

DEBT COLLECTORS

Your rights under the FDCPA & Louisiana law

Dealing with aggressive debt collectors can be difficult in the best of circumstances. Dealing with them while planning for a deployment, a PCS or ETS can be especially draining. However, under the Federal Debt Collection Practices Act (FDCPA) and Louisiana consumer law, you have specific protections from unscrupulous debt collectors.

CREDITORS VS. DEBTORS

First, it is important to understand the difference between a creditor and a debt collector. A creditor is a person or entity to whom a debtor owes money. If you take out a car loan with Bank XYZ, Bank XYZ is considered your creditor. A debt collector is in the business of collecting debts that are owed to creditors. If you fail to pay your car loan with Bank XYZ, Bank XYZ will typically send your account to a debt collector, Collection Agency ABC. In most states, creditors like Bank XYZ can take broad action to try and collect on their debt, even contacting your employer as part of their collection efforts. Debt collectors like Collection Agency ABC, however, are very limited in their activities, mainly due to the FDCPA.

COMMUNICATION WITH COMMAND OR EMPLOYERS

Under the FDCPA, debt collectors are not allowed to contact your employer. Under Louisiana law R.S. 9:3562, neither creditors nor debt collectors are permitted to contact your employer, including commanders. These laws are echoed by Army Regulation (AR) 600-15, para 1-7 and para 4-2. There are two exceptions to this rule; a creditor or debt collector may contact your command if they have obtained a judgment against you or if you have given them written permission after the debt was created. Absent these circumstances, they cannot contact your command. They can call and ask for your contact information, but they are not permitted to identify themselves as someone calling regarding a debt.

HOW TO DEAL WITH DEBT COLLECTORS

If you are receiving calls from debt collectors, the best thing to do is to send the company a letter disputing the debt and requesting validation of the debt under the FDCPA. If you are contesting the validity of the debt, include the nature of your dispute in that letter. The words "I dispute this debt" impose a special requirement on the debt collector to send you validation of the debt to confirm they are collecting on a valid debt. Until they send you this validation, they must cease all collection activities.

The FDCPA prevents debt collectors from a host of actions. For each violation of the FDCPA, a consumer can sue the debt collector for damages up to \$1,000, in addition to whatever losses the consumer actually suffered.

- *Harassing the debtor or others.* This includes threats of violence, use of obscene language, repeated or continuous phone calls, and threats to contact third parties. Debt collectors cannot contact you before 0800 or after 2100.
- *Failing to send the required consumer notice.* When a debt collector first contacts you, they must notify you within five days of (1) the amount of the debt, (2) name of the original creditor, (3) the

right to dispute the debt, (4) the right to obtain validation of the debt, and (5) the right to obtain the name and address of the original creditor.

- *Continuing to contact the consumer after receiving a notice to cease all communication.* If you notify a debt collector in writing to cease all further contact with you, their failure to honor that demand is a violation of FDCPA.
- *Revealing the debt to third parties.* Third-party contacts are generally unauthorized.
- *Threatening dire consequences if the consumer fails to pay.* Some collectors falsely threaten lawsuit or other action that they do not intend to take. Others falsely threaten arrest or the seizure of property. Creditors can obtain a judgment against you for the debt you owe, but they must first notify of the court action.
- *Calling the consumer's place of employment.* Under Louisiana law and AR 600-15, neither creditors nor debt collectors may contact employers.

If you have questions concerning consumer debt collection and your rights, please call the Fort Polk Legal Assistance Office at (337) 531-2580 for an appointment. Hours of operation are Monday through Friday, 0800 – 1130 and 1230 – 1630. We are located in Building 1454 on Alabama Avenue, next to the Showboat Theater.

Excerpts from Army Regulation 600-15

1–7. Fair Debt Collection Practices Act

a. A debt collector may not contact any person other than the soldier, his or her lawyer or legal counsel, or the creditor about any debt collection. The debt collector, however, may contact the employer if he or she has a written and signed consent from the soldier, or a court order permitting contact. The written consent must include the debt collector's name. It is illegal for debt collectors to use another name when collecting debts.

b. Debt collectors who have obtained the needed written consent or court order and who have followed chapter 4 will have their debt complaints processed.

c. Creditors who collect only on their own behalf are exempt from the Act.

4–2. State laws

Florida, Louisiana, Maryland, Massachusetts, New York, North Carolina, and Wisconsin have passed laws that forbid creditors from contacting employers. This includes commanders, unless certain conditions are met. These conditions are the reduction of a debt to court judgment or the written permission of a debtor. The judgment must conform to the Soldiers' and Sailors' Civil Relief Act of 1940, as amended (50 USC App, Sec 501 et. seq., (1970)) if applicable. (See DA Pam 27–166.) Other States may enact similar laws; if they do, the same conditions will apply. Creditors wanting to make use of the debt processing privilege must first certify their compliance with the relevant State's law about contact with an employer (fig 4–1). These laws, however, do not apply if the debtor is located in a State that has not passed such a law.