



## **FORT SAM HOUSTON LEGAL ASSISTANCE OFFICE** **DEBT COLLECTION INFORMATION SHEET**

**Overview of the Debt Collection Process:** Army Regulation 600-15, Indebtedness of Military Personnel, outlines Army policy regarding the obligation of soldiers to pay consumer debts and the procedures commanders must follow when processing requests for debt collection assistance by the military.

Creditors (those to whom a consumer debt is owed) normally start collection efforts with a series of form letters, graduate to phone calls or personal visits, then to repossession or referral to a collection agency or attorney for a lawsuit. The initial contacts are usually friendly "reminder" letters, followed by letters requesting the consumer to telephone them to discuss the problem and suggesting that nonpayment of the debt is very serious. Phone calls may serve a legitimate purpose of determining why payments are late and resolving misunderstandings and disputes, or they may be used illegally to harass the consumer in attempts to collect the debt from a distressed consumer. When payments on the debt are 30 to 60 days late, the creditor generally threatens to repossess the collateral or foreclose on a mortgage.

At any stage of the process, the creditor may write off the debt, either because the debt is obviously not collectible or because the creditor has an internal rule that obligations that are unpaid for a certain period of time will be charged off for tax purposes.

If a creditor is unsuccessful in getting the consumer to pay the debt, the creditor may turn the account over to an attorney or a debt collector (one in the business of collecting debts for others). An attorney may simply furnish the creditor with a "dunning" letter or series of letters for a flat fee or pursuant to a retainer fee. The attorney may also be retained to initiate legal action, usually for a contingency fee, retaining a portion of the amount collected (*e.g.* 30-50%). A collection agency may be retained for a flat fee or retainer fee as well, often at a 50% contingency fee. Collection agencies seldom bother to get all the documents related to the debt from the creditor - rather, they only get the name, address of the consumer, and the amount of the debt owed. Because of a large number of complaints about the abusive practices by debt collectors, Congress enacted the Fair Debt Collection Practices Act in 1982, and later amended by Public Law 104-208, dated September 30, 1996.

The purpose of this information sheet is to provide you with information regarding the laws governing debt collection practices and the rights you as a "debtor" can assert against debt collectors.

**The Federal Fair Debt Collection Practices Act (FDCPA):** In the past, many debt collectors engaged in unethical practices that caused “debtors” (i.e., individuals who owe money to credit card companies, banks, landlords, or other similar entities) to suffer distress and humiliation over the constant pressures to pay off their debts. As a result, the federal government enacted a law known as the Fair Debt Collection Practices Act, (FDCPA), which outlines the conduct that debt collectors may engage in when attempting to collect debts. The purpose of the FDCPA is to eliminate abusive debt collection practices; to ensure that those collectors who refrain from using abusive debt collection practices are not competitively disadvantaged; and to promote consistent state action to protect consumers against debt collection abuses.

The FDCPA defines a “debt collector” as any person, other than a creditor, who regularly attempts to collect debts that are owed to others. Since 1986, the term “debt collector” has been expanded to include attorneys who engage in the practice of collecting debts on behalf of others. However, “debt collectors” do not include the following: (a) officers or employees of the creditor who collect debts in the name of the creditor; (b) federal and state employees who are collecting debts in the performance of their official duties; and (c) non-profit consumer credit counselors.

The FDCPA is applicable to debts that are incurred by consumers primarily for **personal, family or household purposes**, whether or not such debts have been reduced to a judgment by a court of law. For example, money owed on credit cards and loans, or money owed to landlords or health care providers, are subject to the rules outlined in the FDCPA.

**Requirements Imposed by the FDCPA:** To be in compliance with the FDCPA, debt collectors must meet several requirements:

- (1) **Debt Verification.** The debt collector must notify the debtor of the nature of the debt, the identity of the creditor, and must cease all collection efforts until verification of the debt is completed if the consumer chooses to verify the debt.
- (2) **Rights Disclosure.** On the initial communication by the debt collector (usually by letter), the debt collector must tell the consumer that it is a debt collector and that any information provided by the recipient will be used to collect the debt.
- (3) **Cease and Desist.** The consumer also has the right to stop the attempts of a debt collector to communicate with the consumer. This can terminate any harassing phone calls, for instance. What it does **not** do is stop the collection attempts of the debt collector.

Unless the debtor gives prior consent **directly** to a debt collector, or the debt collector has a **court order**, a debt collector may not communicate with a debtor in connection with the collection of any debt:

- (a) at any unusual time or place known to be inconvenient to the debtor;
- (b) before 8:00 a.m. or after 9:00 p.m. at the debtor’s location; or
- (c) at the debtor’s place of employment if the debt collector knows that the debtor’s employer prohibits the debtor from receiving such communication.

Unless the debtor has previously given consent directly to the debt collector or there is a court order, a debt collector may not communicate, in connection with the collection of any debt, with any person other than the debtor or the debtor’s attorney. Therefore, a debt collector may NOT

discuss your debt with a supervisor, co-worker, parent or neighbor. However, it is permissible for a debt collector to ask these third parties for information regarding your location.

Under the FDCPA, a debt collector may not engage in any conduct, the natural consequence of which, is to **harass, oppress or abuse** any person in connection with the collection of a debt.

“Harassment” has been found to include:

- (a) threats of violence or other criminal means by the debt collector to harm the physical person, reputation or property of any person;
- (b) the use of obscene or profane language;
- (c) causing the telephone to ring repeatedly or continuously engaging any person in telephone conversation with the intent to harass that person;
- (d) the placement of telephone calls by debt collectors without identifying themselves; or
- (e) threats to publish a list of consumers who refuse to pay their debts, except to a consumer reporting agency; and
- (f) the advertisement for sale of any debts to coerce payment of the debt.

In addition, the FDCPA prohibits debt collectors from making any **false, deceptive or misleading representations** in connection with the collection of any debt. This includes:

- (a) falsely implying that the debt collector is an attorney or government representative;
- (b) falsely implying that the debtor has committed a crime;
- (c) falsely representing that the debt collector operates or works for a credit bureau;
- (d) misrepresenting the amount of the debt;
- (e) misrepresenting the involvement of an attorney in collecting a debt; or
- (f) stating that a debtor will be arrested if he or she does not pay the debt.

Finally, debt collectors cannot engage in **unfair practices** such as:

- (a) collecting any amount from a debtor that is greater than the debt, unless allowed by law;
- (b) depositing a post-dated check prematurely;
- (c) causing a debtor to incur telephone charges by calling the debtor “collect;”
- (d) taking or threatening to take a debtor’s property unless this can be legally done; or
- (e) contacting debtors by postcard.

If **within 30 days after first contacted**, a debtor notifies a debt collector **in writing** that the debtor wishes the debt collector to cease further communication with the debtor, the debt collector shall not communicate further with respect to such debt except:

- (a) to advise the debtor that debt collection efforts are being terminated; or
- (b) that the debt collector or creditor may invoke specific remedies to collect the debt. If the debtor has an attorney, the debt collector may only contact the debtor’s attorney after receipt of debtor’s written desire to cease collection efforts.

If a debtor disputes a debt being collected, **within the first 30 days after being contacted**, the debtor should notify the debt collector of this dispute **in writing**. In addition, the debtor may request that the debt collector provide him or her with the name and address of the original creditor. The debt collector may not continue to attempt to collect the debt until the debt collector obtains verification of the debt, a copy of the judgment, or the name and address of the original creditor and a copy of such is provided to the debtor.

If a debtor believes that a debt collector fails to comply with any provision of the FDCPA, the debtor can file suit in a state or federal court within one year from the date the debtor believed the law was violated. If successful in court, a debtor may recover money for any actual damages sustained (includes damages for personal humiliation, embarrassment, mental anguish, or emotional distress); statutory damages of up to \$1,000.00 (no actual damages required); court costs; and reasonable attorney's fees. Generally, FDCPA is a strict liability statute. A debt collector may, however, avoid liability if the he/she can show by a preponderance of evidence that the violation was unintentional and resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adapted to avoid any such error.

**Texas Law on Debt Collection:** Most states have laws comparable to the FDCPA. In Texas, the Texas Debt Collection Act, (TDCA), governs debt collection efforts in the State of Texas. Although it is similar to the FDCPA, one important distinction is the definition of a "debt collector." Under the TDCA, even creditors who attempt to collect debts for themselves may be subject to the Act and its penalties. Violators of the TDCA are subject to criminal and civil penalties. Consumers who think that they have been harassed or deceived by debt collectors may also seek injunctions and damages under the TDCA. Harassment and deception by debt collectors may also constitute a violation of the Texas Deceptive Trade Practices Act. This Act gives the Texas Attorney General the authority to take action in the public interest.

**Potential Administrative or Disciplinary Actions Against Soldiers:** Commanders may take administrative or disciplinary actions against soldiers who fail to meet their just financial obligations in a proper and timely manner. Such actions include filing unfavorable information (such as a letter of reprimand) in the soldier's permanent record, denial of reenlistment, administrative separation, and punitive action under the UCMJ, articles 92, 123, 133, or 134.

The Army, however, has no legal authority to force soldiers to pay their debts. Also, the Army cannot divert any part of a soldier's pay even though payment of the debt was decreed by a civil court. Only civil authorities can enforce payment of private debts. The FDCPA applies to the Army as well, so a debt collector may contact the Army about a soldier's debt **only** if he/she has a written and signed consent from the soldier, or a court order permitting contact. However, a mere creditor, as opposed to a debt collector, does not fall under the scope of the FDCPA and therefore he/she may contact the Army on their own behalf to collect an outstanding debt.

**Conclusion:** What should you do if a debt collector is harassing you? It is always a good idea to keep track of the date, time, and place of any phone calls made by debt collectors. If possible, get the full name of the debt collector making the call. If a debt collector contacted a third person by phone, find out if the debt collector discussed your debt with that person, particularly if you did not give the debt collector permission to contact third parties.

Keep a file of all letters, telegrams and other types of correspondence you have received from the debt collector. If you send a written letter requesting the debt collection efforts to cease or if you are disputing the debt, keep a copy of that letter for your file. It is always a good idea to send a letter by certified mail, return receipt requested.

Whenever you are contacted by a debt collector, try to deal with the matter as soon as possible, as it is easier to resolve such issues early on. Finally, if you are unsure of your rights or believe that a debt collector is violating the law, please contact a Legal Assistance attorney or civilian attorney who practices in the area of consumer law.

For more information on debt collection in the State of Texas you may contact the Consumer Protection Hotline of the Texas Attorney General at 1-800-621-0508 or you can contact the San Antonio office at (210) 225-4191. If you wish to make a consumer complaint to the Office of the Attorney General the complaint must be made in writing. You may call the above numbers to request complaint forms or you may write to:

Office of the Attorney General, Consumer Protection Division, P.O. Box 12548, Austin, TX 78711-2548.

Complaint forms and additional information can also be found in the consumer protection section of the Texas Attorney General Web site, at [www.oag.state.tx.us](http://www.oag.state.tx.us).