, May 29, 1979]

### Subpart C—Exemption for State-Regulated Garnishments

#### § 870.50 General provision.

Section 305 of the CCPA authorizes that Secretary to "exempt from the provisions of section 303(a) garnishments issued under the laws of any State if he determines that the laws of that State provide restrictions on garnishment which are substantially similar to those provided in section 303(a)."

#### § 870.51 Exemption policy.

(a) It is the policy of the Secretary of Labor to permit exemption from section 303(a) of the CCPA garnishments issued under the laws of a State if those laws considered together cover every case of garnishment covered by the Act, and if those laws provide the same or greater protection to individuals. Differences in text between the restrictions of State laws and those in section 303(a) of the Act are not material so long as the State laws provide the same or greater restrictions on the garnishment of individuals' earnings.

(b) In determining whether State-regulated garnishments should be exempted from section 303(a) of the CCPA, or whether such an exemption should be terminated, the laws of the State shall be examined with particular regard to the classes of persons and of transactions to which they may apply; the formulas provided for determining the maximum part of an individual's earnings which may be subject to garnishment; restrictions on the application of the formulas; and with regard to procedural burdens placed on the individual whose earnings are subject to garnishment.

(c) Particular attention is directed to the fact that subsection (a) of section 303, when considered with subsection (c) of that section, is read as not requiring the raising of the subsection (a) restrictions as affirmative defenses in garnishment proceedings.

#### § 870.52 Application for exemption of State-regulated garnishments.

(a) An application for the exemption of garnishments issued under the laws of a State may be made in duplicate by a duly authorized representative of the State. The application shall be filed

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with the Administrator of the Wage and Hour Division, Department of Labor, Washington, DC 20210.

(b) Any application for exemption must be accompanied by two copies of all the provisions of the State laws relating to the garnishment of earnings, certified to be true and complete copies by the Attorney General of the State. In addition, the application must be accompanied by a statement, in duplicate, signed by the Attorney General of the State, showing how the laws of the State satisfy the policy expressed in § 870.51(a) and setting forth any other matters which the Attorney General may wish to state concerning the application.

(c) Notice of the filing of an application for exemption shall be published in the FEDERAL REGISTER. Copies of the application shall be available for public inspection and copying during business hours at the national office of the Wage and Hour Division and in the regional office of the Wage and Hour Division in which the particular State is located. Interested persons shall be afforded an opportunity to submit written comments concerning the application of the State within a period of time to be specified in the notice.

[35 FR 8226, May 26, 1970, as amended at 35 FR 14315, Sept. 11, 1970]

**§ 870.53 Action upon an application for exemption.**

(a) The Administrator shall grant or deny within a reasonable time any application for the exemption of State-regulated garnishments. The State representative shall be notified in writing of the decision. In the event of denial, a statement of the grounds for the denial shall be made. To the extent feasible and appropriate, the Administrator may afford to the State representative and to any other interested persons an opportunity to submit orally or in writing data, views, and arguments on the issue of whether or not an exemption should be granted and on any subsidiary issues.

(b) If an application is denied, the State representative shall have an opportunity to request reconsideration by the Administrator. The request shall be made in writing. The Administrator shall permit argument when-

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ever the opportunity to do so has not been afforded under paragraph (a) of this section, and may permit argument in any other case.

(c) General notice of every exemption of State-regulated garnishments and of its terms and conditions shall be given by publication in the FEDERAL REGISTER.

**§ 870.54 Standards governing the granting of an application for exemption.**

The Administrator may grant any application for the exemption of State-regulated garnishments whenever he finds that the laws of the State satisfy the policy expressed in § 870.51(a).

**§ 870.55 Terms and conditions of every exemption.**

(a) It shall be a condition of every exemption of State-regulated garnishments that the State representative have the powers and duties

(1) To represent, and act on behalf of, the State in relation to the Administrator and his representatives, with regard to any matter relating to, or arising out of, the application, interpretation, and enforcement of State laws regulating garnishment of earnings;

(2) To submit to the Administrator in duplicate and on a current basis, a certified copy of every enactment by the State legislature affecting any of those laws, and a certified copy of any decision in any case involving any of those laws, made by the highest court of the State which has jurisdiction to decide or review cases of its kind, if properly presented to the court; and

(3) To submit to the Administrator any information relating to the enforcement of those laws, which the Administrator may request.

(b) The Administrator may make any exemption subject to additional terms and conditions which he may find appropriate to carry out the purposes of section 303(a) of the Act.

**§ 870.56 Termination of exemption.**

(a) After notice and opportunity to be heard, the Administrator shall terminate any exemption of State-regulated garnishments when he finds that the laws of the State no longer satisfy the purpose of section 303(a) of the Act

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or the policy expressed in §870.51(a). Also, after notice and opportunity to be heard, the Administrator may terminate any exemption if he finds that any of its terms or conditions have been violated.

(b) General notice of the termination of every exemption of State-regulated garnishments shall be given by publication in the FEDERAL REGISTER.

**§ 870.57 Exemptions.**

Pursuant to section 305 of the CCPA (82 Stat. 164) and in accordance with the provisions of this part, it has been determined that the laws of the following States provide restrictions on garnishment which are substantially similar to those provided in section 303(a) of the CCPA (82 Stat. 163); and that, therefore, garnishments issued under those laws should be, and they hereby are, exempted from the provisions of section 303(a) subject to the terms and conditions of §§ 870.55(a) and 870.56:

(a) *State of Virginia*. Effective June 30, 1978, garnishments issued under the

laws of the State of Virginia are exempt from the provisions of sections 303(a) and 303(b) of the CCPA under the following additional conditions: (1) Whenever garnishments are ordered in the State of Virginia which are not deemed to be governed by section 34-29 of the Code of Virginia, as amended, and the laws of another State are applied, sections 303(a) and 303(b) of the CCPA shall apply to such garnishments according to the provisions thereof; and (2) whenever the earnings of any individual subject to garnishment are withheld and a suspending or super-sedeas bond is undertaken in the course of an appeal from a lower court decision, sections 303(a) and 303(b) of the CCPA shall apply to the withholding of such earnings under this procedure according to the provisions thereof.

[35 FR 18527, Dec. 5, 1970, as amended at 43 FR 28472, June 30, 1978]

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