

Army Regulation 600-15, Indebtedness of Military Personnel: Time for An Update

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I. Introduction

Private Snuffy is twenty years old. He has completed almost half of his four year enlistment. He is a good Soldier: he shows up on time, does his job well, and gets along with others. During the past two years he purchased an expensive stereo, a video game system, a fancy digital camera, a state-of-the-art computer, and a pile of DVDs and video games—all on credit. He bought a used sports car three months ago, financed at a high interest rate. He also has several credit cards, all of which he maxed out. He makes minimum monthly payments on all of these debts.

Last month, *Snuffy's* commander began to receive phone calls from several of *Snuffy's* creditors. Each of these creditors complained that *Snuffy* was behind on his payments, and each disclosed detailed information about *Snuffy's* financial history and requested help with collections. The commander ordered *Snuffy* to start making payments immediately or face action under the Uniform Code of Military Justice (UCMJ). *Snuffy* saw a legal assistance attorney for help. After a brief meeting, the legal assistance attorney called the commander and explained that the commander had no authority to interfere in *Snuffy's* private financial matters, especially considering that *Snuffy* was a good Soldier and his financial affairs were not affecting his job performance or the unit's mission. The commander then called the trial counsel for guidance, who affirmed the Army's position that Soldiers need to pay their debts promptly. The trial counsel, however, then cautioned that the Army had no legal authority to require *Snuffy* to actually pay a private debt, nor could the Army divert any part of his pay to satisfy a commercial debt, even for a creditor who had obtained a judgment from a civil court. The trial counsel did say a creditor with a civil judgment could seek an involuntary allotment against *Snuffy*, but he was not sure how that program worked. The trial counsel also commented on various federal and state consumer protection laws, which appeared to limit what the commander could do, and then referred the commander to *Army Regulation 600-15, Indebtedness of Military Personnel*,¹ for more information.

Unsure of what to do next—but determined to do the right thing—the commander reviewed *AR 600-15*, expecting to find clear guidance and quick answers. Instead, she found the regulation confusing, disorganized, and often contradictory. She found no information on involuntary allotments in the regulation.

Army Regulation 600-15—a small and relatively unknown regulation—is the U.S. Army's primary source for information on policies and procedures governing Soldier indebtedness and creditor claims. The regulation sets forth Army policy on indebtedness and creditor claims; it suggests various tools and punishments for Soldiers who fail to resolve unpaid debts; it refers to and describes federal laws and regulations that govern indebtedness and that apply to Soldiers; and it provides instructions on how creditors may receive assistance with debt collections against Soldiers.

Unfortunately for Soldiers, commanders, and creditors, *AR 600-15* is poorly written and out-of-date. It was published in 1986, during a time when Soldier pay was immune from state court judgments for commercial debts. Substantial changes in federal law have occurred that have greatly altered the relationship between Soldiers and creditors. These changes are not reflected anywhere in *AR 600-15*, yet it is the regulation to which commanders and Soldiers must turn for policy information and guidance when dealing with indebtedness.

This article reviews the history of garnishment of federal pay, including the effect of the 1993 Hatch Act Reform Amendment,² which for the first time made federal pay subject to garnishment for commercial judgments. Further, this article reviews the historical development of *AR 600-15*. It then analyzes the structure of the current version of *AR 600-15* in light of its own internal inconsistencies and obsolete information. The article addresses the responses of the Coast Guard, Navy, Marine Corps, and Air Force to the Hatch Act, which is followed by analysis and argument regarding how the Army

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¹ U.S. DEP'T OF ARMY, REG. 600-15, INDEBTEDNESS OF MILITARY PERSONNEL (14 Mar. 1986) [hereinafter *AR 600-15*].

² 5 U.S.C.S. § 5520a (LEXIS 2005).

should update *AR 600-15*. This article concludes with the recommendation that *AR 600-15* should: (1) have a new proponent agency (the Office of the Judge Advocate General); (2) be updated to incorporate changes in federal law and Department of Defense (DOD) regulations; and, (3) be revised to mirror the current Air Force Instruction on indebtedness.

II. Background

Early in United States history, a generally accepted principle of sovereign immunity was that a federal employee's pay could not be subject to garnishment for state court judgments. This principle has its roots in the Constitution. Article I, Section 9, clause 7 specifies that "No money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law,"³ which suggests that "Congress [has] primary authority over whether Treasury moneys are put to any particular use, including satisfying judgments."⁴

A. Judicial Interpretation of Sovereign Immunity and Federal Pay

An early case to apply this principle was *Buchanan v. Alexander*,⁵ which involved some Sailors who owed money to an innkeeper. When the Sailors' ship returned from a cruise, the innkeeper attempted to serve a writ of attachment on the ship's purser, who controlled the sailors' wages.⁶ The issue was elevated to the Secretary of the Navy, who ordered the purser to disregard the writ and pay the Sailors.⁷ The innkeeper sued the purser in a Virginia court. The court ruled against the purser for disregarding the attachments on the Sailors' wages.⁸ The purser appealed to the U.S. Supreme Court, who overturned the Virginia trial court, holding:

The funds of the government are specifically appropriated to certain national objects, and if such appropriations may be diverted and defeated by state process or otherwise, the functions of the government may be suspended. So long as money remains in the hands of a disbursing officer, it is as much the money of the United States, as if it had not been drawn from the treasury. Until paid over by the agent of the government to the person entitled to it, the fund cannot, in any legal sense, be considered a part of his effects. The purser is not the debtor of the seamen.⁹

This aspect of sovereign immunity remained constant well into the twentieth century.¹⁰ Courts "consistently cited two policy reasons to uphold the immunity of federal pay from garnishment. First, garnishment unreasonably would interrupt the process of public administration. Second, it would apply public funds to purposes for which they had not been appropriated."¹¹

B. Changing Demographic Realities Compel Policy Modifications

Cultural changes in the 1960s created national pressure to rethink these policy reasons. The number of divorces¹² and children born to single parents¹³ began to increase, with the consequent increase in court-ordered child support.¹⁴ Congress

³ U.S. CONST. art. I, § 9, cl. 7.

⁴ Vickie C. Jackson, *Suing the Federal Government: Sovereignty, Immunity, and Judicial Independence*, 35 GEO. WASH. INT'L L. REV. 521, 535 (2003).

⁵ *Buchanan v. Alexander*, 45 U.S. 20 (1846).

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

¹⁰ See, e.g., *Applegate v. Applegate*, 39 F. Supp. 887 (E.D. Va. 1941) (holding that Congress had as yet never waived federal immunity to permit attachment or garnishment proceedings against the United States Treasury or its disbursing officers).

¹¹ Captain Gerald E. Wuetcher, *The Garnishment Equalization Act: Leveling the Playing Field or Upsetting a Delicate Balance?*, ARMY LAW., Nov. 1992, at 4 (citations omitted).

¹² U.S. CENSUS BUREAU, STATISTICAL ABSTRACT OF THE UNITED STATES: 2003, at 71 (tbl. no. 83) (2003), available at <http://www.census.gov/prod/2004/pubs/03statab/vitstat.pdf>.

¹³ U.S. CENSUS BUREAU, STATISTICAL ABSTRACT OF THE UNITED STATES: 2003, SUPPLEMENT, 2003 MINI HISTORICAL STATISTICS 23 (tbl. HS-14—Births to Teenagers and to Unmarried Women: 1940 to 2002), available at <http://www.census.gov/statab/hist/HS-14.pdf>.

took note of the variety of ways obligors avoided paying child support, including “the statutory barrier to collecting from military personnel and federal employees,”¹⁵ and passed legislation in 1974 waiving immunity of federal pay for child support and alimony.¹⁶ Servicemembers were specifically included in that particular type of immunity waiver,¹⁷ but, like the rest of the federal workforce, their pay was still immune from garnishment for regular creditor judgments.

C. The Hatch Act

Once the sovereign immunity shield was pierced for child support, no compelling arguments remained to protect federal employee pay from other types of judgments. Congress passed the Hatch Act in 1993,¹⁸ which amended the law governing the withholding of government employee pay.¹⁹ Federal pay would now be treated much like private citizen pay: both subject to state court judgments for commercial debts.²⁰

D. The Promulgation of *Department of Defense Directive 1344.9 and Instruction 1344.12*

When it was proposed, the Hatch Act presented an interesting dilemma for the military. Servicemembers are a special category of federal employees.

Unlike other forms of federal employment . . . military service interferes with an individual's representation of his or her interests. The ability of service members to appear in courts and to defend against civil claims always is subordinate to, and often is restricted by, their military duties. Moreover, the Armed Forces frequently subject service members to involuntary moves and extended world-wide deployments at short notice. Consequently, military personnel are very susceptible to default judgments.²¹

The DOD was able to persuade Congress to “distinguish military personnel from all other federal employees, including DOD civilian employees,”²² in the actual language of the law.²³ Instead of garnishment, an “involuntary allotment” of a servicemember’s pay would be used to satisfy a proper judgment from a state court.²⁴ The Hatch Act directed the DOD (as

¹⁴ Wuetcher, *supra* note 11, at 5.

¹⁵ *See id.* n.23

¹⁶ *Id.* n.22 (citing Social Services Amendments of 1974, Pub. L. No. 93-647, 88 Stat. 2337).

¹⁷ *Id.* n.25 (citing Pub. L. No. 93-647, § 459, 88 Stat. 2357 (1974) (codified as amended at 42 U.S.C. § 659(a) (LEXIS 2005)).

¹⁸ 5 U.S.C.S. § 5520a (LEXIS 2005). Subsection (k), the portion of the law affecting servicemembers, states:

(k)(1) No later than 180 days after the date of the enactment of this Act, the Secretaries of the Executive departments concerned shall promulgate regulations to carry out the purposes of this section with regard to members of the uniformed services.

(2) Such regulations shall include provisions for -

(A) the involuntary allotment of the pay of a member of the uniformed services for indebtedness owed a third party as determined by the final judgment of a court of competent jurisdiction, and as further determined by competent military or executive authority, as appropriate, to be in compliance with the procedural requirements of the Soldiers' and Sailors' Civil Relief Act of 1940 (50 App. U.S.C. 501 et seq.); and

(B) consideration for the absence of a member of the uniformed service from an appearance in a judicial proceeding resulting from the exigencies of military duty.

(3) The Secretaries of the Executive departments concerned shall promulgate regulations under this subsection that are, as far as practicable, uniform for all of the uniformed services. The Secretary of Defense shall consult with the Secretary of Transportation with regard to the promulgation of such regulations that might affect members of the Coast Guard when the Coast Guard is operating as a service in the Navy.

Id.

¹⁹ *Id.* § 5520.

²⁰ *See* TJAGSA Practice Note, *Garnishment of Military Pay—What's Going On?*, ARMY LAW., Sept. 1993, at 36.

²¹ Wuetcher, *supra* note 11, at 7.

²² *Id.* at 6.

²³ *See* 5 U.S.C. § 5520a(k).

²⁴ The term “involuntary allotment” appears to be unique to the military. Although the author could not find a definition for this term, its use in various laws and regulations, such as 5 U.S.C. § 5520a and 32 C.F.R. Parts 112 and 113 (2004), suggests that it was coined to distinguish it from the more familiar

well as some other federal agencies) to promulgate regulations to carry out the law, taking into consideration protections afforded by the Servicemember's Civil Relief Act (SCRA) (formerly titled the Soldiers' and Sailors' Civil Relief Act),²⁵ as well as the absence of a servicemember "from an appearance in a judicial proceeding resulting from the exigencies of military duty."²⁶ In 1994, the DOD promulgated *Directive 1344.9*²⁷ and *Instruction 1344.12*,²⁸ both of which were designed to implement the Hatch Act.²⁹

Department of Defense Directive 1344.9 directed the service secretaries to establish procedures to comply with the Hatch Act. The Coast Guard, Navy, Marine Corps, and Air Force have each updated their service specific "indebtedness" regulations.³⁰ The Army has not,³¹ possibly because *AR 600-15* currently has no responsible proponent.

III. Army Regulation 600-15, Indebtedness of Military Personnel

A. The History of Army Regulation 600-15

The first version of *AR 600-15* was promulgated on 11 February 1970. Prior to that date, official Army guidance on Soldier indebtedness came from two sources: paragraph thirty-six of *AR 600-20, Army Command Policy and Procedures*,³² and paragraphs eight, nine, and ten of *AR 210-7, Personal Commercial Affairs*.³³ Those four paragraphs captured several themes that have remained fairly consistent through all updates and changes over the past thirty plus years: (1) the Army expects Soldiers to pay their just debts promptly;³⁴ (2) Soldiers have rights that protect them against unscrupulous creditors;³⁵ and (3) the Army has no actual authority to make Soldiers pay creditors.³⁶ Nevertheless, the decision to have guidance on

concept of "garnishment." Garnishment (also known as wage attachment or income withholding) follows a civil court judgment and is an order by the court directing an employer to withhold money from the defendant's pay and remit payment to the plaintiff. In the case of servicemembers, garnishments are only allowed for child support and alimony and constitute a waiver of sovereign immunity by the federal government for that narrow category of judgments. See 42 U.S.C. § 659. The Hatch Act granted an additional qualified waiver of sovereign immunity for commercial debts, and tied that qualified waiver to protections afforded to servicemembers under the Soldiers' and Sailors' Civil Relief Act, 50 U.S.C. §§ 501-594 (LEXIS 2005) (recently updated and renamed the Servicemembers Civil Relief Act (SCRA), Pub. L. No. 108-189, 117 Stat. 2835 (2003)). 5 U.S.C. § 5520a(k). A garnishment order is neither necessary nor sufficient to start an involuntary allotment against a servicemember. U.S. DEP'T OF DEFENSE, INSTR. 1344.12, INDEBTEDNESS PROCESSING PROCEDURES FOR MILITARY PERSONNEL para. 6.2.1.3 (18 Nov. 1994) [hereinafter DOD INSTR. 1344.12]. Rather, a plaintiff is required only to secure a civil court judgment, ensuring that all required protections under the SCRA have been met, and then submit a copy of the judgment along with an Involuntary Allotment Application (U.S. Dep't of Defense, DD Form 2653, Involuntary Allotment Application (Aug. 2004) [hereinafter DD Form 2653]) to the Defense Finance and Accounting Service (DFAS). *Id.* para. 6.2.1.4. Detailed instructions regarding the involuntary allotment procedure are available at the DFAS website, <http://www.dod.mil/dfas/money/garnish/mcdafact.htm> (last visited Mar. 17, 2005).

²⁵ See *id.* § 5520a(k)(2)(A).

²⁶ See *id.* § 5520a(k)(2)(B).

²⁷ U.S. DEP'T OF DEFENSE, DIR. 1344.9, INDEBTEDNESS OF MILITARY PERSONNEL (27 Oct. 1994) [hereinafter DOD DIR. 1344.9].

²⁸ DOD INSTR. 1344.12, *supra* note 24.

²⁹ The Secretary of Defense also implemented the Hatch Act in 1995 via parts 112 and 113 of Title 32, Code of Federal Regulations. The language in 32 C.F.R. part 112 is virtually identical to that found in DOD Directive 1344.9; the same is true for 32 C.F.R. part 113 and *DOD Instr.* 1344.12. See TJAGSA Practice Note, *Involuntary Allotment—Draft Department of Defense (DOD) Directive 1344.9*, ARMY LAW., Nov. 1994, at 49.

³⁰ See U.S. COAST GUARD, COMMANDANT INSTR. M1000.6A ch. 8.L. (8 Jan. 1988) (updated by C26, 3 Feb. 1997) [hereinafter CGCI M1000.6A]; U.S. DEP'T OF NAVY, NAVAL MILITARY PERSONNEL MAN. 7000-020 (22 Aug. 2002) [hereinafter MILPERSMAN 7000-020]; U.S. MARINE CORPS, ORDER P5800.16A, MARINE CORPS MANUAL FOR LEGAL ADMINISTRATION (31 Aug. 1999) [hereinafter MCO P5800.16A]; U.S. DEP'T OF AIR FORCE, INSTR. 36-2906, PERSONAL FINANCIAL RESPONSIBILITY (1 Jan. 1998) [hereinafter AFI 36-2906].

³¹ *AR 600-15*, *supra* note 1.

³² U.S. DEP'T OF ARMY, REG. 600-20, ARMY COMMAND POLICY AND PROCEDURES (1 Feb. 1970) [hereinafter 1970 AR 600-20]. See Appendix A for the complete text of paragraph 36.

³³ U.S. DEP'T OF ARMY, REG. 210-7, PERSONAL COMMERCIAL AFFAIRS (10 June 1966) [hereinafter AR 210-7]. See Appendix B for the complete text of paragraphs 8, 9, and 10.

³⁴ *Id.* para. 8(a) ("A member of the Armed Forces is expected to pay his just financial obligations in a proper and timely manner."). *Id.* The current version of *AR 600-15* states: "Soldiers are required to manage their personal affairs satisfactorily and pay their debts promptly." *AR 600-15*, *supra* note 1, para. 1-5(a).

³⁵ See *AR 210-7*, *supra* note 33, para. 10. See also *AR 600-15*, *supra* note 1, para. 1-5(e).

³⁶ See *AR 210-7*, *supra* note 33, para. 8(b).

[T]he Department of the Army has no legal authority to require a military member to pay a private debt, or to divert any part of his pay for the satisfaction thereof even though the indebtedness may have been reduced to judgment by a civil court. The enforcement of the private obligations of a military member is a matter for civil authorities.

indebtedness come from two separate sources created a division between Soldier protections and command responsibility that exists to this day.

B. *Army Regulation 210-7* (1967)

The 1967 version of *AR 210-7* represented the Army's acknowledgement that as Soldiers participated in the growth of borrowing opportunities and consumer credit, the chain of command would increasingly be viewed as a tool for debt collectors.³⁷ Few, if any, civilian employers have the kind of control commanders possess over Soldiers. Soldiers are also uniquely susceptible to scams and unreasonable credit arrangements, mostly due to the lack of family or other close responsible parental figures that could monitor both the Soldier and the creditor.

To give teeth to this policy position, the Army required creditors to comply with certain "Standards of Fairness,"—embodied in ten paragraphs—which covered such topics as finance charges, assignment of debts, late fees, and prepayment penalties.³⁸ Creditors were also required to disclose to the borrower up front and in writing the terms of any contract, concisely stating the finance rate, value of any trade-in, repayment schedule, etc.³⁹ Finally, both the creditor and the borrower were required to sign a "Certificate of Compliance," signifying that the Standards of Fairness had been applied to the transaction, full disclosure of the terms of the transaction had been made to the borrower, and that the borrower had been given a copy of the disclosure.⁴⁰ A creditor who failed to accomplish any of these requirements *would not be eligible for collection assistance by the Army*.⁴¹

The language in *AR 210-7* is more than mere admonishment. The requirements listed give the impression that the Army was serious about forcing creditors to act responsibly when dealing with Soldiers. Nevertheless, as with most things in the Army, actual implementation of policy was left to commanders, who usually consult commander-specific regulations first. For Soldier indebtedness, that meant consulting paragraph thirty-six of *AR 600-20, Army Command Policy and Procedure*, which, unfortunately, gave little attention to Soldier protections.

C. Paragraph 36 of *Army Regulation 600-20* (1967)

Paragraph thirty-six of the 1967 version of *AR 600-20* does not even mention the Standards of Fairness, the creditor disclosure requirements, or the procedures for processing debt complaints discussed previously.⁴² Under paragraph thirty-six, the commander had three main issues to consider when dealing with Soldier indebtedness.

First, did the Soldier's actions with regard to the indebtedness rise to the level where disciplinary or adverse administrative action should be undertaken?⁴³

Id.

The current version of *AR 600-15* states: "The Army . . . 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." *AR 600-15, supra* note 1, para. 1-5(a).

³⁷ *AR 210-7, supra* note 33, para. 10.

³⁸ *Id.* app. I. See also Appendix C of this article for the text of the 1967 *AR 210-7*'s Standards of Fairness.

³⁹ *Id.* Note that these required disclosures predate the Truth in Lending Act, 15 U.S.C.S. 1601-1667 (LEXIS 2005), the first version of which became law in 1968.

⁴⁰ *Id.*

⁴¹ *Id.* para. 10(b)(2). *Army Regulation 210-7* also made allowance for creditors who failed to comply with all the requirements but who acted in good faith and had objectively reasonable terms in their contracts. Such creditors simply needed to execute the required disclosures and certificate of compliance after the fact. See *id.* Of course, that procedure meant seeking the signature of the Soldier on a new Certificate of Compliance. By that time, a Soldier may not have felt like cooperating and may even have realized that by signing the new Certificate of Compliance, the creditor would then have a green light to obtain collection assistance from the Army.

⁴² In fact, the only reference in the 1967 version of *AR 600-20* to the requirements of the 1966 version of *AR 210-7* for Army assistance in collections appears in paragraph 36(a), which states: "See *AR 210-7*." 1970 *AR 600-20, supra* note 32, para. 36(a).

⁴³ Note how the text of paragraph 36 begins:

Commanding officers will not tolerate actions of irresponsibility, gross carelessness, neglect, dishonesty, or evasiveness in the private indebtedness and financial obligations of their personnel. Normally, it is not difficult to distinguish between an honest denial of an obligation and a dishonest or irresponsible evasion thereof. . . . If, after consideration of all factors, a commanding officer believes that a member of his command has dishonorably failed to pay his just debts, disciplinary action may be initiated

Second, had the creditor made reasonable efforts to collect directly from the Soldier? If not, the commander was directed to inform the creditor that any Army action would be deferred until the creditor could show that direct efforts had reasonably been made and had been unsuccessful.⁴⁴

Third, if reasonable efforts to collect directly from the Soldier had been unsuccessful, the commander literally became the arbitrator who judged whether any bona fide dispute existed between the creditor and the Soldier.⁴⁵

D. The First Version of AR 600-15

When the first version of AR 600-15 was promulgated in 1970, it virtually mirrored the indebtedness language contained in the old AR 210-7 and AR 600-20. It differed in two main respects: (1) the new regulation contained an absolute prohibition on releasing any information to creditors regarding disciplinary or adverse administrative action taken against a Soldier as a result of a complaint of indebtedness;⁴⁶ and (2) the commander's role in processing indebtedness complaints was greatly expanded.⁴⁷ Again, however, the language imposing disclosure requirements on creditors and requiring adherence to the Standards of Fairness was disconnected from the directions given to commanders. Full disclosure and Standards of Fairness requirements are in chapter two of the 1970 AR 600-15, whereas the commander's Procedures for Processing Private Debt Complaints are in chapter three. Chapter three only indirectly refers to the prerequisites creditors must have complied with in order to receive Army assistance with collection⁴⁸—the only other limit on the commander's involvement was when the commander determined in his or her sole discretion that there was a bona fide dispute between the parties. In that situation, the commander again was supposed to refer the matter to the civil courts.⁴⁹

Another interesting aspect of the first version of AR 600-15 was its reference to other recently enacted federal and state laws governing creditors. With the increase in borrowing opportunities came an increase in creditor abuses of consumers. Congress took note of this increase and began passing protective legislation.⁵⁰ The federal laws referenced in the original AR

(arts. 15, 133, 134, UCMJ; para. 213b, MCM, 1951). Whether or not disciplinary action is taken, unpaid personal indebtedness of long standing which the individual is not attempting to resolve may be handled administratively.

Id. para. 36. This language appropriately reflects an aspect of command that exists independent of any obligations owed to creditors,—the protection of the Army's public image—but its placement is curious. In contrast to the 1966 version of AR 210-7, which is all about Standards of Fairness and disclosure and the Army's position that there will be no cooperation unless creditors comply, paragraph 36 begins with telling the commander when to consider a court-martial! *Id.* Another interesting aspect of paragraph 36 is that it did not prohibit a commander from telling a creditor whether any adverse action was taken against a Soldier because of the complaint. *See id.*

⁴⁴ There is no direct mention anywhere in paragraph 36 that creditors are required to have complied with the Standards of Fairness and to have made affirmative disclosures prior to receiving any assistance from the Army. The only question is whether the creditor had tried sufficiently to work directly with the Soldier. The commander is the sole judge of this issue and paragraph 36 provides no standards or guidance.

⁴⁵ If there was no dispute, and the Soldier agreed to pay the debt, the commander was directed to "insure that reply is made promptly to the complainant indicating the member's intentions regarding payment." 1970 AR 600-20, *supra* note 32, para. 36(d)(2) (1970). If the Soldier disputed the debt, then the commander could, in his or her discretion, "require either or both parties to submit any necessary documents or other pertinent evidence." *Id.* If the commander determined the dispute was bona fide, the commander was to inform the creditor that Army policy dictated that disputed debts were to be resolved in civil court. *Id.* If, on the other hand, the commander determined that there was no real dispute, then the commander "will take appropriate followup action with a view to assisting the member in complying with previous arrangements." *Id.* Again, such language obviously gave enormous discretion to commanders and was subject to abuse.

⁴⁶ U.S. DEP'T OF ARMY, REG. 600-15, INDEBTEDNESS OF MILITARY PERSONNEL para. 3-1(b) (31 Feb. 1970).

⁴⁷ *Id.* para. 3-1(c).

⁴⁸ "Complaints of civil indebtedness or financial obligations which meet the requirements of this regulation . . . will be forwarded to the immediate commanding officer of such member for action." *Id.* para. 3-1(a).

⁴⁹ *Id.* para. 3-1(c)(4).

⁵⁰ One of the original federal consumer protection statutes, the Consumer Credit Protection Act, 15 U.S.C.S. §§ 1601-1693 (LEXIS 2005), begins as follows:

The Congress finds that economic stabilization would be enhanced and the competition among the various financial institutions and other firms engaged in the extension of consumer credit would be strengthened by the informed use of credit. The informed use of credit results from an awareness of the cost thereof by consumers. It is the purpose of this subchapter to assure a meaningful disclosure of credit terms so that the consumer will be able to compare more readily the various credit terms available to him and avoid the uninformed use of credit, and to protect the consumer against inaccurate and unfair credit billing and credit card practices.

Id. § 1601(a).

600-15 include the Consumer Credit Protection Act,⁵¹ the Truth in Lending Act,⁵² and the Federal Reserve Board's Regulation Z,⁵³ all of which imposed mandatory disclosure requirements on creditors. The regulation is silent as to which state laws may apply.

After referring to all of these laws (and the Standards of Fairness), the regulation then directs the following:

In all loan and credit transactions subject to this regulation, communications charging military members with indebtedness which do not meet the above requirements will be returned to the claimant informing him that the [e]nclosed copy of Appendix A and/or B must be completed before the request can be acted upon.⁵⁴

The “above requirements” referred to in *AR 600-15* are the Standards of Fairness and the various federal and state laws and regulations. Appendix A of the regulation simply lists the Standards of Fairness—there is nothing in Appendix A to “be completed.” Appendix B is a Certificate of Compliance, which gives the creditor an opportunity after the fact to state that they complied with all applicable consumer protection laws. Unlike the Certificate of Compliance in the old *AR 210-7*, the certificate of compliance in *AR 600-15* does not require the signature of the borrower. The regulation also does not instruct the commander on how to determine whether a creditor actually complied with these laws.

Army Regulation 600-15 was updated as federal and state consumer protection laws were modified to address weaknesses and gaps. The first update to *AR 600-15* occurred in 1973. Language referring to state laws was expanded to reflect the many states that recently enacted laws prohibiting creditors from contacting a debtor's employer.⁵⁵

The second update to *AR 600-15* occurred in 1974. Creditors were now required to furnish documentary evidence showing compliance with the various federal and state laws and regulations. Commanders were to refer Soldiers whom they suspected were not provided the required disclosures to a legal assistance attorney. Also, explicit language was added indicating that “many personal financial cases which come to a commander's attention do not reflect adversely on the character, integrity, morals or professionalism of the individual and should not be placed in his official records.”⁵⁶

The third update to *AR 600-15* occurred in 1975. A sample form letter for the commander to send to creditors was added to the regulation.⁵⁷ This form letter was the “check-the-block” type—the commander simply filled in the name and address of the creditor and then checked the applicable block. Interestingly, of all the options included in this form letter, an option stating that the creditor had not complied with one of the consumer protection laws or the Standards of Fairness was not included.

E. The 1979 Revision of *Army Regulation 600-15*

In 1979, the Army published a revised *AR 600-15*.⁵⁸ This new version incorporated references to the Fair Debt Collection Practices Act (FDCPA), which was enacted in 1977.⁵⁹ As implemented by *AR 600-15*, the FDCPA prohibited debt collectors from contacting commanders without either the prior consent of the debtor or a court order.⁶⁰ The regulation

⁵¹ 15 U.S.C. §§ 1601-1693. Originally enacted in 1968, the Consumer Credit Protection Act is actually an umbrella statute which has evolved and expanded over the years. It started in 1968 with the Truth in Lending Act, *id.* §§ 1601-1667 (governing credit transactions and advertising), and expanded as Congress saw fit to pass more consumer protection laws, such as the Fair Credit Billing Act, *id.* § 1666 (establishing minimum standards for billing practices in credit transactions), and the Fair Credit Reporting Act, *id.* §§ 1681-1682 (governing the reporting of credit transactions).

⁵² 15 U.S.C. §§ 1601-1667.

⁵³ 12 C.F.R. pt. 226 (2000).

⁵⁴ *AR 600-15*, *supra* note 46, para. 2-3(a).

⁵⁵ Memorandum of Interim Change, Commander, MILPERCEN, to All Holders of *AR 600-15*, subject: Interim Change to DA Circular 640-13 and *AR 600-15* (12 June 1973).

⁵⁶ Memorandum of Interim Change, Commander, MILPERCEN, to All Holders of Initial Distribution Copies of *AR 600-15*, subject: Interim Change to *AR 600-15* (C1, 6 Feb. 1974).

⁵⁷ Memorandum of Interim Change, Commander, MILPERCEN, to All Holders of Initial Distribution of *AR 600-15*, subject: Interim Change to *AR 600-15*, Indebtedness of Military Personnel (C2, 3 Apr. 1975).

⁵⁸ U.S. DEP'T OF ARMY, REG. 600-15, INDEBTEDNESS OF MILITARY PERSONNEL (28 Sept. 1979) [hereinafter 1979 *AR 600-15*].

⁵⁹ 15 U.S.C.S. § 1692 (LEXIS 2005).

⁶⁰ 1979 *AR 600-15*, *supra* note 58, para. 1-6.

also expanded the description and requirements of the many federal and state laws and regulations pertaining to debt collection practices then in effect.⁶¹ Most of the prior interim changes were incorporated, and a sample letter was included for commanders to send to creditors who had failed to comply with any of the required laws or who had failed to provide the necessary documentation to show compliance.⁶² The regulation itself increased from sixteen to twenty-five pages.

Unfortunately, the same division between the commander's and the creditor's responsibilities continued. The commander's responsibilities were listed in chapter two, and the creditor's responsibilities were listed in chapter four.

F. The Current *Army Regulation 600-15*

The current *AR 600-15* has one major difference from the 1979 version—the amount of documentary evidence the creditor is required to provide before receiving collection assistance from the Army was increased.⁶³

1. *The Structure of the Current Army Regulation 600-15*

Like its predecessors, the current *AR 600-15* continues to represent a clash of competing absolutes. For example, in the current *AR 600-15*, “Soldiers are required to manage their personal affairs satisfactorily and pay their debts promptly,”⁶⁴ but “[t]he Army . . . has no legal authority to force soldiers to pay their debts.”⁶⁵ When one adds strong institutional values, such as “the Army’s public image,”⁶⁶ to this apparent dichotomy, the result is a regulation that is confusing at best, and subject to manipulation at worst.

The current *AR 600-15*’s structure loosely reflects its two main goals: (1) the implementation of a procedure for a creditor to follow whereby he or she may receive Army assistance in collecting a debt from an uncooperative Soldier, and (2) protection of a Soldier’s right to privacy. The regulation is a mix of law, Army policy, exhortations, and procedure. Many of these areas overlap and several appear contradictory. For example, paragraph 1-5(a) of *AR 600-15* states: “The Army cannot divert any part of a [S]oldier’s pay even though payment of the debt was decreed by a civil court.”⁶⁷ Paragraph 1-4b states that the Commanding General, United States Army Community and Family Support Center (USACFSC)⁶⁸ will “process debt claims received at USACFSC regarding [S]oldiers.”⁶⁹ Even more directly, paragraph 1-5(c) states: “Creditors who follow chapter four *will* have their debt complaints processed.”⁷⁰ “Processed” is defined nowhere in the regulation, but the context certainly seems to imply that the Army will assist the creditor to receive payment.

2. *Processing Creditor Claims in Accordance with AR 600-15*

The following is a description of what is supposed to happen when creditors follow the guidance in *AR 600-15*.

⁶¹ *Id.* ch. 4.

⁶² *Id.* app. E.

⁶³ Compare *AR 600-15*, *supra* note 1, para. 4-3, with 1979 *AR 600-15*, *supra* note 58, para. 4-3(a)(4). Another interesting addition to the current *AR 600-15* is paragraph 1-10, Allotments of Pay for Debts. Paragraph 1-10 prohibits creditors from: (1) requesting that a soldier set up a bank account for the purpose of paying a debt, (2) requesting a soldier to pay by allotment, or (3) sending sample copies of an allotment form to the soldier or guiding the soldier on how to make out such an allotment. *AR 600-15*, *supra* note 1, para. 1-10. The regulation, however, does not provide any recourse for a Soldier who unwittingly creates an allotment at the request of a creditor.

⁶⁴ *AR 600-15*, *supra* note 1, para. 1-5(a).

⁶⁵ *Id.*

⁶⁶ *Id.*

⁶⁷ *Id.*

⁶⁸ The U.S. Army Community and Family Support Center was established by the Department of the Army in 1984. The USACFSC provides oversight for Army Morale, Welfare, and Recreation operations. See U.S. Army MWR, About MWR, <http://www.armymwr.com/portal/about/> (last visited Nov. 21, 2005).

⁶⁹ *AR 600-15*, *supra* note 1, para. 1-4(b).

⁷⁰ *Id.* para. 1-5(c) (emphasis added).

Creditors are advised first to contact delinquent Soldiers directly.⁷¹ A reasonable time should be allowed for Soldiers to respond to each such contact.⁷²

If a Soldier does not respond, the creditor should then make available to the commander a series of documents, including either written permission from the Soldier for the creditor to contact the Army about the debt⁷³ or a court order;⁷⁴ a copy of the contract forming the basis of the debt, signed by the Soldier;⁷⁵ written evidence showing the creditor's efforts to get the money directly from the Soldier;⁷⁶ and evidence showing the creditor has complied with the DOD's Standards of Fairness and other applicable federal and state regulations.⁷⁷

Even when the required items are provided by the creditor, the commander is not supposed to take the complaint at face value. The regulation directs commanders to review each case "to ensure that the terms of [AR 600-15] have been met."⁷⁸ The commander is to return creditor requests for help in processing debt complaints without action⁷⁹ if the commander finds, for example, that the claim is obviously false or misleading,⁸⁰ if any penalty for prepayment has been charged,⁸¹ or if there has been a late charge in excess of the lesser of five percent of the late payment or five dollars.⁸²

Once all the required information has been provided and the commander has determined that the creditor complied with the terms of AR 600-15, the creditor may then contact the Soldier's commander directly.⁸³ It is also at this point—and only at this point—that the commander is supposed to counsel the Soldier.⁸⁴ If the debt is not disputed, but the command is unable or unwilling to persuade the Soldier to pay, the creditor may appeal to USACFSC.⁸⁵ The regulation is silent at this point on what happens next.⁸⁶ Presumably, USACFSC would coordinate with the Defense Finance and Accounting Service (DFAS) to deduct the money from the Soldier's pay and give it to the creditor, as USACFSC is the same organization responsible for recouping money from Soldiers through DFAS for checks returned for insufficient funds from Army commissaries, clubs, etc.⁸⁷

The language of AR 600-15 puts creditors with a civil court judgment in the best position. Such creditors do not need consent from the Soldier to contact the command⁸⁸—the court order is presumed valid on its face⁸⁹—and there is little to fear from the SCRA,⁹⁰ as judgments secured in violation of the SCRA are voidable, not void.⁹¹

⁷¹ *Id.* para. 4-3a(5).

⁷² *Id.*

⁷³ *Id.* para. 4-3(a)(4). What if permission from the Soldier comes as part of the boilerplate of a contract – can the Soldier revoke permission? If he or she does, is there then a breach of contract? As few, if any, commanders or creditors ever bother to check such things, the question at this point may only be academic.

⁷⁴ *Id.*

⁷⁵ *Id.* para. 4-3(a)(2).

⁷⁶ *Id.* para. 4-3(a)(5).

⁷⁷ *Id.* para. 4-3(a)(1).

⁷⁸ *Id.* para. 2-1(a).

⁷⁹ *Id.* para. 4-4.

⁸⁰ *Id.* para. 4-4(c).

⁸¹ *Id.* para. 4-4(g).

⁸² *Id.* para. 4-4(i). Does anyone in the Army today know about this provision? The language in paragraph 4-4(i) would appear to apply to most consumer loans and credit card debt, but it conflicts with the Standards of Fairness, listed in Appendix B of AR 600-15, which state: "No late charge shall be made in excess of five percent of the late payment, or \$5 whichever is the lesser amount, or as provided by law or applicable regulatory agency determination." *Id.* app. B, para. B-5 (emphasis added). Which provision controls? Rather than viewing it as conflicting with the Standards of Fairness, could it not also be viewed as increased protection afforded to Soldiers by the Army? Put differently, Army policy could be that any late charge in excess of the lesser of five percent of the late payment or \$5 could be justification for the commander to take no action on the case.

⁸³ *Id.* para. 4-3(e).

⁸⁴ *Id.* para. 2-1c(8). Of course, commanders have various tools to encourage soldiers to resolve unpaid debts, including reprimand, administrative separation, and court martial. *Id.* para. 3-1.

⁸⁵ *Id.* para. 4-3e.

⁸⁶ *But see id.* para. 1.5c ("Creditors who follow chapter 4 will have their debt complaints processed."). *Id.* (emphasis added).

⁸⁷ Telephone Interview with Isaac Templeton, Jr., Chief of Transition Support, Family Program Directorate, USACFSC (Oct. 8, 2004).

⁸⁸ AR 600-15, *supra* note 1, para. 4-3a(4).

Finally, if a Soldier disputes a debt, the commander is supposed to return the matter to the creditor without action.⁹² Nowhere in *AR 600-15* does it require that the dispute be bona fide, but because commanders are charged with reviewing debt complaints, it is reasonable to assume that such a review would include at least a preliminary assessment of whether a Soldier's dispute has merit.

3. *The Reality of AR 600-15*

As any attorney who has worked in a military legal assistance office knows, commanders and noncommissioned officers routinely involve themselves in the private financial matters of their Soldiers, regardless of the circumstances surrounding the alleged debt. Either Soldier protections in *AR 600-15* are ignored or certain provisions are taken out of context to justify the commander's involvement.

Creditors often fare no better in the actual implementation of *AR 600-15*. First, exactly who promulgates *AR 600-15* is unclear. The regulation states that the proponent is the Army's Office of the Deputy Chief of Staff for Personnel,⁹³ but comments and suggested improvements,⁹⁴ as well as requests for collection assistance, are to be forwarded to USACFSC.⁹⁵

While USACFSC exists and performs important missions for the Army, management of *AR 600-15* is not one of them. No one at USACFSC can recall a creditor *ever* submitting a request for debt collection assistance, whether in compliance with *AR 600-15* or not.⁹⁶ There is even doubt about where a letter sent to the address listed in paragraph 4-3e of *AR 600-15* would ultimately arrive.⁹⁷

Of course, as with any complex regulation, *AR 600-15* is also subject to manipulation, as parties are able to take phrases out of context to justify a particular course of action. Creditors can rely on paragraphs that require prompt payment⁹⁸ or threaten court-martial.⁹⁹ Soldiers can rely on paragraphs that state both that the Army neither judges disputed debts¹⁰⁰ nor has any authority to make Soldiers pay debts,¹⁰¹ and also that creditors who try to make the Army a debt collector may be refused

⁸⁹ *Id.* para. 2-1c(6).

⁹⁰ Servicemembers Civil Relief Act, Pub. L. No. 108-189, 117 Stat. 2835 (2003). The SCRA was formerly known as the Soldiers' and Sailors' Civil Relief Act, 50 U.S.C.S. §§ 501-594 (LEXIS 2005).

⁹¹ *Smith v. Davis*, 364 S.E.2d 156 (N.C. Ct. App. 1988); *see also* TJAGSA Practice Note, *Procedural Steps in the SSCRA That a Plaintiff Must Take to Secure a Default Judgment Against a Military Member*, ARMY LAW., Dec. 1993, at 38. In plain terms, this means that unless a Soldier goes back to court, reopens the case, and succeeds in persuading the court that the original judgment should be voided, the judgment remains valid.

⁹² *AR 600-15*, *supra* note 1, para. 2-1c(1).

⁹³ *Id.* at i.

⁹⁴ *Id.*

⁹⁵ *Id.* para. 4-3e.

⁹⁶ Telephone Interview with Christel Schaeffers, Senior Banking Officer, USACFSC (Oct. 19, 2004).

⁹⁷ If a creditor has complied with *AR 600-15*'s requirements, but is unable to obtain collection assistance from the commander, paragraph 4-3(e) instructs creditors to seek help from the Commander, USACFSC, ATTN: DACF-IS-PA, ALEX VA 22331-0522. The author sent a test letter via registered mail, return receipt requested, on 28 October 2004, to verify whether the address or procedure is still valid. Based on the zip code of the delivery address, the letter was delivered to the mail room at the Hoffman Building in Alexandria, Virginia, which was where USACFSC was located until 1998. Someone in the Hoffman Building mail room must have recognized the acronym USACFSC, and placed a mailing label with the current address on the letter. Once forwarded to USACFSC's current location, the local mail room staff consulted a routing sheet, which broke down the various organizational elements within USACFSC according to the ZIP-4 extension. For the author's test letter, the ZIP+4 extension was 0522, as indicated in the regulation. On the local routing sheet, 0522 corresponded to the Armed Forces Sports Office, and the author's test letter was forwarded there. Someone in the Sports Office opened the letter, saw that it concerned *AR 600-15*, and forwarded it to Sally Entlich, a Senior Program Analyst with USACFSC, whose responsibilities include providing guidance on Army regulations. The author and Ms. Entlich began to correspond via email in early December 2004. After researching the matter, Ms. Entlich learned that back in 1986, when the current version of *AR 600-15* was published, elements of the Adjutant General's office were still part of USACFSC, including "Installation Support, Personal Affairs," whose office symbol was "IS-PA" (see the address listed above). Telephone Interview with Sally Entlich, Senior Program Analyst, Strategic Planning and Policy Section, USACFSC (Dec. 9, 2004).

⁹⁸ *AR 600-15*, *supra* note 1, para. 1-5a.

⁹⁹ *Id.* para. 1-5g.

¹⁰⁰ *Id.* para. 1-5f.

¹⁰¹ *Id.* para. 1-5a.

assistance.¹⁰² Commanders can go either way. They can use passages to justify either heavy involvement in a Soldier's private financial affairs¹⁰³ or refusal of assistance to a creditor.¹⁰⁴

G. Effect of the 1993 Hatch Act Reform Amendment

Interestingly enough, it is the Hatch Act that achieves the original goals of *AR 600-15*. Creditors now have a much more stream-lined procedure for recovering money from delinquent Soldiers.¹⁰⁵ Similarly, Soldiers now have real protections under the SCRA.¹⁰⁶

Under the Hatch Act, creditors who are unable to recover money directly from Soldiers now have an incentive to go to court. With a court order, the Hatch Act allows Soldier pay to be subject to an involuntary allotment for commercial debts. The procedures are straightforward,¹⁰⁷ are available to anyone on the Internet,¹⁰⁸ and appear to be working quite well.¹⁰⁹

As for Soldiers, the Hatch Act specifically requires that the regulations promulgated by the services address the plight of Soldiers unable to attend hearings due to "exigencies of military duty."¹¹⁰ *Department of Defense Instruction 1344.12* requires creditors to strictly observe the protections offered by the SCRA—failure to do so results in denial by DFAS of the application for an involuntary allotment.¹¹¹ This protection appears to be working quite effectively.¹¹² Of course, without recourse to DFAS, judgment creditors are usually left without a realistic remedy, as the typical Soldier's main asset is his or her monthly income from DFAS.

With the enactment of the Hatch Act and the promulgation of *Department of Defense Directive 1344.9* and *Instruction 1344.12*, *AR 600-15* has been ready for an overhaul for many years. Before discussing the substance of that overhaul, a review of the actual requirements of *Directive 1344.9* and *Instruction 1344.12* and a comparison of how the sister services have responded to the Hatch Act are appropriate.

IV. *Department of Defense Directive 1344.9* and *Instruction 1344.12*

Like most DOD Directives and Instructions, *DOD Directive 1344.9* sets forth policies and prescribes responsibilities for various department heads. *Department of Defense Instruction 1344.12* implements the actual workings of the policies.

The policies set forth in *DOD Directive 1344.9* address the following: indebtedness,¹¹³ debt complaints,¹¹⁴ and involuntary allotments.¹¹⁵ In general, servicemembers are expected to pay their just financial obligations in a proper and

¹⁰² *Id.* para. 1-5e(2).

¹⁰³ *Id.* para. 1.5c(8)(g).

¹⁰⁴ *Id.* para. 1.5f.

¹⁰⁵ See DOD INSTR. 1344.12, *supra* note 24 (outlining the specific procedures for initiating an involuntary allotment against a soldier's pay).

¹⁰⁶ See TJAGSA Practice Note, *Defenses to Involuntary Allotments for Creditor Judgments—Implementing the Hatch Act Reform Amendments*, ARMY LAW., Jan. 1995, at 68; see also Servicemembers Civil Relief Act, Pub. L. No. 108-189, 117 Stat. 2835 (2003) (formerly known as the Soldiers' and Sailors' Civil Relief Act, 50 U.S.C. §§ 501-594 (LEXIS 2005)).

¹⁰⁷ A creditor seeking an involuntary allotment against a Soldier's pay must meet two requirements: (1) the creditor must obtain a final judgment against the Soldier from a civil court, which meets the procedural requirements of the SCRA, and (2) the creditor must send a copy of the judgment to DFAS along with a completed Involuntary Allotment Application, DD Form 2653, *supra* note 24. See Defense Finance and Accounting Service, *Involuntary Allotment from Military Personnel for Commercial Debt*, <http://www.defenselink.mil/dfas/money/garnish/mcdafact.htm> (last visited Oct. 27, 2005).

¹⁰⁸ See *id.* (providing creditors with the Involuntary Allotment Application (DD Form 2653) and a non-lawyer version of the procedures for initiating an involuntary allotment).

¹⁰⁹ Telephone Interview with Rodney L. Winn, Director, Garnishment Operations, Defense Finance and Accounting Service, Cleveland Center (Oct. 8, 2004) [hereinafter Telephone Interview with Mr. Winn]. According to Mr. Winn, in 2003 DFAS received over 6,800 applications from creditors for involuntary allotments against servicemembers. *Id.*

¹¹⁰ 5 U.S.C.S. § 5520a(k)(2)(B) (LEXIS 2005).

¹¹¹ See TJAGSA Practice Note, *Involuntary Allotment Defenses*, ARMY LAW., May 1995, at 71.

¹¹² Telephone Interview with Mr. Winn, *supra* note 109. According to Mr. Winn, of the over 6,800 applications for involuntary allotment submitted in 2003 by judgment creditors, almost half were rejected, the principal reason being failure to comply with the requirements of the SCRA. *Id.*

¹¹³ The portion of the DOD's policy on indebtedness relevant to this article is set forth in sections 4.1. and 4.2. of *DOD Instruction 1344.9*:

4.1. 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 . . . or a

timely manner. Failure to do so may result in disciplinary action; however, the service has no legal authority to require servicemembers to pay a private debt or to divert any part of their pay for satisfaction of a private debt. Instead, in accordance with the Hatch Act, an involuntary allotment system is established.

Department of Defense Instruction 1344.12 implements *Directive 1344.9's* policies with specific guidance. Mandatory disclosure by creditors is still a prerequisite to receiving assistance with debt complaints from the services.¹¹⁶ The instruction explains the entire involuntary allotment process. Also, the services are instructed that “[d]ebt complaints that meet the requirements of [*DOD Instruction 1344.12*] shall be processed by DOD Components.”¹¹⁷ This time, unlike in *AR 600-15*, “processed” is defined¹¹⁸—the servicemember is counseled about the debt by the commander, and the creditor is informed

claim pursuant to Article 139 of [the UCMJ], . . . [T]he 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.

.

4.2. 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.

DOD DIR. 1344.9, *supra* note 27, §§ 4.1, 4.2.

¹¹⁴ The part of DOD’s policy on debt complaints relevant to this article is set forth in section 4.3. of DOD Instruction 1344.9:

4.3. The following general policies apply to processing of DEBT COMPLAINTS (not involuntary allotments):

4.3.1. Debt complaints meeting the requirements of this Directive, and procedures established [under DOD Instruction 1344.12] shall receive prompt processing assistance from commanders.

4.3.2. Assistance in indebtedness matters shall not be extended to those creditors:

4.3.2.1. Who have not made a bona fide effort to collect the debt directly from the military member.

4.3.2.2. Whose claims are patently false and misleading; or

4.3.2.3. Whose claims are obviously exorbitant.

4.3.3. Some States have enacted laws that prohibit 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.

4.3.3.1. 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.

4.3.3.2. The rule in subparagraph 4.3.3.1. 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.

4.3.4. Under [the 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 [the Fair Debt Collection Practices Act], but only when they collect on their own behalf.

Id. § 4.3.

¹¹⁵ The part of DOD’s policy on involuntary allotments relevant to this article is set forth in section 4.4. of *DOD Instruction 1344.9*:

4.4. The following general policies apply to processing of INVOLUNTARY ALLOTMENTS under [the Hatch Act].

4.4.1. 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 pay of the member may be made under procedures prescribed [in DOD Instruction 1344.12]. Such procedures shall provide the exclusive remedy available under [the Hatch Act].

4.4.2. An involuntary allotment from a member’s pay shall not be stated in any indebtedness case in which:

4.4.2.1. Exigencies of military duty caused the absence of the member from the judicial proceeding at which the judgment was rendered; or

4.4.2.2. There has not been compliance with the procedural requirements of the Soldiers’ and Sailors’ Civil Relief Act of 1940.

Id.

¹¹⁶ DOD INSTR. 1344.12, *supra* note 24, sec. 6.1.2.

¹¹⁷ *Id.* sec. 6.1.5.

¹¹⁸ Paragraph 6.1.5. states:

6.1.5. Debt complaints that meet the requirements of this Instruction shall be processed by DOD components. “Processed” means that Heads of the DOD Components, or designees, shall:

that the servicemember has been counseled.¹¹⁹ “Processed” does not mean that the services ultimately have a way to divert money from a servicemember’s pay. In the end, if a servicemember refuses to pay a just debt, the only way to attach his or her pay is to have a creditor obtain a proper civil court judgment against the servicemember and apply for an involuntary allotment.

V. How the Other Services Have Responded to the Hatch Act

All of the other services—the Coast Guard, Navy, Marine Corps, and Air Force—begin their respective regulations on indebtedness with the same two general principles: (1) servicemembers are expected to pay their just financial obligations in a timely manner, and (2) the services have no authority to require a servicemember to pay a private debt or to divert any part of their pay for its satisfaction.

A. The Coast Guard: *COMDTINST M1000.6, Chapter 8.L., Indebtedness*

The Coast Guard instruction is internally inconsistent and lacks information required by *DOD Directive 1344.6*. For example, the instruction does not mention any of the various federal and state consumer protection laws. Compliance with these laws is supposed to be a prerequisite to receiving any command assistance. All claimants are treated the same in the instruction, regardless of which state they are from or where the debtor is located, thus ignoring any consumer protections afforded under state law. There is also no distinction between creditors and debt collectors, which is curious considering that the Fair Debt Collection Practices Act prohibits debt collectors from contacting employers about a debt unless the debtor consents or the debt has been reduced to a court judgment.

There is also the same division between language early in the instruction restricting what the commander can do regarding matters of indebtedness,¹²⁰ and later guidance instructing what the commander should do when a complaint of indebtedness arrives. The latter section, “Action upon Receipt of Complaint of Indebtedness,”¹²¹ begins with the following phrase:

Commanding officers receiving an initial complaint of indebtedness shall inquire into the complaint and take prompt action to resolve the controversy. Such action should support Coast Guard regulations

6.1.5.1. Review all available facts surrounding the transaction forming the basis of the complaint, including the member’s legal rights and obligations, and any defenses or counterclaims the member may have.

6.1.5.2. Advise the member concerned that:

6.1.5.2.1. “Just financial obligations” . . . are expected to be paid in a “proper and timely manner” . . . and what the member should do to comply with that policy;

6.1.5.2.2. Financial and legal counseling services are available . . . ; and

6.1.5.2.3. That a failure to pay a just debt may result in the creditor obtaining a “judgment” . . . from a “court” . . . that could form the basis for collection of pay from the member pursuant to an involuntary allotment.

6.1.5.3. If a member acknowledges a debt as a result of creditor contact with a DOD Component, advise the member that assistance and counseling may be available from the on-base military banking office, the credit union serving the military field of membership, or other available military community service organizations.

6.1.5.4. Direct the appropriate commander to advise the claimant that:

6.1.5.4.1. Those aspects of DOD policy prescribed in [DOD Directive 1344.9 section 4] are pertinent to the particular claim in question; and

6.1.5.4.2. The member concerned has been advised of his or her obligations on the claim.

6.1.5.5. The commander’s response to the claimant shall not undertake to arbitrate any disputed debt, or admit or deny the validity of the claim. Under no circumstances shall the response indicate whether any action has been taken, or will be taken, against the member as a result of the complaint.

Id.

¹¹⁹ Commanders are to reveal to creditors only that counseling took place—not whether any action has or will be taken against a servicemember. *Id.* para. 6.1.5.5.

¹²⁰ “While a commanding officer is not authorized to adjudicate disputed cases . . .” CGCI M1000.6A ch. 8.L.1.c. (8 Jan. 1988).

¹²¹ *Id.* para. 8.L.3.

regarding the maintenance of discipline. Command action must also support the law which provides for the garnishment of a member's pay as described in Article 8.L.1.a. All actions should be accomplished within 30 days of receipt of a complaint.¹²²

Could a Coast Guard commander misread the intent of this paragraph? What if the complaint received is from a debt collector who has neither a court order nor permission from the debtor to contact the commander? The sending of such a complaint violates the Fair Debt Collection Practices Act and should result in no collection assistance by the command. Or what if the particular Coast Guard unit is located in a state that prohibits creditors from contacting employers about a debt, such as Florida?¹²³ The Coast Guard instruction does not address or even refer to these issues. Instead, the first sentence of the section following the one quoted above states: "The commanding officer should urge the individual to make payments on debts by U.S. postal money order, check, or by any other method of proving an actual record of payment."¹²⁴ It is reasonable to assume that in many situations the directive "take prompt action to resolve the controversy" will transform "urge the individual to make payments" into "order the individual to make payments."¹²⁵

The Coast Guard instruction requires commanders to make a difficult choice: (1) quickly consult the section of the Instruction which appears on point, but which is incomplete and, if read out of context, provides erroneous guidance, or (2) take the time to read and try to understand the entire instruction, which is a task lawyers struggle with. The Coast Guard instruction serves as a poor model for an updated *AR 600-15*.

B. The Navy: *MILPERSMAN 7000-020, Indebtedness and Financial Responsibility of Members*

The Navy takes a simpler approach to the matter of servicemember indebtedness:

The enforcement of private obligations is a matter for civil authorities. A commanding officer is without authority to adjudicate claims or to arbitrate controversies concerning debts or private obligations of naval members, or to act as an agent or collector. . . . The extent to which commanding officers may cooperate with creditors is limited to administrative referral of correspondence to the member.¹²⁶

The regulation then lists various consumer protection laws and regulations that a creditor must be comply with before he can receive assistance with debt collection. The laws and regulations cited come almost verbatim from *DOD Instr. 1344.12*, section 6. Next follows a series of common sense financial "tips" for the commander to discuss with servicemembers. These include adages such as "thrift is not only a virtue, but for most people, a necessity,"¹²⁷ "be wary of the 'high pressure' salesperson,"¹²⁸ and "prior to acceptance of any credit plan, members should evaluate their financial capabilities and set up a budget."¹²⁹

¹²² *Id.* para. 8.L.3.a.

¹²³ *See, e.g.*, FLA. STAT. ch. 559.72 (2004).

¹²⁴ CGCI M1000.6A, *supra* note 30, ch. 8.L.3.b.

¹²⁵ The Coast Guard Instruction also offers commanders a sample letter to use when responding to claimants. The language of the letter is worth repeating. After listing the address and salutation, the letter states:

This is in response to your letter of <Date>, concerning the alleged failure of <Name of Member>, to pay the debt owed to you.

The Coast Guard expects its members to honor all just debts and comply fully with the orders of any court of competent jurisdiction not under appeal. Upon receipt of your letter, we referred the matter to <Name of member> and advised <him/her> to communicate with you concerning this indebtedness.

If you and <Name of member> are unable to resolve this issue in a mutually agreeable manner, you must comply with the procedures of the Soldiers' and Sailors' Civil Relief Act and the provisions of Title 32, Code of Federal Regulations, Parts 112 and 113, to obtain a final judgment and court order in a court of competent jurisdiction.

Id. ch. 8.L.3.c. The language of this sample letter could easily lead a creditor to conclude that the Coast Guard merely handed the complaint over to the member.

¹²⁶ MILPERSMAN 7000-020, *supra* note 30, para. 2.

¹²⁷ *Id.* para. 4.a.

¹²⁸ *Id.* para. 4.e.

¹²⁹ *Id.* para. 4.c.

The regulation then adopts an interesting strategy for how the commander is to respond to complaints received. The commander is supposed to divide complainants into various categories, depending on whether the creditor has complied with various consumer protection laws and regulations, and whether the creditor already has a court order. The regulation provides a matrix for the commander to follow, along with several sample letters. For example, if a particular complainant failed to comply with the Fair Debt Collection Practices Act, the commander fills out and sends letter L-1; if the complainant failed to provide evidence of compliance with the Standards of Fairness, the commander fills out and sends letter L-2.¹³⁰ Each of the sample letters has boilerplate language to address the particular situation.

Initially, this approach seems straightforward and simple to follow. Unfortunately, commanders are left to determine which of all the various consumer protection laws and regulations apply to a particular situation. None of the referenced or applicable laws are provided in the regulation, and it is the rare commander who would take the time to research the issue. The Navy regulation does not facilitate a commander's compliance with *DOD Directive 1344.9* and *Instruction 1344.12* and, therefore, is not a good model for the Army.

C. The Marine Corps: *Marine Corps Order P5800.16A, Chapter 16, Indebtedness*

The Marine Corps order is straight forward and comes almost verbatim from *DOD Directive 1344.9* and *Instruction 1344.12*. Most of the applicable consumer protection laws are listed at the beginning, along with a description of how the laws must be complied with before a complainant can receive assistance.¹³¹ Unlike the Coast Guard instruction and the Navy regulation, the Marine Corps order urges commanders to contact their local staff judge advocate (SJA) for assistance.¹³² Next follows the section "Processing Complaints of Indebtedness,"¹³³ which begins with a list of disclosure requirements and a description of various types of creditors.¹³⁴ It is only after all these matters are covered that the commander receives instruction on how to actually respond to indebtedness complaints. The commander's response basically consists of a counseling session with the Marine. Marine Corps policy regarding indebtedness is to be explained to the Marine, as is the possibility of an involuntary allotment.¹³⁵ The only information communicated to the complainant is that the Marine has been counseled concerning his obligations.¹³⁶ The commander is not to reveal information on potential disciplinary or adverse administrative action to the claimant.¹³⁷

The Marine Corps order then briefly provides explanatory information on how the involuntary allotment process works,¹³⁸ and concludes with some helpful, common sense counseling tips on how to counsel Marines about financial matters¹³⁹ and, of course, a reminder to commanders that punitive, nonpunitive, and administrative actions are available for more serious situations.¹⁴⁰ There is a series of figures at the end of the Marine Corps order that contain the Standards of Fairness,¹⁴¹ a Certificate of Compliance,¹⁴² and several sample letters for commanders to use.¹⁴³

Generally, this is a helpful regulation. There are, nevertheless, two weaknesses. First, figure 16-3 (Standard Form for Commander's Reply to Complainant Alleging Indebtedness of a Member of the Command) of *MCO P5800.16A*, gives a

¹³⁰ *Id.* para. 6.

¹³¹ MCO P5800.16A, *supra* note 30, para. 16002.

¹³² *Id.* para. 16002.7. Interestingly enough, the Navy's MILPERSMAN 7000-020 only refers to attorneys in the context of referring debtors to legal assistance attorneys. MILPERSMAN 7000-020, *supra* note 30, para. 4(j). The Coast Guard's Instruction never refers to judge advocates once! CGCI M1000.6, *supra* note 30, chap. 8.L.

¹³³ MCO P5800.16A, *supra* note 30, para. 16003.

¹³⁴ *Id.*

¹³⁵ *Id.* para. 16003.5(b).

¹³⁶ *Id.* para. 16003.5(d).

¹³⁷ *Id.*

¹³⁸ *Id.* para. 16004.

¹³⁹ *Id.* para. 16005.2.

¹⁴⁰ *Id.* para. 16005.3.

¹⁴¹ *Id.* Figure 16-1.

¹⁴² *Id.* fig. 16-2.

¹⁴³ *Id.* figs. 16-3 through 16-6.

claimant an incorrect impression that a garnishment order is required in order to recover a debt from the pay of a Marine.¹⁴⁴ As discussed earlier in this article, a state garnishment order is neither necessary nor sufficient to initiate an involuntary allotment. Rather, a state court judgment in compliance with the SCRA is required.¹⁴⁵

The other weakness with the Marine Corps order is the same as that which plagues the Coast Guard's and Navy's respective regulations: the commander is required to spend too much time gathering information in order to make a proper decision on a case.

D. The Air Force: *Air Force Instruction 36-2906, Personal Financial Responsibility*

The Air Force instruction represents the best model for an update to *AR 600-15*. The instruction presents the clearest guidance on how commanders, members, creditors, and others are to respond to issues of member indebtedness. The Instruction is divided into two main sections: instructions to the various individuals invariably involved when a complaint of indebtedness is made¹⁴⁶ and a "fact sheet" containing basic information on the involuntary allotment process.¹⁴⁷

The instruction is well organized with responsibilities grouped according to the individual involved, such as major commands, installation commanders, unit commanders, SJAs, servicemembers, and even DFAS. Very little law or doctrine is set forth or even referenced; rather, each person in the "chain" receives a succinct series of instructions of what he needs to do concerning matters of indebtedness. For example, at the senior level, major commands are instructed to monitor and guide subordinate units and to include a block of instruction on personal financial management in course curricula.¹⁴⁸ Installation commanders are instructed to "[d]evelop and coordinate responses to high-level, executive, and congressional inquiries."¹⁴⁹

Unit commanders—the major players in debt collection practices—have the greatest number of responsibilities. They are to review and respond to complaints of indebtedness,¹⁵⁰ but their response is limited to a recitation of Air Force policy on indebtedness.¹⁵¹ They advise servicemembers of Air Force policy on indebtedness and that failure to pay a just debt may result in a court judgment and subsequent involuntary allotment.¹⁵² Commanders are also advised to continue their traditional role of considering adverse administrative or disciplinary action against servicemembers who continually demonstrate financial irresponsibility.¹⁵³ No information regarding adverse disciplinary or administrative action, however, may be provided to complainants.¹⁵⁴

¹⁴⁴ Figure 16-3, Standard Form for Commander's Reply to Complainant Alleging Indebtedness of a Member of the Command, states in part:

Section 5520a of Title 5, United States Code, provides that a servicemember's pay is subject to legal process initiated to enforce satisfaction of a legal debt. Such action, however, requires final judgment of a court of competent jurisdiction *directing the Marine Corps to withhold an amount from the pay of _____ and make payment to _____.*

Id. fig. 16-3 (emphasis added). The italicized portion of the quote above is garnishment language. *Department of Defense Instruction 1344.12*, to which each of the service regulations are subordinate, states: "A garnishment summons or order is insufficient to satisfy the final judgment requirement . . . and is not required to apply for an involuntary allotment under this Instruction." DOD INSTR. 1344.12, *supra* note 24, para. 6.2.1.3.

¹⁴⁵ DOD INSTR. 1344.12, *supra* note 24, para. 6.2.1.4.

¹⁴⁶ AFI 36-2906, *supra* note 30, paras. 1-9.

¹⁴⁷ *Id.* attachment 3.

¹⁴⁸ *Id.* para. 1.

¹⁴⁹ *Id.* para. 2.

¹⁵⁰ *Id.* para. 3.1.1.

¹⁵¹ The Air Force's policy on private indebtedness is as follows:

"Military members are expected to pay their just financial obligations in a proper and timely manner. . . . However, Air Force components have no legal authority to arbitrate or resolve personal disputes over debts, or . . . to require a member to pay or to divert any part of a member's pay to satisfy a private debt."

Id. attachment 3, para. A3.2.

¹⁵² *Id.* para. 3.4.1.

¹⁵³ *Id.* para. 3.1.6.

¹⁵⁴ *Id.* para. 3.1.4.

In the Air Force instruction, SJAs are the listed resource for both commanders and servicemembers for information on how to apply the various laws and regulations.¹⁵⁵ This is appropriate. Some of the more relevant laws, such as the Fair Debt Collection Practices Act, are mentioned as examples of laws to consider,¹⁵⁶ but the instruction is not a resource on the law in this area. The instruction simply presumes that lawyers know what laws and regulations are applicable to a given situation.

The “Fact Sheet” in attachment 3 of AFI 36-2906 provides an accurate, concise summary of the “general procedures involved in resolving allegations of indebtedness and initiating involuntary allotments against military pay for civil debts.”¹⁵⁷ It is devoid of military acronyms. All of the necessary points of contact, addresses, phone numbers, laws, forms, and procedures are spelled out in less than two pages. Commanders are even authorized to send a copy of attachment 3 to claimants in appropriate cases.

The Air Force has obviously recognized that private indebtedness is a complicated subject matter for anyone who does not regularly work in this area. As such, they have created a regulation that is a practical resource for commanders. It provides basic information and assigns responsibilities, but appropriately refers all of the legal issues to the SJA. This is the model the Army should follow to update *AR 600-15*.

VI. A Proposal to Revise *AR 600-15*

After considering *AR 600-15* in light of the history of garnishment of federal pay, the development of *AR 600-15*, changes in federal law, including the enactment of the Hatch Act, the requirements of *DOD Directive 1344.9* and *Instruction 1344.12*, and the response of the sister services, the following revisions to *AR 600-15* are necessary to bring the regulation up to date and to make *AR 600-15* an effective tool for commanders.

A. A New Proponent

Regardless of what is written in the current *AR 600-15*, there is no active proponent for the regulation. Although the Office of the Deputy Chief of Staff for Personnel (G-1) is listed as the proponent,¹⁵⁸ no one in G-1 knows anything about the regulation today.¹⁵⁹ As explained earlier, no one at USACFSC knows anything about *AR 600-15* either. This leaves commanders, Soldiers, and creditors with no one to serve as the final authority on the regulation. Also, there is no one to whom suggested improvements or changes to *AR 600-15* may be addressed.¹⁶⁰ Given the problems with the current *AR 600-15* discussed above and all of the changes in the law, a proper, accessible proponent is imperative.

The Office of the Deputy Chief of Staff for Personnel is not the proper proponent because G-1 addresses standard personnel issues such as managing morale programs, establishing policy matters, and tracking human resources, while *AR 600-15* almost exclusively involves legal matters. The number of laws and regulations that overlap in the area of private indebtedness continues to increase. Anytime an issue of private indebtedness arises, it is necessary to analyze the complex relationship between the privacy rights of Soldiers, the administrative requirements of creditors, the unique role of the commander, and the array of possible administrative and disciplinary actions in place to protect the Army’s image and to ensure good order and discipline. The host of different federal and state laws and regulations need to be understood and

¹⁵⁵ *Id.* sec. 5.

¹⁵⁶ *Id.* para. 5.2.

¹⁵⁷ *Id.* para. A3.1.

¹⁵⁸ *AR 600-15*, *supra* note 1, at i.

¹⁵⁹ Ms. Entlich, the USACFSC employee referred to in *supra* note 97, also stated that she did some investigating on her own after our conversations. She consulted personnel at the Deputy Chief of Staff’s office in the Pentagon and was told that the section entitled “Compensation and Entitlements,” a part of G-1, now was the proponent for *AR 600-15*. E-mail from Ms. Sally Entlich, Senior Program Analyst, Strategic Planning & Policy, USACFSC, to MAJ James S. Tripp, Student, 53d Graduate Course, The Judge Advocate General’s Legal Center and School, U.S. Army (27 Jan. 2005) (on file with author). Ms. Entlich referred the author to Patricia Battle, G-1 Publications Control, Management Support, who confirmed that Compensation and Entitlements was indeed the listed proponent for *AR 600-15*. Telephone Interview with Patricia Battle, G-1 Management Support, Publications Control, The Pentagon (Jan. 28, 2005). The author then contacted Gail Roman-Rodriguez at the Compensation and Entitlements office in the Pentagon. Ms. Roman-Rodriguez said her office managed remission and cancellation of indebtedness to the U.S. Government, and that they have never dealt with the issue of private soldier indebtedness. She had no knowledge of *AR 600-15*. Telephone Interview with Ms. Gail Roman-Rodriguez, Compensation and Entitlements, G-1, The Pentagon (Jan 28, 2005).

¹⁶⁰ Comments and suggested improvements are supposed to be sent to the same address to which the author sent the test letter, referred to in footnote 97 above.

applied correctly. Questions in this area are appropriately addressed to lawyers, not personnel specialists, human resource managers, or accountants. As such, a logical choice for the proponent of *AR 600-15* is the Office of the Judge Advocate General. The regulation should be switched to become part of the *AR 27* legal series—for example, *AR 27-15, Indebtedness of Military Personnel*.

B. The Content and Format of an Updated *AR 600-15*

Air Force Instruction 36-2906 is a great example of what the Army's revised *AR 600-15* should resemble. Brief, concise, readable—*AFI 36-2906* represents a real resource for commanders.

The regulation should begin with a general statement of Army policy on indebtedness: Soldiers are expected to pay their just financial obligations in a proper and timely manner, but the Army has no legal authority to arbitrate or resolve personal disputes over debts, to require a Soldier to pay debts, or to divert any part of a Soldier's pay to satisfy a private debt. This policy statement should be followed by a section describing the responsibilities of the various commands and other parties involved. The regulation should also contain a fact sheet, along with some reference and sample materials, on indebtedness and the involuntary allotment process that is written in language understandable to civilians (a proposed sample is provided in Appendix D of this article). That is all—perhaps ten to fifteen pages in length.

The various commands and other parties covered in the responsibilities section should include the Office of the Judge Advocate General (OTJAG), the Legal Assistance Policy Division within OTJAG, installation commanders, unit commanders, SJAs, Soldiers, and DFAS.

The OTJAG would have overall responsibility and supervision of the interpretation of *AR 600-15*. Of course, as with any branch of the Executive Department, this is to ensure responsibility and accountability for the regulation. There must also be an ultimate authority on the regulation within the agency. Although the current *AR 600-15* lists the Deputy Chief of Staff for Personnel as that authority,¹⁶¹ the reality is that language in the regulation shifts all decision-making authority to the Commanding General (CG), USACFSC.¹⁶² As discussed earlier, USACFSC has literally no dealings with *AR 600-15*, so it is difficult to imagine how a technical question on interpretation of the regulation would be answered by the CG, USACFSC. Most likely, the CG would turn to his judge advocate for guidance. Questions regarding Soldier private indebtedness will almost always be legal questions; therefore, a logical choice for ultimate authority on interpretation of *AR 600-15* would be The Judge Advocate General of the Army.

Although OTJAG would be the proponent of the regulation and would be responsible for overall supervision and administration, the Legal Assistance Policy Division (LAPD) within OTJAG would actually be the office to promulgate policies and procedures. This is a logical proposal as the LAPD normally tracks consumer laws on indebtedness. Since the LAPD is the subject-matter experts, they could monitor and guide installation legal offices to ensure the offices have up-to-date information on federal, state, and local laws concerning indebtedness. The LAPD could also coordinate with the Administrative Law Division of OTJAG to prepare and distribute instructional materials to commanders on personal financial management and the involuntary allotment process.

Installation commanders would be charged with monitoring and guiding subordinate units. This responsibility would really only consist of making sure implementation of *AR 600-15* is a command responsibility. Also, in coordination with their local SJA, installation commanders would be responsible for responding to congressional and other high-level inquiries.

Unit commanders would have the most responsibilities as this is the most efficient way to carry out the intent of *DOD Directive 1344.9*. The commander's listed responsibilities would be devoid of the various federal and state laws and regulations. Rather, commanders would be charged with reviewing and assessing commercial indebtedness complaints, in consultation with their local SJA. Commanders would then be directed to counsel Soldiers on Army policies regarding indebtedness, regardless of the circumstances. This counseling would not include an order to pay. It would be a discussion of the Army's policy that Soldiers pay their just debts timely, and that failure to do so could result in an involuntary allotment by the creditor. The commander would also inform the Soldier that repeated demonstrations of financial irresponsibility could result in adverse administrative or disciplinary action. If the Soldier has questions, he would be referred to an installation financial counselor or a legal assistance attorney.

¹⁶¹ *AR 600-15*, *supra* note 1, para. 1-4(a).

¹⁶² *Id.* para. 1-4(b)(4).

As for the complainant, the commander would respond to the creditor in writing using a sample letter contained in the regulation as a guide. The sample letter would acknowledge receipt of the complaint and would indicate that the Soldier has been counseled on the Army's policy concerning indebtedness. The complainant would be informed, however, that Army policy dictates that assistance to creditors is limited to the administrative referral of the material to the Soldier, as the Army has no legal authority to arbitrate or resolve personal disputes over debts, nor to require a Soldier to pay, or to divert any part of a Soldier's pay to satisfy, a private debt. The commander would refer to and include with the letter a "Fact Sheet" from AR 600-15. This "Fact Sheet" would contain a concise description of Army policy on personal indebtedness and the involuntary allotment process.¹⁶³ Limited information would be provided on the involuntary allotment procedure, as the forms used by DFAS to set up an involuntary allotment are self explanatory and contain a great deal of information.

Staff judge advocates would be charged with advising commanders on how to apply Army policy to individual cases of indebtedness, and of the involuntary allotment procedures. Of course, the SJA has always been and will continue to be an advisor to the command on the appropriate administrative or disciplinary action in cases of continued financial irresponsibility, fraud, deceit, or criminal conduct. The SJA would also be charged with providing legal assistance to Soldiers on issues of financial responsibility under federal and state laws and regulations and to those who choose to contest applications for involuntary allotments for civil debts.

The section on Soldiers' responsibilities would mainly consist of directions to comply with the Army's policy on indebtedness, but it would also include exhortative language encouraging behaviors such as thrift and budgeting.

A section about DFAS would not direct DFAS to do anything; rather, it would provide a brief description of DFAS's role in matters of indebtedness and provide contact information.

VII. Conclusion

Now, having read the proposed *AR 600-15*, when the commander receives a call from *Snuffy's* creditors she calmly responds that Army policy requires that she not arbitrate or judge complaints of indebtedness. She takes the name and address of the creditor and then sends the creditors a tailored copy of *AR 600-15's* sample letter, along with the Fact Sheet, which explains Army policy in more detail and provides information on the involuntary allotment procedure. She also counsels *Snuffy* about the possibility of an involuntary allotment and the potential for adverse administrative or disciplinary action if his financial problems interfere with the unit's mission or damage the Army's public image. She then refers him to the local installation financial counselor and the legal assistance office.

The current *AR 600-15* is obsolete and without a real proponent. Most commanders are unaware of its existence. Those that have heard of *AR 600-15* usually ignore its mandates or take language out of context to justify a decision in a given situation. Some commanders are aggressive in matters of indebtedness and give orders intruding into a Soldier's private life—even when the Soldier's work performance is flawless and, absent the call from the creditor, no one in the army would know there was a dispute. On the other hand, other commanders are reluctant to take any measures against a Soldier—relying on "the army has no authority" language—even when the Soldier is engaging in flagrant financial misbehavior, bringing discredit on the Army, or harming relations between a local creditor and the military community at large.

The DOD published *Directive 1344.9* and *Instruction 1344.12* over ten years ago. These publications were in response to the Hatch Act and implemented many changes in the way the Army is to process complaints of Soldier indebtedness. The Army has yet to update *AR 600-15* to comply with these changes. *Army Regulation 600-15* should be revised to comply with current law, and it should be greatly simplified so that it becomes an effective resource for commanders and Soldiers. Its new proponent should be the Office of the Judge Advocate General, as it is a regulation that deals mainly with the application of various federal and state laws and regulations.

¹⁶³ A sample "Fact Sheet" is provided in Appendix D of this article.

Appendix A

Paragraph 36, AR 600-20, Army Command Policy and Procedures (1 February 1970)

36. Private indebtedness and financial obligations.

a. *See AR 210-7.*

b. Commanding officers will not tolerate actions of irresponsibility, gross carelessness, neglect, dishonesty, or evasiveness in the private indebtedness and financial obligations of their personnel. Normally, it is not difficult to distinguish between an honest denial of an obligation and a dishonest or irresponsible evasion thereof. A claim based upon a judgment, order, or decree of a court which appears valid on its face, should ordinarily be accepted by the commanding officer as prima facie evidence of the financial obligation established thereby. Such a judgment, however, may be rebutted by other evidence, such as a conflicting decree of another civil court. If, after consideration of all factors, a commanding officer believes that a member of his command has dishonorably failed to pay his just debts, disciplinary action may be initiated (arts. 15, 133, 134, UCMJ; para. 213b, MCM, 1951). Whether or not disciplinary action is taken, unpaid personal indebtedness of long standing which the individual is not attempting to resolve may be handled administratively under the provisions of AR 600-200, AR 635-105, or AR 635-212.

c. Complaints of civil indebtedness or financial obligations which are not subject to the provisions of AR 210-7 and which are received at any echelon of the Department of the Army superior to the immediate command of the member concerned will be forwarded through proper channels to the immediate commanding officer of such member for action as outlined in *d* below. Each communication will be acknowledged by the command receiving the complaint and the writer informed of the referral of his letter.

d. Upon receipt of a communication from any echelon of the Department of the Army superior to the immediate command of the member concerned, or directly from the complainant, concerning a member's failure to satisfy his private indebtedness or financial obligations, the appropriate procedure set forth below will be followed:

(1) If upon receipt of the communication it appears that the complainant has not made reasonable efforts to collect directly from a member, inform the complainant that action by the military authorities will be deferred until such time as it appears that the complainant has made such efforts. In questionable cases involving civil court judgments, commanders are encouraged to utilize the services of a Staff Judge Advocate prior to furnishing a reply to the complainant.

(2) If upon receipt of the communication there appears to be evidence showing a reasonable effort to collect directly from the member, the organizational commander will discuss the matter with the member concerned. If the obligation is admitted by the member, the commanding officer will insure that reply is made promptly to the complainant indicating the member's intentions regarding payment. If the obligation or the amount is disputed or denied by the member, the commanding officer, in his discretion, may require either or both parties to submit any necessary documents or other pertinent evidence. When the commanding officer believes that the matter justifiably is controversial, he will make reply directly to the complainant advising that it is the established policy of the Department of the Army that a disputed debt is a matter to be settled by the civil courts. When complaints of a member's repeated failure to satisfy private indebtedness or financial obligations are received, the commanding officer will take appropriate followup action with a view to assisting the member in complying with previous arrangements. The complainant will be requested to address any further correspondence deemed necessary direct to the member concerned or to his commanding officer.

(3) Complaints received after a service member has been reassigned will be forwarded to his current organization if the latest assignment is available. Complaints received after a service member has departed on orders for overseas duty or on orders to return to CONUS, and whose current organization is not known, will be forwarded to the commanding officer of the appropriate overseas replacement station or returnee reassignment station. All complaints in the above categories will be acknowledged and the complainant will be advised-

(a) Of the service member's leave address when applicable.

(b) That service member will be in a transient status for 30 to 90 days (or the approximate number of days normally required in each individual case) prior to reaching his new duty station.

(c) That further correspondence concerning the indebtedness should be addressed to the commanding officer of the unit of the service member, if known. If the unit of the service member is not known, the complainant will be advised of the due date and the address to which correspondence should be sent in format consistent with the following examples:

Commanding Officer of
PVT Robert E. Roe, SN 00000000
U.S. Army Oversea Replacement Station
Fort Lewis, Washington
(DUE DATE: 1 Jan 196-)

or

Commanding Officer of
PVT Robert E. Roe, SN 00000000
U.S. Army Returnee-Reassignment Station
Fort Hamilton, New York
(DUE DATE: 1 Jan 196-)

e. The provisions of *b* through *d* above, and paragraph 37 do not normally apply in the case of retired personnel not on active duty. Routine complaints of civil indebtedness or financial obligations of retired personnel not on active duty, is outside the responsibility of the Army and that the command regrets that it cannot be of assistance in the matter. Requests for exception to policy may be forwarded to The Adjutant General, ATTN: AGPF-IC, Department of the Army, Washington, D.C. 20310, when in the opinion of the reviewing officer the complaint justifies consideration by the active military.¹⁶⁴

¹⁶⁴ 1970 AR 600-20, *supra* note 32, para. 36.

Appendix B

Paragraphs 8, 9 and 10 of AR 210-7, Personal Commercial Affairs (1 July 1966)

8. Indebtedness of military personnel.
 - a. A member of the Armed Forces is expected to pay his just financial obligations in a proper and timely manner. A “just financial obligation” means one acknowledged by the military member in which there is no reasonable dispute as to the facts or the law, or one reduced to judgment which conforms to the Soldiers’ and Sailors’ Civil Relief Act (50 U.S. C., Appendix 501, et seq.), if applicable. “In a proper and timely manner” means a manner which the installation commander concerned determines does not under the circumstances, reflect discredit on the military service.
 - b. The Department of the Army does not condone an attitude of irresponsibility or evasiveness by its personnel toward their just private indebtedness or financial obligations. However, the Department of the Army has no legal authority to require a military member to pay a private debt, or to divert any part of his pay for the satisfaction thereof even though the indebtedness may have been reduced to judgment by a civil court. The enforcement of the private obligations of a military member is a matter for civil authorities.
 - c. Creditors desiring to contact a military member concerning his indebtedness will be advised that the member’s current address may be obtained by writing to The Adjutant General, ATTN: AGPF, Department of the Army, Washington, D.C. 20310, for officers and warrant officers and to the Commanding Officer, US Army Personnel Services Support Center, Fort Benjamin Harrison, Ind., 46249, for enlisted personnel, and inclosing \$1.50 as a fee for the service. See AR 37-30.
9. Standards of fairness and full disclosure by lenders and sellers.
 - a. Appendix I describes the principal standards (Part I) which are considered to characterize fair and just dealing with servicemen and itemizes the information (Part II) which the servicemen needs to know in order to be fully informed on the terms of the contract. Adherence to these standards and disclosure of this information in advance places both parties squarely on notice of their respective obligations, discourages improvident loans, and reduces cases of default.
 - b. Those who sell or loan to military personnel are expected to subscribe to the standards of fairness and to make full disclosure before the loan or credit agreement or contract is executed. Because banks and credit unions operating on military installations own a special responsibility to deal fairly with those assigned to or employed on the installation, they must conform to the requirements of appendix I before executing the loan or credit agreement or contract.
 - c. The itemized information required in Part II of appendix I may be presented to the serviceman in the form most convenient to the seller or lender, as long as all of the information is disclosed and a copy is provided to the borrower.
10. Processing debt complaints.
 - a. With the growth of borrowing opportunities and consumer credit, the Department of the Army has been called upon with increasing frequency to provide assistance in the processing of debt complaints growing out of such transactions. While many of these requests involve loan and credit transactions which are fair and reasonable, other involve transactions in which the full cost of credit has not been stated simply and clearly in advance. Further, some of these transactions levy exorbitant charges and other unreasonable obligations against the military debtor. Under such circumstances the Department of the Army will not use its facilities and personnel in processing such debt complaints through military channels. For the purpose of this regulation, lenders also include all financial institutions (such as centralized charge systems) which, although not a party to the original transaction, seek assistance in the collection of debts.

b. In all loan and credit transactions subject to this regulation, communications charging military members with indebtedness will be referred through channels to the debtor only under the conditions set forth in (1) and (2) below.

(1) Lenders and creditors completing appendix I before executing the loan or credit contract must submit a copy of Part II (Full Disclosure) to the commanding officer of the military member concerned or, if unknown, to the Headquarters, Department of the Army, for forwarding to the military member concerned.

(2) Those not executing appendix I before consummating the loan or credit contract (or who are unable to produce a copy thereof signed by both parties) must submit an executed copy of Part II (Full Disclosure) and Part III (Certificate of Compliance). Requests for assistance which fail to meet these requirements and which are not modified after the sender has been so notified will not be acted upon.

c. Those claims in which there is questionable compliance with these requirements, or in which the cost of the loan or credit including all finance charges, although stated, appear excessive or exorbitant, will be referred to the officer who has been designated by the installation commander as responsible for such consideration and disposition as may be appropriate. Before deciding on a course of action, the designated officer will give the creditor an opportunity to demonstrate that the finance charges conform to the law of the State governing the contract and the extent to which the finance charges and rates conform to the prevailing rates and charges for similar consumer credit transactions.

d. Additionally, the fact that a particular claim is exempt from the requirements of Full Disclosure and Standards of Fairness under *e* below (e.g., an open-end or revolving charge account), does not foreclose the right by the debtor to question service charges and other finance charges and to negotiate a fair and reasonable settlement.

e. The following types of debt complaints are not subject to the processing requirements of *d* above: claims by accommodation endorsers, comakers, or lenders against the party primarily liable on obligations not intended to benefit the accommodating party through payment of interest or otherwise; contracts for the purchase, sale or rental of real estate; claims in which the total unpaid amount does not exceed \$50; claims for support of dependents; claims based on a revolving or open-end credit account if the account shows the periodic rate and its annual rate equivalent and the balance to which it is applied to compute the charge; or purchase money liens on real property (this does not include other liens on real property and related obligations such as those which represent obligations for improvement or repair). See also paragraph 36, AR 600-20.¹⁶⁵

¹⁶⁵ AR 210-7, *supra* note 33, paras. 8, 9, 10.

Appendix C

Appendix I of AR 210-7, Personal Commercial Affairs (10 June 1966)

Standards of Fairness

1. No finance charge contracted for, made, or received under any contract shall be in excess of the charge which could be made for such contract under the law of the place in which the contract is signed by the serviceman. In the event a contract is signed with a U.S. company in a foreign country the lowest interest rate of the State or States in which the company is chartered or does business shall apply.
2. No contract or loan agreement shall provide for an attorney's fee in the event of default unless suit is filed in which event the fee provided in the contract shall not exceed 10% of the obligation found due. No attorney fees shall be authorized if he is a salaried employee of the holder.
3. In loan transactions, defenses which the debtor may have against the original lender or its agent shall be good against any subsequent holder of the obligation. In credit transactions, defenses against the seller or its agent shall be good against any subsequent holder of the obligation, provided that the holder had actual knowledge of the defense or under conditions where reasonable inquiry would have apprised him of this fact.
4. The debtor shall have the right to remove any security for the obligation beyond State or national boundaries if he or his family moves beyond such boundaries under military orders and notifies the creditor in advance of the removal, of the new address where the security will be located. Removal of the security shall not accelerate payment of the obligation.
5. No late charge shall be made in excess of 5% of the late payment, or \$5., whichever is the lesser amount. Only one late charge may be made for any tardy installment.
6. The obligation may be paid in full at any time or through accelerated payments of any amount. There shall be no penalty for prepayment and in the event of prepayment that portion of the finance charges which have inured to the benefit of the seller or creditor shall be prorated on the basis of the charges which would have been ratably payable had finance charges been calculated and payable as equal periodic payments over the terms of the contract and only the prorated amount to the date of prepayment shall be due. As an alternative the "Rule of 78" may be applied, in which case its operation shall be explained in the contract.
7. No charge shall be made for an insurance premium or for finance charges for such premium unless satisfactory evidence of a policy, or insurance certificate where state insurance laws or regulations permit such certificates to be issued in lieu of a policy, reflecting such coverage has been delivered to the debtor within 30 days after the specified date of delivery of the item purchase or the signing of a cash loan agreement.
8. If the loan or contract agreement provides for payments in installments, each payment, other than the down payment, shall be in equal or substantially equal amounts, and installments shall be successive and of equal or substantially equal duration.
9. If the security for the debt is repossessed and sold in order to satisfy or reduce the debt, the repossession and resale will meet the following conditions: (a) the defaulting purchaser will be given advance written notice of the intention to repossess; (b) following repossession, the defaulting purchaser will be served a complete statement of his obligations and adequate advance notice of the sale; (c) he will be permitted to redeem the item by payment of the amount due before the sale, or in lieu thereof submit a bid at the sale; (d) there will be a solicitation for a minimum of three sealed bids unless sold at auction; (e) the party holding the security, and all agents thereof, are ineligible to bid; (f) the defaulting purchaser will be charged only those charges which are reasonably necessary for storage, reconditioning and resale and (g) he shall be provided a written detailed statement of his obligations, if any following the resale and promptly refunded any credit balance due him, if any.

10. The contract may be terminated at any time before delivery of the goods or services without charge to the purchaser. However, if goods made to the special order of the purchaser result in pre-production costs, or require preparation for delivery, such additional costs will be listed in the order form or contract. No termination charge will be made in excess of this amount. Contracts for delivery at future intervals may be terminated as to the undelivered portion, and the purchaser shall be chargeable only for that proportion of the total cost which the goods or services delivered bear to the total goods called for by the contract.¹⁶⁶

¹⁶⁶ AR 210-7, *supra* note 33, app. I.

Appendix D

Proposed Fact Sheet for Revised AR 600-15

Personal Indebtedness and Involuntary Allotments for Civil Debts

1. Involuntary Allotments. This fact sheet addresses the general procedures involved in resolving allegations of indebtedness and initiating involuntary allotments against military pay for civil debts.
2. Army Policy. Soldiers are expected to pay their just financial obligations in a proper and timely manner. When necessary, commanders will counsel Soldiers about their financial responsibilities. Nevertheless, the Army has no legal authority to arbitrate or resolve personal disputes over debts or to require a Soldier to pay or to divert any part of a Soldier's pay to satisfy a private debt.
3. Disputes Over Indebtedness. Whenever possible, disputes over indebtedness should be resolved through amicable means by the parties involved. Claimants desiring to contact a Soldier about a debt may, in most cases, obtain the Soldier's address by contacting:

Commander
U.S. Army Enlisted Records & Evaluation Center
ATTN: Locator
8899 East 56th Street
Fort Benjamin Harrison, IN 46249-5301

The Army will charge a reasonable fee for the research service. In situations in which the Army is unable to release information about the Soldier (i.e., Soldiers assigned at overseas installations or at classified locations), the Army will forward correspondence from the claimant to the Soldier at no additional cost.

4. Involuntary Allotments for Civil Debts. Creditors whose bona fide efforts to collect a debt have failed may seek relief by applying for an involuntary allotment of pay pursuant to the Hatch Act Reform Amendments of 1993 (Public Law No. 103-94), as implemented by DOD Directive 1344.9, DOD Instruction 1344.12, and Army Regulation 600-15.

4.1. A creditor may initiate this process against any Soldier of the regular Army, Army National Guard, or Army Reserve. Involuntary allotments will not be taken from retired or disability pay. The application is initiated by preparing and submitting DD Form 2653, Involuntary Allotment Application, along with a certified copy of a judgment issued by a civil court and any other certifications required by DOD Instruction 1344.12, to the Defense Finance and Accounting Service (DFAS). Information and forms are available from DFAS by calling (800) 859-1845 or via the internet at www.dod.mil/dfas, or by writing:

Defense Finance and Accounting Service
Cleveland Center, Code PGL
P.O. Box 998002
Cleveland, OH 44199-8002

4.2. The creditor's application must certify certain state and federal procedural requirements have been satisfied prior to obtaining the judgment, including satisfaction of the procedural requirements of the Servicemember's Civil Relief Act.

4.3. Upon proper receipt of a complete application package, DFAS will forward a copy of the application to the Soldier and the Soldier's commander along with a DD Form 2654, Involuntary Allotment Notice and Processing. The Soldier will have 90 days from the date DFAS mails the package in which to respond to the application. The Soldier's time to respond to the action may be extended by the Soldier's commander for good cause. If the Soldier and commander fail to respond to the notice from DFAS within the allotted time, and application is otherwise valid, DFAS may automatically process the involuntary allotment on the 15th calendar day after the date a response was due.

4.4. If the Soldier consents to the allotment, the commander will return the package to DFAS. The allotment will commence within 30 days. If the Soldier contests the application, the Soldier may seek legal assistance and will submit supporting evidence refuting the validity of the application within 15 days to his or her commander, who will then forward the response to DFAS.

4.5. DFAS officials will make the final decision on any issues or defenses raised by the Soldier except for the issue of whether "military exigencies" adversely impacted the Soldier. A "military exigency" is defined in DOD Directive 1344.9 to be a military assignment or mission-essential duty that, because of its urgency, importance, duration, location or isolation, necessitates the Soldier to be absent from an appearance at a judicial proceeding, or prevents the Soldier from being able to respond to notice of an involuntary allotment action. Exigency of military duty is normally presumed during periods of war, national emergency, or when the Soldier is deployed. The Soldier's unit commander will decide whether the defense of military exigencies is valid and the commander's decision on this issue is binding on DFAS. Commanders return the application to DFAS indicating their decision on the DD Form 2654. If the commander finds that the military exigencies defense is valid, DFAS will return the application to the creditor without further action.

4.6. If the involuntary allotment application is denied based upon the commander's determination that military exigencies adversely impacted the Soldier's ability to respond to the legal action, DFAS will give the creditor the name and address of the appellate authority listed on the DD Form 2654 by the commander. In the Army, the appellate authority is the immediate Army superior commander to the commander who made the initial decision. The creditor may appeal the denial to the appellate authority, who will make the final decision within 30 days of receiving the appeal and who will respond directly to the creditor. The appellate authority's decision may not be appealed. If the appeal is granted, the creditor must submit a written request to DFAS, along with a copy of the appellate authority's decision, to start the allotment.

4.7. Involuntary allotments will be taken only from pay that is "subject to involuntary allotment," as defined by DOD Instruction 1344.12. Pay subject to allotment includes basic pay and certain other payments, but not allowances, reimbursements for expenses, or separation pay. The maximum amount of pay that may be taken is the lesser of 25 percent of the member's pay subject to involuntary allotment or the maximum amount authorized by the applicable state's law. Other debts (e.g., income tax withholding, government debts, military fines and forfeitures, family support obligations) take priority over allotments for civil debts.