

### § 112.3

### 32 CFR Ch. I (7-1-08 Edition)

Inspector General of the Department of Defense, the Defense Agencies, and the Department of Defense Field Agencies (hereafter referred to collectively as “the Department of Defense Components”). The term “Military Services,” as used herein, refers to the Army, the Navy, the Air Force, the Marine Corps, and the Coast Guard.

(b) The provisions of this part do not apply to:

(1) Indebtedness of a member of the Military Services to the Federal Government.

(2) Processing of indebtedness claims to enforce judgments against military members for alimony or child support.

(3) Claims by State or municipal governments under the processing guidelines for complaints, including tax collection actions.

#### § 112.3 Definitions.

(a) *Absence.* A member’s lack of an “appearance,” at any stage of the judicial process, as evidenced by failing to physically attend court proceedings; failing to be represented at court proceedings by counsel of the member’s choosing; or failing to timely respond to pleadings, orders, or motions.

(b) *Court.* A court of competent jurisdiction within any State, territory, or possession of the United States.

(c) *Debt collector.* An agency or agent engaged in the collection of debts described under 15 U.S.C. 1601 note and 1692-1692o (“Fair Debt Collection Practices Act”).

(d) *Exigencies of military duty.* A military assignment or missing-essential duty that, because of its urgency, importance, duration location, or isolation, necessitates the absence of a member of the Military Services from appearance at a judicial proceeding or prevents the member from being able to respond to a notice of application for an involuntary allotment. Exigency of military duty is normally presumed during periods of war, national emergency, or when the member is deployed.

(e) *Judgment.* A final judgment must be a valid, enforceable order or decree, by a court from which no appeal may be taken, or from which no appeal has been taken within the time allowed, or from which an appeal has been taken

and finally decided. The judgment must award a sum certain amount and specify that the amount is to be paid by an individual who, at the time of application for the involuntary allotment, is a member of the Military Services.

(f) *Just financial obligations.* A legal debt acknowledged by the military member in which there is no reasonable dispute as to the facts or the law; or one reduced to judgment that conforms to the Soldiers’ and Sailors’ Civil Relief Act of 1940, as amended (50 U.S.C. appendix sections 501-591).

(g) *Member of the military services.* Any member of the Regular Army, Air Force, Navy, Marine Corps, or Coast Guard, and any member of a Reserve component of the Army, Air Force, Navy, Marine Corps or Coast Guard (including the Army National Guard of the United States and the Air National Guard of the United States) on active duty pursuant to 10 U.S.C. 672, for a period in excess of 180 days at the time an application for involuntary allotment is received by the Director, DFAS, or Commanding Officer, Coast Guard Pay and Personnel Center. The following shall not be considered members:

(1) Retired personnel, including those placed on the temporary or permanent disabled retired list; and

(2) Personnel in a prisoner of war or missing in action status, as determined by the Secretary of the Military Department concerned.

#### § 112.4 Policy.

(a) Members of the Military Services are expected to pay their just financial obligations in a proper and timely manner. A Service member’s failure to pay a just financial obligation may result in disciplinary action under the Uniform Code of Military Justice (10 U.S.C. 801-940) or a claim pursuant to Article 139 of the Uniform Code of Military Justice (10 U.S.C. 939). Except as stated in this section, and in paragraphs (a)(1) and (a)(2) of this section, the Department of Defense Components have no legal authority to require members to pay a private debt or to divert any part of their pay for satisfaction of a private debt.

(1) Legal process instituted in civil courts to enforce judgments against

military personnel for the payment of alimony or child support shall be acted on in accordance with 42 U.S.C. 651-665, and Part 7, Chapter 7, Section B. of Department of Defense 7000.14-R<sup>1</sup>, Volume 7, Part A.

(2) Involuntary allotments under 5 U.S.C. 5520a(k) shall be established in accordance with this part.

(b) Whenever possible, indebtedness disputes should be resolved through amicable means. Claimants may contact military members by having correspondence forwarded through the military locator services for an appropriate fee, as provided under DoD Instruction 7230.7.<sup>2</sup>

(c) The following general policies apply to processing of *debt complaints* (not involuntary allotments):

(1) Debt complaints meeting the requirements of this part, and procedures established by the Under Secretary of Defense (Personnel and Readiness), as required by 32 CFR part 113, shall receive prompt processing assistance from commanders.

(2) Assistance in indebtedness matters shall not be extended to those creditors:

(i) Who have not made a bona fide effort to collect the debt directly from the military member;

(ii) Whose claims are patently false and misleading; or

(iii) Whose claims are obviously exorbitant;

(3) Some States have enacted laws that prohibit creditors from contacting a debtor's employer about indebtedness or communicating facts on indebtedness to an employer unless certain conditions are met. The conditions that must be met to remove this prohibition are generally such things as reduction of a debt to judgment or obtaining written permission of the debtor.

(i) At Department of Defense installations in States having such laws, the processing of debt complaints shall not be extended to those creditors who are in violation of the State law. Commanders may advise creditors that this rule has been established because it is the general policy of the Military Serv-

ices to comply with State law when that law does not infringe upon significant military interests.

(ii) The rule in §112.4(c)(3)(i) shall govern even though a creditor is not licensed to do business in the State where the debtor is located. A similar practice shall be started in any State enacting a similar law regarding debt collection.

(4) Under 15 U.S.C. 1601 note and 1692-1692o ('Fair Debt Collection Practices Act'), contact by a debt collector with third parties, such as commanding officers, for aiding debt collection is prohibited without a court order, or the debtor's prior consent given directly to the debt collector. Creditors are generally exempt from this requirement, but only when they collect on this own behalf.

(d) The following general policies apply to processing of *involuntary allotments* under 5 U.S.C. 5520a(k).

(1) In those cases in which the indebtedness of a military member has been reduced to a judgment, an application for an involuntary allotment from the pay of the member may be made under procedures prescribed by the Under Secretary of Defense (Personnel and Readiness). Such procedures shall provide the exclusive remedy available under 5 U.S.C. 5520a(k).

(2) An involuntary allotment from a member's pay shall not be started in any indebtedness case in which:

(i) Exigencies of military duty caused the absence of the member from the judicial proceeding at which the judgment was rendered; or

(ii) There has not been compliance with the procedural requirements of the Soldiers' and Sailors' Civil Relief Act of 1940, 50 U.S.C. appendix sections 501-591.

#### § 112.5 Responsibilities.

(a) The Under Secretary of Defense for Personnel and Readiness shall:

(1) In consultation with the Under Secretary of Defense (Comptroller), establish procedures for the processing of debt complaints and involuntary allotments.

(2) Have policy oversight on the assistance to be provided by military authorities to creditors of military personnel who have debt complaints, and

<sup>1</sup>Copies may be obtained, at cost, from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161.

<sup>2</sup>See footnote 1 to §112.4(a)(1)