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GUIDANCE: EMERGENCY ASSISTANCE PROVIDED PURSUANT TO THE CARES ACT IS EXEMPT FROM SEIZURE BY CREDITORS AND DEBT COLLECTORS

The Office of the Attorney General (AGO) issues the following guidance concerning emergency assistance to be paid to Massachusetts residents pursuant to recent federal legislation. This guidance relates to the AGO's enforcement of the Massachusetts Consumer Protection Act, G.L. c. 93A and the Attorney General Debt Collection Regulations, 940 CMR 7.00.

Background:

On March 27, 2020, President Trump signed into law the Coronavirus Aid, Relief, and Economic Security Act (the "CARES Act" or the "Act"). The CARES Act "provid[es] emergency assistance and health care response for individuals, families, and businesses affected by the 2020 coronavirus pandemic."

Section 2201 of Title II of the CARES Act provides cash assistance to individuals and families subject to means-tested eligibility criteria. Specifically, the Act provides for a one-time cash payment in the form of a refundable tax credit, identified as a "recovery rebate," of up to \$1,200 for each eligible individual or \$2,400 in the case of eligible individuals filing a joint return, plus an additional \$500 per dependent child. Individuals with higher incomes will receive a lesser payment or no payment whatsoever.

Guidance:

Massachusetts law exempts certain income and property from garnishment or attachment by creditors. *See* G. L. c. 235, § 34 (listing property exempt from seizure by judgment creditors); G. L. c. 223, § 42 (describing property exempt from attachment). Specifically, "the full amount owing or paid to a person as public assistance" is exempt from garnishment or attachment by creditors. G. L. c. 235, § 34, cl. 15. The term "public assistance" encompasses a broad range of state and federal programs, including those that provide cash assistance or in-kind benefits to individuals and families on a means-tested basis. A broad construction of this term advances the purpose of the exemption statutes, which is to ensure that individuals have sufficient income and property to provide for basic necessities. The courts have long construed these exemption laws liberally to effectuate the underlying public purpose of protecting individuals with low to moderate household income. *See, e.g., Dwyer v. Cempellin*, 424 Mass. 26, 29 (1996).

It is the Attorney General's view that, under Massachusetts law, all funds provided to Massachusetts residents under Section 2201 of Title II of the Coronavirus Aid, Relief, and Economic Security Act, Pub. L. No. 116-136, constitute "public assistance" under G.L. c. 235, § 34. Accordingly, the funds

are exempt from seizure, including garnishment, under G. L. c. 235, § 34, and attachment under G. L. c. 223, § 42, and remain exempt after payment regardless of the manner in which the funds are deposited or thereafter held.

Because federal assistance payments under Section 2201 are exempt under state law, any action, or threat to take action, by a creditor or a debt collector to garnish, attach or otherwise seize these funds violates the Attorney General's Debt Collection Regulations, which prohibit the compulsory collection of funds or property that are exempt by law. 940 CMR 7.07(18)-(19). Furthermore, the Attorney General's Emergency Debt Collection Regulations prohibit new garnishments or attachments by a creditor or a debt collector during the COVID-19 state of emergency period. 940 CMR 35.03(1)(b). Any creditor, including, but not limited to, a debt collector as defined by 940 CMR 35.02, that threatens or takes action to garnish, attach, or otherwise seize funds paid to individuals under section 2201 of Title II of the CARES Act is engaged in conduct that violates the Attorney General's Debt Collection Regulations.

This guidance addresses only the application of the Attorney General's Debt Collection Regulations to actions by a creditor or debt collector against "public assistance," as that term appears in G. L. c. 235, § 34. The guidance does not express an opinion regarding the meaning of that term as it used in any other statute or regulation. Finally, this guidance is inapplicable to any actions taken by the Massachusetts Department of Revenue, including, but not limited to, any actions taken to collect past due child support pursuant to G. L. c. 119A.

Dated: April 13, 2020