

## **Guidance on CARES Act Payments**

New York Attorney General Letitia James is hereby issuing guidance to make clear that emergency stimulus payments authorized by the CARES Act are exempt from garnishment under New York law, any creditor or debt collector that garnishes such payments has violated New York and federal law, and our office will aggressively prosecute such violations.

### **Background**

On March 27, 2020 the President signed the Coronavirus Aid, Relief, and Economic Security Act (the “CARES Act”) to provide direct and immediate economic assistance to the millions of individuals and businesses who have been adversely effected by the COVID-19 pandemic and accompanying national emergency.<sup>1</sup> To that end, Section 2201 of the CARES Act authorizes the U.S. Department of the Treasury to issue “Recovery Rebates,” one-time cash payments to eligible individuals up to \$1,200 for an adult and \$500 for a child. These means-tested payments are intended to help struggling Americans provide for their basic needs during the COVID-19 crisis,<sup>2</sup> and initial reports suggest recipients are using them that way.<sup>3</sup>

Notwithstanding the emergency and life-sustaining purposes of these payments, the CARES Act does not explicitly designate the payments as exempt from garnishment, as other government payments are.<sup>4</sup>

### **CARES Act Payments Are Exempt from Garnishment Under New York Law**

Under New York law, certain types of property are exempt from execution, levy, attachment, garnishment, and other legal process by a judgment creditor seeking to satisfy a monetary judgment, including public benefits such as public assistance, social security, and veterans’ and retirement benefits.<sup>5</sup> The New York Court of Appeals has held that exemption statutes “are to be construed liberally in favor of debtors” because exemptions “serve the important purpose of protect[ing] the debtor’s essential needs.”<sup>6</sup> The statutes exempting public

<sup>1</sup> See <https://www.congress.gov/116/bills/hr748/BILLS-116hr748enr.pdf>.

<sup>2</sup> As Senators Sherrod Brown (D-OH) and Josh Hawley (R-MO) recently explained in a letter urging the Treasury Department to protect CARES Act payments: “Congress included this critical relief in order to help American families struggling to pay for food, medicine, and other basic necessities during the novel coronavirus-19 (COVID-19) pandemic and resulting economic crisis.” Sherrod Brown and Josh Hawley, Apr. 9, 2020 Letter, *available at* [https://www.banking.senate.gov/imo/media/doc/Mnuchin%20Letter%20to%20Treasury\\_April%209.pdf](https://www.banking.senate.gov/imo/media/doc/Mnuchin%20Letter%20to%20Treasury_April%209.pdf).

<sup>3</sup> See Heather Long, *The \$1,200 Stimulus Checks Are Arriving. People Are Mostly Spending Them on Food*, Wash. Post, Apr. 14, 2020, *available at* <https://www.washingtonpost.com/business/2020/04/14/1200-relief-checks-have-begun-arriving-bank-accounts-people-are-mostly-spending-it-food/>.

<sup>4</sup> See 31 C.F.R. § 212.2(b) (identifying federal benefits exempt from garnishment).

<sup>5</sup> See C.P.L.R. 5205(l)(2). Most of these exemptions – including the exemption for public assistance – “do not apply when the state of New York, or any of its agencies or municipal corporations is the judgment creditor, or if the debt enforced is for child support, spousal support, maintenance or alimony.” C.P.L.R. 5205(o).

<sup>6</sup> See *In re Santiago-Monteverde*, 24 N.Y.3d 283, 292 (2014) (interpreting exemptions available under New York’s Debtor and Creditor Law) (internal citation and quotation marks omitted).

benefits was not intended to be an exhaustive list of types of income exempt from garnishment; instead, it compiled the types of payments already deemed exempt by other statute and granted additional protections to debtors with those types of income.

CARES Act payments are similarly aimed at the debtors' essential needs, and therefore should not be subject to garnishment and similar legal process. Banking institutions are advised that they should treat CARES Act payments as subject to the same protections as statutorily exempt payments.<sup>7</sup>

### **The NYAG Will Treat – and Prosecute – Garnishment of CARES Act Payments As a Violation of Local, State, and Federal Law**

New York Executive Law § 63(12) authorizes the NYAG to bring an action “[w]henver any person shall engage in repeated fraudulent or illegal acts or otherwise demonstrate persistent fraud or illegality in the carrying on, conducting or transaction of business.” Similarly, Section 349 of New York’s General Business Law declares unlawful “[d]eceptive acts or practices in the conduct of any business, trade or commerce or in the furnishing of any service in this state,” and authorizes the NYAG to bring an action “to enjoin such unlawful acts or practices and to obtain restitution of any moneys or property obtained directly or indirectly by any such unlawful acts or practices.” It is the NYAG’s position that CARES Act payments are exempt from garnishment, and therefore any person who garnishes or attempts to garnish these payments has engaged in fraudulent or illegal conduct under Executive Law § 63(12) and deceptive conduct under General Business Law § 349.

The NYAG’s position is that garnishment of CARES Act payments would constitute “illegal acts” because such garnishment would violate:

- The New York City Consumer Protection Law’s prohibition of false, deceptive, or misleading conduct, including “the representation or implication that nonpayment of any debt will result in . . . the seizure, garnishment, attachment, or sale of any property or wages of any person unless such action is lawful and the debt collector or creditor intends to pursue such action,”<sup>8</sup> and “the threat to take any action that cannot legally be taken or that is not intended to be taken.”<sup>9</sup>
- New York General Business Law § 601(8)’s prohibition of “claim[ing], or attempt[ing] or threaten[ing] to enforce a right with knowledge or reason to know that the right does not exist.”
- The Fair Debt Collection Practices Act’s prohibition of false, deceptive, or misleading conduct, including “[t]he representation or implication that nonpayment of any debt will result in the . . . seizure, garnishment, attachment, or sale of any property or wages of any person unless such action is lawful and the

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<sup>7</sup> See C.P.L.R. §§ 5222(h), 5222-a.

<sup>8</sup> N.Y.C. Rules & Regulations, tit. 6, § 5-77(d)(3).

<sup>9</sup> N.Y.C. Rules & Regulations, tit. 6, § 5-77(d)(4).

debt collector or creditor intends to take such action,”<sup>10</sup> and “[t]he threat to take any action that cannot legally be taken or that is not intended to be taken.”<sup>11</sup>

- The Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, Pub. L. No. 111–203, 124 Stat. 1376 (2010) (“Dodd-Frank”), which prohibits unfair, deceptive, and abusive acts or practices,<sup>12</sup> and authorizes State Attorneys General to enforce these prohibitions.<sup>13</sup> Under Dodd-Frank, an act or practice is unfair if it “causes or is likely to cause substantial injury to consumers which is not reasonably avoidable by consumers” and “such substantial injury is not outweighed by countervailing benefits to consumers or to competition.”<sup>14</sup> An act or practice is abusive if it:

(1) materially interferes with the ability of a consumer to understand a term or condition of a consumer financial product or service; or

(2) takes unreasonable advantage of –

(A) a lack of understanding on the part of the consumer of the material risks, costs, or conditions of the product or service;

(B) the inability of the consumer to protect the interests of the consumer in selecting or using a consumer financial product or service; or

(C) the reasonable reliance by the consumer on a covered person to act in the interests of the consumer.<sup>15</sup>

The NYAG will treat garnishment of CARES Act payments as unfair and abusive under Dodd-Frank. In addition, any person who knowingly or recklessly provides substantial assistance to a creditor or debt collector in garnishing CARES Act payments will face aiding and abetting liability under Dodd-Frank.<sup>16</sup>

Under certain circumstances, New York law may permit a bank to seize funds in a consumer’s account at the bank to pay a debt owed to the bank.<sup>17</sup> This is known as a bank’s right of setoff. It is the NYAG’s position that, because CARES Act payments are exempt from garnishment, they are also exempt from setoffs, and such setoffs would be unfair and abusive. The NYAG urges all financial institutions to follow the lead of the nation’s largest banks, which

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<sup>10</sup> 15 U.S.C. § 1692e(4).

<sup>11</sup> 15 U.S.C. § 1692e(5).

<sup>12</sup> 12 U.S.C. § 5531(a).

<sup>13</sup> 12 U.S.C. § 5552(a)(1).

<sup>14</sup> 12 U.S.C. § 5531(c)(1).

<sup>15</sup> 12 U.S.C. § 5531(d).

<sup>16</sup> *See* 12 U.S.C. § 5536(a)(3).

<sup>17</sup> *See* N.Y. Debt. & Cred. Law § 151.

are reported to have paused collection on negative account balances to give their customers access to vital stimulus payments.<sup>18</sup>

**Scope of This Guidance**

This guidance only addresses the exemption for payments authorized by the CARES Act. This guidance does not express an opinion on any other exemptions, the meaning of the term “public assistance” in other statutes, or the status of CARES Act payments in other contexts.

This guidance does not apply to any actions taken by the State of New York, including, but not limited to, any actions to collect past due child support.

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<sup>18</sup> See Emily Flitter and Alan Rappoport, Some Banks Keep Customers’ Stimulus Checks if Accounts Are Overdrawn, N.Y. Times, Apr. 16, 2020, available at <https://nyti.ms/3a8nWJC> (reporting that Bank of America, JPMorgan Chase, Citibank, and Wells Fargo are not exercising setoff rights against CARES Act payments).