

**NOTICE TO CHAPTER 7 AND 13 TRUSTEES
REGARDING RECOVERY REBATES PAID TO
CONSUMER BANKRUPTCY DEBTORS
UNDER THE CARES ACT OF 2020**

The federal government will soon begin issuing recovery rebates to qualified individuals under the Coronavirus Aid, Relief, and Economic Security (CARES) Act of 2020 (the “Act”). The rebates total at most \$1,200 per individual or \$2,400 per married couple filing jointly, with an additional \$500 paid for each qualifying child under the age of 17. The rebates are payable in full to qualifying individuals earning less than \$75,000, \$150,000 per married couple filing jointly, or \$112,500 for heads of household, and decrease by 5 percent of income exceeding those thresholds until completely phased out. Two bankruptcy questions have arisen about whether the rebates: (1) should be included in the calculation of current monthly income or projected disposable income; and (2) are property of the bankruptcy estate.

The Act explicitly answers the first question. Under Sec. 1113(b)(1) of the Act, which amends 11 U.S.C. §§ 101(10A)(B)(ii) and 1325(b)(2), “payments made under Federal law relating to the national emergency declared by the President under the National Emergencies Act (50 U.S.C. § 1601 *et seq.*) with respect to the coronavirus disease 2019 (COVID-19)” are excluded from the statutory definitions of current monthly income and disposable income. Accordingly, recovery rebates received within six months before the filing of the petition should not be included in calculating a debtor’s currently monthly income in a chapter 7 or 13 case, and further should be excluded from projected disposable income available to pay creditors through a chapter 13 plan.

The Act is silent as to whether the recovery rebate is property of the estate. In chapter 7 cases, the “property of the estate” issue will only arise in cases filed after March 27, 2020, the effective date of the Act. Regardless of whether the rebate is property of the estate, the United States Trustee expects that it is highly unlikely that the trustee would administer the payment after consideration of all relevant circumstances, including: the modest amount of the recovery rebate; the applicability of state and federal exemptions; any interest of a non-debtor spouse in the recovery rebate; the cost to the estate of recovering and administering the recovery rebate, including litigation with debtors who may seek a judicial determination; and the extent to which recovering the recovery rebate will enable creditors to receive a meaningful distribution.

In rare chapter 13 cases filed on or after March 27, 2020, the recovery rebate may be relevant to the confirmation standard contained in 11 U.S.C. § 1325(a)(4). For chapter 13 cases filed before March 27, 2020, the recovery rebate is excluded from that analysis because it would not have been available for payment to creditors in a chapter 7 case.

Trustees are directed to notify the United States Trustee prior to taking any action to recover recovery rebates or objecting to a chapter 13 plan based on the treatment of recovery rebates.