

THE IMPACT OF DEBT DELINQUENCY
How to Avoid, Contain, and Resolve Common Credit Problems

The Army is currently drawing down troops and tightening the enforcement of regulations. In today's Army, one misstep can end or severely derail a military career. *Soldiers with credit problems stemming from debt delinquency are at high-risk of threatening their security clearances, and, as a result, their careers.* In addition to the security clearance threat, Service Members can also be prosecuted under the UCMJ for non-payment of debts. In either case, the result can be catastrophic to a service member with an otherwise clean service record. However, there are easy ways to avoid debt, guidelines to manage debt-collections, and solutions to clear debt and credit problems.

I. AVOIDING DEBT & CREDIT PROBLEMS

Generally, **abide by a few simple rules** and save yourself from the long and difficult process of clearing debt and credit issues:

- 1. Do not co-sign anything!** Whether you are buying a car, a timeshare, or opening a joint credit card account, both parties are equally responsible for the debt. *It does not matter if one party promises to make the payments, or if only one person uses the goods or services; the debt belongs to both* because you have signed a contract agreeing to repay the money. This scenario often plays out between a Service Member and a Civilian. However, while the Civilian's credit will also be hurt by the non-payment, it is the Service Member that jeopardizes their security clearance and career.
- 2. When divorcing, divide accounts and assets!** This is similar to the first scenario. When the debt is incurred with a spouse, it is often times divided by a court order upon divorce. However, even when a court apportions debt to each spouse, *it is up to the spouses to ensure their names are removed from accounts*, either through re-financing or negotiating with the lender. Until that is done, creditors can still damage your credit while seeking repayment of debts. While you may later recover the money or enforce the divorce decree in court, you will still have to fight to clear your credit history.
- 3. Do not ignore notices from collection agencies!** Ignoring letters and phone calls from a creditor is one of the worst things you can do. *Even if you do not recognize the debt or think the creditor is mistaken, you must get more information and address the issue.* While you may not ultimately be liable for the money owed, ignoring the debt will still lead to damage to your financial record. Ignoring creditors will only make the problem more complex and possibly lead to additional fines and interest. Ultimately, you will have to deal with the issue at some point – it will not simply go away.

4. Do not give anyone a general power of attorney! It is understandable that soldiers feel the need to assign a family member, spouse, or friend a general power of attorney due to deployments or long absences from home. However, there are very few reasons why someone would need that much power to conduct business on your behalf. The person holding the general power of attorney has the power to buy and sell real estate on your behalf, enter into contracts, and generally cause problems with your credit if not used responsibly. Once a general power of attorney is created, it is very difficult to take back. Instead, consider giving someone a limited of attorney for a particular purpose, or granting them access to a single bank account for the purposes of paying bills only.

5. Always plan for the "what if"! It is important that Service Members plan for the possibilities of life and service. When you sign a lease, keep in mind that you may be ordered back to barracks. When you get your Army paycheck, keep in mind you could later see a decrease in pay due to COLA or BAH differences. Most importantly, keep in mind that your service is not a guarantee – you should plan for a contingency in case you leave the Army. Unless you sign a contract with clauses allowing you to have an "out" in case your military service obligations change, you will usually be held responsible for any debt you incur, even if you suddenly are unable to pay that debt. For those who foresee leaving the Army, keep in mind that many Civilian and Government jobs also require security clearances and clean credit histories.

II. DEBT COLLECTION PROTECTION AND RIGHTS

If you have been unable to avoid a debt issue, you will have to manage attempts to collect the debt. In the Army, you will have to understand Federal and State laws, as well as Army Regulations regarding debt collection. Depending on the State, creditors may have more legal leeway to attempt to collect on the debt. On the other hand, a debt collector, or collection agency, has to abide by stringent Federal laws when attempting to collect a debt. It is important to understand the difference between a creditor and a debt-collector, and to know your rights when dealing with them.

A debt-collector is a third party attempting to collect the debt on behalf of the creditor. Debt-collectors are subject to a Federal regulation called the Fair Debt Collection Practices Act (full text at <http://www.ftc.gov/os/statutes/fdcpa/fdcpact.shtm>). Under the Act, a debt-collector may not:

1. Speak to ANYONE, including employers and commanders, about the debt without your authorization or a court order;
2. Use threat or coercion to scare you into repaying the debt, including threat of violence or jail time;
3. Engage in fraud, deceptive, or misleading representations, like sending letters made to look as if drafted by lawyers;
4. Continue to contact you after you request *in writing* that they cease all communication. Please note, however; *they may stop calling, but the debt will still be active* until it is resolved.

A **creditor** is an entity to whom money is directly owed. Creditors can be individuals, credit card, companies, or any business attempting to recoup moneys owed directly to them. In Hawaii, State Statutes (HRS §443B) extend most Federal protections from debt-collectors to creditors. There is, however, one important exception: **Creditors are permitted to call your command**. States will have different statutes and protections, so research local laws when PCS-ing or ETS-ing.

Once the chain of command has been notified that you owe a valid debt, either directly from the creditor or through other channels, the command has the authority to do the following:

1. Assist in collecting the debt; however, the command cannot order you to repay. This may result in negative counseling statements and other actions adverse to your military career.
2. Initiate action under UCMJ, Article 133 or 134; Dishonorably Failing to Pay a Debt. Punishments can range from local letters of reprimand to bad-conduct discharge, forfeiture of all pay and allowances, and confinement for 6 months.

If you think a creditor or debt collector has violated the law in attempting to collect a debt, you may file a complaint with the Federal Trade Commission (<https://www.ftccomplaintassistant.gov/>) or, in Hawaii, with the Hawaii Bureau of Consumer Protection (<http://hawaii.gov/dcca/ocp/>). In extreme cases, you may file a lawsuit. A successful lawsuit filed in the Hawaii can result in an award of three times your actual damages or \$1,000, whichever is greater. However, you will need to consult a private civilian attorney.

III. DEBT AND CREDIT SOLUTIONS

The most obvious solution to a valid debt problem is to **repay the debt**. Most debt-collections agencies will work with debtors to create a payment plan, or will take a certain amount to satisfy the debt. You will have to negotiate directly with the creditor or debtor to resolve the issue.

If you **know** the debt has been assessed against you in error, the worst thing you can do is ignore it. First, obtain as much information about the debt as possible. Then, check your credit report for any adverse information arising from the debt. You can obtain a free credit report at <https://www.annualcreditreport.com>. If you see that the debt has been reported, file complaints with all three major credit bureaus; Equifax, Experian, and TransUnion. Each has a website with instructions on how to file disputes, which can be completed online. If you think your identity has been stolen or that someone has fraudulently created a debt in your name, also file a local police report.

There are a number of ways to protect yourself and your military career from debt and credit problems. However, if you have been unable to avoid credit complications, be proactive in investigating and resolving all claims against you. The cost of losing a career will be far greater than the cost of the debt incurred.

CREDIT PROBLEMS: 3 COMMON QUESTIONS AND ANSWERS

THERE IS SOMETHING ON MY CREDIT REPORT THAT I DON'T RECOGNIZE, OR AN ACCOUNT THAT I KNOW I DIDN'T OPEN; WHAT SHOULD I DO?

FIRST: Contact the credit reporting company, in writing, to let them know what information you think is not accurate. In addition to providing your complete name and address, your letter should clearly identify each item in your report you dispute, state the facts and explain why you dispute the information, and request that it be removed or corrected. Most credit bureaus will have online systems for reporting, which is the most effective way to contact the credit bureaus.

CREDIT BUREAU CONTACT INFORMATION:

Experian: <http://www.experian.com/disputes/main.html>

Equifax: <https://www.ai.equifax.com/CreditInvestigation/>

TransUnion: <https://www.transunion.com/personal-credit/credit-disputes-alerts-freezes.page>

SECOND: Tell the creditor (Bank, credit card, etc) or other information provider, in writing, that you dispute an item. Be sure to include copies (NOT originals) of documents that support your position. Many providers specify an address for disputes. If the provider reports the item to a credit reporting company, it must include a notice of your dispute.

I HAVE A JOINT CREDIT/LEASE/CAR PAYMENT/BILL WITH SOMEONE, AND THEY AREN'T PAYING IT. NOW THE COLLECTIONS AGENCIES ARE COMING AFTER ME; CAN THEY DO THAT?

Unfortunately, if you have a joint bill with someone – meaning both your names are on the lease/car payment/credit card or other bill, you are BOTH responsible for the bill regardless of any agreement between the two of you. Therefore, if the other party is not paying the bill, you are “on the hook” for the bill. Both your credits will be damaged by non-payment, and Military personnel can face problems with security clearances due to bad credit.

-WHAT CAN I DO?

If the company holding the debt will not release you from the obligation, there is very little you can do, other than pay the bill. Refinancing mortgages and other bills may allow you to remove your name from the debt, but you will need the consent and cooperation of the other party to do so.

MY DIVORCE DECREE OR SEPARATION AGREEMENT SAYS THAT MY SPOUSE IS SUPPOSED TO PAY SOME OF OUR JOINT BILLS. WHAT CAN I DO IF THEY DON'T PAY?

Even if a divorce decree says that a single person will pay off a credit card, until your name is removed from that credit card, you will be responsible for that debt – same goes for other obligations such as mortgages, car loans, etc. If a court-ordered decree has been issued assigning a joint debt to another party, you must still go through the process of refinancing the debt or working with the debt holder (bank, credit card, etc) to remove your name and obligation from that debt. If your spouse refuses to cooperate, you will have to take them to court. In the meantime, the unpaid debts can affect your credit.

CREDIT REPAIR

The Fair Credit Reporting Act was enacted to protect consumers from having inaccurate or obsolete information in a consumer report used as a factor in determining their eligibility for credit, insurance or employment. The law gives you the right to learn what information is being distributed about you by credit bureaus. You are entitled to have incomplete or inaccurate information corrected without charge.

Upon request you can also learn the identities of those who have received your credit report within the past 2 years for employment purposes, or within 6 months for other purposes. Credit reporting agencies should release information about you to others only if they believe the information will be used for credit, insurance, employment, licensing or legitimate business reasons.

How can I get a copy of my credit report?

There are 3 major credit reporting agencies. Call beforehand to be sure the address is current, but you can request a copy of the respective credit report on you by writing to:

Equifax
PO Box 740241
Atlanta, GA
30374

(800) 378-2732

Trans Union
PO Box 390
Springfield, PA
19064

(800) 670-9849
(316) 636-6100
Credit denied:
(316) 634-8440

TRW
Complimentary: PO Box 8030
Layton, VT
84041-8030

Credit denied: PO Box 949
Allen, TX
75013

(800) 422-4879

In your letter you should provide the following information: your full name, current address, former address, social security number, date of birth, and your day and evening phone numbers. You must also send a copy of your driver's license, a recent utility bill or other documentation to verify your current address.

Instead of making the request yourself, you could pay for the services of First American Credco, 9444 Balboa Ave., Suite 500, San Diego, CA 921223; phone (800) 443-9342. Credco will obtain all 3 credit reports for you for \$30.95, or \$49.95 for next day delivery.

Once you receive your credit report, you can call the credit reporting agency to help you read and understand it.

How much will a copy of my credit report cost if I get it myself?

Unless you are entitled to a free copy, it will cost \$8.00 for each credit report.

You can get a free copy of your report from any one of the three major agencies if you request it within 60 days of being denied credit, insurance, a job or rental opportunity because of information contained in that agency's credit report on you.

One of the companies, TRW, will send you one free credit report a year, or anytime within 60 days of a creditor's inquiry, if you request it. A form you could use to request a complementary TRW report is attached.

How long will it take to get a copy of my report?

If you have been denied credit, the creditor must give you the name and address of the particular credit reporting agency it relied on. Once you make a request to that agency, it should take one week or less to get a copy of your report.

For a routine request where there has been no denial of credit, it will take about 3 weeks. It is recommended that you request a copy of your credit report at least once every 3 years to ensure that the information it carries about you is correct.

How long will negative information be kept in my credit report?

Bankruptcy adjudications more than 10 years old, and paid tax liens, suits, judgments, records of arrest or conviction or any other adverse information more than 7 years old, may not be included in your credit report unless the information is being furnished regarding a credit transaction of \$50,000 or more (e.g., for a home mortgage), life insurance of \$50,000 or more, or employment with an annual salary of \$20,000 or more.

If I notice something that's not right in my credit report, what can I do about it?

If you dispute the completeness or accuracy of the report, you can contact the particular credit reporting agency at the following addresses and ask them to investigate:

Equifax
PO Box 740256
Atlanta, GA
30374

Trans Union
PO Box 403
Springfield, PA
19064

TRW
PO Box 2106
Allen, TX
75013

You should be as specific as possible in your letter and include copies of any relevant documents. Unless they determine your dispute is "frivolous" or "irrelevant", the agency must investigate within a reasonable time (generally 30 days).

If their investigation reveals that the disputed entry is inaccurate or can no longer be verified, the credit reporting agency must delete, correct or update the information.

If the credit reporting agency claims the information is correct, you can file a statement of not more than 100 words rebutting the information and the reporting agency must include your statement or a summary of it in all future reports on you.

What can I do about creditors who have already seen the disputed information?

After either correcting your report or receiving your rebuttal statement, the credit reporting agency must furnish a copy of the report (including any rebuttal statement) to "any person specifically designated by the consumer" who has received the report within the past 2 years for employment purposes, or within the past 6 months for other purposes.

Should I use a "credit repair" company to fix my credit?

No company or person can do anything more for you than you could do yourself, and sometimes "credit repair" services are quite expensive.

If you are considering using a credit repair company instead of doing the legwork yourself, you may want to first research that company with the Better Business Bureau or your local consumer protection agency.

What if the credit reporting agency fails to comply with the law?

There are some civil and criminal penalties for a credit reporting agency's willful or negligent failure to comply with the Fair Credit Reporting Act.

You can contact your Legal Assistance Office to review any rebuttal statements you have drafted, or to ask more specific questions about your rights and their enforcement under the Fair Credit Reporting Act.