

Economic Impact Payments Authorized by the CARES Act Are Not Exempt From Garnishment in Florida

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Millions of Americans have already received their “economic impact payment” under the Coronavirus Aid, Relief, and Economic Security (CARES) Act signed into law on March 27, 2020. For many people, including judgment debtors, the economic impact payment is automatically calculated by the Internal Revenue Service and received as a direct deposit into the bank account provided by the recipient on his or her most recent tax return. Those payments can be for up to \$1,200 per qualifying adult (up to \$2,400 in the case of eligible individuals filing a joint return), plus an additional \$500 per child under 17 years old.

One issue that has arisen since Congress passed the CARES Act is whether these economic impact payments may be frozen by financial institutions that are served with a writ of garnishment. In Florida, under the state’s statutory garnishment procedures, the answer is yes. Unlike the express protections related to federal student loans, federally backed mortgages, bankruptcy, and constraints on the collection of debts owed to the federal government specifically provided under the CARES Act, the CARES Act does not exempt or otherwise protect the economic impact payments from garnishment by judgment creditors.

Under Florida law, a financial institution served with a writ of garnishment by a judgment creditor is obligated to:

- Identify accounts belonging to any debtor named in the writ

- Freeze those accounts
- Serve an answer to the writ that sets forth the amount contained therein

However, certain federal regulations (which preempt state law) protect “benefit payments” from being accessed or garnished by creditors other than the U.S. government and certain state agencies. “Benefit payment” is defined in 31 C.F.R. § 212.3 as “a Federal benefit payment referred to in § 212.2(b) paid by direct deposit to an account with the character ‘XX’ encoded in positions 54 and 55 of the Company Entry Description field and the number ‘2’ encoded in the Originator Status Code field of the Batch Header Record of the direct deposit entry.” The key factor in this analysis is whether the payment is a federal benefit payment referred to in section 212.2(b).

Federal benefit payments covered by section 212.2(b) include payments from the following authorities:

- Social Security Administration (Social Security benefits and Supplemental Security Income benefits)
- Department of Veterans Affairs (veteran benefits)
- Railroad Retirement Board (federal Railroad Retirement, unemployment, and sickness benefits)
- Office of Personnel Management (Civil Service Retirement System benefits and Federal Employees Retirement System benefits)

Under the federal regulations mentioned, financial institutions must therefore determine whether any account held by the judgment debtor received exempt federal benefit payments within the two-month “look-back period” defined in 31 C.F.R. § 212.3. If any such payments are identified within the two-month time frame, then that amount may not be frozen and the financial institution must ensure that the account holder has full and customary access to the protected amount.

The economic impact payments, which are issued by the Department of the Treasury, are not paid by any of the authorities set forth in section 212.2(b). Therefore, these payments do not fall within the definition of “benefit payment” under 31 C.F.R. § 212.3. Accordingly, a financial institution served with a writ of garnishment issued by order of a Florida court is not obligated to ensure the judgment debtor has access to the economic impact payment and must freeze those funds pursuant to the writ.

This is the current status of the law in the state of Florida. Financial institutions are urged, however, to pay close attention to the different positions taken by other states. The Ohio attorney general, for example, released an official statement on April 13, 2020, that payments under the CARES Act fall within an exemption from attachment, garnishment, or execution pursuant to Ohio Revised Code

section 2329.66(A)(12)(d). Similarly, the New York attorney general issued official guidance on April 21, 2020, “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 [the New York attorney general’s] office will aggressively prosecute such violations.”

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