

D17 LEGAL BULLETIN

Advice for Guardians of the Last Frontier



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COVID-19 Series

Garnishment of Stimulus Payments

Let the Debtor Beware: Garnishment of Stimulus Payments

You may have heard rumors that the stimulus payments provided under the CARES Act in response to the novel coronavirus may be subject to seizure under state laws that allow debt collectors to seize funds held on deposit. Is it really true that the stimulus funds, intended for food, housing, and other essential needs, could be snatched away to pay off your debts? The answer, unfortunately, is yes. While the CARES Act exempted the money from garnishment for federal debts like student loans, nothing in the law exempts the payment from garnishment by private collectors to apply toward other judgments.

In addition, some banks may apply the money toward overdraft fees or negative balances on long-forgotten accounts. For example, USAA was among those banks that applied the stimulus payments to overdrawn account balances, though it quickly reversed course and returned the money in response to bad publicity. But USAA certainly was not alone. According to David Dayen, executive editor at *The American Prospect*, of the five largest consumer banks, “only JPMorgan Chase said they would not use CARES Act payments to offset debts. The other four gave no response.”

Despite the federal inaction, many states have taken action to protect the funds from seizure. At least 25 state attorneys general have asked Treasury Secretary Steve Mnuchin to declare the payments “benefits payments” exempt from attachment. In the absence of that, the governors of Illinois, Oregon, and Washington are among those who issued executive orders declaring moratoria on seizures of bank accounts. The attorneys general of Ohio and Nebraska opined that state law already protects the funds from seizure. And on 20 April 2002, the Indiana Supreme Court declared CARES funds exempt from garnishment, though it did not go so far as ending all bank account garnishments. The Alaska government has not yet taken steps to protect the money.

For those who still may be at risk of losing their stimulus payment to garnishment, there are some options, though neither is fail-safe:

- 1) The best advice is to request the Treasury Department issue a **paper check** rather than directly deposit the money into your account. That eliminates the possibility the money ever will be in a bank account until you put it there. If you request a paper check, remember it will take longer to process a check through the mail than to issue direct deposit. In addition, most banks and check cashing businesses charge hefty fees for the privilege of accessing your money. Avoiding direct deposit also probably is a

non-issue for service members, who generally must receive their pay by direct deposit in any event.

- 2) Another option is to go immediately to an ATM and **withdraw the money**. That may pose potential health risks associated with social distancing. In addition, withdrawing the money after it hits the bank may be too little, too late. A bank attachment only works when properly timed to hit the bank when there will be money in the account and before the customer has time to take action to direct the funds somewhere else.

But if garnishment of the stimulus is a potential concern for you, your issues go beyond just garnishment of the stimulus payment. It's important to look to your overall financial picture, even after the COVID-19 pandemic has passed. If a judgment has been entered against you, it's never too late to contact the creditor to arrange payments that are more manageable for you. A legal assistance attorney can help with that. While the terms most certainly will require payment by voluntary wage assignment or through automatic withdrawal from your bank account, they will be within your control and without the worry of future garnishments. Contact the legal assistance office for assistance.

Legal Assistance is a free benefit available to active duty service members and their dependents and retirees and their dependents for all civil legal matters, including consumer issues. Call the Legal Assistance office at (907) 487-5474 for an intake to start the process.

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