National Consumer Law Center

Coronavirus Emergency: Why States Need to Act Now to Protect Families' Stimulus Payments

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WHY STATES SHOULD PROTECT FAMILIES' STIMULUS PAYMENTS

Protects Public Health

As a result of the $2.2 trillion CARES Act, the federal government will issue stimulus payments to millions of income-qualified Americans. The purpose of the checks is to help people pay for food, utilities, rent, medicine, and other basic necessities at a time when many have been told to stay home and have lost or will lose income. Garnishment of these funds by creditors represents a threat to families' livelihood and public health, with an estimated 47 million Americans projected to lose their jobs.

Garnishments Now Would Violate Due Process

When a creditor seeks to seize funds in a bank account, due process requires the debtor to be given notice of possible exemptions *and the opportunity for a prompt hearing to claim exemptions.* Aacen v. San Juan County Sheriff's Dept., 944 F.2d 691 (10th Cir. 1991). However, court closures or restrictions on the types of cases that are currently being heard will make it difficult for consumers to assert exemptions, especially in the limited period of time provided under some state laws. Additionally, stay-at-home orders in place in much of the country may make it difficult to access legal assistance, especially free lawyer-for-the-day clinics, forcing people to navigate the process alone.

Allowing judgment creditors to seize the stimulus payments when the recipients do not have meaningful access to the courts to assert their state rights to protect those payments would deny them due process.

WHAT STATE AND LOCAL GOVERNMENTS CAN DO TO PROTECT FAMILIES' STIMULUS PAYMENTS

Using judicial and executive orders, emergency regulations, and legislation, states and local governments can protect consumer stimulus payments from garnishment by:

- Staying the enforcement of all new and existing garnishment orders (Las Vegas and Washington, DC; see also Massachusetts and Texas);
- Staying all garnishment for debts owed to the state or local government (New York, North Carolina);
- Prohibiting state chartered banks and credit unions from seizing stimulus checks to repay a debt owed to the bank or credit union (the "banker's right of setoff"); and
- Clarifying that stimulus checks are exempt under existing state law and the garnishment of such funds is an unfair and deceptive practice. (Massachusetts and Ohio). Relevant exemptions may include exemptions for public benefits, cash in bank accounts, or wildcard exemptions.

Questions? Contact NCLC attorneys April Kuehnhoff (akuehnhoff@nclc.org) or Andrea Bopp Stark (astark@nclc.org), or visit NCLC's webpage about COVID-19 & Consumer Protections.