

Consumer Financial Protection Bureau Penalizes Bank of America for Improper Garnishment Practices

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On May 4, 2022, the Consumer Financial Protection Bureau (CFPB) ordered Bank of America to pay a \$10 Million civil penalty for its improper garnishment practices. According to the consent order, Bank of America improperly processed certain bank account garnishment notices from courts located outside of the state in which the bank account was located, as defined by the bank's account agreement. The consent order states that the bank failed to consider: 1) whether the issuing state permits garnishments of bank accounts not physically located within that state; and 2) whether to apply the garnishment exemption laws of the state where the customer resides.

The CFPB further provides the following guidance for the processing of out-of-state garnishment notices:

- If an out of state garnishment notice is received from a court that is in a "Restriction State" (i.e. a state that prohibits or otherwise restricts garnishments of out-of-state bank accounts), do not process the garnishment and inform the issuing court that there are no garnishable assets located within the state. The Order states that "Restriction States" "include but are not limited to Alabama, Arizona (before August 2019), California, Florida (after August 2014) and Oregon."
- If an out of state garnishment notice is received for an account that is not located in the same state where the court is located, and the court itself is not located in a "Restriction State," notify the issuing court or other issuing entity that the relevant deposit account is not located in the state from which the out of state garnishment notice was issued.
- Do not require customers to sign deposit account agreements that require consumers to waive any state and/or federal law objection rights that are not waivable under state and/or federal law.

In short, banks should think carefully about how and whether to process garnishment orders where the bank account at issue is not located in the same state as the court that issued the garnishment

order, including an evaluation of these questions in the context of the specific language in a bank's deposit account agreement. Further, in light of the CFPB's order, all banks should review their garnishment processing procedures and their deposit account agreements to ensure that both are in line with the CFPB's requirements. Given the complexities and evolving nature of state law in these areas, the implications of the CFPB's order should be considered on an ongoing basis. This alert does not consider any specific state law. State garnishment laws can vary significantly state by state. Please reach out to your Vorys attorney with any questions or concerns as to how this order might apply to your banking practices.