

CHAPTER 28

COLLECTION OF DEBTS2801 GENERAL

A debt may be due to an overpayment or erroneous payment not legally due a member, or an amount due to the U. S. Government but unpaid by a member. A debt may be for an overpayment of retired pay, an overpayment of active duty pay and allowances, or other indebtedness arising from service on active duty, an overpayment from another federal agency, unpaid government hospital bills, unpaid rent due military installations, IRS tax levies, court judgments, and bad checks tendered to appropriated or non-appropriated fund activities. Also, a failure to deduct or an under-deduction from retired pay for VA compensation, federal civil employment, Retired Serviceman's Family Protection Plan or Survivor Benefit Plan costs, or allotments constitute an overpayment of retired pay. Pay or salary that has been earned for personal services rendered to the United States is authorized to be withheld only when expressly provided for by statute. See Table 28-1 for additional information. See paragraph 190606 of this volume for precedence of discontinuing allotments, if required, to increase available pay for collection.

2802 SPECIALIZED TERMS

280201. Administrative Offset. The withholding of money payable by the U. S. Government to, or held by the government for, a person to satisfy a debt that person owes to the government.

280202. Allowances. Includes, but is not limited to, allowances for subsistence, quarters, uniforms, personal money, family separation, travel and transportation, and overseas station allowances.

280203. Compromise. The acceptance of a lesser amount in settlement of a debt in accordance with 31 U.S.C. 3711 (reference (dh)) and 4 C.F.R., Chapter II, Part 103, (reference (ee)).

280204. Creditor Agency. The United States agency to which the debt is owed.

280205. Delinquent Debt. A debt that is past due and unpaid.

280206. Disposable Pay. That part of pay remaining after deduction of any amount required or authorized by law to be withheld for state or federal income taxes.

280207. Erroneous Payment. A payment that was not legal and proper when made.

280208. Involuntary Collections. Collection action taken without a member's consent following provision of procedural due process rights to member. Involuntary collection action requires a statute specifically authorizing such collection.

280209. Pay. That part of current pay remaining after any reductions in entitlements required by law because of:

- A. Civilian employment (dual compensation, foreign employment, and conflict of interest restrictions)
- B. Reserve duty (IDT/ADT)
- C. Retired Serviceman's Family Protection Plan premium
- D. Survivor Benefit Plan premium
- E. VA compensation

280210. Paying Agency. The federal agency from which the debtor is receiving current pay.

280211. Routine Adjustments. The correction of an overpayment resulting from clerical or administrative errors or delays in processing pay documents that is discovered and corrected within no more than 2 monthly pay periods after the date of overpayment. This includes retroactive VA increases resulting from legislation.

280212. Salary Offset. The collection of a debt to the United States by installment deduction(s) at officially established pay intervals from the current pay account of a member.

280213. Waiver and Waive. The authority to forego the collection of a government claim arising out of an erroneous payment or an overpayment of pay or allowance.

2803 COLLECTION WITH MEMBER'S CONSENT

Members indebted to the United States will be encouraged to discharge their indebtedness through lump-sum cash payment when possible. When the amount of the debt relative to the member's ability to repay indicates that lump-sum settlement would create financial hardship for the member, installment payments will be accepted. Members will be encouraged to accept liability voluntarily for their indebtedness and agree to repayment schedules that adequately protect the interests both of the United States and those members.

2804 AUTHORITY FOR INVOLUNTARY COLLECTION

Current pay is available for repayment of an indebtedness without the member's consent only if such recovery is expressly authorized by statute. Statutory authority to collect indebtedness to the United States is contained in 37 U.S.C. 1007(c) (reference (z)), 5 U.S.C. 5514 (reference (az)), and 31 U.S.C. 3716 (reference (dh)). Debts to the Department of Defense or any of its instrumentalities or other Uniformed Services will be collected under 37 U.S.C. 1007(c) (reference

(z)). Debts administratively determined to be owed to another federal agency shall be collected by salary offset under authority of 5 U.S.C. 5514 (reference (az)). Debts determined to be owed to another federal agency shall be collected administratively under authority of 31 U.S.C. 3716 (reference (dh)). However, requests by courts to be paid money due non-federal debtors are not debts to the United States that can be involuntarily offset, unless the offset specifically is authorized by statute.

2805 COLLECTION UNDER 37 U.S.C. 1007(C) (reference (z))

The law authorizes the deduction from a member's pay of amounts that the Secretary of the Military Department concerned (or designee) administratively determines to be owed the United States or any of its instrumentalities.

280501. Routine Adjustments. See paragraph 280211, above, for definition. The member shall be given notice of the adjustment when it is made, or as soon thereafter as practicable. The member shall be told whom to contact for additional information.

280502. Other Collections. Before initiating any collection action, other than a routine adjustment, the member shall be given at least 30 days written notice that includes the following provisions. (Note: the Secretary concerned may prescribe additional rights prior to collection by offset under 37 U.S.C. 1007(c)) (reference (z)).)

- A. The nature and amount of the debt due the United States, and the intent to commence collection through deductions from pay;
- B. The member's opportunity to inspect and copy or request and receive a copy of government records related to the debt;
- C. The member's opportunity for review of the decision related to the debt;
- D. The member's opportunity to request a written agreement with the Secretary of the Military Department concerned (or designee) under terms acceptable to both parties to establish a schedule for repayment of the debt;
- E. The member's right to seek waiver or remission of the debt, if appropriate.

280503. Active duty debts will be transferred on retirement and collection will be resumed from retirement or retainer pay. It will not be necessary to repeat the due process procedures in paragraphs 280501 and 280502, above.

280504. Where a member of one Military Service owes a debt to another Military Service and the Secretary of the creditor Service makes an administrative determination of indebtedness, the Secretary may forward that determination, along with certification of compliance with appropriate procedures set forth above, to the Secretary of the member's Military Service. That Secretary (or designee) then may initiate collection.

2806 COLLECTION UNDER 5 U.S.C. 5514 (reference (az))

★280601. The Secretary of the Military Department concerned (or designee) determines that a member is indebted to the United States under the authority of 5 U.S.C. 5514 (reference (az)). The designated agent listed below is responsible for receiving these collection requests:

DFAS-CL/ABA
1240 E 9th Street
Cleveland, OH 44199-8002

★280602. Collection may be made in monthly installments or at established pay intervals not to exceed 15 percent of disposable pay for any pay period, unless a greater percentage is authorized by written consent of the member. Unsatisfied debts at discharge or retirement shall be deducted from subsequent payments of any nature due the member.

★280603. Due Process. Debts collected under 5 U.S.C. 5514 (reference (az)) are those owed to departments and agencies outside the Department of Defense or other Uniformed Services. The creditor agency is responsible for providing due process rights to member debtors and for certifying to the Secretary of Defense that required due process rights have been provided when requesting collection action. Once the Secretary of the Military Department concerned (or designee) has accepted the debt for collection, a member should be given written notice giving the nature and amount of the debt due the United States and the intent to commence collection through deductions from pay. The notice should identify a point of contact at the creditor agency for any questions or disputes that the member may have concerning the intended collection action.

2807 LIMITATION ON AMOUNT OF DEDUCTIONS

280701. The amount to be collected each month in order to recoup an indebtedness from a member's retired pay should be no less than \$50, or an amount each month reasonable to the size of the debt and the member's ability to pay. Minimum amounts do not apply where collection amounts are specified by statute.

280702. The maximum monthly amount that may be collected under section 2805, above, is two-thirds of the member's pay less:

- A. Amounts deducted in arriving at disposable pay plus
- B. Amounts collected under section 2806, above, and this section.

2808 INTEREST, PENALTIES, AND ADMINISTRATIVE COSTS

280801. With respect to collections, other than routine adjustments, the Secretary concerned shall charge a minimum annual rate of interest on an outstanding debt to the United

States that is equal to the average investment rate for the Treasury tax and loan accounts for the 12-month period ending on September 30 of each year, rounded to the nearest whole-percentage point.

280802. Interest shall accrue from the date on which notice of debt and the interest requirements are first mailed, or hand delivered, to the debtor or such date as specified in the notice.

280803. Interest under paragraph 280801, above, may not be charged if the amount due on the claim is paid within 30 days after the date from which interest accrues in paragraph 280802, above.

280804. The Secretary concerned shall assess charges to cover the administrative cost of processing and handling a delinquent debt.

280805. A penalty charge, not to exceed 6 percent a year, shall be assessed for failure to pay a part of a debt more than 90 days past due. The charge will be calculated from the 91st day of delinquency, but shall accrue from the date the debt became delinquent.

280806. The interest specified in paragraph 280801, above, does not accrue on charges assessed under paragraphs 280804 and 280805, above.

280807. The Secretary of the Military Department concerned may prescribe regulations identifying circumstances appropriate to waiving collection of interest and charges under paragraphs 280801, 280804, and 280805, above.

2809 WAIVER OF INDEBTEDNESS

280901. Recovery of erroneous payments of pay and allowances to or on behalf of a member or former member of the Uniformed Services, may be waived if recovery is determined to be against equity and good conscience. (Erroneous payments of travel and transportation allowances, made prior to December 28, 1985, may not be waived.) Application for waiver must be received by the Department of Defense within 3 years from the date the erroneous payment was discovered. The member must apply for a refund of any amount collected within 2 years from the date of waiver approval. A claim of the United States against a member or former member of the Uniformed Services, arising out of such erroneous payment, may be considered for waiver within 3 years from the date of discovery, when collection of the erroneous payment would be against equity and good conscience, and not in the best interest of the United States. Generally, these criteria are met by a finding that: (a) the erroneous payment occurred through administrative error; and (b) there is no indication of fraud, misrepresentation, fault, or lack of good faith on the part of the member or any other person having an interest in obtaining a waiver of the claim. Any significant unexplained increase in pay that would require a reasonable person to inquire about the correctness of pay would preclude a waiver when the member fails to bring the matter to the attention of the appropriate officials. Collection action may be suspended in certain cases pending action on an application for waiver. In determining, on a case-by-case basis, whether suspension of collection would be appropriate, consider whether:

- A. There is a reasonable possibility that a waiver will be granted;
- B. The government's interest will be protected if suspension is granted by reasonable assurance that the erroneous payment could be recovered if waiver is not granted;
- C. The collection of the debt will cause undue hardship. See procedural instructions of the Military Service concerned.

2810 APPLICATION OF THE FEDERAL CLAIMS COLLECTION ACT

The Secretary of the Military Department concerned shall make all reasonable efforts to collect all claims of the United States for money or property arising out of the activities of, or referred to, that agency. Any claims that have not been referred to another agency for further collection action and do not exceed \$20,000 exclusive of interest, may be compromised or collection action may be terminated when the Secretary concerned determines that no person liable in the claim has the present or prospective financial ability to repay the claim, or that cost of collecting the claim is likely to exceed the amount of recovery. See the appropriate regulation of the Military Department concerned.

- 281001. Army: AR 27-40 (reference (eg))
- 281002. Navy: NAVCOMPTINST 4365.1 (reference (eh))
- 281003. Air Force: AFR 112-1 (reference (ef))

2811 IRS TAX LEVIES

281101. Background. IRS tax levies are requests for one-time deduction from a member's retired pay to collect back taxes owed. If the amount collected in any particular month is not enough to pay off the member's tax debt, the IRS may issue additional tax levies to cover later months of retired pay income. Medal of Honor recipients are exempt from tax levy.

281102. Procedures. The IRS will transmit IRS Forms 668-W or 668-W(c) in five parts (the letter "c" designates a computer-generated form which is the same as the version of the form without the "c") which will identify the member; specify the amount of the tax liability; give instructions for providing due process; show how to compute the levy based on input from the taxpayer; and give the address to which to send the payment.

Read and follow the instructions on the IRS Form 668-W; in general, this requires notifying the taxpayer, computing the amounts available for payment to the IRS, and making the payment. Currently, the IRS Form 688-W requires the employer to send to the IRS all of the taxpayer's net pay less what is exempt from levy. Net pay is gross retired pay less all deductions and allotments in effect as of the date of receipt of IRS Form 688-W. Follow the instructions on that form when computing exemptions.

Specific instructions:

A. Within 3 working days from the date of receipt of the levy, notify the taxpayer by using a formal letter similar to that at Appendix W and enclosing the member's copies of the IRS Form 668-W.

B. If the date of receipt of the levy is between the 1st and the 15th day of the month, advise the member that the deduction from retired pay will be on the first business day of the second month after current month. If the date of receipt of the levy is between the 16th and the last day of the month, the deduction will be on the first business day of the third month after current month. Thus, if the receipt of the levy is November 11, 1993, deduction will be in the retired pay check of January 1, 1994. If the receipt of the levy is November 28, 1993, the deduction will be on February 1, 1994.

C. Notify affected former spouses with divorce dates prior to February 3, 1991 (division of property settlement cases only), that a future payment will be different from anticipated. Do not tell the former spouse the reason for the fluctuation.

D. Even if the member's declaration of exemption is not timely, it should be honored if received prior to the last date for making changes to the member's retired pay account.

281103. Problem Cases. When the IRS has determined the taxpayer to be a "problem case," the taxpayer will be furnished with the Form 668-W, a statement of the amount of delinquent taxes and a statement that "net pay" is not enough to pay the levy and that all available accrued pay should be sent to the IRS. Available accrued pay is gross retired pay less:

- A. Withholding for current federal taxes (statutory amounts only)
- B. Amounts required to satisfy prior overpayments of pay and allowances
- C. Amounts waived in favor of compensation from the Department of Veterans

Affairs

D. Amounts forfeited for dual compensation and pay cap (see paragraphs 050203, 050204, and 050209 of this volume)

- E. SGLI premiums
- F. Deductions for military survivor benefit plans of whatever type
- G. Voluntary child support allotments to satisfy court orders, provided the court order is dated prior to the date of the levy from the IRS
- H. Pay attached or garnished for child support or alimony

I. The levy exemptions calculated under normal levy procedures

The main difference between a regular levy and a problem case levy is that, under the latter, the member's voluntary allotments of retired pay must be stopped to satisfy the levy. If it is not necessary to stop all allotments, the member should be given the opportunity to select those allotments to be stopped. If the member does not so elect, stop such allotments as are necessary, stopping any commercial insurance allotments last.

2812 BANKRUPTCY

A member may file a petition of bankruptcy under Chapters 7, 11, or 13 of the Bankruptcy Code (reference (dg)).

281201. When the amount of an indebtedness due the United States is incurred prior to the filing date of the petition, the debt is termed prepetition indebtedness. Such debt may be collected by set-off from the member's pay account only through the day prior to the date the bankruptcy petition is filed, except as provided below:

A. After the date of bankruptcy petition is filed, prepetition indebtedness due the United States may be collected by the filing of proofs of claim with United States Bankruptcy Court. No collection action may begin until the Bankruptcy Court has provided a repayment plan or liquidation schedule. Collection is then limited to the amount provided in such a plan or schedule.

B. After the date the bankruptcy petition is filed, prepetition indebtedness due the United States may be set-off from the member's pay account if the member reaffirms indebtedness due the United States. Reaffirmation agreements must be approved by the court.

C. If the court subsequently dismisses a bankruptcy case, collection is permitted by set-off if otherwise authorized in Chapters 27 through 29 of this volume.

281202. An indebtedness due the United States, but incurred after the filing date of the petition of bankruptcy, may be collected by set-off if otherwise authorized by Chapters 27 through 29 of this volume.

281203. A member may enter voluntarily into a Chapter 13 Plan (formerly Wage Earner's Plan) under the Bankruptcy Code (reference (dg)). When required by a Chapter 13 Plan (reference (dg)), send the member's pay to the court-appointed trustee as ordered by the court. (See Chapter 17 of this volume.)

2813 PAY NOT AFFECTED BY CIVIL PROCESS

A retired member may not be deprived of his or her pay by civil process of garnishment or levy except as follows:

- 281301. Garnishment for child support or alimony. (See Chapter 27 of this volume.)
- 281302. Levy for delinquent federal income taxes. (See section 2811, above.)
- 281303. Levy for child support

INDEBTEDNESS TO GOVERNMENT AGENCIES					
R U L E	A	B	C	D	E
	If a (an)	of	is indebted for	then collect from retired pay	at maximum monthly rate of
1	retired member	any Military Service	overpayment of retired pay	involuntarily	see note 1.
2			overpayment of active duty pay and allowances carried forward from active duty		rate established while on active duty (note 1).
3			unpaid hospital bills for medical services furnished a dependent	involuntarily or pursuant to Military Service regulations	see note 1.
4					
5		the Army or Air Force	uncollectible check to a commissary issued or endorsed by member or member's agent	involuntarily	all pay (excluding FITW).
6		the Navy or Marine Corps		involuntarily or pursuant to Military Service regulations	see note 1.
7		any Military Service	any indebtedness to a non-appropriated fund activity		
8			hospital rations furnished to a member		
9		CHAMPUS payment on behalf of member's dependents	with member's consent		
10				delinquent federal income tax	involuntarily
11		the Army or Air Force	loss, damage, or destruction of arms or equipment in member's care or use	involuntarily or pursuant to Military Service regulations	see note 1.
12		the Navy or Marine Corps		with member's consent	

Table 28-1. Indebtedness to Government Agencies

R U L E	A	B	C	D	E	
	If a (an)	of	is indebted for	then collect from retired pay	at maximum monthly rate of	
13	accountable officer	any Military Service	loss or damage to military supplies, upon final settlement of accounts of officer charged with issue of the supplies	involuntarily or pursuant to Military Service regulations	see note 1.	
14	retired member		damage to assigned family housing, or damage to or loss of equipment or furnishings caused by the abuse or negligence of the member or the member's dependent(s) or guests of member or the member's dependent(s) while on active duty and established by a Report of Survey	involuntarily	not to exceed 15 percent of disposable pay.	
15			a debt determined valid from another federal agency			all pay or amount applicable.
16			RSFPP and SBP payments to a surviving annuitant when retiree presumed dead is later found to be alive			see note 1.
17			advanced and unused travel expense			
18			dual compensation restrictions			
19			negotiating both original and substitute checks			

Table 28-1. Indebtedness to Government Agencies (Continued)

R U L E	A	B	C	D	E
	If a (an)	of	is indebted for	then collect from retired pay	at maximum monthly rate of
20	retired member	any Military Service	retired pay paid concurrently with active duty pay while serving as a Reservist. (a) prior fiscal year(s) or prior month(s) (b) current	involuntarily	see note 1. 1/12 of total for fiscal year
21			any of the Armed Forces		readjustment pay (a) paid prior to Sep 15, 81 (see Table 4-1) (b) paid after Sep 14, 81
22		non-disability severance pay (a) paid prior to Sep 15, 81 (see Table 4-2) (b) paid after Sep 14, 81			see note 2.
23					separation pay
24		any Military Service	an uncollectible check endorsed or issued by the member or a defaulted loan made to the member at a military banking facility overseas		see note 1.
25			an uncollectible check endorsed by the member to a disbursing officer		

NOTES:

1. Deductions will not exceed limitation set forth in paragraph 280702 of this volume.
2. Monthly rate based on service for which readjustment, severance, or separation pay was received as a proportion of the total deducted equals the lump-sum payment received.

Table 28-1. Indebtedness to Government Agencies (Continued)