



UNITED STATES DEPARTMENT OF LABOR  
WAGE AND HOUR DIVISION  
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MEMORADUM FOR: REGIONAL ADMINISTRATORS  
AND DISTRICT DIRECTORS

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SUBJECT: Disability Payments as “Earnings”  
Under the Consumer Credit Protection Act

This memorandum provides guidance to Wage and Hour Division (WHD) field staff regarding the treatment of disability payments from an employment-based disability plan as earnings under the Consumer Credit Protection Act (CCPA or Act).

The issue of whether disability payments from an employment-based disability plan qualify as “earnings” under the CCPA, 15 U.S.C. 1672(a), has been the subject of recent litigation in which federal courts of appeals reached different conclusions. *Compare U.S. v. Ashcraft*, 732 F.3d 860 (8th Cir. 2013) with *U.S. v. France*, 782 F.3d 820 (7th Cir. 2015), *vacated and remanded*, 136 S.Ct. 583.<sup>1</sup> The Department has concluded that disability payments from an employment-based disability plan qualify as earnings under the Act.

Thus, as a matter of enforcing the Act, WHD staff should treat garnishments of disability payments from employment-based disability plans as subject to the limitations set by section 1673(a) of the CCPA.

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<sup>1</sup> In *France*, the Seventh Circuit ruled that payments from a disability insurance policy obtained through an individual’s employer are not subject to the CCPA’s limitations in criminal restitution proceedings pursued by the Federal Government. The Supreme Court vacated the ruling based on the Federal Government’s agreement with petitioner, after consultations with the Department, that such disability payments qualify as earnings under the CCPA.

In *Ashcraft*, the Eighth Circuit determined that disability payments received through an employer are earnings for the purposes of the CCPA, in part because the Act’s operative language prioritizes the character of the payment, rather than its label.

## **Background**

The CCPA sets the maximum amount that may be garnished in any workweek or pay period. Ordinarily, the garnishment amount may not exceed the lesser of two figures: 25 percent of the employee's disposable earnings for a week, or the amount by which an employee's disposable earnings for a week are greater than 30 times the federal minimum wage.

A wage garnishment is any legal or equitable procedure through which some portion of a person's earnings is required to be withheld by an employer for the payment of a valid debt. Most garnishments are made by court order. Other types of legal or equitable procedures for garnishment include IRS or state tax collection agency levies for unpaid taxes and federal agency administrative garnishments for non-tax debts owed the federal government.

Wage garnishments do not include voluntary wage assignments - that is, situations in which employees voluntarily agree that their employers may turn over some specified amount of their earnings to a creditor or creditors. The CCPA places certain limitations on the power of creditors to garnish the "earnings" of debtors. 15 U.S.C. 1671 et seq.<sup>2</sup> The Act defines "earnings" as "compensation paid or payable for personal services, whether denominated as wages, salary, commission, bonus, or otherwise, and includ[ing] periodic payments pursuant to a pension or retirement program." 15 U.S.C. 1672(a). It defines "disposable earnings" as "that part of the earnings . . . remaining after the deduction . . . of any amounts required by law to be withheld." 15 U.S.C. 1672(b).

The amount of pay subject to garnishment is based on an employee's "disposable earnings," which is the amount left after legally required deductions are made. Only payments that are considered "disposable earnings" are subject to the garnishment restrictions under the CCPA. If a payment is not considered "disposable earnings", there is no restriction under the CCPA on how much of it can be garnished.

Congress articulated three reasons to restrict the garnishment of earnings: to prevent predatory extensions of credit that result from unrestricted garnishment of compensation for personal services; to prevent the loss of employment that frequently results from garnishment; and to create uniformity in the bankruptcy laws. *See* 15 U.S.C. 1671(a)(1)-(3).

## **Discussion**

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<sup>2</sup> When applicable, section 1673(a) of the Act limits the garnishment of aggregate disposable earnings of an individual for any workweek to the lesser of: (1) 25 per cent of disposable earnings for that week, or (2) the amount by which disposable earnings for that week exceed 30 times the Federal minimum hourly wage in effect at the time. Different limitations apply to garnishments "to enforce any order for the support of any person." 15 U.S.C. 1673(b)(2).

Consistent with the CCPA's language, the nature of employment-based disability payments, and the Act's purposes, payments from an employment-based disability plan are earnings under the CCPA.

**1. The CCPA's statutory language confirms that payments from an employment-based disability plan constitute earnings.**

The CCPA defines earnings as "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." 15 U.S.C. 1672(a) (emphasis added). The CCPA does not define "compensation," but the term means:

Remuneration and other benefits received in return for services rendered; esp., salary or wages. . . . [Compensation] includes wages, stock option plans, profit-sharing, commissions, bonuses, golden parachutes, vacation, sick pay, medical benefits, disability, leaves of absence, and expense reimbursement.

Black's Law Dictionary 342-343 (10th ed. 2014) (emphasis added). Thus, "compensation," as it is now understood, includes disability payments received in return for services rendered. And it is this contemporary understanding of compensation that is controlling because the statutory definition includes compensation paid in specified forms "or otherwise," confirming that the term includes forms of payment the law might not have recognized as compensation at the time of the CCPA's passage. 15 U.S.C. 1672(a); *see* DOL Op. WH-124, 1971 WL 33061, at \*2 (April 8, 1971) (denying Illinois' application for exemption from the CCPA, in part, because the "State law . . . d[id] not include within its protection any forms of compensation paid or payable for personal services *which are not specifically named*") (emphasis added).

**2. The nature of employment-based disability payments confirms that they are "earnings."**

The law generally recognizes that disability payments replace income. *See Employee Benefits Handbook*, Part IV (identifying disability benefits as "replacement income") (Jeffrey S. Mamorsky, August 2015), *available on* WestlawNext; Benefits Guide, § 5.13 ("To compensate disabled employees for income lost due to periods when they are unable to work, employers may sponsor or maintain disability pay plans") (Michael B. Snyder, December 2015), *available on* WestlawNext; Employee Benefits Law 358 (2d ed. 2000) ("Disability income insurance provides payments, usually monthly, to replace income lost due to inability to work as a result of illness, injury, or disease"); *see also* Rousey v. Jacoway, 544 U.S. 320, 331 (2005) (discussing bankruptcy exemption in 11 U.S.C. 522(d)(10)(E) for "a payment under a stock bonus, pension, profit sharing, annuity, or similar plan or contract on account of illness, disability, death, age, or length of service," and stating that "[t]he common feature of all of these plans is that they provide income that substitutes for wages earned as salary or hourly compensation"). The Internal

Revenue Code generally treats as taxable income those disability payments that an employer provides based on years of service and salary. *See, e.g., Berman v. Commissioner*, 925 F.2d 936, 940 (6th Cir. 1991); *Rosen v. United States*, 829 F.2d 506, 509-10 (4th Cir. 1987); *Beisler v. Commissioner*, 814 F.2d 1304, 1307-09 (9th Cir. 1987) (en banc). These income-replacement, wage substitution, and taxability features confirm that employment-based disability payments are a form of employee compensation.

Moreover, recognizing disability payments from an employment-based disability plan as earnings prevents the disparate treatment of materially indistinguishable payments. A tax-qualified pension plan may provide “for the payment of a pension due to disability.” 26 CFR 1.401-1(b)(1)(i). The plain language of the CCPA’s definition of earnings includes disability payments from a tax-qualified pension plan because they are “periodic payments pursuant to a pension or retirement program.” *See United States v. Cunningham*, 866 F. Supp. 2d 1050, 1059-61 (S.D. Iowa 2012). Because payments under an employment-based disability plan that is not a tax-qualified pension plan are the functional equivalent of disability payments from a tax-qualified pension plan, it is appropriate to treat such payments in the same manner under the CCPA.

### **3. The CCPA's purposes confirm that payments from an employment-based disability plan are earnings under 15 U.S.C. 1672(a).**

The CCPA’s purposes include preventing predatory extensions of credit that result from unrestricted garnishment of compensation for personal services, preventing loss of employment that frequently results from garnishment, and creating uniformity in the bankruptcy laws. *See* 15 U.S.C. 1671(a)(1)-(3). Congress’s intention was to limit personal bankruptcies by regulating “garnishment in its usual sense as a levy on periodic payments of compensation needed to support the wage earner and his family on a week-to-week, month-to-month basis.” *Kokoszka v. Belford*, 417 U.S. 642, 651 (1974).

Limiting the garnishment of disability payments furthers the Act’s goal to reduce predatory extensions of credit because individuals receiving disability payments, like active wage earners, are more likely to be victims of predatory extensions of credit if the creditor can garnish the debtor’s entire disability payment consistent with the CCPA. In addition, recipients of disability payments will commonly rely on the payments to support themselves and their families. Because such individuals’ personal solvency is contingent on receipt of their disability payments, limiting the garnishment of such individuals’ disability payments should further the CCPA’s goal to reduce personal bankruptcies. In short, a failure to protect disability payments from garnishment would encourage more predatory extensions of credit to individuals that rely on the payments for support, likely resulting in an increase in personal bankruptcies – all contrary to congressional intent.

### **4. The Department’s position is consistent with the Ashcraft ruling.**

The Ashcraft decision is consistent with the Department’s position that the CCPA’s language, nature, and purposes render disability payments from an employment-based

disability plan earnings under the Act.<sup>3</sup> First, the Eighth Circuit concluded that “[b]ased on the Act’s plain language, Ashcraft’s disability payments constitute ‘earnings.’” Ashcraft, 732 F.3d at 864. The court determined that the operative plain language in the CCPA is “compensation paid or payable for personal services.” *Id.* (“[T]he central issue is whether the disability payments are ‘compensation paid or payable for personal services.’”). The court observed that because the definition of earnings is clear that the manner in which a payment is “denominated” does not control whether it constitutes such compensation, “the Act prioritizes the character of the payment over its label.” *Id.* The court then found that Ashcraft’s employer provided access to the disability plan as a “direct component of compensation . . . to Ashcraft in return for the personal services Ashcraft rendered to [the employer],” and that the employer had merely denominated payments that were the functional equivalent of wages or salary as disability payments. *Id.*

Second, the Ashcraft court’s focus on the character rather than the label of the payment resulted in its consideration of the nature, rather than name, of the payment method. The court concluded that the nature of disability payments is to serve as a substitute for wages. *See Ashcraft*, 732 F.3d at 864 (noting that disability payments are “designed to function as wage substitutes”). Third, the decision reinforces the importance of fulfilling the CCPA’s purposes. *Id.* at 863 (“[T]he [CCPA] sought to prevent consumers from entering bankruptcy in the first place . . . There is every indication that Congress, in an effort to avoid the necessity of bankruptcy, sought to regulate garnishment . . . as a levy on periodic payments of compensation needed to support the wage earner and his family on a week-to-week, month-to-month basis.”) (quoting Kokoszka, 471 U.S. at 651).

## **5. Application of CCPA Restrictions on the garnishment of disability payments**

If an individual’s employment-based disability plan payment is garnished, the garnishment is subject to the limitations set forth in section 1673(a) of the CCPA. Section 1676 of the CCPA and 29 C.F.R 870.1(b) authorize the Secretary of Labor, through the Wage and Hour Administrator, to enforce the garnishment limitations of Title III of the CCPA. Thus, the Administrator has the authority to enforce the CCPA’s restrictions on garnishment with respect to an individual’s employment-based disability plan payments.

### **Conclusion**

The language and purposes of the CCPA, as well as the nature of employment-based disability plan payments, confirm that such payments are earnings under the Act. Thus, the CCPA’s garnishment limitations, when otherwise applicable, apply to creditors

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<sup>3</sup> On June 5, 2013, a WHD regional office provided a written response to a Member of Congress’s inquiry about the CCPA’s application to a constituent’s disability insurance payments. The position set forth in this FAB reflects DOL’s considered analysis of the question presented herein and supersedes the June 2013 letter to the extent that letter is deemed inconsistent with the views expressed here. Notably, as mentioned above, the Department’s position is also consistent with the Federal Government’s ultimate position in France.

seeking to garnish employment-based disability plan payments to debtors and the Wage and Hour Division will enforce the CCPA's garnishment limitations as applied to employment-based disability plan payments.