

Notice to Financial Institutions: Benefit Exemption from Restraining Notices and Levies to Increase as of April 1, 2021

March 31, 2021

Under New York's Exempt Income Protection Act ("EIPA"), certain funds in deposit accounts are exempt from most restraining notices and levies. One exemption under the EIPA is for the direct deposit or electronic payment of certain statutorily exempt funds (such as social security) into the deposit account, with the amount of the exemption adjusted every three years based on inflation. That amount will increase to \$3,000 as of April 1, 2021.

The EIPA took effect in 2009 and, among other things, requires financial institutions to exempt certain funds in deposit accounts from the reach of creditors seeking to restrain or levy on those accounts. There are two exemptions under the EIPA: (1) for a calculated portion of wages; and (2) for the direct deposit or electronic payment of amounts "reasonably identifiable as statutorily exempt" funds during the 45-day period preceding the service of the restraining notice or levy. With respect to this second exemption, if the account had received the direct deposit or electronic payment of exempt funds within the 45-day period, a set amount of the funds in the account cannot be restrained or levied against. The set amount has now been increased from \$2,850 to \$3,000 as of April 1, 2021. This amount increases every three years based on inflation and will adjust again on April 1, 2024.

The New York State Department of Financial Services ("DFS"), in posting the new exemption amount on its website, has stated that "[t]his amount is effective April 1, 2021 and shall not apply to cases commenced before April 1, 2021." It is not clear what DFS means by "cases," but it would seem reasonable for financial institutions to start applying the new benefit amount for restraining notices and levies received on and after April 1, 2021.

Please note that the separate wage exemption under the EIPA, which is tied to the minimum wage, will often result in a higher exemption amount for depositors than the \$3,000 benefit exemption. Details on how to calculate the amount of a wage exemption is available [here](#). In addition, federal regulations provide an exemption for federal benefit payments that may also result in a higher exemption amount than under New York law.

Please note that this advisory is a general overview of the application of the EIPA and is not intended as legal advice. The requirements of the EIPA are very detailed and must be reviewed in their totality and in connection with federal rules protecting certain funds from garnishment.

If you have any questions regarding the EIPA or the exemption of depositor funds from restraint or levy, 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, Kevin Patterson at (516) 296-9196 or via email at kpatterson@cullenllp.com, Elizabeth A. Murphy at (516) 296-9154, or via email at emurphy@cullenllp.com, or Mandy Xu at (516) 357-3850 or via email at mxu@cullenllp.com.

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