

**DEPARTMENT OF DEFENSE****Office of the Secretary****32 CFR Part 112**

[DOD-2007-OS-0025]

RIN 0790-A108

**Indebtedness of Military Personnel****AGENCY:** Department of Defense.**ACTION:** Proposed rule.

**SUMMARY:** This part contains uniform Department of Defense policies for indebtedness of Military Personnel. This updated rule contains editorial changes only as required for internal Department of Defense mandated reconsideration every five years.

**DATES:** Comments must be received by June 18, 2007.

**ADDRESSES:** You may submit comments, identified by docket number and or RIN number and title, by any of the following methods: *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

*Mail:* Federal Docket Management System Office, 1160 Defense Pentagon, Washington, DC 20301-1160.

*Instructions:* All submissions received must include the agency name and docket number or Regulatory Information Number (RIN) for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at <http://regulations.gov> as they are received without change, including any personal identifiers or contact information.

**FOR FURTHER INFORMATION CONTACT:** Lieutenant Colonel Mark Gingras, Office of the Deputy Under Secretary of Defense for Program Integration, 4000 Defense Pentagon, Washington, DC 20301-4000.

**SUPPLEMENTARY INFORMATION:****Executive Order 12866, "Regulatory Planning and Review"**

It has been determined that 32 CFR part 123 is not a significant regulatory action. The rule does not:

(1) Have an annual effect to the economy of \$100 million or more or adversely affect in a material way the economy; a section of the economy; productivity; competition; jobs; the environment; public health or safety; or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another Agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

**Unfunded Mandates Reform Act (Sec. 202, Pub. L. 104-4)**

It has been certified that this rule does not contain a Federal mandate that may result in the expenditure by State, local and tribal governments, in aggregate, or by the private sector, of \$100 million or more in any one year.

**Public Law 96-354, "Regulatory Flexibility Act" (5 U.S.C. 601)**

It has been certified that this rule is not subject to the Regulatory Flexibility Act (5 U.S.C. 601) because it would not, if promulgated, have a significant economic impact on a substantial number of small entities.

**Public Law 96-511, "Paperwork Reduction Act" (44 U.S.C. Chapter 35)**

It has been certified that this rule does impose reporting or recordkeeping requirements under the Paperwork Reduction Act of 1995. The reporting and recordkeeping requirements have been submitted to OMB for review.

**Executive Order 13132, "Federalism"**

It has been certified that this rule does not have federalism implications, as set forth in Executive Order 13132. This rule does not have substantial direct effects on:

- (1) The States;
- (2) The relationship between the National Government and the States; or
- (3) The distribution of power and responsibilities among the various levels of government.

**List of Subjects in 32 CFR Part 112**

Claims, Credit, Military personnel.

Accordingly, 32 CFR Part 112 is proposed to be revised as follows:

**PART 112—INDEBTEDNESS OF MILITARY PERSONNEL**

Sec.

- |       |                                       |
|-------|---------------------------------------|
| 112.1 | Purpose.                              |
| 112.2 | Applicability and scope.              |
| 112.3 | Definitions.                          |
| 112.4 | Policy.                               |
| 112.5 | Processing of debt complaints.        |
| 112.6 | Processing of involuntary allotments. |
| 112.7 | Responsibilities.                     |

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

**§ 112.1 Purpose.**

This part:

(a) Updates DoD policies and assigns responsibilities governing delinquent indebtedness of members of the Military Services and prescribes policy for processing involuntary allotments from the pay of military members to satisfy judgment indebtedness in accordance with 5 U.S.C. 5520a(k).

(b) Establishes responsibility for procedures implementing 5 U.S.C. 5520a(k), 15 U.S.C. 1601 note, 1601-1614, 1631-1646, 1661-1665a, 1666-1666j, and 1667-1667e ("Truth in Lending Act"), and 15 U.S.C. 1601 note, and 1692-1692o ("Fair Debt Collection Practices Act").

**§ 112.2 Applicability and scope.**

(a) 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 Service in the Navy, under agreement with the Department of Homeland Security), the Chairman of the Joint Chiefs of Staff, the Combatant Commands, the Office of the Inspector General of the Department of Defense, the Defense Agencies, the DoD Field Activities, and all other organizational entities in the Department of Defense (hereafter referred to collectively as the "DoD Components").

(b) This part does not apply to:

- (1) Indebtedness of a member of the Military Services to the Federal Government.
- (2) Processing of indebtedness claims to enforce judgments against military members for alimony or child support.
- (3) Claims by State or municipal governments under the processing guidelines for complaints, including tax collection actions.

**§ 112.3 Definitions.**

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

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

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

(d) *Exigencies of Military Duty.* A military assignment or 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 or prevents the member from being able to respond to a notice of application for an involuntary allotment. Exigency of military duty is normally presumed during periods of war, national emergency, or when the member is deployed.

(e) *Judgment*. A final judgment must be a valid, enforceable order or decree, by a court from which no appeal may be taken, or from which no appeal has been taken within the time allowed, or from which an appeal has been taken and finally decided. The judgment must award a sum certain amount and specify that the amount is to be paid by an individual who, at the time of application for the involuntary allotment, is a member of the Military Services.

(f) *Just Financial Obligation*. 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 Sections 501–591 of title 50 Appendix, United States Code (The Servicemembers Civil Relief Act, as amended).

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

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

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

#### § 112.4 Policy.

(a) Members of the Military Services are expected to pay their just financial obligations in a proper and timely manner. A Service member's failure to pay a just financial obligation may result in disciplinary action under the Uniform Code of Military Justice (10 U.S.C. 801–940) or a claim pursuant to Article 139 of the Uniform Code of Military Justice. Except as stated in this section, and in paragraphs (a)(1) and (a)(2) of this section, the DoD

Components have no legal authority to require members to pay a private debt or to divert any part of their pay for satisfaction of a private debt.

(1) Legal process instituted in civil courts to enforce judgments against military personnel for the payment of alimony or child support shall be acted on pursuant to 42 U.S.C. 651–665, and Part 7, Chapter 7, Section B. of Department of Defense Regulation 7000.14–R Volume 7.<sup>1</sup>

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

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

#### § 112.5 Processing of debt complaints.

(a) Debt complaints meeting the requirements of this Part and procedures established by the Under Secretary of Defense for Personnel and Readiness, as required by § 112.7(a)(1) shall receive prompt processing assistance from commanders.

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

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

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

(3) Whose claims are obviously exorbitant.

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

(1) At DoD installations in States having such laws, the processing of debt complaints shall not be extended to those creditors who are in violation of the State law. Commanders may advise creditors that this rule has been established because it is the general policy of the Military Services to comply with State law when that law does not infringe upon significant military interests.

(2) The rule in paragraph(c)(1) of this section shall govern even though a creditor is not licensed to do business

in the State where the debtor is located. A similar practice shall be started in any State enacting a similar law regarding debt collection.

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

#### § 112.6 Processing of involuntary allotments.

Pursuant to 5 U.S.C. 5520a(k):

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

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

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

(2) There has not been compliance with the procedural requirements of the Servicemembers Civil Relief Act 50 U.S.C. Appendix, sections 501–591.

#### § 112.7 Responsibilities.

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

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

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

(b) The Under Secretary of Defense (Comptroller) shall:

(1) Establish, as necessary, procedures supplemental to those promulgated by the Under Secretary of Defense for Personnel and Readiness to administer and process involuntary allotments from the pay of members of the Military Services; this includes the authority to promulgate forms necessary for the efficient administration and processing of involuntary allotments.

(2) Ensure that the Director, Defense Finance and Accounting Service:

(i) Implements procedures established by the Under Secretary of Defense for

<sup>1</sup> Copies may be obtained from the DoD Directives Web page at: <http://www.dtic.mil/whs/directives>.

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

Personnel and Readiness and The Under Secretary of Defense (Comptroller).

(ii) Considers whether Servicemembers Civil Relief Act 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) Publishes, prints, stocks, redistributes, and revises DoD forms necessary to process involuntary allotments.

(c) The Heads of the DoD Components shall urge military personnel to meet their just financial obligations, since failure to do so damages their credit reputation and affects the public image of all DoD personnel. See DoD Directive 5500.7.<sup>3</sup>

(d) The Secretaries of the Military Departments shall:

(1) Establish, as necessary, procedures to administer and process involuntary allotments from the pay of members of the Military Services. This includes designating those commanders, or other officials who may act in the absence of the commander, who shall be responsible for determining whether a member's absence from a judicial proceeding was caused by exigencies of military duty, and establishing appeal procedures regarding such determinations.

(2) Require commanders to counsel members to pay their just debts, including complying, as appropriate, with court orders and judgments for the payments of alimony or child support.

(3) Emphasize prompt command action to assist with the processing of involuntary allotment applications.

(e) The Chief, Office of Personnel and Training, for the Coast Guard shall:

(1) Establish, as necessary, procedures supplemental to those promulgated by the Under Secretary of Defense for Personnel and Readiness to administer and process involuntary allotment from the pay of members of the Military Services; this includes the authority to promulgate forms necessary for the efficient administration and processing of involuntary allotments.

(2) Ensure that the Commanding Officer, Coast Guard Pay and Personal Center:

(i) Implements procedures established by the Under Secretary of Defense for Personnel and Readiness 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.

Dated: April 11, 2007.

**C.R. Choate,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

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**BILLING CODE 5001–06–P**

## LIBRARY OF CONGRESS

### Copyright Royalty Board

#### 37 CFR Part 381

[Docket No. 2006–2 CRB NCBRA]

#### Noncommercial Educational Broadcasting Statutory License

**AGENCY:** Copyright Royalty Board, Library of Congress.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Copyright Royalty Judges are publishing for comment certain royalty rates, proposed by the parties in the proceeding to determine the rates and terms for the noncommercial educational broadcasting statutory license contained in the Copyright Act.

**DATES:** Comments and objections, if any, are due on or before May 17, 2007.

**ADDRESSES:** An original, five paper copies, and one electronic copy in Portable Document Format (PDF) on compact disk (an optical data storage medium such as a CD-ROM, CD-R or CD-RW) or floppy diskette of a comment or objection must be delivered to the Copyright Royalty Board in one of the following ways: If hand delivered by a private party, the comment or objection should be brought to the Copyright Office Public Information Office in the James Madison Memorial Building, Room LM–401, 101 Independence Avenue, SE., Monday through Friday, between 8:30 a.m. and 5 p.m., and the envelope must be addressed as follows: Copyright Royalty Board, Library of Congress, James Madison Memorial Building, 101 Independence Avenue, SE., Washington, DC 20559–6000. If delivered by a commercial courier (excluding overnight delivery services such as Federal Express, United Parcel Service and similar overnight delivery services), the comment or objection must be delivered to the Congressional Courier Acceptance Site (CCAS) located at 2nd and D Street, NE., Monday through Friday, between 8:30 a.m. and

4 p.m., and the envelope must be addressed as follows: Copyright Royalty Board, Library of Congress, James Madison Memorial Building, 101 Independence Avenue, SE., Washington, DC 20559–6000. If a comment or objection is sent by mail (including overnight delivery using United States Postal Service Express Mail), the envelope must be addressed to: Copyright Royalty Board, P.O. Box 70977, Southwest Station, Washington, DC 20024–0977. Comments and objections may not be delivered by means of overnight delivery services such as Federal Express, United Parcel Service, etc., due to delays in processing receipt of such deliveries.

**FOR FURTHER INFORMATION CONTACT:** Gina Giuffreda, Attorney-Advisor. Telephone (202) 707–7658. Telefax (202) 252–3423.

#### SUPPLEMENTARY INFORMATION:

##### Background

Section 118 of the Copyright Act, title 17 of the United States Code, establishes a statutory license for the use of certain copyrighted works in connection with noncommercial television and radio broadcasting. The terms and rates for this statutory license have been adjusted periodically by the Librarian of Congress and appear in 37 CFR Part 253. However, the Copyright Royalty and Distribution Reform Act of 2004, Pub. L. No. 108–419, transferred jurisdiction over these rates and terms to the Copyright Royalty Judges. 17 U.S.C. 801(b)(1). This is a window year for the establishment of new rates and terms for the 2008–2012 license period.

On January 9, 2006, pursuant to 17 U.S.C. 803(b)(1)(A)(i)(V), the Copyright Royalty Judges published a notice in the **Federal Register** announcing commencement of proceedings under 17 U.S.C. 118 and requesting interested parties to submit their petitions to participate. 71 FR 1453 (January 9, 2006). Petitions to participate were received from: the American Council on Education (“ACE”); the National Music Publishers Association, Inc. (“NMPA”); the Harry Fox Agency (“HFA”); the National Religious Broadcasters Noncommercial Music License Committee (“NRBNMLC”); Royalty Logic, Inc.; the American Society of Composers, Authors and Publishers (“ASCAP”); Broadcast Music, Inc. (“BMI”); SESAC, Inc.; National Public Radio (“NPR”); the Corporation for Public Broadcasting (“CPB”); the Public Broadcasting Service (“PBS”); and the Church Music Publishers Association, Inc. The Judges set the timetable for the three-month negotiation period, see 17 U.S.C. 803(b)(3), and directed the

<sup>3</sup> See footnote 1 to § 112.4(a)(1).