

LEGADMINMAN

CHAPTER 16

INDEBTEDNESS

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CHAPTER 16

INDEBTEDNESS

16000. SCOPE. This chapter includes policy and responsibilities governing complaints of indebtedness and provides guidance for processing involuntary allotments. Excluded from its provisions are claims for alimony or child support and claims by Federal, State, or Municipal Governments.

16001. POLICY ON INDEBTEDNESS

1. Marines are expected to pay their just financial obligations in a proper and timely manner. A Marine's failure to pay a just financial obligation may result in disciplinary action under the UCMJ or a claim pursuant to UCMJ Article 139. Except as provided in this chapter, the Marine Corps has no legal authority to require Marines to pay a private debt or to divert any part of their pay for its satisfaction.

2. Legal process instituted in civil courts to enforce judgments against Marines for the payment of spousal or child support and for division of marital property (including related attorney fees) is discussed in chapter 15 of this Manual.

16002. COMPLAINTS OF INDEBTEDNESS

1. Whenever possible, indebtedness disputes should be resolved through amicable means. This paragraph provides policies for processing complaints of indebtedness (not involuntary allotments)

2. The processing of complaints of indebtedness will not be extended to those who have not made a bona fide effort to collect the debt directly from the Marine, or to those whose claims are patently false and misleading.

3. Most States have enacted laws that prohibit creditors from contacting a debtor's employer with regard to alleged indebtedness and from communicating facts concerning indebtedness to the employer, unless certain conditions are met. The conditions that must be met to remove this prohibition generally include reduction of a debt to judgment or obtaining written permission of the debtor. In States having such laws, the processing of complaints of indebtedness will not be extended to those creditors who are in violation of State law. Commanders may advise creditors that this policy has been established because it is the general policy of the military services to comply with State law, when that law does not infringe upon significant military interests. This policy will govern even though a creditor is not licensed to do business in the State where the debtor is located.

A similar practice will be initiated in any State enacting a similar practice with respect to debt collection.

4. "The Fair Debt Collection Practices Act" (15 U.S.C. § 1692 et seq.) regulates certain activities of those who regularly collect debts for others (debt collectors) as distinguished from creditors who collect their own debts. This law prohibits debt collectors from using any means of interstate commerce, such as the mail, to contact a debtor's employer (except for the purpose of confirming or correcting information concerning the debtor's location) unless the debt collector is acting with the debtor's consent or is in possession of a valid court order or judgment. Unless the debtor has given permission, such contacts may not contain any language to indicate that the inquiry is from a debt collection agency or that the purpose of the inquiry relates to collection of a debt. The processing of claims of indebtedness will not be extended to those debt collectors who are in violation of this Federal law.

5. The "Truth in Lending Act" (15 U.S.C. § 1601 et seq.) prescribes the general disclosure requirements which must be met by those offering or extending consumer credit, and Regulation Z (12 C.F.R. § 226 et seq.) prescribes the specific disclosure requirements for both open-end and installment credit transactions. In place of Federal 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. Commanders should consult with the staff judge advocate to determine whether Federal or State laws and regulations apply.

6. Paragraph 16002.3 shall not apply to credit unions serving DON personnel as set forth in SECNAVINST 5381.5A, or to those similarly serving other DoD personnel. Commanders will provide debt processing assistance to such credit unions to the extent permitted under the Privacy Act of 1974 (5 U.S.C. § 552a). Credit unions may bring delinquent loans or dishonored checks to the attention of a commander, or designee, for such assistance (32 C.F.R. § 230).

7. Commanders are urged to contact the local staff judge advocate for assistance with regard to any correspondence about which there is any uncertainty.

8. Courtesy. CMC has specifically directed that replies to inquiries, verbal or written, must be temperate and courteous in tone.

16003. PROCESSING COMPLAINTS OF INDEBTEDNESS

1. It is incumbent on those submitting complaints of indebtedness to show that the disclosure requirements of Section 125 of the "Truth in Lending Act" and Regulation Z have been met and to show compliance with the standards of fairness (Figure 16-1).

2. Creditors subject to Regulation Z, and assignees claiming thereunder, shall submit with their request for debt processing assistance an executed copy of the Certificate of Compliance (Figure 16-2), or other evidence of compliance, and a true copy of the general and specific disclosures provided the military member as required by the "Truth in Lending Act." Requests that do not meet these requirements will be returned to the claimant without action

3. A creditor not subject to Regulation Z, such as a public utility company, shall submit with the request a certification that no interest, finance charge, or other fee is in excess of that permitted by 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.

5. Commanders will process complaints of indebtedness that meet the requirements of this chapter. "Processed" means that the command will:

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

b. Advise the Marine that just financial obligations are expected to be paid in a proper and timely manner; what the Marine should do to comply with that policy; that financial and legal counseling services are available to assist in resolving indebtedness; and that 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 Marine pursuant to an involuntary allotment. A "just financial obligation" is defined as 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 (SSCRA), as amended (50 U.S.C. § appendix sections 501-591).

c. If a Marine acknowledges a debt as the result of creditor contact with the command, advise the Marine that assistance and counseling are available from the on-base military banking office, the credit union serving the military field membership, and the local legal assistance office.

d. Advise the creditor of those aspects of Marine Corps policy contained in paragraph 16001 which are pertinent to the claim in question, and that the Marine concerned has been counseled concerning the obligations with respect to the claim. The commander's response will not undertake to arbitrate any disputed debt, or to admit or deny the validity of the claim. Under no circumstances will the response

indicate whether any action has been taken against the Marine as a result of the complaint. (See figure 16-3)

6. Indebtedness complaints that fail to meet the requirements of this chapter shall be returned to the creditor, using figure 16-4 as a format, with an explanation of why the complaint was not processed.

7. When a creditor, having been notified of the requirements of this chapter, refuses or repeatedly fails to comply with them or, regardless of the merits of the claim, clearly has shown that an attempt is being made to make unreasonable use of the processing privilege, commanders are authorized to deny the creditor any processing of the claim. In such a case, a letter following the format contained in figure 16-5 should be used. Commanders should consult with the staff judge advocate when this action is contemplated.

8. If a complaint is received alleging indebtedness of a Marine no longer a member of the command, it will be forwarded to the Marine's new command. If the individual has been separated from the Marine Corps, the correspondence will be returned to the sender so informing the party. The creditor may be informed of the Marine's new military address but in no case shall the permanent (home) mailing address be disclosed, except as may otherwise be authorized under the Freedom of Information Act or Privacy Act of 1974. (See figure 16-6)

16004. INVOLUNTARY ALLOTMENT OF PAY FOR COMMERCIAL DEBTS

1. The pay of active duty Marines is subject to involuntary allotment to satisfy a judgment for a commercial debt (5 U.S.C. § 5520a(k) (1994)). Detailed guidance is found in DoD Directive 1344.9 and DoD Instruction 1344.12.

2. Generally, creditors may collect the lesser of 25 percent of a debtor's pay subject to involuntary allotment or the maximum percentage of pay subject to garnishment proceedings under the applicable State law. For further procedures, see DoD Financial Management Regulation, Volume 7A, section 5003.

3. Creditors must comply with the SSCRA and apply to the Defense Finance and Accounting Service (DFAS) to initiate action to obtain an involuntary allotment. DFAS will forward pertinent information to the debtor and his/her commanding officer, giving them advance notice and an opportunity to respond. For further guidance see DoD Instruction 1344.12.

4. All applications from creditors seeking to enforce a court-ordered judgment must be sent to:

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

16005. INDOCTRINATION AND COUNSELING

1. The responsibility to indoctrinate and counsel Marines is a basic precept of military leadership. It is the nondelegable responsibility of command, at every echelon, to ensure that Marines are indoctrinated and counseled concerning indebtedness and to ensure that prompt, effective, corrective action is taken to reduce, insofar as possible, the number of complaints of indebtedness concerning Marines.

2. Such indoctrination and counseling should include: the pitfalls of installment buying; incurring debts beyond the capacity to pay; the necessity for liquidating debts in a timely manner; information regarding the need for a full disclosure of the terms of the agreement; how finance and interest rates are quoted and computed; the standards of fairness which should be observed; the forms available for this purpose; and the availability of offices for advice and assistance.

3. Commanders will take appropriate punitive, nonpunitive, and/or administrative action against Marines who fail to meet their just financial obligations in a proper and timely manner. Additionally, commanders are reminded that these matters should be appropriately reflected in evaluating the conduct and performance of Marines of all grades.

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STANDARDS OF FAIRNESS

1. In the United States, 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 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. The Department of Defense will establish interest rates and service charges applicable to overseas military banking facilities.

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

3. In loan transactions, defenses which 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 defense, 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 if the military member 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 five percent of the late payment, or \$5, 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 will not be levied where an allotment has been timely filed but payment of the allotment has been delayed. 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 and, in the event of prepayment, that portion of the finance charges which have inured to the benefit of the seller or creditor shall be prorated on the basis of the charges which would

Figure 16-1.--Standards of Fairness.

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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 sum of the digits method (called the Rule of "78's") may be used. Under this formula for crediting unearned interest, multiply the number of months in advance of the due date that the payment is made by the amount of interest that would be made on a payment one month in advance of the due date. Interest on a payment one month in advance of the due date is 1/78 of the total annual interest. For example, a payment made five months in advance of the due date would be credited with five times the interest of a payment one month in advance of the due date (5/78's of the total interest due).

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 installments, 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 laws of the State in which the security is repossessed will govern the repossession and resale.

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 will be listed in the order form or contract.

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

b. The purchaser shall be chargeable only for that proportion of the total cost which the 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 Lending Act (Public Law 90-321) and Federal Reserve Board Regulation Z.)

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I certify that the _____, upon
(name of creditor)
extending credit to _____ on _____,
(name of obligor) (date)
complied with the full disclosure requirements of the Truth in Lending
Act and Regulation Z, and with the Fair Debt Collection Practices Act
(or the laws and regulations of the 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 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)

Figure 16-2.--Certificate of Compliance.

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(Date)

Military Collection Corporation
Suites 1000-1020 Credit Building
200 Indebtedness Road
Chargeatown, Allstates ZIP Code

Gentlemen:

Receipt of your letter alleging indebtedness of _____ is acknowledged. The matter has been brought to his/her attention and s/he has been advised to communicate with you setting forth his/her intentions in the matter.

The Marine Corps expects its members to meet their just financial obligations. The Marine Corps, however, has no authority to compel any payment, except in the case of State court garnishment proceedings. Such payments are the individual responsibility of _____, and any action to enforce payment would be a matter for civil court.

Section 5520a of title 5, United States Code, provides that a servicemember's pay is subject to legal process initiated to enforce satisfaction of a legal debt. Such action, however, requires final judgment of a court of competent jurisdiction directing the Marine Corps to withhold an amount from the pay of _____ and make payment to _____.

Unless this matter can be resolved satisfactorily by direct correspondence with _____, the appropriate forum for settlement is a civil court. Any action to enforce a valid court-ordered judgment must be sent to:

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

Sincerely,

J. J. AUTHORITY
Major, U.S. Marine Corps
Commanding Officer

Figure 16-3.--Standard Form for Commander's Reply to Complainant
Alleging Indebtedness of a Member of the Command.

LEGADMINMAN

(Date)

Military Collection Corporation
Suites 1000-1020 Credit Building
200 Indebtedness Road
Chargeatown, Allstates ZIP Code

Gentlemen:

Your letter alleging indebtedness of Sergeant J. Marine Leatherneck, Jr., U.S. Marine Corps, is returned. Your letter does not indicate that the requirements prescribed by the Secretary of Defense and promulgated in 44 Federal Register 31014 and 32 Code of Federal Regulations 43A, have been complied with, in that

I have enclosed an excerpt of the cited directive.

If you will provide me, at the above address, the necessary information and certification, I shall proceed with those measures that are authorized by the Secretary of Defense.

Sincerely,

J. J. AUTHORITY
Major, U.S. Marine Corps
Commanding Officer

Encl:

- (1) Your letter
- (2) Standards of Fairness, Full Disclosure and Certificate of Compliance

NOTES:

1. In the first paragraph, briefly set out the deficiencies and the method by which they may be corrected.
2. Enclosure (2) need not be furnished to large commercial users on a recurring basis.

Figure 16-4.--Standard Form For Commander's Reply to Complainant Not Complying with Current Regulations.

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(Date)

Military Collection Corporation
Suites 1000-1020 Credit Building
200 Indebtedness Road
Chargeatown, Allstates ZIP Code

Gentlemen:

Receipt of your letter alleging indebtedness of Sergeant J. Marine
Leatherneck, Jr., U.S. Marine Corps, is acknowledged.

(As this individual has been separated from the U.S. Marine Corps,
your letter is returned without action) (_____ has been
reassigned to _____. Your letter has been forwarded
to his new commanding officer. Any further correspondence should be
addressed to that organization.)

Sincerely,

J. J. AUTHORITY
Major, U.S. Marine Corps
Commanding Officer

Encl:
(1) Your letter (if appropriate)

Figure 16-5.--Standard Form for Commander's Reply to Complainant
Alleging Indebtedness of a Person not a Member of the
Command.

LEGADMINMAN

(Date)

Military Collection Corporation
Suites 1000-1020 Credit Building
200 Indebtedness Road
Chargeatown, Allstates ZIP Code

Re: Sergeant J. Marine Leatherneck Jr., U.S. Marine Corps

Gentlemen:

Your claim will not be processed because of your (repeated failure) (refusal) to comply with the provisions of regulations published regarding the processing of a claim.

or

Your claim will not be processed because it is my opinion that you are attempting to make an unreasonable use of the debt processing privilege.

All further correspondence regarding this matter will be returned without action.

Sincerely,

J. J. AUTHORITY
Major, U.S. Marine Corps
Commanding Officer

Note: Prior to sending this type of reply, consult with the staff judge advocate.

Figure 16-6.--Standard Form for Commander's Reply to Complainant
Denying Processing of Claim for Abuse of Processing
Privilege.