



U.S. Department of Justice

Executive Office for United States Attorneys

Office of the Director

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MEMORANDUM- Sent via Electronic Mail

DATE: April 13, 2020

TO: ALL UNITED STATES ATTORNEYS
ALL FIRST ASSISTANT UNITED STATES ATTORNEYS
ALL EXECUTIVE UNITED STATES ATTORNEYS
ALL CRIMINAL CHIEFS
ALL CIVIL CHIEFS
ALL ADMINISTRATIVE OFFICERS
ALL AFFIRMATIVE CIVIL ENFORCEMENT COORDINATORS
ALL HEALTH CARE FRAUD COORDINATORS
ALL FINANCIAL LITIGATION COORDINATORS

FROM: Corey F. Ellis
Acting Director

SUBJECT: Amendment to and Clarification of Temporary Suspension of Affirmative Civil Debt Collection and Enforcement Activities during the COVID-19 Pandemic Regarding Affirmative Civil Enforcement (ACE) Matters

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The Executive Office for United States Attorneys (EOUSA) issued a memorandum on March 31, 2020, entitled "[Temporary Suspension of Affirmative Civil Debt Collection and Enforcement Activities during the COVID-19 Pandemic](#)" (Temporary Suspension). That memorandum indicated that the Temporary Suspension of affirmative civil debt collection and enforcement extended to the filing of liens. However, the filing of judgment liens against debtors' property directly protects the government's interests and does not require a response

from the debtor. Therefore, effective immediately, the Temporary Suspension – as it relates to the filing of liens only – is lifted.

Since the Temporary Suspension was announced on March 31, questions have arisen regarding its impact, if any, on ACE matters. This memorandum clarifies the application of the Temporary Suspension to ACE matters.¹

1. The Temporary Suspension does not impact a USAO's ability to investigate, file complaints, litigate to judgment, or settle any ACE matter. As stated in paragraph 1 of the March 31 memorandum, the "Temporary Suspension does not apply to ongoing litigation, appeals, or cases that are not subject to a final, non-appealable judgment."
2. The Temporary Suspension does not prohibit a USAO from collecting settlement payments pursuant to a voluntary settlement agreement. *See* March 31 Memorandum, p. 2 ("Voluntary payments are still permitted."). This includes the collection of payments pursuant to a settlement agreement that provides for payments over time, including payments that are due during the suspension period. Such payments are not debts on "active payment plans with FLUs," as referenced in the March 31 memorandum.
3. If a settlement agreement is breached, the Temporary Suspension does not prohibit pursuing any of the remedies made available to the United States by the terms of the parties' settlement agreement, including, but not limited to, seeking a default judgment.
4. If a default judgment is obtained, the Temporary Suspension prohibits executing on that judgment through May 31, 2020. The suspension of judgment collection does not affect the accrual of interest or other amounts that may become due as a result of a delay in payment. Moreover, the Temporary Suspension, as herein amended, does not prohibit a USAO from filing a judgment lien, investigating the availability of assets available for enforced collection, or taking any other necessary action to protect the government's interest. In the event that a USAO has reason to believe the defendant is dissipating or fraudulently transferring assets, the office should take all appropriate steps to protect the assets.

Please remember that, although the Temporary Suspension does not apply specifically to pre-judgment ACE matters, the intent of the Memorandum – to provide financial respite during the crisis – may be appropriate to consider in individual cases. USAOs are encouraged to use their discretion when negotiating appropriate resolutions in their ACE cases.

¹ For purposes of this memorandum, "ACE matters" includes False Claims Act, FIRREA, and other cases brought for damages, civil penalties, and/or equitable remedies. "ACE litigation" does not include suits for debts on a sum certain referred by agencies, such as suits to collect student loans or SBA loans.

Finally, as noted above, USAOs should make every effort to protect the government's interests. If ACE defendants seek ability to pay settlements, are seeking to renegotiate terms or payment schedules of prior settlements, or appear likely to file bankruptcy, ACE attorneys are encouraged to consult with bankruptcy attorneys in your office regarding how best to protect the government's interests.

cc: All United States Attorneys' Secretaries