

Dear Secretary Mnuchin:

I write today to urge the Department of the Treasury to exempt the stimulus payments to be made to Americans under the Coronavirus Aid, Relief, and Economic Security Act (the “CARES Act”) from garnishment.

As you know, over the last month, an unprecedented number of Americans have lost their jobs, their financial stability, and their sense of security as a result of the coronavirus epidemic. However, the stimulus payments authorized under Title II, Subtitle B of the CARES Act will provide a lifeline, ensuring millions of families are able to maintain access to housing, food, medical care, and other essentials in the wake of this crisis. I applaud you and your colleagues across the federal government for making this bold and creative solution a reality.

But as your Treasury Department prepares to roll out these direct payments to individuals, it’s critical that you now act to exempt these payments from garnishment. Exempting the stimulus payments from seizure by creditors will maximize the impact they will have on our fragile national economy, protect these funds from becoming simply a windfall to creditors, and throw more Americans a bigger life preserver.

The CARES Act provides for the stimulus payments to be deposited into accounts authorized to receive tax refund payments or federal benefits payments, but does not specify how the stimulus payments will be coded. So to protect these funds and ensure their intended effect, I urge you to code the stimulus payments as federal benefit payments, which both existing federal law (31 CFR § 212) and New York’s Exempt Income Protection Act (“EIPA”) protect from garnishment.

The mechanism by which federal benefit payments are identified as subject to the garnishment protections of federal law and EIPA is found in 31 CFR § 212.3, which specifies that such payments are “paid by direct deposit to an account with the character ‘XX’ encoded in positions 54 and 55 of the Company Entry Description field and the number ‘2’ encoded in the Originator Status Code field of the Batch Header Record of the direct deposit entry.”

Coding the stimulus funds in this way would be a simple, powerful, and effective step. It will allow banks to automatically identify these payments as subject to the garnishment protections of state and federal law, and significantly reduce both administrative costs and litigation risk.

Our country's battle against the coronavirus will endure long after the last patient is released from the hospital – it will take years to recover from the pandemic's emotional, physical, and financial burden. Our job today is to ensure the resources available to turn our country back around and kick-start our recovery are delivered, quickly and fully.

I hope, Mr. Secretary, that you will consider taking this important step on behalf of all Americans.

Sincerely,

Andrew M. Cuomo
Governor of the State of New York