

CARES Act – Economic Impact Payments – Stimulus Checks
Debt Collection and Garnishments Cheat Sheet
April 17, 2020

The information provided below is intended to assist financial institutions with the numerous questions that have resulted from a lack of guidance by the IRS and Treasury related to Economic Impact Payments (“stimulus checks”). All information contained herein is for general informational purposes only and is not intended to constitute legal advice. The Division cannot provide legal advice to its regulated financial institutions.

Financial institutions should contact their legal counsel in order to obtain advice with respect to any particular legal matter. No one should act or refrain from acting on the basis of the information herein without first seeking legal advice from counsel. Only your individual attorney can provide assurances that the information contained herein – and your interpretation of it – is applicable or appropriate to the particular facts of your situation.

CARES Act Garnishment Exceptions

- The economic impact payment will not be subject to most types of federal offset or federal garnishment as a result of defaulted student loans or tax debt.
 - **Caveat:** The payments are still subject to garnishment if someone is behind on child support.

Private Debt Collection/Court-Ordered Judgements/Garnishments

- The CARES Act does not include protections for private debt collection and **court-ordered** judgements/garnishments (outside of the Federal garnishment exception outlined in the CARES Act and noted above).
 - **Therefore,** financial institutions must follow **court-ordered** judgements/garnishments (those not included under the Federal garnishment exception umbrella outlined in the CARES Act), unless these instances of debt collection are protected under a current State law (example: Ohio) or a State has issued a specific directive during the crisis regarding this issue.
 - A handful of States have issued a debt collection directive protecting against these collections/garnishments (MT has not yet taken this measure).
 - As of 4/15/20, 25 state attorneys general and the Hawaii Office of Consumer Protection had sent a letter to the Treasury Department urging them to protect stimulus checks from garnishment by debt collectors – Treasury has not issued a response yet.
 - Regional banks should ensure that they are acting consistent with the laws of the state in which the customer resides as consumer protections are applicable dependent on the state of residence of the customer.

Financial Institutions: Charged-Off Accounts/Previously Unpaid Sums and Overdrawn Deposit Accounts

- It does not appear there is anything in law that prohibits financial institutions from offsetting previously closed/charged-off accounts, current accounts with overdrafts, etc. (i.e. it would be up to management and the Board to determine their policies and procedures on how they want to handle this)
 - **Therefore**, providing there are no court-ordered judgements/garnishments associated with a specific deposit account, it appears the financial institution holds the option on how to handle the stimulus payment if there are prior unpaid sums, etc.
 - There is no specific State or Federal guidance on how to handle these situations; however, below are three potential scenarios to proceed. These scenarios are in no way a representation of the Division's directive or preferred methods, or any other regulatory agency for that matter; the options are strictly based on general research related to what is currently being done in practice in the industry based on questions and comments that have been received.
 - **Potential Scenario 1:** Return the funds to Treasury allowing the customer to potentially receive a paper check or direct deposit into a different account.
 - **Potential Scenario 2:** Offset the payment amount against a prior closed/charged-off account or account with an overdraft – remaining amount (if an amount exists) would go to the customer. Strongly consider waiving any overdraft fees that the customer was charged prior to the charge-off or account closure. Reputational risk associated with this option may be high: <https://prospect.org/coronavirus/usaa-bank-grabs-stimulus-checks-from-military-families/>
 - **Potential Scenario 3:** Defer collection on previously unpaid sums (previously charged-off accounts) or offer provisional credits that are temporarily applied to negative balances – both items resulting in the customer being able to access the stimulus funds in their entirety.

*****It is important to note the potential risks (reputational and otherwise) and timing issues that the various scenarios above could cause. However, these are ultimately decisions of management and the Board, and no matter the decisions made, it would be best practice to ensure and approach these situations as consistently as possible.**

Payments to Accounts of/associated with Deceased Individuals

- There are multiple reports/articles about this topic and some indications that based on the tax filing year and timing of the person being deceased, payments could be accepted by individuals (i.e. children or spouses, if applicable) in certain circumstances.
- **HOWEVER**, there is no formal guidance on this issue from Treasury or the IRS yet and it is uncertain in what instances individuals should keep or send the funds back.

- **Potential Scenario 1 (For active deposit accounts):** Due to Regulation CC disclosure requirements regarding funds availability, the financial institution should **NOT** place a hold on the stimulus funds for an active deposit account. If a customer contacts the financial institution with questions about these funds, best practice would be for the financial institution to inform the customer about the potential risks and uncertainties (as noted above), but it is not the obligation of the financial institution to determine what the customer should or should not do with the funds.
- **Potential Scenario 2 (For closed deposit accounts):** Best practice would be for the financial institution to return the funds to Treasury and let the potential parties involved reconcile the matter.
- This issue has come up in the past with other similar government payments/programs and unfortunately there does not seem to be any clear guidance how those instances were handled.

Payments to Accounts Regarding Individuals with Joint Returns/Divorce Timing Implications

- Per the CARES Act, “Joint Returns. – In the case of a refund or credit made or allowed under subsection (f) with respect to a joint return, half of such refund or credit shall be treated as having been made or allowed to each individual filing such return.”
 - **However,** this does not appear to be the responsibility or decision of a financial institution. If an issue is brought to the attention of the financial institution, the financial institution could consult with legal counsel to ensure proper procedures are followed; however, any dispute of funds between individuals/customers will more than likely be a legal matter between the customers/individuals involved in the matter and what is outlined in their deposit account agreements and/or separation, divorce, or custody agreements.

Does a Financial Institution Have to Cash a Non-Customer Check?

- There does not appear to be any Federal law that requires a financial institution to cash a non-customer check, including government checks. To the extent that your financial institutions chooses to provide this service to non-customers in support of the local community, the following website can be used to verify the authenticity of stimulus checks: <https://tcva.fiscal.treasury.gov>

All liability with respect to actions taken or not taken based on the contents herein is hereby expressly disclaimed as the above is not legal advice and should not be relied on as such.