

## CLIENT ALERT

### Attorneys General Press the Federal Government to Protect Consumers' Relief Checks Under the CARES Act

April 20, 2020

As Coronavirus Aid, Relief, and Economic Security Act (“CARES Act”) payments are being made to Americans, many State Attorneys General have begun urging the United States Department of the Treasury (“Treasury”) to ensure money Americans receive under the CARES Act is shielded from debt collection efforts. They have also begun advocating for vigilant protection of consumer credit by the Consumer Financial Protection Bureau (“CFPB”).

On April 13, 2020, 25 bi-partisan State Attorneys General, led by New York, sent a letter to the Treasury asking that it “take immediate action to ensure” that the monetary relief allowed by the CARES Act is not subject to garnishment by debt collectors or creditors. The CARES Act allows the Treasury Department to issue regulations or guidance to carry out its purposes, and the letter’s signatories hope the Treasury Department will do so, by, for example, “issuing a regulation or guidance designating CARES Act payments as ‘benefit payments’ exempt from garnishment.” Ohio Attorney General Dave Yost offered further protection to Ohio consumers, issuing a notice to financial institutions and creditors, informing them that the CARES Act stimulus checks are exempted under Ohio law from “attachment, garnishment, or execution.” These mandates to protect consumers from debt collectors are not new in the debt collection space since the States have taken aggressive approaches historically to protect consumers. One historical example includes the Attorneys General objective to avoid debt collection practices that proved harmful during the 2008 mortgage crisis and financial meltdown.

Twenty-three bi-partisan State Attorneys General also asked the CFPB on April 13, 2020 to help enforce the CARES Act and to mandate that credit reporting agencies follow the Fair Credit Reporting Act (“FCRA”) during the pandemic. The Attorneys General stated that doing so would allow more consumers to avoid suffering damage to their credit. This request comes in response to recent pronouncements by the CFPB saying (1) it would not enforce an amendment to the FCRA requiring lenders to report loans as current that are affected by a COVID-19 accommodation and (2) that it would not act against consumer reporting agencies that violate the FCRA by failing to investigate consumer disputes within 30 days. The Attorneys General expressed concern that if the CFPB does not enforce the CARES Act requirements, consumers might not take advantage of accommodations, such as forbearances, offered by lenders. They also emphasize that declining to investigate consumer disputes could cause risk to consumers, especially in light of the novel situation and the prevalent COVID-19 related scams. Further, consumer reporting agencies legally must carefully and accurately report consumer credit, which requires following the FCRA and CARES Act directives. Finally, the Attorneys General promised to continue enforcing the FCRA deadlines against businesses that fail to adhere to the law, even if the CFPB declines to do so.

State Attorneys General have already been announcing that they expect businesses to bear losses related to the COVID-19 economic collapse. For example, several Attorneys General have recently requested that gyms cease billing for memberships consumers cannot use, either by freezing memberships or by honoring cancellation requests without charging a cancellation fee or imposing other conditions. Others are asking gyms to revoke restrictive cancellation policies, such as those requiring in-person cancellation. The recent letters by the Attorneys General demonstrate that they will continue efforts to enforce their

authority to protect consumers. They are likely to do so with extra vigor in the debt collection context, which has been of special interest historically.

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