PROTECTING ASSETS & CHILD CUSTODY IN THE FACE OF DEPORTATION

A GUIDE FOR PRACTITIONERS ASSISTING IMMIGRANT FAMILIES

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APPLESEED
Dear Friends,

Can you imagine being abruptly ejected from the United States — and leaving behind your home, your children, your job, your bank account, and everything else you’ve spent years to build? Can you imagine what your children would feel when they arrived home and you’re gone?

Deportation can be a cataclysm for families and communities, destroying decades of hard-earned assets and rupturing family development. But with advanced planning, immigrant families can prevent an enormous amount of this damage.

That’s why Appleseed is proud to present an updated version of its 2012 Manual, “Protecting Assets and Child Custody in the Face of Deportation.” This one-of-a-kind resource is designed for immigrants and those who work with them; the host of attorneys, nurses, social workers, religious workers who are stepping up in challenging times.

Appleseed’s Manual will help families develop plans in advance to deal with critical financial and family issues in the event of deportation, arrest, and other family emergencies. It will help immigrant families deal with child custody and related children’s issues, personal finances, assets and personal property, remittance payments, wages and benefits, business issues, and taxes. And it includes special guidance for family and children’s issues, including professional advice for parents to help their families deal with painful psychological issues, and for immigrant survivors of domestic violence and sexual assault.

Make no mistake: for vulnerable immigrant families, advance planning can make all the difference. Once an immigrant is detained or deported from the United States, navigating a legal proceeding or managing assets is much more difficult, or even impossible, especially since immigration laws bar immigrants from reentering the United States after deportation for several years.

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Immigrants come to the United States to build a better future and to unite with family members. Most have lived in the United States for many years, paying taxes and joining the daily life of their communities. Over time, immigrants buy homes, start businesses and build personal assets. When they build better lives, they make our country stronger.

That’s why this Manual is a labor of love for all who worked on it. We are committed to fairness and compassion for the millions of immigrants living in our country. Our hope is that you can use this resource to help them build better lives.

Sincerely,

Annette LoVoi, Director, Financial Access and Asset Building, Appleseed
Disclaimers

Each Chapter is intended to provide generalized information on a particular topic. In many cases, laws may differ from state to state. Therefore, this information is not intended to replace state-specific legal assistance. Nothing in this manual is intended to create an attorney-client or fiduciary relationship.

Appleseed recognizes and understands the legal term “alien,” used to describe any person born in another country to parents who are not American and who has not become a naturalized citizen, but is living or staying in the United States. However, throughout this Manual, we will primarily use the term “immigrant” in place of the term “alien” based on AP Stylebook guidance and the recommendations of our partners. The exception will be when citing laws, codes, or regulations that specifically use the term “alien.”
9. Payday and Other Short-Term Loans

Payday and other short-term debts, such as car title loans, do not go away. However, an immigrant can manage debt by prioritizing which debts are paid first, discontinuing automatic repayments and potentially working out a payment arrangement with the lender that the immigrant can afford. This chapter addresses the following issues:

👀 What Happens to Your Loan Debt After You Leave the Country? 👀 How to Prioritize the Repayment of Debt 👀 Working With the Lender to Extend Payments for the Loan and/or Negotiate the Repayment Amount 👀 Protecting Accounts from Automatic Withdrawals or Garnishment 👀 It May Not Be Legal for the Debt to Be Collected 👀

What Happens to Your Loan Debt After You Leave the Country?

The debt for a payday loan (sometimes also called cash advance loans) and other short-term loans exists regardless of where the immigrant lives. The obligation to repay the debt does not disappear when a person leaves the country. If an immigrant misses a loan payment, the immigrant will likely incur fees and penalties on his or her debt. A lender may or may not try to collect this debt depending on the existence of collateral or co-signors and the borrower’s location.

Loans Will Continue to Accrue Interest and Fees

The effective annual percentage rates (APR) on payday and other short-term loans is far greater than most other forms of debt, such as credit card debt. Payday loans often have an effective APR of 400% to 600% or higher. By comparison, APRs on credit cards can range from about 12% to 30%. Some states have rules related to how much interest a payday lender can charge; however, other states, such as Texas, allow payday lenders to charge unlimited interest and fees for nonpayment.
The Lender May Seek to Recover the Unpaid Debt

Debt collectors have a limited time during which they can sue debtors for nonpayment (see below under “The debt may no longer be legal”). If a lender sues the immigrant in a United States court and wins a favorable judgment against him or her (which can happen even without the immigrant present, in which case it is called a “default judgment”), it will only be able to enforce the judgment in a country outside of the United States if that country has an agreement with the United States that U.S. judgments are enforceable in that country.

How to Prioritize the Repayment of Debt

The National Consumer Law Center advises debtors to prioritize their debts and decide which bills they must pay first, usually household expenses (home, apartment, food and medicine), cell phone and other utilities, car and appliances such as refrigerator or washing machine.

These are some of the key steps they recommend:

- Always pay family necessities and housing-related bills;
- Pay the minimum required to keep essential utility services;
- Pay car loans if a car is essential for an immigrant’s work and family;\(^4^1\)
- Pay child support debts and income taxes;
- Do not move a debt up in priority because the creditor threatens to sue you or continually calls your home; and
- Some debts may not be legally binding. See below under “It may not be legal for the debt to be collected.”

Working with the Lender to Extend Payments for the Loan and/or Negotiate the Repayment Amount

The immigrant may be able to make an alternative payment arrangement directly with the lender, such as an extended payment period or change in repayment amount. Any new terms agreed with the lender should be in writing and the immigrant or his or her representative should keep track of all communications with the lender, including notes about interactions in person or over the phone. They should also keep any emails or letters received from the lender and the lender’s contact information. The immigrant may also be able to get more time to repay a payday loan without

\(^4^1\) In the case of a car title loan which the immigrant cannot pay off, they can either find someone willing to buy the car and use that money to pay off the loan, or just turn the car in to the lender, especially if the debt is more than the value of the vehicle.
being charged extra fees through an Extended Payment Plan (EPP), if permitted by state law.\textsuperscript{42}

Protecting Accounts from Automatic Withdrawals or Garnishment

Payday Loans Tied to Bank Accounts
An immigrant can withdraw his or her permission to the lender to take money from the immigrant’s bank account. Some payday and other short-term loans require a written Automated Clearing House (ACH) authorization, which gives the lender permission to electronically take money from the customer’s checking or savings account when payment is due. Cancellation or revocation of an ACH authorization will prevent such withdrawals from being made from the immigrant’s account or stop payment on checks. However, it will not prevent the lender from applying fees and penalties on overdue payments or from seeking civil remedies. For example, if the immigrant gave the lender a post-dated check and there is not enough money in the account to pay the check when the lender submits it to the bank, the lender will charge the immigrant fees and penalties and the bank may charge the immigrant an overdraft fee.

Garnishment and Default Judgements
Garnishment is a court order that allows creditors to take repayment directly from a debtor’s paycheck or bank account. Garnishment varies significantly from state to state, so risks are higher for someone with assets who is in a more permissive garnishment state. The likelihood that a court will order a garnishment against the immigrant is higher if there is a default judgment. If the debt is taken to court for collection and you have granted someone your power of attorney, that person may engage a lawyer for you and make legal decisions on your behalf to avoid a default judgment (but unless the person is a lawyer they cannot represent you in court).

It May Not Be Legal for the Debt to Be Collected
Debt collectors have a limited time during which they can sue debtors for nonpayment. Such time limits differ by state and are set by each state’s

\textsuperscript{42} EPPs are offered by payday lenders that are members of the Consumer Financial Services Association of America (CFSA). Under an EPP, a customer may pay the transaction balance in four equal payments coinciding with the periodic payment dates. The general requirements and conditions of an EPP can be found at this website: http://cfsaa.com/cfsa-member-best-practices/what-is-an-extended-payment-plan.aspx. You can find out whether a payday lender is a member of the CFSA through this website: http://cfsaa.com/about-cfsa/2017-cfsa-corporate-members.aspx. There is no charge to enter into an EPP.
statute of limitations. For example, in Texas, after four years the debt is time-barred and the debtor can no longer pursue a court judgment for collections. In some states, where there is a 36% or lower rate cap in place and the loan is online, the loan could be illegal and thus not be required to be repaid because legally it is not collectible. Other states have limits on rollovers or other protections that may apply and allow an immigrant to stop payment. A local lawyer can provide more information.
CHECKLIST: PAYDAY AND OTHER SHORT-TERM LOANS

Your debt is not discharged after you leave the country. Payday and other short-term debt does not go away. But an immigrant can manage debt by discontinuing automatic repayment and working out something they can afford. It is important to prioritize how you want to spend your money.

- If you have time before leaving the country, you should contact your lenders, notify them of the situation and provide a forwarding address in your home country. Be sure to contact them both by phone and by mail, and send your notification by certified mail, return receipt requested.

- If you are subject to immediate deportation, you should keep a record of each of your lender’s contact information accessible and, if you can, send a payment to the lender upon arriving in your home country. You should also attempt to contact the lender after being deported to provide an updated mailing address.

- If you have granted a lender an ACH authorization to allow them to automatically withdraw money from your bank account, you may want to cancel the authorization.

- You may be eligible for an Extended Payment Plan (EPP) for your loan, if your loan meets certain requirements described above. You may also be able to work with your lender to extend your payment schedule or renegotiate your payment amount. Any changes to your loan should be in writing.