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## CFPB Finds UDAAP Violations on Garnishment Practices

**Legal Update**

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In early May 2022, the Consumer Financial Protection Bureau (CFPB) entered into a consent order with Bank of America, N.A. (BoA) regarding BoA's garnishment practices. While BoA did not admit or deny the facts or conclusions of law presented in the consent order, it agreed to refund or cancel at least \$592,000 in garnishment-related fees paid by affected customers, to pay a civil money penalty of \$10,000,000, to review and reform its garnishment-related practices, and to cease including language in consumer-facing contracts that attempted to limit consumers' right to challenge garnishment.

This case is an important reminder to review your bank's garnishment-related practices and language in deposit agreements. Additionally, it reinforces the overall regulatory trajectory toward more frequent and zealous enforcement activities regarding unfair, deceptive, or abusive acts or practices (UDAAP).

### Bank Account Garnishment

Bank account garnishment is a process used by a creditor to recover directly from the debtor's bank account amounts a debtor owes. Each state has its own judicial process and laws governing a creditor's ability to recover, and certain states restrict or prohibit garnishment from bank accounts located in a state other than the state that issues the garnishment. To garnish a bank account lawfully, there must be appropriate jurisdiction over the financial institution that holds the debtor's bank account, the bank account itself, and the debtor/depositor. To complicate matters, there are also federal law restrictions on certain types of garnishment. Accordingly, banks must be careful in their approach to ensure they are applying all of these overlapping factors correctly.

## The Alleged Violations

*Applying the wrong state's garnishment law* – The consent order alleges that in freezing accounts, charging fees, and garnishing funds, BoA inappropriately applied the garnishment protection and exemption rights of the state that issued the garnishment order rather than the state where the debtor/customer resides, thereby deceiving its customers about their rights and failing to protect the full amount of their funds. The CFPB also concluded that BoA should have disclosed to the entity issuing the notice of garnishment that the funds to be garnished were located in a different state, thereby putting such entity on notice of the potential mismatch in jurisdiction.

*Including unenforceable language in deposit agreements* – According to the consent order, BoA's deposit account agreements required customers to agree not to contest legal process of a garnishment and disclaimed liability for BoA's compliance with that legal process – language which BoA referenced and relied upon in communications with customers who complained about garnishment issues. The CFPB concluded that this misrepresentation prevented customers from pursuing legal claims against BoA and disregarded the fact that certain federal and state laws prohibit banks from requiring customers to waive certain protections.

## Key Takeaways

### 1. Review Garnishment-Related Practices

Out-of-state garnishment is not necessarily unenforceable but must be carried out according to the legal requirements and procedures of applicable state law. Banks should therefore treat this case as a timely reminder to review policies and procedures for handling out-of-state garnishment requests to ensure the right steps will be taken to determine the correct applicable law and ensure compliance. Take the time to carefully review the law of each state where the bank has branches and customers and add this to the list of items to be reviewed regularly to avoid missing any changes in applicable law. The analysis to decide the proper approach to a particular garnishment request is fact-specific and can be complicated, especially for banks whose footprint crosses state lines. Keep in mind that solid policies and procedures are only part of the equation – making sure relevant employees receive regular training and proper instruction/supervision on the subject is critical.

### 2. Review Deposit Agreements

BoA's deposit agreements with customers contained language regarding legal remedies that the CFPB deemed unenforceable, unfair, and deceptive. Mindful of this consent order, banks should complete a careful review of their own deposit agreements for any similar problematic or unenforceable language. Contract language regarding liability, waivers, and legal remedies can be delicate and influenced by myriad applicable laws, rules, and regulations.

### 3. Expect More (and Broader) UDAAP Enforcement

This consent order is consistent with other signals that the CFPB is stepping up its UDAAP enforcement efforts under the Biden administration. It also demonstrates that the CFPB is willing to use its UDAAP authority to reach beyond federal law to the interpretation and enforcement of state law. While community banks generally are not subject to the CFPB's supervisory authority, the CFPB still wields strong influence. Not only does the CFPB hold the pen on the consumer protection regulations applicable to all banks, but other state and federal regulators sometimes give weight to its opinions and interpretations when carrying out their own supervisory activities. As the regulatory tides continue to turn, we can safely assume that UDAAP issues will continue to be a priority for all financial industry regulators, and likely in broader and more innovative ways.