



PREVENTIVE LAW SERIES

GARNISHMENTS/ INVOLUNTARY ALLOTMENTS



Prepared by:
Legal Assistance Department
Region Legal Service Office Southwest
3395 Sturtevant Street Suite 9
San Diego CA 92136-5072
(619) 556-2211

WHAT IS AN INVOLUNTARY ALLOTMENT?

Invuntary allotments, also known as garnishments, are one way deductions from a servicemember's pay can be made. Usually, a previous valid court order exists that indicates that the person has an obligation to pay a certain amount of money.

INVOLUNTARY ALLOTMENT FOR FAMILY SUPPORT

An involuntary allotment can be initiated against an active duty servicemember to pay for child support or a combination of spousal and child support, **but not spousal support only**. (However, for those members who have only a spousal support order, this rule is not a shield against a contempt of court action. The court which issued the spousal support order can, and likely will, hold you in contempt of court for failure to pay spousal support once it has been ordered.) The servicemember must be under a court or administrative order to make the payments and the total amount in arrears must be greater than or equal to two months of payments. Pay that is subject to this type of allotment is: Basic Pay, BAH, BAS, Special Pay, Proficiency Pay or Special Duty Pay, Submarine Pay, Flight Pay, and Career Sea Pay.

A state child support enforcement agent or court sends a letter or order to the military finance center requesting an allotment be started. The military finance center will notify the servicemember of the involuntary allotment petition in order to give the servicemember an opportunity to respond in case there has been some type of error. Arrearages can be collected but there must be a second court order requiring payment of the arrearages by involuntary allotment. To start payments, contact DFAS.

MAXIMUM AMOUNT OF INVOLUNTARY ALLOTMENT

- 50% if member is supporting other family members and is in **arrears** (unpaid, overdue debt or unfulfilled obligation).
- 55% if member is supporting other family members and is in **arrears**.
- 60% if member is not supporting other family members and is in **arrears**.
- 65% if member is not supporting other family members and is in **arrears**.

A service member can assert by affidavit that he or she is supporting other family members.

In the event that your support order (or collective support orders) exceed the maximum amount allowed to be withheld by federal or state law, you are still responsible for the full amount of the child or spousal support as ordered in the state court. **MAXIMUM INVOLUNTARY ALLOTMENT PROVISIONS DO NOT SHIELD YOU FROM THE STATE COURT ORDER TO PAY A SPECIFIED SUPPORT ORDER.** You are still responsible for those excess amounts, even though it won't come directly out of your military paycheck. The percentages that can be garnished are separate and distinct from the amount of child support or spousal support, or both, that can be ordered to be paid by a person under state child and spousal support laws. Failure to pay the ordered amounts that are in excess of the above percentages can and may result in issuance of a tax intercept, inability to get a U.S. passport, negative reports to the major credit reporting agencies, suspension of the your driver's license, and or suspension of the your professional license.

MILITARY PAY SUBJECT TO INVOLUNTARY ALLOTMENT

- For officers and warrant officers – basic pay, special pay, most bonuses, BAS, BAH
- For E-7 and above – basic pay, special pay, most bonuses, BAH
- For E-6 and below – basic pay, special pay, most bonuses, and BAH for members with dependents.

DO NOT START A VOLUNTARY ALLOTMENT UPON RECEIVING NOTIFICATION OF AN INVOLUNTARY ALLOTMENT ACTION. OTHERWISE, THE RESULT WILL SIMPLY BE THAT TWO ALLOTMENTS WILL BE DEDUCTED FROM MILITARY PAY.

INVOLUNTARY ALLOTMENT FOR JUDGMENT INDEBTEDNESS

This type of involuntary allotment may occur when there is a judgment against the servicemember for a specific amount of money from a creditor. In these circumstances, the creditor sends an involuntary allotment application to the military finance center along with a copy of the court order. In addition the creditor must certify that the judgment has not been modified or set aside, that it complies with all requirements imposed by the Servicemembers' Civil Relief Act, that the servicemember's pay can be garnished, that the debt has not been discharged in bankruptcy, and that the creditor agrees to repay the servicemember within 30 days if payment made was erroneous.

The amount which may be deducted is a maximum of twenty-five percent (25%) of the disposable earnings of the servicemember (or lower depending on state law). The military pay which is subject to involuntary allotment due to judgment indebtedness is: Basic Pay, Special and Incentive Pay, Accrued Leave Payments, Readjustment Pay, Severance Pay, Lump-sum Reserve Bonus, and Inactive Duty Training Pay.

When the creditor sends the petition to the military finance center, they will notify the servicemember and his/her Commanding Officer. If applicable, the servicemember may invoke any of the following defenses:

- Failure to comply with the Servicemembers' Civil Relief Act
- Exigencies of military duties caused the servicemember's absence from the proceedings
- Information is false or erroneous
- The judgment has been satisfied, set aside, or materially amended
- Legal protection against establishing an involuntary allotment exists

The determination of whether exigencies of military duties exist, rests solely on the servicemember's Commanding Officer. Final determination of all other asserted defenses rests with the military finance center. Note that the DoD Financial Management Regulation prohibits allotments on vehicles, appliances or household goods, electronics, and other consumer items that are tangible and movable.

LEGAL ASSISTANCE SERVICES

A legal assistance attorney is available by appointment Monday through Thursday from 0800 - 1030 and 1300 - 1500, and Friday from 0900 - 1100. Powers of attorney and notaries are available Monday through Friday at the same times. For more information, please contact the Legal Assistance Office, located in Building 56, 32nd Street Naval Station, San Diego, CA, by telephone at (619) 556-2211, or our office at Naval Air Station North Island – Coronado, Building 318 – Second Deck, above the Fleet and Family Support Center, Saufley Road, by telephone at (619) 545-6437.

RESOURCES

Defense Finance Accounting Service: (866) 859-1845; www.dfas.mil/garnishment.html

Allotments from Pay for Child and Spousal Support Owed by Members of Uniformed Services on Active Duty, 42 U.S.C. § 665 (2012)

Consumer Credit Protection Laws, 15 U.S.C. §§ 1601 et seq. (2012)

DoD Implementing Regulations, 32 C.F.R. Part 54 (2013)

DoD Financial Management Regulation, DoD 7000.14-R, Vol. 7A, Chapters 40 and 42

Indebtedness of Military Personnel, 32 C.F.R. Parts 112–113 (2013)

Indebtedness of Military Personnel, DoD Directive 1344.09 (2008)