



Notice to Financial Institutions: New York State Benefit Exemption for Restraining Notices and Levies Increased as of April 1, 2024

April 1, 2024

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 a deposit account, with the amount of the exemption adjusted every three years based on inflation. That amount has increased to \$3,425 as of April 1, 2024.

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 increased from \$3,000 to \$3,425 as of April 1, 2024. This amount increases every three years on April 1 based on inflation and will adjust again on April 1, 2027.

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, 2024 and shall not apply to cases commenced before April 1, 2024." 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, 2024.

Please note that the separate wage exemption under the EIPA, which is tied to the minimum wage, will generally result in a higher exemption amount for depositors than the \$3,425 benefit exemption. Details on the amount of a wage exemption as of the date of this advisory 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 Gabriela Morales at (516) 357-3850 or via email at gmorales@cullenllp.com.

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