



CCPA-22

August 10, 1970

This is in further reference to your letter dated June 26, 1970, requesting an exemption from section 303 (a), pursuant to section 305 of Title III, Consumer Credit Protection Act, for trustee processes issued under the laws of the State of New Hampshire.

We cannot take favorable action on your request for the following reasons.

The trustee process provisions of section 512:21 of the New Hampshire law appear to be applied to the total wages of the individual whereas the like provisions of section 303(a) of Title III are applied to the disposable earnings of the individual. Where a State's law and the Federal law are applied on such different bases it is not possible to determine whether the provisions of State law are "substantially similar" to those of the Federal law for the purposes of section 305. Under such circumstances, the amount that may be garnished will vary in each particular case, depending on such things as the earnings and tax status of the individual during the workweeks within the garnishment period. Further, it would appear that at earnings of slightly more than \$100.00 per week the Federal law would be more restrictive than New Hampshire law.

Another factor which bears on our inability to grant your petition is that we cannot determine whether the term "wages" in the New Hampshire law is as all-inclusive as the term "earnings" in section 302(a) of Title III, which is defined to mean 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. A difference in definition could have a material effect on the amount of an individual's earnings which may be subjected to garnishment.

We also note that section 512:21 II provides, in part, that "...upon a debt on a judgment to the amount of fifty times the minimum hourly wage as established by the Fair Labor Standards Act for each week shall be exempt..." You will note in this regard that the amount exempted from garnishment in section 303(a)(2) of Title II is limited specifically to "...the Federal minimum hourly wage prescribed by section 6(a)(1) (emphasis added) of the Fair Labor Standards Act of 1938 in effect at the time the earnings are payable". The minimum hourly wage prescribed currently by section 6(a)(1) is \$1.60 per hour as opposed, for example, to \$1.50 per hour under section 6(a)(5) of the Fair Labor Standards Act.

You may wish to amend the New Hampshire law to conform to section 303 of the Consumer Credit Protection Act, and reapply for exception in compliance with Part 870 of our Regulations, a copy of which is enclosed. Until this is done, it is suggested that there be attached a copy of the enclosed

"Importance Notice" form to each of your trustee process forms as it is issued. There are no restrictions on the reproduction of our "Importance Notice" forms.

With regard to the foregoing comments, we wish to indicate that section 307 provides that Title III does not annul, alter, or affect, or exempt any person from complying with the laws of any State prohibiting garnishments or providing for more limited garnishments that are allowed under Title III. Section 307 operates independently of section 305, in that it continues in effect those provisions of State law which place a greater restriction on garnishment than do the provisions of the Federal law. Therefore, where, in a particular case, a section or provision of New Hampshire law permits a larger amount of an individual's earnings to be garnished than is permitted under the Federal law, it is preempted by the Federal law. On the other hand, the New Hampshire law is to be applied if it results in smaller garnishment amounts.

Sincerely,

Ben P. Robertson
Deputy Administrator

Robert D. Moran
Administrator

Enclosures