

Garnishment of Economic Impact Payments Under the CARES Act

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Commentary provided by [Patrick G. Brugger](#).

With the passage of the Coronavirus Aid, Relief, and Economic Security (CARES) Act, millions of Americans, many of whom are judgment debtors, will be receiving “economic impact payments” from the Department of the Treasury. Those payments range from \$1,200 for qualifying individuals or head of household filers, to \$2,400 for married filing jointly, plus \$500 per child. Other than constraints on collection of debts owed to state and federal governments, there is nothing in the CARES Act that makes the payments exempt or otherwise protected from garnishment. As Sens. Sherrod Brown and Josh Hawley expressed in an April 9 letter to the Department of the Treasury, “the CARES Act direct payments are at risk of being seized by debt collectors” unless further action is taken. With many of the economic impact payments being paid via direct deposit this week, some are bracing for an uptick in service of writs of garnishment.

The Garnishment Process

A writ of garnishment is a device often employed by creditors to collect on judgments. It works like this: the creditor (called the garnishor) identifies a third party (the garnishee) that might be holding money or property belonging to the debtor. The garnishor then applies to the clerk for the issuance of a writ of garnishment. Once issued by the clerk, the garnishor serves the writ upon the garnishee. Within 20 days of service, the garnishee must serve an answer to the writ indicating whether it holds any money or property belonging to the debtor. If so, the garnishee must hold the money or property and continue holding it until either the writ is dissolved or the court otherwise enters an order directing disposition after the garnishee and debtor fight over entitlement thereto. The garnishee is merely a neutral stakeholder. Furthermore, if a garnishee is in good faith doubt as to whether money should be held, the garnishment statute encourages them to err on the side of holding. However, some regulations prohibit financial institutions from holding certain funds.

Financial Institutions

Generally, when a financial institution is served with a writ of garnishment, it is obligated to identify accounts belonging to any debtor named in the writ, freeze those accounts, and serve an answer to the writ which sets forth the amount contained therein. As part of steps and, federal regulations require a financial institution to “look back” 60 days from the date of service of the writ to determine

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whether there have been any deposits of federal benefit payments. If any exist, that amount may not be frozen. For example, if an account contains \$1,000 on the date of service of the writ, but there were two Social Security payments totaling \$600 deposited in that account within the last 60 days, then the financial institution may only freeze \$400.

CARES Act Payments Can Be Frozen

The question then becomes: should Economic Impact Payments be held pursuant to the writ? The answer is "yes." Under existing regulations, a financial institution must locate "benefit payments" deposited within the last 60 days. A "benefit payment" is defined as "a Federal benefit payment referred to in Section 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." While coding of the deposit is one component, it is not dispositive. Rather, it is whether the payment is a "Federal benefit payment referred to in Section 212.2(b)," which is a payment from either Social Security Administration (including Social Security benefits and Supplemental Security Income benefits); Department of Veterans Affairs (veterans benefits); Railroad Retirement Board (Federal Railroad retirement, unemployment and sickness benefits); or Office of Personnel Management (including Civil Service Retirement System benefits and Federal Employee Retirement System benefits). Since Economic Impact Payments are not paid by any of those authorities, a financial institution should have no duty to release them to the debtor and must freeze them pursuant to the writ.

That said, as a practical matter, unless the creditor procured a writ several weeks ago which has yet to be served, it is doubtful that there will be a massive flood of garnishments over the next few weeks. The various administrative orders entered by courts across the state of Florida have virtually paralyzed nonessential proceedings such as garnishment, thereby making issuance of writs extremely difficult. Still, garnishees should be prepared to address this issue when it arises.

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Patrick G. Brugger

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