

CHAPTER 31

SENIOR OFFICER LEGAL ORIENTATION

CONSUMER LAW FOR LEADERS

I.	PLACING AREAS “OFF-LIMITS”	1
a.	<i>References</i>	1
b.	<i>Off-Limits Establishments and Areas</i>	1
c.	<i>Procedure – The Armed Forces Disciplinary Control Board</i>	2
	FEDERAL TRADE COMMISSION RULES	6
II.	COOLING OFF PERIOD FOR DOOR-TO-DOOR SALES (16 C.F.R. PART 429)	6
a.	<i>How Does This Rule Help Soldiers?</i>	6
b.	<i>How Does the Rule Work?</i>	6
c.	<i>How Does the Soldier Rescind the Transaction?</i>	8
III.	TELEMARKETING RULE (16 C.F.R. PART 310)	9
a.	<i>How Does This Help Soldiers?</i>	9
b.	<i>How Does the Rule Work?</i>	9
c.	<i>What Should A Leader Do?</i>	13
	SELECTED STATUTORY PROTECTIONS	14
IV.	TRUTH IN LENDING ACT (TILA)	14
a.	<i>How Does This Help Soldiers?</i>	14
b.	<i>How Does the Rule Work?</i>	14
c.	<i>Scope</i>	14
V.	FAIR CREDIT BILLING ACT (FCBA) & ELECTRONIC FUND TRANSFER ACT (EFTA)	27
a.	<i>How Do These Acts Help Soldiers?</i>	27
b.	<i>Procedure</i> ,	27
c.	<i>Limits the liability</i>	27
d.	<i>How Do these Acts Work?</i>	27
e.	<i>What Should A Leader Do?</i>	29
VI.	FAIR DEBT COLLECTION PRACTICES ACT	30
a.	<i>Purpose</i>	30
b.	<i>Military Regulations</i>	30
c.	<i>Overview of the debt collection process</i>	30
d.	<i>How Does the Act Work?</i>	30
VII.	PROCESSING REQUESTS FOR DEBT COLLECTION ASSISTANCE BY THE MILITARY	35
a.	<i>References</i>	35
b.	<i>A Process for Analysis</i>	35
c.	<i>Bankruptcy</i>	40
d.	<i>What should a leader do?</i>	40
VIII.	FAIR CREDIT REPORTING ACT (FCRA)	42
a.	<i>How Does the Act Help Soldiers?</i>	42
b.	<i>Introductory note</i>	42
c.	<i>How Does the act work?</i>	42
d.	<i>What should A leader do?</i>	47

INTRODUCTION

The following outline is a brief overview of several key consumer protection rules and laws. They have been selected because they address situations which soldiers are likely to experience. It is important to note that this outline **does NOT contain a complete discussion of all aspects of the cited rules and laws!** For complete advice, soldiers must see a legal assistance attorney. The outline is designed to provide leaders with an understanding of the situations addressed by the rules and laws so that they can do two things. First, recognize when a soldier needs to go to legal assistance, whether the soldier knows it yet or not. Second, decide how critical it is for the soldier to get to the Legal Assistance Office (LAO) quickly.

Each section is broken down into similar subsections. The first subsection is an explanation of how the rule/law helps soldiers. The middle subsections give some critical details about the rule/law. At the end, is a subsection explaining what a leader should do if they learn a soldier is experiencing the particular consumer problem addressed by the rule/law. Again, this is NOT a complete treatment of these rules. If you need further information, contact your servicing LAO.

I. PLACING AREAS “OFF-LIMITS”

a. References

1. AR 190-24, Armed Forces Disciplinary Control Boards and Off-installation Liaison and Operations (30 June 1993).
2. AR 600-20, Army Command Policy

b. Off-Limits Establishments and Areas

1. Purposes.
 - a) Maintain good discipline, health, morals, safety, and welfare of service members.
 - b) Prevent service members from being exposed to or victimized by crime-conducive conditions.
2. Effect of Off-limits Designation

- a) Service members are prohibited from entering establishments or areas declared off-limits according to AR 190-24.
 - b) Violations subject the service member to discipline under appropriate regulations or the UCMJ.
 - c) Family members should be made aware of the off-limits areas.
- c. Procedure – The Armed Forces Disciplinary Control Board
- 1. The Role of Commanders
 - a) Establishment of off-limits areas is a function of command.
 - b) Commanders retain substantial discretion to declare establishments or areas temporarily off-limits for their commands. These areas are given first priority for review at the AFDCB.
 - c) Prior to initiating AFDCB action, installation commanders will attempt to correct adverse conditions or situations through the assistance of civic leaders or officials.
 - 2. The Armed Forces Disciplinary Control Board (AFDCB)
 - a) Composition
 - (1) Established at the installation base or station level.
 - (2) Structured according to the needs of the command, but consider reps from the following functional areas:
 - (a) Law Enforcement
 - (b) Legal Counsel
 - (c) Medical, Health, and Environmental Protections

- (d) Public Affairs
- (e) Equal Opportunity
- (f) Fire and Safety
- (g) Chaplain
- (h) Alcohol and Drug Abuse
- (i) Personnel and Community Activities
- (j) Consumer Affairs

(3) Commanders designate a board president and voting members in the written agreement establishing the board. At most installations, the president is the Provost Marshal.

b) Function

- (1) Advise and make recommendations to commanders concerning eliminating conditions which adversely affect the health, safety, morals, welfare, morale, and discipline of the Armed Forces.
- (2) Meet as designated by the forming commander. Most meet at some predesignated interval (quarterly, monthly).
- (3) The Board makes recommendations as to the following conditions:
 - (a) Disorders and Lack of Discipline
 - (b) Prostitution
 - (c) Sexually Transmitted Disease

- (d) Liquor Violations
- (e) Racial and other discriminatory practices
- (f) Alcohol and Drug Abuse
- (g) Criminal or illegal activities involving cults or hate groups
- (h) Illicit Gambling
- (i) Areas Susceptible to terrorist activities
- (j) Unfair commercial or consumer activities
- (k) Other undesirable conditions that may adversely affect members of the military or their families.

(4) The Board coordinates with local and civil authorities regarding these conditions.

c) Procedure

- (1) The Board receives and considers reports of the conditions cited above.
- (2) The board may investigate or visit an establishment, but if they do so, the President must submit a report of the findings and recommendations from the visit at the next meeting.
- (3) DUE PROCESS: When the board concludes that conditions adverse to Armed Forces personnel exist, they must do the following before placing the establishment off-limits:

- (a) Notify the individual responsible (owner or manager) for the conditions of the problem. This notification letter must be sent by certified mail.
 - (b) The proprietor should be afforded an opportunity to appear before the board.
 - (c) Conduct further investigation to determine whether improvements have been made.
- (4) Make a recommendation to the sponsoring commander. The commander will approve or disapprove and notify the president.
- (5) The president will notify the proprietor of the outcome.
- (6) Commanders will publish a list of off-limits establishments
- d) Limitations.
- (1) Commanders may not post signs on private property (saying “off-limits.”)
 - (2) OCONUS procedures must be consistent with the SOFA for that country.
 - (3) Off-limits should only be imposed where there is substantive information supporting the action. The board must not act arbitrarily.
- e) Removal.
- (1) The proprietor may petition for removal at any time. Removal action must be taken by the AFDCB.
 - (2) A change in ownership, management, or name does NOT in and of itself revoke the off-limits order.

- (3) Additionally, the Board should inspect off-limits establishments at least quarterly to ensure that continued limitations are justified.
- (4) Once the board is convinced that adequate corrective measures have been taken, they should forward a recommendation for removal to the commander.

FEDERAL TRADE COMMISSION RULES

II. COOLING OFF PERIOD FOR DOOR-TO-DOOR SALES (16 C.F.R. PART 429)

- a. How Does This Rule Help Soldiers?
 1. Rule grants unilateral right to rescind consumer purchase contracts for three business days following a door-to-door sale.
 2. Rule contains disclosure requirements and notice requirements.
 3. Leaders may be able to get a soldier to the Legal Assistance Office in time to use the rule for protection against unwise purchases/contracts.
- b. How Does the Rule Work? You must have a “door-to-door” sale as defined by the rule. If you do, the consumer may cancel within 3 business days for any reason or no reason.
 1. Door-to-door Sale: Sale, lease, or rental of **consumer goods** and services with a total purchase price of \$25.00 or more personally solicited by the seller at a **place other than the permanent place of business of the seller**.
 - a) Consumer goods are those purchased primarily for personal, family, or household purposes.

- b) Other than the Permanent Place of Business of the Seller. 1995 Amendments added an annotation to the definition that includes the following examples of places that fit within the definition:
 - (1) Buyer's residence;
 - (2) Facilities rented on a temporary or short-term basis including hotel or motel rooms, convention centers, fairgrounds, restaurants;
 - (3) Sales at the buyer's workplace;
 - (4) Sales in dormitory lounges. This would include barracks.

- 2. Business day: Any day except Sundays and Federal Holidays. Current Federal Holidays are New Year's Day, Martin Luther King, Jr.'s Birthday, President's Day, Memorial Day, Independence Day, Labor Day, Columbus Day, Veteran's Day, Thanksgiving and Christmas.

- 3. Business activities specifically EXCLUDED from the rule. These are NOT "door-to-door" sales!
 - a) Pre-arranged visits after initial contact at a seller's regular place of business. (For example, carpet salesman who comes to measure your home after you visit the carpet store.)

 - b) Contracts in which the cooling-off period of the Truth-in-lending act applies. (primarily home equity loans).

 - c) Buyer-initiated contacts for a bona-fide emergency need. (For example, you call the furnace repairman in the winter and sign the service order when he gets to your house.) However, the consumer must waive the cooling-off period in writing!

 - d) Solicitations by mail or telephone. (See the Telemarketing Rule below).

- e) Buyer initiated visit for repairs of personal property. (For example, you call a computer repairman to come to your home and you sign the service order only when he arrives.)
 - f) Sale (or rental) of Real Property, Insurance, or Securities. (These are governed by other regulations.)
 - g) Automobile tent sales (where dealer has permanent place of business elsewhere).
 - h) Craft Fairs.
4. Waiver is not allowed. (Exception - emergency needs).
- c. How Does the Soldier Rescind the Transaction?
- 1. Consumer must mail or deliver written notice to seller before midnight of the third business day following the transaction.
 - 2. Use cancellation form provided by the seller, or,
 - 3. Use any written form, to include a telegram, that communicates the desire to rescind to the seller.
- d. What Should A Leader Do?
- 1. If a soldier indicates that he has participated in a “door-to-door” sale, MAKE time for him to go have the transaction reviewed at the LAO immediately.
 - 2. Have the soldier bring ALL documentation he may have.
 - 3. **Time is of the essence.** Once three business days have passed, the rule does not help the soldier at all!

III. **TELEMARKETING RULE** (16 C.F.R. Part 310).

- a. How Does This Help Soldiers?
 1. The Rule implements the Telemarketing & Consumer Fraud and Abuse Protection Act which was enacted to “offer consumers necessary protection from telemarketing deception and abuse.”
 2. The Rule prohibits certain telemarketing practices and prescribes certain disclosures.
 3. Leaders should be familiar with the Rule so that they know when to refer soldiers to the Legal Assistance Office to seek protection from deceptive and abusive telemarketing activities.

- b. How Does the Rule Work? The Rule makes certain telemarketing practices an Unfair or Deceptive Act or Practice (UDAP) subject to enforcement by private lawsuit, state action, or federal action.
 1. **Telemarketing** under the Rule is any plan, program or campaign which is conducted to induce the purchase of goods or services by use of one or more telephones AND which involves more than one interstate telephone call.
 2. Specifically excluded are:
 - a) Most Catalog Sales. (Like Lands End where the solicitation is a written catalog and the sales are made only after the consumer initiates a call to the sellers sales center.)
 - b) Sale of pay-per-call services (Regulated under other rules.)
 - c) Sale of franchises (Regulated under other rules.)
 - d) Calls where the sale is not complete until after a face-to-face presentation by the seller.

- e) Most Calls initiated by consumer:
 - (1) Without any solicitation on the part of the seller;
 - (2) In response to an advertisement through any media.
 - (3) In response to a direct mail solicitation that makes proper disclosures.
- f) Calls between a telemarketer and any business (except for the sale of nondurable office or cleaning supplies).

3. **TELEMARKETER** means any person who, in connection with telemarketing, initiates or receives telephone calls to or from the customer, whether or not the telemarketer is an employee of the seller of the product.

c. Prohibitions of the Rule.

1. Deceptive Telemarketing Acts or Practices (16 C.F.R. § 310.3).

- a) Failure to disclose:
 - (1) Total costs of transaction
 - (2) All material restrictions, limitations, and conditions of transaction.
 - (3) Any policy of not making refunds.
 - (4) All material terms and conditions of any refund, cancellation, or repurchase policy that IS mentioned in the call.
 - (5) In a prize promotion, the odds of receiving a prize and all material conditions or costs to receive or redeem the prize.

- b) Misrepresenting, directly or by implication:
 - (1) Total costs of transaction
 - (2) Any material restrictions, limitations, and conditions of transaction.
 - (3) Any material aspect of the performance, efficacy, nature, or central characteristics of the goods or services.
 - (4) Any material terms and conditions of any refund, cancellation, or repurchase policy
 - (5) Any material aspect of a prize promotion.
 - (6) Any material aspect of an investment opportunity.
 - (7) Seller's affiliation with any government or third party organization.

- c) Obtaining or submitting for payment a form of negotiable paper without the person's express verifiable authorization.
Authorization is verifiable if it is:
 - (1) Express and in writing.
 - (2) Express and made orally and is tape recorded
 - (3) Written confirmation of the transaction has been sent to the customer PRIOR TO submission for payment and the confirmation includes all disclosures required under the Rule.

- d) Making a false or misleading statement to induce any person to pay for goods or services.

2. Abusive Telemarketing Acts or Practices.

- a) Threats, intimidation, profane, or obscene language.
- b) Requesting or receiving payment for goods and services to fix credit reports UNLESS:
 - (1) The time frame in which the seller is supposed to have provided all goods and services has passed AND
 - (2) The seller provides the person with documentation of success in the form of a credit report having been issued more than 6 months after the results were achieved.
- c) Requesting or receiving payment for goods and services represented to return money or other value from a previous telemarketing transaction until 7 business days after the money or other item is returned to the consumer.
- d) A PATTERN OF PHONE CALLS that is:
 - (1) causing the phone to ring repeatedly and continuously with intent to annoy, abuse, or harass any person at the called number OR
 - (2) Initiating a call with a person who has previously stated that he or she does not wish to receive calls made by or on behalf of the seller whose goods or services are being offered.
- e) Calls made earlier than 8:00 a.m. or later than 9:00 p.m. at the called person's location UNLESS the person consents to calls outside that time frame.
- f) Failure to make the following oral disclosures:
 - (1) The identity of the seller;
 - (2) That the purpose of the call is to sell goods and services;

(3) The nature of the goods and services; AND

(4) That no purchase or payment is necessary to be able to win a prize or participate in a prize promotion if a prize promotion is offered.

c. What Should A Leader Do?

1. If a soldier has experienced the problems outlined above, have him make a routine Legal Assistance Appointment.
2. The soldier should write out his exact recollection of the conversation with the telemarketer immediately. This will prevent him from forgetting critical details prior to the appointment.
3. Get the soldier to the LAO at the appointed time.

SELECTED STATUTORY PROTECTIONS

IV. TRUTH IN LENDING ACT (TILA).

- a. How Does This Help Soldiers?
 1. TILA requires "meaningful disclosure of credit terms" to allow for comparison shopping of credit terms. Additionally TILA is designed to protect consumers against inaccurate and unfair credit billing and credit card practices.
 2. TILA is to be liberally construed in favor of consumers, with creditors who fail to comply with TILA in any respect becoming liable to the consumer regardless of the nature of the violation or creditors' intent.
- b. How Does the Rule Work? The Rule requires certain disclosures regarding the terms of credit extension by businesses that extend credit when certain conditions are met.
- c. Scope.
 1. TILA **applies to:**
 - a) Each individual or business that offers or extends credit when 4 conditions are met:
 - (1) Credit offered or extended to consumers,
 - (2) Done "regularly" - extends credit more than 25 times (or more than 5 times for transactions secured by dwelling) per year,
 - (3) Subject to a finance charge or is payable by written agreement in more than 4 installments, and

- (4) Primarily for personal, family, or household purposes.
 - b) If a credit card is involved, however, certain provisions apply even if the credit is not subject to a finance charge, is not payable by agreement in more than 4 installments, or if the credit card is used for business purposes.
 - c) Also, certain requirements apply to persons who are not creditors but who provide applications for home equity plans to consumers.
2. TILA is inapplicable to:
- a) Creditors who extend credit primarily for business, commercial, agricultural, or organizational purposes or other purposes that are otherwise regulated, such as securities brokers.
 - b) Student Loan Programs.
 - c) Credit transactions, over \$25,000.00, except those involving a security interest in real property, or in personal property used or expected to be used as the principal dwelling of the consumer.
- b. Material Disclosures Required.
- 1. Required disclosures must be made clearly and conspicuously, in meaningful sequence, in writing, and in a form the consumer may keep.
 - 2. FRB promulgates model disclosure forms, but where they would be misleading, lenders should provide tailored notice consistent with TILA.
 - 3. States also regulate credit disclosure:
 - a) CHECK CASHING COMPANIES

- (1) *Virginia v Allstate Express Check Cashing, Inc.*, No. HC-44-1; *Virginia v Foremost Group, Inc.*, No. HC-1234-1; *Virginia v Ameracheck Corp.*, No. HC-1232-1 (Cir. Ct., Richmond Sep. 1993) - Check-cashing companies violated Virginia Consumer Finance Act by making short-term advances to customers who write personal checks in return for substantially smaller amounts of on-the-spot cash in transactions amounting to short term loans with annual percentage rates sometimes higher than 2,000%. (Cases cited in BNA Antitrust & Trade Reg. Daily (Oct. 7, 1993).
- (2) *Turner v. E-Z Check Cashing*, 35 F. Supp. 2d 1042 (M.D. Tenn. 1999) for a description of the mechanics of a check advancement loan; *White v. Check Holders, Inc.*, 1999 Ky. LEXIS 68 (Ky. 1999)(holding check advancement transactions are loans for purposes of state usury laws); *Smith v. The Cash Store*, 1999 U.S. Dist. LEXIS 9040 (N.D. Ill. 1999)(applying TILA to check advancement loans).

b) TAX REFUND ANTICIPATION LOANS

- (1) *North Carolina Ass'n of Electronic Tax Filers v Graham*, 429 S.E.2d 544 (N.C. 1993) (North Carolina's Refund Anticipation Loan Act (N.C. Gen. Stat. §§ 53-245-254) which imposes registration and disclosure requirements on and otherwise regulates tax refund anticipation loans does not violate U.S. Constitution and was not preempted by federal tax and banking laws. State law ensured residents were fully informed as to difference between refund anticipation loan and simple electronic filing of returns and as to potentially high cost of refund loan.
- (2) Texas Attorney General settled deceptive trade practices lawsuit with H&R Block, Inc. forcing tax return company to advertise its "Rapid Refund" program is actually a loan program charging customers up to 150% in annual interest. Filed as UDAP suit. [Case reported in National Association of Attorneys General Consumer Protection Report (Sep. 1993)]

- (3) *Cades v. H. & R Block, Inc.*, 43 F.3d 869 (4th Cir. 1994), cert. Denied, 515 U.W. 1103 (1995); *Zawikowski v. Beneficial National Bank*, 1999 WL 35304 (N.D. Ill. 1999)(applying TILA to refund anticipation loan); *Affatato v. Beneficial Corp.*, 1998 WL 472404 (E.D.N.Y. 1998)(discussing timing of refund anticipation loan disclosures); *Basile v. H & R Black, Inc.*, 897 F. Supp. 194 (E.D. Pa. 1995).
- (4) But see *Cullen v. Bragg*, 350 S.E.2d 798 (Ga. App. Ct. 1986)(holding TILA inapplicable to refund anticipation transactions because the consumer had no obligation to repay).

c.) PAWN TRANSACTIONS/AUTO PAWN

- (1) *Burnett v. Ala Moana Pawn Shop*, 3 F.3d 1261 (9th Cir. 1993)(decision discusses extensively factors considered, including, e.g., fact that 75% of customers “repurchased” the goods; parties’ intent; title to property did not pass until end of repurchase option period, which could be extended for a fee, which court held analogous to charging interest; “sales” prices related to amount customer needed, rather than fair market value of goods).
- (2) *Pendleton v. American Title Brokers, Inc.*, 754 F. Supp. 860 (S.D. Ala. 1991)(where the ad read, “Pawn your title, keep your car;” the borrower signed a “pawn ticket/loan” contract, repayable with interest in weekly installments and executed a leaseback of the automobile, to run concurrently with the loan repayment, for a weekly rental amount equal to 10% of the loan; also included a provision granting the creditor the right of repossession in the event of default. This was a credit transaction, therefore TILA applied and since the proper disclosures were not made, TILA was violated). Good example of a disguised Credit Sale.

c. Closed-end Credit Transactions:

1. Definition: “other than open-end credit” - Credit is advanced for a specific time period and, the amount financed, finance charge, and schedule of payments are “agreed upon” by the creditor and the consumer. (See 12 C.F.R. § 226.2(a)(10)).

2. Closed End Disclosures:
 - a) Identity of the creditor,
 - b) Amount financed,
 - c) Itemization of amount financed,
 - d) Annual percentage rate, including applicable variable-rate disclosures,
 - e) Finance charge,
 - f) Total of payments,
 - g) Payment schedule,
 - h) Prepayment/late payment penalties, and,
 - i) If applicable to the transaction:
 - (1) Total sales cost,
 - (2) Demand feature,
 - (3) Security interest,
 - (4) Insurance,

(5) Required deposit, and

(6) Reference to contract.

d. Violations of TILA.

1. Creditors are liable for violation of the disclosure requirements, regardless of whether the consumer was harmed by the nondisclosure, **UNLESS**:

a.) The creditor corrects the error within 60 days of discovery and prior to written suit or written notice from the consumer, or,

b.) The error is the result of bona fide error. The creditor bears the burden of proving by a preponderance of the evidence that:

(1) The violation was unintentional.

(2) The error occurred notwithstanding compliance with procedures reasonably adapted to avoid such error (error of legal judgment with respect to creditor's TILA obligations not a bona fide error).

2. Civil remedies for failure to comply with TILA requirements:

a.) Action in any U.S. district court or in any other competent court within one year from the date on which the violation occurred. This limitation does not apply when TILA violations are asserted as a defense, set-off, or counterclaim, except as otherwise provided by state law.

b.) Private remedies - applicable to violations of provisions regarding credit transactions, credit billing, and consumer leases.

(1) Actual damages in all cases.

(2) Attorneys' fees and court costs for successful enforcement and rescission actions.

(3) Statutory damages.

- (a) Individual actions - double the correctly calculated finance charge. For closed end transactions secured by real property – not less than \$200 or more than \$ 2,000.
- (b) Class actions - an amount allowed by the court with no required minimum recovery per class member to a maximum of \$500,000 or 1% of the creditor's net worth, whichever is less.
- (c) Can be imposed on creditors who fail to comply with specified TILA disclosure requirements, with the right of rescission, with the provisions concerning credit cards, or with the fair credit billing requirements.

3. Enforcement by administrative agencies.

a.) Who:

- (1) Banks - Federal Reserve Board, the Federal Deposit Insurance Corporation, and other agencies.
- (2) Others not subject to the authority of any specific enforcement agency - Federal Trade Commission.
- (3) Nine separate agencies currently have enforcement responsibilities.

b.) What - Enforcement agencies can do:

- (1) Issue cease and desist orders or hold hearings pursuant to which creditors are required to:

- (a) Adjust debtors' accounts (15 U.S.C. § 1607(e)(4)(A), (B)) to ensure that the debtor is not required to pay a finance charge in excess of the finance charge actually disclosed or,
 - (b) the dollar equivalent of the annual percentage rate actually disclosed, whichever is lower.
 - (2) If the FTC determines in a cease and desist proceeding against a particular individual or firm that a given practice is "unfair or deceptive," it may proceed against any other individual or firm for knowingly engaging in the forbidden practice, even if that entity was not involved in the previous proceeding.
- c) Criminal penalties - Willful and knowing violations of TILA permit imposition of a fine of \$5,000, imprisonment for up to 1 year, or both.
- d) Rescind the contract (see below).
- e. Truth In Lending Act Rescission Rights. 3-Day Cooling Off Period (15 U.S.C. § 1635; 12 C.F.R. § 226.15).
 - 1. General - **In addition to remedies described above**, consumers who enter into certain home equity loans may also have rescission rights as described below.
 - a) Under TILA, a consumer may rescind a consumer credit transaction involving a "non-purchase money" security interest in the consumer's **principal dwelling**:
 - (1) **Within 3 business days** (excludes Sunday and most Federal holidays) if all TILA disclosure requirements are met, or
 - (2) During an extended statutory period for TILA disclosure violations:

- (a) Failure to give adequate **notice** of right to rescind, clearly and conspicuously in a form the consumer may keep.
 - (b) Failure to give adequate TILA credit term **disclosures**.
- b) Rescission **voids the security interest** in the principal dwelling.
- c) Consumer must have ownership interest in dwelling that is encumbered by creditor's security interest. Consumer need not be a signatory to the credit agreement.
- d) TILA rescission rights do not apply to business credit transactions, even if secured by consumer's principal dwelling.

2. Scope of Rescission Rights (WHAT).

- a.) Applies to loan involving a non-purchase money security interest in consumer's principal residence (i.e., home equity loans/lines of credit/home improvement loans, etc.).
- b.) A consumer can have only one principal dwelling at a time. A vacation or other second home is not a principal dwelling. A transaction secured by a second home cannot be rescinded even if the consumer plans to reside there in the future.

3. Time to Exercise Right to Rescind (WHEN).

- a.) Right to rescind until midnight of third business day following the later of:
 - (1) Consummation of transaction,
 - (a) In the case of closed-end credit, when the credit agreement is signed.

- (b) In the case of open-end credit, the occurrence giving rise to the right to rescind:
 - (i) Opening the plan,
 - (ii) Each credit extension above previously established credit limit,
 - (iii) Increasing the credit limit,
 - (iv) Adding to an existing account a security interest in the consumer's principal dwelling, and
 - (v) Increasing the dollar amount of the security interest taken in the dwelling to secure the plan.

(2) Delivery of the required rescission right notice, or

(3) Delivery of all material disclosures.

b.) Extended right to rescind.

(1) Continuing right to rescind if required disclosures not made or made incorrectly, but...

(2) Statutory cut-off of extended right to rescind at 3 years after consummation.

(3) Will be cut off earlier by transfer of all of the consumer's interest in the property (including involuntary transfer such as foreclosure), or sale of the property.

(4) Violations Giving Rise to An Extended 3-Year Right to Rescind.

- (a) Failure to give proper rescission notice.
- (b) Creditors are required to deliver two copies of the right to rescind to each consumer entitled to rescind.
- (c) Notice must disclose the following:
 - (i) The retention or acquisition of a security interest in the consumer's principal dwelling,
 - (ii) The consumer's right to rescind,
 - (iii) How to exercise the right to rescind, with a form for that purpose, setting forth the creditor's business address,
 - (iv) The effects of rescission, and
 - (v) The date the rescission period expires.

4. Waiver of the Right to Rescind.

- a.) Consumers may modify or waive the right to rescind the credit transaction if extension of credit is needed to meet a bona fide personal financial emergency before end of rescission period. Waiver must be knowing and voluntary.
- b.) Consumer must provide creditor with dated written statement describing emergency,
 - (1) Specifically modifying or waiving right, and
 - (2) Signed by all consumers entitled to rescind.

2. Delay of Performance.

- a) Unless the rescission period has expired and the creditor is reasonably satisfied that the consumer has not rescinded, the creditor must not, either directly or through a third party,
 - (1) Disburse advances to the consumer or others,
 - (2) Begin performing services for the consumer, or
 - (3) Deliver materials to the consumer.

- b) During the delay period, a creditor may:
 - (1) Prepare cash advance check (or loan check in the case of open-end credit),
 - (2) Perfect the security interest and/or
 - (3) Accrue finance charges,
 - (4) In the case of open-end credit, prepare to discount or assign the contract to a third party.

- c) Delay beyond rescission period.
 - (1) Creditor must wait until he/she is reasonably satisfied consumer has not rescinded.
 - (2) May do this by:
 - (a) Waiting reasonable time after expiration of period to allow for mail delivery, or
 - (b) Obtaining written statement from all eligible consumers that right not exercised.

3. Mechanics of Rescission Process.
 - a) Consumer sends or delivers written notice to creditor.
 - b) When consumer rescinds, the security interest becomes void and consumer is not liable for any amount, including finance charges.
 - (1) Within 20 calendar days after receiving notice of rescission, creditor must:
 - (a) Return any property or money given to anyone in connection with the transaction,
 - (b) Take whatever steps necessary to reflect termination of the security interest.
 - (2) When creditor meets its obligations, consumer must tender the money or property to creditor, or if tender not practicable, it's reasonable value.
 - (3) If creditor fails to take possession of tendered money or property within 20 days, consumer may keep it without further obligation.
 - c) Court may modify procedures.
 - (1) Court has power to exercise equitable discretion and condition rescission of a loan upon the return of the loan proceeds.
 - (2) *See Family Financial Services v. Spencer, 677 A.2d 479*(Conn. App. 1996)(creditor's failure to honor the rescission nullified the security interest, barring foreclosure, and the consumer was not required to tender back the proceeds).

- (3) See Reynolds v. D & N Bank, 792 F. Supp. 1035 (E.D. Mich. 1992). Consumer canceled home improvement contract 14 months after signed; 4 TILA violations; creditor failed to respond (did not return money or cancel security interest); consumer sued to enforce rescission, obtain damages, and **keep value of property purchased rather than tender it to creditor**. Court gave creditor 20 days to comply with its obligations, which creditor then failed to do. Court, in unreported opinion, then granted consumer's request. Creditor blew second chance! (See NCLC Reports, Vol. 11, March/April 1993).

V. FAIR CREDIT BILLING ACT (FCBA) & ELECTRONIC FUND TRANSFER ACT (EFTA)

- a. How Do These Acts Help Soldiers?
- b. They establish procedures for complaining about billing errors and require creditors to respond to such complaints,
1. Either by correcting the error or,
 2. By explaining any rejection of the billing error complaint.
- c. They limit the liability of consumers for unauthorized transactions.
- d. How Do these Acts Work? These two acts are closely related and provide similar protections to different types of transactions. The following table compares the two acts and lays out their protections side-by-side. The key point in these areas is that, in many situations where soldiers might take credit cards or ATM cards from each other, you can help the victim as well as punish the perpetrator.

	Fair Credit Billing Act	Electronic Fund Transfer Act
Applicability	Open-end consumer credit transactions (i.e., credit cards, store charge accounts).	Fund Transfers directly from accounts using an electronic device (i.e., ATM machines, debit cards, etc.)

	Fair Credit Billing Act	Electronic Fund Transfer Act
Billing Errors	<p>Bills for transactions that never occurred.</p> <p>Transactions by unauthorized people.</p> <p>Bills for erroneous amounts.</p> <p>Bills for goods/services that were not delivered or were not accepted.</p> <p>Failure to credit account properly.</p> <p>Computation errors.</p> <p>Bills sent to incorrect addresses, provided that the creditor received notice of the change of address at least 20 days before the end of the billing cycle for which the statement was sent out.</p>	<p>An unauthorized electronic fund transfer,</p> <p>An incorrect electronic fund transfer to or from consumer's account,</p> <p>Omission from a periodic statement of an electronic fund transfer to or from consumer's account that should have been included,</p> <p>Computational or bookkeeping error made by financial institution relating to an electronic transfer,</p> <p>Consumer's receipt of an incorrect amount of money from an electronic terminal,</p> <p>An electronic fund transfer not identified in accordance with regulations, or,</p> <p>A consumer's request for any documentation required to be given by the financial institution, or additional clarification concerning an electronic transfer. Does not include routine inquiry about the balance of account.</p>
Billing Error Resolution	<p>Notify IN WRITING w/I 60 days of transmittal of periodic statement.</p> <p>Consumer may withhold payment. Paying may waive some claims & defenses.</p> <p>Card Issuer must do reasonable investigation and resolve complaint within 2 billing cycles (no more than 90 days.)</p>	<p>Notify ORALLY or in writing w/I 60 days.</p> <p>Access Device Issuer must resolve complaint within 10 (20) days or 45 (90) days if they provisionally recredit.</p>
Unauthorized Use	No actual, implied, or apparent authority	No actual authority

	Fair Credit Billing Act	Electronic Fund Transfer Act
Liability for Unauthorized Use	\$50 maximum	Three-Tiered Liability Notice w/i 2 Business Days: \$50 2 Bus. Days < Notice < 60 days from transmittal of statement: \$500 Notice > 60 days - Unlimited
Other Provisions	Claims & Defenses IF: K entered W/I 100 miles or same state as billing address K > \$50	

e. What Should A Leader Do?

1. Ensure that soldiers are aware that they have certain rights and protections under law in dealing with their credit card companies.
2. Invite a Legal Assistance Attorney (LAA) to speak at a professional development class about this subject.
3. If a soldier has a problem with billing errors or unauthorized charges, the soldier should be allowed to seek legal assistance immediately.
4. **Time is of the essence!** The sooner the soldier properly notifies the credit card issuer, the greater the protection he has against such things as unauthorized transfers. Additionally, the proper assertion of claims and defenses can keep the soldier from having to pay the disputed bill.

VI. FAIR DEBT COLLECTION PRACTICES ACT

- a. The Act circumscribes the conduct of debt collection agencies to protect consumers from abusive practices.
- b. Military regulations prescribe the proper involvement of commander's in the process of debt collection.
- c. OVERVIEW OF THE DEBT COLLECTION PROCESS.
 1. Creditors (those to whom the debt is owed) start collection efforts with series of form letters, graduate to phone calls or personal visits, then to repossession or referral to collection agency or lawyer for suit.
 - a) Initial contacts usually friendly "reminder" letters.
 - b) Followed by letters requesting consumer phone to discuss problem and suggesting nonpayment is serious.
 - (1) Phone calls may serve legitimate purpose of determining why payments are late and resolving misunderstandings and disputes.
 - (2) Calls may be used illegally to harass consumer in attempts to collect debt from distressed consumer.
 - c) When payments 30 to 60 days late, creditor generally threatens to repossess collateral or foreclose on a mortgage.
 2. At any stage of process, creditor may write off debt, either because debt obviously not collectible or because creditor has internal rule that obligations unpaid for certain period of time will be charged off for tax purposes.

3. Creditor may turn account over to lawyer or debt collector (one in the business of collecting debts for others).
 - a) Lawyer may simply send or furnish creditor with dunning letter or series of letters for flat fee or pursuant to retainer. Lawyer may also be retained to initiate legal action, usually contingency fee, retaining portion of amount collected (i.e., 30-50%).
 - b) Collection Agency may be retained for flat fee or retainer, many times a 50% contingency.
 - (1) Seldom do collection agencies bother to get all documents related to debt from creditor -rather; they get name, address of consumer, and amount of debt.
 - (2) Must comply with federal Fair Debt Collection Practices Act.
- d. How Does the Act Work? The Act applies almost exclusively to debt collectors. The key to the Act is understanding who it defines as "debt collectors" and how the conduct of these people is limited.

1. Key Definitions.

- a) A "debt collector" is a person who uses any instrumentality of interstate commerce or the mails in any business the principal purpose of which is the collection of any debts, or who regularly collects debts owed to others.
 - (1) Includes a party based in U.S. who collects debts owed by consumers residing outside U.S. Residence of consumer is irrelevant.
 - (2) Attorneys may meet the definition of "debt collector."

- (3) Not included in the definition are, among others (there are 6 categories of excepted persons):
- (4) Officers or employees of a creditor collecting debts for that creditor.
- (5) Any officer or employee of the U.S. or any state to the extent that collecting or attempting to collect is in performance of his/her duty. Thus, a collection by AAFES is NOT covered either because they are the creditor or they are an employee of the U.S.

- b) A **"creditor"** is a person or organization to whom or to which a **debt is owed**. Generally, creditors are not included within the definition of "debt collector" when collecting its own debts using its own name.

(States may have statutes which limit conduct of creditors as well as debt collectors)

- c) A **"debt"** is any obligation or alleged obligation of a consumer to pay money arising out of a transaction in which the money, property, insurance, or services which are the subject of the transaction are primarily used for personal, family, or household purposes, whether or not the obligation has been reduced to judgment (i.e., overdue obligations on bills, dishonored checks used to pay for goods or services intended for personal, family, or household purposes, student loans).

2. Requirements imposed by the FDCPA:

- a) Requires validation of debts (a debt collector must notify the debtor of the nature of the debt, the identity of the creditor, and must cease collection efforts until verification of the debt is completed if the consumer chooses to verify the debt).

- b) Requires that a debt collector's letter disclose that any information provided by recipient will be used to collect debts.
- c) Provides a means by which a consumer can stop the attempts of a debt collector to communicate with the consumer.

3. Protections Under the Act.

- a) Restricts contacts by debt collectors with third parties.
- b) Debt collectors may contact third parties seeking debt collection assistance only if:
 - (1) The debtor has given prior consent directly to the debt collector, or
 - (2) The debt collector has obtained a court order permitting such contact, or
 - (3) Contact is reasonably necessary to effectuate a post-judgment judicial remedy.
- c) Debt collectors may contact third parties to acquire information about consumer's location, but must
 - (1) Identify self, state he/she is trying to confirm or correct location information about consumer, and only if expressly asked, identify his/her employer,
 - (2) Refrain from referring to the debt,
 - (3) Usually make only a single contact with each third party,
 - (4) Not communicate by postcard,

- (5) Not indicate the collection nature of his/her business purpose in any written communication, and
 - (6) Limit communications to the consumer's attorney, where collector knows of the attorney, unless the attorney fails to respond.
- d) They may contact a consumer reporting agency if otherwise permitted by law.
4. Without prior consent of the consumer given directly to the debt collector or a court order, a debt collector may not communicate with a consumer (this includes consumer's spouse, parent if consumer is a minor, guardian, executor, or administrator):
- a) At unusual or inconvenient times or places (8:00 A.M. - 9:00 P.M. at consumer's location is presumed convenient).
 - b) If the debt collector knows the consumer is represented by an attorney and knows or can readily ascertain the attorney's name and address.
 - c) At the consumer's place of employment if the debt collector knows or has reason to know that the consumer's employer prohibits the consumer from receiving such communication.
 - d) After the consumer notifies the debt collector in writing that the consumer refuses to pay the debt or that the consumer wishes the debt collector to cease further communication with the consumer, except that the debt collector may notify the consumer that the debt collector intends to invoke a specific remedy.
5. A debt collector may not engage in any conduct the natural consequence of which is to harass, oppress, or abuse any person in connection with a debt.

6. A debt collector may not use any false, deceptive, or misleading representations in connection with the collection of any debt.
7. A debt collector may not use unfair or unconscionable means to collect any debt.

VII. PROCESSING REQUESTS FOR DEBT COLLECTION ASSISTANCE BY THE MILITARY.

- a. References.
 1. 32 C.F.R. Part 113, Indebtedness of Military Personnel (1999).
 2. DOD Directive 1344.9.
 3. AR 600-15, Indebtedness of Military Personnel (14 March 1986). Soon to be amended to include regulations implementing Garnishment of military wages.
- b. A Process for Analysis. Consult you servicing judge advocate for assistance with the execution of this process.
 1. STEP 1: Should this person even be calling me?
 - a) Requests from Debt Collectors. Remember that debt collectors are limited in contacting third parties. (See Above.) As a general rule, we do not assist debt collectors, only creditors.
 - b) Requests from Creditors.
 - (1) A "creditor" is a person or organization to whom or to which a debt is owed.

- (2) Creditors are entitled to contact third parties for assistance unless state law precludes such contact. DOD installations in those states will follow state law because it does not infringe upon significant military interests.
- c) Credit Unions and Banks:
 - (1) Those serving DOD must conform to Standards of Fairness. (See AR 600-15, App. B)
 - (2) Commanders will answer all check complaints.
 - (3) No mention that they are exempt from state law prohibiting third party contact.
2. STEP 2: Consult with Your Servicing Judge Advocate and Review DOD/Army Policy and Regulations.
 - a) Department of Defense Directive 1344.9.
 - (1) DOD Definitions.
 - (a) **Just Financial Obligations.** A legal debt 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 SSCRA, if applicable.
 - (b) **A Proper and Timely Manner.** A manner which under the circumstances does not reflect discredit on the military service.
 - (c) **Debt Collector.** Same as FDCPA.
 - (2) General Policies.

- (a) Members are expected to pay just financial obligations in proper and timely manner.
 - (b) Services have no legal authority, except in the case of court ordered alimony or child support, to require members to pay a private debt or to divert any part of their pay for its satisfaction.
 - (c) Enforcement of private obligations of a military member is a matter for civil authorities.
- (3) Processing debt complaints will not be extended to those:
- (a) Who have not made a bona fide effort to collect the debt directly from the military member;
 - (b) Whose claims are patently false and misleading;
 - (c) Whose claims are obviously exorbitant.
- b) Army policy reflects that of DOD and adds some other specifics.
- (1) We will assist creditors only. We will NOT assist debt collectors.
 - (2) To receive assistance, creditors must provide commanders with the following information (AR 600-15, para. 4-3).
 - (a) Certificate of Compliance with ONE of the following:
 - (i) DOD Standards of Fairness
 - (ii) The Truth in Lending Act (TILA)
 - (iii) State Regulations

- (iv) Creditors not subject to the TILA (such as public utility companies) may submit a certificate that certifies that they charged no interest, finance charge, or other fee that violates the laws of the state where the service they provided was requested.
 - (b) A true copy of the signed contract.
 - (c) The general and specific disclosures given to the soldier.
 - (d) A copy of a judgment or written permission from the soldier allowing employer contact **if state law requires it**. (Contact your servicing SJA office for advice on this.)
 - (e) Proof of efforts by the creditor to collect directly from the soldier.
 - (3) Foreign owned companies must submit with their requests for assistance:
 - (a) Copy of terms of the debt (English translation), and
 - (b) Certification it has subscribed to DOD Standards of Fairness.
3. STEP 3: Provide/Deny Assistance IAW Policy
- a) Advise creditors who have not met requirements what the requirements are and that the commander will provide no assistance until those requirements are met. (Form letters to do this are included in AR 600-15).
 - b) For creditors who HAVE met requirements, Commanders shall:

- (1) Review facts surrounding transaction forming basis of complaint, to include:
 - (a) Member's legal rights and obligations,
 - (b) Member's defenses or counterclaims.

 - (2) **Advise member** that:
 - (a) Just financial obligations are expected to be paid in proper and timely manner, and
 - (b) Financial and legal counseling services are available.

 - (3) Notify claimant that soldier told of complaint, summarizing soldier's intentions if soldier gave permission to release that information.

 - (4) Assistance should be provided within 45 days (for the contiguous 48 states) or 60 days (all other locations). AR 600-15, para. 4-3e.
- c) Commanders will not:
- (1) Arbitrate disputed debts, or
 - (2) Admit or deny the validity of the claim.
 - (3) Try to judge or settle disputed claims or admit or deny validity. If soldier denies debt, notify creditor that disputed debts must be handled by civil authorities.
 - (4) Commanders' responses will not indicate whether any action has been taken against a member as a result of the complaint.

- d) Commanders May Deny Assistance to Creditors.
 - (1) When the claimant, having been notified of the DOD requirements, refuses or repeatedly fails to comply;
 - (2) When the claimant, regardless of the merits of the claim, clearly shows an attempt to unreasonably use the processing privilege.

4. STEP 4: Take Disciplinary Action Where Appropriate.

- a) Commanders may take administrative or disciplinary action against members who fail to meet their just financial obligations in a proper and timely manner.
- b) Commanders should see the guidance in AR 600-15, Chapter 3 and consult with their servicing judge advocate before proceeding with disciplinary action.
- c) Commanders may consider:
 - (1) Placing Adverse Information into the Soldier's Records (AR 600-37),
 - (2) Denying reenlistment (AR 601-280),
 - (3) Administrative separation (AR 635-100 (officer) or 635-200 (enlisted)),
 - (4) Punitive action under UCMJ, articles 92,123,133, or 134.
- c. Bankruptcy. Care must be taken not to infringe on the rights of soldiers under bankruptcy law.
- d. What should a leader do?

- 1) Ensure that soldiers are aware that they have certain rights and protections under law in dealing with debt collectors. However, they must also understand that the military expects them to honor their just financial obligations.
- 2) Invite a Legal Assistance Attorney (LAA) to speak at a professional development class about this subject.
- 3) If a soldier has a problem with a debt collector, they should be allowed to seek legal assistance as soon as possible.
- 4) If you are contacted by a person seeking assistance with a debt, do NOT begin giving information immediately. Ask them for a request in writing that conforms to appropriate regulations. Then follow the analysis above in coordination with your servicing judge advocate.

VIII. FAIR CREDIT REPORTING ACT (FCRA)

- a. How Does the Act Help Soldiers?
 1. A good credit rating is essential to purchasing many necessities such as homes and cars. The Act helps to ensure that the information that affects this rating is accurate and relevant.
 2. The Act protects consumers from improper release of credit information by defining the circumstances under which credit information may be released.
 3. The Act also establishes procedures for resolving errors in credit reports.
- b. Introductory note: The Omnibus Appropriations Act referenced above contained, among other consumer protection legislation, the Consumer Credit Reporting Act of 1996 which made changes to the Fair Credit Reporting Act. In general, the changes took effect on **September 30, 1997**.
- c. How Does the act work?
 1. The Fair Credit Reporting Act applies to **Credit Reporting Agencies (CRAs) and Users of Credit Reports (Users)**. It **does not** apply to those furnishing information from their own dealings with the consumer; i.e., creditors.
 2. Credit Reporting Agencies (CRAs) are those "who for monetary fees, dues, or on a cooperative nonprofit basis, regularly engage in ... the practice of assembling or evaluating consumer credit information on consumers **for the purpose of furnishing consumer reports to third parties**, and [who use] any means or facility of interstate commerce for the purpose of preparing or furnishing consumer reports." (e.g., TRW, Trans Union Credit Corporation).
 3. **NOTE:** Creditors that report information about their own experiences with consumers are not credit reporting agencies, nor are they issuing a "consumer report." **BUT**, if the creditor reports any information other than that obtained in its own dealings with consumer, then it may meet the definition of "consumer reporting agency."

4. Users are those receiving the "consumer report" information and applying it to a consumer.

5. Consumer Credit Reports are any written, oral or other communications of information collected by a CRA bearing on the consumer's credit worthiness, credit standing, or, general reputation, personal characteristics, or mode of living, which is used or expected to be used in establishing the consumer's eligibility for credit or insurance to be used primarily for personal, family, or household purposes; employment purposes; or other purposes authorized by the Act.

6. Permissible Purposes For Releasing Reports.
 - a) CRAs may furnish consumer reports only:
 - (1) In response to a **court order or subpoena** issued in connection with proceedings before **federal grand jury**, or
 - (2) With the **consent of the consumer** to whom the report relates, or
 - (3) To a person who the CRA "has reason to believe":
 - (a) Intends to use the report in connection with a credit transaction involving the consumer,
 - (b) Intends to use the report for employment purposes, or
 - (c) Intends to use the report in connection with the consumer's insurance, or
 - (d) Intends to use the report in connection with the consumer's eligibility for a license or other benefit conferred by the government, or

(4) Otherwise has a legitimate business need for the information--

(i) The legitimate business need must be in connection with a business transaction that is initiated by the consumer; or

(ii) To review an account to determine whether the consumer continues to meet the terms of the account.

7. **REPORTS CONTAINING MEDICAL INFORMATION:** A consumer reporting agency shall not furnish for employment purposes, or in connection with a credit or insurance transaction or a direct marketing transaction, a consumer report that contains medical information about a consumer, unless the consumer consents to the furnishing of the report.

8. **ADVERSE ACTION:** If the user takes adverse action in a credit, insurance, or employment situation, based on a credit report, then the user must:

a) Provide oral, written, or electronic notice of the adverse action to the consumer; AND

b) Provide--

(1) The name, address, and telephone number of the CRA that furnished the report to the person; AND

(2) A statement that the consumer reporting agency did not make the decision to take the adverse action and is unable to provide the consumer the specific reasons why the adverse action was taken; AND

(3) Notice of the consumer's right--

- (a) To obtain a FREE copy of a consumer report from the CRA, including notice that the request must be made with 60 days; AND
 - (b) To dispute the accuracy or completeness of any information in the consumer report.
- c) Special Rule for Adverse Action in EMPLOYMENT Situations. **Before taking any adverse action** based in whole or in part on the report, the person intending to take such adverse action shall provide to the consumer to whom the report relates--
 - (1) A copy of the report; AND
 - (2) A description in writing of the rights of the consumer under the FCRA.

9. Obsolete Information.

- a) Unless otherwise specified, the following information is considered "obsolete" and cannot be included in a CRA's consumer report (Note: this is adverse information; favorable information that is old may be included in the report):
 - (1) Bankruptcy adjudications more than 10 years old.
 - (2) Other categories for 7 years. Included are:
 - (3) Paid tax liens,
 - (4) Accounts placed for collection or charged to profit and loss,
 - (5) Records of criminal **arrest**, indictment, or conviction which, from the date of disposition, release, or parole, antedate the consumer report by more than 7 years,

- (6) Suits and judgments which, from date of entry, antedate the consumer report by more than 7 years or until the governing statute of limitations has expired, whichever is the longer period,
- (7) Any other adverse item of information which antedates the consumer report by more than 7 years.

10. Inclusion of "adverse" obsolete information. "Obsolete" information **CAN** be included in the consumer report IF the report is intended for use involving (15 U.S.C. § 1681c):

- a) The consumer's participation in a credit transaction of \$150,000 or more. (e.g. home mortgage!)
- b) Issuance of life insurance coverage on the consumer of \$150,000 or more.
- c) Employment of the consumer at an annual salary of \$75,000 or more.

11. CONSUMER'S RIGHTS.

a) Upon request, the consumer can obtain (15 U.S.C. § 1681g):

- (1) All information in the CRA's files with the exception of risk score formulas.
- (2) The identities of those who have received the report:
- (3) Within the past 2 years for employment purposes.
- (4) Within the past 6 months for other purposes.
- (5) A fee may be charged for producing the report. (Except when adverse action has been taken by a user. Then, the report must be provided free of charge.)

- (a) The reasonable fee cannot exceed \$8. (Which amount will be adjusted by the FTC each January 1 for inflation based upon the CPI).
 - (b) The fee shall be disclosed to the consumer prior to issuing the information.
- b) If the consumer disputes the completeness or accuracy of the report, the CRA must investigate (within a reasonable time) and record the current status of the disputed information **unless the CRA has reason to believe that the dispute is frivolous or irrelevant.** 15 U.S.C. § 1681i.
 - (1) If the investigation does not resolve the dispute,
 - (2) The consumer may file a statement of not more than 100 words, and
 - (3) In future reports, the CRA must note that the entry is disputed by the consumer and provide the consumer's statement.
 - (4) If the investigation reveals that the disputed entry is inaccurate or can no longer be verified, the CRA must delete the information.
- c) Following either correction of the report or receipt of a consumer's statement in rebuttal, the CRA must furnish a copy of the annotated report (and consumer's statement, where appropriate) to "any person specifically designated by the consumer" who has received the report:
 - (1) Within the past 2 years for employment purposes.
 - (2) Within the past 6 months for other purposes.
- d. What should A leader do?
 - 1. Ensure that soldiers are aware that they have certain rights and protections under law regarding their credit rating.

2. Invite a Legal Assistance Attorney (LAA) to speak at a professional development class about this subject.
3. If a soldier has a problem with their credit report, the soldier should be allowed to seek legal assistance as soon as possible. Resolving errors in these reports is difficult and requires substantial time and effort. The sooner the attorney can begin assisting the soldier in the matter, the less impact the error will have on the soldier's life.