

VOLUME 16, CHAPTER 5: “COLLECTION OF DEBTS OWED BY CONTRACTORS”

SUMMARY OF MAJOR CHANGES

All changes are denoted by **blue font**.

Substantive revisions are denoted by an * symbol preceding the section, paragraph, table, or figure that includes the revision.

Unless otherwise noted, chapters referenced are contained in this volume.

Hyperlinks are denoted by **bold, italic, blue, and underlined font**.

This is the initial publication.

PARAGRAPH	EXPLANATION OF CHANGE/REVISION	PURPOSE
All	This chapter consolidated debt management policy pertaining to debts owed by vendors and contractors previously found in Volume 4, Chapter 3 and Volume 10, Chapter 18.	New
050201	Updated with additional examples of contract debt.	Revision
050203.A (previous)	Deleted the requirement for contracting offices to submit all vouchers to the Defense Finance and Accounting Service Debt Management Office (DMO).	Deletion
050501.A	Updated thresholds for referral of delinquent debt to the DMO.	Revision
050501.B	Added language stating that Components who have implemented the Delinquent Debt Management Guidance should refer delinquent debts greater than \$25 to the Department of Treasury.	Addition
050503.A	Added language per the Digital Accountability and Transparency Act of 2014 to state that any debt that is referred to the Treasury Offset Program via cross-servicing is required to be transferred when it has been delinquent for 120 days.	Addition
050503.B	Added language stating that Components who have implemented the Delinquent Debt Management Guidance should refer delinquent debts greater than \$25 to the Department of Treasury.	Addition

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CHAPTER 5

***COLLECTION OF DEBTS OWED BY VENDORS AND CONTRACTORS**

0501 GENERAL

050101. Purpose

This chapter contains debt collection policy for debts that are owed to the Department of Defense (DoD) by contractors, vendors, assignees, universities, non-profits, and other business entities.

050102. Scope

A. Policies in this chapter are not applicable to debts owed by the DoD. Policies in this chapter also do not apply to the settlement of commercial transportation payment overcharges since the Director of the General Services Administration (GSA) has the authority to audit and settle all transportation accounts (*Title 31 United Statues Code (U.S.C.) 3726*) as further discussed in Volume 10, Chapter 13. Refer to Volume 5, Chapter 25 for policies for handling indebtedness associated with fraud. Policies in this chapter are consistent with the *Federal Acquisition Regulation (FAR)* and the Defense Federal Acquisition Regulation Supplement (*DFARS*).

B. This chapter does not contain policy for contracting officers regarding their responsibility to make debt determinations pursuant to *FAR Subpart 32.6*. However, this chapter does provide policy on the collection of contract debts established by the contracting officer as well as the establishment and collection of payment office debts.

C. The term contractor, as used throughout this chapter, refers to contractors, vendors, assignees, universities, non-profits, and other business entities.

D. The term Debt Collection Office (DCO), as used in this chapter, refers to vendor pay offices, contracting offices, and any other office that processes contractor debts. The DCO does not refer to the Defense Finance and Accounting Service (DFAS) Debt Management Office (DMO).

E. This chapter does not contain policy on implementing the requirements of The Improper Payments Elimination and Recovery Act of 2010 (IPERA) for use of Payment Recapture Audits (PRA). For information on PRA, as well as the disposition of recovered amounts, refer to Volume 10, Chapter 22.

0502 COLLECTION ACTIONS

*050201. Contract Debts

Contract debts result from amounts that have been paid to the contractor to which the contractor is not entitled under the terms and conditions of the contract or amounts otherwise due from the contractor. Contractor debts include, but are not limited to:

- A. Damages or excess costs related to defaults in performance;
- B. Breach of contract obligations concerning progress payments, performance-based payments, advance payments, commercial item financing, or Government-furnished property;
- C. Government expenses of correcting defective goods or services;
- D. Duplicate or erroneous payments;
- E. Billing and price reductions resulting from contract terms for price adjustment or a determination of prices under incentive type contracts;
- F. Overpayments disclosed by quarterly statements required under price redetermination or incentive contracts;
- G. Reimbursement of amounts due under [FAR 33.102\(b\)\(3\)](#) and [FAR 33.104\(h\)\(8\)](#);
- H. Price or cost reductions for defective cost or pricing data;
- I. Financing payments determined to be in excess of the contract limitations at [FAR 52.232-16\(a\)\(7\)](#), Progress Payments, [FAR 52.232-32\(d\)\(2\)](#), Performance-Based Payments, or any contract clause for commercial item financing;
- J. Increases to financing payment liquidation rates;
- K. Price adjustments resulting from Cost Accounting Standards noncompliance or changes in cost accounting practice;
- L. Re-inspection costs for nonconforming supplies or services;
- M. Delinquency in contractor payments due under agreements or arrangements for deferral or postponement of collections; and
- N. Overpayments related to errors in quantity, billing, or deficiencies in quality.

050202. Initiating Debt Collection

Once it is determined that a contractor is indebted to DoD, a demand letter must be issued providing the contractor notice of the debt, the opportunity to inspect relevant records, and the opportunity to request a review of the debt as set forth in Chapter 2.

A. Demand Letters. Demand letters must comply with procedures set forth in Chapter 2. Additionally, notice of indebtedness to a contractor must include a statement that, in accordance with Office of Management and Budget (OMB) Circular A-123, Appendix C, Part III, high-dollar overpayments may be reported on the Federal Government's improper payment website. Refer to Volume 4, Chapter 14 for the definition of a high-dollar overpayment.

B. Debt Collection Initiated by Contracting Officers or Designees

1. The contracting officer has primary responsibility for determining the amount of the debt and ensuring collection for most types of contract debts, except for those debts resulting from errors made by the payment office.

2. When a contracting officer or other authorized official requests that a payment office recover a debt and provides a copy of the contract to the payment office, including the payment dates and amounts due from the contractor, the payment office will recover the debt.

3. If the contracting officer or other designated official receives the contractor's payment, then the contracting officer or other designated official must immediately forward the payment to the disbursing office with a request for confirmation of receipt of the payment.

4. The appropriate DoD Component contracting officer, or other designated official, must initiate collection of contractor debts pursuant to FAR Subpart 32.6 and DFARS Subpart 232.6.

5. The contracting officer must send a copy of each demand letter to the payment office cited in the contract, as well as documentation that identifies the line of accounting for distribution of the principal amount of the debt to the supporting Accounts Receivable Office (ARO).

6. The contracting officer must follow up periodically with the DCO, ARO, or supporting accounting office to ensure that contract debts have been collected and credited to the proper appropriations.

C. Debt Collection Initiated by the Payment Office

1. Payment offices are designated to make payments under a contract and to receive payments for amounts due to DoD. Payment offices are responsible for

determining the amount of contract debts that are the result of overpayments or erroneous payments and initiating collection action on those debts. The payment office is also responsible for the collection of contractor debts when the amounts due and dates for payment are in the contract, and a copy of the contract has been furnished to the payment office with notice to collect as amounts become due.

2. When a contract modification (downward adjustment) is issued after the date of a disbursement and causes a contract to be in an overpayment status, the result of that modification is not an erroneous payment with respect to this chapter. The payment office must contact the procuring contracting officer or the administrative contracting officer (the individual who issued the modification causing the overpayment) to ensure that a demand letter is sent to the contractor for recovery of funds.

050203. Supporting Documentation

When referring a debt to the DCO or DMO for further collection, the following documentation is required, unless the contracting officer is referring the debt, in which case the DCO must coordinate with the contracting officer and request only those documents that do not already exist within DFAS:

- A. Dates and amounts of collections/offsets;
- B. Legible copies of the negotiated checks obtained from the United States (U.S.) Treasury (Treasury) for duplicate payments and dual negotiated successor checks;
- C. All demand letters, correspondence, and written documentation of communication between the contracting officer and the debtor or the DCO and the debtor;
- D. Any documents needed to support a recommendation for compromise, discontinuance, or termination;
- E. Tax identification number (TIN);
- F. Telephone number, address, and the name of a point of contact that is knowledgeable of the following:
 - 1. Debtor,
 - 2. Contracting office making the referral,
 - 3. Disbursing office making the referral, and
 - 4. Supporting accounting office;

G. A copy of the audit or reconciliation report, with sufficient supporting documentation to explain the conclusions in the case of a determination of debt(s) resulting from an audit or contract reconciliation;

H. The accounting classification/appropriation to which the principal portion of the debtor's payments should be deposited;

I. Copies of documentation that supports debts arising from the sale of goods and services to commercial entities on a reimbursable basis; and

J. The debtor's Commercial and Government Entity (CAGE) code.

0503 ADMINISTRATIVE OFFSET

050301. General

A. To the extent practicable, debts should be recovered internally (within DoD), either by voluntary repayment in a lump sum or by administrative offset(s) of payment(s) owed to the contractor, unless an installment agreement has been entered into or a deferment of collection has been approved ([FAR 32.606](#)). If 30 days have elapsed since the DCO mailed the initial demand letter, and no payment has been received, then DCOs must offset a contractor's indebtedness against other monies that are owed the contractor.

B. FAR 32.606 allows for offsetting contractor payments to liquidate debts owed by the contractor. If additional payments are scheduled under the same contract, then the DCO should administratively offset against those payments first. The DCO must coordinate with the payment office to apply administrative offsets against amounts due the contractor under other contracts if offsets against the contract that gave rise to the debt cannot be accomplished. The disbursement voucher must be approved and the accounting classification charged for the total amount of the entitlement with no regard for the deduction being applied. DCOs must prominently annotate the face of the voucher, or the electronic equivalent, with the amount withheld and the accounting classification credited to ensure that only the net amount is paid to the contractor. The voucher must adequately inform the payee of the reason(s) for the deduction.

C. Administrative offsets normally will not be taken when there is a valid assignment of claims, under the Assignment of Claims Act of 1940 ([31 U.S.C. 3727](#) and [41 U.S.C. 6305](#)), associated with the contractor. DCO personnel should seek guidance from their legal office, as appropriate, in determining whether an administrative offset may be taken when an assignment of claims exists.

D. Pursuant to [31 U.S.C. 3716](#), and in accordance with Title 31, Code of Federal Regulations (C.F.R.) [901.3\(b\)\(2\)](#), a DCO must process an administrative offset to collect a debt when the name and TIN of a payee matches the name and TIN of a debtor, and all other requirements for administrative offset have been met.

050302. Credit Invoice

A. A contractor may request to liquidate a debt against existing unpaid bills due to the contractor. As an exception, DCOs may accept a credit invoice under special circumstances, and only when there is a current payable invoice to which the credit can be applied. The contractor should furnish the DCO, upon request, an invoice number, date, and the amount of the debt to be offset against the invoice, according to the credit invoice.

B. A contractor may state on an invoice, or on a progress payment request that the amount of the credit invoice can be deducted from the amount due from the DoD. In all other instances, a determination must be made on the most effective manner in which the debt can be recovered. In making this determination, DCOs must give consideration both to the relative costs that would be incurred by DoD under each option and to the method that is expected to result in liquidation of the debt at the earliest date. The latter factor is dependent upon the expected volume and frequency of incoming invoices that are susceptible to administrative offset, and whether this option is more effective and efficient than a credit invoice.

C. DCOs must acknowledge receipt of the credit invoice and inform the contractor of its disposition. If direct remittance is required, then the acknowledgement must contain a statement, such as, "This is to acknowledge receipt of your credit invoice 14245, dated December 14, 2013. We cannot accept this document as liquidation of your indebtedness, and must ask that you remit a check to the following address: (insert applicable address)." The contractor may identify an invoice to offset instead. If the offset is taken, then the DCO's letter must contain a statement such as, "This is to acknowledge receipt of your credit invoice 67890, dated June 12, 2013." Receipt of a credit invoice by the due date (where the demand letter states the due date) does not preclude charging interest and administrative charges.

0504 INSTALLMENT PAYMENT PLANS

050401. General

Whenever possible, payment to liquidate a debt, including a deferred payment, must be made in one lump sum. However, when a contractor can establish sufficient justification, the DCO may approve a series of installment payments to liquidate the debt within a reasonable period of time. In accordance with 31 C.F.R. 901.8, installment payments should be sufficient in size and frequency to liquidate the debt within 3 years. If the contractor requests a repayment term of more than 3 years, then the DCO must refer the request to the DMO for a determination. See Chapter 2 for additional guidance on installment payment plans.

050402. Installment Payment Approval Authority

The DMO may approve a contractor's request for an installment agreement; however, the DMO may not deny a contractor's request for an installment agreement without first obtaining consent from the creditor DoD Component's senior financial manager (FM) or designee. In the

latter case, the DMO will send the request to the office of the creditor DoD Component's senior FM or designee within 3 working days from the date the request was received.

050403. Installment Payment Notification

The DMO will make installment agreements available to the office that referred the debt and to the office of the creditor DoD Component's senior FM or designee.

0505 REFERRAL OF DELINQUENT DEBTS TO DEBT MANAGEMENT OFFICE (DMO)

*050501. Dollar Thresholds for Referral

* A. Dollar thresholds for referring delinquent debts to the DMO are as follows:

1. Debts that amount to \$25 or more and belong to a contractor with a known TIN; or

2. Debts that amount to \$100 or more and belong to a contractor without a known TIN.

* B. Components that have implemented the processes contained in the Delinquent Debt Management Guidance (DDMG) should refer delinquent debt over \$25 to the Bureau of Fiscal Services Debt Management Services for further collection action where applicable.

C. If a contractor has more than one debt, each under the threshold, then the ARO will combine these debts to determine whether the sum of the debts is equal to or greater than the threshold. If so, then the ARO will refer the debts to the DMO in accordance with paragraph 050502. Refer to Volume 4, Chapter 3 for information on write-off of delinquent debt that is below the referral threshold and cannot be collected.

050502. Delinquent Debts and Multiple Debts Greater than the Threshold

A. General. DCOs must refer valid and legally enforceable debts that are equal to or greater than the thresholds in paragraph 050501, individually or in aggregate, to the DMO no later than 90 days following the debt repayment due date. Debts must be validated by the DCO prior to referral to the DMO. The DMO must annotate acceptance of the debt in the appropriate system, thereby making the information available to the DCO and the supporting accounting office responsible for maintaining the official accounting records. In accordance with Chapter 2, administrative charges may be assessed for the expenses of referring the debt.

B. Supporting Documentation. When referring a debt to the DMO, DCOs must submit the documentation as listed in 050203.

C. Funds Accountability. After referral, the DMO will have full responsibility for collecting the delinquent debt. Accounting and reporting of the debt does not transfer to the DMO, but remains with the servicing accounting office using status information provided by the DMO. The DMO only maintains a memorandum accounts receivable record. Any office other than the DMO that receives a payment after referral of the debt must notify the DMO of the receipt and disposition of the payment within 3 business days. The ARO must notify the FM representative of the cognizant DoD Component when the debt should be closed. In the case of dual negotiated checks, the DMO will also notify the accountable payment office or settlement office.

*050503. Referral of Debts to the Department of the Treasury (Treasury)

* A. The DMO will refer valid and legally enforceable debts, which have been delinquent over 120 days, to the Treasury for debt collection and cross-servicing. If a debt is first referred to the Cross-Servicing Program, Treasury will submit any remaining amount not collected by cross-servicing to TOP on behalf of the agency. Therefore, in order to comply with the 120 day deadline for submitting debts to TOP, creditor agencies must submit debts more than 120 days delinquent to cross-servicing, rather than waiting until the debt is 180 days delinquent. Once a debt is referred to Treasury, the DoD must cease collection activity related to that debt. Agencies referring debts to Treasury must authorize Treasury to utilize all available collection tools. After referral, the DMO must review applicable reports within FedDebt and the Contract Debt System (CDS) to ensure the debt record was processed and received by the Treasury. If it is in the DoD's best interest, valid and legally enforceable debts may be referred to Treasury earlier than the 120 days.

* B. Components that have implemented the processes contained in the DDMG should refer delinquent debt over \$25 directly to Treasury's Bureau of Fiscal Services Debt Management Service for further collection action where applicable.

0506 DISPUTES AND DEFERMENTS UNDER THE CONTRACT DISPUTES ACT

050601. Disputes

Under the Contract Disputes Act of 1978 (41 U.S.C. Chapter 71), a contractor may appeal a decision of indebtedness to the Armed Services Board of Contract Appeals or through the United States Courts. Actions filed by contractors under the Disputes Clause will not suspend or delay the collection unless the contractor has been granted a deferment as set forth in paragraph 050603. Further, interest, penalties and fees will continue to accrue on uncollected debts that have been formally disputed.

050602. Crediting Collections in Dispute

A. When an amount, including interest and administrative fees, is collected from a contractor, and the contractor formally disputes the debt, the collected amount will not be accounted for as settlement of the debt. The disputed amounts will be credited to a Treasury deposit account pending disposition of the contractor's dispute, and interest, penalties, and fees will no longer accrue since the debt has been collected. When making a collection in a disputed

situation, the collection must be documented as a disputed contract collection. For example, debts collected by DFAS will be coded as disputed in CDS.

B. The payment office typically handles collection of a debt. In the event another office, including the ARO, supporting accounting offices, the DMO, contracting officers, contract administration officers, or legal offices receives a payment against an existing debt, the receiving office should forward the payment to the relevant DCO immediately. Accounting for disputed collections is covered in Volume 4, Chapter 3.

C. The DCO and the responsible payment office must notify the contracting officer, the contract administration officer if applicable, the Service or agency contract finance officer, and/or another authority of any matters affecting the disputed collections. Conversely, these officers or offices must also inform the responsible payment office and the DCO of any actions taken that affect the disputed collection.

050603. Deferments

A. Under the Contract Disputes Act (CDA) of 1978, a contractor may appeal a decision of indebtedness to the Armed Services Board of Contract Appeals (ASBCA) or through the United States court system. In accordance with FAR 32.607, the contractor may request, in writing, for deferment of debt repayment until the appeal is decided.

B. In accordance with FAR 32.607, the contractor must submit the request for deferment to the contracting office.

C. The contracting office will forward the request to the appropriate DoD Component's senior FM or designee within 3 working days from the date the request was received. The DoD Component's senior FM or designee will approve or deny the request and notify the contractor, contracting office, and the DMO of the decision.

D. Collection of the debt should continue until the date the deferment is granted. Volume 4, Chapter 3 contains the policy for accounting for collections under the CDA.

0507 WRITE-OFF AND CLOSE-OUT OF ACCOUNTS RECEIVABLE

050701. Write-off and Close-out of Indebtedness

Refer to Volume 4, Chapter 3 for policy on write-off and close-out of delinquent debt.

050702. Tax Reporting

Notification of all closed-out, uncollected public contractor debt will be forwarded to the DFAS-Columbus, DFAS Tax Office Standards & Compliance, Finance Mission Area, ATTN: DFAS-JJFD/CO, PO Box 182317, Columbus, Ohio 43218-2317 for tracking, consolidation, and reporting. In accordance with 26 U.S.C. 6050P, the Tax Office will issue an Internal Revenue Service Form 1099-C, Cancellation of Debt, if the closed, uncollected debt is greater than or

equal to \$600 for the calendar year. Tax Office required data elements are contained in Volume 4, Chapter 3.

0508 BANKRUPTCY

050801. General

Within DoD, DFAS Office of General Counsel, Indianapolis, IN (DFAS-OGC) will file contractor bankruptcy proof of claims. DFAS-OGC is not responsible for litigating contractor bankruptcies. The litigation function remains the responsibility of the DoD Component. Bankruptcy litigation is accomplished by the Department of Justice (DOJ) through the office of the responsible U.S. Attorney. Prescribed actions, as detailed in paragraphs 050801.A through 050806, will be taken when the procuring contracting office or contract administrative office receives notice of bankruptcy from the contractor or another source. This is covered in *FAR Subpart 42.9*.

A. Bankruptcy cases are time sensitive. When the DoD receives a notice of bankruptcy, immediate action is required. Government monetary claims and other rights may be adversely and irrevocably affected if not timely asserted.

B. When either the procuring contracting office or the contract administrative office learns that bankruptcy proceedings have been initiated, the receiving office will immediately notify DFAS-OGC by writing to Defense Finance and Accounting Service, 8899 East 56th Street, Indianapolis, IN 46249 or by email to dfas.indianapolis-in.hgb.mbx.ogc-bankruptcies@mail.mil.

C. Notification must occur regardless of whether any contracts have fully been performed, closed, or terminated. The DoD Component must also notify any office within the cognizant department or agency designated to receive this information. This notification must be made within 3 business days of receipt of the notice of bankruptcy, regardless of whether it appears the notice has been received late. Bankruptcy notices must also be sent to the following addresses:

1. Defense Logistics Agency
Office of General Counsel, ATTN: DG
8725 John J. Kingman Road, STOP 2533
Fort Belvoir, VA 22060-6221
2. Assistant General Counsel (Litigation), Department of the Navy
Office of the General Counsel
720 Kennon Street SE Room 233
Washington Navy Yard, DC 20374-5013
3. Air Force Legal Operations Agency
1500 West Perimeter Road, Suite 1780
Joint Base Andrews, MD 20762

4. U.S. Army Litigation Center
9275 Gunston Road, Suite 3000
Fort Belvoir, VA 22060-5546
5. Defense Contract Management Agency
Office of General Counsel (DCMA-GC)
3901 A Avenue
Building 10500
Ft. Lee, VA 23801-1809D.

D. At a minimum, the notification must include:

1. The name of the contractor,
2. The court in which the bankruptcy petition has been filed,
3. The date of the filing of the bankruptcy petition,
4. The bankruptcy court docket number (if available), and
5. Whether the contractor is indebted to the DoD.

050802. 15-Day Report

The contracting office may receive a notice of bankruptcy from the debtor or DFAS-OGC. When the contracting office receives notification of a bankruptcy, that office will initially send a message to DFAS-OGC, the DoD Component's legal office noted in paragraph 050801.C, and any other office designated within DoD, followed by a report no later than 15 days after receipt of the notice of bankruptcy. If some of this information is not available, then the report will be sent reflecting all available information. To the extent possible, the report will include the following information:

- A. The name of the contractor;
- B. A list of the contracts involved;
- C. The amount of any potential claim against the contractor. Often, the amount of a potential claim must be an estimate. The contracting officer must attempt to calculate the amount of the debt accurately with the understanding that filing of the proof of claim is time sensitive, and must attach a short explanation of how the debt arose. Documentation evidencing the existence of the debt will be attached whenever possible;
- D. Any property, and its location, in the possession of the contractor in which DoD claims an interest; e.g., government property made available to the contractor, such as government furnished equipment or government furnished property;

- E. Any claims the debtor may have asserted or presented to DoD;
- F. The bankruptcy court docket number of the proceeding, and the court in which the bankruptcy is pending; and
- G. Available information concerning the deadline for submitting documents to the Bankruptcy Court, asserting the government's claims against the debtor.

050803. Proof of Claim

Upon receipt of a notice from a contracting officer, DFAS-OGC will prepare a consolidated proof of claim on behalf of DoD. DFAS-OGC will file the proof of claim with the appropriate court unless the responsible U.S. Attorney directs otherwise. DFAS-OGC will send a copy of the proof of claim to each DoD Component that submitted a claim. DoD or agency copies of the proof of claim must be sent to the responsible offices designated in paragraph 050801.C. The proof of claim will identify DFAS-OGC as the office designated to receive further notices and any funds received pursuant to the proceedings.

050804. Actions Against Contractor

The filing of a bankruptcy petition has a major impact on business relationships with the contractor who has filed for bankruptcy protection. Many otherwise appropriate actions cannot be taken against a bankrupt contractor, and actions that may be legally taken against a contractor may have adverse consequences for DoD. The activity's legal office should be informed before any action is taken with regard to a contractor who has filed for bankruptcy.

050805. Bankruptcy Notification From Contractor

In accordance with the contract clause provisions contained in FAR 52.242-13, should the contractor enter into proceedings relating to bankruptcy, whether voluntary or involuntary, the contractor agrees to furnish by certified mail, or electronic commerce method authorized by the contract, written notification of the bankruptcy to the contracting officer responsible for administering the contract. This notification will be furnished within 5 days of the initiation of the proceedings relating to bankruptcy filing and will include the following:

- A. The date on which the bankruptcy petition was filed,
- B. The identity of the court in which the bankruptcy petition was filed, and
- C. A listing of government contract numbers and contracting offices for all government contracts against which final payment has not been made.

050806. Notification to Office of General Counsel (OGC)

FAR 52.242-13 states that the contractor's obligation to notify their contracting officer of a bankruptcy remains in effect until final payment under the contract(s) is made. In addition, the

contracting officer must provide a copy of the notification from the contractor to DFAS-OGC, Defense Finance and Accounting Service, 8899 East 56th Street, Indianapolis, IN 46249 and by email to dfas.indianapolis-in.hgb.mbx.ogc-bankruptcies@mail.mil.