

Under Secretary of Defense (Comptroller), and Chief, Office of Personnel and Training.

(ii) Considers whether the Servicemembers Civil Relief Act, as amended (50 U.S.C. Appendix, sections 501-591) has been complied with pursuant to 5 U.S.C. 5520a(k) prior to establishing an involuntary allotment against the pay of a member of the Military Services.

(iii) Acts as the Coast Guard manager for forms necessary to process involuntary allotments.

PART 113—INDEBTEDNESS PROCEDURES OF MILITARY PERSONNEL

Sec.

113.1 Purpose.

113.2 Applicability.

113.3 Definitions.

113.4 Policy.

113.5 Responsibilities.

113.6 Procedures.

APPENDIX A TO PART 113—CERTIFICATE OF COMPLIANCE

APPENDIX B TO PART 113—STANDARDS OF FAIRNESS

APPENDIX C TO PART 113—SAMPLE DD FORM 2653, "INVOLUNTARY ALLOTMENT APPLICATION"

APPENDIX D TO PART 113—SAMPLE DD FORM 2654, "INVOLUNTARY ALLOTMENT NOTICE AND PROCESSING"

AUTHORITY: 5 U.S.C. 5520a(k) and 10 U.S.C. 113(d).

SOURCE: 60 FR 1722, Jan. 5, 1995, unless otherwise noted.

§ 113.1 Purpose.

This part implements policy, assigns responsibilities, and prescribes procedures under 32 CFR part 112 governing delinquent indebtedness of members of the Military Services.

§ 113.2 Applicability.

This part applies to the Office of the Secretary of Defense, the Military Departments (including the Coast Guard when it is not operating as a Military Service in the Navy by agreement with the Department of Transportation), the Chairman of the Joint Chiefs of Staff, the Unified Combatant Commands, the Inspector General of the Department of Defense, the Defense Agencies, and the DoD Field Activities (hereafter referred to collectively as "the DoD

Components"). The term "Military Services," as used herein, refers to the Army, the Navy, the Air Force, the Marine Corps, and the Coast Guard.

§ 113.3 Definitions.

(a) *Appearance*. The presence and participation of a member of the Military Services, or an attorney of the member's choosing, throughout the judicial proceeding from which the judgment was issued that is the basis for a request for enforcement through involuntary allotment.

(b) *Applicant*. The original judgment holder, a successor in interest, or attorney or agent thereof who requests an involuntary allotment from a member of the Military Services pursuant to DoD Directive 1344.9.¹

(c) *Pay subject to involuntary allotment*. For purposes of complying with 32 CFR part 112 and 5 U.S.C. 5520a(k), pay subject to involuntary allotment shall be determined by:

(1) Including:

(i) Basic pay but excluding reduction for education for education benefits under section 38 U.S.C. 1411 ("New G.I. Bill").

(ii) Special pay (including enlistment and reenlistment bonuses).

(iii) Incentive pay.

(iv) Accrued leave payments (basic pay portion only).

(v) Readjustment pay.

(vi) Severance pay (including disability severance pay).

(vii) Lump-sum Reserve bonus.

(viii) Inactive duty training pay.

(2) Excluding:

(i) Retired pay (including) disability retired pay).

(ii) Retainer pay.

(iii) Separation pay, Voluntary Separation Incentive (VSI), and Special Separation Benefit (SSB).

(iv) Allowances paid under titles 10 and 37 of the United States Code (e.g., Chapter 53 of title 10 and Chapter 7 of title 37, respectively) and other reimbursements for expenses incurred in connection with duty in the Military Service or allowances in lieu thereof.

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

(v) Payments not specifically enumerated in §113.3(c)(1).

(3) After including the items in §113.3(c)(1), subtracting the following pay items to compute the final earnings value of the pay subject to involuntary allotment:

(i) Federal and State employment and income tax withholding (amount limited only to that which is necessary to fulfill member's tax liability).

(ii) FICA tax.

(iii) Amounts mandatorily withheld for the United States Soldiers' and Airmen's Home.

(iv) Deductions for the Servicemen's Group Life Insurance coverage.

(v) Retired Serviceman's Family Protection Plan.

(vi) Indebtedness to the United States.

(vii) Fines and forfeitures ordered by a court-martial or a commanding officer.

(viii) Amounts otherwise required by law to be deducted from a member's pay (except payments under 42 U.S.C. 659, 661, 662, and 665).

(d) *Preponderance of the evidence.* A greater weight of evidence that is more credible and convincing to the mind. That which best accords with reason and probability. (See Black's Law Dictionary²)

(e) *Proper and Timely Manner.* A manner that under the circumstances does not reflect discredit on the Military Service.

§ 113.4 Policy.

(a) It is DoD policy under 32 CFR part 112 that procedures be established for the processing of debt complaints against members of the Military Services and involuntary allotments from the pay of members of the Military Services.

(b) An involuntary allotment shall not exceed the lesser of 25 percent of a member's pay subject to involuntary allotment or the maximum percentage of pay subject to garnishment proceedings under the applicable State law.

(c) The amount of an involuntary allotment under 32 CFR part 112 and this part when combined with deductions as a result of garnishments or statutory allotments for spousal support and child support under 42 U.S.C. 659, 661, 662, or 665, may not exceed the lesser of 25 percent of a member's pay subject to involuntary allotment or the maximum percentage of pay subject to garnishment proceedings under applicable State law. In any case in which the maximum percentage would be exceeded, garnishments and involuntary allotments for spousal and child support shall take precedence over involuntary allotments authorized under 32 CFR part 112 and this part. Involuntary allotments established under 32 CFR part 112 and this part shall be reduced or stopped as necessary to avoid exceeding the maximum percentage allowed.

(d) The Truth in Lending Act (15 U.S.C. 1601 note, 1601-1614, 1631-1646, 1661-1666j, and 1667-1667e) prescribes the general disclosure requirements that must be met by those offering or extending consumer credit and Federal Reserve Board Regulation Z (12 CFR 226) prescribes the specific disclosure requirements for both open-end and installment credit transactions. In place of Federal Government requirements, State regulations apply to credit transactions when the Federal Reserve Board has determined that the State regulations impose substantially similar requirements and provide adequate enforcement measures. Commanding officers, with the assistance of judge advocates, should check regulations of the Federal Reserve Board to determine whether Federal or State laws and regulations govern.

§ 113.5 Responsibilities.

(a) The Under Secretary of Defense for Personnel and Readiness shall monitor compliance with this part.

(b) The Under Secretary of Defense (Comptroller) shall ensure Defense Finance and Accounting Service (DFAS) implementation of this part.

(c) The Heads of the DoD Components shall ensure compliance with this part.

§ 113.6 Procedures.

(a) The following procedures apply to the processing of debt complaints

²Black's Law Dictionary, Fourth Edition, West Publishing Company, Saint Paul, Minnesota (1952).

§ 113.6

32 CFR Ch. I (7-1-14 Edition)

against members of the Military Services.

(1) It is incumbent on those submitting indebtedness complaints to show that they have met the disclosure requirements of the Truth in Lending Act (15 U.S.C. 1601 note, 1601-1614, 1631-1646, 1661-1666j, and 1667-1667e) and Federal Reserve Board Regulation Z (12 CFR 226), and that they complied with the Standards of Fairness (appendix B to this part).

(2) Creditors subject to Federal Reserve Board Regulation Z (12 CFR 226), and assignees claiming thereunder, shall submit with their debt complaint an executed copy of the Certificate of Compliance (appendix A to this part), and a true copy of the general and specific disclosures provided the member of the Military Service as required by the Truth in Lending Act (15 U.S.C. 1601 note, 1601-1614, 1631-1646, 1661-1666j, and 1667-1667e). Debt complaints that request assistance but do not meet these requirements will be returned without action to the claimant.

(3) A creditor not subject to Federal Reserve Board Regulation Z (12 CFR 226), such as a public utility company, shall submit with the request a certificate that no interest, finance charge, or other fee is in excess of that permitted by the law of the State in which the obligation was incurred.

(4) A foreign-owned company having debt complaints shall submit with its request a true copy of the terms of the debt (English translation) and shall certify that it has subscribed to the Standards of Fairness (appendix B to this part).

(5) Debt complaints that meet the requirements of this part shall be processed by Department of Defense Components. "Processed" means that Heads of the Department of Defense Components, or designees, shall:

(i) Review all available facts surrounding the transaction forming the basis of the complaint, including the member's legal rights and obligations, and any defenses or counterclaims the member may have.

(ii) Advise the member concerned that:

(A) Just financial obligations are expected to be paid in a proper and time-

ly manner, and what the member should do to comply with that policy;

(B) Financial and legal counseling services are available under DoD Directive 1344.7³ in resolving indebtedness; and

(C) That a failure to pay a just debt may result in the creditor obtaining a judgment from a court that could form the basis for collection of pay from the member pursuant to an involuntary allotment.

(iii) If a member acknowledges a debt as a result of creditor contact with a DoD Component, advise the member that assistance and counseling may be available from the on-base military banking office, the credit union serving the military field of membership, or other available military community service organizations.

(iv) Direct the appropriate commander to advise the claimant that:

(A) Those aspects of DoD policy prescribed in 32 CFR part 112.4, are pertinent to the particular claim in question; and

(B) The member concerned has been advised of his or her obligations on the claim.

(v) The commander's response to the claimant shall not undertake to arbitrate any disputed debt, or admit or deny the validity of the claim. Under no circumstances shall the response indicate whether any action has been taken, or will be taken, against the member as a result of the complaint.

(b) The following procedures apply to the processing of involuntary allotments from the pay of members of the Military Services.

(1) *Involuntary allotment application.*

(i) Regardless of the Service Affiliation of the member involved, with the exception of members of the Coast Guard an application to establish an involuntary allotment from the pay of a member of the Military Services shall be made by sending a completed DD Form 2653, "Involuntary Allotment Application" (appendix C to this part) to the appropriate address listed below. Applications sent to any other address shall be returned without action to the applicant.

³See footnote 1 to § 113.3(b).

Office of the Secretary of Defense

§ 113.6

(For Army, Navy, Air Force, or Marine Corps)

Defense Finance and Accounting Service,
Cleveland Center, Code L, P.O. Box 998002,
Cleveland, OH 44199-8002

(For Coast Guard only)

Coast Guard Pay and Personnel Center
(LGL), 444 S.E. Quincy Street, Topeka, KS
66683-3591

(ii) Each application must include a copy of the final judgment certified by the clerk of court and such other documents as may be required by § 113.6(b)(1)(iv).

(iii) A garnishment summons or order is insufficient to satisfy the final judgment requirement of § 113.6(b)(1)(ii) and is not required to apply for an involuntary allotment under this part.

(iv) Involuntary allotment applications must contain the following information, certifications, and acknowledgment:

(A) The full name, social security number, and branch of Service of the military member against whose pay an involuntary allotment is sought. Although not required, inclusion of the member's current duty station and duty address on the application form will facilitate processing of the application.

(B) The applicant's full name and address. If the applicant is not a natural person, the application must be signed by an individual with the authority to act on behalf of such entity. If the allotment is to be in favor of a person other than the original judgment holder, proof of the right to succeed to the interest of the original judgment holder is required and must be attached to the application.

(C) The dollar amount of the judgment. Additionally, if the judgment awarded interest, the total dollar amount of the interest on the judgment accrued to the date of application.

(D) A certification that the judgment has not been amended, superseded, set aside, or satisfied; or, if the judgment has been satisfied in part, the extent to which the judgment remains unsatisfied.

(E) A certification that the judgment was issued while the member was not on active duty (in appropriate cases). If the judgment was issued while the

member was on active duty, a certification that the member was present or represented by an attorney of the member's choosing in the proceedings, or if the member was not present or represented by an attorney of the member's choosing, that the judgment complies with the Soldiers' and Sailors' Civil Relief Act of 1940, as amended (50 U.S.C. appendix sections 501-591).

(F) A certification that the member's pay could be garnished under applicable State law and section 5520a(k) of the United States Code, if the member were a civilian employee.

(G) A certification that, to the knowledge of the applicant, the debt has not been discharged in bankruptcy, nor has the member filed for protection from creditors under the bankruptcy laws of the United States.

(H) A certification that if the judgment is satisfied prior to the collection of the total amount through the involuntary allotment process, the applicant will provide prompt notice that the involuntary allotment must be discontinued.

(I) A certification that if the member overpays the amount owed on the judgment, the applicant shall refund the amount of overpayment to the member within 30 days of discovery or notice of the overpayment, whichever is earlier, and that if the applicant fails to repay the member, the applicant understands he or she may be denied the right to collect by involuntary allotment on other debt reduced to judgments.

(J) Acknowledgment that as a condition of application, the applicant agrees that neither the United States, nor any disbursing official or Federal employee whose duties include processing involuntary allotment applications and payments, shall be liable for any payment or failure to make payment from moneys due or payable by the United States to any person pursuant to any application made in accordance herewith.

(v) The original and three copies of the application and supporting documents must be submitted by the applicant to DFAS.

(vi) A complete "application package" (the DD Form 2653, supporting documentation, and three copies of the application and supporting documents),

§ 113.6

32 CFR Ch. I (7-1-14 Edition)

is required for processing of any request to establish an involuntary allotment pursuant to this part and 32 CFR part 112.

(vii) Applications that do not conform to the requirements of this part shall not be processed. If an application is ineligible for processing, the application package shall be returned to the applicant with an explanation of the deficiency. In cases involving repeated false certifications by an applicant, the designated DFAS official may refuse to accept or process additional applications by that applicant for such period of time as the official deems appropriate to deter against such violations in the future.

(2) *Processing of involuntary allotment applications.* (i) Promptly upon receipt of DD Form 2653 (Appendix C to this part), the designated DFAS official shall review the "application package" to ensure compliance with the requirements of this part. If the application package is complete, the DFAS official shall:

(A) Complete Section I of DD Form 2654, "Involuntary Allotment Notice and Processing" (Appendix D to this part), by inserting the name, social security number, rank, and branch of service of the military member against whom an application for involuntary allotment is being processed. Additionally, the DFAS official shall provide the due date for receipt of a response at DFAS. The due date shall be 90 days from the date DFAS mails the DD Form 2654 to the commander and member concerned as provided for in § 113.6(b)(2)(i)(B).

(B) Mail one copy of the application package to the member and two copies of the application package, along with DD Form 2654, to the commander of the military member or other official as designated by the Military Service concerned during times of war, national emergency, deployment, or other similar circumstances, who may act for the commander, provided the Military Service concerned has provided DFAS with the name or position of the official and the appropriate address (hereinafter, the meaning of the term "commander" includes such other official).

(C) Within 60 days of mailing the copies of the application package and DD Form 2654, DFAS shall provide notice to the member and the member's commander that automatic processing of the involuntary allotment application shall occur if a response (including notice of an approved extension as authorized in § 113.6(b)(2)(iii)(B) and (F), is not received by the due date specified in Section I of DD Form 2654. In the absence of a response, DFAS may automatically process the involuntary allotment application on the fifteenth calendar day after the date a response was due. When DFAS has received notice of an extension, automatic processing shall not begin until the fifteenth calendar day after the approved extension date.

(D) Retain the original of the application package and DD Form 2654.

(ii) Upon receipt of an application, the commander shall determine if the member identified in Section I of DD Form 2654 is assigned or attached to the commander's unit and available to respond to the involuntary allotment application. If the member is not assigned or attached, or not available to respond (e.g., retired, in a prisoner of war status, or in a missing in action status), the commander will promptly complete Section II of DD Form 2654 and attach appropriate documentation supporting the determination. The commander will then mail the application package and DD Form 2654 to DFAS. Section II shall also be used by the commander to notify DFAS of extensions beyond the due date for a response contained in Section I of DD Form 2654. When such extensions are authorized, the commander will complete Section II, make a copy of Sections I and II, and promptly mail the copy to DFAS.

(iii) Within 5 days of receipt of an application package and DD Form 2654 from the designated DFAS official, the commander shall notify the member of the receipt of the application, provide the member a copy of the entire application package, and counsel the member using and completing Section III of DD Form 2654 about the following:

(A) That an application for the establishment of an involuntary allotment

for the lesser of 25 percent of the member's pay subject to involuntary allotment or the maximum percentage of pay subject to garnishment proceedings under the applicable State law has been received.

(B) That the member has 15 calendar days from the date of receipt of the commander's notice to complete Section IV of DD Form 2654. That for good cause shown, the commander may grant an extension of reasonable time (normally not exceeding 30 calendar days) to submit a response. That during times of deployment, war, national emergency, assignment outside the United States, hospitalization, or other similar situations that prevent the member from obtaining necessary evidence or from responding in a timely manner, extensions exceeding 30 calendar days may be granted. That if the member fails to respond within the time allowed, the commander will note the member's failure to respond in Section V of DD Form 2654 and send the form to DFAS for appropriate action.

(C) That the member's response will either consent to the involuntary allotment or contest it.

(D) That the member may contest the application for any one of the following reasons:

(1) There has not been compliance with the procedural requirements of the Soldiers' and Sailors' Civil Relief Act of 1940, as amended (50 U.S.C. appendix sections 501-591) during the judicial proceeding upon which the involuntary allotment application is sought.

(2) "Exigencies of military duty" (as defined in 32 CFR part 112.3(d)) caused the "absence" of the member from appearance in a judicial proceeding forming the basis for the judgment upon which the application is sought.

(3) Information in the application is patently false or erroneous in material part.

(4) The judgment has been fully satisfied, superseded, or set aside.

(5) The judgment has been materially amended, or partially satisfied. When asserting this defense, the member shall include evidence of the amount of the judgment that has been satisfied.

(6) There is a legal impediment to the establishment of the involuntary allotment (for example, the judgment debt

has been discharged in bankruptcy, the judgment debtor has filed for protection from the creditors under the bankruptcy laws of the United States, the applicant is not the judgment holder nor a proper successor in interest to that holder, or the applicant has been enjoined by a Federal or state court from enforcing the judgment debt).

(7) Or other appropriate reasons that must be clearly specified and explained by the member.

(E) That, if the member contests the involuntary allotment, the member shall provide evidence (documentary or otherwise) in support thereof. Furthermore, that any evidence submitted by the member may be disclosed to the applicant for the involuntary allotment.

(F) That the member may consult with a legal assistance attorney, if reasonably available, or a civilian attorney at no expense to the government. That if a legal assistance attorney is available, the member should immediately arrange for an appointment. That the member may request a reasonable delay from the commander to obtain legal assistance (in cases where an approved delay will cause DFAS to receive the member's response after the due date identified in Section I of DD Form 2654, the commander must immediately notify the designated DFAS official of the delay, the date for an expected response, and the reason for the delay by completing Section II of DD Form 2654 and forwarding a copy of Sections I and II to DFAS). Additionally, that requests for extensions of time based on the need for legal assistance shall be denied to members who fail to exercise due diligence in seeking such assistance.

(G) That if the member contests the involuntary allotment on the grounds that exigencies of military duty caused the absence of the member from the judicial proceeding at which the judgment was rendered, then the member's commander shall review and make the final determination on this contention, and notify the designated DFAS official of the commander's decision by completing Section V of DD Form 2654 and forwarding the form to DFAS.

(1) In determining whether exigencies of military duty caused the absence of the member, the commander at the

§ 113.6

32 CFR Ch. I (7–1–14 Edition)

level designated by the Service concerned shall consider the definition of “exigencies of military duty” (as defined in 32 CFR part 112.3(d)).

(2) Additionally, consideration shall be given to whether the commander at the time determined the military duties in question to be of such paramount importance that they prevented making the member available to attend the judicial proceedings, or rendered the member unable to timely respond to process, motions, pleadings, or orders of the court.

(H) That if the member contests the involuntary allotment on any basis other than exigencies of military duty, the application package and DD Form 2654 shall be returned to the commander who shall forward it to the designated DFAS official for appropriate action.

(I) That if the member fails to respond to the commander within the time allowed under § 113.6(b)(2)(iii)(B), the commander shall notify the designated DFAS official of the member’s failure to respond by completing Section V of DD Form 2654, and forwarding the form to DFAS.

(iv) After counseling the member in accordance with § 113.6(b)(2)(iii)(A)–(I), the commander shall:

(A) Date and sign Section III of DD Form 2654.

(B) Obtain the member’s acknowledgment of counseling by having the member sign the appropriate space on Section III of DD Form 2654.

(C) Determine if the member consents to the involuntary allotment or needs the time authorized under this part to review the application package and take appropriate action. If the member consents to the involuntary allotment, the commander shall direct the member to appropriately complete Section IV of DD Form 2654. The commander must then complete the appropriate item in Section V and promptly forward the completed DD Form 2654 to the designated DFAS official.

(D) Complete the appropriate items in Section V of DD Form 2654 when the member fails to respond within the time authorized for a response, or asserts that exigencies of military duty caused the absence of the member from an appearance in the judicial pro-

ceeding upon which the Involuntary Allotment Application is sought.

(1) In determining whether exigencies of military duty caused the absence of the member, the commander, at the level designated by the Service concerned, shall consider the definition of “exigencies of military duty” (as defined in 32 CFR part 112.3(d)), the evidence provided by the member, any other reasonably available evidence (e.g., a copy of the member’s personnel record), and whether the commander at the time determined the military duties in question to be of such paramount importance that they prevented making the member available to attend the judicial proceedings, or rendered the member unable to timely respond to process, motions, pleadings, or orders of the court.

(2) The evidentiary standard for a commander to determine whether existences of military duty caused the absence of the member from an appearance in the judicial proceeding upon which the Involuntary Allotment Application is sought is a “preponderance of the evidence” (as defined in § 113.3(d) of this part).

(3) If the commander has made a determination on exigencies of military duty, the commander must insert in Section V of DD Form 2654, the title and address of the appeal authority.

(E) Promptly following the date the member’s response is due to the commander as determined by § 113.6(b)(2)(iii)(B), ensure that the DD Form 2654 is appropriately completed and mail the form, along with any response received from the member, to DFAS.

(F) Provide the member a copy of the completed DD Form 2654 within 5 days of mailing to the designated DFAS official.

(v) Upon receipt of DD Form 2654 and any additional evidence submitted by the member, the designated DFAS official shall conduct a review of the entire application package, DD Form 2654, and any evidence submitted by the member, to determine whether the application for an involuntary allotment should be approved and established.

(A) In those cases where the member's commander has completed Section V of DD Form 2654, and determined that exigencies of military duty caused the absence of the member from an appearance in a judicial proceeding upon which the involuntary allotment application is sought, the designated DFAS official shall deny the involuntary allotment application and provide the applicant written notice of the denial and the reason therefor. The designated DFAS official shall also advise the applicant that:

(1) The responsibility for determining whether exigencies of military duty existed belonged to the member's commander and the Military Department concerned.

(2) The commander's decision may be appealed within 60 days of the date DFAS mailed the notice of the decision to the applicant.

(3) An Appeal must be submitted to the appeal authority at the address provided by DFAS (as found in Section V of the DD Form 2654) in their written notice of denial, and that an appeal submitted to an appeal authority and address different from the one provided by DFAS may be returned without action.

(4) An appeal must be submitted in writing and contain sufficient evidence to overcome the presumption that the commander's exigency determination was correct.

(5) The appellate authority shall decide an appeal within 30 days of its receipt and promptly notify the applicant in writing of the decision. The 30 day decision period may be extended during times of deployment, war, national emergency, or other similar situations.

(6) If an appeal is successful, the applicant must submit a written request, along with a copy of the appellate authority's decision, to DFAS within 15 days of receipt of the appellate authority's decision.

(B) Upon receiving written notice that an applicant has successfully appealed a commander's determination on exigencies of military duty that resulted in denial of an involuntary allotment application, DFAS shall review the application in accordance with §113.6(b)(2)(v)(C), and determine

whether the involuntary allotment should be approved and initiated.

(C) In all cases, other than as described in §113.6(b)(2)(v)(A), the designated DFAS official shall deny an involuntary allotment application, and give written notice to the applicant of the reason(s) for denial, if the designated DFAS official determines that:

(1) There has not been compliance with the procedural requirements of the Soldier's and Sailor's Civil Relief Act of 1940, as amended (50 U.S.C. appendix sections 501-591) during the judicial proceeding upon which the involuntary allotment application is sought.

(2) Information in the application is patently false or erroneous in material part.

(3) The judgment has been fully satisfied, superseded, or set aside.

(4) The judgment has been materially amended, or partially satisfied. In such a case, the request for involuntary allotment may be approved only to satisfy that portion of the judgment that remains in effect and unsatisfied; the remainder of the request shall be denied.

(5) There is a legal impediment to the establishment of the involuntary allotment (for example, the judgment debt has been discharged in bankruptcy, the judgment debtor has filed for protection from the creditors under the bankruptcy laws of the United States, the applicant is not the judgment creditor nor a proper successor in interest to that creditor, or the applicant has been enjoined by a Federal or State court from enforcing the judgment debt).

(6) The member's pay is already subject to one or more involuntary allotments or garnishments that equal the lesser of 25 percent of the member's pay subject to involuntary allotment or the maximum percentage of pay subject to garnishment proceedings under the applicable State law.

(7) The applicant has abused the processing privilege (e.g., an applicant, having been notified of the requirements of this part, repeatedly refuses or fails to comply therewith).

(8) Or other appropriate reasons that must be clearly explained to the applicant.

(D) In all cases other than as described in §113.6(b)(2)(v)(A) and (C), the

designated DFAS official shall approve the involuntary allotment application and establish an involuntary allotment against the pay subject to involuntary allotment of the member.

(vi) The designated DFAS official shall, at any time after establishing an involuntary allotment, cancel or suspend such allotment and notify the applicant of that cancellation if the member concerned, or someone acting on his or her behalf, submits legally sufficient proof, by affidavit or otherwise, that the allotment should not continue because of the existence of the factors enumerated in § 113.6(b)(2)(v)(A) and (C)(1)-(8).

(3) *Payments.* (i) Payment of an approved involuntary allotment under 32 CFR part 112 and this part shall commence within 30 days after the designated DFAS official has approved the involuntary allotment.

(ii) Payments under this part shall not be required more frequently than once each month, and the designated official shall not be required to vary normal pay and disbursement cycles.

(iii) If the designated DFAS official receives several applications on the same member of a Military Service, payments shall be satisfied on a first-come, first-served basis.

(iv) Payments shall continue until the judgment is satisfied or until canceled or suspended.

(A) DFAS shall collect the total judgment, including interest when awarded by the judgment. Within 30 days following collection of the amount of the judgment, including interest as annotated by the applicant in Section I of DD Form 2654, the applicant may submit a final statement of interest that accrued during the pay-off period. This final statement of interest request must be accompanied by a statement of account showing how the applicant computed the interest amount. DFAS will collect this post-application interest provided it is an amount owed pursuant to the judgment. DFAS shall not accept any further interest requests.

(B) Interest or other costs associated with the debt forming the basis for the judgment, but not included as an amount awarded by the judgment, shall not be paid to applicants for involuntary allotments.

(v) If the member is found not to be entitled to money due from or payable by the Military Services, the designated official shall return the application and advise the applicant that no money is due from or payable by the Military Service to the member. When it appears that pay subject to an involuntary allotment is exhausted temporarily or otherwise unavailable, the applicant shall be told why and for how long that money is unavailable, if known. Involuntary allotments shall be canceled on or before the date a member retires, is discharged, or is released from active duty. The designated DFAS official shall notify the applicant of the reason for cancellation.

(vi) Upon receiving notice from an applicant that a judgment upon which an involuntary allotment is based has been satisfied, vacated, modified, or set aside, the designated DFAS official shall promptly adjust or discontinue the involuntary allotment.

(vii) The Under Secretary of Defense (Comptroller) may, in DoD 7000.14-R⁴ Volume 7, Part A, designate the priority to be given to involuntary allotments pursuant to 32 CFR part 112 and this part, among the deductions and collections taken from a member's pay, except that they may not give precedence over deductions required to arrive at a member's disposable pay for garnishments or involuntary allotments authorized by statute for alimony and child support payments. In the absence of a contrary designation by the Comptroller, all other lawful deductions (except voluntary allotments by the member) and collections shall take precedence over these involuntary allotments.

APPENDIX A TO PART 113—CERTIFICATE OF COMPLIANCE

I certify that the (Name of Creditor) upon extending credit

to _____
on _____
(Date)

complied with the full disclosure requirements of the Truth-in-Lending Act and Regulation Z, and the Fair Debt Collection Practices Act (or the laws and regulations of _____)

⁴See footnote 1 to § 113.3(b).

Office of the Secretary of Defense

Pt. 113, App. B

State of _____), and that the attached statement is a true copy of the general and specific disclosures provided the obligor as required by law.

I further certify that the Standards of Fairness set forth in DoD Directive 1344.9¹ have been applied to the consumer credit transaction to which this form refers. (If the unpaid balance has been adjusted as a consequence, the specific adjustments in the finance charge and the annual percentage rate should be set forth below.)

(Adjustments) _____

(Date of Certification) _____

(Signature of Creditor or Authorized Representative)

(Street) _____

(City, State and Zip Code) _____

APPENDIX B TO PART 113—STANDARDS OF FAIRNESS

1. No finance charge contracted for, made, or received under any contract shall be in excess of the charge that could be made for such contract under the law of the place in which the contract is signed in the United States by the military member.

a. In the event a contract is signed with a U.S. company in a foreign country, the lowest interest rate of the State or States in which the company is chartered or does business shall apply.

b. However, interest rates and service charges applicable to overseas military banking facilities shall be as established by the Department of Defense.

2. No contract or loan agreement shall provide for an attorney's fee in the event of default unless suit is filed, in which event the fee provided in the contract shall not exceed 20 percent of the obligation found due. No attorney fees shall be authorized if the attorney is a salaried employee of the holder.

3. In loan transactions, defenses that the debtor may have against the original lender or its agent shall be good against any subsequent holder of the obligation. In credit transactions, defenses against the seller or its agent shall be good against any subsequent holder of the obligation, provided that the holder had actual knowledge of the de-

fense or under conditions where reasonable inquiry would have apprised the holder of this fact.

4. The military member shall have the right to remove any security for the obligation beyond State or national boundaries if the military member or family moves beyond such boundaries under military orders and notifies the creditor, in advance of the removal, of the new address where the security will be located. Removal of the security shall not accelerate payment of the obligation.

5. No late charge shall be made in excess of 5 percent of the late payment, or \$5.00, whichever is the lesser amount, or as provided by law or applicable regulatory agency determination. Only one late charge may be made for any tardy installment. Late charges shall not be levied where an allotment has been timely filed, but payment of the allotment has been delayed. Late charges by overseas banking facilities are a matter of contract with the Department of Defense.

6. The obligation may be paid in full at any time or through accelerated payments of any amount. There shall be no penalty for prepayment. In the event of prepayment, that portion of the finance charges that has inured to the benefit of the seller or creditor shall be prorated on the basis of the charges that would have been ratably payable had finance charges been calculated and payable as equal periodic payments over the terms of the contract, and only the prorated amount to the date of prepayment shall be due. As an alternative, the "Rule of 78" may be applied.

7. If a charge is made for loan insurance protection, it must be evidenced by delivery of a policy or certificate of insurance to the military member within 30 days.

8. If the loan or contract agreement provides for payments in installation, each payment, other than the down payment, shall be in equal or substantially equal amounts, and installments shall be successive and of equal or substantially equal duration.

9. If the security for the debt is repossessed and sold in order to satisfy or reduce the debt, the repossession and resale shall be governed by the laws of the State in which the security is requested.

10. A contract for personal goods and services may be terminated at any time before delivery of the goods or services without charge to the purchaser. However, if goods made to the special order of the purchaser result in preproduction costs, or require preparation for delivery, such additional costs shall be listed in the order form or contract.

a. No termination charge shall be made in excess of this amount. Contracts for delivery at future intervals may be terminated as to the undelivered portion.

b. The purchaser shall be chargeable only for that proportion of the total cost that the

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

Pt. 113, App. B

32 CFR Ch. I (7-1-14 Edition)

goods or services delivered bear to the total goods called for by the contract. (This is in addition to the right to rescind certain credit transactions involving a security interest in real estate provided by the Truth in Lend-

ing Act (15 U.S.C. 1601 note, 1601-1614, 1631-1646, 1661-1665a, 1666-1666j, and 1667-1667e) and Federal Reserve Board Regulation Z (12 CFR 226)).

APPENDIX C TO PART 113—SAMPLE DD FORM 2653, "INVOLUNTARY ALLOTMENT APPLICATION"

Appendix C to Part 113

INVOLUNTARY ALLOTMENT APPLICATION		Form Approved OMB No. 0704-0367 Expires Sep 30, 1997		
Public reporting burden for this collection of information is estimated to average 15 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to Department of Defense, Washington Headquarters Services, Directorate for Information Operations and Reports, 1216 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202-4302, and to the Office of Management and Budget, Paperwork Reduction Project (0704-0367), Washington, DC 20503. PLEASE DO NOT RETURN YOUR FORM TO EITHER OF THESE ADDRESSES. SEND YOUR COMPLETED FORM TO THE ADDRESS IN THE INSTRUCTIONS BELOW.				
PRIVACY ACT STATEMENT				
AUTHORITY:	5 USC 5520a, EO 9397.			
PRINCIPAL PURPOSE:	To make an application for the involuntary allotment of pay from a member of the Armed Services or the Coast Guard.			
ROUTINE USES:	None			
DISCLOSURE:	Voluntary; however, failure to provide the requested information may result in denial of the involuntary allotment application.			
INSTRUCTIONS				
<p>1. These instructions govern an application for involuntary allotment payment from Military Service (or Coast Guard) member's active or reserve/guard's pay under 5 USC Section 5520a.</p> <p>2. In order to be processed, this form must be filled out completely, signed, and the following supporting documents attached:</p> <p style="margin-left: 20px;">a. A copy of the judgment, certified by the clerk of the appropriate court;</p> <p style="margin-left: 20px;">b. If the applicant is other than the original judgment holder, proof of the applicant's right to succeed to the interest of the original judgment holder.</p> <p>3. Submit the original and three copies of this application and all supporting documents to:</p> <table style="width: 100%; border: none;"> <tr> <td style="width: 50%; font-size: x-small;">For Army, Navy, Air Force and Marine Corps: Defense Finance and Accounting Service Cleveland Center, Code L PO Box 998002 Cleveland, OH 44199-8002</td> <td style="width: 50%; font-size: x-small;">For Coast Guard: Coast Guard Pay and Personnel Center (LGL) 444 S.E. Quincy Street Topeka, KS 66683-3591</td> </tr> </table>			For Army, Navy, Air Force and Marine Corps: Defense Finance and Accounting Service Cleveland Center, Code L PO Box 998002 Cleveland, OH 44199-8002	For Coast Guard: Coast Guard Pay and Personnel Center (LGL) 444 S.E. Quincy Street Topeka, KS 66683-3591
For Army, Navy, Air Force and Marine Corps: Defense Finance and Accounting Service Cleveland Center, Code L PO Box 998002 Cleveland, OH 44199-8002	For Coast Guard: Coast Guard Pay and Personnel Center (LGL) 444 S.E. Quincy Street Topeka, KS 66683-3591			
SECTION I - IDENTIFICATION				
1. APPLICANT				
I hereby request that an involuntary allotment be established from the pay of the following identified member of the Military Services/ Coast Guard pursuant to the provisions of Pub. L. No. 103-94, the Hatch Act Reform Amendments of 1993. The debt in question has been reduced to a judgment. A copy of the judgment, as certified by the appropriate Clerk of Court, is attached.				
a. APPLICANT NAME (Provide whole name whether a person or business)				
b. ADDRESS				
(1) STREET AND APARTMENT OR SUITE NUMBER	(2) CITY	(3) STATE		
		(4) ZIP CODE (9 digit)		
2. SERVICE MEMBER				
a. NAME (Last, First, Middle Initial)	b. SSN	c. BRANCH OF SERVICE		
d. CURRENT DUTY ASSIGNMENT (If known)				
e. CURRENT ADDRESS (If known)				
(1) STREET AND APARTMENT OR SUITE NUMBER	(2) CITY	(3) STATE		
		(4) ZIP CODE (9 digit)		
3. CASE				
a. CASE NUMBER (As assigned by court)	b. NAME OF ORIGINAL JUDGMENT HOLDER (If different from applicant)	c. ACCOUNT NUMBER OF DEBTOR		
d. JUDGMENT AMOUNT				
(1) DOLLAR AMOUNT OF JUDGMENT \$	(2) DOLLAR AMOUNT OF INTEREST OWED TO DATE OF APPLICATION (Only if awarded by the judgment) \$			

DD FORM 2653, NOV 94

Appendix C to Part 113

SECTION II - APPLICANT CERTIFICATION		
4. I HEREBY CERTIFY THAT:		
<input checked="" type="checkbox"/>	a. (X as applicable)	
<input type="checkbox"/>	(1) The judgment has not been amended, superseded, set aside, or satisfied;	
<input type="checkbox"/>	(2) If the judgment has been satisfied in part, that the judgment remains unsatisfied to the extent of \$ _____	
<input type="checkbox"/>	b. (X as applicable)	
<input type="checkbox"/>	(1) The judgment was issued while the member was not on active duty; or	
<input type="checkbox"/>	(2) If the judgment was issued while the member was on active duty, that the member was present or represented by an attorney of the member's choosing in the proceedings; or	
<input type="checkbox"/>	(3) If the member was not present or represented by an attorney at the judicial proceedings, that the judgment complies with the Soldiers' and Sailors' Civil Relief Act of 1940, as amended, 5 USC app. 501-592.	
	c. The member's pay could be garnished under applicable State law and 5 USC 5520a if the member were a civilian employee;	
	d. To the best of my knowledge, the debt has not been discharged in bankruptcy nor has the member filed for protection from creditors under the bankruptcy laws of the United States;	
	e. I will promptly notify you to discontinue the involuntary allotment at any time the judgment is satisfied prior to the collection of the total amount of the judgment through the involuntary allotment process;	
	f. If the member overpays the amount owed on the judgment, I will refund the amount of overpayment to the member within 30 days of discovery or notice of the overpayment, whichever is earlier, and that if I fail to repay the member, I understand that I may be denied the right to collect by involuntary allotment on other debts reduced to judgments.	
5. I HEREBY ACKNOWLEDGE THAT:		
As a condition of application, I agree that neither the United States, nor any disbursing official or Federal employee whose duties include processing involuntary allotment applications and payments, shall be liable with respect to any payment or failure to make payment from moneys due or payable by the United States to any person pursuant to this application.		
6. CERTIFICATION		
I make the foregoing statement as part of my application with full knowledge of the penalties involved for willfully making a false statement (U.S. Code, Title 18, Section 1001, provides a penalty as follows: A maximum fine of \$10,000 or maximum imprisonment of 5 years, or both).		
a. TYPED NAME (Last, First, Middle Initial)	b. SIGNATURE	c. DATE SIGNED

DD FORM 2653, NOV 94 (BACK)

APPENDIX D TO PART 113—SAMPLE DD FORM 2654, “INVOLUNTARY ALLOTMENT NOTICE AND PROCESSING”

Appendix D to Part 113

INVOLUNTARY ALLOTMENT NOTICE AND PROCESSING			
PRIVACY ACT STATEMENT			
AUTHORITY:	5 USC 5520a, EO 9397.		
PRINCIPAL PURPOSE:	To notify a member of the Armed Services or the Coast Guard of an involuntary allotment application against the member's disposable pay; to provide the member an opportunity to respond to the involuntary allotment application; and to provide for action by the member's commander to forward the member's response to the Defense Finance and Accounting Service (or the Coast Guard Pay and Personnel Center) and, as appropriate, to make determinations concerning exigencies of military duty; and to provide for appeals of exigency determinations.		
ROUTINE USES:	None.		
DISCLOSURE:	Voluntary for the member; however, failure to provide a response may result in the involuntary allotment of the member's disposable pay.		
INSTRUCTIONS			
<p>1. These instructions govern notice and processing of an application for an involuntary allotment from the pay of a member of the Armed Forces or the Coast Guard under 5 USC 5520a.</p> <p>2. Section I, item 1 is to be completed by the designated Defense Finance and Accounting Service (DFAS) (or Coast Guard Pay and Personnel Center) representative. After completing this section, the representative will mail the form, along with two copies of the DD Form 2653, "Involuntary Allotment Application" and associated paperwork, to the commander of the member identified, and one copy to the member.</p> <p>3. Upon receipt, the commander will determine if the member identified in Section I is in his or her unit. If the member is no longer assigned or available, or, after receiving the notice required by Section III, requests an extension to respond that is granted, the commander will complete Section II. If the member is no longer available under Section II, item 3, the commander will return the entire form and application package to DFAS (or the Coast Guard Pay and Personnel Center); if an extension is authorized under Section II, item 4, that will cause the member's response to be received by DFAS (or the Coast Guard Pay and Personnel Center) later than the date the response is due, then the commander must immediately provide a copy of Sections I and II to DFAS (or the Coast Guard Pay and Personnel Center). The address for mailing is: "DFAS, Cleveland Center, Code L, PO Box 998002, Cleveland, OH 44199-8002" (or other address as specified by DFAS). For the Coast Guard, the address is: "Coast Guard Pay and Personnel Center (LGL), 444 S.E. Quincy Street, Topeka, KS 66683-3591." If the member is assigned, the commander will provide the member a complete copy of DD Form 2653, "Involuntary Allotment Application," and counsel the member in accordance with Section III, items 7a - g.</p> <p>4. After counseling, the commander will complete Section III, item 8, and the member will complete Section III, item 9. The commander will then make and retain one copy of the form with Section III completed. After obtaining a copy, the commander will provide the member the signed original and advise the member to complete Section IV prior to the date the commander specifies that the member's response is due.</p> <p>5. The member will complete Section IV and return the original form and accompanying evidence or additional matters, if any, to the commander on or before the due date as specified by the commander.</p> <p>6. Following receipt of the member's response, the commander will complete Section V and forward the original form, to include any additional evidence or other matters from the member, to DFAS (or the Coast Guard Pay and Personnel Center) at the address listed in paragraph 3 above. Note, if the member fails to respond by the due date, the commander will complete Section V on a copy of the DD Form 2654 previously retained in accordance with the instructions in paragraph 4 above, and forward the form to DFAS (or the Coast Guard Pay and Personnel Center).</p> <p>7. Within 5 working days from the date of forwarding to DFAS (or the Coast Guard Pay and Personnel Center), the commander will provide the member a copy of the completed DD Form 2654.</p>			
SECTION I - NOTIFICATION OF APPLICATION FOR INVOLUNTARY ALLOTMENT			
1. MEMBER IDENTIFICATION			
a. NAME (Last, First, Middle Initial)	b. SSN	c. RANK	d. BRANCH OF SERVICE
2. DATE RESPONSE DUE (If not received by this date, an involuntary allotment may be automatically processed.)			
SECTION II - COMMANDER'S DETERMINATION OF MEMBER'S AVAILABILITY AND EXTENSIONS TO RESPOND			
3. MEMBER AVAILABILITY			
On _____ (date - YYMMDD), I received this form and an application for an involuntary allotment from the pay of the member identified. The above named member is not available for purposes of processing an involuntary allotment because the member is as indicated below. Official documentation supporting this determination is attached.			
a. Retired (Including placement on the Temporary or Permanent Disabled Retired List).			
b. In a prisoner of war status.			
c. In a missing in action status.			
d. Not assigned or attached to this unit or organization.			

Appendix D to Part 113

SECTION II (Continued) 4. EXTENSION I have determined that an extension is necessary until _____ (YYMMDD) because the member is not available for notice and contesting or unable to respond in a timely manner (explain in Remarks section below). I will notify you prior to the above date if any further extensions are necessary.		
5. REMARKS <div style="font-size: 48px; text-align: center; margin-top: 20px;">S A</div>		
6. COMMANDER OR DESIGNEE		
a. SIGNATURE	b. SIGNATURE BLOCK	c. DATE SIGNED
SECTION III - NOTICE TO MEMBER BY COMMANDER OR AUTHORIZED DESIGNEE 7. NOTICE You are hereby notified that an application for the establishment of an involuntary allotment for the lesser of 25% of your pay subject to involuntary allotment or the maximum percentage of pay subject to garnishment proceedings under the applicable state law has been received. Along with this notice, I am providing you a copy of the entire application package.		
Additionally, you are notified that:		
a. You must respond within 15 calendar days from the date of this notification by either consenting to the involuntary allotment or contesting it. For good cause shown, I may grant an extension of reasonable time (normally not exceeding 30 calendar days, except during times of deployment, war, national emergency, or other similar situations) to submit a response. Additionally, if you fail to respond within the specified date (or any approved extended date), your failure to respond will be indicated in Section V of this form, which will then be sent back to the designated Defense Finance and Accounting Service (DFAS) (or Coast Guard Pay and Personnel Center) official for appropriate action.		
b. You may contest this application for any of the reasons described in Section IV of this form.		
c. If you contest the application, you must provide evidence (documentary or otherwise) supporting your reasons for contesting the application. Any evidence you submit may be disclosed to the applicant for this involuntary allotment.		
d. You may, if reasonably available, consult with a legal assistance attorney, or a civilian attorney at no expense to the government. If a legal assistance attorney is available, you should immediately arrange for an appointment. If a legal assistance attorney is not available, you may request a reasonable delay to enable you to obtain legal assistance. If you have failed to exercise due diligence in seeking assistance, I will deny a request for delay.		
e. If you contest the involuntary allotment on the grounds that exigencies of military duty caused your absence from an appearance at the judicial proceeding at which the judgment was rendered, then I will review and make the final determination on this contention. My decision will be reflected in Section V of this form which will be forwarded to the designated DFAS (or Coast Guard Pay and Personnel Center) official for appropriate action. I will consider the following when making this determination:		
(1) That exigencies of military duty are defined as "a military assignment or mission 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. Absence from an appearance in a judicial proceeding is normally presumed to be caused by exigencies of military duty during periods of war, national emergency, or when the member is deployed."		
(2) Whether the military duties in question were of such paramount importance that they prevented making you available to attend the judicial proceedings, or rendered you unable to timely respond to process, motions, pleadings, or orders of the court.		
f. If you contest the involuntary allotment on any basis other than exigencies of military duty, you must return this form and your response to me. This form, the application package, and your response will then be returned to the designated DFAS (or Coast Guard Pay and Personnel Center) official who will consider your response and determine whether to establish the involuntary allotment. The designated DFAS (or Coast Guard Pay and Personnel Center) official has decision authority on all issues other than exigencies of military duty.		

Appendix D to Part 113

SECTION V - COMMANDER'S ACTION AND DETERMINATIONS				
13. COMMANDER OR DESIGNEE WILL INITIAL IN THE APPROPRIATE SPACE:				
a. The member has completed Section IV of this form and the member's response (to include any additional submissions) is hereby forwarded for appropriate action.				
b. The member refused to respond by the authorized suspense date and this form is hereby returned without Section IV completed by the member.				
14. COMPLETE ONLY IF THE MEMBER ASSERTED "EXIGENCIES OF MILITARY DUTY" AS REASON FOR CONTESTING THE INVOLUNTARY ALLOTMENT APPLICATION <i>(Initial in the appropriate space)</i>				
a. Exigencies of military duty DID NOT CAUSE the absence of the member from an appearance in the judicial proceeding upon which this Involuntary Allotment Application is sought.				
b. Exigencies of military duty CAUSED the absence of the member from an appearance in the judicial proceeding upon which this application for involuntary allotment is sought. Exigency existed due to: <i>(X as applicable and explain in item 15, "Remarks.")</i>				
	(1) Deployment	(2) War	(3) National Emergency	(4) Other <i>(e.g., Major Exercise)</i>
15. REMARKS				
<p>M</p> <p>P</p> <p>L</p>				
NOTE: Commander must provide member a copy of this form within 5 days of mailing to the designated DFAS (or Coast Guard Pay and Personnel Center) official.				
16. IF THE APPLICANT CHOOSES TO APPEAL MY EXIGENCY DETERMINATION, THE APPEAL MUST BE SENT TO:				
a. TITLE OF APPEAL AUTHORITY				
b. STREET ADDRESS		c. CITY	d. STATE	e. ZIP CODE
17. COMMANDER OR DESIGNEE				
a. SIGNATURE		b. SIGNATURE BLOCK		c. DATE SIGNED