

April 14, 2020

Honorable Doug Ducey
Office of the Governor, State of Arizona
1700 W. Washington St.
Phoenix, AZ 85007

Re: Emergency Action Needed to Safeguard CARES Act Deposits from Debt Collectors

Dear Governor Ducey,

Arizonans urgently need you to take executive action to protect the deposited federal CARES Act funds in consumers' bank accounts from being diverted by debt collectors and creditors instead of being available to spend for emergency family needs. Federal payments to families have already started and we know of no action taken in Arizona to protect these funds.

On April 3, the Center for Economic Integrity and a broad range of community organizations wrote to you and the Acting Superintendent of the Department of Financial Institutions, urging action to protect consumers from financial harm. Two of those requests were to **Stop Collection of Debt** and to **Safeguard bank accounts, income and benefits**, specifically ... "to safeguard deposited stimulus funds into Arizonans' bank accounts needed to support families in this emergency, not to be withdrawn to pay debt."¹ We also urged you to halt repossession of borrowers' vehicles.

Federal payments of up to \$1,200 per adult are intended to help people pay for necessities, not to help debt collectors and creditors. Many Arizonans will receive their payments via direct deposit to the bank accounts identified in their most recent tax returns. Arizona law only protects \$300 in a bank account from execution or attachment to collect a debt.² Debt collectors are eager to garnish the CARES Act funds meant to help Arizonans cover basic necessities. Before this crisis erupted, 34 percent of Arizonans and 50 percent of communities of color had a debt in collections.³ With exploding unemployment and the economic disruption caused by Covid-19, even more families are at risk.

¹ Coalition letter to Governor Ducey, April 3, 2020 at <https://nomoreloansharksaz.org/gallery/2020-04-03%20arizona%20covid-19%20letter%20to%20gov%20and%20azdfi.pdf>

² A.R.S. § 33-1126(A)(9). Arizona gets a "D" grade on protecting family funds from debt collection. See: NCLC, "No Fresh Start in 2019, p. 52 at https://www.nclc.org/images/pdf/debt_collection/report-still-no-fresh-start-nov2019.pdf

³ Urban Institute Debt Delinquency (2019) at https://apps.urban.org/features/debt-interactive-map/?type=overall&variable=pct_debt_collections&state=4&print=true

Your Executive Orders have not stopped the filing of new debt collection lawsuits or collection on previously obtained judgments, including seizure of funds from bank accounts. Debt collectors and creditors seize money from the bank accounts of people who owe money. If collectors are permitted to garnish the CARES Act payments to Arizonan families, the federal effort to help Americans will end up in the coffers of creditors and collectors. As Senators Josh Hawley and Sherrod Brown wrote to the U.S. Treasury on this issue, “Congress included this critical relief in order to help American families struggling to pay for food, medicine, and other basic necessities during the novel coronavirus-19 (COVID-19) pandemic and resulting economic crisis.”⁴

CARES Act payments deposited into the bank accounts of hard-hit Arizonans can be taken by banks using set-off to extract payment of overdraft and insufficient funds fees.⁵ Licensed Sales Finance companies that make “registration” loans under the Secondary Motor Vehicle Finance Transaction law typically require borrowers to provide a void check or bank account information to be used to withdraw funds from the borrower’s account if he/she fails to renew or pay the loan in person. This is done by creating an unsigned paper check (demand draft) or using the borrower’s bank account number and routing number to create a payment order processed as a “check,” or via a remotely created electronic payment order. Creditors charging triple-digit rates should not get access to federal funds meant to keep families afloat in this crisis.

The Las Vegas courts⁶ and the Texas Supreme Court⁷, among other jurisdictions, have already taken this type of action to protect their citizens. The Ohio Attorney General issued a ruling that CARES Act funds are protected under state law.⁸ Attorneys General from 26 states wrote Treasury Secretary Mnuchin, urging protection of CARES Act funds from garnishment.⁹

Below is a **proposed order**, based on a public interest coalition recommendation to the Governor of California and adapted for Arizona, to assist you in taking immediate action:

⁴ Senators Hawley and Brown letter to Treasury Secretary, April 9, 2020 at https://www.banking.senate.gov/imo/media/doc/Mnuchin%20Letter%20to%20Treasury_April%209.pdf

⁵ David Dayen, “Your Coronavirus Check Is Coming. Your Bank Can Grab It,” American Prospect, April 14, 2020 at <https://prospect.org/coronavirus/banks-can-grab-stimulus-check-pay-debts/>

⁶ <http://www.lasvegasjusticecourt.us/Admin%20Order%2020-03%20Amended.pdf>

⁷ <http://www.txcourts.gov/media/1446356/209054.pdf>

⁸ Dave Yost, Ohio Attorney General, “Notice of Applicability of State Law Exemption to Payments Under Federal CARES Act, April 13, 2020 at https://www.ohioattorneygeneral.gov/Files/Briefing-Room/News-Releases/STATE_LAW_EXEMPTION_FOR_WEB.aspx

⁹ Letter from Attorneys General to US Treasury, April 13, 2020 at https://ag.ny.gov/sites/default/files/04.13.20_multistate_letter_to_treasury_re_garnishment_and_cares_act_final.pdf

For the duration of the State of Emergency declared by the Governor on March 11, 2020, plus an additional 90 days, no creditor, debt collector or financial institution or financial enterprise regulated by Arizona, may:

- (a) Initiate, file, or threaten to file any new collection lawsuit;*
- (b) Initiate, threaten to initiate, or act upon any legal or equitable remedy for the garnishment, seizure, attachment, or withholding of wages, earnings, property or funds for the payment of a debt, with the exception of collection actions for child support payments owed by a parent that are delivered to a custodial parent for the current support of a child who is still a minor;*
- (c) Seize stimulus checks or deposited funds to pay a debt owed to a state-chartered bank or credit union including overdrafts and fees (“right of setoff”);*
- (d) Use borrower bank account information to create a demand draft or remotely created payment order or otherwise use account information to withdraw payment for loans made by licensed Sales Finance companies making Secondary Motor Vehicle Finance Transaction loans;*
- (e) Initiate, threaten to initiate, or act upon any legal, or equitable or technological remedy to repossess or deprive a person of the use of any vehicle.*
- (f) All currently issued writs of execution are hereby stayed until 90 days after the expiration of the Governor’s March 11, 2020 State of Emergency Order. Any property garnished or attached after March 11, 2020 must be released back to the judgment debtor.*

Action is necessary to lift up the economic lives of Arizona families and to safeguard the integrity of taxpayer funds intended for individual consumers, not debt collectors.

Thank you for the work you have already done to stop evictions and foreclosures. To safeguard economically-vulnerable Arizonans, please stop creditors and collectors from draining CARES Act funds from bank accounts and from repossessing vehicles used to secure loans.

Sincerely,



Kelly Griffith
Executive Director
Center for Economic Integrity

Ellen Katz
William E. Morris Institute for Justice

Cynthia Zwick
Executive Director
Wildfire