#39.30 2/13/73

Memorandum 73-17

Subject: Study 39.30 - Wage Garnishment and Related Matters

Attached to this memorandum are two exhibits pertaining to the wage garnishment recommendation. A printed copy of this recommendation (dated October 1972) was mailed to you on January 18, 1973. We will bring a few extra copies to the March meeting but ask that you please try to bring your own copy to consider in connection with this memorandum.

Exhibit I is a letter (dated February 1, 1973) and several enclosures received from the federal administrator regarding our request for an exemption from Title III of the federal Consumer Credit Protection Act for the area (employer garnishment) covered by the proposed Employees' Earnings Protection Law. As you will see, the request was denied. The administrator takes the position that a state's law must qualify for a total exemption or no exemption at all will be granted. As he points out, our recommendation does not meet the Title III standards that they have set up particularly with regard to earnings of persons other than employees and bank accounts. John DeMoully has written again to the administrator regarding the possibility of a partial exemption, but there is no reason to suppose that any different answer will be received. With this situation in mind, does the Commission wish to take any new action with regard to the recommendation? The recommendation has been introduced to the 1973 Legislature as Assembly Bill 101 (Assemblyman Warren).

Exhibit II is a letter received a while back from an attorney representing a large employer. Most of the comments relate to either portions of Section 690.6 or Section 682.3 which have been repealed. Their repeal would seem to eliminate for the most part the writer's concerns. As to paragraph (2)

of the letter, the recommendation requires that a withholding order for support (Section 723.030) or for taxes (Section 723.072) be denoted as such upon its face. As to paragraph (3), Section 723.030 and the Comment thereto make clear that support orders include orders for the support of any person including a former spouse.

Paragraph (5) raises a problem which the Commission has not previously considered. Probate Code Section 732 provides as follows:

> 732. When a judgment has been rendered against the testator or intestate, no execution shall issue thereon after his death, except as provided in the Code of Civil Procedure. A judgment against the decedent for the recovery of money must be filed or presented in the same manner as other claims. If execution is actually levied upon any property of the decedent before his death, the same may be sold for the satisfaction thereof; and the officer making the sale must account to the executor or administrator for any surplus in his hands. A judgment creditor having a judgment which was rendered against the testator or intestate in his lifetime, may redeem any real property of the decedent from any sale under foreclosure or execution, in like manner and with like effect as if the judgment debtor were still living.

If nothing is done at all, the courts would presumably treat the withholding order in a manner similar to a writ of execution. See Comment to Section 723.029 (service of an order is a levy, but it is not a levy of a writ of execution). Levy of execution after death is ineffective; levy before death gives the creditor his priority. Implicit in an application for a withholding order is the creditor's belief that the debtor is still alive and working. A statement to this effect could be included in the application but seems unnecessary to us. On the other hand, should some provision be included to cover the situations where an order is served after an employee has died (and the employer is still holding some earnings) or where an employee dies during the period an order is in effect? If so, what policy does the Commission wish to adopt? It should be noted that the creditor will be able to file a creditor's claim in the decedent's estate--the real issue is what priority does he achieve by virtue of his levy. The staff suggests that an

order served after death should be ineffective. An order served before death should not be affected by the employee's death. If the Commission decides that these points need statutory clarification in the manner suggested, we suggest that Section 723.029 and Section 723.022 be amended as indicated below.

Section 723.022 could be amended by adding the following new subdivision (d) and renumbering present subdivisions (d) and (e) as (e) and (f) respectively:

> (d) Notwithstanding subdivision (b), where the employee dies before the withholding period commences, an employer shall not withhold any earnings payable to such employee.

The Comment to this subdivision should refer to Section 723.029 and should note that, where the employee dies after withholding has started, the levying creditor maintains his priority on earned but unpaid wages.

Section 723.029 could be amended by adding the following sentence:

> Such lien shall not be affected by the death of the employee after a withholding period commences.

As to paragraph (6), we merely note that the employer's service charge is entirely discretionary. As to paragraph (7), it is impossible to provide a final definition as to what constitutes earnings, but Section 723.011(a) makes a start, and Section 723.150 authorizes the Judicial Council to adopt rules covering specific problems as they arise. The Comments to Sections 723.011 and 723.022 have anticipated the problems raised in regard to vacation pay, commissions, bonuses, and so on.

Paragraph (10) refers, we think, to page 111 of the present recommendation and a discussion of the existing law. In any event, we believe that the Comment to subdivision (b) of Section 723.022 makes clear what pay periods are subject to levy. Paragraph (11) seems to suggest that an employer

could be made to keep a file on orders received and give effect to subsequent orders as earlier ones are satisfied. The Commission rejected this approach as being too burdensome to the employer. We see no reason to change our approach but note with interest that the suggestion for change comes from an employer.

Respectfully submitted,

Jack I. Horton
Assistant Executive Secretary

U.S. DEPARTMENT OF LABOR
EMPLOYMENT STANDARDS ADMINISTRATION
WASHINGTON, D.C. 20210

FEB 1 1973

Mr. John H. DeMoully
Executive Secretary
California Law Revision Commission
School of Law - Stanford University
Stanford, California 94305

Dear Mr. DeMoully:

This is in reply to your letter of September 20, 1972, concerning proposed garnishment legislation in the State of California.

You ask whether the draft statute you enclosed would appear to qualify the State of California for an exemption from the provisions of section 303(a) of the Consumer Credit Protection Act under the following condition: "Wherever the earnings of any individual are subject to garnishment under any provision of California law other than the Employees' Earnings Protection Law (Chapter 2.5 (commencing with section 723.010) of Title 9 of Part 2 of the Code of Civil Procedure), section 303(a) of the CCPA shall apply to the withholding of such earnings under such other statute." You state that such a "conditional exemption" would preserve the CCPA restrictions on garnishment as they may apply to such matters, for example, as checking accounts and independent contractors.

As indicated in 29 CFR 870.51, it is the policy of the Secretary to permit exemption from section 303(a) of Title III of the Consumer Credit Protection Act if the laws of a State cover every case of garnishment covered by the Act, and if those laws provide the same or greater restriction on garnishment of individuals' earnings. Under this standard, which has been in effect from the time Title III became effective, we are unable to approve the conditional exemption you suggest.

We recognize that Title III preempts any provision of State law which is not as restrictive as the Federal garnishment limitations. However, such preemption may not be considered as qualifying State laws for exemption under section 305. If this could be done every State would qualify for an exemption regardless of its laws, and section 305 would be a nullity. As indicated in section 301 of Title III, the purpose of this Title is to "regulate commerce and to establish uniform bankruptcy laws" based upon

a Congressional finding that the "great disparities among the laws of the several States relating to garnishment have, in effect, destroyed the uniformity of the bankruptcy laws and frustrated the purposes thereof in many areas of the country". See the seventh paragraph of opinion letter WH-121 (February 5, 1971) wherein this same matter is discussed.

In view of the fact that we cannot proceed towards the conditional exemption you suggest, we have not made a detailed examination of the latest version of California Senate Bill No. 88 (page proofs dated July 28, 1972) which you enclosed with your letter. However, we agree with your conclusion that if California garnishment law is amended by Senate Bill No. 88, the resulting body of law would clearly provide less protection than the Federal law in certain significant areas. For example, as explained in paragraph 3 of our letter to you of August 2, 1972, (opinion letter WH-177), §690.6 of the bill does not appear to provide any restriction on a levy of attachment directed to payable earnings of individuals who are not employees.

Also, we note that §690.7 of the current Code of Civil Procedure would not be amended by the bill. Section 690.7 provides a maximum exemption from execution of $1,000, which would apply even though an account subject to execution under this section may contain earnings which are entitled to the Title III percentage restriction on garnishment. Thus, this section of the existing law, which would not be affected by Senate Bill No. 88, is potentially less restrictive than Federal law in that Title III sets no dollar limit on the maximum amount of earnings which is protected from garnishment. Also, the exemption provided by §690.7 is not self executing. See §690(a) of the existing law and §690.50 in Senate Bill No. 88, and 29 CFR 870.51(c). Please also refer to page 2 of opinion letter WH-177 wherein analogous matters pertaining to an earlier version of Senate Bill No. 88 (as amended April 25, 1972) are discussed. In addition to our opinion letter WH-146 (October 26, 1971) which we previously sent to you, you may also be interested in opinion letter WH-171 (August 3, 1972) which further discusses the Department's views on the application of Title III to the garnishment of earnings in a bank account.

We noted in the tenth paragraph of opinion letter WH-177 that if certain types of retirement payments were deposited in a bank account, they would be treated under proposed sections of State law pertaining to levies of execution against bank accounts which we considered to provide less protection than the Federal law. This observation also applies to Senate Bill No. 88 as it is now written. Thus, if retirement payments of the

types which are within the purview of §§690.18(b) and 690.18½ are deposited in a bank account, such earnings would be treated under §690.7 of existing law. We consider §690.7 of existing law as providing less restriction on garnishment than the Federal law as discussed in the preceding paragraph.

We have not attempted to analyze every aspect of your proposal. If enacted, however, Senate Bill No. 88 would provide protection to debtors which, in many situations, would appear to exceed that prescribed by the Federal law. Thus, while the bill would not qualify for exemption in its present form, it represents a desirable step towards eventually conforming State law to Federal law.

Your main concern appears to be that unless you can point out to employers the benefits of your proposed bill, especially Chapter 2.5, you believe that representatives of creditors may secure defeat of the bill. However, the benefits of your proposed bill should not be diminished in any way by our withholding approval of the conditional exemption you seek.

If all of the provisions of Chapter 2.5, including the withholding tables for representative pay periods and multiples for pay periods longer than a week, which would be promulgated by the State Judicial Council pursuant to §723.050, in fact, provide for smaller garnishments than Title III with respect to every case of garnishment within the purview of Chapter 2.5, this chapter of State law may be followed with respect to earnings withholding orders executed pursuant to it. (See the 15th paragraph of opinion letter WH-177). As you know, any section or provision of any State law which prohibits garnishments or provides for a smaller garnishment amount than does Title III in a particular case will be applied, as provided under the provisions of section 307. Where a State has not received an exemption but some portions of its laws impose stricter standards restricting garnishments, both State law and Title III would apply concurrently. The Wage and Hour Division would continue to enforce Title III under section 306 and delegations of authority from the Secretary of Labor and State courts would continue to be subject to the proscription contained in section 303(c) against the making, executing, or enforcing of any order or process in violation of that section. (See opinion letter WH-76 dated September 14, 1970).

The extent and nature of our enforcement of section 303 in your State, therefore, would depend upon State substantive and procedural law and

the manner in which the State enforces its own laws. It would be clearly beneficial for your State to continue its efforts in achieving a body of garnishment law compatible with Federal law. Our assistance will continue to be available in this effort.

Sincerely,

Ben P. Robertson
Acting Administrator
Wage and Hour Division

Enclosures 6

PART 870 (29 CFR) – REGULATIONS

Title 29—LABOR

Chapter V—Wage and Hour Division, Department of Labor

PART 870—RESTRICTION ON GARNISHMENT

Subpart A—General

AUTHORITY: The provisions of this Part 870 issued under secs. 303, 305, 306, 82 Stat. 163, 164; 15 U.S.C. 1673, 1675, 1676.

Source: The provisions of this Part 870 appear at 35 F.R. 8298, 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 "multiples" of weekly restrictions on garnishment of earnings, and section 305 permitting exemptions for State-regulated garnishments in certain situations.

(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.

§ 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.

(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 be 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 for 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 lesser period. Thus, so long as the Federal minimum wage prescribed by section 6(a)(1) of the Fair Labor Standards Act of 1938 is $1.60 an hour—

(1) If an individual's disposable earnings for a workweek or lesser period are $48 (30 x $1.60) or less, his earnings may not be garnished in any amount.

(2) If an individual's disposable earnings for a workweek or lesser period are more than $48, but less than $64, only the amount above $48 is subject to garnishment.

(3) If an individual's disposable earnings for a workweek or lesser period are $64 or more, 25 percent of his disposable earnings is subject to garnishment.

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

(2) The "multiple" of the Federal minimum hourly wage equivalent to that applicable to the disposable earnings for 1 week is represented by the following formula: The number of workweeks, or fractions thereof (x) x 30 x the applicable Federal minimum wage ($1.60). For the purpose of this formula, a calendar month is considered to consist of 4⅓ workweeks. Thus, so long as the Federal minimum hourly wage is $1.60 an hour, the "multiple" applicable to the disposable earnings for a 2-week period is $96 (2 x 30 x $1.60); for a monthly period, $208 (4⅓ x 30 x $1.60); and for a semimonthly period, $104 (2⅙ x 30 x $1.60). The "multiple" 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.

Subpart C—Exemption for State-Regulated Garnishments

§ 870.50 General provision.

Section 305 of the CCPA authorizes the 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 with the Administrator of the Wage and Hour Division, Department of Labor, Washington, D.C. 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.

[36 F.R. 14716, 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 whenever 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 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 Kentucky.* Effective December 5, 1970, garnishments issued under the laws of the State of Kentucky are exempt from the provisions of section 303(a) of the CCPA: *Provided*, That garnishments served in the State of Kentucky which, by virtue of section 427.050 of the Kentucky Revised Statutes, as amended, are governed by the exemption laws of another State shall not be deemed, for the purposes of this exemption, to be issued under the laws of the State of Kentucky, and section 303(a) of the CCPA shall apply to such garnishments according to the provisions thereof.

[35 F.R. 18526, Dec. 5, 1970]

(b) *State of Virginia.* Effective January 12, 1971, garnishments issued under the laws of the State of Virginia are exempt from the provisions of section 303(a) 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, section 303(a) 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 supersedeas bond is undertaken in the course of an appeal from a lower court decision, section 303(a) of the CCPA shall apply to the withholding of such earnings under this procedure according to the provisions thereof.

[36 F.R. 367, January 12, 1971]

PD

U.S. DEPARTMENT OF LABOR
EMPLOYMENT STANDARDS ADMINISTRATION
WASHINGTON, D.C. 20210

3 AUG 1972

CCPA 303

This is in reply to your letter of June 7, 1972, concerning the application of Title III of the Consumer Credit Protection Act to the garnishment of earnings in a bank account.

You ask for the citations to which reference is made in opinion letter No. WH-146 (Oct. 26, 1971) for the cases adjudicated under other State and Federal statutes which have held that the exempt earnings of a debtor do not lose their exempt character by being deposited in a bank account. In this regard see Rutter v. Shumway, 26 Pac. 321 (Colo.); Staton v. Vernon & Oskaloosa National Bank, 229 N.W. 763 (Iowa); Colonial Discount Co. v. Wilhelm, 40 N.Y.S. 2d 298 (N.Y.); Sherwin Williams Co. v. Morris, 156 S.W. 2d 350 (Tenn.); Williams v. U. S. Fidelity & Guarantee Co., 107 F. 2d 210 (D. C.), Surplus v. Remmele, 87 N.Y.S. 2d 651 (N.Y.); Holmes v. Marshall, 79 Pac. 534 (Calf.); Payne v. Jordan, 110 S.E. 4 (Ga.); Emmert v. Schmidt, 68 Pac. 1072 (Kans.); Succession of Erwin, 126 So. 223 (La.); Surace v. Danna, 161 N.E. 345 (N.Y.): Gaddy v. First National Bank of Beaumont, 283 S.W. 472 (Tex.).

You also present several general questions on the application of the restrictions provided in Title III to the garnishment of earnings on deposit in a bank. In our opinion the earnings of a debtor in a bank account would retain their status as earnings subject to the restrictions on garnishment provided in the Act so long as they are capable of identification as such. This would not depend on any specific period of time as you suggest, but rather upon the facts in each case as to whether the sum on deposit or some part thereof is capable of identification as earnings. The Act's restrictions apply to earnings or compensation paid or payable for personal services. It would be contrary to the express mandate of the Act to assume that when a debtor deposits his earnings for safekeeping in a bank, his earnings are transformed into a bank credit to which the Act's restrictions do not apply. (See the cases cited above).

The bank acting as garnishee would need to identify the source of deposits subjected to garnishment, as you suggest. This would include, of course, receiving information directly from the depositor. As a practical matter, we believe that in most cases of garnishment the debtor's earnings would be the only source of funds in the bank account.

The answer to your last question is found in the penultimate paragraph of opinion letter No. WH-146. If the earnings are subjected to garnishment to the maximum extent provided in section 303(a) of the Act, such earnings are not subject to further attachment either before or after they are placed in the employee's account. For an employee paid on a weekly basis, the amount of disposable earnings subject to garnishment is not merely the excess over $48 per week. The garnishment restrictions provided in section 303(a) of the Act are explained starting at page 3 of the enclosed pamphlet.

Sincerely,

BEN T[illegible]RTSON
DEPUTY ADMINISTRATOR
WAGE & COMPENSATION PROGRAMS

Horace E. Menasco
Deputy Assistant Secretary

2 Enclosures

RD

U.S. DEPARTMENT OF LABOR
WAGE AND HOUR AND PUBLIC CONTRACTS DIVISIONS
WASHINGTON, D.C. 20210

SEP 14 1970

CCPA

This is in reply to your letter of August 7, 1970, concerning the administration of Title XII of the Consumer Credit Protection Act when a particular section violates both Title III and State law in a State which has more stringent garnishment restrictions than Title III, but which has not received an exemption under section 305.

Under the provisions of section 307, any section or provision of any State law which prohibits garnishments or provides for a smaller garnishment amount than does Title III in a particular case will continue to be applied. On the other hand, the State law is considered preempted if it results in a larger garnishment amount than permitted under section 303. This principle of general application will guide our activities in administering and enforcing Title III, unless we are otherwise directed by authoritative court decisions.

Where a State law imposes stricter standards regarding restrictions on wage garnishments and is thus not annulled, altered or affected by Title III by virtue of section 307, both the State law and Title III would apply concurrently. The Wage and Hour Division would continue to enforce Title III under section 306 and delegations of authority from the Secretary of Labor, and State courts would continue to be subject to the proscription contained in section 303(c) against the making, executing, or enforcing of any order or process in violation of that section. The manner in which a State law would be enforced would, of course, be dependent upon its particular provisions.

Sincerely,

ROBERT D. MORAN

Robert D. Moran
Administrator

Enclosure

U.S. DEPARTMENT OF LABOR
OFFICE OF THE ASSISTANT SECRETARY
WASHINGTON, D.C. 20210

WORKPLACE STANDARDS ADMINISTRATION

FEB 5 1971

Honorable Vernon B. Romney
Attorney General
State Capitol
Salt Lake City, Utah 84114

Dear Mr. Attorney General:

This is in reply to your letter of October 13, 1970, requesting an exemption from the provisions of section 303(a) of Title III, Restrictions on Garnishment, of the Consumer Credit Protection Act for garnishments issued under the laws of the State of Utah.

A notice of the application was published in the Federal Register of November 25, 1970, and a period of 30 days was allowed for comments from interested persons. The comments received were considered together with the application.

The salient features of Utah law are found in sections 70B-5-105 and 78-23-1(7), Utah Code Annotated, 1953. The limits prescribed in section 70B-5-105, although adequate, apply only to garnishments to enforce payments of judgments arising from consumer credit sales, consumer leases or consumer loans. However, the garnishment restrictions of Title III apply to all garnishments with the exception of the three narrow exemptions listed in section 303(b). Also, section 70B-5-105 does not define "earnings" so that it is not known whether it applies to "earnings" as defined in Title III.

Garnishments which do not result from the three types of consumer credit transactions listed in section 70B-5-105(2), Utah Code Annotated, are within the purview of section 78-23-1(7), U.C.A. This section provides an exemption from execution for "one-half of the earnings of the judgment debtor for his personal services rendered at any time within thirty days next preceeding the levy of execution or attachment by garnishment or otherwise, when it appears by the debtor's affidavit or otherwise that he is a married man, or head of family, and that such earnings are necessary for the use of his family residing in the state and supported wholly or in part by his labor, provided, that a married man or head of family shall be entitled to an exemption of not less than $50 per month". The limits on garnishment prescribed in section 78-23-1(7) are clearly less restrictive than the garnishment restrictions of Title III. Also, this

WH-121

section does not protect earnings prior to the 30 day period next preceding the garnishment, but the garnishment restrictions of Title III apply without limitation as to when wages were earned. The protection of Title III does not depend upon whether earnings are necessary for family support but under this section there is no restriction on garnishment where earnings are not necessary for family support.

Furthermore, "garnishment" and "earnings" are not defined in section 78-23-1(7), U.C.A. Therefore, it is not clear that section 78-23-1(7), applies to all garnishments which are beyond the purview of section 70B-5-105 or that these two sections taken together would apply to all garnishments which are within the purview of the Title III definition of "garnishment". It is not known whether section 78-23-1(7) applies to "earnings" as defined in Title III without a definition of this term. Also, the exemption available under section 78-23-1(7) must be affirmatively claimed, but under Title III there is no such requirement.

The procedural law concerning garnishments is found in Rule 64D and Rule 69(b) of the Utah Rules of Civil Procedure. Under section (d) of Rule 64D, which prescribes the contents of the garnishment writ, the garnishee is commanded "not to pay any debt due or to become due to the defendant but to retain possession and control of all personal property, effects and choses in action of such defendant until further order". Rule 69(b) (not submitted by the State for our review although it is also pertinent to the garnishment writ) appears to be consonant with section (d) of Rule 64D. Thus, the garnishee is ordered to withhold the whole pay (100 per cent) until further court order. Such a garnishment writ is itself a "garnishment" within the meaning of section 302(c) to which the restrictions of section 303(a) would be applicable. Under Title III, a garnishment writ may never cause any withholding of any earnings in excess of that subjected to garnishment under section 303(a). Accordingly, it should be clear under State law that any employer (or garnishee) shall pay any employee (or defendant) the amount of his exempt disposable earnings on the regular pay day for the pay period in which the wages were earned.

We have considered your Opinion No. 70-058 which indicates that Title III preempts any provision of State law which is not as restrictive as the Federal garnishment limitations. However, such preemption may not be considered as qualifying State laws for exemption under section 305. If this could be done every State would qualify for an exemption regardless of its laws, and section 305 would be a nullity. As indicated in section 301 of Title III, the purpose of this Title is to "regulate commerce and to establish uniform bankruptcy laws" based upon a Congressional finding that the "great disparities among the laws of the several States relating to garnishment have, in effect, destroyed the uniformity of the bankruptcy laws and frustrated the purposes thereof in many areas of the country".

In view of these differences between the Utah law and the Federal law and in applying Subpart C of Title 29, Part 870, Code of Federal Regulations (35 F.R. 8226), I conclude that the Utah law does not provide restrictions on

garnishment which are substantially similar to those provided in section 303(a) of Title III of the Consumer Credit Protection Act. The application for exemption is, therefore, denied.

Sincerely,

Robert D. Moran
Administrator

CCPA

U.S. DEPARTMENT OF LABOR
EMPLOYMENT STANDARDS ADMINISTRATION
WASHINGTON, D.C. 20210

RD

AUG 02 1972

This is in reply to your inquiry as to whether the legislation proposed in California Senate Bill No. 88 would provide restrictions on garnishment substantially similar to those of section 303(a) of Title III of the Consumer Credit Protection Act.

As indicated in 29 CFR 870.51, it is the policy of the Secretary to permit exemption from section 303(a) if the laws of a State cover every case of garnishment covered by the Act, and if those laws provide the same or greater restriction on garnishment of individuals' earnings. We have reviewed Senate Bill No. 88 (as amended April 25, 1972) to ascertain whether it would provide the requisite restriction on garnishment. The following discussion of some of the provisions of Senate Bill No. 88 denotes a number of circumstances where it would not provide the same or greater protection to individuals as does the Federal law.

Section 690.6 of the bill, which applies to earnings of individuals who are not employees, exempts the earnings of the debtor received for his personal services. It does not appear that there is any restriction on a levy of attachment directed to payable earnings of individuals within the purview of §690.6. The restrictions of Title III are stated in terms of "earnings" or "compensation paid or payable" and are applicable to individuals, whether an employee or otherwise. Thus, in cases within the purview of §690.6, the bill by definition would manifestly provide less protection than the Federal law.

It is noted that §690.6 exempts from attachment of earnings received by the debtor either: (a) one-half of such earnings, or (b) such greater portion as allowed by Title III, but the exemption is limited to earnings received within 30 days next preceding the levy of execution. As noted in our letter to you on November 22, 1971, Title III does not contain any time limitation for its restrictions to be effective.

Sections 690.7 through 690.7-1/2 pertain to levies of execution against bank accounts. The restrictions on garnishment provided in Title III apply to the garnishment of earnings deposited in bank accounts. Therefore, the above sections of State law should operate in such a way as to provide garnishment restrictions for earnings deposited in bank accounts which would be substantially similar to Title III. This aspect of Federal law is discussed in opinion letter WH-146, published October 26, 1971, which was sent to you as an enclosure with our letter of November 22, 1971.

Section 690.7 provides a maximum exemption from execution of $100. This maximum would apply even though an account subjected to execution under this section may contain earnings which are entitled to the Title III percentage restriction on garnishment. Thus, this section is clearly less restrictive than Federal law in that Title III sets no dollar limit on the maximum amount of earnings which is protected from garnishment. Also, the exemption provided by §690.7 is not self executing. See §690(a) of the existing law; §§690.7(f) and 690.50 in Senate Bill No. 88; and 29 CFR 870.51(c).

Section 690.7-1/2 provides an exemption in the case of earnings deposited by an employer with a bank which acts as his "payroll agent". The term "employer's payroll agent" is defined in §690.7-1/2 to mean "a financial institution that computes for an employer the net amount payable to an employee after making all required and authorized deductions from his gross earnings and credits the net amount to the employees deposit account in that financial institution". Under this section the "account of the debtor is exempt from levy of execution to the extent of the amount of the debtor's earnings that the agent has credited to that account for the last pay period prior to the levy, less all amounts debited to the account after the time the earnings for that pay period were credited to the account".

Section 690.7-1/2 would not provide restrictions on garnishment equal to Title III for several reasons. If the employee does not perform the affirmative act of withdrawing all of the earnings subjected to a levy of attachment before the next payday, the levy may take all of such earnings because they are not protected beyond this length of time. Thus, the exemption would not be self-executing. (See 29 CFR 870.51(e).) Additionally, this section prescribes a time limit, the span of one pay period, during which its protection would be effective. There is no such time limitation for the restrictions in Title III.

In situations within the purview of §690.7-1/2, the bank has the payroll records and, therefore, is fully aware of the amount of disposable earnings credited to the account. This section could thus be amended to provided garnishment restrictions substantially similar to Title III as well as such additional protection as the State wishes to add.

Sections 690.18 and 690.18½ deal with restrictions on levies of execution against retirement payments. In the case of such payments which are within the purview of §§690.18(b), 690.18(c) and 690.18½, it appears that if they are deposited in a bank account, they would be treated under §§690.7 and 690.7½ which are considered to provide less protection than the Federal law.

The Employee's Earnings Protection Law in Chapter 2.5 of the bill deals with the most typical type of garnishment situation in which the garnishee and the defendant have an employer-employee relationship and only payable earnings are involved. A garnishment is titled an "earnings withholding order" under this chapter. In certain instances this chapter provides less protection than the Federal law.

It should be pointed out that section 723.034 permits the employer to deduct a one dollar service fee each time he makes a deduction pursuant to a garnishment. To the extent that the total deduction -- the amount for the garnishment plus the service fee -- does not exceed the garnishment limitations of the Federal law this would not violate Title III. However, where such allowances are permitted by State law, any deductions from wages may not reduce the employee's earnings below the statutory minimum wage or overtime compensation which may be required under the Fair Labor Standards Act. Such deductions would not be considered as deductions "required by law to be withheld" for the purpose of determining the employee's "disposable earnings" within the meaning of section 302(b) of Title III. The basic garnishment restriction in the case of employees' earnings in the proposed bill, as indicated on the submitted "Withholding Comparison Table" would prohibit any withholding pursuant to a garnishment where the employee's gross earnings are less than $98 for one week. With the current minimum wage at $1.60, the addition of the one dollar service charge would not appear to raise a question of minimum wage and overtime compensation violation under the Fair Labor Standards Act in this proposed bill.

Section 723.030 of Chapter 2.5 delineates the treatment of deductions pursuant to a withholdings order for support. The treatment under Title III of court orders for support is explained in the enclosed opinion letters WH-100, WH-104, and WH-112. As indicated therein a court order for support is a "garnishment" and, therefore, deductions pursuant to a support order may not be treated as deductions required by law to be withheld. The opinions state that if a support order exhausts the allowable amount of disposable earnings under Federal law, no more of the employee's earnings may be withheld pursuant to another garnishment against the same earnings.

section 723.030(b)(4) treats deductions pursuant to a withholdings order for support as a deduction required by law. Thus, simultaneous deductions may be made for both a withholdings order for support and another withholding order. The amount deducted for support is subtracted first from the employee's earnings and then the employer computes the amount to be withheld pursuant to the second withholdings order based on the remaining earnings pursuant to §723.050. In the case of an employee subjected to a withholding order for support at the same time that another earnings withholding order is received, it is clear that State law is less restrictive of garnishment than Title III.

Under §723.050, which specifies the exemption for most earnings withholding orders and levies of execution, the State Judicial Council would be required to establish multiples for pay periods other than a week and withholding tables for representative pay periods. Any determination as to whether this section adequately restricts garnishment would necessarily depend on the multiples and tables which would be promulgated pursuant to this section.

Withholding orders for State taxes, within the purview of Article 4, are treated in a manner which is more restrictive than under Title III. However, the bill is silent on the handling of Federal tax levies and it is not clear that the State would follow the position that if a Federal tax levy exceeded the amount subject to garnishment under §303(a) of Title III that no further garnishment could be made against the same earnings. (cf. opinion WH-111).

Section 723.106(b), on procedure, provides that where "a judgment debtor has earnings from more than one source, an earnings withholding order may be issued based on the debtor's total earnings but directed to one employer". This is contrary to opinion letter WH-110 (January 7, 1971) which states that the restrictions of Title III" are considered to be separately applicable to each employer (garnishee)". Different employers would generally have different payroll periods and, thus, it would be impossible to combine earnings from two employments to ascertain the exempt amount under either the State bill or the Federal law - both of which apply garnishment restrictions on a pay period basis.

In addition, §723.106(a) defines earnings to include all tips, whether or not the tips pass through the employer's hands, in determining the amount which may be deducted under an earnings withholding order. Opinion letter WH-95 (December 9, 1970) states that under Title III tips do not constitute earnings when they do not pass through the hands of the employer and such tips may not be included in determining the amount subject to garnishment. Thus §723.106 would not be as restrictive as Federal law in

the case of employees receiving tips or earnings from more than one source. Also, the bill does not indicate the treatment to be given employees receiving board and lodging as part of their earnings. (cf. opinion WH-95).

Due to the manner in which Senate Bill No. 88 is structured, with different types of earnings under different provisions of law, it cannot be positively ascertained that the State law would provide the requisite level of protection in every case of garnishment covered by Federal law. Unlike Title III, the bill provides a complicated system of exemptions rather than a general restriction on garnishment. The analysis given above, therefore, does not cover all instances where there may be a discrepancy between Federal and State law.

We recognize and commend the important work the California Law Revision Commission has done in the area of providing protection to debtors, some of which go beyond the benefits provided by Federal law. Although Senate Bill No. 88 would not qualify for exemption in its present form under the provisions of 29 CFR 870, it represents a desirable step towards eventually conforming State law to Federal law.

Under the provisions of section 307 of Title III, those features of the bill prohibiting garnishment or providing for a smaller garnishment than Federal law in a particular case would be applied rather than Title III. On the other hand, the State law is preempted where it results in a larger garnishment amount than permitted under section 303. Thus, we feel it beneficial that the State continues its efforts in achieving a body of garnishment law compatible with Federal law. Our continued assistance will be available to you in this effort.

Sincerely,

SIGNED

Horace E. Menasco
Deputy Assistant Secretary

Enclosures 3

WH-177

Public Law 90-321
90th Congress, S. 5
May 29, 1968

An Act

To safeguard the consumer in connection with the utilization of credit by requiring full disclosure of the terms and conditions of finance charges in credit transactions or in offers to extend credit; by restricting the garnishment of wages; and by creating the National Commission on Consumer Finance to study and make recommendations on the need for further regulation of the consumer finance industry; and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Consumer Credit Protection Act.

§ 1. Short title of entire Act

This Act may be cited as the Consumer Credit Protection Act.

(This reprints only that portion of the Consumer Credit Protection Act contained in Title III - Restriction on Garnishment - effective July 1, 1970.)

TITLE III—RESTRICTION ON GARNISHMENT

82 STAT. 162

Sec.
301. Findings and purpose.
302. Definitions.
303. Restriction on garnishment.
304. Restriction on discharge from employment by reason of garnishment.
305. Exemption for State-regulated garnishments.
306. Enforcement by Secretary of Labor.
307. Effect on State laws.

82 STAT. 163

§ 301. Findings and purpose

(a) The Congress finds:

(1) The unrestricted garnishment of compensation due for personal services encourages the making of predatory extensions of credit. Such extensions of credit divert money into excessive credit payments and thereby hinder the production and flow of goods in interstate commerce.

(2) The application of garnishment as a creditors' remedy frequently results in loss of employment by the debtor, and the resulting disruption of employment, production, and consumption constitutes a substantial burden on interstate commerce.

(3) The great disparities among the laws of the several States relating to garnishment have, in effect, destroyed the uniformity of the bankruptcy laws and frustrated the purposes thereof in many areas of the country.

(b) On the basis of the findings stated in subsection (a) of this section, the Congress determines that the provisions of this title are necessary and proper for the purpose of carrying into execution the powers of the Congress to regulate commerce and to establish uniform bankruptcy laws.

§ 302. Definitions

For the purposes of this title:

(a) The term "earnings" means compensation paid or payable for personal services, whether denominated as wages, salary, commission, bonus, or otherwise, and includes periodic payments pursuant to a pension or retirement program.

(b) The term "disposable earnings" means that part of the earnings of any individual remaining after the deduction from those earnings of any amounts required by law to be withheld.

(c) The term "garnishment" means any legal or equitable procedure through which the earnings of any individual are required to be withheld for payment of any debt.

§ 303. Restriction on garnishment

(a) Except as provided in subsection (b) and in section 305, 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,

80 Stat. 838. 29 USC 206.

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) The restrictions of subsection (a) do not apply in the case of

(1) any order of any court for the support of any person.

(2) any order of any court of bankruptcy under chapter XIII of the Bankruptcy Act.

52 Stat. 930. 11 USC 1001-1086.

(3) any debt due for any State or Federal tax.

(c) No court of the United States or any State may make, execute, or enforce any order or process in violation of this section.

§ 304. Restriction on discharge from employment by reason of garnishment

(a) No employer may discharge any employee by reason of the fact that his earnings have been subjected to garnishment for any one indebtedness.

82 STAT. 164

Penalties.

(b) Whoever willfully violates subsection (a) of this section shall be fined not more than $1,000, or imprisoned not more than one year, or both.

§ 305. Exemption for State-regulated garnishments

The Secretary of Labor may by regulation 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).

§ 306. Enforcement by Secretary of Labor

The Secretary of Labor, acting through the Wage and Hour Division of the Department of Labor, shall enforce the provisions of this title.

§ 307. Effect on State laws

This title does not annul, alter, or affect, or exempt any person from complying with, the laws of any State

(1) prohibiting garnishments or providing for more limited garnishments than are allowed under this title, or

(2) prohibiting the discharge of any employee by reason of the fact that his earnings have been subjected to garnishment for more than one indebtedness.

GPO 889-850

Memorandum 73-17

EXHIBIT II

North American Rockwell

1700 East Imperial Highway
El Segundo California 90245

December 21, 1972

Mr. John H. DeMoully
Executive Secretary
California Law Revision Commission
School of Law, Stanford University
Stanford, California 94305

Re: Wage Garnishment

Dear Mr. DeMoully:

We are in receipt of your letter of December 12, 1972, together with a draft of the Recommendation of the California Law Revision Commission Relating to Wage Garnishment and Related Matters.

The Commission's legislative proposals are generally very satisfactory, since they would go a long way toward minimizing the burden which garnishments impose upon employers. A comprehensive review of your bill would require more time than I have available. However, I would like to list a few ideas for amendments to existing statutes and to make a few other comments regarding your Recommendation. This list represents my personal views as a private citizen and has not been approved (or disapproved) by our management.

1. The word "earnings" in § 690.6 of the Code of Civil Procedure (CCP) should at least be defined. At present, our Payroll Department is in doubt as to what payroll deductions (if any) may or should be subtracted from an individual's gross earnings prior to computing the amount of the 50% exemption. The instructions on the notice of garnishment form which accompanies writs of execution in Los Angeles County equate "earnings" with "disposable earnings," as defined in the Consumer Credit Protection Act (CCPA). I note that § 723.050 of your bill would solve this problem. Have you considered what a

garnishee should do if the amount exempt is insufficient to fund all of the payroll deductions authorized by the employee?

2. The form of writ of execution should be altered so as to clearly indicate when the writ is enforcing a support order or tax debt. At present, executions based on support orders and tax debts, though few in number, are the only types of execution subject to the provisions of § 690.6(b) of the CCP. The balance, of course, are governed by the restrictions contained in the CCPA. Yet our Payroll Department is unable to determine easily whether a writ of execution is based upon a support order or tax debt.

3. Whether or not executions to enforce alimony judgments are subject to the 50% exemption contained in § 690.6 of the CCP should be clearly spelled out in the statute. As you know, there is language in many cases to the effect that no part of the debtor's earnings is exempt from such executions. Yet the instructions on the notice of garnishment form require the garnishee to withhold only 50% in such cases, and our Payroll Department has been following this instruction.

4. The word "received" in § 690.6 of the CCP is very confusing in garnishment cases because, obviously, if something has been received by the employee, it is not subject to garnishment in the hands of the employer. I realize that the word "received" has been judicially construed to include due and owing, but I feel that the statute itself should reflect this construction. Perhaps "received or due and owing" would be appropriate.

5. It is not clear under present law what our Payroll Department should do when an employee whose wages are being garnished dies within the 90-day period. Section 732 of the Probate Code has evidently not been reviewed since enactment of § 682.3 of the CCP.

6. I am not so enthusiastic as you might suppose about your proposal to permit the garnishee to deduct $1 per garnishment to cover its expenses. I doubt that our Company would ever take advantage of this option because the $1 would come out of the employee's earnings remaining after the garnishment. We would not want to be put in a position adverse to our employee. In addition, the $1 amount is so small that it might cost us almost as much to provide for procedures to deduct it in each case.

7. Another problem is that the exemption provisions of § 690.6(b) and the procedure established by § 682.3 only apply in the case of "earnings." The Company is often in possession of money, such as reimbursement for mileage, owed to the employee which is not earnings. Some such amounts are administered by departments other than Payroll. It would simplify our problem greatly if judgment creditors were limited, in the case of employers, to earnings.

8. I think your proposal to treat tax levies in the same manner as other wage garnishments is an excellent idea.

9. The language "at any time within 30 days next preceding the date of a withholding" found in § 690.6(b) of the CCP greatly complicates compliance with garnishment orders because it requires us to determine when the services were rendered for which a particular payment is to be made. Vaction pay, retroactive wage increases, suggestion awards, etc., are particularly difficult.

10. I am confused by the statement in the first full paragraph on page 4 of your Recommendation that the employer must withhold on earnings due at the time of service of the order. I may misunderstand the law, but it would not seem that an accrual of earnings to the time of service of a writ of

execution would be necessary because the entire week's earnings would become payable within the 90-day period. Perhaps the statement refers to tax levies.

11. I am not sure that I agree with the discussion on page 3 of your Recommendation regarding the treatment of multiple wage orders under existing law. If the first execution is satisfied, or otherwise terminates, within 90 days after service of the second writ, then it would seem to me that the garnishee should begin withholding pursuant to the second writ.

I hope the above will be of some assistance to you.

Very truly yours,

Richard C. Seamans
Assistant General Counsel

RCS:cr

cc: R. J. Nearman