

SUBCHAPTER D—GARNISHMENT OF EARNINGS

PART 870—RESTRICTION ON GARNISHMENT

Subpart A—General

Sec.

- 870.1 Purpose and scope.
870.2 Amendments to this part.

Subpart B—Determinations and Interpretations

- 870.10 Maximum part of aggregate disposable earnings subject to garnishment under section 303(a).
870.11 Exceptions to the restrictions provided by section 303(a) of the CCPA and priorities among garnishments.

Subpart C—Exemption for State-Regulated Garnishments

- 870.50 General provision.
870.51 Exemption policy.
870.52 Application for exemption of State-regulated garnishments.
870.53 Action upon an application for exemption.
870.54 Standards governing the granting of an application for exemption.
870.55 Terms and conditions of every exemption.
870.56 Termination of exemption.
870.57 Exemptions.

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:

Wage and Hour Division, Labor

§ 870.11

| 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 bi-weekly 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