



April 17, 2020

STATES RESPOND TO FEDERAL ACTIONS RELATING TO COVID-19

A number of states have issued guidance and executive orders, and sent letters to federal agencies, relating to the emergency monetary relief many consumers are expecting to receive under the Coronavirus Aid, Relief and Economic Security Act (the "CARES Act").

Economic Impact Payments

On April 13th, 25 state Attorneys General and the Hawaii Office of Consumer Protection wrote a letter to the U.S. Department of Treasury Secretary Steven Mnuchin requesting that Secretary Mnuchin take immediate action to ensure that the emergency relief funds authorized by the CARES Act will not be subject to garnishment by creditors or debt collectors. The letter emphasizes that the CARES Act does not explicitly designate these emergency stimulus payments as exempt from garnishment, resulting in the potential garnishment by creditors or debt collectors, which would undermine the purpose of the CARES Act. The letter states that the CARES Act authorizes the Department of Treasury to issue regulations or other guidance as may be necessary to carry out the purposes of the CARES Act. The letter requests that Secretary Mnuchin immediately take any and all action necessary to designate CARES Act payments as exempt from garnishment, including by issuing a regulation or guidance designating CARES Act payments as "benefit payments" exempt from garnishment.

Credit Reporting

Also on April 13th, 22 state Attorneys General and the Attorney General of Puerto Rico wrote a letter to the Consumer Financial Protection Bureau ("CFPB") urging the CFPB to withdraw its recent guidance that it will step back from enforcing certain requirements of the Fair Credit Reporting Act ("FCRA") during the COVID-19 crisis, including not enforcing the CARES Act's amendment to the FCRA that requires lenders to report as current any loans that are subject to a COVID-19-related forbearance or other accommodation and not taking action against consumer reporting agencies when they fail to investigate consumer disputes in a timely fashion. See our ALERT of April 2, 2020. The letter states that the CFPB's announcement that it will step back from enforcing the CARES Act's requirements could discourage consumers from taking advantage of the forbearances

and other accommodations that lenders are offering and that lenders that work to comply with the CARES Act will be at a competitive disadvantage to those that flout its furnishing requirements, harming both honest businesses and consumers. The letter concludes by requesting that the CFPB to immediately withdraw its recent guidance and resume vigorous oversight of consumer reporting agencies and enforcement of the FCRA. The letter emphasizes that even if the CFPB refuses to act, the states themselves will continue to defend consumers and families and will not hesitate to enforce the FCRA's deadlines against companies that fail to comply with the law.

State Guidance

The Massachusetts and Ohio Attorneys General have issued guidance that declares that the emergency monetary assistance provided pursuant to the CARES Act is exempt from attachment, garnishment or execution by creditors and debt collectors as a matter of state law. Both states emphasized that any action taken by a creditor or debt collector to garnish, attach or otherwise seize the funds violates state law and the state has the power to enforce the exemption. The Illinois Governor issued an executive order that suspends specific Illinois statutes that permit the service of a garnishment summons, wage deduction summons or a citation to discover assets on a consumer debtor or consumer garnishee. Similarly, the Washington Governor issued a proclamation temporarily prohibiting garnishment to collect judgements for consumer debt stating that allowing garnishments would "risk the life, health and safety of people who are impacted by the economic downturn."

Other states also have issued guidance and orders prohibiting general garnishments to collect consumer debt and regulating creditor collection practices. We will continue to monitor federal and state regulators issuing guidance to financial services providers during the COVID-19 crisis. Please let us know if you need copies or have any questions. □

✧ *Mike Tomkies and Lindsay Valentine.*

Darrell L. Dreher
ddreher@dtlaw.com

Elizabeth L. Anstaett
eanstaett@dtlaw.com

Emily C. Cellier
ecellier@dtlaw.com

Susan L. Ostrander
sostrander@dtlaw.com

2750 HUNTINGTON CENTER
41 S. HIGH STREET
COLUMBUS, OHIO 43215
TELEPHONE: (614) 628-8000 FACSIMILE: (614) 628-1600
WWW.DTLAW.COM

To see previously sent ALERTS, visit our website at www.dtlaw.com

To decline future ALERTS, please contact us at ALERTS@DTLAW.COM. This ALERT has been prepared for informational purposes only. It does not constitute legal advice and does not create an attorney-client relationship.

Michael C. Tomkies
mtomkies@dtlaw.com

Susan M. Seaman
sseaman@dtlaw.com

Lindsay P. Valentine
lvalentine@dtlaw.com

Judith M. Scheiderer
jscheiderer@dtlaw.com

Robin R. De Leo
robin@deher-la.com