

Indiana Legal Services, Inc

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Can Creditors Take My Social Security?

As a general rule, creditors cannot take (“seize”) Social Security benefits, even if they have sued you and gotten a judgment against you in court. There are, however, some limited exceptions to this rule for certain kinds of debts owed to the government, which are explained below.

Are Social Security benefits protected by law?

Yes. With the exception of certain federal agencies, creditors cannot garnish or seize Social Security benefits, whether it is retirement, disability, survivor’s benefits, or SSI. Congress has written this protection into law. This means that ordinary creditors such as credit card companies, medical collectors, and loan companies, cannot take Social Security benefits under any circumstances.

Does it matter if the creditor has sued me in court?

No. These protections apply, even if the creditor has a court judgment against you. The court may not order you to pay the judgment out of Social Security money.

Do these protections exist if the Social Security money is deposited into a bank account?

Yes. Even after Social Security funds are deposited into a bank, they are still protected from garnishment or seizure.

What if a collection agency threatens to take my Social Security?

The collection agency may be violating the Fair Debt Collection Practices Act, a federal law that regulates collection agencies. You may have legal claims against the collection agency, and should seek legal advice.

Can government agencies take my Social Security benefits?

Yes, but only under limited circumstances.

First, SSI (Supplemental Security Income) cannot be taken at all.

Only federal agencies may try to take Social Security benefits. Examples of some things the federal agencies can try to take your Social Security benefits for are:

- Federally subsidized student loans.
- Other loans owed to, or subsidized by the government.
- Food stamp overpayments.

Can the federal agency take my whole Social Security payment?

No. A government agency can take only a limited portion of the monthly Social Security check. The first \$750 per month, or \$9000 per year, cannot be taken. So if your benefits are less than \$750 per month, your benefits cannot be taken.

If your benefits are more than \$750 per month, the government agency can take the lesser of:

1. The amount of the debt;
2. 15% of your monthly payment; OR
3. The amount by which your monthly payment is more than \$750.

Debts to the IRS do NOT follow the rules above. The IRS can take up to 15% of your monthly Social Security benefit even if you get less than \$750.

Can I protest the government's action?

Yes. You have the right to get advance, written notices that the government is going to "offset" (take a portion of) your Social Security benefits. You have the right to a hearing if you don't think you owe the money. You may wish to seek legal advice. Another alternative is to set up payment arrangements with the government agency that is threatening to take your Social Security benefits.

Can I get rid of the government debt in bankruptcy?

In many cases, yes. There are, however, important exceptions, including:

- Student loans and taxes can be discharged only in limited circumstances.
- The debt will not be discharged if the government proves you obtained the debt by false pretenses or fraud.

An attorney can review your financial circumstances, and the nature of the debts, to help you decide whether bankruptcy is right for you.

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