COVID-19 Collections Impact Bulletin: State Responses (December 2020 Update)

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As 2020 comes to a close, it would be an understatement to say that the COVID-19 pandemic has significantly impacted the way we conduct business and live our everyday lives. With new and impending changes in both the economic and political landscape, financial institutions have had to adapt to ever-changing policies governing consumer loan servicing and debt collection.

In March of 2020, Burr published an article discussing the global pandemic's impact on collection practices. This Bulletin serves as an update to that non-exhaustive compilation of information. Burr will continue to provide updates as federal and state agencies create and amend their guidance.

WHAT MATTERS
Financial institutions, servicers, lenders, and debt collectors must stay up-to-date on evolving federal and state laws stemming from the COVID-19 pandemic, as such laws impact all facets of consumer loan servicing and debt collection.

State Responses

- **Alaska** – On April 9, 2020, the Alaska state legislature enacted SB 241, which extended the deadlines for legislation enacted in March. The new bill issued a moratorium on evictions, foreclosures, and repossessions, which expired on June 30, 2020. Additionally, the bill halted utility shut-offs arising from COVD-19-related financial hardships until November 15, 2020.

- **Arizona** – On April 24, 2020, the Arizona Department of Financial Institutions announced it was encouraging financial institutions to work with customers affected by COVID-19. While no mandate was issued, the department suggested that institutions could waive certain fees, increase ATM daily cash withdrawal limits, ease restrictions on cashing out-of-state and non-customer checks, increase credit card limits, offer payment accommodations (such as deferment or extended deadlines), or suspend foreclosure and eviction actions.

Governor Doug Ducey previously ordered a moratorium on small business evictions and residential evictions, which expired on May 31, 2020 and July 22, 2020, respectively.

- **California** – On March 17, 2020, Child Support Services stopped automatically placing bank levies for overdue child support during the COVID-19 crisis.

  The Department of Business Oversight issued guidance on March 21, 2020 that work from home prohibitions would not be enforced against escrow agents, finance lenders and servicers, student loan servicers, or residential mortgage lenders and servicers, thus allowing collection efforts to continue.

  On April 23, 2020, Governor Gavin Newsom issued Executive Order N-57-20 exempting stimulus payments and other COVID-19-related government financial assistance from attachment, levy, execution, or garnishment. Liens and setoffs were also prohibited, except as related to child support, spousal or family support, or criminal restitution payable to victims.

  On August 31, 2020, the state legislature enacted the COVID-19 Tenant Relief Act of 2020. This legislation provides eviction protection for tenants who fail to pay rent during the COVID-19 crisis. Landlords may go to small claims court to recover missing rent, but not until after March 1, 2021.

  Legislation enacted in 2019, which prevents debt collectors from seizing certain amounts from a consumer's bank account, went into effect on September 1, 2020. This creates an automatic exemption protecting an amount which satisfies the "minimum basic standard of adequate care for a family of four," to be adjusted annually. While this was enacted prior to the COVID-19 pandemic, the California legislature has acknowledged the beneficial impact the legislation has in the current economic situation.

  Additionally, several counties and municipalities have enacted protections to limit collection activities by local government during the COVID-19 crisis.

- **Colorado** – On June 29, 2020, the Colorado legislature enacted Senate Bill 20-211. This legislation prohibits judgment creditors from initiating new "extraordinary" collection actions, including garnishment, attachment, levies, or execution. Debtors must notify creditors if they are facing financial hardship due to COVID-19, but no additional documentation is required for protection. The protections are set to expire on February 1, 2021.

- **Connecticut** – On March 9, 2020, the Department of Banking issued a no action memorandum stating the department would not enforce provisions against working from home for licensed entities, including consumer collection agencies and other financial institutions, until December 31, 2020.

The Department of Banking issued guidance on March 17, 2020, encouraging financial institutions to work with borrowers whose ability to repay loans was affected by COVID-19. Additionally, the department issued guidance on April 16, 2020, strongly encouraging financial institutions to withhold the satisfaction of an overdraft or the offsetting of accounts for at least thirty days after stimulus payments were deposited.

- **Delaware** – On April 8, 2020, the state judiciary announced a moratorium on the collection of all civil, criminal, and traffic assessments other than those that relate to child support. Bench warrants for failure to pay and late fees for Voluntary Assessment Center obligations were also suspended. These provisions will last for the length of the Judicial Emergency, which is currently set to expire on January 3, 2020.

  On November 20, 2020, Governor John Carney issued the Third Revision to the Twenty-Seventh Modification of the Declaration of a State of Emergency for the State of Delaware Due to a Public Health Threat which, among other things, permits electronic foreclosure sales. Governor Carney also encouraged local law enforcement to refrain from removing individuals from their residential properties, unless the mortgage foreclosure action was issued before the declaration of the COVID-19 State of Emergency.

- **Idaho** – On March 16, 2020, the Department of Finance issued guidance stating it would take no action against licensees (including collection agencies), allowing them to temporarily work from home as long as they meet certain security requirements. This order was extended until December 31, 2020.

  On September 22, 2020, additional guidance was issued encouraging financial institutions to "meet the financial needs of customers and members affected by the Coronavirus" and encouraging them to "work constructively with borrowers and other customers in affected communities." This guidance is set to expire March 31, 2021.

- **Illinois** – On March 26, 2020, Governor J.B. Pritzker issued Executive Order 2020-16, which suspended the repossession of vehicles during the duration of the COVID-19 Gubernatorial Disaster Proclamation.

  On April 14, 2020, Governor Pritzker issued Executive Order 2020-25 suspending the service of garnishment summonses, wage deduction summonses, or citations to discover assets on consumer debtors or garnishees. This order is inapplicable to domestic support obligations. On April 24, 2020, and pursuant to the order, the Illinois Supreme Court announced that property up to $4,000, which had been garnished before the order but after March 8, 2020, must return to the debtor and funds which had been frozen, withheld, or seized should also return to the debtor.

On April 23, 2020, Governor Pritzker issued Executive Order 2020-30 prohibiting residential eviction actions and the enforcement of eviction orders for non-residential purposes, unless the tenants posed a direct threat to health or safety, or an immediate and severe risk to property. This was reissued by Executive Order 2020-72 on November 13, 2020.

All of the above executive orders were re-issued on November 13, 2020, upon Governor Pritzker's Executive Order 2020-71. They are currently in effect until December 12, 2020, but will likely be extended.

- **Indiana** – On March 24, 2020, the State Department Securities Commissioner issued guidance providing that licensees, including collection agencies, are not barred from working remotely temporarily during the COVID-19 pandemic.

  On April 3, 2020, the judiciary announced that state courts would not issue new writs of attachment, civil bench warrants, or body attachments until the expiration of the public health emergency. The state of emergency is currently set to expire on December 31, 2020.

  On April 20, 2020, the judiciary also announced the cessation of all garnishments of CARES Act stimulus payments through the end of the public health emergency.

- **Iowa** – On March 18, 2020, the Iowa Division of Banking issued guidance allowing licensees and registrants, including mortgage loan originators, money services businesses, loan companies, and other financial institutions, to work remotely during the COVID-19 pandemic, provided that the workers took steps to ensure the security of information. This lasts for the duration of the pandemic, and the current state of emergency is set to expire on December 10, 2020.

- **Kansas** – The Office of the State Bank Commissioner issued guidance on March 16, 2020, which was updated on August 27, 2020, stating that the decision of licensees and registrants to work remotely during the COVID-19 pandemic would be respected. A list of best practices is provided for securing information. The guidance expires at the end of the state of emergency, which is currently set for December 31, 2020.

- **Kentucky** – On March 18, 2020, Governor Andy Beshear directed that all enforced collection action be suspended during the COVID-19 emergency. This was reiterated by the Kentucky Department of Revenue on April 15, 2020.

  On September 4, 2020, Governor Beshear issued an executive order adopting the CDC's order imposing a nationwide moratorium on evictions and announcing a moratorium on residential evictions for tenants who submit a declaration regarding his or her inability to pay rent due to a COVID-19-related hardship. The moratorium expires on December 31, 2020.

On October 19, 2020, the governor issued an executive order placing a moratorium on disconnections for the non-payment of utility bills, which expired on November 6, 2020. Pursuant to the order, utility companies must create a payment plan for residential customers with late payments and waive all late fees through December 31, 2020.

- **Louisiana** – The Chief Justice of the Louisiana Supreme Court issued a letter to state judges encouraging them to take certain actions regarding fees, fines, and costs to assist those with financial hardships resulting from COVID-19. These actions include the suspension of due dates for payment of fees, costs, and fines, and refraining from referring defendants to third-party collectors, among others.

  The state legislature introduced Senate Bill 512 which would exempt any government payments or grants in response to COVID-19 from seizure, sale, attachment, or restraint under any process other than the payment of child or spousal support. The bill was referred to committee on May 4, 2020, but no further action has been taken.

  On November 5, 2020, Governor John Bel Edwards extended the COVID-19 state of emergency, which suspends certain practices relating to late fees. This state of emergency is set to expire on December 4, 2020.

  With respect to collection calls, telephone solicitations are generally barred during a state of emergency in Louisiana. However, before a moratorium on telephone solicitations can take effect, the governor must declare a state of emergency and the State Emergency Operations Center (SEOC) must order the Lousiana Public Service Commission (LPSC) to report to the SEOC. Because the SEOC has not ordered the LPSC to report, collection calls may continue in Louisiana.

- **Maryland** – On March 27, 2020, the Department of Labor issued guidance for businesses servicing or collecting consumer debts, encouraging them to take reasonable steps to offer assistance for struggling consumers during the COVID-19 pandemic.

  The April 3, 2020 executive order limiting foreclosures and repossessions remains in effect upon the most recent extension of the state of emergency, issued on November 25, 2020.

  On April 29, 2020, Governor Larry Hogan issued an executive order exempting CARES Act payments from garnishment under state law.

- **Massachusetts** – On March 11, 2020, the Division of Banks announced guidance permitting all mortgage loan originators and other licensees to work from home, provided that they meet certain requirements.

On March 27, 2020, Attorney General Maura Healey issued emergency regulations prohibiting creditors from taking certain collection actions. ACA International challenged these regulations, and on May 6, 2020, Judge Richard G. Stearns of the U.S. District Court enjoined their enforcement. More information may be found here.

On April 13, 2020, Attorney General Healey issued guidance stating that the CARES Act stimulus funds were exempt from seizure, garnishment, and attachment by creditors and debt collectors.

New legislation was introduced to guarantee housing stability and limit the collection of overdue rent for consumers lawfully residing in their home as of March 10, 2020. It is sponsored by the Joint Committee on Housing and is currently being considered by committees in both the House and the Senate.

- **Minnesota** – On March 13, 2020, the Commerce Department issued guidance that no action would be taken against collections agencies working from home temporarily as long as certain requirements are met. This guidance lasts for the duration of the state of emergency, currently set to expire December 14, 2020.

  On April 10, 2020, the State Court Administrator announced steps taken by the state judiciary in response to COVID-19. These include the extension for the payment of fines from thirty to ninety days until January 1, 2021; the suspension of filings for late notices, penalties, and failure to appear notices until December 1, 2020; and a stay on the automated referral to collections until February 1, 2021.

  On May 4, 2020, Governor Tim Walz issued an executive order announcing that CARES Act stimulus payments and other emergency funds are exempt from all claims, other than domestic support obligations, by creditors. The order also suspends certain other garnishments and is in effect until the state of emergency is lifted.

- **Mississippi** – On March 14, 2020, the Department of Banking and Consumer Finance issued a memorandum "strongly" encouraging consumer finance licensees to work closely with consumers who may have experienced financial hardships due to COVID-19, including the possibility of deferring fees or other charges.

- **Nebraska** – On April 15, 2020, the Attorney General issued a statement warning that state law may exempt CARES Act stimulus checks from attachment, garnishment, or execution for low-income consumers. Any attempt to garnish or attach these funds would be considered an unfair trade practice in Nebraska.

- **Nevada** – While debt collection agencies were initially deemed non-essential and were instructed to cease operations, the Department of Business & Industry later announced a temporary allowance for employees of licensed collection agencies to work remotely. This is currently set to expire on December 31, 2020.

On April 30, 2020, Governor Steve Sisolak issued an executive order placing a stay on all writs of garnishment and writs of execution other than those for child or spousal support or payment of criminal restitution to victims. It also stated that setoffs may continue, but setoffs against COVID-19 stimulus funds are prohibited. This remains in place for the duration of the state of emergency.

- **New Jersey** – On March 19, 2020, the Department of Banking and Insurance issued guidance encouraging financial institutions to work with consumers by relaxing due dates for loan payments, extending grace periods, modifying terms of agreements, allowing deferrals and skipped payments, and delaying negative reporting to credit bureaus.

  Also on March 19, 2020, Governor Phil Murphy issued an executive order placing a moratorium on evictions and foreclosures. This remains in effect until two months after the conclusion of the state of emergency.

  On October 15 , 2020, Governor Murphy issued an executive order extending a prior order which prohibits the discontinuance of any gas, electric, or water service to New Jersey residents. Additionally, the order places restrictions on the discontinuance of internet and voice services. This is set to expire on March 15, 2021.

  There is currently pending legislation which would require insurance carriers to cover the cost of COVID-19 treatment expenses and places restrictions on the collection of certain medical debt. The bill also allows the governor to issue executive orders prohibiting or restricting the enforcement of judgments.

- **New Mexico** – On June 5, 2020, the New Mexico Supreme Court issued an order suspending debt collection efforts for the duration of the COVID-19 pandemic. The order suspends the issuance of new writs of garnishment and execution, but does not apply to domestic support obligations.

- **New York** – On November 4, 2020, Governor Andrew Cuomo and Attorney General Letitia James renewed the order to halt the collection of medical and student debt owed to the State of New York that had been referred to the Office of the Attorney General for collection. This is currently set to expire on December 31, 2020.

  On April 17, 2020, Attorney General James issued guidance providing that stimulus payments received under the CARES Act are exempt from garnishment and bank setoff.

  On June 17, 2020, two pieces of legislation were passed to protect residential consumers from the termination of utility services. The first bill issued a moratorium on the termination of utility services during the COVID-19 emergency. The second bill reiterates the moratorium and also allows for the forbearance of mortgage payments for mortgagors experiencing financial hardship as a result of the pandemic.

The Tenant Safe Harbor Act, enacted on June 30, 2020, prohibits evictions for renters who have experienced financial hardship during the COVID-19 pandemic. This prohibition applies to any unpaid rent accruing between March 7, 2020, and the currently-undetermined end date of the COVID-19 state of emergency.

On October 20, 2020, Governor Cuomo issued an executive order extending his previous ban on the eviction and foreclosure of commercial tenants. This moratorium is in effect until January 1, 2021.

- **North Carolina** – In addition to the Attorney General's suspension of collection efforts, Governor Roy Cooper issued an executive order on May 30, 2020 placing a moratorium on residential and commercial evictions, which ended June 20, 2020. Rent due during this period shall be paid off pursuant to a payment plan by November 30, 2020. A similar pay off period exists for past due utilities payments, ending November 30, 2020.

- **Ohio** – On April 13, 2020, Attorney General Dave Yost issued guidance, stating that CARES Act stimulus payments are exempt from attachment, garnishment, and execution.

  On March 25, 2020, legislation to halt debt collection was introduced. On May 5, 2020, HB 596 was referred to committee, but no further action has occurred.

- **Oregon** – On March 12, 2020, the Division of Financial Regulation issued guidance allowing mortgage lenders, loan servicers, consumer finance companies, and other licensees to work from home as long as certain requirements are satisfied.

  On March 20, 2020, the Division of Financial Regulation issued additional guidance encouraging all lenders and loan servicers to "take active measures to help borrowers economically affected by the COVID-19 pandemic." Suggested actions include offering forbearance plans, fee waivers, and deferred payment options. The guidance also recommended postponing foreclosures and evictions for those facing financial hardship.

  On March 27, 2020, Chief Justice Martha Walters issued an order authorizing (and encouraging) state courts to waive collection fees, and suspend collection actions and the issuance of new garnishments during the COVID-19 pandemic. This is effective until sixty days after the expiration of the state of emergency, which is currently set to expire on January 2, 2021.

  On April 30, 2020, the Department of Consumer and Business Services issued guidance for collection agencies and debt buyers. This guidance encouraged them to accommodate debtors experiencing financial hardships from COVID-19 by allowing deferments, extending due dates, waiving fees, and suspending collection activities.

On June 30, 2020, the state legislature enacted House Bill 4212, codifying a prior executive order by Governor Kate Brown. This legislation states that CARES Act stimulus payments are not subject to garnishment and is set to expire at the end of the state of emergency.

Senate Bill 1601 was enacted on July 7, 2020, and placed a moratorium on certain traffic-related offenses. This includes a prohibition on citations for expired documents, failure to pay registration fees, or failure to register a vehicle, if the expiration fell between March 1, 2020 and December 31, 2020.

- **Pennsylvania** – The Public Utilities Commission had issued an absolute moratorium on the termination of public utilities during the COVID-19 pandemic. Pursuant to an updated statement on October 8, 2020, the moratorium expired on November 9, 2020. However, public utilities shall continue to refrain from terminating service to those at 300% or more below the federal poverty income guidelines and shall offer payment arrangements for other customers.

  The Department of Banking and Securities has stated on its website that non-life-sustaining businesses, including collections agencies and licensees, may work from "alternate site locations" while Pennsylvania remains under a Proclamation of Disaster Emergency.

- **Rhode Island** – On April 28, 2020, the Attorney General issued guidance exempting stimulus payments received under the CARES Act from garnishment by debt collectors and creditors.

  On November 3, 2020, the State of Rhode Island District Court issued new eviction protocols. Under the new protocols, eviction actions may now be filed and heard, and judgments may issue. However, no judgment will be enforceable and no executions shall issue until the CDC order on evictions terminates.

- **Tennessee** – The Department of Commerce and Insurance stated on its website that, pursuant to state law, there is no prohibition on working from home for collections agencies, as long as a branch business location is still maintained and is on record with the licensee's file.

- **Vermont** – On March 16, 2020, the Department of Financial Regulation encouraged financial institutions to work with consumers affected by COVID-19. The Department suggested waiving late fees on loans and credit cards, increasing credit card limits, and other loan modifications.

  On April 21, 2020, the Attorney General directed that stimulus payments under the CARES Act are exempt from garnishment or collection. The directive also asks banking institutions to voluntarily suspend collection activity for overdrafts and administration fees that could jeopardize a consumer's use of the stimulus payments.

On May 14, 2020, the state legislature enacted S.333, which issued a moratorium on ejectment and foreclosure actions during the COVID-19 pandemic. The moratorium will expire thirty days after the end of the state of emergency, currently set for December 15, 2020.

- **Virginia** – The Bureau of Financial Institutions posted guidance on its website encouraging financial institutions to work with consumers and businesses. It also emphasizes that data security and other protections must "retain paramount importance" while employees of financial institutions work remotely.

  On October 28, 2020, the Virginia State Legislature enacted House Bill 5068, which exempts from garnishment CARES Act stimulus payments and any future government payments for economic relief related to COVID-19.

  On November 9, 2020, the state legislature enacted House Bill 5112, placing a 60-day stay of unlawful detainer for the nonpayment of rent and a 30-day stay of foreclosure proceedings. To take advantage of the legislation, a debtor must request a stay and provide written proof of financial hardship due to COVID-19. This is set to expire ninety days after state of emergency ends.

- **Washington** – On April 14, 2020, Governor Jay Inslee issued an executive proclamation which initially suspended laws permitting the garnishment of wages or bank accounts. This was later limited to bank account garnishments. The proclamation is in effect until December 7, 2020, but may be extended.

  On June 18, 2020, the Washington Collection Agency Board announced a temporary rule allowing collection agencies' employees to temporarily work remotely. This has been extended until February 17, 2021. The Board is currently in the process of discussing a permanent rule allowing collection agencies to work remotely beyond the COVID-19 pandemic.

- **Washington, D.C.** – On April 10, 2020, the Council for the District of Columbia passed the COVID-19 Response Supplemental Emergency Amendment Act of 2020. The Act provides significant support for consumers during the COVID-19 crisis. For instance, it prohibits creditors and debt collectors from threatening or initiating any new legal action to collect any consumer debt. The collection ban extends for sixty days after the conclusion of the state of emergency, currently set to expire on December 31, 2020. Additionally, the Act provides mortgage relief by requiring mortgage servicers to develop deferment plans and waive late fees for borrowers who can demonstrate hardship due to COVID-19. Additional protections toll the deadline for rent payments and place certain bans on disconnecting utilities.

On October 9, 2020, the Council also passed the Coronavirus Support Temporary Amendment Act of 2020 and the COVID-19 Response Supplemental Temporary Amendment Act of 2020. Together, these provide additional protections by prohibiting debt collectors from initiating, filing, or threatening to file new collection lawsuits or acting upon any statutory remedy for garnishment, seizure, attachment, or repossession of vehicles.

- **West Virginia** – On March 13, 2020, the Division of Financial Institutions announced guidance allowing financial institutions regulated by the state to temporarily work remotely. The guidance is effective until March 1, 2021.

  On September 9, 2020, Governor Jim Justice made a public statement urging landlords to cease all evictions during the COVID-19 pandemic. However, he acknowledged that West Virginia law prevented him from prohibiting such evictions.

- **Wisconsin** – The Wisconsin Public Service Commission banned shut offs of all utilities within the state, including water, power, and heat. This was recently extended until April 15, 2021.

  On March 18, 2020, the Department of Financial Institutions announced guidance to all licensed lenders and payday lenders doing business in the state. The guidance encourages being "part of the solution for struggling families" by working with consumers during the COVID-19 pandemic. The guidance also amends certain character and fitness requirements for licensees, stating it "shall deem it as an essential failure of your character and fitness if you increase your customary interest rates, fees, or any costs of borrowing in response to the crisis."

  On April 13, 2020 the Department of Financial Institutions issued guidance on debt collection practices. While it provided no "precise boundary," the guidance states that, during the pandemic, certain customary practices (such as repeated telephone calls) may be considered threatening or harassing, even though they may have been customary under normal conditions.

TAKE ACTION

At this time, state and local action continues to vary and we expect that to continue in the near future. We will monitor such action and update this Bulletin as developments occur. Stay up to date by monitoring the latest COVID-19 resources on our CORONAVIRUS RESOURCE CENTER.

DISCUSS FURTHER

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