

# Bank Agrees to Pay \$700,000 for Illegally Freezing Bank Accounts and Turning Over Consumer Funds to Debt Collectors

April 19, 2024

A South Dakota-based national bank has agreed to pay more than \$700,000 to settle charges from the New York State Attorney General that the Bank violated New York’s Exempt Income Protection Act (the “EIPA”)[1] by unlawfully freezing customer accounts and illegally transferring money to debt collectors. This appears to be the first time a financial institution has faced a governmental penalty for violating the EIPA, a law that took effect in 2009.

On April 17, 2024, New York Attorney General Letitia James secured an agreement from Pathward, National Association (“Pathward”) to pay a total of \$706,664.67 for violating the EIPA. As a result of the [Assurance of Discontinuance](#) between the Office of the Attorney General (“OAG”) and Pathward (the “Assurance”), Pathward is required to make refunds to dozens of New Yorkers in the Bronx, Manhattan, Brooklyn, and Queens amounting to \$79,664.67, and to pay \$627,000 in penalties and costs.

## I. The Assurance of Discontinuance

### **A. EIPA Overview**

The EIPA prohibits debt collectors from obtaining funds that include certain government benefits and prevents financial institutions from freezing bank accounts where balances are subject to statutory protections under New York law. Generally, the EIPA provides that financial institutions, upon receipt of account restraints, levies, or certain other legal process related to enforcement of judgments (collectively, “Legal Process”), must not restrain consumers from using the balance of funds in their accounts that is the greater of: (1) statutorily exempt funds, such as social security benefits, veterans’ benefits, and disability insurance (the “Exempt Funds”) up to an amount set every three years by New York’s Department of Financial Services (“DFS”); or (2) their protected wages (“Protected Wages”) based on where they work in New York State,[2] as explained below.

A financial institution must not honor Legal Process unless the applicable consumer accounts contain certain minimum balances. The EIPA provides that where bank accounts contain Exempt Funds and the account balances are below the current limit of \$3,425 set by DFS (the “Exempt Funds Threshold”), any Legal Process is deemed void by operation of law and financial institutions must not restrain accounts at all. In addition to considering the Exempt Funds Threshold, the EIPA bars financial institutions from restraining Protected Wages in bank accounts.

If the amount of the Protected Wages in an account is less than the amount applicable to that consumer (the “Wage Threshold”), the Legal Process is also deemed void by operation of law and financial institutions cannot restrain such accounts at all.

## **B. Pathward’s Actions**

### ***Deceptive Language in Account Agreements***

Pathward issues debit cards, prepaid cards, payroll cards, and gift cards, primarily through third-party servicers. These third-party servicers market prepaid reloadable debit cards online or at retail locations, and Pathward issues those cards and holds the funds loaded onto them.

The OAG’s investigation of Pathward’s Legal Process handling found that Pathward’s account agreements did not accurately describe consumers’ rights under the EIPA and as a result, were deceptive. Pathward’s Legal Process section in their template cardholder and demand deposit account agreements purported to constitute agreements by consumers to waive liability that, as a matter of New York law, cannot be waived. The Legal Process section also stated that Pathward may honor legal process that, under New York law, is deemed void. Lastly, it stated that Pathward had no obligation to assert exemptions to Legal Process when, as a matter of New York law, banks such as Pathward are statutorily required to review for exemptions and assert them.

### ***Pathward and Certain Servicers Restrained Accounts and Paid Out Funds in Violation of the EIPA***

The OAG’s investigation also found that Pathward and certain of Pathward’s servicers restrained accounts and paid out funds in violation of the EIPA. On several occasions since 2016, Pathward, after being served with Legal Process, instructed its servicers to place account restraints on bank accounts and pay over funds in those accounts to debt collectors, even when accounts contained Exempt Funds or when account balances were below the Exempt Funds Threshold or Wage Threshold. Additionally, Pathward failed to direct its servicers to comply with the domestication policy that Pathward adopted in 2020 or to otherwise ensure that its servicers handled Legal Process in a manner that complied with the EIPA. On more than 1,400 independent occasions since 2016, in response to Legal Process relating to accounts of New York residents, certain of Pathward’s servicers operationally restrained Pathward bank accounts with balances below the Exempt Funds Threshold or Wage Threshold.

The Assurance states that since 2016, in response to service of Legal Process, Pathward and its servicers caused tens of thousands of dollars held by New York residents in Pathward bank accounts with balances below the Exempt Funds Threshold or the Wage Threshold to be illegally paid out. Further, Pathward and its servicers caused more than \$100,000 held by New York residents in Pathward bank accounts with balances below the Exempt Funds Threshold or the Wage Threshold to be illegally restrained.

### ***Pathward Failed to Prevent Deceptive Acts and Practices by Certain of its Servicers***

According to the Assurance, Pathward’s servicers adopted procedures for the handling of Legal Process that are contrary to the EIPA’s requirements. For example, one servicer adopted a policy requiring consumers to provide written documentation stating that the servicer had no liability to debt collectors before account restraints could

be released. In addition, Pathward's servicers also provided deceptive information to consumers about Legal Process by describing it as "court orders" rather than documents generated by debt collectors and incorrectly informing consumers that nothing could be done to remove restraints. Pathward's servicers also referred inquiring consumers directly to debt collectors. Debt collectors, in turn, attempted to negotiate deals in which they would agree to release accounts from restraints in exchange for a portion of the account balance.

## **C. Relief**

### ***Changes to Business Practices***

The Assurance requires Pathward to comply with applicable laws and to deliver guidance to each of its servicers and ensure that each servicer's policies and procedures have been revised in accordance with the guidance to be delivered by Pathward.

Pathward must also provide the OAG with proposed revisions to the "Legal Process" section of all standard-form account agreements used by servicers in which funds loaded onto the card are consumer-owned and legally subject to Legal Process.

### ***Monetary Relief***

Pathward must pay to the State of New York \$79,664.67 in restitution and \$627,000 in penalties and costs. The OAG will distribute restitution to affected consumers in a fair and equitable manner as determined in its sole discretion.

### ***Ongoing Monitoring & Compliance***

Pathward must provide the OAG a six-month report sufficient to show, for each Legal Process served on Pathward or a servicer, specific information demonstrating their compliance with applicable New York law.

## **II. Conclusion**

This appears to be the first time that a party has been assessed a governmental penalty in connection with violations of the EIPA. This penalty is a reminder that financial institutions serving New York residents must have proper policies and procedures to comply with the EIPA, as well as similar requirements under a federal regulation of the U. S. Department of Treasury.<sup>[3]</sup>

Cullen and Dykman LLP has been advising financial institutions on the EIPA ever since the law was enacted, and regularly provides training sessions on EIPA compliance and helps institutions develop policies and procedures for such compliance.

This advisory is a general overview of the Assurance and is not intended as legal advice. The Assurance and the requirements of the EIPA are very detailed and should be reviewed in their totality.

If you have any questions about the Assurance or the EIPA, or are interested in employee training on this subject, please feel free to contact Joseph D. Simon at (516) 357-3710 or via email at [jsimon@cullenllp.com](mailto:jsimon@cullenllp.com), Kevin Patterson at (516) 296-9196 or via email at [kpatterson@cullenllp.com](mailto:kpatterson@cullenllp.com), Elizabeth A. Murphy at (516) 296-9154, or via

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## Footnotes

[1] New York’s Exempt Income Protection Act amended various provisions of Article 52 of the New York Civil Practice Law and Rules (“CPLR”).

[2] The current New York State minimum wage is \$16.00 in New York City, Long Island, and Westchester County, and \$15.00 in all other parts of New York State. The EIPA requires the applicable minimum wage to be multiplied by 240 hours to calculate a consumer’s Protected Wages. The EIPA thus currently bars financial institutions from restraining up to either \$3,840 or \$3,600 of Protected Wages in bank accounts, depending on where consumers work in New York.

[3] 31 CFR Part 212.

## Practices

- Banking and Financial Services

## Attorneys

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