



Clifford J. White III  
Director  
U.S. Department of Justice  
950 Pennsylvania Avenue, NW  
Washington, DC 20530-0001

March 17, 2021

Dear Mr. White,

As you know, the President has signed the American Rescue Plan Act of 2021. This legislation is intended to provide assistance desperately needed by families in financial distress, many of whom will be filing bankruptcy cases in the months to come. The National Association of Consumer Bankruptcy Attorneys is calling on you to use your authority to ensure that the goals of this new law are not undermined by your office or by bankruptcy trustees.

In particular we call on you to take the following steps:

1. **Instruct chapter 7 trustees not to attempt to take stimulus payments from debtors.** The prior COVID-19 bill, the Consolidated Appropriations Act amended section 541 to exclude recovery rebate payments under section 6428 of the Internal Revenue Code (IRC) from the bankruptcy estate. This provision was widely understood to exclude from the estate the rebates that bill provided under section 6428A of the IRC. Otherwise, it would have been meaningless, since any payments under section 6428 as enacted last spring would have been long-since spent. The same interpretation should apply to section 6428B, as enacted by the Rescue Plan Act. Therefore, chapter 7 trustees should be instructed to refrain from seeking to take these funds from debtors, most of whom would not have the ability to resist such trustee efforts.
2. **Instruct chapter 7 trustees not to attempt to take child tax credit payments.** The Rescue Plan Act provides vital support for children, taking many out of poverty, through the enhanced child tax credit. Child tax credit payments will be made monthly, as a form of additional income. The expectation of such postpetition income should be treated like wages, and excluded from the chapter 7 estate. It is fundamentally different than tax credits accrued prior to the bankruptcy petition, which in some cases can be property of the estate. Moreover, such payments are intended to benefit the debtor's children. Many courts have held that child support payments are not property of the estate and are held for the benefit of the child. See, e.g., *In re Palidora*, 310 B.R. 164 (Bankr. D. Ariz. 2004), following *Boston v. Gardner*, 365 F.2d 242 (9th Cir. 1966).

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3. **Instruct chapter 7 trustees and United States trustees to disregard recovery rebates and child tax credit payments in applying section 707(b).** Section 101(10A)(B)(ii)(V) excludes from current monthly income payments made under Federal law relating to the COVID-19 national emergency. We expect this provision to be extended for an additional year. The recovery rebates and child tax credit payments enacted by the Rescue Plan Act are payments related to the COVID-19 emergency and are therefore excluded from current monthly income. They should not be considered in applying section 707(b).
4. **Instruct chapter 13 trustees to disregard recovery rebates and child tax credits in applying the best interests of creditors test and the disposable income test.** For the same reasons outlined above, recovery rebates should not be considered in applying the best interests of creditors test and the disposable income test. Moreover, section 1325(b)(2) excludes from disposable income payments made under Federal law relating to the COVID-19 national emergency. We expect this provision to be extended. Finally, the child tax credits are intended to be a form of child support, and child support is also excluded from disposable income.

It is critically important that you act immediately to take these measures. Failing to do so will substantially undermine the intent of Congress and the President to help families facing enormous financial problems due to the pandemic. We look forward to your prompt response.

Sincerely,

John C. Colwell  
Board President