UNFAIR, ABUSIVE, AND UNLAWFUL: PROTECTING DEBTORS AND SOCIETY FROM UNRESTRAINED BANK ACCOUNT GARNISHMENT

*Kevin Green**

In the span of a generation, consumer credit has reshaped the financial lives of millions of Americans. Today, some seventy million Americans have a debt in collections, and creditors file millions of actions annually to secure repayment of these loans. Despite the rapid expansion of consumer debt, the Consumer Credit Protection Act, the only federal law limiting garnishment, has not been updated since its enactment in 1968. Moreover, courts have narrowly construed its provisions to permit creditors to empty a debtor's bank account to repay a delinquent debt.

To afford debtors the basic protections of the Consumer Credit Protection Act, this Note argues that courts should enforce its provisions to protect wages deposited into a bank account. Alternatively, considering the dramatic expansion of consumer credit and debt collection, this Note argues that the Consumer Financial Protection Bureau should engage in rulemaking to prohibit the unrestrained garnishment of bank accounts as an unfair and abusive practice. These federal interventions are critical in shielding debtors and their families from destitution and in protecting the public from the onerous social costs of unrestrained debt collection.

* J.D. Candidate, 2023, Fordham University School of Law; B.A., 2013, Bennington College. I would like to thank Professor Susan Block-Lieb for her guidance and support throughout the writing process. Thank you to my dad for inspiring me to be a lawyer. Thank you to my wife, Teresa, for your unwavering support.

INTRODUCTION

On March 23, 2020, Cheri Long, a nurse at an assisted living center in West Virginia, was purchasing groceries for her family when her debit card was declined.[1] This was odd because, three days earlier, her biweekly paycheck was directly deposited into her bank account.[2] She quickly learned that West Virginia University Hospitals, Inc. (WVUH) had executed a garnishment against her account for $3,542.85 to satisfy a medical debt owed by her husband, Seth.[3] Years earlier, Seth was hospitalized, and although he was insured, he still owed thousands of dollars in hospital bills.[4]

1. *See* Alec MacGillis, *One Thing the Pandemic Hasn't Stopped: Hospital Debt Collections*, MLK50 (Apr. 28, 2020), https://mlk50.com/2020/04/28/one-thing-the-pandemic-hasnt-stopped-hospital-debt-collections/ [https://perma.cc/G5EH-PY97].

2. *See* Complaint ¶ 19, Long v. Clear Mountain Bank, Inc., No. 20-C-38 (W. Va. Cir. Ct. Apr. 15, 2020).

3. *See id.* ¶ 16.

4. *See id.* ¶ 6.

Before the garnishment, the Longs were in a good position to weather the COVID-19 pandemic. Although Seth, a coal miner, was unable to look for work due to West Virginia's shelter-in-place order,[5] the Longs could depend on Cheri's $3,000 in monthly wages to provide for their necessities.[6] After WVUH seized Cheri's wages from her bank account, the Longs' finances fell apart. Without Cheri's income, the Longs fell behind on their house payment, had to borrow money from coworkers for gas, and Cheri "couldn't even afford to purchase fabric to make [herself] a mask due to the shortage of personal protective equipment."[7]

The Consumer Credit Protection Act[8] (CCPA), passed in 1968,[9] might have offered the Longs some relief. The CCPA protects 75 percent of a worker's weekly wages from garnishment.[10] However, courts have interpreted its provisions to apply only to wages in the hands of an employer, allowing creditors to seize 100 percent of wages once they are deposited into a bank account.[11] In an era of ubiquitous direct deposit,[12] this interpretation of the CCPA has rendered the act's protections against wage garnishment meaningless, leaving workers like Cheri to ask coworkers for gas money to drive to work on the front lines of a global pandemic to earn a living she might never see.[13]

This Note argues that courts should enforce the CCPA to protect wages deposited into a bank account. In the absence of judicial enforcement of the CCPA's protections, this Note argues that the Consumer Financial Protection Bureau (CFPB) should engage in rulemaking pursuant to its inherent jurisdiction under the Consumer Financial Protection Act of 2010[14] (CFPA) to prohibit the unrestricted garnishment of wages from a bank account as an unfair and abusive act.

Part I of this Note provides background on consumer debt, garnishment, and consumer financial protection law. Part II describes how federal consumer protection law has been applied to bank account garnishments and

---

5. *See id.* ¶ 1.

6. *See* MacGillis, *supra* note 1.

7. Joe Smith, *Hospitals in West Virginia Are Seizing Bank Accounts, Garnishing Wages over Unpaid Debt During Ongoing COVID-19 Pandemic*, TIMES WEST VIRGINIAN (Apr. 20, 2020), https://www.timeswv.com/news/hospitals-in-west-virginia-are-seizing-bank-accounts-garnishing-wages-over-unpaid-debt-during-ongoing/article_2570a96e-82ac-11ea-b6cb-1f200dcac618.html [https://perma.cc/3UD2-5C2N].

8. 15 U.S.C. §§ 1601–1693.

9. Pub. L. No. 90-321, 82 Stat. 146 (1968) (codified as amended at 15 U.S.C. §§ 1601–1693).

10. *See* 15 U.S.C. § 1673(a).

11. *See infra* Part II.A.1.

12. *See* Michael W. Kahn, *Survey Says: Direct Deposit Is the Overwhelming Choice*, NACHA (Oct. 5, 2020), https://www.nacha.org/news/survey-says-direct-deposit-overwhelming-choice [https://perma.cc/9GDE-KTZ5]; NAT'L PAYROLL WK., 2020 "GETTING PAID IN AMERICA" SURVEY RESULTS 4 (2020), https://www.nationalpayrollweek.com/wp-content/uploads/2020/09/2020GettingPaidInAmericaSurveyResults.pdf [https://perma.cc/7CAP-DBYX].

13. *See* Smith, *supra* note 7 and accompanying text.

14. Pub. L. No. 111-203, 124 Stat. 1955 (codified as amended in scattered sections of the U.S.C.).

discusses the regulatory authority of the CFPB. Finally, Part III recommends judicial enforcement of the CCPA to limit bank account garnishment, and, in the alternative, recommends that the CFPB prohibit unrestricted bank account garnishment pursuant to its rulemaking authority.

I. THE BIG BUSINESS OF SMALL DEBTS: AN OVERVIEW OF RISING CONSUMER DEBT AND GARNISHMENT

Cheri's story is not unique. Over the last twenty years, Americans have taken on an unprecedented amount of household debt.[15] Over that same period, the debt collections industry has boomed, growing from six billion dollars in 1993 to ninety-eight billion dollars in 2013.[16] Today, nearly seventy million Americans have a debt in collections.[17]

This part overviews the modern scale of consumer debt and the means that creditors use to collect on delinquent accounts. Part I.A describes the economic conditions that have pushed many Americans into debt and discusses the impact that debt collection actions have had on state and local courts. Part I.B. details how creditors use garnishments to satisfy outstanding loans. Finally, Part I.C introduces federal and state law limiting the use of garnishment in debt collection.

A. Causes and Consequences of Rising Consumer Debt

The modern scale of consumer debt is a relatively recent phenomenon.[18] Before World War II, personal lending played a minor role in the American economy.[19] However, over the latter half of the twentieth century, the volume of consumer credit soared. In 1970, 16 percent of American families held a credit card, compared to 71 percent in 2004.[20] During that same period, outstanding consumer debt increased from $127 billion in 1970 to over two trillion dollars in 2004.[21] This section discusses some of the economic factors that contributed to the dramatic rise of consumer debt and highlights how debt collection actions have come to dominate in state and local courts nationwide.

---

15. *See* JENIFER WARREN, PEW CHARITABLE TRS., HOW DEBT COLLECTORS ARE TRANSFORMING THE BUSINESS OF STATE COURTS 11 (2020), https://www.pewtrusts.org/-/media/assets/2020/06/debt-collectors-to-consumers.pdf [https://perma.cc/Q62V-J67H].

16. *Id.*

17. *See* Andrew Warren, *Before COVID-19, 68 Million US Adults Had Debt in Collections. What Policies Could Help?*, URB. INST. (Apr. 17, 2020), https://www.urban.org/urban-wire/covid-19-68-million-us-adults-had-debt-collections-what-policies-could-help [https://perma.cc/TBT6-GU83].

18. *See* LISA SERVON, THE UNBANKING OF AMERICA: HOW THE NEW MIDDLE CLASS SURVIVES 64 (2017) (explaining that Americans' dependence on debt arose within the span of a generation).

19. *See* LOUIS HYMAN, DEBTOR NATION 1 (2011).

20. *See* Steven L. Willborn, *Wage Garnishment: Efficiency, Fairness, and the Uniform Act*, 49 SETON HALL L. REV. 847, 870 n.40 (2019).

21. *See Consumer Credit Outstanding*, BD. OF GOVERNORS OF THE FED. RSRV. SYS., https://www.federalreserve.gov/releases/g19/HIST/cc_hist_sa_levels.html [https://perma.cc/23NZ-5X74] (last visited Oct. 7, 2022).

Stagnant wages and rising costs have played a critical role in placing Americans so deep in debt.[22] Between 1987 to 2017, real income rose 16 percent.[23] During this same period, real housing prices increased 290 percent, tuition at public, four-year colleges rose 682 percent, and per capita personal health-care expenditures rose over 362 percent.[24]

This mix of soaring costs and unchanged wages has led to a dramatic decrease in the rate at which Americans save.[25] In the mid-1970s, American households saved nearly 15 percent of their disposable personal income.[26] Today, that rate has declined to less than 4 percent.[27] According to a more recent survey conducted by the Federal Reserve, 44 percent of adults reported that they would be unable to cover an emergency expense costing just $400.[28]

With insufficient income and savings, Americans increasingly rely on credit to make ends meet.[29] Unexpected costs, like medical expenses, and essential purchases, like automobiles, are increasingly financed with credit.[30] Today, outstanding consumer debt is at an all-time high. In the third quarter of 2021, outstanding household debt totaled $15.24 trillion, breaking the record set by the 2008 Great Recession by over $2.5 trillion.[31]

Many Americans cannot afford to pay back their debt. Before the COVID-19 pandemic, nearly seventy million Americans had a debt in collections.[32] Over the last twenty years, creditors have increasingly turned to the courts to recoup payment on these delinquent accounts,[33] transforming state and local courts into debt-collection machines.[34]

---

22. *See* Pamela Foohey, Dalié Jiménez & Christopher K. Odinet, *The Debt Collection Pandemic*, 11 CALIF. L. REV. ONLINE 222, 225 (2020).

23. ADAM J. LEVITIN, CONSUMER FINANCE: MARKETS AND REGULATION 6 (Rachel E. Barkow et al. eds., 2018); *see also* DANIEL MARKOVITS, THE MERITOCRACY TRAP 23–24 (2019) ("As the incomes of the top 1 percent have tripled, the median real income has increased by only about a tenth since 1975, and median incomes have effectively not increased at all since 2000."); SERVON, *supra* note 18, at 51.

24. LEVITIN, *supra* note 23, at 6.

25. *See id.* at 5–6; *see also* SERVON, *supra* note 18, at 48 (explaining that nearly half of Americans currently live paycheck to paycheck).

26. LEVITIN, *supra* note 23, at 5.

27. *Id.*

28. BD. OF GOVERNORS OF THE FED. RSRV. SYS., REPORT ON THE ECONOMIC WELL-BEING OF U.S. HOUSEHOLDS IN 2016, at 26 (2017), https://www.federalreserve.gov/publications/files/2016-report-economic-well-being-us-households-201705.pdf [https://perma.cc/8AVY-T9QS]. Moreover, 30 percent of respondents, representing seventy-three million adults, reported that they are either "finding it difficult to get by" or are "just getting by" financially. *Id.* at 1.

29. *See* Foohey et al., *supra* note 22, at 226.

30. *See id.*; *see also* LEVITIN, *supra* note 23, at 9.

31. CTR. FOR MICROECONOMIC DATA, FED. RSRV. BANK OF N.Y., QUARTERLY REPORT ON HOUSEHOLD DEBT AND CREDIT 1 (2021), https://www.newyorkfed.org/medialibrary/interactives/householdcredit/data/pdf/HHDC_2021Q3.pdf [https://perma.cc/FN2E-S898].

32. Warren, *supra* note 17.

33. *See* Margot F. Saunders & Johnson M. Tyler, *Past, Present and Future Threats to Federal Safety Net Benefits in Bank Accounts*, 16 N.C. BANKING INST. 43, 50–51 (2012).

34. *See* Paul Kiel & Jeff Ernsthausen, *Capital One and Other Debt Collectors Are Still Coming for Millions of Americans*, PROPUBLICA (June 8, 2020, 6:00 AM),

Until the late 1980s, creditors collected debts directly, generally using extrajudicial means like harassing debtors over the phone.[35] But in the early 2000s, banks adjusted their strategies and began to sell vast packages of uncollectable debt to debt buyers.[36] These debt buyers purchase packages of debt for pennies on the dollar[37] and then sue debtors in local court[38] to collect the full value of a debt.[39] Over the last twenty years, the debt-buying industry has grown over 1,500 percent.[40] For example, a single debt buyer, Encore Capital Group, reports that one in five Americans either owes it money or has owed it money in the past.[41]

In the wake of the pandemic, the debt-buying industry has continued to flourish. Debt buyers posted record earnings in 2020, making a fortune garnishing COVID stimulus payments.[42] Encore Capital Group, the country's largest debt buyer, posted a 40 percent increase in annual earnings in 2020, making over $200 million in profit.[43]

The proliferation of debt buyers has transformed local court dockets nationwide.[44] Debt buyers file millions of collections actions annually.[45] According to a 2020 report by the Pew Charitable Trusts, debt collection suits have doubled over the last twenty years and are now the most common type of case in civil dockets.[46] In New York City alone, 2.5 million consumer suits were filed over a five-year period, mostly by debt buyers.[47]

In sum, consumer credit has transformed the financial lives of Americans and state and local courts dockets nationwide.[48] The following section describes how creditors use courts to collect delinquent accounts and

---

https://www.propublica.org/article/capital-one-and-other-debt-collectors-are-still-coming-for-millions-of-americans [https://perma.cc/5XTY-539W].

35. *See* Saunders & Tyler, *supra* note 33, at 50.

36. *See id.*

37. After default, banks are required to "charge off" uncollected debt, meaning that the loans are no longer reflected as assets on a balance sheet. *See* CHRIS ALBIN-LACKEY, HUM. RTS. WATCH, RUBBER STAMP JUSTICE: US COURTS, DEBT BUYING CORPORATIONS, AND THE POOR 10 (2016), https://www.hrw.org/sites/default/files/report_pdf/us0116_web.pdf [https://perma.cc/5YBF-XBX6]. Instead of taking a total loss, banks package and sell this debt at steep discounts to debt buyers. *Id.*

38. *See generally* Peter A. Holland, *The One Hundred Billion Dollar Problem in Small Claims Court: Robo-Signing and Lack of Proof in Debt Buyer Cases*, 6 J. BUS. & TECH. L. 259 (2011) (explaining how debt buyers take advantage of cursory procedural rules in small claims court to obtain judgments against delinquent borrowers).

39. *See* ALBIN-LACKEY, *supra* note 37, at 1.

40. WARREN, *supra* note 15, at 12.

41. ALBIN-LACKEY, *supra* note 37, at 2.

42. *See* Kiel & Ernsthausen, *supra* note 33 ("In August [2020], Encore Capital, the largest debt buyer in the country, announced that it had doubled its previous record for earnings in a quarter.").

43. *Id.*

44. *See generally* WARREN, *supra* note 15.

45. *See id.* at 8.

46. *Id.*

47. *See* Saunders & Tyler, *supra* note 33, at 51. *See generally* Conor P. Duffy, *A Sum Uncertain: Preserving Due Process and Preventing Default Judgments in Consumer Debt Buyer Lawsuits in New York*, 40 FORDHAM URB. L.J. 1147 (2013).

48. *See supra* Part I.A.

discusses the interaction between debt collection and the availability of consumer credit.

B. Garnishment and Consumer Financial Markets

This Note focuses on how creditors use courts to extract payment, namely through a legal instrument called a garnishment. This section provides an overview of how creditors use garnishment to collect debt and discusses the role of debt collection in consumer financial markets.

State law provides both the substantive and procedural law of debt collection.[49] Accordingly, the remedies available to a creditor, including garnishment, vary by state.[50] Although the law varies, creditors[51] must generally meet several requirements before they are entitled to collect.[52]

First, a creditor must file a suit and obtain a judgment declaring that a consumer owes a specific sum of money.[53] Creditors, or more frequently debt buyers, file millions of such actions in state court every year.[54] More than 70 percent of these cases result in a default judgment for the creditor,[55] relieving the creditor of its burden to prove its entitlement to recover the underlying debt.[56]

Once a creditor obtains a judgment, it may attempt to collect by garnishing a debtor's money or by levying (also called executing) the debtor's property.[57] A levy or execution occurs when law enforcement seizes and sells a debtor's property, with the proceeds going to the creditor.[58] Garnishment is a legal proceeding brought by a creditor against a third party to obtain property of a debtor in the hands of the third party.[59]

Wage garnishment is a common type of garnishment used by creditors.[60] Generally, wage garnishment permits a creditor to seize wages directly from

---

49. *See* LEVITIN, *supra* note 23, at 694.

50. *See id.*

51. This Note focuses only on unsecured debt, i.e., debt that is not secured by specific collateral property of the debtor, like a car or home. *See id.* at 693–94.

52. *See id.* at 694–95.

53. *Id.* at 694. There are no self-help measures available to an unsecured creditor; they may not take a debtor's assets without a court order. *Id.*

54. *See* WARREN, *supra* note 15, at 8 ("From 1993 to 2013, the number of debt cases rose from fewer than 1.7 million to about 4 million.").

55. *Id.* at 2.

56. *See* Holland, *supra* note 38, at 263.

57. *See* LEVITIN, *supra* note 23, at 695. The specific procedures and names of the court orders vary by state. *Id.*

58. *Id.*; *see also Execution*, BLACK'S LAW DICTIONARY (11th ed. 2019) ("Judicial enforcement of a money judgment . . . by seizing and selling the judgment debtor's property . . . ."); *Levy*, BLACK'S LAW DICTIONARY (11th ed. 2019) ("The legally sanctioned seizure and sale of property . . . .").

59. *See* 30 AM. JUR. 2D *Executions, Etc.* § 464 (2022); LEVITIN, *supra* note 23, at 695; *Garnishment*, BLACK'S LAW DICTIONARY (11th ed. 2019) ("A judicial proceeding in which a creditor (or potential creditor) asks the court to order a third party who is indebted to or is bailee for the debtor to turn over to the creditor any of the debtor's property (such as wages or bank accounts) held by that third party.").

60. Garnishment has deep historical roots dating back to the Middle Ages. *See* William E. Mussman & Stefan A. Riesenfeld, *Garnishment and Bankruptcy*, 27 MINN L. REV. 1, 7–17

a debtor's employer.[61] Once served with a notice of garnishment, an employer withholds a certain percentage of an employee's wages to satisfy the debt.[62] Every year, about eleven million workers have their paychecks garnished in this way.[63]

Bank accounts may also be garnished to satisfy a debt.[64] As of 2016, 98 percent of households had some type of deposit account.[65] While terms vary, banks generally have a duty to return to account holders up to the total amount of the deposits.[66] As a third party in possession of a debtor's money, a bank may be garnished to satisfy the debt of an account holder.[67]

Wage and bank account garnishment are essential tools that enable creditors to collect on consumer debt and help facilitate the entire consumer finance industry, which provides millions of Americans access to credit.[68] In order to provide such widespread credit, creditors must be able to collect on outstanding debt.[69] Burdensome collection laws, which increase the cost of collection, are likely to result in higher interest rates for consumers and may decrease the availability of credit overall, especially for high-risk borrowers.[70]

However, if unrestrained, garnishment can lead to catastrophic results for debtors.[71] For example, in 2015, Anna, a teacher's aide in Maryland, had garnishment orders issued against both her employer and her bank, leaving her nearly penniless.[72] Without money, she was unable to pay her mortgage and utility bills, leaving her without electricity and on the brink of foreclosure.[73] The stress of her financial situation was so profound that she began to lose hair and had difficulty leaving the house due to crippling anxiety and depression.[74]

(1942). Wage garnishment is a much newer practice that began in the industrial economy of the nineteenth century soon after the abolishment of debtors' prisons. *See* Boyd v. Buckingham, 29 Tenn. (1 Hum.) 434, 435 (Tenn. 1850). Without the threat of imprisonment, lawmakers feared that debtors would defy creditors by hiding assets. *Id.* Wage garnishment laws reassured creditors by providing access to a laborer's earnings in the hands of another. *Id.*

61. *See* Willborn, *supra* note 20, at 853.
62. *See id.* at 851.
63. *Id.* at 848.
64. *See supra* note 59 and accompanying text.
65. LEVITIN, *supra* note 23, at 265.
66. *See id.* at 264.
67. *See generally infra* Part II.A.1.
68. *See* LEVITIN, *supra* note 23, at 693.
69. *Id.*
70. *See id.*; *see also* Todd J. Zywicki, The Law and Economics of Consumer Debt Collection and Its Regulation 3 (Sept. 2015) (unpublished manuscript), https://www.mercatus.org/system/files/Zywicki-Debt-Collection-v2.pdf [https://perma.cc/QA52-737C].
71. *See, e.g.*, *supra* notes 1–7 and accompanying text.
72. CAROLYN CARTER, NAT'L CONSUMER L. CTR., NO FRESH START IN 2019: HOW STATES STILL ALLOW DEBT COLLECTORS TO PUSH FAMILIES INTO POVERTY 13 (2019), https://www.nclc.org/images/pdf/debt_collection/report-still-no-fresh-start-nov2019.pdf [https://perma.cc/9YR2-BBNQ].
73. *Id.*
74. *Id.*

Anna's situation is far from unique. With so many Americans deep in debt and unable to afford even a $400 expense,[75] garnishment can have the effect of pushing a debtor into destitution, depriving them of the ability to travel to work or pay for necessities.[76] These burdens are then passed on to the public in the form of increased demand for social services.[77] Moreover, lax collection regulation can lead to predatory extensions of credit because creditors can more easily extract repayment.[78] Accordingly, in regulating garnishment, the benefits of widespread commercial credit must be balanced against the costs imposed on debtors and on the public by collection practices.[79]

C. Federal and State Limitations on Garnishment

This section provides an overview of the major sources of garnishment regulation. Part I.C.1 describes the Consumer Credit Protection Act, the federal law limiting garnishment, and its interaction with state law. Part I.C.2 then introduces the Consumer Financial Protection Bureau, the federal agency responsible for administering the nation's consumer protection laws.

1. The Consumer Credit Protection Act and the States

Garnishment is regulated at both the federal and state level.[80] At the federal level, the CCPA limits wage garnishment to 25 percent of a worker's weekly wages.[81] However, the CCPA preserves the ability of states to enact garnishment laws that offer greater protection to debtors.[82] Moreover, the CCPA has been narrowly construed to allow creditors to seize 100 percent of wages once they are deposited into a bank account.[83] Accordingly, state law continues to play a critical role in defining the level of protection afforded to debtors. This section provides an overview of the CCPA's enactment and describes the law's limitations on garnishment, as well as its interaction with state statutes.

The CCPA was enacted against a backdrop of rapidly increasing personal bankruptcies. Over a roughly twenty-year period, the amount in consumer credit had increased from $5.6 billion in 1945 to over ninety-five billion dollars in 1967.[84] During that same period, the yearly number of personal

75. *See supra* note 28 and accompanying text.
76. *See* CARTER, *supra* note 72, at 8.
77. *See id.*; *cf.* Stratton v. Travis, 380 A.2d 985, 986 (Del. Super. Ct. 1977) ("The exemption statutes in effect in America today are rooted in the early English Common Law and based on the humane theory that by allowing the debtor to retain certain property he has an opportunity to be self-supporting and thus will not become a burden on society.").
78. *See* 15 U.S.C. § 1671(a) ("The unrestricted garnishment of compensation due for personal services encourages the making of predatory extensions of credit.").
79. *See* LEVITIN, *supra* note 23, at 693.
80. *See supra* notes 49–52 and accompanying text.
81. 15 U.S.C. § 1673(a).
82. *Id.* § 1677.
83. *See infra* Part II.A.1.
84. H.R. REP. NO. 90-1040, at 10 (1967).

bankruptcies increased from 18,000 to 208,000.[85] Congress viewed the "unrestricted garnishment of compensation due for personal services"[86] as "the greatest single pressure . . . forcing wage earners into bankruptcies."[87] The legislative history notes that the evidence "clearly established a causal connection between harsh garnishment laws and high levels of personal bankruptcies."[88] For example, the House report for the bill found the rate of personal bankruptcies in states that prohibited wage garnishment to be at about seven per 100,000 citizens.[89] In states with harsh garnishment laws, that rate soared to roughly 250 per 100,000 citizens.[90]

To address the rise in personal bankruptcies, Congress enacted the Consumer Credit Protection Act. The CCPA's provisions on wage garnishment limit the amount of an employee's disposable earnings that may be garnished to satisfy a debt.[91] At a minimum, the law exempts all weekly wages below thirty times the federal minimum wage from garnishment.[92] Accordingly, today, a worker making less than $217.50 per week may not have any of their wages garnished.[93] For workers making more than $217.50 per week, wage garnishment may never exceed 25 percent of the worker's disposable earnings.[94] Finally, the law prohibits an employer from discharging any employee because "[the employee's] earnings have been subjected to garnishment for any one indebtedness."[95]

Bringing uniformity to garnishment law was a key purpose of the CCPA.[96] However, the CCPA did not entirely replace state law. It contains an anti-preemption provision that preserves state laws that offer at least as much protection to debtors as the CCPA.[97] In the wake of the CCPA's enactment, many states revised their wage garnishment statutes to mirror the language of the federal law.[98]

---

85. *Id.* at 20.
86. 15 U.S.C. § 1671.
87. H.R. REP. NO. 90-1040, at 7 (1967).
88. *Id.* at 20–21.
89. *Id.* at 21.
90. *Id.*
91. 15 U.S.C. § 1673.
92. *Id.* ("[T]he 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 . . . whichever is less.").
93. Willborn, *supra* note 20, at 852 n.28.
94. 15 U.S.C. § 1673.
95. *Id.* § 1674.
96. *See id.* § 1671(a)(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.").
97. *Id.* § 1677; *see also* Willborn, *supra* note 20, at 852.
98. *See* Jason C. Walker, *Wyoming's Statutory Exemption on Wage Garnishment: Should It Include Deposited Wages?*, 6 WYO. L. REV. 53, 57 (2006); *see also* Brown v. Commonwealth, 40 S.W.3d 873, 876 (Ky. Ct. App. 1999) ("[The CCPA] requires state garnishment exemption statutes to comply with federal limitations on amounts that may be garnished. Consequently, most state wage garnishment exemption statutes, including Kentucky's, track the language of the federal act.").

The CCPA's anti-preemption provision has resulted in a range of protection for debtors at the state level.[99] Many, but not all, have enacted laws protecting a greater portion of a debtor's paycheck than the federal law does, with four states banning the practice of wage garnishment outright.[100] However, many states do not go beyond the CCPA, permitting wage garnishment to the same degree that federal law does.[101]

The CCPA's regulation of wage garnishment has been limited in one important respect. As discussed in Part II.A, shortly after its enactment, courts narrowly construed the CCPA's provisions to apply only to garnishments of an employer, allowing creditors to seize 100 percent of wages once they are deposited into a bank account.[102] Due to this narrow interpretation, the regulation of bank account garnishment has been entirely left to the states, and thus outside the scope of the CCPA.[103]

States vary greatly in the level of protection afforded to bank accounts.[104] Some states limit the amount a creditor may take.[105] For example, in New York, the first $3,600 in an account is automatically protected.[106] On the other hand, fourteen states offer no protection to a debtor's bank account, allowing creditors unrestricted access to a debtor's deposited wages.[107]

In conclusion, the CCPA currently plays a limited role in regulating wage garnishment.[108] While it effectively serves as a floor of protection, preserving at least 75 percent of a worker's paycheck while in the possession of an employer, it has been narrowly construed to permit creditors unfettered access to a debtor's bank account.[109] Although some states have taken steps to protect bank accounts, millions of Americans live in jurisdictions without such additional protections.[110] Debtors in these states that receive wages through direct deposit essentially enjoy no protection from unrestricted wage garnishment, despite the CCPA's provisions.[111]

---

99. *See generally* CARTER, *supra* note 72.
100. *Id.* at 9.
101. *Id.*
102. *See infra* Part II.A.1.
103. *See* CARTER, *supra* note 72, at 6, 24.
104. *Id.* at 24.
105. *Id.*
106. *Id.* at 26. Delaware offers the strongest protection to debtors by banning bank account garnishments outright. *Id.* at 30. Maine, Nevada, New York, North Dakota, South Carolina, and Wisconsin all allow debtors to protect a minimum amount in a bank account from garnishment. *Id.*
107. *Id.* at 30 (explaining that Arkansas, Georgia, Hawaii, Kansas, Kentucky, Louisiana, Michigan, New Jersey, Pennsylvania, Rhode Island, Texas, Utah, Wyoming, and the Virgin Islands do not protect bank accounts from garnishment).
108. *See supra* notes 99–107 and accompanying text.
109. *See infra* Part II.A.1.
110. *See supra* note 107 and accompanying text.
111. *See supra* note 107 and accompanying text.

2. The Consumer Financial Protection Bureau

The CCPA is not the only federal law that may provide relief from unrestricted wage garnishment. The Consumer Financial Protection Act, enacted in 2010 in the wake of the 2008 Great Recession, established the Consumer Financial Protection Bureau, a federal agency responsible for administering the nation's consumer protection laws.[112] The CFPB does not currently regulate garnishment. However, pursuant to its statutory authority, the bureau may engage in rulemaking and bring enforcement actions to prohibit unfair, deceptive, or abusive acts and practices (UDAAP).[113]

Subsequent parts of this Note will explore prior regulatory actions by the CFPB invoking these powers to better illustrate the extent of the CFPB's UDAAP authority.[114] Ultimately, this Note will argue that the CFPB should enact rules limiting bank account garnishment.[115] This section focuses on the CFPB's rulemaking authority and describes the statutory definitions of unfair and abusive acts and practices.[116]

The CFPA empowers the CFPB to prohibit a covered person from engaging in unfair acts or practices in connection with any consumer financial product or service.[117] The "unfair acts or practices" standard is comprised of three elements.[118] First, the act must "cause[] or [be] likely to cause substantial injury to consumers."[119] Second, the injury caused by a purported unfair practice must "not [be] reasonably avoidable by consumers."[120] Finally, the injury must not be "outweighed by countervailing benefits to consumers or to competition."[121]

The CFPB also has authority to prescribe rules that identify and prohibit "abusive acts or practices."[122] The statute provides four types of abusive acts

---

112. CONSUMER FIN. PROT. BUREAU, BUILDING THE CFPB: A PROGRESS REPORT 8 (2011), https://files.consumerfinance.gov/f/2011/07/Report_BuildingTheCfpb1.pdf [https://perma.cc/3H8Z-US65].

113. 12 U.S.C. § 5531 (granting the CFPB rulemaking authority to identify UDAAPs); *id.* § 5536 (designating UDAAPs as unlawful).

114. *See infra* Part II.B.

115. *See infra* Part III.B.

116. The CFPB has power to limit unfair, deceptive, and abusive acts and practices. *See supra* note 113 and accompanying text. I refer to this interchangeably as the bureau's "UDAAP power" or "UDAAP authority." Each adjective—unfair, deceptive, or abusive—is treated distinctly under the act. *See* 12 U.S.C. § 5531. The "deceptive" element is not discussed as it is not relevant to this Note. *See generally* LEVITIN, *supra* note 23, at 193–201 (providing an overview of the "deceptive" element).

117. 12 U.S.C. § 5531(b).

118. *Id.* § 5531(c); *see also* Payday, Vehicle Title, and Certain High-Cost Installment Loans, 82 Fed. Reg. 54472, 54519 (Nov. 22, 2017) ("[T]he unfairness standard . . . requires primary consideration of three elements: The presence of a substantial injury, the absence of consumers' ability to reasonably avoid the injury, and the countervailing benefits to consumers or to competition associated with the act or practice.").

119. 12 U.S.C. § 5531(c)(1)(A).

120. *Id.*

121. *Id.* § 5531(c)(1)(B).

122. *Id.* § 5531(b).

or practices.[123] First, an act is abusive if it "materially interferes with the ability of a consumer to understand a term or condition" of a financial product.[124] Abusive acts are also those that take unreasonable advantage of (1) a consumer's lack of understanding of a material risk of a financial product, (2) a consumer's inability to protect their interests, or (3) a consumer's reasonable reliance on a covered person to act in their best interest.[125]

Despite the potential reach, the CFPB has rarely invoked its UDAAP authority in rulemaking and enforcement actions.[126] To date, the CFPB has promulgated only a single rule prohibiting an unfair and abusive practice.[127] The "abusive" standard is especially enigmatic.[128] Of a total 200 enforcement actions brought as of the start of 2018, only twenty-seven had "abusive" counts.[129] To date, not a single court has interpreted the "abusive" provision.[130] Accordingly, the statutory text and the CFPB's enforcement actions provide the only authoritative commentary on the meaning of the "abusive" provision.[131]

Part II.B will build on the statutory provisions detailed here and provide illustrations of how the CFPB has used its rulemaking and enforcement powers in practice.

II. CONSUMER PROTECTION LAW AND BANK ACCOUNT GARNISHMENT

The limited application of the CCPA to bank accounts has left a void in the regulation of wage garnishment.[132] Today, millions of Americans are vulnerable to the seizure of their deposited wages, despite the federal law's garnishment limitations.[133] This part explores how the CCPA and the CFPB might limit bank account garnishment. Part II.A details the conflicting interpretations of the CCPA's garnishment provisions, describing how courts have reached varying conclusions on the law's application to deposited wages. Part II.B then shifts gears to discuss the CFPB's UDAAP powers, providing examples of how the bureau has previously limited unfair and abusive acts and practices that are similar to bank account garnishment. The issues presented in Part II will ultimately be resolved in Part III, where this Note argues that the CCPA should be enforced to limit bank account garnishment and advocates for the CFPB to engage in regulatory action to protect a minimum balance in a bank account from garnishment.

---

123. *Id.* § 5531(d).
124. *Id.* § 5531(d)(1).
125. *Id.* § 5531(d)(2).
126. *See* LEVITIN, *supra* note 23, at 188.
127. *See id.*
128. *See id.* at 206.
129. *Id.*
130. *Id.*
131. *Id.*
132. *See supra* Part I.C.1.
133. *See supra* note 107 and accompanying text.

A. Conflicting Approaches: The CCPA and Bank Account Garnishment

Shortly after the CCPA's enactment, litigation ensued to determine whether the CCPA applied to wages deposited into a bank account.[134] The overwhelming weight of authority holds that the CCPA does not apply to banks, allowing creditors unfettered access to an employee's wages once deposited.[135] However, courts are not unanimous in this interpretation.[136] Several state courts, interpreting nearly identical state statutes modeled on the CCPA, have held that the law applies to all garnishments, whether issued to a bank or an employer.[137]

This section examines how courts have reached conflicting conclusions on this issue. Part II.A.1 looks at interpretations that limit the CCPA's application to employers. Part II.A.2 then describes state court decisions protecting bank accounts. Finally, Part II.A.3 examines the treatment of federal laws that are similar to the CCPA.

1. The CCPA's Limited Application to Bank Accounts

Courts have generally held that the CCPA's garnishment provisions apply only in the employment context, and not to wages deposited into a bank account.[138] The statute itself is silent on this issue, but courts have rejected extending the act's protections—which limit the amount of weekly wages a creditor may garnish—to the lump sum reflected in a debtor's bank account.[139] This section describes how courts have interpreted the CCPA's statutory language, legislative history, and precedent to reject applying the CCPA to wages deposited in bank accounts.

Courts have generally determined that the CCPA's silence regarding its application to nonemployer garnishees, specifically banks, demonstrates a congressional intent to exclude such institutions from the act's provisions.[140]

---

134. *See, e.g.*, Usery v. First Nat'l Bank of Ariz., 586 F.2d 107 (9th Cir. 1978); Dunlop v. First Nat'l Bank of Ariz., 399 F. Supp. 855 (D. Ariz. 1975).

135. *See Usery*, 586 F.2d at 108; United States v. Tilford, No. 13-CV-3906-N, 2014 WL 11048791, at *4 (N.D. Tex. Sept. 9, 2014) (finding that "nothing in the CCPA restricts the garnishment of funds once deposited in a bank account"); United States v. Tisdale, No. 12-CV-5250-L, 2013 WL 4804286, at *4 (N.D. Tex. Sept. 9, 2013) ("[O]nce earnings are deposited into an account, those funds are no longer characterized as 'earnings' and therefore lose the 25 percent exemption."); *In re* Lawrence, 205 B.R. 115, 123 (Bankr. E.D. Tenn. 1997) ("[A]lmost all the cases interpreting the CCPA, both state and federal, have held that the federal statute does not prevent creditors from pursuing earnings once they are in the hands of the debtor."); *Dunlop*, 399 F. Supp. at 858; Brown v. Commonwealth, 40 S.W.3d 873, 877 (Ky. Ct. App. 1999) ("In light of the CCPA's limited purpose, virtually all of the courts to consider whether that act applies to wages deposited into bank accounts or otherwise removed from the employer's control have found that it does not.").

136. *See infra* Part II.A.2.

137. *See infra* Part II.A.2.

138. *See supra* note 135 and accompanying text.

139. *See infra* notes 150–53 and accompanying text.

140. *See Usery*, 586 F.2d at 110 ("It is unrealistic to assume that Congress intended to impose such duties without mentioning banks or financial institutions in this title of the statute or without conducting any hearings that would give financial institutions fair warning that they were subject to such obligations."); *Dunlop*, 399 F. Supp. at 857 ("If Congress . . . had

For example, in *Dunlop v. First National Bank of Arizona*,[141] the first case to address this issue,[142] the court found that by omitting reference to banks, Congress intended to exclude them from the act's coverage.[143] The court found that a statute's individual sections must be read in relation to the whole act.[144] The court noted that the CCPA explicitly addresses financial institutions in other sections and held that because Congress has specifically used a term (e.g., "financial institutions") in certain places and excluded it in others, the court should not read that term into the excluded section.[145] Accordingly, the court held that the CCPA offers no protection to deposited wages.[146]

Similarly, the CCPA's extensive legislative history is devoid of any mention of banks.[147] In *Usery v. First National Bank of Arizona*,[148] the U.S. Court of Appeals for the Ninth Circuit found it "unrealistic" that Congress would impose a duty on banks to protect a depositor's wages without conducting hearings on the matter, especially because financial institutions provided extensive testimony regarding other sections of the CCPA.[149]

Moreover, it is unclear how the act's garnishment limitations could be applied to deposited wages.[150] The act limits garnishment in reference to weekly earnings, a figure potentially unknown to banks and which "bear[s] no relation to the lump sum amount in a checking or savings account."[151] Applying the act to bank accounts raises a number of unanswered administrative questions, like how long to exempt wages for or how to treat wages commingled with other, nonexempt monies.[152] These administrative concerns, along with the act's explicit application to wages, suggest that the act may only protect earnings throughout the payroll process.[153]

Instead of limiting garnishment, courts have found that the principal concern of the act is the preservation of the employer-employee

---

intended that it apply to such a large grouping of economic institutions it would have so stated . . . ."); John O. Melby & Co. Bank v. Anderson, 276 N.W.2d 274, 277 (Wis. 1979).

141. 399 F. Supp. 855 (D. Ariz. 1975).

142. *Id.* at 857.

143. *See id.* at 856.

144. *Id.*

145. *Id.*

146. *Id.* at 858.

147. *Id.* at 856. ("After a careful reading of the Congressional reports and debate on the subchapter and the briefs submitted by the Bank and the Department one fact emerges. There is no mention of financial institutions in reference to Subchapter II.").

148. 586 F.2d 107 (9th Cir. 1978).

149. *Id.* at 110.

150. *See id.* at 109.

151. *Id.* The court also emphasized that the act "contains no suggestion as to how a bank could acquire such information or maintain records without impinging upon the privacy of its depositors." *Id.*

152. *Id.*

153. *See* John O. Melby & Co. Bank v. Anderson, 276 N.W.2d 274, 277–78 (Wis. 1979) ("It could not be clearer that the Congress was concerned with the protection of earnings in the ordinary payroll process. There is nothing to suggest that the restrictions on garnishment were intended to apply to wages after they had been paid over to the worker.").

relationship.[154] Indeed, the congressional declaration of purpose indicates that "[t]he application of garnishment as a creditors' remedy frequently results in loss of employment by the debtor."[155] Moreover, the act proscribes terminating an employee when they are subjected to a single garnishment.[156] In *Usery*, the court found that the purpose of preserving employment would not be served if the act were extended to banks, as a bank has no bearing on the employer-employee relationship.[157]

Finally, the U.S. Supreme Court's holding in *Kokoszka v. Belford*[158] suggests that deposited funds may be beyond the contemplation of the CCPA.[159] In *Kokoszka*, the only Supreme Court case to consider the garnishment provisions of the CCPA, the Court held that an income tax refund does not constitute "earnings" within the meaning of the statute.[160] The *Kokoszka* Court found that Congress intended to regulate "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," and did not protect "every asset that is traceable in some way to such compensation."[161] Courts have applied this logic to deny protections for deposited funds because, "[l]ike a lump sum tax return, a bank account has neither an element of periodicity nor the critical relationship to a person's subsistence that a paycheck does."[162] Under this interpretation, once wages are deposited, they lose the character of "earnings" and are therefore no longer within the ambit of the CCPA's garnishment protections.[163]

In sum, courts have narrowly construed the CCPA to apply only to garnishments of an employer.[164] Accordingly, wages deposited into a bank account enjoy none of the CCPA's protections.[165] However, courts are not unanimous in this interpretation.[166] Next, Part II.A.2 discusses how state courts have interpreted statutes modeled on the CCPA to protect deposited funds.

---

154. *See Usery*, 586 F.2d at 110; Dunlop v. First Nat'l Bank of Ariz., 399 F. Supp. 855, 856 (D. Ariz. 1975) ("The purpose of Subchapter II is to govern the relationship between employers and employees."); Brown v. Commonwealth, 40 S.W.3d 873, 877 (Ky. Ct. App. 1999) ("These [garnishment] provisions were not intended to create a new fund beyond the reach of creditors, but only to prevent creditors from unduly burdening the employment relationship.").

155. 15 U.S.C. § 1671(a)(2).

156. *Id.* § 1674(a).

157. *Usery*, 586 F.2d at 110.

158. 417 U.S. 642 (1974).

159. *See infra* note 162 and accompanying text.

160. *Kokoszka*, 417 U.S. at 651.

161. *Id.*

162. *Usery*, 586 F.2d at 110.

163. John O. Melby & Co. Bank v. Anderson, 276 N.W.2d 274, 278 (Wis. 1979) ("While it is clear that an income-tax refund is derived from earnings, it is equally clear that it is not . . . payroll earnings . . . . It is also clear that bank accounts, although resulting from a deposit of the employee's payroll check, are not 'disposable earnings' sought to be protected by the Act . . . ."); *see also* Hodge v. Sinclair (*In re* Sinclair), 417 F.3d 527, 531 (5th Cir. 2005).

164. *See supra* notes 150–53.

165. *See supra* note 135 and accompanying text.

166. *See infra* Part II.A.2.

2. Exemption of Deposited Wages Under State CCPA Analogues

After the CCPA's enactment, many states modified their existing garnishment laws to mirror the language of the CCPA.[167] So long as these laws provide at least as much protection as the CCPA, they are not preempted by the federal statute.[168] In interpreting state statutes modeled after the CCPA, some state courts have held that their analogous provisions apply not only to employers, but also to deposited wages.[169] This section illustrates how some high state courts have looked to precedent and legislative purpose to protect bank accounts from unrestrained garnishment.

In *MidAmerica Savings Bank v. Miehe*,[170] the Iowa Supreme Court held that Iowa's garnishment statute protects wages deposited into a bank account.[171] The Iowa garnishment statute is nearly identical to the CCPA and provides that "[t]he disposable earnings of an individual are exempt from garnishment to the extent provided by the federal Consumer Credit Protection Act."[172] Although the Iowa law is, by its terms, coextensive with the CCPA, the Iowa court looked to state precedent and the purpose of the garnishment law to afford Iowans greater protections than those provided under the prevailing interpretation of the CCPA.[173]

In 1930, before the enactment of the CCPA, the Iowa Supreme Court considered whether the state's garnishment statute, which at the time exempted personal earnings from garnishment,[174] protected wages deposited into a bank.[175] In *Staton v. Vernon*,[176] the court found that it would be an "unreasonable construction" to consider the character of earnings to be transformed simply by depositing them into a bank.[177] Accordingly, the court held that depositing wages does not "change the character of the earnings as to deprive them of their exempt character" and protected the deposits from garnishment.[178]

In *MidAmerica*, the court found that the rationale of *Staton* is "as valid today as it was in 1930."[179] The court reasoned that if exempted wages could be garnished immediately upon deposit, then the purpose of the law would

167. *See supra* note 98 and accompanying text.
168. *See supra* notes 97–98 and accompanying text.
169. *See* Morrison v. Kobernusz (*In re* Kobernusz), 160 B.R. 844 (Bankr. D. Colo. 1993); Miller v. Monrean, 507 P.2d 771 (Alaska 1973); MidAmerica Sav. Bank v. Miehe, 438 N.W.2d 837 (Iowa 1989); Daugherty v. Cent. Tr. Co. of N.E. Ohio, 504 N.E.2d 1100 (Ohio 1986).
170. 438 N.W.2d 837 (Iowa 1989).
171. *Id.* at 838.
172. IOWA CODE ANN. § 642.21 (West 2022).
173. *See MidAmerica*, 438 N.W.2d at 838.
174. Iowa law provided that "[t]he earnings of a debtor . . . for his personal services . . . are exempt from liability for debt." *MidAmerica*, 438 at 839 (quoting IOWA CODE § 11763 (1939); IOWA CODE § 11763 (1927)).
175. *See* Staton v. Vernon, 229 N.W. 763, 764 (Iowa 1930).
176. 229 N.W. 763 (Iowa 1930).
177. *Id.* at 764.
178. *Id.*
179. *MidAmerica*, 438 N.W.2d at 839.

be "rendered meaningless."[180] Furthermore, the court noted that the "commercial realities of modern-day living" frequently require wages to be deposited into a bank and ruled that a debtor must have a "reasonable opportunity" to spend a paycheck before it may be garnished by a creditor.[181] Accordingly, the court exempted all wages deposited within ninety days of a garnishment order.[182]

Colorado's exemption law has been interpreted similarly. Prior to the CCPA, Colorado law provided that "[t]here shall be exempt from levy under execution or attachment or garnishment the wages and earnings of any debtor to an amount not exceeding one hundred dollars, earned during the thirty days next preceding such levy."[183] In 1891, the Colorado Supreme Court held that this statute protected earnings deposited into a bank account.[184] In *Rutter v. Shumway*,[185] the court found that "if earnings once received immediately lose their character as wages, then . . . the laborer could never retain his earnings for a single hour without exposing them to the very perils which the statute was designed to avert."[186] The court found the argument that wages could be garnished upon deposit to be a "mockery."[187]

A little over one hundred years after *Rutter*, this same issue reemerged in *Morrison v. Kobernusz (In re Kobernusz)*.[188] By that time, the Colorado garnishment statute had been amended to conform with the CCPA.[189] Relying on *Dunlop* and *Usery*,[190] the plaintiff-creditor argued that the defendant-debtor could not shield wages from garnishment after deposit.[191] The court acknowledged that if "this case hinged on an interpretation of the CCPA, then *Usery* would be compelling precedent."[192] However, because the defendant chose to rely on Colorado law, the court rejected plaintiff's argument.[193] Citing *Rutter*, the court found that it would be "absurd and improper" to argue that earnings "lose . . . exemption when placed into a

180. *Id.*
181. *Id.*
182. *Id.* at 840.
183. Rutter v. Shumway, 26 P. 321, 322 (Colo. 1891) (quoting 1885 Colo. Sess. Laws 262).
184. *See id.*
185. 26 P. 321 (Colo. 1891).
186. *Id.* at 322.
187. *Id.*
188. 160 B.R. 844 (Bankr. D. Colo. 1993).
189. *Compare* 15 U.S.C. § 1673(a) ("[T]he 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 . . . ."), *with* COLO. REV. STAT. ANN. § 13-54-104(2)(a)(I)(A) (West 2022) ("[T]he maximum part of the aggregate disposable earnings of an individual for any workweek that is subjected to garnishment or levy under execution or attachment may not exceed . . . the lesser of: (A) Twenty percent of the individual's disposable earnings for that week; or (B) The amount by which the individual's disposable earnings for that week exceed forty times the federal minimum hourly wage . . . .").
190. *See supra* notes 141–57 and accompanying text.
191. *In re Kobernusz*, 160 B.R. at 847.
192. *Id.*
193. *Id.*

wallet" and reaffirmed that Colorado's exemption law extends to deposited wages.[194]

Iowa and Colorado are not alone.[195] The high courts of Alaska and Ohio have similarly interpreted their respective state CCPA analogues to exempt wages after deposit.[196] As with *In re Kobernusz* and *MidAmerica*, both courts emphasized that the garnishment of deposited wages undermines the essential purpose of an exemption law.[197] However, because these cases concern state CCPA analogues, these decisions do not alter the prevailing interpretations of the CCPA discussed in Part II.A.1. For debtors living in jurisdictions without state limitations on garnishment, the CCPA offers no protection for deposited paychecks.[198]

The following section explores how courts have addressed this issue in the context of federal benefits. Certain federal benefits, like social security insurance, may not be garnished.[199] But, as with wages, creditors have attempted to garnish bank accounts containing these exempt benefits by arguing that the exemption is lost upon deposit.[200] The next section discusses the U.S. Supreme Court's rejection of this position and describes why courts have not extended the same protection to wages.

3. Garnishment of Deposited Federal Benefits

The U.S. Supreme Court has twice considered the question of whether money remains exempt after deposit in the context of veterans' and social security benefits.[201] In both instances, the Court held that the funds remained exempt after deposit.[202] This section describes these holdings and explores why courts have not extended the same treatment to a debtor's deposited wages.

In *Porter v. Aetna Casualty & Surety Co.*,[203] the Court held that deposited veterans' benefits remain exempt, provided the money is readily available to support the veteran and has not been converted into permanent

194. *Id.* at 848 ("[*Rutter*] stressed that wages should not lose [exemption] solely on the basis of being placed into a bank account . . . . Though one hundred and two years old, the [*Rutter*] decision is still applicable and controlling.").

195. *See infra* note 196 and accompanying text.

196. *See* Miller v. Monrean, 507 P.2d 771 (Alaska 1973); Daugherty v. Cent. Tr. Co. of N.E. Ohio, 504 N.E.2d 1100 (Ohio 1986).

197. *See Daugherty*, 504 N.E.2d at 1103 ("The legislature's purpose, in exempting certain property from court action brought by creditors, was to protect funds intended primarily for maintenance and support of the debtor's family. This legislative intent would be frustrated if exempt funds were automatically deprived of their statutory immunity when deposited in a checking account . . . ." (citation omitted)); *Miller*, 507 P.2d at 775 ("The primary purpose of [the law] is to allow the judgment debtor to retain a portion of his income to meet his family needs. In light of this purpose, it would be anomalous to limit the protections of [the law] to income in the hands of the employer.").

198. *See supra* note 107 and accompanying text.

199. *See infra* Part II.A.3.

200. *See, e.g.*, *infra* notes 207–15 and accompanying text.

201. *See infra* notes 203, 207.

202. *See infra* notes 206, 215 and accompanying text.

203. 370 U.S. 159 (1962).

investments.[204] The statute states that veterans' benefits "shall be exempt from the claim of creditors, and shall not be liable to attachment, levy, or seizure by or under any legal or equitable process whatever, either before or after receipt by the beneficiary."[205] The Court found that, because exemption statutes should be construed liberally to protect the maintenance and support of debtors, deposits of veterans' benefits should "remain inviolate."[206]

Similarly, in *Philpott v. Essex County Welfare Board*,[207] the Court exempted deposited federal disability benefits from seizure.[208] In *Philpott*, a New Jersey man was allowed to collect state disability benefits on the condition that he reimburse the state should he receive any federal aid.[209] One year after he began to receive state benefits, the petitioner received a retroactive, lump-sum disability insurance payment under the Social Security Act[210] amounting to nearly $2,000.[211] New Jersey sued to seize the funds from the petitioner's bank pursuant to the reimbursement agreement.[212]

The Social Security Act provides that "none of the moneys paid or payable or rights existing under this subchapter shall be subject to execution, levy, attachment, garnishment, or other legal process."[213] The Court found that the retroactive payment was "moneys paid" within the meaning of the act, and that the state's suit was an "execution, levy, attachment, garnishment, or other legal process."[214] The Court analogized the facts to the facts in *Porter* and held that the "funds on deposit were readily withdrawable and retained the quality of 'moneys' within the purview of [the Social Security Act]."[215]

However, courts have found that *Porter* and *Philpott* support a contrary result when applied to the exemption of wages under the CCPA.[216] For example, the statute at issue in *Porter* explicitly protects veterans' benefits "either before or after receipt by the beneficiary."[217] In *Usery*, the Ninth Circuit found that, had Congress wanted to afford the same protection for wages, it "would have chosen similar unequivocal terms."[218] Similarly, the Social Security Act provides protection against "execution, levy, attachment, garnishment, or other legal process."[219] Courts have found that, had Congress intended to protect wages in the hands of an employee, it would

204. *See id.* at 162.
205. *Id.* at 159 n.1 (quoting 38 U.S.C. § 3101(a) (1964)).
206. *Id.* at 162.
207. 409 U.S. 413 (1973).
208. *See id.* at 417.
209. *See id.* at 413–14.
210. Ch. 531, 49 Stat. 620 (codified as amended in scattered sections of 42 U.S.C.).
211. *Philpott*, 409 U.S. at 415.
212. *Id.*
213. *Id.* at 415 n.3 (quoting 42 U.S.C. § 407(a)).
214. *Id.* at 416.
215. *Id.*
216. *See* Usery v. First Nat'l Bank of Ariz., 586 F.2d 107, 111 (9th Cir. 1978); Dunlop v. First Nat'l Bank of Ariz., 399 F. Supp. 855, 857 (D. Ariz. 1975); John O. Melby & Co. Bank v. Anderson, 276 N.W.2d 274, 279 (Wis. 1979).
217. 38 U.S.C. § 3101(a) (1964).
218. *Usery*, 586 F.2d at 111.
219. 42 U.S.C. § 407(a).

have provided for protection against "attachment of such monies while in the hands of the employee, as they did in the case of social security benefits."[220]

In conclusion, Part II.A has discussed the conflicting approaches to protecting deposited funds from garnishment under the CCPA and similar statutes. Although some state courts differ, the weight of authority maintains that wages may be garnished after deposit.[221] Similarly, the Supreme Court's exemption of deposited federal benefits, discussed in this section, has been construed to support a contrary outcome for deposited wages.[222] This Note returns to these issues in Part III.A, where it argues that the CCPA's limitations should be applied to deposited wages.

Next, this Note explores an alternative approach to limiting bank account garnishment under the regulatory authority of the Consumer Financial Protection Bureau. To illustrate the bureau's authority to limit unfair and abusive practices, Part II.B overviews the bureau's prior rulemaking and enforcement actions. Ultimately, Part III.B will illustrate how the authority discussed in the following section can be used to rein in unrestrained bank account garnishment.

B. "Unfair and Abusive" in CFPB Rulemaking and Enforcement Actions

The CCPA is not the only federal law that may limit bank account garnishment.[223] As discussed in Part I.C.2, the CFPB has rulemaking authority to prohibit unfair and abusive acts and practices.[224] This section illustrates how the CFPB has used this authority in prior rulemaking and enforcement actions. Part II.B.1 describes the CFPB's Payday, Vehicle Title, and Certain High-Cost Installment Loans rule[225] (the "Payday Lending Rule"), the only rule to date to invoke the bureau's UDAAP authority.[226] Part II.B.2 then illustrates how the "unfair and abusive" standard have been used in prior CFPB enforcement actions.

1. "Unfair and Abusive" in CFPB Rulemaking

In 2017, the CFPB promulgated the Payday Lending Rule, the first and only rule invoking its UDAAP authority.[227] This rule limits a payday lender's ability to seize funds from a borrower's bank account in satisfaction of a payday loan.[228] By targeting a lender's unrestricted access to a bank account as an unfair and abusive practice in the payday lending context, the

220. *Usery*, 586 F.2d at 111; *see also Dunlop*, 399 F. Supp. at 857 ("The Court feels that . . . [the Social Security Act] expresses a concern on the part of the Congress to protect a given fund from all methods of attachment. On the other hand . . . [the CCPA] is concerned with the regulation of the garnishment process itself and not the protection of a given fund.").

221. *See supra* Parts II.A–B.

222. *See supra* Part II.C.

223. *See infra* Part III.B.

224. *See supra* Part I.C.2.

225. 12 C.F.R. § 1014 (2021).

226. *See supra* notes 126–27.

227. *See supra* notes 126–27.

228. *See infra* note 235 and accompanying text.

Payday Lending Rule serves as a potential model for how the CFPB can regulate bank account garnishment more generally, a theme to be developed in Part III of this Note. This section illustrates how the CFPB used its UDAAP authority to limit the ability of payday lenders to seize bank accounts.

The Payday Lending Rule regulates how lenders collect payday loans, which are short-term loans that are generally required to be repaid in a single lump-sum payment on a borrower's next payday.[229] Prior to the promulgation of the rule, borrowers were typically required to authorize future third-party withdrawals from their bank accounts to ensure loan repayment.[230] In the event of default, lenders used these prior authorizations to access a borrower's account to recoup the loan.[231]

However, borrowers often lacked sufficient funds to cover the full amount of the pre-authorized withdrawal.[232] Despite the initial failure, lenders would repeatedly attempt to make withdrawals.[233] Each failed attempt would generate multiple new fees for the distressed borrower, assessed by both the lender and the bank.[234]

The Payday Lending Rule specifically targets these repeated collection attempts as an unfair and abusive practice.[235] The rule prohibits lenders from making new withdrawal attempts after two consecutive payment attempts have failed, unless the consumer provides a fresh authorization to do so.[236]

The CFPB found that unlimited collection attempts on payday loans were unfair within the meaning of the CFPA.[237] The "unfair acts or practices" standard is comprised of three elements[238]: First, the act must "cause[] or [be] likely to cause substantial injury to consumers."[239] Second, the injury caused by a purported unfair practice must "not [be] reasonably avoidable by

229. *See* Payday, Vehicle Title, and Certain High-Cost Installment Loans, 82 Fed. Reg. 54472, 54475 (Nov. 17, 2017).

230. *See id.* at 54499.

231. *See id.* at 54500.

232. *See id.* ("[O]ver an eighteen-month observation period, 50% of online borrowers were found to experience at least one payment attempt that failed or caused an overdraft and one-third of the borrowers experienced more than one such incident.").

233. *See id.* at 54573 ("The Bureau's research indicates that when one attempt fails, online payday lenders make a second attempt to collect 75 percent of the time but are unsuccessful in 70 percent of those cases. The failure rate increases with each subsequent attempt.").

234. *See id.* ("The median bank fee for an NSF transaction is $34.00 . . . . In addition to incurring NSF fees from a bank . . . the consumer can be charged a returned check fee by the lender . . . [resulting in] duplicative and additional fees for the same failed transaction.").

235. 12 C.F.R. § 1041.7 (2021) ("It is an unfair and abusive practice for a lender to make attempts to withdraw payment from consumers' accounts . . . after the lender's second consecutive attempts to withdraw payments . . . have failed due to a lack of sufficient funds, unless the lender obtains the consumers' new and specific authorization . . . .").

236. *Id.*

237. *Id.*

238. *See supra* note 118 and accompanying text.

239. 12 U.S.C. § 5531(c)(1)(A).

consumers."[240] Finally, the injury must not be "outweighed by countervailing benefits to consumers or to competition."[241]

On the first prong, the CFPB determined that unlimited collection attempts cause substantial injury to consumers by generating excessive fees and by increasing the risk of account closure.[242] The rule notes that 43 percent of accounts with two consecutive failed withdrawal attempts are closed by the depository institution, compared to only 3 percent of accounts generally.[243] Such an increased risk of account closure, along with the cumulative fees owed to both the bank and lender, were sufficient to establish substantial injury to consumers.[244]

The CFPB also determined that consumers were not able to reasonably avoid the substantial injury caused by successive withdrawal attempts.[245] The rule notes that consumers often face difficulty revoking withdrawal authorizations or stopping payments to lenders.[246] The bureau determined that voluntarily closing an account to prevent withdrawals was not reasonable because "consumers use their accounts to conduct most of their household financial transactions."[247] Repaying or avoiding the loan in the first place was also found to not be a reasonable means of avoiding the injury.[248]

Finally, the bureau determined that the injury caused by successive withdrawal attempts was not outweighed by countervailing benefits to the consumer or competition.[249] The rule notes that the exceedingly low success rates of repeated withdrawal attempts are of little benefit to lenders and impose onerous costs on already distressed borrowers.[250]

The bureau also found repeated withdrawal attempts by payday lenders to be "abusive" in violation of the CFPA.[251] The statute designates four types of abusive acts or practices.[252] First, an act is abusive if it "materially interferes with the ability of a consumer to understand a term or condition" of a financial product.[253] Abusive acts are also those that take unreasonable advantage of (1) a consumer's lack of understanding of a material risk of a financial product, (2) a consumer's inability to protect their interests, or

240. *Id.*
241. *Id.* § 5531(c)(1)(B).
242. *See* Payday, Vehicle Title, and Certain High-Cost Installment Loans, 82 Fed. Reg. 54472, 54734 (Nov. 17, 2017).
243. *Id.*
244. *See id.* at 54733.
245. *See id.* at 54736.
246. *See id.*
247. *Id.*
248. *See id.* at 54737. As one court noted, if avoiding or repaying a loan were seen as a reasonable protective measure, then "[b]y that logic, no practice by a lender could ever be 'unfair.'" Cmty. Fin. Servs. Ass'n. of Am. v. Consumer Fin. Prot. Bureau, 558 F.Supp.3d 350, 362 (W.D. Tex. 2021) (upholding the Payday Lending Rule).
249. *See* Payday, Vehicle Title, and Certain High-Cost Installment Loans, 82 Fed. Reg. at 54737.
250. *See id.* at 54738.
251. *See id.* at 54739–42.
252. *Id.* § 5531(d).
253. *Id.* § 5531(d)(1).

(3) a consumer's reasonable reliance on a covered person to act in their best interest.[254]

The bureau concluded that repeated withdrawal attempts take unreasonable advantage of a consumer's lack of understanding of the material risks, costs, and conditions of the loan.[255] The bureau acknowledged that, as a general matter, consumers understand that they must repay loans, and that failing to do so may result in fees.[256] However, the bureau determined that borrowers are not aware of the risks and harms associated with repeated withdrawal attempts, which, as noted in the substantial injury prong of the unfairness analysis, results in significant cost to the borrower.[257]

The bureau also concluded that consumers were unable to protect their interests in relation to the unexpected costs of repeated withdrawal attempts.[258] The bureau noted that, "[b]y the time consumers discover that lenders are using their authorizations in this manner, it is often too late for them to take effective action."[259] Often, the only protective measure available to a borrower is to close their account, a measure that the bureau considered impractical, "given that consumers use their accounts to conduct most of their household financial transactions."[260]

Finally, the bureau determined that repeated withdrawal attempts take unreasonable advantage of consumers' inability to protect themselves.[261] The bureau noted that the practice of obtaining prior authorization to withdraw payments is not, standing alone, an abusive practice.[262] However, the bureau determined that the unrestrained use of the authorization to generate fees, with little probability of obtaining payment from the borrower, is abusive within the meaning of the CFPA.[263]

To date, the Payday Lending Rule is the only CFPB regulation promulgated pursuant to the bureau's UDAAP authority.[264] However, as discussed in Part III, the bureau's approach to collection practices in the payday lending context provide a useful model for how the CFPB might use its rulemaking authority to limit bank account garnishment more generally. To further illustrate the regulatory authority of the bureau, the next section discusses the use of UDAAP in prior CFPB enforcement actions.

---

254. *Id.* § 5531(d)(2).
255. *See* Payday, Vehicle Title, and Certain High-Cost Installment Loans, 82 Fed. Reg. at 54741.
256. *See id.* at 54740.
257. *See id.* at 54740–41.
258. *See id.* at 54742.
259. *Id.*
260. *Id.*
261. *See id.* at 54743.
262. *See id.*
263. *See id.* at 54744.
264. *See* LEVITIN, *supra* note 23, at 188.

2. "Unfair and Abusive" in CFPB Enforcement Actions

The CFPB's use of the unfair and abusive standard in enforcement actions likewise illustrates how the bureau might regulate unrestricted bank account garnishment. The following section details the CFPB enforcement action in *Consumer Financial Protection Bureau v. Think Finance, LLC*,[265] where the bureau argued that certain collection practices were unfair and abusive.

In *Think Finance*, the bureau used its UDAAP authority as the basis for a consent order that enjoined a lender from collecting on usurious loans that violated state law.[266] There, the defendant collaborated with tribal nations to provide high-cost loans to consumers across the United States.[267] These loans charged interest at a rate of up to 450 percent annually,[268] despite state usury laws that declare loans in excess of certain interest limits to be void.[269] Despite these usury laws, the defendant executed direct transfers from a customer's bank account to repay the usurious loans.[270]

In its complaint, the CFPB argued that it was an unfair practice to collect loans that were void and unenforceable under state law.[271] The bureau argued that extracting payment from consumers for unenforceable loans caused substantial injury.[272] Such injury was not reasonably avoidable because consumers were unable to avoid bank account seizures, and because consumers were likely unaware of the laws which limited their obligation to repay.[273] These injuries harmed competition by placing law-abiding lenders at a relative disadvantage.[274]

The bureau also argued that the defendant's practices were abusive.[275] The bureau found that a consumer's legal obligation to repay is "a material risk, cost, or condition of a loan."[276] According to the bureau, the defendant took unreasonable advantage of consumers' lack of understanding of this material condition by collecting amounts exceeding the consumers' legal obligation.[277]

This section has discussed how the CFPB has used its UDAAP authority in prior rulemaking and enforcement actions. As demonstrated by the Payday Lending Rule and in *Think Finance*, the bureau has used its UDAAP authority to limit unfair and abusive collection practices in the past. These

---

265. Stipulated Final Consent Order, No. 17-cv-00127 (D. Mont. Feb. 6, 2020), ECF No. 107.
266. *Id.* ¶¶ 15–16.
267. First Amended Complaint ¶ 52, Consumer Fin. Prot. Bureau v. Think Fin., LLC, No. 17-cv-00127 (D. Mont. Mar. 28, 2018), ECF No. 38.
268. *Id.* ¶ 28.
269. *Id.* ¶ 112.
270. *Id.* ¶ 90.
271. *Id.* ¶¶ 144, 156.
272. *Id.* ¶ 144.
273. *Id.* ¶ 145.
274. *Id.* ¶ 148.
275. *Id.* ¶ 155.
276. *Id.* ¶ 152.
277. *Id.* ¶ 154.

actions serve as a potential model for how the CFPB can regulate bank account garnishment more generally.

Next, Part III resolves the issues presented throughout this part. Part III.A returns to the issue of bank account garnishments under the CCPA and recommends that the law be enforced to protect deposited wages. Part III.B then recommends, as an alternative, that the CFPB engage in rulemaking to designate and prohibit unrestrained bank account garnishment as an unfair and abusive practice.

III. PROTECTING BANK ACCOUNTS FROM UNRESTRAINED GARNISHMENT

Since the CCPA's enactment in 1968, the consumer credit industry has dramatically changed.[278] Today, nearly seventy million Americans have a debt in collections,[279] and creditors file millions of actions annually to collect on outstanding debts.[280] As indebtedness and debt collection have skyrocketed, courts have narrowly construed the CCPA, leaving millions of Americans vulnerable to unrestricted garnishment of deposited wages.[281]

This part argues that, considering these changes, federal action must be taken to afford debtors the basic protections enumerated in the CCPA. Part III.A argues that the CCPA should be enforced to protect deposited wages. In the absence of judicial enforcement of the CCPA's protections, Part III.B argues that the CFPB should engage in rulemaking to prohibit unrestricted bank account garnishment as an unfair and abusive act.

A. Resolving the Conflicting Approaches to the CCPA's Garnishment Provisions

This section argues that the CCPA's garnishment limitations should apply to wages deposited into a bank account. Part III.A.1 demonstrates how the statute's text supports its application to deposited wages. Part III.A.2 then argues that both precedent and statutory purpose support protecting bank accounts from garnishment. Finally, Part III.A.3 recommends how courts can apply the CCPA's garnishment provisions to wages deposited in a bank.

1. Textualist Support for the CCPA's Application to Bank Accounts

The CCPA provides that a creditor may not garnish more than 25 percent of a worker's aggregate weekly disposable earnings.[282] These restrictions raise two distinct, albeit related, interpretive questions: first, what third parties must abide by the law's garnishment provisions, and second, do wages, once deposited, retain their quality as "earnings" within the meaning of the act?[283] This section provides textual support for the position that banks

278. *See supra* Part I.A.
279. *See supra* note 17 and accompanying text.
280. *See supra* notes 44–47 and accompanying text.
281. *See supra* Part II.A.1.
282. 15 U.S.C. § 1673.
283. *See supra* Part II.A.

are subject to the law's provisions, and that wages remain exempt after deposit.

Nothing in the CCPA's statutory text suggests that banks should be excluded from the act's provisions.[284] The CCPA provides that "garnishment" means "any legal or equitable procedure through which the earnings of any individual are required to be withheld for payment of any debt."[285] A garnishment served on a bank is certainly a legal procedure that creditors use to satisfy a debt.[286] Given that the Supreme Court has held that exemption statutes like the CCPA should be "liberally construed," banks should not be excluded from the act's coverage absent explicit language limiting the law's application.[287]

Similarly, the fact that the CCPA does not explicitly refer to banks should not be understood as evidence that Congress intended to exclude them from the act's provisions. The act also omits explicit reference to employers, but this has not prevented courts from applying the law's provisions in the employment context.[288] Moreover, the statutes at issue in *Porter* and *Philpott* also omit explicit reference to banks, but in both cases, the Court exempted benefits from garnishment after deposit by the beneficiary.[289] Congress used broad language in the CCPA to limit "any legal or equitable procedure" used to collect "any debt."[290] Such broad language suggests that all garnishments are covered by the act, not merely garnishments of an employer.

The statutory language also indicates that wages retain their quality as "earnings" after deposit.[291] The act defines "earnings" as "compensation paid or payable for personal services."[292] The term "paid" is not defined by the statute and therefore assumes its ordinary meaning.[293] "Paid" is the past tense of "pay." To "pay" means "to give in return for goods or service,"[294] while "paid" denotes the receipt of such payment.[295] By including "paid" in its provisions, the act explicitly applies to wages after they have been distributed.

---

284. *See generally* 15 U.S.C. §§ 1672–1673.

285. *Id.* § 1672(c).

286. *See supra* note 59 and accompanying text.

287. *See* Porter v. Aetna Cas. & Sur. Co., 370 U.S. 159, 162 (1962).

288. *See* Usery v. First Nat'l Bank of Ariz., 586 F.2d 107, 108 (9th Cir. 1978) (acknowledging that the act does not apply to employers "by any explicit language").

289. *See supra* notes 203–15 and accompanying text.

290. 15 U.S.C. § 1672(c).

291. *See, e.g.*, *supra* note 194 and accompanying text.

292. 15 U.S.C. § 1672(a).

293. *See* Taniguchi v. Kan Pac. Saipan, Ltd., 566 U.S. 560, 566 (2012) ("When a term goes undefined in a statute, we give the term its ordinary meaning.").

294. *Pay*, MERRIAM-WEBSTER, https://www.merriam-webster.com/dictionary/pay [https://perma.cc/7BJE-GDQR] (last visited Oct. 7, 2022).

295. *See Paid*, MERRIAM-WEBSTER, https://www.merriam-webster.com/dictionary/paid [https://perma.cc/4F59-7SJQ] (last visited Oct. 7, 2022) (defining "paid" as "marked by the receipt of pay," or "being or having been paid or paid for").

In *Usery*, the court strained to limit the "paid or payable" language of the act to exclude compensation paid to an employee.[296] The court found that "paid" means "those amounts which have been accrued on the employer's books, and thus are 'paid' in the accounting sense, even though such funds have not yet been transmitted to the employee."[297] In other words, "compensation paid" within the statute indicates an employer's outstanding obligation to pay an employee.

This interpretation of "paid" renders the term "payable" redundant. The canon against surplusage instructs that courts should not "construe [a] statute in a manner that is strained and, at the same time . . . render a statutory term superfluous."[298] In *Usery*, the court does both: it abandons the ordinary meaning of "paid" in favor of a technical term of art, and it deprives "payable" of any independent meaning. "Payable" ordinarily means a sum of money that "is to be paid" but is not necessarily yet due, such as an employer's outstanding obligation to pay an employee.[299] In *Usery*, the court attributes this meaning to the word "paid" and ignores the term "payable" altogether.

Moreover, the *Usery* court's strained interpretation of "paid or payable" is at odds with the Supreme Court's interpretation of the same language as used in the Social Security Act.[300] The Social Security Act provides that "none of the moneys paid or payable or rights existing under this subchapter shall be subject to execution, levy, attachment, garnishment, or other legal process."[301] In *Philpott*, the Court found that exempt benefits deposited in an account were "moneys paid" within the meaning of the statute.[302] This interpretation of "paid or payable" comports with ordinary meaning and should be applied to the CCPA.

The statutory text demonstrates that the CCPA contemplates limitations on all garnishments, not just those of an employer, and protects wages, even after they have been paid and deposited into a bank.[303] The relevant case law supports such a construction,[304] and many state courts that have considered the issue are in accord.[305] In 1891, the Colorado Supreme Court addressed this issue with clarity.[306] The court imagined a worker who has $100 of

296. *See* Usery v. First Nat'l Bank of Ariz., 586 F.2d 107, 110 (9th Cir. 1978).

297. *Id.*

298. Dole Food Co. v. Patrickson, 538 U.S. 468, 476–77 (2003).

299. *Payable*, BLACK'S LAW DICTIONARY (11th ed. 2019) ("Of a sum of money . . . that is to be paid . . . . An amount may be payable without being due. Debts are commonly payable long before they fall due."); *see also Payable*, MERRIAM-WEBSTER, https://www.merriam-webster.com/dictionary/payable [https://perma.cc/YZB4-JSXE] (last visited Oct. 7, 2022) ("[M]ay, can, or must be paid.").

300. *See* Philpott v. Essex Cnty. Welfare Bd., 409 U.S. 413, 415–16 (1973).

301. 42 U.S.C. § 407.

302. *Philpott*, 409 U.S. at 415–16.

303. *See supra* notes 282–302.

304. *See* Porter v. Aetna Cas. & Sur. Co., 370 U.S. 159 (1962); *Philpott*, 409 U.S. at 415–16.

305. *See supra* Part II.A.2.

306. *See* Rutter v. Shumway, 26 P. 321 (Colo. 1891).

monthly wages garnished immediately upon receipt.[307] It wrote: "Think of the court gravely responding: 'Yes, the money was your wages before you received it, and was exempt, but, having received it, it is no longer wages, but capital, and is not exempt. You were entitled to enjoy it before you received it, but not afterwards.' What mockery."[308] Due to the prevailing interpretation of the CCPA, for millions of Americans today, the Colorado Supreme Court's imagined farce is an unfortunate reality.

2. Precedential and Purposive Support for the CCPA's Application to Bank Accounts

Kokoszka v. Belford[309] is the only U.S. Supreme Court case to consider the CCPA's garnishment provisions. In it, the Court provided insight into both the purpose and function of the CCPA's statutory scheme. This section argues that the Court's holding in *Kokoszka* and the CCPA's purpose support extending the law's provisions to protect wages deposited into a bank account.

In *Kokoszka*, the Court held that an income tax refund is not "earnings" within the meaning of the statute.[310] The Court found that the CCPA was intended to protect "compensation needed to support the wage earner and his family on a week-to-week, month-to-month basis" but did not protect "every asset that is traceable in some way to such compensation."[311] Relying on this decision, the *Usery* court held that deposited funds, "[l]ike a lump sum tax return . . . has neither an element of periodicity nor the critical relationship to a person's subsistence that a paycheck does."[312]

This interpretation does not reflect the commercial reality of modern American life. Today, 94 percent of Americans receive their paycheck via direct deposit,[313] and many, if not most, live paycheck to paycheck.[314] Unlike a tax refund, which arrives annually, a bank account generally represents little more than a debtor's periodic wages and bears critically on a debtor's day-to-day subsistence.[315] For the millions of Americans receiving direct deposit, wages cannot be accessed until they are deposited.

Finally, the Court's decision in *Kokoszka* demonstrates how the CCPA's purpose supports its application to bank accounts. Many courts refusing to extend the act to banks find that such an application would not further the law's aim of preserving employment.[316] However, the preservation of employment is not the sole, or even the primary, purpose of the act.[317] The

307. *Id.* at 322.
308. *Id.*
309. 417 U.S. 642 (1974).
310. *Id.* at 651.
311. *Id.*
312. Usery v. First Nat'l Bank of Ariz., 586 F.2d 107, 110 (9th Cir. 1978).
313. *See supra* note 12.
314. *See* SERVON, *supra* note 18, at 48.
315. *Id.*
316. *See supra* notes 154–57 and accompanying text.
317. *See supra* notes 84–95 and accompanying text.

statute and its legislative record demonstrate that Congress limited garnishment to prevent bankruptcy.[318] As the Court noted in *Kokoszka*, "[t]here is every indication that Congress, in an effort to avoid the necessity of bankruptcy, sought to regulate garnishment . . . of compensation needed to support the wage earner and his family."[319] In rejecting the act's application to banks, courts have frustrated this essential purpose. By failing to protect wages after receipt, the courts have deprived debtors of any meaningful protection that may forestall bankruptcy.[320]

In sum, the statute's language, purpose, and precedential interpretations support the protection of wages after deposit. However, as noted in *Usery*, the application of the law to bank accounts presents administrative questions.[321] The following section discusses how courts can operationalize the CCPA's garnishment provisions to protect deposited wages.

3. Applying the CCPA to Banks

This section argues that the enforcement of the Social Security Act's exemption provisions provides a model for the CCPA's application to bank accounts. Accordingly, courts should declare that deposited wages are exempt from garnishment and ensure that states afford debtors due process in asserting these exemption rights.

To protect deposited wages, a court must first declare that the CCPA's exemptions apply to wages after deposit. If this is done, then any state garnishment law that fails to afford wages such protection will be preempted by the federal statute.[322] However, to protect bank accounts under the act, a court must adopt a standard to distinguish deposited wages, which are exempt, from other money that may be seized by a creditor, an issue that the statute does not explicitly address.[323]

There are a variety of tests available to distinguish exempt deposited wages. For example, in the context of federal benefits, *Porter* and *Philpott* adopted a "permanent investment" standard, exempting benefits from garnishment so long as they are readily available to support a debtor.[324] Conversely, permanent investments, like money invested in speculative ventures or in time deposits at interest, are not exempt.[325] In the context of its state CCPA analogue, the Iowa Supreme Court held that wages remain

318. *See* Kokoszka v. Belford, 417 U.S. 642, 650 (1974) ("Congress' concern was . . . the *prevention* of bankruptcy in the first place by eliminating 'an essential element in the predatory extension of credit . . . .'" (quoting H.R. REP. NO. 90-1040, at 20 (1967)).

319. *Id.* at 651.

320. *See* Brown v. Commonwealth, 40 S.W.3d 873, 879 (Ky. Ct. App. 1999) ("[W]hile the debtor's plunge into bankruptcy is made likely if all or most of his wages are intercepted before he receives them, confiscation of the debtor's wages immediately after receipt tends toward the same result.").

321. *See supra* notes 151–52 and accompanying text.

322. 15 U.S.C. § 1673(c).

323. *See supra* notes 151–52 and accompanying text.

324. Philpott v. Essex Cnty. Welfare Bd., 409 U.S. 413, 416 (1973); Porter v. Aetna Cas. & Sur. Co., 370 U.S. 159, 162 (1962).

325. *Porter*, 370 U.S. at 162.

exempt until a debtor has a "reasonable opportunity to negotiate the paycheck and spend the funds," which the court defined as ninety days preceding a garnishment order.[326] In applying the CCPA to deposited wages, courts could use either the "permanent investment" or "reasonable opportunity" standard to identify protected deposited earnings.

Although the CCPA can establish a federal exemption for deposited wages, it must be enforced by the states.[327] The CCPA itself does not establish or replace state procedural law governing garnishment.[328] It merely provides a baseline standard of protection and preempts state laws that fail to enforce these requirements.[329]

However, if a federal exemption of deposited earnings is established, states must afford debtors due process in asserting the right to protect these funds.[330] In the event of a garnishment of exempt social security benefits, due process requires that a debtor be provided (1) notice of the garnishment, (2) notice of the exemption, and (3) a prompt opportunity to challenge the seizure and assert the exemption.[331] The notice must clearly explain a debtor's procedural rights and remedies,[332] and, given that a "bank account may well contain the money that a person needs for [the] . . . basic requirements of life," a delay of even fifteen days for a hearing may be insufficient.[333] State laws that fail to meet these requirements would be unconstitutional, and courts may be prohibited from issuing garnishments under such laws.[334]

The enforcement of the Social Security Act's exemption provisions described above provides a model for the CCPA's enforcement. At a minimum, before executing a bank account garnishment, debtors should be notified of their right to protect wages and be given a meaningful opportunity to assert any applicable exemptions. Allowing creditors to empty bank accounts without providing debtors with notice and an opportunity to be heard frustrates debtors' due process rights and denies them the basic protections afforded by the CCPA.

In conclusion, the CCPA's language and purpose support its application to wages deposited into a bank. Accordingly, 75 percent of deposited wages should remain exempt from garnishment. If a creditor attempts to seize

326. MidAmerica Sav. Bank v. Miehe, 438 N.W.2d 837, 839–40 (Iowa 1989).

327. *See infra* notes 328–29 and accompanying text.

328. *See* Evans v. Evans, 429 F. Supp. 580, 582 (W.D. Okla. 1976) ("The federal statutes dealing with garnishment are not an attempt to create or establish garnishment proceedings but are meant only to pre-empt state laws which are less restrictive." (citation omitted)).

329. *See id.*; *see also* Crane v. Crane, 417 F. Supp. 38, 40 (E.D. Okla. 1976).

330. *See* Dionne v. Bouley, 757 F.2d 1344, 1350 (1st Cir. 1985) ("[Debtor's] interest in retaining her exempt social security funds free from attachment was the kind of property interest that is entitled to due process protection."); McCahey v. L.P. Invs., 774 F.2d 543, 547 (2d Cir. 1985); Finberg v. Sullivan, 634 F.2d 50, 56 (3d Cir. 1980).

331. *See McCahey*, 774 F.2d at 549; *Dionne*, 757 F.2d at 1354; *Finberg*, 634 F.2d at 59–62.

332. *Dionne*, 757 F.2d at 1352.

333. *Finberg*, 634 F.2d at 58.

334. *See Dionne*, 757 F.2d at 1345; *Finberg*, 634 F.2d at 64.

exempted wages from a bank account, debtors should be given notice of their exemption and provided a meaningful opportunity to assert their rights. Judicial enforcement of the act's provisions to bank accounts is critical to reining in the "unrestricted garnishment of compensation" that the law was designed to end.[335]

Next, this Note addresses an alternative approach to protecting bank accounts from unrestrained garnishment. Building on the discussion in Part II.B, Part III.B recommends that the CFPB engage in rulemaking pursuant to its UDAAP authority to limit bank account garnishment as an unfair and abusive practice.

B. The CFPB Should Engage in Rulemaking to Prohibit Unrestricted Bank Account Garnishment

As an alternative to applying the CCPA to deposited wages, this section argues that the CFPB should use its UDAAP authority to identify and prohibit unrestricted bank account garnishment. This section builds on the examples provided in Part II.B to demonstrate that unrestricted bank account garnishment is both an unfair and abusive practice, and as such, is within the rulemaking authority of the CFPB. This section ultimately concludes by discussing how the CFPB may design a rule to limit abusive bank account garnishment.

As illustrated in Part II.B, unfair practices require primary consideration of three elements: (1) substantial injury to consumers that is (2) not reasonably avoidable by consumers and (3) is not outweighed by countervailing benefits to consumers or to competition.[336]

Regarding the first prong, unrestricted garnishment of a debtor's bank account causes substantial injury to consumers.[337] Conrad Goetzinger's story provides an instructive example.[338] When he was twenty-nine-years old, Mr. Goetzinger faced repeated bank account garnishments due to a $2,400 debt he owed for a laptop he bought while in high school.[339] In addition to having his wages garnished, his bank account was emptied twice.[340] Unaware of the garnishments, he continued to use the account, incurring repeated overdraft fees totaling several hundred dollars.[341] In the end, he was forced to close the account to protect his future wages from seizure.[342] In the payday lending context, the CFPB found that acts that

335. 15 U.S.C. § 1671(a).
336. *See supra* note 118 and accompanying text.
337. *See, e.g.*, *supra* notes 1–7, 72–76 and accompanying text.
338. *See* Paul Kiel, *Old Debts, Fresh Pain: Weak Laws Offer Debtors Little Protection*, PROPUBLICA (Sept. 16, 2014, 5:00 AM), https://www.propublica.org/article/old-debts-fresh-pain-weak-laws-offer-debtors-little-protection [https://perma.cc/LEB4-XB4D].
339. *Id.*
340. *Id.*
341. *Id.*
342. *Id.*

generate excessive fees and account closure, as here, impose a substantial injury constituting an unfair practice.[343]

Unrestricted garnishment also causes substantial injury to the public.[344] For debtors, it can lead to catastrophic results—like the loss of a home, car, or employment—preventing a debtor from providing basic necessities for themselves and their families.[345] Deprived of their basic needs, debtors are more likely to turn to the state for assistance.[346] Indeed, in enacting the CCPA, Congress noted that the disruption to "employment, production, and consumption" caused by unrestricted garnishment imposed "substantial burden[s] on interstate commerce."[347]

Regarding the second prong, debtors are unlikely to be able to reasonably avoid the injuries caused by unrestricted bank account garnishment.[348] First, because garnishment requires a third-party proceeding, debtors are not likely to know when or whether their bank accounts will be seized.[349] This lack of notice makes it difficult for consumers to take measures to protect wages, for example by canceling direct deposit or by closing an account preemptively.[350] In CFPB enforcement actions, lack of notice of impending injury led to the finding that an injury was not reasonably avoidable.[351]

Moreover, the only realistic means of avoiding the injury imposed by unrestricted bank account garnishment is to cancel direct deposit or close the bank account altogether.[352] In prior rulemaking, the bureau found that such measures impose an undue burden on consumers because "consumers use their accounts to conduct most of their household financial transactions."[353] Similarly, the bureau has found that repaying a creditor or avoiding the loan in the first place is not a reasonable means of preventing injury.[354]

Regarding the third prong, the costs imposed by unfettered garnishment are not outweighed by countervailing benefits to consumers or

---

343. *See supra* notes 242–45 and accompanying text.

344. *See supra* notes 76–77 and accompanying text.

345. *See* CARTER, *supra* note 72, at 5–6.

346. *See id.* at 6 ("[E]xemption laws . . . can also act as an economic recovery tool that will steer money into state and local communities. [They] also save costs that taxpayers would otherwise have to bear for services such as emergency shelter and foster care.").

347. 15 U.S.C. § 1671.

348. *See infra* notes 349–54.

349. *See supra* note 59 and accompanying text.

350. *See, e.g.*, *supra* notes 1–7 and accompanying text (illustrating an example of a surprise garnishment of a health-care worker).

351. *In re* Cottonwood Fin., Ltd., CFPB No. 2020-CFPB-0001 (Apr. 1, 2020) ("Consumers . . . could not reasonably have avoided the harm because they did not know whether, when, or how these calls might occur and had no control over Respondent's use of these collection tactics.").

352. *See, e.g.*, Kiel, *supra* note 338 (providing an example of a consumer closing an account to prevent further garnishment).

353. Payday, Vehicle Title, and Certain High-Cost Installment Loans, 82 Fed. Reg. 54472, 54736 (Nov. 17, 2017).

354. *See id.* at 54736; *see also* Cmty. Fin. Servs. Ass'n. of Am. v. Consumer Fin. Prot. Bureau, 558 F. Supp. 3d 350, 362 (W.D. Tex. 2021) (rejecting the reasonableness of repaying or avoiding a loan because, "[b]y that logic, no practice by a lender could ever be 'unfair'").

competition.[355] In conducting this analysis, bureau guidance suggests that benefits may include lower prices or wider availability of financial services, while costs may include "the costs to society as a whole of any increased burden."[356] In the payday lending context, the low success rate of repeated withdrawal attempts did not outweigh the costs imposed on already distressed borrowers.[357]

Here, unrestricted garnishment benefits creditors by allowing collection of the full value of a debt without regard to a debtor's ability to pay.[358] These benefits may be passed onto consumers in the form of cheaper credit.[359] However, limiting garnishment, for example by applying CCPA limits to deposited wages,[360] does not eliminate the benefits of the practice; it merely delays repayment by permitting a debtor to retain a percentage of their earnings.[361] The relative convenience to creditors does not offset the onerous costs imposed on debtors and the public.[362] The ubiquity of state laws limiting debt collection speaks to a wide recognition of the social costs that the practice would impose if left unrestrained.[363]

Unrestricted bank account garnishment also constitutes an "abusive" practice because it takes unreasonable advantage of a consumer's lack of understanding of the material conditions of a loan.[364] A consumer's legal obligation to repay is a material condition of a loan.[365] In *Think Finance*, the bureau found the creditor's seizure of a bank account to be abusive because it took unreasonable advantage of the consumer's lack of awareness of state law limiting their obligation to repay.[366]

Unrestricted bank account garnishment likewise takes unreasonable advantage of a consumer's lack of understanding. Here, federal law places limits on the wages that a creditor may seize.[367] A debtor may close an account or cancel direct deposit, forcing a creditor to execute a garnishment against their employer, thereby ensuring that the federal garnishment limits are honored.[368] However, as seen in *Think Finance*, debtors are not likely to

---

355. *See infra* notes 358–63 and accompanying text.

356. CONSUMER FIN. PROT. BUREAU, CFPB CONSUMER LAWS AND REGULATIONS: UNFAIR, DECEPTIVE, OR ABUSIVE ACTS OR PRACTICES 3 (2022), https://files.consumerfinance.gov/f/documents/cfpb_unfair-deceptive-abusive-acts-practices-udaaps_procedures.pdf [https://perma.cc/36DL-TVRP].

357. *See* Payday, Vehicle Title, and Certain High-Cost Installment Loans, 82 Fed. Reg. at 54738.

358. *See generally* Zywicki, *supra* note 70, at 3 (discussing the market benefits of lax collection laws).

359. *See id.*

360. *See supra* Part III.A.3.

361. *See supra* notes 91–94 and accompanying text.

362. *See supra* notes 76–77 and accompanying text.

363. *See* CARTER, *supra* note 72, at 4 ("Every state has a set of exemption laws, intended to prevent creditors from pushing consumers and their families into destitution.").

364. 12 U.S.C. § 5531(d)(1); *see also supra* notes 122–25.

365. First Amended Complaint, *supra* note 267, ¶ 152.

366. *Id.* ¶¶ 154–55.

367. *See supra* Part I.C.1.

368. *See supra* note 332.

understand that the law offers such protections.[369] Creditors take unreasonable advantage of this lack of understanding when they empty a debtor's account. As in *Think Finance*, such acts are abusive within the meaning of the CFPA.[370]

Accordingly, unrestricted bank account garnishment is both an unfair and abusive practice and is therefore within the regulatory authority of the CFPB. To protect debtors from the substantial harms discussed above, the bureau should engage in rulemaking to limit the practice.

Indeed, there is administrative precedent for regulating unrestricted bank account garnishment that could serve as a model for future CFPB rulemaking. In 2011, the U.S. Department of the Treasury promulgated a rule that ended bank account garnishment for certain federal benefits.[371] Until that point, federal benefits were under siege by debt buyers.[372] In response to the tens of thousands of monthly account seizures,[373] the Department of the Treasury promulgated a rule that required banks to preserve exempt federal benefits in a bank account for two months before complying with a garnishment order.[374]

This rule could serve as a model for how to curtail abusive bank account garnishments. The CFPB should require banks to preserve a minimum amount of funds in a bank account before honoring a garnishment order.[375] Several states offer this type of protection for bank accounts.[376] Such a policy has the benefit of being simple to administer, as it does not require a debtor to take any action to assert an exemption, and it does not require the bank to determine the source of the funds, as is the case with federal benefits.[377]

Creditors may argue that a rule protecting a minimum amount in a bank account would make it nearly impossible to collect, and would thereby reduce the availability of credit to consumers overall.[378] For example, in 2018, a Connecticut bill proposed an automatic protection of up to $1,000 in a bank account.[379] In opposition, Encore Capital Group, the nation's largest debt buyer,[380] wrote that the bill would "mak[e] it impossible for creditors to obtain [deposited] funds, [and] would encourage consumers to shield money

369. First Amended Complaint, *supra* note 267, ¶ 145 ("Consumers were unlikely to know that that Subject States' usury laws . . . limited consumers' obligation to repay . . . .").

370. *See supra* note 366.

371. *See* 31 C.F.R. § 212 (2021).

372. *See* Saunders & Tyler, *supra* note 33, at 45.

373. *Id.*

374. 31 C.F.R. § 212.6 (2021).

375. The CFPB has regulatory authority over any entity that engages in offering or providing a consumer financial product or service, including banks. *See* 12 U.S.C. § 5481.

376. For example, in New York, the first $3,600 in an account is automatically protected. *See supra* note 106 and accompanying text.

377. *See* CARTER, *supra* note 72, at 24 (explaining the importance of self-executing protections).

378. *See infra* notes 381–82 and accompanying text.

379. *See* Kiel & Ernsthausen, *supra* note 33.

380. *Id.*

in a bank account."[381] Encore warned that, "[w]ithout the ability to recoup valid debt obligations, creditors will have little incentive to lend money to Connecticut consumers in the first place."[382]

However, contrary to the industry's contentions, protecting a minimum amount in a bank account does not make debt collection impossible. First, limiting bank account garnishment does nothing to diminish a creditor's entitlement to collect; creditors would remain able to seize all funds beyond a set minimum.[383] Moreover, such a rule would preserve a creditor's ability to execute a wage garnishment against a debtor's employer, allowing them to seize wages in compliance with the CCPA.[384] Although this might delay repayment, it does not make collection impossible. On the contrary, by indirectly enforcing the federal limits on wage garnishment, such a rule preserves a creditor's right to collect, while protecting debtors and the public from the severe costs of unlimited garnishment.

In conclusion, unrestricted bank account garnishment is an unfair and abusive practice.[385] As such, pursuant to its UDAAP authority, the CFPB should engage in rulemaking to limit the practice. In designing a rule, the CFPB should seek to protect a minimum amount in a bank account from garnishment. Such a rule preserves the rights of creditors to collect, while protecting debtors and the public from the onerous costs of unfair and abusive bank account garnishment.

CONCLUSION

Since the CCPA's enactment in 1968, the consumer credit industry has dramatically changed. Today, nearly seventy million Americans have a debt in collections, and creditors file millions of actions annually to collect outstanding debts. As indebtedness has skyrocketed, the law has failed to keep pace to protect debtors and the public from the onerous social costs of unrestrained debt collection.

To afford debtors the full protections of the CCPA, courts should enforce its provisions to protect wages deposited into a bank account. Alternatively, the CFPB should engage in rulemaking to limit the unrestrained garnishment of bank accounts as an unfair and abusive practice. These interventions will preserve a creditor's ability to collect, while shielding debtors and their families from destitution.

---

381. Memorandum from Sonia Gibson, Senior Manager, Gov't Affs., Encore Cap. Grp., to Joint Comm. on Banking, Connecticut State House of Reps. (Mar. 14, 2018), https://s3.documentcloud.org/documents/7221453/Document-Encore-Connecticut-Bill-Oppose.pdf [https://perma.cc/ACG9-V67P].

382. *Id.*

383. For example, the rule promulgated by the Department of the Treasury indicates that if no exempt benefits are contained in an account, then the bank "shall follow its otherwise customary procedures for handling the garnishment order." 31 C.F.R. § 212.5 (2021).

384. *See supra* Part I.C.1.

385. *See supra* notes 338–70 and accompanying text.