

Veterans Legal Manual

A Resource Manual for Attorneys General
Offices to Assist Servicemembers and Veterans
with Their Unique Legal Issues

"To care for him who shall have borne the battle ..."



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The quotation on the cover is taken from Abraham Lincoln's Second Inaugural Address to the nation. The full quote is as follows:

With malice toward none, with charity for all, with firmness in the right as God gives us to see the right, let us strive on to finish the work we are in, to bind up the nation's wounds, to care for him who shall have borne the battle and for his widow, and his orphan, to do all which may achieve and cherish a just and lasting peace among ourselves and with all nations.

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PRESENTERS AT THE VETERANS ISSUES TRAINING:

Nick Akers, Office of the Attorney General of California **Sonja Berndt**, Office of the Attorney General of California Barry Bernstein, Office of the Attorney General of South Carolina **Brent Connelly**, Office of the Attorney General of Missouri **Jerry Coyne**, Office of the Attorney General of Rhode Island LTC Tom Collick, Staff Judge Advocate, U.S. Air Force **Dionne DeNunzio**, Office of the Attorney General of Ohio David Kramer, Office of the Attorney General of Oregon Todd Leatherman, Office of the Attorney General of South Carolina Robert Muth, University of San Diego School of Law **Deanna Nelson**, Office of the Attorney General of New York John Odom, Jones & Odom, LLP **Jared Plunk**, Office of the Attorney General of Tennessee **Jill Remming**, Office of the Attorney General of Delaware **Ohla Rybakoff**, Office of the Attorney General of Tennessee Jim Sidanycz, Office of the Attorney General of California Amber Standridge, U.S. Department of Justice **Grant Swinger**, Office of the Attorney General of Illinois Chris Toth, NAAG/NAGTRI

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Introduction



OUTLINING THE PURPOSE AND GOALS OF THE GUIDE

The goals of this Guide are threefold. First, the Guide is meant to give a concise overview of some of the major legal issues faced by military servicemembers, veterans, and their families in broad areas such as litigation, consumer protection, education, and employment. Second, it is meant to provide a background in the legal framework surrounding those issues. Although it does not provide exhaustive analysis of legal precedent, it is intended to provide a valuable jumping-off point for attorneys general and their staffs to perform their due diligence in particular cases. Finally, it aims to provide practical information and resources that can be passed along to military servicemembers, veterans, and their families to help them protect themselves and vindicate their interests in the areas of litigation, consumer protection, education, and employment.



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What is a Veteran?



DISTINGUISHING BETWEEN SERVICEMEMBERS AND VETERANS

In the context of military servicemembers and veterans, terms tend toward ambiguity and are often used in an imprecise manner. The status of a military servicemember can greatly affect the rights, protections, and benefits afforded to him or her. Thus, it is important for attorneys operating in this space to have an understanding of the distinctions between active servicemembers and the various classifications falling under the term "veteran."

Active Servicemembers

For most purposes a "military servicemember" or "servicemember" is a member of the United States uniformed services. The uniformed services include the active duty, Reserve, and National Guard components of the five branches of the Armed Forces, *i.e.*, the Army, Navy, Air Force, Marine Corps, and Coast Guard.¹ The uniformed services also include the commissioned corps of the Public Health Service and the National Oceanic and Atmospheric Administration.² Different

rights, protections, and benefits may be implicated depending on whether a servicemember is serving on active, Reserve, or National Guard duty. The particularities of military orders and terms of service may affect the legal protections afforded to an active duty servicemember. Therefore, while it is helpful to have a basic understanding of these different duty statuses, attorneys assisting servicemembers must carefully consult the duty status requirements of any legislation with which they work.

Active Duty

According to Title 10 of the U.S. Code, active duty means "full-time duty in the active military service of the United States. Such term includes full-time training duty, annual training duty, and attendance, while in the active military service, at a school designated as a service school by law or by the Secretary of the military department concerned. Such term does not include full-time National Guard duty." In other words, a person who is on active duty works for the military full time; they may be

^{1 10} U.S.C. § 101(a)(4), (5) (2014).

^{2 10} U.S.C. § 101(a)(5) (2014).

¹⁰ U.S.C. § 101(d)(1) (2014). Full text at Appendix A, *infra*. Note that while on full-time and annual training duty, members of the National Guard or Reserve component are considered to be on active duty. *See Active Duty for Training*, ABOUT.COM, http://usmilitary.about.com/cs/generalinfo/g/actdutr.htm (last visited Sept. 28, 2014).

deployed or they may serve at a military base, subject to deployment at any time.4

The Reserve Components⁵

Each of the five branches of the Armed Forces also has a Reserve component whose purpose is to provide and maintain trained units and qualified persons to be mobilized for active duty in the armed forces when needed.⁶ Mobilizations may be in times of war, in a national emergency, or as the need occurs based on threats to national security.7 Reservists may be called upon to serve either stateside or overseas.8 Traditionally, the primary job of the Reserve was to fill the gaps in stateside service positions when the active duty forces ship overseas. However, since the terrorist attacks on September 11, 2001, Reservists have been a major part of America's fighting force: over 400,000 Reservists have been mobilized for duty in operations in Iraq and Afghanistan.¹⁰

The Reserve components are further broken down into the "Selected Reserves" and "Individual Ready Reserves." The Selected Reserves are the drilling reservists; they participate in training drills one weekend per month and two weeks per year.11 They are the first reservists to be mobilized for active duty. The Individual Ready Reserves are non-drilling reservists; they do not have the training drill obligations of the Selected Reserves. Further, Individual Ready Reserve mobilizations are more limited.

National Guard¹²

Additionally, the Army and Air Force contain National Guard components which are federally funded but organized and controlled by each state. The Guard assists during local disasters, such as fire and floods. However, in times of national crises,

Active Duty vs. Reserve or National Guard, VA.Gov (Apr. 6, 2012), www.va.gov/vetsinworkplace/docs/em_activeReserve.html [hereinafter "Active Duty vs. Reserve"].

the National Guard may be brought under federal control and deployed. Having its origins well before the Revolutionary War, the National Guard has served the country for nearly 400 years and has fought in every major American conflict. Members of the National Guard have undergone significant deployments in Iraq and Afghanistan; over 480,000 have been mobilized for active duty.¹³ Similar to the Reserve components, the National Guard requires that members undergo training one weekend a month and two weeks per year.

Veterans

The definition of "veteran" in various federal and state laws may vary, depending on the context or the benefits being offered. For instance, most federal veterans' benefits are designed for those "who served in the active military, naval, or air service, and who was discharged or released therefrom under conditions other than dishonorable,"14 Some veterans' educational benefits are also offered to commissioned officers of the National Oceanic and Atmospheric Adminsitration and the Public Health Service. Colloquially, veterans are considered as those who are currently serving in the armed forces or those who have once served, which is the manner in which the term "veteran" is generally used in this manual. The term "servicemember" will generally be used to referring to those still on active duty.

Discharged Servicemembers

Discharged servicemembers are former members of the armed forces whose military service obligations are fully alleviated. Discharges fall into two main categories: administrative and punitive. There are several different characterizations of discharge within those categories which affect the benefits to which a discharged servicemember

Administrative Discharges

Honorable. To receive an honorable discharges, servicemembers must "have received a rating from good to excellent for his or her service. Servicemembers who meet or exceed the required

Id.

Id.

Id.

Id.

Reserve Components: Noble Eagle / Enduring Freedom, United STATES DEPARTMENT OF DEFENSE (APR. 25, 2014), http://www. defense.gov/documents/Mobilization-Weekly-Report-04-25-14. pdf.

Active Duty vs. Reserve, supra n. 4.

¹² Id.

¹³ Reserve Components: Noble Eagle / Enduring Freedom, supra n. 10...

^{14 38} U.S.C. § 101(2) (2014).

standards of duty performance and personal conduct and complete their tours of duty normally receive honorable discharges. However, one need not complete a term of service to receive an honorable discharge, provided the reason for involuntary discharge is not due to misconduct. For instance, persons rendered physically or psychologically incapable of performing assigned duties will normally have their service characterized as honorable, regardless of whether the condition or disability was incurred in the line of duty, provided they otherwise exceeded standards."¹⁵

Servicemembers who receive an Honorable discharge are entitled to all veterans' benefits for which they otherwise qualify.¹⁶

General (Under Honorable Conditions).

General discharges are given to servicemembers whose performance is "satisfactory but is marked by a departure in duty performance or conduct expected of military members." In other words, characterization of service as general (under honorable conditions) is "warranted when the positive aspects of the enlisted servicemember's conduct or performance of duty outweigh negative aspects of the enlisted servicemember's conduct or performance of duty as documented in their service record." ¹⁸

Reasons for this characterization of service vary, but are typically "preceded by some form of non-judicial punishment utilized by a unit commander as a means to correct unacceptable behavior prior to initiating discharge action (unless the reason is drug abuse, in which case discharge is mandatory). A commander must disclose the reasons for the discharge action in writing to the service member, and must explain reasons for recommending the service be characterized as General (Under Honorable Conditions)." 19

Generally speaking, a servicemember receiving a general discharge is entitled to the same veterans' benefits as one receiving an honorable discharge.²⁰

However, "a general discharge may preclude participation in the GI Bill, service on veterans commissions, and other programs where a fully-honorable discharge is required."²¹

Under Other than Honorable Conditions.

A discharge under Other Than Honorable (OTH) conditions is the "most severe form of administrative discharge. This type of discharge represents a serious departure from the conduct and performance expected of all military members. OTH discharges are typically given to service members convicted by a civilian court in which a sentence of confinement has been adjudged or in which the conduct leading to the conviction brings discredit upon the service."22 Examples include "the use of force or violence to produce serious bodily injury or death; abuse of a special position of trust; disregard by a superior of customary superior-subordinate relationships; acts or omissions that endanger the security of the United States or the health and welfare of other servicemembers of the Military Services; and deliberate acts or omissions that seriously endanger the health and safety of other persons."23 OTH discharges may also be given as the result of certain civil hearings, like a divorce for adultery.24

OTH discharges can sometimes be accepted in lieu of court martial proceedings at the servicemember's request. Such discharges are referred to as a Separation In Lieu of Trial (SILT). The Uniform Code of Military Justice guarantees those facing OTH discharges the right to have their discharge heard by an administrative discharge board, which is similar to a court martial but is not a public forum.²⁵

Recipients of OTH discharges are barred from reenlisting into any component of the Armed Forces, including the Reserves. Further, they are normally barred from joining the Army National Guard or Air National Guard, except under rare circumstances that require exception-to-policy waivers. As of September 2006, all 50 states had policies barring the reenlistment of OTH discharge recipients.²⁶

In addition, the majority of veterans' benefits are not available to individuals who receive an OTH

¹⁵ Military Discharge in the United States, Oregon.Gov, 1-2, available at www.oregon.gov/odva/docs/pdfs/criminal_justice_ portal/military_discharge.pdf (last visited Sept. 28, 2014).

¹⁶ Benefits Based on Character of Service, NAVYMEDICINE.MIL, www. med.navy.mil/leadership/FORCM/Documents/Benefits%20 Based%20on%20Character%20of%20Service.pdf (last visited Sept. 28, 2014).

¹⁷ Military Discharge in the United States, supra n. 15, at 2.

¹⁸ Enlisted Administrative Separations, DEPT. OF DEFENSE (Jan. 27, 2014), 30, www.dtic.mil/whs/directives/corres/pdf/133214p.pdf.

¹⁹ Military Discharge in the United States, supra n. 15, at 2.

²⁰ Benefits Based on Character of Service, supra n. 16.

²¹ Military Discharge in the United States, supra n. 15, at 2.

²² Ia

²³ Enlisted Administrative Separations, supra n. 18, at 31.

²⁴ Military Discharge in the United States, supra n. 15, at 2.

²⁵ Id.

²⁶ Id. at 3.

discharge, including the Montgomery and Post-9/11 GI Bill and (in most cases) VA healthcare benefits.²⁷

Punitive Discharges

Bad Conduct. A Bad Conduct Discharge (BCD) can only be given by a court-martial (either Special or General)²⁸ as punishment to an enlisted servicemember. Bad conduct discharges are "often preceded by a period of confinement in a military prison. The discharge itself is not executed until completion of both confinement and the appellate review process."²⁹ Receipt of a BCD revokes virtually all veterans' benefits.

Dishonorable. A dishonorable discharge can "only be handed down to an enlisted member by a general court-martial. Dishonorable discharges are handed down for what the military considers the most reprehensible conduct. This type of discharge may be rendered only by conviction at a general court-martial for serious offenses (e.g., desertion, sexual assault, murder, etc.) that call for a dishonorable discharge as part of the sentence."³⁰

Servicemembers whose service is terminated via dishonorable discharge lose all veterans' benefits, regardless of any past honorable service.³¹ In many states a dishonorable discharge is deemed the equivalent of a felony conviction, with attendant loss of civil rights.³²

Dismissal. A dishonorable discharge may only be awarded to enlisted members as punishment by a court-martial. The equivalent punishment awarded to an officer is termed a dismissal.³³

Retired Veterans

Discharge should not be confused with retirement. Many retired veterans still have military obligations and are subject to recall to active duty. When a servicemember "retires," he or she may enter the "retired reserve" and may be subject to recall to active duty up to the age of 60. After reaching the age of 60, recall to active duty is typically voluntary.³⁴

30 Id.

⁷ Military Discharge in the United States, supra note 15.

There are three types of courts-martial: summary, special, and general. They differ in who may convene the court-martial, the number of board members, and the types of punishment that may be imposed. Generally, a summary court-martial is convened to try an enlisted member for fairly minor infractions; the accused may request, instead, a special court-martial where there is a right to counsel. A special court-martial is used for what would be considered misdemeanor offenses, almost always by enlisted servicemembers, whereas a general court-martial is convened for felony offenses. Members of the reserve component are subject to courts-martial even if not on active duty whereas members of the National Guard are only subject to them if they are on active federal duty. Enlisted members can often avoid prosecution at a summary or special courts-martial by agreeing to an other than honorable discharge. Courts-Martial Explained, MILITARY.Com, http://www.military.com/benefits/ military-legal-matters/courts-martial-explained.html (last visited Sept. 28, 2014). Additionally, for many minor infractions, an enlisted member can be punished by his commanding officer through nonjudicial punishment, which is referred to as an Article 15 (Army and Air Force), Captain's Mast (Navy), or office Hours (Marine Corps). Military Discharge in the United States, supra n. 15, at 3.

³¹ See id.

³² See ic

³³ United States v. Ballenger, 13 C.M.R. 465 (1953).

³⁴ See Pre-Retirement Counseling Guide, ASSOCIATION OF THE UNITED STATES ARMY (Oct. 2010), 12, www.ausa.org/resources/retireeaffairs/Documents/10Pre-Ret_Gde_F.pdf. Warrant officers are an exception, remaining subject to recall until age 62.

Litigation and the Servicemembers Civil Relief Act



DEFINING SERVICEMEMBERS' RIGHTS AND REMEDIES IN LEGAL DISPUTES AFFECTED BY THEIR SERVICE

The Servicemembers Civil Relief Act (SCRA) protects military servicemembers in a variety of legal contexts ranging from judicial proceedings to taxation and more. It is intended to "postpone or suspend certain civil obligations to enable servicemembers to devote their full attention to duty and relieve stress on the family members of those deployed servicemembers."35 It is also a very powerful consumer protection law because it places substantial limitations on default judgments and self-help enforcement of mortgage and lease obligations; it allows for penalty-free cancellation of premises and automobile leases; and it reduces interest rates on some pre-service obligations to 6%, among other protections. This Part provides a brief overview of much of the SCRA's legal framework and provides additional resources which readers may

Legal Framework

This Section provides an overview of the SCRA's coverage and jurisdiction; the rights it conveys; the penalties and remedies it provides; and state legislative efforts to incorporate SCRA protections into state law.

Coverage and Jurisdiction

The protections of the SCRA typically apply during the term of "military service." This term bears different meanings depending on to which branch of the uniformed services a servicemember belongs:

• "In the case of a servicemember who is a member of the Army, Navy, Air Force, Marine Corps, or Coast Guard, "military service" means active duty status under Title 10 of the United States Code.³⁶ This is defined as

consult to enhance their understanding of the full depth and breadth of SCRA protections.

³⁵ Servicemembers Civil Relief Act Overview, MILITARY.COM, www.military.com/benefits/military-legal-matters/scra/ servicemembers-civil-relief-act-overview.html (last visited Sept. 28, 2014) [hereinafter "SCRA Overview"].

^{66 50} U.S.C. App. § 511(2)(A)(i) (2014). See, infra, Appendix A for the relevant text of Title 10.

"full-time duty in the active military service of the United States. Such term includes fulltime training duty, annual training duty, and attendance, while in the active military service, at a school designated as a service school by law or by the Secretary of the military department concerned."37

- In the case of a member of the National Guard, military service includes service under a call to active service authorized by the President or the Secretary of Defense for a period of more than 30 consecutive days under 32 U.S.C. § 502(f), for purposes of responding to a national emergency declared by the President and supported by federal funds.³⁸
- In the case of a servicemember who is a member of the Public Health Service or the National Oceanic and Atmospheric Administration, military service includes commissioned officers' active service.39
- Military service also includes any period during which a servicemember is absent from duty on account of sickness, wounds, leave, or other lawful cause.40
- The jurisdiction of the SCRA is very broad. Its protections apply in all civil and administrative proceedings at the federal, state, and local level.41 In other words, except for criminal proceedings, the SCRA applies to all judicial and administrative proceedings. 42

Rights Conveyed

The SCRA protects military servicemembers in a variety of legal contexts ranging from judicial proceedings to taxation and more. SCRA rights can be characterized into two main categories: General Relief Provisions applicable in all civil proceedings and Protective Provisions which are effective in more specific legal contexts.

General Relief Provisions

Protections Regarding Default Judgments.43 Some of the strongest and most important protections of the SCRA are those regarding the entry of default judgments. Before a court may enter a default judgment in any civil proceeding where a defendant servicemember does not make an appearance, the plaintiff must file an affidavit stating whether or not the defendant is in military service. If the affidavit shows that the defendant is

in military service, the court may not enter a default judgment until after the court appoints an attorney to represent the defendant.

An attorney appointed under these provisions may apply for a stay of proceedings, which the court must grant for at least 90 days if it finds that (1) there may be a defense to the action and a defense cannot be presented without the presence of the defendant; or (2) after due diligence, counsel has been unable to contact the defendant or otherwise determine if a meritorious defense exists. Note that this stay procedure does not apply in cases where the defendant receives actual notice of the proceedings, which are governed by another section of the SCRA.44

If a default judgment is entered against a defendant during her or his period of military service or within 60 days thereafter without the plaintiff filing the required affidavit regarding the defendant's military service, the defendant may move to set aside the default judgment within 90 days after release from military service. The court must set aside the judgment and reopen the matter for further proceedings if it determines that (1) the servicemember was materially affected by reason of that military service in making a defense to the action; and (2) the servicemember has a meritorious or legal defense to the action or some part of it.

¹⁰ U.S.C. § 101(d)(1) (2014).

⁵⁰ U.S.C. App. § 511(2)(A)(ii) (2014).

^{39 50} U.S.C. App. § 511(2)(B) (2014). 40 50 U.S.C. App. § 511(2)(C) (2014)

⁴¹ See 50 U.S.C. App. §§ 511(5) 512(b) (2014); see also COLONEL JOHN S. ODOM, JR., A JUDGE'S BENCHBOOK FOR THE SERVICEMEMBERS CIVIL RELIEF ACT 8 (2011).

⁴² See id. See also Odom, supra n. 40, at 8.

⁴³ See 50 U.S.C. App. § 521 (2014); see also Odom at 21-25.

⁴⁴ See 50 U.S.C. App. § 522 (2014).

Stays of Proceedings.⁴⁵ When a servicemember has received actual notice of any civil proceeding and is either in military service or within a period of 90 days following release from military service, they may request a stay of those civil proceedings. The court must grant the servicemember a stay of at least 90 days if their request for a stay is properly filed and includes:

- (A) A letter or other communication setting forth facts stating the manner in which current military duty requirements materially affect the servicemember's ability to appear and stating a date when the servicemember will be available to appear[;] [and]
- (B) A letter or other communication from the servicemember's commanding officer stating that the servicemember's current military duty prevents appearance and that military leave is not authorized for the servicemember at the time of the letter.

A servicemember who is granted an initial 90 day stay may request an additional stay based on a continuing material effect of military duty on the servicemember's ability to appear. The request must be accompanied by the same information as the initial request for a stay. Granting of additional stays is discretionary. However, if the court refuses an additional stay, the court must appoint counsel to represent the servicemember in the proceeding.

Note that a servicemember does not need to be deployed to a distant area to qualify for a stay. So long as their military service materially affects their ability to appear and military leave is not authorized, the servicemember qualifies for a stay of proceedings. Also, note that a court may issue a stay under this section sua sponte.

Stay or Vacation of Judgments.⁴⁶ As relief of last resort, the SCRA allows a servicemember to request a stay of the execution of any judgment or order entered against the servicemember in any civil proceeding commenced during military service or within 90 days after release therefrom. A servicemember may also request the vacation or stay

of an attachment or garnishment of property, money, or debts in the possession of the servicemember or a third party, whether before or after judgment.

The court must grant a servicemember's request for a stay or vacation if the court finds that the servicemember is materially affected by reason of military service in complying with the judgment or order. The court may also grant a stay or vacation *sua sponte*, provided that the court finds that the servicemember is materially affected by reason of military service in complying with the court's judgment or order.

Tolling Statutes of Limitations.⁴⁷ The SCRA very broadly tolls statutes of limitation, both for and against, a military servicemember during the time of their military service. The SCRA states, in relevant part:

The period of a servicemember's military service may not be included in computing any period limited by law, regulation, or order for the bringing of any action or proceeding in a court, or in any board, bureau, commission, department, or other agency of a State (or political subdivision of a State) or the United States by or against the servicemember or the servicemember's heirs, executors, administrators, or assigns.

The tolling provision of the SCRA also applies to the computation of the period during which a servicemember may redeem real property sold or forfeited to enforce an obligation. The only statutes of limitations not tolled by military service under the SCRA are those established under the United States Internal Revenue Code.

Protective Provisions

Cap on Interest Rates. 48 The SCRA limits the interest rate on any pre-service obligation or liability to 6% for the duration of military service if the military service materially affects the servicemember's ability to pay the debt at the contract rate of interest. It is important to emphasize that this 6% cap only applies to obligations incurred prior to entering military service. To invoke the cap, the SCRA requires the servicemember to make written demand for the relief and provide a copy of military orders to creditors at any time during the period of military service or

⁴⁵ See id. See also Odom, at 26-29.

⁴⁶ See 50 U.S.C. App. § 524 (2014); see also Odom, at 32-33.

⁷ See 50 U.S.C. App. § 526 (2014); see also Odom at 36-37

⁸ See 50 U.S.C. App. § 527 (2014); see also Odom at 38-40.

within 180 days of the servicemember's release from military service. Regardless of when notice is given during this period, the rate cap applies retroactively from the beginning of military service. Any interest incurred during military service at a rate in excess of 6% will be forgiven and refunded if need be.

The rate cap can apply to any obligation, including credit card debt and mortgage obligations. The rate cap expires at the end of military service except with respect to mortgages, in which case the cap continues to apply for one year after exiting military service.

A court may grant a creditor relief from the 6% interest rate cap if the court finds that the ability of a servicemember to pay interest upon the obligation or liability at a rate in excess of 6% per year is not materially affected by reason of the servicemember's military service.

Protections in Mortgage Proceedings. 49

The SCRA provides servicemembers with several protections regarding mortgage obligations incurred prior to entering military service. These protections apply during a servicemember's military service and for one year thereafter.⁵⁰ First and foremost, for any pre-service mortgage obligation, the SCRA prevents a mortgage creditor from exercising self-help. That is, the SCRA prohibits a mortgage creditor from selling, foreclosing, or seizing a servicemember's mortgaged property *except* pursuant to a court order.

The SCRA also entitles a servicemember to a stay of proceedings in an action by a creditor against a servicemember to enforce a mortgage obligation. A court must grant a servicemember's request for a stay if the servicemember shows that his or her military service materially affects the ability to comply with the obligation. If he or she does so, the SCRA may also entitle the servicemember to an adjustment of the obligation "to preserve the interests of all parties." A court may also issue a stay or adjust the obligation on its own motion.

The 2012 Mortgage Servicing Agreement imposes additional SCRA compliance requirements on five major mortgage servicers: Bank of America,

J.P. Morgan Chase, Wells Fargo, Citigroup, and Ally Financial.⁵² For instance, the mortgage servicers which were parties to the Agreement must notify servicemembers who are 45 days delinquent that they may be entitled to SCRA protections regarding the interest rate and risk of foreclosure and that counseling forservicemembers is available from agencies such as Military OneSource and Armed Forces Legal Assistance.⁵³

Protections in Eviction Proceedings.⁵⁴ The SCRA grants protections similar to its mortgage provisions in the residential lease context. A landlord's self-help options are all but eliminated; except pursuant to a court order, a landlord may not evict a servicemember or dependents during the servicemember's period of military service regardless of when the lease originated. Nor may a landlord subject the servicemember's premises to a distress action during a period of military service. However, these provisions only apply to residential leases whose monthly rent falls under a specified level which is adjusted to match inflation. For 2014, these provisions apply to residential leases where the monthly rent is less than \$3,217.81.⁵⁵

The SCRA also entitles a servicemember to a stay of eviction or distress proceedings during the servicemember's military service. A court must grant a stay upon a servicemember's request if the servicemember shows that his or her military service materially affects the ability to pay the agreed rent. The duration of the stay shall be 90 days unless the court finds that justice and equity require a longer or shorter stay. In addition to the granting of a stay upon a servicemember's request, a court can grant a stay sua sponte. A court may also adjust the obligation under the lease to preserve interests of all parties either on its own motion or on the request of a servicemember.

⁴⁹ See 50 U.S.C. App § 533 (2014); see also Odom at 47-48.

⁵⁰ U.S.C. App. § 533(b) (2014). Note that these protections apply for 12 months following service until December 31, 2014. *See* 112 P.L. 154 § 710

^{51 50} U.S.C. App § 533(b)(2) (2014).

merica, 52 See United States of America, et al. v. Bank of America Corp. et al.
Consent Judgment, A-32 to 33, available at www.justice.gov/opa/documents/bank-of-america-consent-judgement.pdf.

⁵³ Id. at A-33. See "Resources for Servicemembers," infra 38-39, for an expanded discussion of Military OneSource and Armed Forces Legal Assistance

⁵⁴ See 50 U.S.C. App § 531 (2014); see also Odom at 43-44

⁵⁵ Publication of Housing Price Inflation Adjustment Under United States Code, 79 Fed. Reg. 115 (Jan. 2, 2014), available at www.gpo. gov/fdsys/pkg/FR-2014-01-02/pdf/2013-31415.pdf.

^{56 50} U.S.C. App § 531(b)(1)(A) (2014).

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Premises and Automobile Lease **Terminations.** 57 The SCRA allows a servicemember to terminate premises and automobile leases without suffering early termination penalties under certain circumstances that require the servicemember to change locations. Premises leases include leases of property for residential, professional, business, agricultural, or similar purposes. A servicemember may terminate a premises lease entered into prior to a period of military service upon entry into military service. A servicemember may terminate a lease entered into during military service if they receive orders for a permanent change of station or deployment for 90 days or more in support of a military operation.

The circumstances under which a servicemember may terminate an automobile lease are narrower. A servicemember who signs an automobile lease prior to entering military service may terminate the lease upon entry into military service only if the period of service is 180 days or more. A servicemember who enters an automobile lease during military service may terminate the lease upon receiving the following military orders: (1) a permanent change of station from a location within the continental United States to a location outside the continental United States; (2) a permanent change of station from Alaska or Hawaii to a location outside of Alaska or Hawaii; or (3) a deployment for 180 days or more in support of a military operation.⁵⁸

To terminate a lease, a servicemember must provide the lessor with written notice of the termination along with a copy of the servicemember's military orders or any notification, certification, or verification from the servicemember's commanding officer regarding the servicemember's current or future military duty status. In the case of an automobile lease, the servicemember must also return the automobile within 15 days of providing notice of the termination.

For a premises lease providing for monthly payment of rent, the termination is effective 30 days after the first payment date following the servicemember's notice of termination. For any other premises lease, the termination is effective on the last day of the month following the month in which notice is given. For an automobile lease,

the termination is effective once the servicemember gives proper notice and returns the vehicle.

Protections in Tax Enforcement **Proceedings.** ⁵⁹ Under the SCRA, personal or real property used by a servicemember, dependents, or employees for dwelling, professional, business, or agricultural purposes cannot be sold to enforce payment of a tax or assessment that falls due and remains unpaid before or during a period of military service, except by court order. A court order allowing the sale of the servicemember's property will only issue if court finds that the servicemember's military service does not materially affect his or her ability to pay the unpaid tax.

A court may stay proceedings to enforce the collection of a tax or proceedings for the sale of a servicemember's property. The stay may run for the duration of the servicemember's military service and up to 180 days after his or her release from military service.

If a court issues an order allowing the sale of a servicemember's property and the property is indeed sold to enforce the collection of a tax obligation, the servicemember still has the right to redeem such property during the period of military service and for up to 180 days following release from military service.

Penalties and Remedies

Any person aggrieved by a violation of the SCRA may bring a civil action against the violator to obtain any appropriate equitable or declaratory relief with respect to the violation and recover all other appropriate relief, including monetary damages.60 Recovery may also include court costs and reasonable attorneys' fees at the court's discretion.61

The U.S. Attorney General may bring a civil action against any person who repeatedly violates the SCRA or who commits a violation of the SCRA raising an issue of "significant public importance."62 Available relief includes any equitable or declaratory relief appropriate to the violation(s); an award of any other appropriate relief, including monetary

⁵⁷ See 50 U.S.C. App § 535 (2014); see also Odom at 51-55

^{58 50} U.S.C. App. § 535(b)(2) (2014).

⁵⁹ See 50 U.S.C. App § 561 (2014); see also Odom at 67-69

^{60 50} U.S.C. App. § 597a(a) (2014).

⁵⁰ U.S.C. App. § 597a(b) (2014).

⁵⁰ U.S.C. App. § 597(a) (2014).

damages, to any person aggrieved by the violation(s); and civil penalties not to exceed \$55,000 for a first violation or \$110,000 for subsequent violations.⁶³

State Level Legislation

From the states' perspective, one of the major shortcomings of the SCRA is that it does not protect National Guardsmen serving under state, rather than federal, authority. Some states have taken action to remedy that shortcoming. States have taken varying legislative approaches to incorporating SCRA protections into state law. Delineating the particular contours of various states' legislation is beyond the scope of this manual, but citations are provided for ease of reference.

A number of states have passed legislation applying some or all SCRA protections to their state Guardsmen by incorporating SCRA provisions by reference. As of the date of writing, states with enacted legislation following this approach include the following:

State	Citation
Alabama	Ala. Code § 31-12-2
Alaska	Alaska Stat. § 26.05.135
Arizona	Ariz. Rev. Stat. Ann. § 26-168
Connecticut	Conn. Gen. Stat. Ann. 27-34a
Idaho	Idaho Code Ann. § 46-409
Indiana	Ind. Code § 10-16-7-23
Kentucky	Ky. Rev. Stat. Ann. § 38.510
Maryland	Md. Code Ann., Pub. Safety § 13-704
Minnesota	Minn. Stat. Ann. § 190.055
New Mexico	N.M. Stat. Ann. § 20-4-7.1

Other states have enacted statutory regimes parallel to the federal SCRA. These regimes are designed to provide some level of SCRA-equivalent protections to members of their respective state National Guards. States with legislation following this approach include the following:

State	Citation
Arkansas	Ark. Code Ann. § 12-62-701 et seq.
California	Cal. Mil. & Vet. Code §§ 400-409
Colorado	Colo. Rev. Stat. Ann. § 28-3-1401 et seq.
Delaware	S.B. 206 (De. 2014)1 ⁶⁴
Hawaii	Haw. Rev. Stat. Ann. § 657D-1 et seq.
Illinois	330 Ill. Comp. Stat. §§ 63/1 to 63/975
Iowa	Iowa Code § 29A.90 et seq.
Louisiana	La. Rev. Stat. Ann. § 29:311 et seq.
Maine	Me. Rev. Stat. Ann. tit. 37-B, § 389-A
Montana	Mont. Code Ann. § 10-1-901 et seq.
New Jersey	N.J. STAT. ANN § 38:23C-1 et seq.
New York	N.Y. MIL. LAW § 300 et seq.
Oregon	Or. Rev. Stat. Ann. §§ 399.238, 399.240
Pennsylvania	51 Pa. Cons. Stat. Ann. § 7301 et seq.
Utah	Utah Code Ann. § 39-7-101 et seq.
Washington	Wash. Rev. Code Ann. § 38.42.010 et seq.
Wisconsin	Wis. Stat. Ann. § 321.62 et seq.
Wyoming	Wyo. Stat. Ann. §§ 19-11-101 to 19-11-124

^{63 50} U.S.C. App. § 597(b) (2014).

⁶⁴ Passed on June 30 and signed into law on July 23, 2014, Delaware's SCRA-equivalent is not yet codified in the Delaware statutes.

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Other states, such as Michigan, have passed a number of laws that provide SCRA-type protection to their active duty and reserve servicemembers and their National Guardsmen while deployed. 65 Some states may also prosecute SCRA violations as violations of state consumer protection laws. Oregon, for instance, passed legislation explicitly declaring a violation of the SCRA to be an unlawful business practice for the purposes of its unlawful trade practices statute. 66 Further, states with broad consumer protection laws which define unfair or deceptive acts or practices to include any unlawful business practices may be able to prosecute SCRA violations under that authority. 67

SCRA Resources

A variety of resources exist to help practitioners and servicemembers understand servicemembers' rights under the SCRA.

First and foremost, Col. John S. Odom Jr.'s "Judge's Benchbook for the Servicemembers Civil Relief Act" provides a clear yet thorough explanation of virtually all aspects of the SCRA. Col. Odom's Benchbook also includes samples of military orders and letters requesting a stay of proceedings, among other illustrative materials.

- The American Bar Association published an SCRA guidebook in 2006, written by instructors from the U.S. Army's Judge Advocate General's Legal Center and School, which covers the history of the SCRA and providing in-depth analysis of its current provisions. The ABA guidebook is available at: www.americanbar. org/content/dam/aba/migrated/legalservices/ lamp/downloads/SCRAguide.authcheckdam. pdf.
- Military.com provides a series of online articles explaining different aspects of the SCRA. The main article can be found at: www.military. com/benefits/military-legal-matters/scra/ servicemembers-civil-relief-act-overview. html.
- The Department of Justice maintains a compendium of SCRA case law on its website at: www.justice.gov/crt/spec_topics/military/ cases.php.

⁶⁵ See, e.g., MICH. COMP. LAWS 445.1011, et seq. (permits a servicemember or spouse to terminate a motor vehicle lease); MICH. COMP. LAWS 484.1901, et seq. (permits servicemembers to terminate cell phone contracts) MICH. COMP. LAWS 600.3185 and MICH. COMP. LAWS 600.3285 (provide foreclosure protections to servicemembers); MICH. COMP. LAWS 32.517 – provides protections against repossession and stays

⁶⁶ See Or. Rev. Stat. Ann. § 646.608(1)(LLL) (2013).

⁶⁷ See, e.g. Cal. Bus. & Prof. Code § 17200 (2014).

⁶⁸ Odom, supra n. 40.

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Consumer Protection



PREVENTING CONSUMER FRAUD BY IDENTIFYING COMMON SCHEMES, UNDERSTANDING THE LEGAL FRAMEWORK, AND PROVIDING EDUCATIONAL AND FINANCIAL RESOURCES FOR SERVICEMEMBERS AND VETERANS

In recent years, military servicemembers and veterans have become prime targets for consumer frauds and scams. Servicemembers and veterans are an appealing target for a variety of reasons. Many servicemembers are young and inexperienced in financial matters, but their incomes are stable in an otherwise unstable workforce. Further, scammers can determine precisely how much income servicemembers make just by looking at the rank on their uniforms. Scammers know that potential adverse consequences on servicemembers' careers under the Uniform Code of Military Justice for falling into a precarious financial situation make them less likely to report abusive practices. They also realize that military culture tends to make servicemembers and veterans want to solve their financial problems on their own rather than seek help from regulators. Finally, scammers know that if they can turn a

servicemember into a debtor, they can use the military allotment system to ensure that they are paid.⁶⁹

Beyond the severe personal hardships associated with being victimized as a consumer, the time and energy servicemembers must devote to dealing with the fallout of such victimization impairs overall military mission readiness. Ideally, veterans subject to recall to active duty at any time should not be suffering from similar financial stresses.

Ultimately, military servicemembers and veterans deserve to be rewarded for their service, not disproportionately targeted for financial victimization. This Part aims to enhance prevention and enforcement efforts in consumer protection by identifying common schemes targeting military servicemembers and veterans, providing an overview of the relevant legal framework and providing resources to which servicemembers and veterans can be directed to help them manage their finances. ⁷⁰

⁶⁹ Allotments of pay are provided to help servicemembers adjust their personal and family finances to military service. Allotments are a definite portion of a member's pay and allowances and are authorized to be made payable to a qualified person or institution. For more, see Pay Allotments, DFAS.MIL (Mar. 24, 2011), http://www.dfas.mil/militarymembers/paydeductions/allotments.html.

⁷⁰ For further information for servicemembers and veterans on common frauds and scams, see Michael A. Archer, Ripped Off! A Servicemember's Guide to Common Scams, Frauds, and Bad Deals (ABA, 2014).

Identifying Common Schemes

When it comes to preventing unfair and deceptive business practices, the educated consumer is the first line of defense. An essential step in educating consumers is identifying common schemes about which consumers should be wary. Generally speaking, military servicemembers and veterans are no less vulnerable to the same types of scams and frauds that affect civilians every day; but some scams and frauds target military servicemembers and veterans at higher rates. This Section identifies the types of scams that commonly affect military servicemembers and veterans including sales, lending, and credit-related scams; automobile-related scams; VA benefits frauds; charities frauds; identity theft; and misleading marketing practices.

Sales, Lending, & Credit-Related Scams

Sales, lending, and credit-related scams are some of the most detrimental consumer pitfalls faced by military servicemembers and veterans. A common thread among most of the following schemes is the goal of forcing servicemembers or veterans into a cycle of debt allowing a lender to collect staggering amounts of interest. Scammers and other unscrupulous actors use several different methods to accomplish this goal, including through consumer product financing agreements; small dollar, high interest loans; and catalog, Internet, and phone "sales." Credit repair schemes go hand in hand here by offering (often fraudulently) to erase the bad marks on servicemembers' or veterans' credit reports caused by the cycle of debt. This Section provides a general overview of how these scams operate.

Product Financing Agreements

Military servicemembers have become prime targets for predatory retailers utilizing deceptive product financing agreements to saddle servicemembers with burdensome debt obligations. The fraudulent practices in this context are numerous. Examples of common sales practices are pricegouging; falsely representing that a product is new when in fact it is a return or defective; claiming that a product is a great deal when in fact it is marked up well over its MSRP; concealing additional costs and contract terms; and advertising 0% financing but

actually charging a substantial APR.⁷¹ Retailers in a variety of industries—from furniture to jewelry to electronics—utilize these practices to take advantage of military servicemembers.

Typically, servicemembers cannot pay for these items up front and must complete a financing agreement in order to make a purchase. Making matters worse for servicemembers and their families, retailers typically persuade or require servicemembers to set up an allotment to make payments on the agreement.⁷² The allotment allows the retailer to draw directly from the servicemembers' paycheck, guaranteeing payment for the retailer and making it more difficult for servicemembers both to appreciate how much they are paying in the long term and to stop payments.⁷³ Given that the products are often vastly overpriced, the agreements riddled with hidden costs, or both, these product financing agreements can be extremely costly for servicemembers and their families.

Small Dollar, High Interest Loans

Small dollar, high interest loans such as payday loans, vehicle title loans, and tax refund anticipation loans are notoriously risky for borrowers. These are short-term loans typically priced at a fixed-dollar fee, which represents the finance charge to the borrower. These loans are usually made to borrowers experiencing cash flow difficulties. Although the fixed-dollar fees may not seem too costly at first glance (usually tens of dollars on a several-hundred dollar loan), when translated to an annual percentage rate, the charges can include 300-1,000% interest or more. Borrowers thus face high interest rates even if loans are timely repaid and further risk facing staggering interest if they are unable to repay on time. Making matters worse, borrowers are often

⁷¹ Soldiers as Consumers: Predatory and Unfair Business Practices
Harming the Military Community Hearing Before the S. Comm.
On Commerce, Science, & Transportation, 113th Cong. 1-2 (2013)
(statement of Robert E. Cooper, Attorney General, State of Tennessee),
available at http://www.commerce.senate.gov/public/?a=Files.
Serve&File_id=27e057aa-a5b5-4ebc-9d33-14b501930df3
[hereinafter "Cooper Testimony"].

⁷² *Id.* at 5.

⁷³ See id.

⁷⁴ An Update on Emerging Issues in Banking: Payday Lending, FDIC.Gov (Jan. 29, 2003), www.fdic.gov/bank/analytical/ fyi/2003/012903fyi.html [hereinafter "FDIC Update on Payday Lending"].

⁷⁵ Id..

unable to repay their loans and, instead, roll over their balance and pay additional finance charges.⁷⁶

For many of the reasons discussed at the beginning of this Part regarding what makes servicemembers and veterans appealing targets for consumer fraud, military servicemembers are aggressively targeted by small dollar, high interest lenders. Indeed, areas immediately surrounding military installations are often flooded with payday lenders, car title lenders, and other businesses offering small dollar, high interest loans.⁷⁷

Catalog, Internet, & Phone "Sales"78

Catalog sales, Internet service sales, and phone card sales are substantially similar scams wherein a victim agrees to pay—usually by writing a check—a sum of money in the future in exchange for a "rebate" of cash and a product or service which, in reality, is largely worthless. To illustrate, a catalog sales scam investigated by the National Consumer Law Center (NCLC) in Georgia operated as follows: a victim would write a check for \$455.00, to be cashed by the catalog company on the victim's next payday. In exchange, the victim received \$350.00 cash and \$105.00 worth of certificates to be used to purchase items from the seller's catalog. However, the items in the catalog were so overpriced that the certificates were virtually worthless. Further, sources indicated that the certificates were almost never cashed.

Internet service and phone service sales operate in a similar manner. Instead of writing a check up front, a victim commits to purchase Internet service or phone cards for a period of time. In addition to the internet or phone services purchased, the victim receives a cash "rebate" in exchange for the commitment. Much like the items in the catalogs previously discussed, the Internet and phone services are vastly overpriced compared to readily available, legitimate service providers.⁷⁹

The NCLC concludes that these scams are, in reality, thinly veiled high-priced loans. Because the services are vastly overpriced or—as is often the case of catalog certificates—completely worthless, the

cash "rebate" is the true benefit of the transaction for the victim. The repayment, however structured, is equivalent to an extremely high-interest loan repayment.⁸⁰

Credit Repair Schemes

Credit repair services are rife with fraud and misrepresentations regarding the help they can actually provide. In reality, there is very little that can be done to retrospectively improve a person's credit. Credit repair services, however, often promise to do just that. Credit repair services usually operate through one of two methods: promising to use the verification process to remove negative items from a credit report or offering a new credit identity. These credit repair schemes are particularly seductive to military members because, in the modern military, almost all duties require a security clearance and credit problems are the primary source of denials of these clearances.

If a credit-reporting agency cannot verify an item on an individual's credit report, it must delete it. Verification-based services work simply by disputing items on a credit report. However, under the Fair Credit Reporting Act (FCRA), any person can file a dispute directly with the credit reporting agencies. Verification is largely automated and will only succeed if the disputed item is truly in error. Thus, in many cases, these verification services are scams asking customers to pay for a free service that is unlikely to succeed. Servicemembers should be particularly wary of any credit repair offer where the service provider insists on payment up front, tells the servicemember not to contact the credit reporting agencies directly, tells the servicemember to dispute accurate information, or fails to explain the servicemember's legal rights under the FCRA.81

Services promising a new credit identity are even more nefarious; they attempt to hide a person's credit history by urging a person to apply for credit with something other than his or her own social security number. These services may advise customers to begin applying for credit with a Credit Privacy Number (CPN) provided by the service. The CPN is typically a stolen social security number, the use of which amounts to identity theft. Alternatively,

⁷⁶ Id.

⁷⁷ In Harm's Way – At Home: Consumer Scams and the Direct Targeting of America's Military and Veterans, NATIONAL CONSUMER LAW CENTER (May 2003), 8-9, http://www.nclc.org/images/pdf/special_projects/military/report-scams-facing-military.pdf [hereinafter "In Harm's Way"].

⁷⁸ Id. at 9, 42-43.

⁷⁹ Id. at 42-43.

⁸⁰ Id. at 41.

⁸¹ Credit Repair Scams, FEDERAL TRADE COMMISSION (Aug. 2012), https://www.consumer.ftc.gov/articles/0225-credit-repair-scams.

the service may advise a service member to obtain an Employer Identification Number (EIN) from the IRS and use that on credit applications. It is also a federal crime to obtain an EIN under false pretenses. 82

Both forms of credit repair scheme are unlawful under the Credit Repair Organizations Act (CROA). The CROA prohibits untrue or misleading representations of the services of the credit repair organization, which prohibits credit repair services from overstating what can be accomplished through the verification process.83 The CROA also makes it unlawful to alter a consumer's identity or advise a consumer to do so for the purposes of preventing the display of the consumer's credit history, thus advising the use of a new credit identity illegal.84 In either context, the CROA prevents a credit repair agency from demanding or receiving payment prior to its full performance of the offered service. 85 Finally, the CROA requires a credit repair servicer to provide any potential customer with a written statement outlining the customer's credit file rights under state and federal law.86

The CROA allows those who fall victim to a credit repair organization operating in violation of the Act to recover actual and punitive damage as well as attorneys' fees.87 Violations of the CROA are also per se violations of the FTC Act, thus invoking all the enforcement powers of the Federal Trade Commission.88 The states additionally have the authority to sue under the Act to enjoin violations or recover actual and punitive damages on behalf of the victim of a violation, as well as costs and attorneys' fees.89

Automobile Purchase Scams

Automobile purchases are a major life decision and often an essential purchase in many areas. As with many big ticket items, automobile sales are often accomplished through complicated, long term financing agreements. The nature of these transactions allows frequent opportunities

for abuse. Two types of scams are particularly common: "Buy Here Pay Here" dealerships and "Yo-Yo sales."

Buy Here, Pay Here Dealerships

Buy Here Pay Here used car dealerships target those with poor credit; they charge high monthly payments designed to make the buyer default, allowing the dealer to repossess and resell the vehicle. Dealers sell old used cars for a large down payment, often equal to the objective value of the car, plus monthly or bi-weekly payments for the remainder of the purchase price. 90 Interest rates on the remainder can reach 30% APR or more. 91 When a buyer defaults on a payment—which roughly 25% of buyers do the dealer repossesses the vehicle and simply resells it to another vulnerable customer. The National Consumer Law Center identified one dealership in South Carolina which had sold the same vehicle 18 times.⁹² (Although Buy Here Pay Here dealerships can and do target any and all vulnerable consumers, they are often found near military installations.)93

Yo-Yo Sales

A Yo-Yo Sale is a form of bait and switch which takes advantage of the accepted practice of spot delivery in automobile sales. A spot delivery sale is an automobile sale wherein the purchaser signs a tentative financing agreement and takes the vehicle off the lot pending credit approval for the agreedupon terms.94 In a Yo-Yo sale, an unscrupulous dealer will then inform the buyer a few days later that the buyer's credit has not been approved and he or she will have to make a concession in the form of a higher interest rate, higher monthly payment, higher down payment, or some combination thereof. If a buyer traded in his or her original vehicle as part of the sale, the dealer will often claim that the trade-in has already been sold and the buyer will not be able to recover

⁸² Id.

See 15 U.S.C. § 1679b(a)(3)-(4) (2014). 83

See 15 U.S.C. § 1679b(a)(2) (2014).

See 15 U.S.C. § 1679b(b) (2014). 85

See 15 U.S.C. § 1679c (2014).

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See 15 U.S.C. § 1679g (2014). See 15 U.S.C. § 1679h(a)-(b) (2014). 88

See 15 U.S.C. § 1679h(c) (2014).

⁹⁰ In Harm's Way, supra note 74, at 41.

⁹¹ See, e.g., Ken Bensinger, A Vicious Cycle in the Used-Car Business, Los Angeles Times (Oct. 30, 2011), www.latimes.com/business/ buy-here-pay-here/la-fi-buy-here-pay-here-part1-storyb-story.html

In Harm's Way at 41, n. 35.

See In Harm's Way at 40-41.

Spot Delivery Pitfalls, Governor's Office of Consumer PROTECTION, http://consumer.georgia.gov/consumer-topics/ spot-delivery-pitfalls (last visited Oct. 1, 2014).

the value of the trade-in if he or she wants to keep the original terms of the deal.⁹⁵

In order to avoid being the victim of a Yo-Yo Sale, a buyer should not pay a down payment, hand over the keys to a car, sign a purchase agreement, or drive the new car off the lot until financing is finalized. 6 Alternatively, if the buyer urgently needs the vehicle, he or she should insist in advance on a written assurance that, if the financing should fall through, the deposit and trade-in will be returned; or, if credit terms change, he or she will be allowed to cancel the deal. 97

VA Benefits Frauds

Military veterans are entitled to a wide variety of benefits from the U.S. Department of Veterans Affairs (VA). As is often the case, unscrupulous actors see these government benefits as an opportunity to make a quick buck at the expense of beneficiaries. Two main scams have emerged in this area: "advance funding" and Bait and Switch Annuities.

"Advance Funding"98

"Advance funding" schemes or "benefits buyouts" are another way in which unscrupulous people prey on the short-term monetary needs of some veterans. In these schemes, lump sum payments are exchanged for streams of veterans' benefits. In other words, when a veteran receiving monthly cash benefits needs, wants, or is pitched a quick cash infusion; a private lender offers that infusion in exchange for a fixed stream of the veteran's monthly benefits payment.

The overarching problem with these schemes is that, in practice, they are overwhelmingly terrible deals for the veterans involved. The National Consumer Law Center conducted several case studies on the issue wherein researchers viewed the benefits buyouts as loans and computed APRs based on the payments made by the affected veterans, including fees. The NCLC found that APRs ranged from 39% to over 100% in some cases. Given that some of these deals were "paid out" by veterans over the course of several years, the costs to the victimized veterans were staggering. In a particularly egregious

example, one veteran gave up \$302,928 in benefits over the course of 10 years for a lump sum payment of only \$66,100.99

Bait and Switch Annuities¹⁰⁰

Schemes commonly known as Bait and Switch Annuities are multi-layered scams. These scams involve unqualified and unaccredited individuals making presentations to senior citizen veterans regarding certain pension benefits administered by the Department of Veterans Affairs. The presentations, in essence, focus on how elderly veterans can hide their assets in annuities and other financial products in order to artificially qualify for VA pension benefits. ¹⁰¹ The scammers typically offer both the financial products and assistance in filing pension claims. These schemes can hurt both the veterans targeted and the pension program as a whole.

Bait and Switch Annuity scams harm those targeted in two major ways. First and most importantly, the financial products in which veterans are convinced to invest are often inappropriate for their circumstances. Often scammers pitch deferred annuities which will leave veterans unable to access their funds during their expected lifetimes without facing substantial withdrawal fees. 102 Further, these asset transfers can result in ineligibility for Medicaid coverage for longterm care. Second, with respect to filing pension claims, scammers are often unaccredited103 and therefore unqualified and indeed legally prohibited from representing veterans in the preparation, presentation, or prosecution of pension benefits claims.¹⁰⁴ Further, they often charge high fees for this service, a service which accredited veterans' service organizations offer for free to qualified veterans.

⁹⁵ In Harm's Way at 41.

⁹⁶ Michael S. Archer, RIPPED OFF: A SERVICEMEMBER'S GUIDE TO COMMON SCAMS, FRAUDS, AND BAD DEALS 195 (2014).

⁹⁷ Spot Delivery Pitfalls.

⁹⁸ In Harm's Way at 25-28. See also Archer at 30-36.

⁹⁹ In Harm's Way at 27.

¹⁰⁰ See generally Veterans' Pension Benefits: Improvements Needed to Ensure Only Qualified Veterans Receive Benefits, GOVERNMENT ACCOUNTABILITY OFFICE (June 6, 2012), http://www.aging. senate.gov/imo/media/doc/hr246db.pdf ["GAO Veterans' Pensions Report"]

¹⁰¹ See id at 5-6; State Attorneys General Toolkit on Consumer Protection for the Military, FINANCIAL FRAUD ENFORCEMENT TASK FORCE (2013), 33, available at http://ago.mo.gov/ publications/consumerprotectionformilitary.pdf. These presentations often take place at assisted living and retirement communities, which may collude with annuity organizations to recruit more pensioners for the facilities. GAO Veterans' Pensions Report at 8

¹⁰² GAO Veterans' Pensions Report at 9.

¹⁰³ Attorneys General Toolkit at 33.

^{104 38} CFR § 14.629(b) (2014).

Moreover, Bait and Switch Annuity schemes hurt the VA pension program as a whole. When these schemes succeed, they secure pension benefits by hiding veterans' assets to create artificial pension eligibility. Paying pension benefits to artificially eligible veterans is a drain on resources that would otherwise go to veterans who are truly in need. The only winners in these transactions are the individuals selling unnecessary and disadvantageous financial products and charging high fees for unaccredited benefits application services which are offered free of charge from other sources.

To avoid Bait and Switch Annuities, veterans should rely solely on accredited attorneys, claims agents, or veterans' service organizations for pension claim services. Further, veterans should confirm the status of any individual purporting to be an accredited pension benefit service provider.

- Accredited attorneys, claims agents, and veterans' service organizations can be found at: https://ebenefits.va.gov/ebenefits/ nrd (select "find resources for Benefits and Compensation")
- Accreditation status can be verified at: http://www.va.gov/ogc/apps/accreditation/index.asp.

Charities Frauds

Distinct from many of the other consumer protection issues covered herein, military servicemembers and veterans are often the *subject* as well as the *target* of charities frauds. Servicemembers and veterans engender a great deal of support from the public. Such support often comes in the form of charitable donations to non-profit organizations advancing the interests of servicemembers and veterans. Recognizing this reality, some individuals have created fraudulent charitable organizations in order to take advantage of the generosity of the public. These organizations falsely purport to benefit servicemembers and veterans while their organizers simply pocket the donations.

The military charity scene can be flooded with these bad actors, but wading through to find legitimate charities is not impossible. Legitimate charities serve an important role and those interested should not be discouraged from donating. The Attorneys General can provide their constituents—both military and civilian—with some helpful tools

and tips on how to differentiate between legitimate and fraudulent charities.

Signs of a Charity Scam

Consumer protection groups and the FTC in particular have identified a number of warning signs indicating that a charity or charitable solicitation may be fraudulent. The FTC has identified the following red flags that should alert potential donors that a charity or fundraiser is probably not legitimate: 105

- The refusal to provide detailed information about a charity's identity, mission, costs, or how donations will be used.
- The failure to provide proof that the IRS has deemed contribution to be tax deductible.
- The use of a name that closely resembles that of a well-known, reputable organization.
- Acknowledgement for pledges which cannot be explained.
- The use of high-pressure tactics such as urging immediate donation, without giving time for a potential donor to think about it and do research.
- The request that donations be in cash or be wired.
- The offer to send a courier or overnight delivery service to collect the donation immediately.
- The guarantee that sweepstakes winnings will be given in exchange for a contribution (by law, donations are never required to be eligible to win a sweepstakes).

Steps to Take in Connection with a Donation

Constituents thinking about making a charitable donation should do their research and make sure they are making an informed decision

¹⁰⁵ Checklist taken from: Signs of a Charity Scam, Federal Trade Commission (June 2012), http://www.consumer.ftc.gov/articles/0074-giving-charity#Signs (last visited Oct. 1, 2014).

even when a charity or fundraiser does not raise any of the red flags discussed immediately above. Before making any donation to any charity, the FTC suggests that constituents do the following:¹⁰⁶

- Ask for detailed information about the charity, including name, address, and telephone number.
- Search the name of the organization online especially with the word "complaint(s)" or 'scam'—to learn about its reputation.
- Check if the charity is trustworthy by contacting a charity watchdog group such as the Better Business Bureau's Wise Giving Alliance,¹⁰⁷ Charity Navigator,¹⁰⁸ Charity Watch,¹⁰⁹ or GuideStar.¹¹⁰
- Check with the Internal Revenue Service to find out if the organization is eligible to receive tax deductible donations.¹¹¹
- Refuse to provide a credit or check card number, bank account number, or any personal information until thoroughly researching a charity.

When dealing with a charitable solicitation, the FTC also suggests that constituents ask if the solicitor is a paid fundraiser. If so, constituents should:¹¹²

- Ask the name of the charity they represent and conduct the steps above before committing to any donation.
- Ask what percentage of donations will go to the charity and what percentage will go to the fundraiser.

- Call the charity and find out if the organization
 is aware of the solicitation and has authorized
 the use of its name.
- If a donation request comes from a group claiming to help the local community—*e.g.*, local police or firefighters—ask the local agency if it has heard of the group and is getting financial support.

Constituents who conduct all the necessary research into an organization and decide to make a donation should still be careful with the form of their donation. When actually making a charitable donation, constituents should:¹¹³

- Never send cash donations. For security and tax purposes, it is best to pay by check (made payable to the charity, not a solicitor) or by credit card.
- Never wire money. Scammers often request donations to be wired because wiring money is like sending cash; once it is sent it cannot be recovered.

Identity Theft

Identity theft is one of the most common consumer protection issues in America. The Federal Trade Commission alone receives hundreds of thousands of identity theft complaints each year; indeed, roughly 15% of all consumer complaints collected by the FTC over the past three years concern identity theft. 114 Servicemembers, veterans, and their families are no less vulnerable to identity theft than the general population. This Section provides a brief overview of what identity theft is and outlines some steps servicemembers can take to protect themselves.

Operation

In short, identity theft happens when someone steals another person's personal information (*i.e.*, Social Security number, financial account information, or credit card information) and uses

¹⁰⁶ Checklist taken from: Charity Checklist, Federal Trade Commission (June 2012), http://www.consumer.ftc.gov/articles/0074-giving-charity#Checklist.

¹⁰⁷ For Charities and Donors, BETTER BUSINESS BUREAU, http://www.bbb.org/us/charity (last visited Oct. 1, 2014).

¹⁰⁸ CHARITY NAVIGATOR, HTTP://www.CHARITYNAVIGATOR.ORG/ (last visited Oct. 1, 2014).

¹⁰⁹ Charity Watch, AMERICAN INSTITUTE OF PHILANTHROPY, http://charitywatch.org/ (last visited Oct. 1, 2014).

¹¹⁰ GUIDESTAR, HTTP://www.GUIDESTAR.ORG/ (last visited Oct. 1, 2014).

¹¹¹ See Exempt Organizations Select Check, INTERNAL REVENUE SERVICE, http://www.irs.gov/Charities-&-Non-Profits/Exempt-Organizations-Select-Check (last visited Oct. 1, 2014).

¹¹² Checklist taken from: Charity Checklist, supra n. 103.

¹¹³ Id

¹¹⁴ Consumer Sentinel Network Data Book for January – December 2013, FEDERAL TRADE COMMISSION (Feb. 2014), 4-5, http://www. ftc.gov/system/files/documents/reports/consumer-sentinelnetwork-data-book-january-december-2013/sentinel-cy2013. pdf.

it without permission.¹¹⁵ Identity theft can wreak havoc on a victim's finances, credit history, and reputation.¹¹⁶ Identity thieves can drain their victim's bank account, run up charges on his or her credit cards, open new utility accounts, or get medical treatment on their victim's health insurance.¹¹⁷

The FTC describes identity thieves as "resourceful" in their methods of obtaining personal information. They will rummage through the garbage of individual residences, businesses, and public dumps; they may pretend to work for legitimate companies, medical offices, clinics, pharmacies, government agencies, or financial institutions to try to trick potential victims into revealing personal information by email or phone. 118

There are many signs indicating that one may have been a victim of identity theft which servicemembers, veterans, and their families should watch out for. According to the FTC, these signs include:¹¹⁹

- Bank account withdrawals that cannot be explained;
- Non-receipt of bills or other mail;
- Check refusal by merchants;
- Receipt of calls from debt collectors about debts that are not owed;
- Unfamiliar/unknown charges on credit cards and unfamiliar accounts on credit reports;
- Medical bills for services not rendered;
- Health plan rejection of legitimate medical claim because benefits limit has been reached;
- Health plan refusal to cover a condition not indicated in medical record;

- IRS notification that more than one tax
 return was filed under the same name, or that income from an unknown employer has been reported; or
- A report that personal information was compromised by a data breach at a company.

Servicemembers and veterans who begin seeing these sign should immediately begin taking steps to mitigate the potential damage of an identity theft.

Mitigation and Prevention

Identity theft is a crime and victims should not hesitate to report it to their state's Attorney General, local law enforcement, and the Federal Trade Commission. ¹²⁰ But there are further steps servicemembers, veterans, and their family members can take to mitigate the damage done by identity theft and to reduce the risk of identity theft occurring in the first place. This Section outlines some of those steps.

Initial Fraud Alert.¹²¹ If veterans or servicemembers sees signs that they or their family may have experienced identity theft, the first step in mitigating potential damage is to file an initial fraud alert with one of the three credit reporting companies. A fraud alert places additional barriers on using a person's identity to acquire credit. When a person's credit report has a fraud alert, businesses must verify that person's identity before issuing new credit. Thus, the victim will be contacted by potential creditors before the identity thief will actually be able to do any further damage. Initial fraud alerts remain active for 90 days but can be renewed for 90 day intervals. Victims of identity theft can request initial fraud alerts at:

Equifax

By Phone: 1-800-525-6285 On the web: https://www.alerts.equifax.com/

¹¹⁵ Identity Theft, FEDERAL TRADE COMMISSION, http://www. consumer.ftc.gov/features/feature-0014-identity-theft (last visited May 5, 2014).

¹¹⁶ *Id*.

¹¹⁷ Id.

¹¹⁸ Signs of Identity Theft, Federal Trade Commission (July 2012), http://www.consumer.ftc.gov/articles/0271-signs-identity-theft.

¹¹⁹ Checklist taken from: Signs of Identity Theft, supra.

¹²⁰ Consumers can file identity theft complaints with the FTC at https://www.consumer.ftc.gov/articles/0277-create-identity-theft-report

¹²¹ Place a Fraud Alert, FEDERAL TRADE COMMISSION (Aug. 2012), http://www.consumer.ftc.gov/articles/0275-place-fraud-alert.

Experian

By Phone: 1-888-397-3742

On the web: https://www.experian.com/

fraud/center.html

TransUnion

By Phone: 1-800-680-7289

On the web: http://www.transunion.com/personal-credit/credit-disputes/fraud-

alerts.page

The credit reporting companies are obligated to notify each other of initial fraud alerts. Requesting an alert with any one of the three companies will be sufficient.

Extended Fraud Alerts and Credit Freezes. 122

Depending on the circumstances, a victim of identity theft may also wish to pursue a seven-year "extended fraud alert" or a credit freeze. An extended fraud alert allows a person to obtain two free credit reports within twelve months from each of the three credit reporting companies, and the credit reporting companies must take their name off marketing lists for prescreened credit offers for five years. While a person can apply for an extended fraud alert by calling any of the above phone numbers, only Experian and TransUnion accept online applications. Typically, applying for an extended fraud alert requires that the applicant have first filed a police report regarding the identity theft.

A credit freeze prevents any potential creditors from pulling the victim's credit report during the duration of the freeze. The cost to place and lift a credit freeze depends on state law. The FTC suggests that victims of identity theft contact their state Attorneys General (AG) for information on credit freezes; AG Offices should be prepared to field questions on their state's credit freeze law.

As with initial fraud alerts, the credit reporting companies are obligated to notify each other of extended fraud alerts. Requesting an alert with any one of the three companies will be sufficient. For a credit freeze, however, a request needs to be filed with each of the credit reporting companies.

122 Extended Fraud Alerts and Credit Freezes, Federal Trade Commission (July 2012) http://www.consumer.ftc.gov/articles/0279-extended-fraud-alerts-and-credit-freezes.

Active Duty Alerts.¹²³ A powerful tool available to active duty servicemembers to reduce their risk of identity theft is the active duty alert. Active duty alerts notify potential creditors that the person whose credit report they are viewing is active duty military and require potential creditors to verify the servicemember's identity before issuing credit. With an active duty alert, servicemembers may designate a personal representative such as a spouse, family member, or trusted friend to verify their identity.

Servicemembers can place active duty alerts on their credit report for up to one year at a time. Active duty alerts can be placed by calling any of the credit reporting companies at their above-listed phone numbers or visiting the listed websites.

Protect Your Information. 124 Servicemembers, veterans, and their family members can make minor lifestyle changes to protect their information. The Federal Trade Commission provides an indepth guide on simple steps the average person can take to protect their personal information, both on the Internet and in everyday life. The guide, "How to Keep Your Personal Information Secure," is available at: http://www.consumer. ftc.gov/articles/0272-how-keep-your-personal-information-secure. A few points bear repeating here:

- Always beware of impostors. No one should give out personal information on the phone, through the mail, or over the Internet unless initiating or knowing the contact.
- Shred or otherwise destroy any trash that may contain personal information. This includes receipts, credit offers, insurance forms, and even labels on prescription bottles.
- Be careful with sharing too much on social networking sites. Identity thieves troll sites to discover information that may be used

¹²³ Active Duty Alerts for Members of the Military, NORTH CAROLINA DEPARTMENT OF JUSTICE, http://www.ncdoj.gov/getdoc/94572b56-8254-432f-9bcb-cc908fd34f6a/Active-Duty-Alerts.aspx (last visited Oct. 1, 2014).

¹²⁴ How to Keep Your Personal Information Secure, Federal Trade Commission (July 2012), http://www.consumer.ftc.gov/articles/0272-how-keep-your-personal-information-secure.

to answer 'challenge' questions in order togain access to financial accounts and other personal information. 125

 Following these steps and others found in the FTC guide can play a major part in reducing the risk of identity theft.

Monitor Credit Activity. A final step servicemembers, veterans, and their family members can take to protect themselves from identity theft is to monitor their credit activity. Everyone is entitled to a free copy of a credit report once a year from each of the three credit reporting companies. A periodic, thorough review of a credit report for any inaccuracies or suspicious activity, such as unexplained open accounts, can provide a head start on the mitigation process previously discussed.

Free credit reports can be obtained from www. annualcreditreport.com.

Misleading Marketing Practices

Misleading marketing tactics are an overarching issue in consumer protection, especially with respect to scams targeting military servicemembers and veterans. Through "affinity marketing" and advertising in "military" newspapers, scammers may use false military affiliations to give themselves an air of legitimacy and authority to appeal to servicemembers and veterans.

Affinity Marketing

Affinity marketing is a tactic that can be used in conjunction with any of the scams previously discussed in this Section. Business entities will adopt military-sounding names or hire former servicemembers to work as salespeople for their products or services. Some salespeople will even falsely claim that they are military retirees. ¹²⁶ These associations or false claims are meant to impress a sense of legitimacy and authority on potential customers, especially servicemembers. The effect is particularly forceful when former high-level officers are used to sell products and services to more junior servicemembers. ¹²⁷

Similar to the goal of affinity marketing, some advertising in newspapers such as *ArmyTimes*, *NavyTimes*, *AirForceTimes*, and *MarineCorpsTimes* can prey on the perceived military association for a sense of legitimacy. These newspapers are found all around military installations and many servicemembers incorrectly believe that they are affiliated with the United States military. Further, servicemembers often incorrectly believe that the military oversees the advertising contained within these four papers. However, these newspapers are, in fact, all publications of the Gannett Company and have no official relationship with the U.S. government.

Legal Framework

State and federal law provides a robust legal framework to protect military servicemembers, veterans, and their families as consumers. This Section provides an overview of some of the more important parts of that legal framework, including the Military Lending Act, the Servicemembers Civil Relief Act, the Fair Debt Collection Practices Act, state unfair and deceptive acts and practices (UDAP) statutes, and the military off-limits designation.

Military Lending Act

The Military Lending Act¹²⁹ (MLA) provides active duty servicemembers with a variety of protections in transactions involving small dollar, high interest loans such as payday loans, vehicle title loans, and tax refund anticipation loans. These loans are typically made to borrowers experiencing cash flow difficulties. Often carrying exceedingly high interest rates (as discussed above), such loans are used to pay rent, utility bills, and other routine obligations, making these routine expenses exceedingly costly. Vehicle title loans additionally put a servicemember's mode of transportation in jeopardy for non-payment.

Nonetheless, many military servicemembers often resort to these types of loans when suffering a short-term need for funds. The MLA was enacted

[&]quot;Military" Newspapers 128

¹²⁵ Id.

¹²⁶ ARCHER, supra n. 93, at 2.

¹²⁷ In Harm's Way, supra note 74, at 17-18.

¹²⁸ Id. at 11.

^{129 10} U.S.C. § 987 (2014).

¹³⁰ FDIC Update on Payday Lending, supra n. 71.

to alleviate many of the risks typically associated with payday lending and other short-term, high interest loans. As discussed in more detail in the following Section, the MLA caps interest rates and limits the use of certain loan terms that tend to be disadvantageous to borrowers.

The protections of the MLA apply to payday loans, ¹³¹ vehicle title loans, ¹³² and tax refund anticipation loans ¹³³ made to covered servicemembers. Covered servicemembers are members of the Army, Navy, Marine Corps, Air Force, or Coast Guard who are on active duty for a period of more than 30 days, and servicemembers serving under "active Guard and Reserve duty" as that term is defined in 10 U.S.C. § 101(d)(6). ¹³⁴ It also covers such a member's spouse, children, and any other dependents the member had in the 180 days preceding a loan. ¹³⁵ As noted above, the MLA's protections only apply to specifically-defined types of loans, namely payday loans, vehicle title loans, and tax refund anticipation loans.

Rights Conveyed

As noted, the MLA conveys a wide array of rights to covered servicemembers in covered transactions; they are presented below in list format to simplify the ad hoc collection of rights.

• The primary protection of the MLA is a 36% cap on the Military Annual Percentage Rate (MAPR) of covered loans. The cap ensures that lenders do not charge servicemembers more than 36% of the principal of the loan per year in loan-related costs (*i.e.*, the MAPR). The costs included in the MAPR calculation are the interest charged on the loan, any fees, credit

service charges, credit renewal charges, credit insurance premiums including charges for single premium credit insurance, fees for debt cancellation or debt suspension agreements, and fees for credit-related ancillary products sold in connection with and either at or before consummation of the credit transaction.¹³⁶

- The MLA requires certain loan information to be clearly and conspicuously disclosed to the potential borrower prior to consummation of the loan. Among the information required to be disclosed is the MAPR percentage rate, the total dollar amount of all charges included in the MAPR, and a clear description of the payment obligation of the borrower.¹³⁷
- The MLA prohibits a lender from refinancing a loan unless the new transaction results in more favorable terms to the covered borrower, such as a lower MAPR.¹³⁸
- The MLA prohibits lenders from requiring a borrower to waive the right to legal recourse under any otherwise applicable provision of state or federal law, including any provision of the Servicemembers Civil Relief Act.¹³⁹
- The MLA prohibits the terms of a loan from requiring a borrower to submit to arbitration in the case of a dispute. It further prohibits a lender from imposing "onerous legal notice provisions" on bringing a claim against the lender.¹⁴⁰
- The MLA prevents a lender from conditioning an extension of credit on the creation of a military allotment to repay the obligation.¹⁴¹
- Finally, the MLA prevents lenders from disallowing the prepayment of a loan or charging a penalty for prepayment.¹⁴²

¹³¹ Payday loans are defined under the MLA implementing regulations as "[c]losed-end credit with a term of 91 days or fewer in which the amount financed does not exceed \$2,000..." 32 CFR § 232.3(b)(1)(i) (2014).

¹³² A vehicle title loan is "[c]losed-end credit with a term of 181 days or fewer that is secured by the title to a motor vehicle, that has been registered for use on public roads and owned by a covered borrower..." 32 C.F.R. § 232.3(b)(1)(ii) (2014). Under MLA regulations, vehicle title loans do not include credit transactions to finance the purchase or lease of a motor vehicle when the credit is secured by the vehicle being purchased or leased. 32 CFR § 232.3(b)(2)(ii) (2014).

¹³³ A tax refund anticipation loan is "[c]losed-end credit in which the covered borrower expressly grants the creditor the right to receive all or part of the borrower's income tax refund or expressly agrees to repay the loan with the proceeds of the borrower's refund." 32 CFR § 232.3(b)(1)(iii) (2014).

¹³⁴ See 32 CFR § 232.3(c) (2014); see also 10 U.S.C. § 101(d)(2), (d)(6) (2014) in Appendix A, infra.

^{135 32} CFR § 232.3(c)(2) (2014).

¹³⁶ FEDERAL RESERVE, TALENT AMENDMENT: LIMITATIONS ON TERMS OF CONSUMER CREDIT EXTENDED TO SERVICEMEMBERS AND DEPENDENTS 1, available at www.federalreserve.gov/boarddocs/supmanual/cch/talent.pdf. See also 32 CFR § 232.3(h) (2014); 12 C.F.R. § 226.22, app. J (2014).

^{137 32} CFR § 232.6(a) (2014).

¹³⁸ See 32 CFR § 232.8(a)(1) (2014).

^{139 32} CFR § 232.8(a)(2) (2014).

^{140 32} CFR § 232.8(a)(3) (2014). 141 32 CFR § 232.8(a)(6) (2014).

^{142 32} CFR § 232.8(a)(7) (2014).

Remedies and Penalties

The MLA specifically grants enforcement authority to federal agencies equivalent to that granted under the Truth in Lending Act. Thus the MLA can be enforced by federal agencies such as the Consumer Financial Protection Bureau, the Federal Deposit Insurance Corporation, the U.S. Department of Agriculture, the Securities and Exchange Commission, and the Federal Trade Commission with respect to entities over which they have regulatory power. 143 Further, states may pass legislation to authorize themselves to enforce the provisions of the MLA. 144 The MLA does not preempt state laws that are more protective of servicemembers in this area.

Remedies and penalties for violation of the MLA include:

- Criminal penalties: violation of the MLA is a misdemeanor punishable by a fine or imprisonment up to one year.¹⁴⁵
- Civil damages: a person aggrieved by a violation of the MLA is entitled to recover any actual damage sustained as a result, but not less than \$500 for each violation; appropriate punitive damages; appropriate equitable or declaratory relief; and any other relief provided by law.¹⁴⁶
- Civil equitable relief: any payday loan, vehicle title loan, or tax refund anticipation loan failing to comply with the provisions of the MLA is rendered void from its inception.¹⁴⁷

Proposed Regulations

On September 29, 2014, the Department of Defense proposed regulations that would broaden the types of consumer credit covered by the MLA

143 See 10 U.S.C. § 987(f)(6) (2014), 15 U.S.C § 1607; see also Alan Kaplinsky, Congress Passes Bill Giving CFPB Authority to Enforce Military Lending Act and Creating Civil Liability for Violations, CFPB MONITOR (Dec. 28, 2012), www.cfpbmonitor. com/2012/12/28/congress-passes-bill-giving-cfpb-authority-to-enforce-military-lending-act-and-creating-civil-liability-for-violations/.

to include all those loans covered by the Truth in Lending Act^{148} as well as mandating that any finance charges that would be covered as "interest" under 10 U.S.C. § 987(i)(3) must be included in the calculation of the MAPR among other changes. ¹⁴⁹

Servicemembers Civil Relief Act

Recall that the Servicemembers Civil Relief Act (SCRA) protects military servicemembers in a variety of legal contexts ranging from judicial proceedings to taxation and more. It is intended to postpone or suspend certain civil obligations to enable service members to devote full attention to duty and relieve stress on the family members of those deployed servicemembers. These obligations can be particularly stressful when a servicemember is deployed. With respect to lending, credit, and debt collection, the SCRA caps interest rates during military service, provides certain rights and protections related to mortgage lending, and provides a host of protections regarding civil debt enforcement proceedings.

For more information on SCRA protections in the lending, credit, and debt collection context, please refer to the "Rights Conveyed" Section on pages 11-16 discussing the provisions of the SCRA.

Fair Debt Collection Practices Act¹⁵¹

In passing the Fair Debt Collection Practices Act ("FDCPA") the United States Congress found that "[t]here is abundant evidence of the use of abusive, deceptive, and unfair debt collection practices by many debt collectors." Further, "[a]busive debt collection practices contribute to the number of personal bankruptcies, to marital instability, to the loss of jobs, and to invasions of individual privacy." Military servicemembers, no less than the civilian population, fall victim to these practices. Needless to say, the consequences of suffering from

¹⁴⁴ Jean Ann Fox, *The Military Lending Act Five Years Later*, Consumer Federation of America (May 29, 2012), 12, www. consumerfed.org/pdfs/Studies.MilitaryLendingAct.5.29.12.pdf.

^{145 32} CFR § 232.9(a) (2014).

^{146 10} U.S.C. § 987(f)(5)(A) (2014).

^{147 32} CFR § 232.9(c) (2014).

^{148 15} U.S.C. § 1601 et sea

¹⁴⁹ Limitations on Terms of Consumer Credit Extended to Servicemembers and Dependents, 79 Fed. Reg. 58601, 58603, available at https://www.federalregister.gov/ articles/2014/09/29/2014-22900/limitations-on-termsof-consumer-credit-extended-to-service-members-anddependents#h-14 (last visited Oct. 3, 2014).

¹⁵⁰ SCRA Overview, supra n. 34.

¹⁵¹ See 15 U.S.C. §§ 1692-16920 (2014).

^{152 15} U.S.C. § 1692(a) (2014).

¹⁵³ Id.

abusive debt collection practices are of particular concern with respect to military servicemembers; military servicemembers must be focused on their duties rather than preoccupied with unscrupulous debt collections.

Moreover, military servicemembers are particularly vulnerable to abusive debt collection practices. Since failure to pay a debt can be punished under the Uniform Code of Military Justice, debt collectors will often threaten to contact a servicemember's superior officers to coerce payment.¹⁵⁴

Rights Conveyed

Although not specifically tailored to the context of a debt collector contacting a servicemember's superior officers, the FDCPA prohibits a debt collector from contacting any third party in connection with the collection of any debt. 155 By default, a collector may only communicate with the debtor, the creditor, their attorneys, or a consumer reporting agency if otherwise permitted by law. 156 A collector may only communicate with a third party with the consent of the debtor, the express permission of a court of competent jurisdiction, or "as reasonably necessary to effectuate a post-judgment judicial remedy." 157

The FDCPA imposes a number of other limitations on how a debt collector may communicate with a debtor. A debt collector may not contact a debtor at any unusual time or place; this prevents a debt collector from contacting a debtor before 8:00am, after 9:00pm, or at any time or place known or which should be known to be inconvenient to the debtor.¹⁵⁸ A debt collector may not communicate with a debtor directly if the collector knows the debtor is represented by an attorney regarding the debt.159 A collector may not contact a debtor at work if the collector has reason to know that the employer prohibits the debtor from receiving such calls. 160 Additionally, a debt collector must cease most forms of communication with a debtor upon written request from the debtor.161

The FDCPA prohibits a debt collector from harassing a debtor to compel payment. Prohibited conduct is defined as "any conduct the natural consequence of which is to harass, oppress, or abuse." For example, the FDCPA specifically prohibits the use of threats and obscene language, among other things. Further, it prevents a debt collector from repeatedly or continuously telephoning a debtor with the intent to annoy, abuse, or harass. 164

Remedies and Penalties

The FDCPA allows those aggrieved by violations of the statute to recover money damages from the violator. The individual aggrieved can recover actual damages, punitive damages up to \$1,000, court costs, and reasonable attorney's fees. ¹⁶⁵ In determining the amount of punitive damages, a court will consider "the frequency and persistence of noncompliance by the debt collector, the nature of such noncompliance, and the extent to which such noncompliance was intentional." ¹⁶⁶

Enforcement authority of the FDCPA typically rests with the Federal Trade Commission. Violation of the FDCPA is, by its very nature, an unfair or deceptive act or practice under the FTC Act, invoking all the powers and functions the FTC possesses under the FTC Act. 167 However, the FTC's enforcement authority is limited with respect to entities over which other federal agencies have regulatory authority. Thus, agencies such as the Consumer Financial Protection Bureau, Federal Deposit Insurance Company, and National Credit Union Administration Board—among others—share FDCPA enforcement authority.¹⁶⁸ In addition to filing a complaint with the state Attorney General, a servicemember suffering from debt collection practices which may potentially violate the FDCPA should file a complaint online with the Federal Trade Commission and the Consumer Financial Protection Bureau. Complaints can be filed with the FTC and CFPB at www.ftccomplaintassistant.gov and www. consumerfinance.gov/complaint, respectively.

¹⁵⁴ See, e.g., Cooper Testimony, supra n. 68.

^{155 15} U.S.C. § 1692c(b) (2014).

¹⁵⁶ *Id*.

¹⁵⁷ Id.

^{158 15} U.S.C. § 1692c(a)(1) (2014).

^{159 15} U.S.C. § 1692c(a)(2) (2014).

^{160 15} U.S.C. § 1692c(a)(2) (2014).

^{161 15} U.S.C. § 1692c(c) (2014).

^{162 15} U.S.C. § 1692d (2014).

^{163 15} U.S.C. § 1692d(1)-(2) (2014).

^{164 15} U.S.C. § 1692d(5) (2014).

^{165 15} U.S.C. § 1692k (2014).

^{166 15} U.S.C. § 1692k(b)(1) (2014).

^{167 15} U.S.C. § 1692l(a) (2014). 168 See 15 U.S.C. § 1692l(a)-(b) (2014).

UDAP Statutes

Unfair and deceptive acts and practices (UDAP) statutes are some of the most far-reaching and effective consumer protection tools. Because they are so broadly drafted, UDAP statutes provide the Attorneys General with an opportunity to make an argument for a victimized servicemember in a huge variety of circumstances.

Of course, the Attorneys General themselves are the true experts on the application of their states' UDAP statutes. Further, in large part, the schemes outlined in this Section are not exclusively used to target military members. Indeed, it is likely that consumer protection divisions frequently deal with these types of schemes outside of the military context. That being said, it is important to appreciate what can be gained by identifying businesses which make an effort to target military servicemembers and veterans with unfair and deceptive acts or practices.

Undoubtedly, indentifying these types of businesses for enforcement purposes vindicates a very important public interest. For the sacrifices they make, the nation owes it to our servicemembers to protect them from unfair and deceptive acts and practices at home. There are also practical advantages to targeting these types of business for enforcement actions. Servicemembers make excellent witnesses. Not only are they are very sympathetic, they also tend to be well-spoken and very good at accurately describing their experiences.

Moreover, additional consumer complaints may be especially easy to track down thanks to the FTC's Consumer Sentinel. The FTC's Consumer Sentinel provides users with access to millions of categorized and searchable consumer complaints. ¹⁶⁹ Consumer Sentinel denotes complaints from military members, making it easy for users to aggregate military complaints against the same offenders. ¹⁷⁰

A potentially powerful tool that can be used to prevent servicemembers from suffering fraud is the off-limits designation. At military installations, commanders have substantial discretion to declare businesses temporarily off-limits to their personnel in order to "help maintain good order and discipline, health, morale, safety, and welfare of Service [sic] personnel . . . [w]here sufficient cause exists." 171 Servicemembers are prohibited from doing business with or even entering the off-limits establishment. This designation is used to protect servicemembers by preventing their exposure to businesses which may have an adverse effect on their health, morale, safety, or welfare. 172 While commanders may temporarily place businesses off-limits, the Armed Forces Disciplinary Control Board (AFDCP) processes placement of an establishment on a permanent off-limits list.

The standard for instituting AFDCP permanent off-limits proceedings is substantially similar to the standard applicable to a commander's initial designation of an establishment as temporarily offlimits. Instituting AFDCP permanent off-limits proceedings requires the presence of substantive information indicating that an establishment or area frequented by Armed Forces personnel presents conditions which adversely affect their health, safety, welfare, morale, or morals.¹⁷³ If such information exists, AFDCP representatives will conduct an investigation of the establishment and submit a report to the AFDCP at large. If the AFDCP concludes that conditions adverse to servicemembers do exist, the establishment in question will be notified and given a chance to correct the issue. If the establishment does not take remedial action, its proprietor will be invited to appear before the AFDCP to explain why the establishment should not be placed off-limits. The AFDCP will then decide whether to place the business off-limits.

Use of the off-limits process can have a lot of benefits for servicemembers. Importantly, a business does not need to engage in patently illegal activity for it to be placed off-limits.¹⁷⁴ Thus,

Off-Limits Designation

¹⁶⁹ See Consumer Sentinel Network, FEDERAL TRADE COMMISSION, www.ftc.gov/enforcement/consumer-sentinel-network (last visited Oct. 2, 2014).

¹⁷⁰ See Military Families, FEDERAL TRADE COMMISSION, www. consumer.ftc.gov/features/feature-0009-military-families (last visited Oct. 2, 2014).

¹⁷¹ Armed Forces Disciplinary Control Boards and Off-Installation Liaison and Operations, MILITARY POLICE (July 27, 2006), 2-6, www.apd.army.mil/jw2/xmldemo/r190_24/main.asp [hereinafter "AFDCB Off-Installation Liaisons"].

¹⁷² Id. at 2-6.

¹⁷³ Id. at B-6.

¹⁷⁴ In Harm's Way, supra n. 74, at 30-31.

the off-limits designation has a broader possible reach than traditional law enforcement methods. This can be especially critical with situations like price-gouging, which may not be technically illegal but is nevertheless harmful to servicemembers. Further, it is possible that, once subject to scrutiny, businesses will voluntarily change their harmful practices.

More information on the AFDCB off-limits process is available at: www.apd.army.mil/jw2/xmldemo/r190_24/main.asp, sections 2-6 and B-6.

Resources for Servicemembers

There are a number of resources available to servicemembers to help them educate themselves about lending, credit, debt, and managing their finances in general. Additionally, servicemembers who are in need of more tangible financial assistance may be eligible for interest-free loans provided by Military Relief Organizations and other non-profits institutions. The Attorneys General should be aware of these services and be able to direct servicemembers to the resources appropriate to their need.

Servicemembers should not hesitate to take advantage of these resources when the need arises. Many servicemembers may be reluctant to admit their financial difficulties to entities associated with the military because they fear they may be disciplined by their superiors or put their security clearance at risk for failing to keep their finances in order. This reluctance can lead servicemembers to seek other solutions which can be much more disadvantageous to them in the long term and even plunge them deeper into debt. Servicemembers should understand that isolated incidents of financial trouble almost never trigger discipline. 175 The reality is that in all but serious, repeat-offender cases, a superior officer will most likely refer a servicemember suffering from financial distress to some of the resources discussed below rather than consider discipline. 176

Financial Management Services

Financial management services educate and advise military servicemembers on financial matters to assist them in managing their assets and resolving financial difficulties. These resources can

175 *Id.* at 13. 176 *Id.* at 14.

be extremely valuable to servicemembers who may otherwise turn to risky solutions such as payday lending in the face of financial struggles.

Military Personal Financial Management Services

Each branch of the armed services has a Personal Financial Management (PFM) program designed to help servicemembers keep their finances in order, save for the future, improve their credit, and resolve financial problems. Although the particularities may vary by service branch, PFM programs typically include classes, seminars, and individual counseling opportunities to educate servicemembers and their families about their rights as consumers and to help them achieve financial stability. Class and seminar topics may include, for instance, budgeting, banking and credit union services, and credit use and abuse. 177 PFM services are provided at no cost to the servicemember.

PFM services are offered at most military installations. Servicemembers who do not reside on a military installation can visit www. militaryinstallations.dod.mil/ to find the nearest installations offering PFM services. Servicemembers may schedule telephone counseling appointments through Military OneSource by calling (800) 342-9647. Further, servicemembers can visit Army OneSource online for a number of educational resources and financial management tools: www.myarmyonesource.com/familyprogramsandservices/financialreadiness/default.aspx.

Armed Forces Legal Assistance

Each branch of the armed services has legal assistance offices which provide free legal services and attorney advice to servicemembers and their families. For servicemembers suffering from lending, credit, and debt collection problems, legal assistance attorneys may be able to help with communication, correspondence, and negotiation with collection agencies, lawyers, or other parties.¹⁷⁸ Servicemembers

¹⁷⁷ Personal Financial Management Programs for Service Members, MILITARY ONESOURCE, www.militaryonesource.mil/pfm?content_id=267421 (last visited Oct. 2, 2014).

¹⁷⁸ The Armed Forces Legal Assistance Program, MILITARY
ONESOURCE, http://www.militaryonesource.mil/legal?content_id=267508 (last visited Oct. 2, 2014).

should not hesitate to meet with an attorney for help with any kind of consumer issue. Legal assistance attorneys can also explain the federal and state laws providing protections for servicemembers as consumers relating to purchases, credit reporting, and creditor collections.¹⁷⁹ They are particularly well-versed in the Servicemembers Civil Relief Act and can explain its protections as well as servicemembers' responsibilities under the Act.¹⁸⁰ With these legal tools in mind and the help of a legal assistance attorney, servicemembers can work toward solutions.

Legal assistance services are offered at most military installations, but online tools are also available to make the search easier:

- All servicemembers can visit legalassistance. law.af.mil/content/locator.php to find the nearest installations offering legal assistance services (continental US only).
- Navy servicemembers can visit www.jag.navy. mil/legal_services/legal_services_locator_rlso. htm to find a legal assistance office anywhere in the world.
- Coast Guard servicemembers can visit www. uscg.mil/legal/la/legal_assistance_find_lawyer. asp to find offices anywhere in the United States (including Alaska and Hawaii).

Third Party Financial Management Resources

Military Relief Organizations. Some of the private, non-profit military relief organizations discussed in greater detail in the following Section on Interest-Free Military Loans also provide financial counseling. The Navy-Marine Corps Relief Society's Financial Assistance and Counseling Program employs caseworkers who will help sailors and marines plan for financial success by helping prepare budgets and providing money-saving resources and tips.¹⁸¹

Similarly, the Debt Management and Financial Counseling Program of Coast Guard Mutual Assistance will help guardsmen manage their cash flow to permit a livable budget and repayment of debt, as well as set aside a modest savings to provide for future needs.¹⁸²

Army Emergency Relief and the Air Force Aid Society do not have independent financial counseling services but do provide counseling in connection with their loan and grant programs.

Military Saves. Military Saves is a component of the non-profit America Saves and a partner in the Department of Defense's Financial Readiness Campaign. Military Saves seeks to motivate, support, and encourage military families to save money, reduce debt, and build wealth. Military Saves provides instructional guides on several financial topics including how and why to save for emergencies and how to reduce debt. Military Saves

SaveAndInvest.org. SaveAndInvest.org is a project of the Financial Industry Regulatory Authority dedicated to helping people make informed financial decisions. ¹⁸⁵ SaveAndInvest.org's Military Center provides free, detailed financial toolkits designed to assist military servicemembers achieve financial stability, manage their debt, and save for the future. ¹⁸⁶

Navy Federal Credit Union. Navy Federal Credit Union (Navy Federal) is a nonprofit, member-owned credit union serving the United States defense industry, including all branches of the armed forces. In addition to the banking services typically offered by credit unions, Navy Federal provides financial education and planning services.¹⁸⁷

¹⁷⁹ Id.

¹⁸⁰ Id.

¹⁸¹ Financial Assistance and Counseling, NAVY-MARINE CORPS RELIEF SOCIETY, www.nmcrs.org/pages/financial-assistance-and-counseling (last visited Oct. 2, 2014) [hereinafter "NMCRS Financial Assistance"].

¹⁸² Debt Management and Financial Counseling Program, COAST GUARD MUTUAL ASSISTANCE, www.cgmahq.org/Assistance/ Programs/deb.html (last visited May 5, 2014).

¹⁸³ What Is Military Saves?, MILITARY SAVES, www.militarysaves. org/learn-more-about-us/what-is-military-saves (last visited Oct. 2, 2014).

¹⁸⁴ Save For Emergencies, MILITARY SAVES, www.militarysaves.org/for-savers/set-a-goal-what-to-save-for/save-for-emergencies (last visited Oct. 2, 2014); Get Out of Debt, MILITARY SAVES, www.militarysaves.org/for-savers/set-a-goal-what-to-save-for/get-out-of-debt (last visited May 5, 2014).

¹⁸⁵ About Us, SaveAndInvest.Org, www.saveandinvest.org/About/ (last visited Oct. 2, 2014).

¹⁸⁶ Military Financial Toolkits, SAVEANDINVEST.ORG, www. saveandinvest.org/MilitaryCenter/MilitaryFinancialToolkits/ (last visited Oct. 2, 2014).

¹⁸⁷ Managing Your Money, NAVY FEDERAL CREDIT UNION, https:// www.navyfederal.org/life-money/managing-your-money/index. php (last visited Oct. 2, 2014).

Navy Federal provides a large amount of free educational materials on managing a person's money. These materials cover general topics such as saving, investing, budgeting, credit and debt management, and others, and can be found at: https://www.navyfederal.org/life-money/managing-your-money/index.php. Navy Federal also has an ongoing agenda of free financial seminars all over the country. The calendar of events is available at: https://www.navyfederal.org/products-services/investments-insurance/events.php.

Furthermore, Navy Federal also provides materials more specifically directed at military servicemembers and veterans. These materials are designed to help servicemembers and veterans make wise financial choices during deployment, relocation, and transition back to civilian life. They are available at: https://www.navyfederal.org/life-money/military-life.php. Navy Federal also partners with recruiting stations and ROTC offices at their request to give in-person financial readiness presentations to help educate prospective servicemembers.¹⁸⁸

Interest-Free Loans

Servicemembers in need of additional cash may qualify for an interest-free loan from a number of sources. These loans carry much less risk and are vastly preferable overall to the short-term, high-interest loans discussed earlier in this Part.

Military Relief Organizations

Servicemembers have access to excellent financial resources in their branch-specific military relief organizations. Military relief organizations are private, non-profit organizations that help servicemembers and their families with certain emergency financial needs. These organizations can provide interest-free loans, grants, or a combination thereof to servicemembers in need. They provide an excellent alternative to the short-term, high-interest loans often relied upon by people experiencing temporary cash flow difficulties.

Army Emergency Relief. Army Emergency Relief (AER) provides assistance to soldiers on active

duty, members of the Army National Guard and Army Reserve on active duty for more than 30 days, and certain retired soldiers.¹⁸⁹ AER also provides assistance to the families of such soldiers and the surviving family members of soldiers who give their lives while on active duty.¹⁹⁰

AER provides funds to help with a variety of emergency financial needs. AER funds can be issued to help with essential expenses such as rent, mortgage payments, vehicle repair, medical bills, utilities, and even food. 191 There is no specific dollar limit on AER funds; AER will attempt to match a soldier's need. 192 However, AER will not provide funds to pay fines, legal expenses, or to liquidate or consolidate debt. 193

Typically, AER funds come in the form of interest-free loans. 194 AER can provide grants if repayment of a loan would cause undue hardship. 195 AER can also provide a combination of loan and grant funds if only partial repayment would be feasible for a soldier. 196 For solving cash flow difficulties, any of these options is much more advantageous to a soldier than resorting to lending traps such as payday loans. But since AER will not provide funds to liquidate debt, in an emergency, soldiers should first seek help from AER.

Soldiers in need should visit www.aerhq. org to apply for funds and for more information on the services provided by Army Emergency Relief, including a more comprehensive list of eligible expenses.

Navy-Marine Corps Relief Society. The Navy-Marine Corps Relief Society (NMCRS) provides financial assistance to active duty or sailors and Marines, as well as Reservists on active duty for 30 days or more. NMCRS also provides assistance to sailors' and marines' family members and surviving spouses. 198

¹⁸⁸ Preparing Future Military Servicemembers, NAVY FEDERAL CREDIT UNION, https://www.navyfederal.org/life-money/military-recruiters.php (last visited Oct. 2, 2014).

¹⁸⁹ See Need Financial Assistance?, ARMY EMERGENCY RELIEF, www. aerhq.org/dnn563/FinancialAssistance.aspx (last visited Oct. 2, 2014).

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¹⁹¹ Frequently Asked Questions, ARMY EMERGENCY RELIEF, www. aerhq.org/dnn563/FinancialAssistance/FAQs.aspx (last visited Oct. 2, 2014) [hereinafter "AER FAQ"].

¹⁹² *Id*.

¹⁹³ *Id*.

¹⁹⁴ Id.

¹⁹⁵ *Id*.

¹⁹⁶ See id.

¹⁹⁷ NMCRS Financial Assistance, supra n. 178.

¹⁹⁸ Id.

NMCRS offers interest-free loans and grants to meet a variety of essential financial needs. NMCRS commonly provides funds to help sailors and Marines pay expenses such as rent, mortgages, utilities, home repairs, medical bills, and costs associated with establishing a new residence.¹⁹⁹

Like Army Emergency Relief assistance, NMCRS assistance comes in the form of interest-free loans, grants, or a combination thereof.²⁰⁰ Typically, a sailor or Marine must make an appointment with an NMCRS office and meet with a caseworker in order to receive funds.²⁰¹ However, if the amount requested is less than \$500, a sailor or Marine may be able to get a "Quick Assist Loan," which can be approved within minutes after submission of a brief application.²⁰²

Sailors and marines in need should visit www.nmcrs.org to apply for funds and obtain more information on the services provided by the Navy-Marine Corps Relief Society, including a more comprehensive list of eligible expenses.

Air Force Aid Society. The Air Force Aid Society (AFAS) provides financial assistance to active duty airmen, Air National Guard and Air Force Reserve personnel on active duty for over 15 days, and retired airmen. AFAS also serves family members and surviving family members of such airmen.²⁰³

AFAS provides interest-free loans and grants to airmen to address emergency expenses. Covered expenses include basic living expenses, emergency travel, vehicle expenses, medical bills, and moving expenses.²⁰⁴

AFAS standard emergency assistance loans and grants are made after an assessment of the airman's emergency situation and an evaluation of his or her personal budget to determine whether to issue a loan, grant, or combination of both.²⁰⁵

However, if the amount requested is less than \$750, an airman may instead apply for a Falcon loan. Falcon loans do not require an airman to submit a budget for consideration, streamlining the loan approval process. The submit a budget for consideration approval process.

Airmen in need should visit www.afas.org to apply for funds and receive more information on the services provided by the Air Force Aid Society, including a more comprehensive list of eligible expenses.

Coast Guard Mutual Assistance. Coast Guard Mutual Assistance (CGMA) provides financial assistance to a broad network of individuals associated with the Coast Guard. Almost everyone associated with the Coast Guard is potentially eligible for assistance from Coast Guard Mutual Assistance on behalf of themselves or their immediate family members. This generally includes active duty members, retired military personnel, civilian employees, reserve members, and auxiliary members, among others. 209

CGMA offers several financial assistance programs to meet differing needs. CGMA's Emergency Assistance Program is most akin to the financial assistance programs of the military relief organizations previously discussed. The Emergency Assistance Program is designed to provide funds to help Coast Guard members meet basic living expenses and pay for expenses such as emergency home repair and emergency travel expenses.²¹⁰ CGMA's Medical and Dental Program is a last resort source of funding in the face of extraordinary and unexpected medical expenses.²¹¹ CGMA's General Assistance Program covers less immediate financial difficulties. The General Assistance Program offers funds to help pay expense such as insurance, child

¹⁹⁹ Id.

²⁰⁰ Id.

²⁰¹ Id.

²⁰² Quick Assist Loans, NAVY-MARINE CORPS RELIEF SOCIETY, www.nmcrs.org/pages/quick-assist-loan-qal (last visited Oct. 2, 2014)

²⁰³ How We Can Help, AIR FORCE AID SOCIETY, www.AFAS.ORG/EA (last visited Oct. 3, 2014).

²⁰⁴ Id.

²⁰⁵ Air Force Aid Society Assistance Guide, AIR FORCE AID SOCIETY (Aug. 2012), 9, www.afas.org/document.doc?id=19.

²⁰⁶ Falcon Loan, AIR FORCE AID SOCEITY, www.afas.org/falcon-loan (last visited Oct 3, 2014).

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²⁰⁸ See Eligibility for Assistance, Coast Guard Mutual Assistance, www.cgmahq.org/Assistance/eligibility.html (last visited Oct. 3, 2014).

²⁰⁹ Id.

²¹⁰ Emergency Assistance Program, Coast Guard Mutual Assistance, www.cgmahq.org/Assistance/Programs/emg.html (last visited Oct. 3, 2014).

²¹¹ Medical and Dental Program, COAST GUARD MUTUAL ASSISTANCE, www.cgmahq.org/Assistance/Programs/med.html (last visited Oct. 3, 2014).

support, past due bills, vehicle repair, and moving expenses, among others. ²¹² Financial assistance from each of these CGMA programs comes in the form of interest-free loans, grants, or a combination of both. ²¹³

CGMA also offers a Quick Loan Program to active duty Coast Guard military members and members of the Coast Guard Reserve called to active duty.²¹⁴ The Quick Loan Program provides loans of \$500 or less to address immediate and essential financial needs.²¹⁵ As its name suggests, the application process for the Quick Loan Program contains fewer steps and requires less detailed documentation from the servicemember as compared to other CGMA financial assistance programs.²¹⁶ Loans disbursed through the Quick Loan Program are also interest-free.²¹⁷

Guardsmen in need should visit www.cgmahq. org to apply for funds and for more information on the services provided by Coast Guard Mutual Assistance, including a more comprehensive overview of eligibility requirements and distinctions between assistance programs.

Non-Profits

The PenFed Foundation. The Pentagon Federal Credit Union Foundation (PenFed Foundation) is a national charitable organization which provides financial assistance to military servicemembers and their families.²¹⁸

The PenFed Foundation's Asset Recovery Kit (ARK) program provides another interest-free alternative to payday lending. The ARK program offers interest-free loans of up to \$500 to military men and women.²¹⁹ The only cost is a \$5

212 General Assistance Program, COAST GUARD MUTUAL
ASSISTANCE, www.cgmahq.org/Assistance/Programs/gen.html
(last visited Oct. 3, 2014).

application fee.²²⁰ The ARK program also provides free financial counseling to those taking out loans.²²¹

The PenFed Foundation's Military Heroes program contributes financial assistance to military servicemembers wounded in the war against terrorism. The Military Heroes program assists those whose monetary needs are unable to be met by government agencies. Military Heroes assistance is not limited to defraying medical costs directly associated with a servicemember's injuries. Military Heroes assistance can be issued to help with myriad expenses including housing costs, back taxes, and home improvements to accommodate an injury-related disability, among others. 224

American Red Cross. The American Red Cross works under partnership agreements with the Air Force Aid Society, Army Emergency Relief, Coast Guard Mutual Assistance, and Navy-Marine Corps Relief Society to help facilitate the lending efforts of those organizations. Not all servicemembers are located in a place with convenient access to an office of their branch's Military Relief Organization. Fortunately, the American Red Cross is able to process loan applications from any eligible servicemember on behalf of any of the four Military Relief Organizations. Relief Organizations.

Servicemembers in need should visit www. redcross.org/find-help/military-families/financial-assistance for more information and call (877) 272-7337 to apply for assistance.

Educational Resources

When it comes to preventing unfair and deceptive business practices, the educated consumer is the first line of defense. State governments, federal agencies, and non-governmental organizations provide a bevy of resources to help consumers educate themselves and avoid scams. This Section

²¹³ Assistance Programs, COAST GUARD MUTUAL ASSISTANCE, www. cgmahq.org/Assistance/generalInfo.html (last visited Oct. 3, 2014)

²¹⁴ Quick Loan Program, COAST GUARD MUTUAL ASSISTANCE, www.cgmahq.org/Assistance/Programs/qui.html (last visited May 5, 2014).

²¹⁵ Id.

²¹⁶ Id.

²¹⁷ Id.

²¹⁸ Supporting Financial Readiness for Military Families,
WhiteHouse.Gov (July 11, 2012), www.whitehouse.gov/blog/2012/07/11/supporting-financial-readiness-military-families.

²¹⁹ How ARK Works, PenFedFoundation, www.
pentagonfoundation.org/site/PageServer?pagename=ark_index
(last visited Oct. 3, 2014); Securing the American Dream,
PenFedFoundation, www.pentagonfoundation.org/site/
PageServer?pagename=about_index (last visited Oct. 3, 2014).

²²⁰ How ARK Works, supra.

²²¹ Id.

²²² Securing the American Dream, supra.

²²³ Military Heroes, PenFedFoundation, www. pentagonfoundation.org/site/PageServer?pagename=heroes_ about (last visited Oct. 3, 2014).

²²⁴ Id.

²²⁵ Financial Assistance, AMERICAN RED CROSS, www.redcross.org/ find-help/military-families/financial-assistance (last visited Oct. 3, 2014).

²²⁶ Id.

outlines some resources that are available and where they can be found to allow Attorney General Offices to easily connect servicemembers with opportunities to become more knowledgeable consumers.

Federal Resources

At the federal level, several independent agencies and task forces deal with enforcing and preventing consumer fraud. Some provide resources directed specifically at servicemembers while others offer more general guidance. Examples include:

- The Consumer Financial Protection Bureau provides guides to help servicemembers protect their finances and plan for their future. These guides can be found at: www.consumerfinance.gov/servicemembers/.
- The **Federal Trade Commission** provides informational materials geared toward servicemembers on a wide variety of consumer topics including credit, identity theft, education, saving, investing, charitable donations, and vehicle sales and financing. The FTC's materials can be found at: www.consumer.ftc. gov/features/feature-0009-military-families.
- Under the umbrella of the U.S. Department of Justice, the Financial Fraud Enforcement Task Force (FFETF) runs StopFraud. gov. Among other initiatives, the FFETF provides servicemembers with information on certain scams targeting servicemembers and veterans including charity scams, payday loan and cash advance scams, and pension scams. The FFETF's servicemember-specific material can be found at: www.stopfraud.gov/service-members.html, while more generally-applicable fraud protection materials are can found at: www.stopfraud.gov/protect.html.
- USA.gov, the federal government's official web portal, provides overviews of many common consumer frauds and scams, including describing what consumers should be on the lookout for. USA.gov's consumer fraud information can be found at: www.usa.gov/topics/consumer/scams-fraud.shtml.

State Resources

The consumer protection divisions of the Attorneys General typically provide educational resources and consumer complaint submission opportunities on their websites. Each state's consumer protection site is listed in Appendix B.²²⁷ Many Attorney General Offices also have veterans groups, charities groups, or both. Where applicable, these websites are also listed in Appendix B.

Non-Governmental Resources

Several non-governmental organizations also do valuable work in consumer education. Organizations such as the National Consumer Law Center, Consumer Federation of America, and the Better Business Bureau can be great resources for servicemembers, veterans, and their families.

- The National Consumer Law Center (NCLC) is considered an authority on consumer law and provides educational materials on a wide variety of consumer law issues. The NCLC issues portal is located at www.nclc.org/issues/issues.html. The NCLC also published a comprehensive report on consumer scams targeting the military. The report, entitled "In Harm's Way At Home: Consumer Scams and the Direct Targeting of America's military and Veterans," is available at: http://www.nclc.org/images/pdf/special_projects/military/report-scams-facing-military.pdf.
- The Consumer Federation of America (CFA) is another well-respected consumer watchdog group. The CFA is a prolific publisher of brief educational brochures on discrete consumer protection issues in a variety of contexts. These materials can be found at: www.consumerfed.org/for-consumers/consumerinformation. The CFA maintains separate websites dedicated to payday lending and identity theft, found at: www.idtheftinfo.org/ and www.paydayloaninfo.org/, respectively.

²²⁷ See infra, 67.

• The **Better Business Bureau** (BBB) offers general consumer education resources, including a compilation of the most common scams of the year, on its website at: www.bbb. org/council/consumer-education/. The BBB also operates the BBB Military Line which provides free financial resources for military families on topics such as saving, investing, managing credit, and more. These materials are available at: www.bbb.org/council/programs-services/bbb-military-line/free-resources/.

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• The Investor Protection Trust, a non-profit organization devoted to investor education, 228 publishes a personal finance guide for military families. Written by military spouse Kimberly Lankford, the "Financial Field Manual" is designed to help military families make informed investment decisions, protect their money, and take charge of the financial lives. The Investor Protection Trust also provides a complimentary PowerPoint presentation for financial educators who wish to use the Financial Field Manual as a teaching tool. Both the manual and the presentation can be found at: www.investorprotection.org/learnabout-investing/?fa=military.

²²⁸ About the Investor Protection Trust, INVESTOR PROTECTION TRUST, http://www.investorprotection.org/ipt-activities/?fa=about (last visited Oct. 3, 2014).

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Education



OUTLINING SERVICEMEMBERS' AND VETERANS' EDUCATION BENEFITS AND PITFALLS IN EXERCISING THEM

The Departments of Defense and Veterans Affairs provide servicemembers and veterans who wish to pursue higher education with tuition and other related benefits to assist them in those endeavors. However, investigations into the higher education industry have revealed certain pitfalls associated with for-profit colleges that disproportionately affect veterans. This Part gives an overview of some of the education benefits available to servicemembers and veterans; outlines the dangers associated with some for-profit schools; and provides resources that servicemembers, veterans, and AG Offices can use to help servicemembers and veterans avoid those dangers.

Education Benefits Overview

Depending on circumstances, servicemembers and veterans may be eligible for financial assistance in seeking higher education. The Department of Defense and the Department of Veterans Affairs each administer several educational assistance programs. This Section provides a brief overview of these programs and directs readers to resources furnishing further explanations.

Tuition Assistance Programs

Many servicemembers wish to further their education while on active duty by taking college classes or vocational trainings during their off-duty hours. Each branch of the Armed Forces provides a Tuition Assistance program to support active duty servicemembers' education goals. The Air Force, Army, Navy, and Marines Tuition Assistance programs can cover up to 100% of tuition and fees (subject to certain total spending limits), while the Coast Guard Tuition Assistance program can cover up to 75% of tuition and fees for eligible members of the Coast Guard. Members of the National Guard and drilling members of the Air Force Reserve, Army Reserve, Navy Reserve, Marine Reserve, and Coast Guard Reserve may also be eligible for Tuition Assistance. An overall summary of benefits can be found at: http://www.military.com/education/ money-for-school/tuition-assistance-ta-programoverview.html. More in-depth information on eligibility and benefits can be found at the following:

- Air Force: http://www.military.com/education/money-for-school/air-force-tuition-assistance.html.
- **Air Force Reserve**: http://www.arpc.afrc.af.mil/library/factsheets/factsheet.asp?id=8487.

Army:

Official Army materials: http://myarmybenefits. us.army.mil/Home/Benefit_Library/Federal_ Benefits_Page/Tuition_Assistance_(TA).html.

Military.com materials: http://www.military.com/education/money-for-school/army-tuition-assistance.html.

- Navy: http://www.military.com/education/ money-for-school/navy-tuition-assistance. html.
- Marines: http://www.military.com/education/ money-for-school/marine-corps-tuitionassistance.html.

• Coast Guard:

Official Coast Guard materials: http://www.uscg.mil/hq/cgi/;

Military.com materials: http://www.military.com/education/money-for-school/coast-guard-tuition-assistance.html.

- **National Guard:** http://www.military.com/education/money-for-school/national-guard-tuition-assistance.html.
- Reserves: http://www.military.com/education/ money-for-school/reserve-tuition-assistance. html.

Department of Veterans Affairs Benefits

The Department of Veterans Affairs offers a host of education assistance programs to veterans. This Section discusses three of these programs: the Post-9/11 GI Bill, the Montgomery GI Bill, and the Reserve Educational Assistance Program. Although a servicemember or veteran may be eligible for more than one benefit, only one benefit may be

collected over the course of an education or training program.²²⁹ The VA provides a comparison tool to help servicemembers and veterans decide which program will be most beneficial for their circumstances. The comparison tool is available at: http://www.benefits.va.gov/gibill/comparison_tool.asp.

The Post-9/11 GI Bill²³⁰

The Post-9/11 GI Bill is the main source of education and training benefits for veterans. The Post-9/11 GI Bill provides up to 36 months of education or vocational training benefits, generally payable for 15 years following a veteran's release from active duty. The primary benefits are tuition and fee payments made directly to a veteran's institute of higher learning. Other benefits include a monthly housing allowance and an annual books and supply stipend.

The dollar values of Post-9/11 GI Bill benefit are adjusted on an annual basis to reflect current costs of higher education. For the 2013-2014 academic year, a veteran with full benefits attending a public school as an in-state student will have all tuition and fee payments covered.²³¹ A veteran with full benefits attending a private school will have up to \$19,198.13 of tuition and fee payments covered by the Post-9/11 GI Bill for the academic year.²³² For a period of time, this benefit could have been transferred to a spouse of a child. However, this transferability was discontinued for those not opting in before 2012. A few states have different coverage rates for veterans attending private schools. These coverage rates and more information on the monthly housing allowance and book and supply stipend can be found at: http://www.benefits.va.gov/gibill/resources/ benefits_resources/rates/ch33/Ch33rates080113.asp.

Veterans with at least 90 days of aggregate active duty service after September 10, 2001 may be eligible for the program. The amount of the

²²⁹ Summary of Educational Benefits under the Reserve Educational Assistance Program, Department of Veterans Affairs (Sept. 2008), 7, available at http://www.benefits.va.gov/gibill/docs/pamphlets/ch1607_pamphlet.pdf.

²³⁰ Post-9/11 GI Bill, DEPARTMENT OF VETERANS AFFAIRS, http://www.benefits.va.gov/gibill/post911_gibill.asp (last visited Oct. 3, 2014)

²³¹ Post-9/11 GI Bill (Chapter 33) Payment Rates For 2013 Academic Year (August 1, 2013 - July 31, 2014), DEPARTMENT OF VETERANS AFFAIRS, http://www.benefits.va.gov/gibill/resources/benefits_resources/rates/ch33/Ch33rates080113.asp (last visited Oct. 3, 2014).

²³² Id.

benefit depends, to a degree, on length on service. Eligibility for full Post-9/11 GI Bill benefits requires 36 months of active duty service after September 10, 2001.²³³ Veterans who served 30 days and were discharged due to a service-connected disability may also be eligible for full benefits.²³⁴ The full eligibility schedule is available at: https://gibill.custhelp.com/app/answers/detail/a_id/947.

The Montgomery GI Bill

The Montgomery GI Bill is composed of two distinct programs: the Montgomery GI Bill Active Duty (MGIB-AD) and the Montgomery GI Bill Selected Reserve (MGIB-SR).

MGIB-AD.²³⁵ The MGIB-AD provides up to 36 months of benefits in the form of reimbursements for tuition costs a veteran incurs pursuing eligible higher education or vocational training programs. The monthly benefit paid is based on type of training taken, length of service, eligibility category, any college fund eligibility, and whether the beneficiary contributed to the "buy-up program." The buy-up program allows a servicemember to contribute up to \$600 while on active duty in order to later receive up to an additional \$5,400 in MGIB-AD benefits. Current payment rates can be found at: http://www.benefits.va.gov/gibill/resources/benefits_resources/rates/ch30/ch30rates100113.asp.

There are four different categories of MGIB-AD eligibility, but the basic requirements for each are the completion of two years of active duty service, an honorable discharge, and a high school diploma or its equivalent. Remaining eligibility requirements can be found at: http://www.benefits.va.gov/gibil/mgib_ad.asp.

MGIB-SR.²³⁶ MGIB-SR program provides education and training benefits to eligible members of the Selected Reserve, including the Army Reserve, Navy Reserve, Air Force Reserve, Marine Corps Reserve and Coast Guard Reserve, as well as the

Army National Guard and the Air National Guard. Eligibility for this program is determined by the Selected Reserve components and the VA makes the payments to the beneficiary.

Like the Post-9/11 GI Bill and MGIB-AD, the MGIB-SR provides up to 36 months of education or vocational training benefits. Potentially eligible programs include college degree and certificate programs, co-op training, technical or vocational courses, flight training, apprenticeships or onthe-job training, high-tech training, licensing and certification tests, entrepreneurship training, certain entrance examinations, and correspondence courses. Benefit payout rates can be found at: http://www.benefits.va.gov/gibill/resources/benefits_resources/rates/CH1606/ch1606rates100113.asp.

Eligibility for MGIB-SR requires a six-year commitment to the Selected Reserve and typically only lasts for the duration of service. Further, a Reservist must be in good standing with their Selected Reserve unit. More information on eligibility and application requirements can be found at: http://www.benefits.va.gov/gibill/mgib_sr.asp.

Reserve Educational Assistance Program²³⁷

The Reserve Educational Assistance Program (REAP) provides educational assistance to members of the Reserve components called or ordered to active duty in response to a war or national emergency declared by the president or Congress. Reservists who were activated for at least 90 days after Sept. 11, 2001, may be eligible for benefits. Like the Montgomery GI Bill, REAP reimburses beneficiaries for money spent on tuition and fees at eligible educational and training programs. The amount of benefits eligibility depends on the length of service. Full eligibility requires two consecutive years on active duty. REAP also offers a \$600 buyup program which will increase total benefits by \$5,400. Payment rates can be found at: http://www. benefits.va.gov/gibill/resources/benefits_resources/ rates/ch1607/ch1607rates100113.asp.

²³³ Maximum Post-9/11 GI Bill Benefits, Department of Veterans Affairs (Nov. 15, 2011), https://gibill.custhelp.com/app/answers/detail/a_id/947.

²³⁴ Id.

²³⁵ Montgomery GI Bill Active Duty (MGIB-AD), DEPARTMENT OF VETERANS AFFAIRS, http://www.benefits.va.gov/gibill/mgib_ad.asp (last visited Oct. 3, 2014).

²³⁶ Montgomery GI Selected Reserve (MGIB-SR), DEPARTMENT OF VETERANS AFFAIRS, http://www.benefits.va.gov/gibill/mgib_sr.asp (last visited Oct. 3, 2014).

²³⁷ See 10 U.S.C. §§ 16161, et seq.; see also Reserve Educational Assistance Program (REAP), DEPARTMENT OF VETERANS AFFAIRS, http://www.benefits.va.gov/gibill/reap.asp (last visited Oct. 3, 2014).

Pitfalls of For-Profit Colleges

For reasons explained in detail below, servicemembers and veterans are disproportionately targeted by for-profit college recruiters. While there is nothing inherently wrong with pursuing higher education at a for-profit college, ample data suggests that students at for-profit colleges have, on average, inferior outcomes compared to students at public and community colleges. Moreover, students are sometimes pressured to enroll at for-profit colleges under false pretenses. This Section provides a brief overview of the data on outcomes for students at forprofit colleges and discusses for-profit colleges' focus on recruiting above student outcomes, particularly with respect to veterans.

Inferior Outcomes for Students at For-**Profit Colleges**

In 2012, the Senate Subcommittee on Health, Education Labor, and Pensions (HELP Committee) reported on its two-year investigation of the forprofit college industry. The HELP Committee found that, while for-profit colleges do play an important role in satisfying demand for higher education among non-traditional students (including military veterans), for-profit colleges often focus more on recruiting students than ensuring they complete their programs. As a result, many students are left with student loan debt but without the increase in earning power that comes from completing a degree.²³⁸ Indeed, the HELP Committee found that over 54% of students who enrolled in for-profit colleges in 2008-2009 withdrew without a degree.²³⁹

The problem of high withdrawal rates is exacerbated when put into context of the high cost of for-profit education. Simply put, programs offered by for-profit colleges are typically more expensive than comparable public university and community college programs.²⁴⁰ At for-profit colleges, bachelor's degree programs are on average 20 percent more expensive than analogous programs at flagship public universities, while associate degree and certificate programs are four times more expensive than comparable community college programs.²⁴¹

Due at least in part to the high cost of the programs, 96% of students at for-profit colleges take out student loans.²⁴² This number includes veterans whose military benefits are inadequate to cover the high costs of their programs.²⁴³ Since over half of students withdraw before earning their degree, student loan default rates are high. Indeed, while "[s]tudents at for-profit colleges make up 13% of the total higher education population, they account for nearly half of all loan defaults."244 Making matters worse, even students who complete their degrees at for-profit colleges are more likely to experience unemployment or underemployment after leaving school.245

For-Profit Colleges' Focus on Recruiting & Targeting of Veterans

Many students are drawn to for-profit colleges by aggressive and sometimes misleading recruiting practices. The HELP Committee found that the recruiting process at for-profit colleges is essentially a high-pressure sales pitch.²⁴⁶ The focus on recruiting is borne out in the average for-profit college's expenses and staff makeup. On average, forprofit colleges employ one recruiter per fifty-three students and spend almost 23% of all revenue on recruiting and advertising.²⁴⁷ To put this in context, they employ about a third as many support services staff, a tenth as many career services staff, and only a little over 17% of their revenues go toward instruction.248 The HELP Committee also found that, in order to convince students to enroll, some for-profit college recruiters mislead prospective students about program costs, the availability of financial aid, the completion rates of other students, job placements rates, the transferability of credits, and the accreditation status of the school.²⁴⁹

²³⁸ For Profit Higher Education: The Failure to Safeguard the Federal Investment and Ensure Student Success, U.S. Senate Health, EDUCATION, LABOR AND PENSIONS COMMITTEE (July 20, 2013), 1, http://www.help.senate.gov/imo/media/for_profit_report/ PartI-PartIII-SelectedAppendixes.pdf [hereinafter "HELP Report"].

²³⁹ Id. at 72.

²⁴⁰ Id. at 3.

²⁴¹ Id.

²⁴² Id. at 7.

²⁴³ See id. at 55.

²⁴⁴ Stephanie Simon & Caitlin Emma, Barack Obama Cracks Down on For-Profit Colleges, POLITICO (Mar. 13, 2014), http://www. politico.com/story/2014/03/barack-obama-education-for-profitcolleges-104661.html.

²⁴⁵ HELP Report, supra n. 235, at 120-121 (finding graduate unemployment rate at 24 percent, versus 8.2 percent contemporary national average).

²⁴⁶ Id. at 58-65.

²⁴⁷ Id. at 2, 4.

²⁴⁸ Id. at 6.

²⁴⁹ See id. at 3-4.

Veterans in particular are common targets of recruitment efforts. The HELP Committee found that for-profit colleges pay "lead generators" to gather information on veterans interested in pursuing higher education. ²⁵⁰ In pursuing these leads—and in addition to the deceptive tactics previously mentioned—some recruiters attempt to enroll veterans by misleading them about whether their tuition would be fully covered by military benefits. ²⁵¹ Some even target particularly vulnerable veterans at Wounded Warrior Centers and veterans hospitals. ²⁵²

Veterans are aggressively targeted due to a loophole in the so-called "90/10 Rule" of the Higher Education Act. On average, nearly 80% of forprofit college revenues come from Department of Education grants, loans, and work study programs (collectively Title IV Funds).²⁵³ Under the 90/10 Rule, a for-profit college will lose its eligibility to continue receiving Title IV Funds if more than 90% of its revenue consists of Title IV Funds for two consecutive years.²⁵⁴ However, educational assistance programs for military servicemembers and veterans—such as the Department of Defense's Tuition Assistance Program and the VA's Post-9/11 GI Bill—do not count as Title IV Funds for the purposes of the 90/10 Rule. 255 Thus, for every dollar from the Tuition Assistance Program or the Post-9/11 GI Bill that a for-profit college brings in, they can bring in nine dollars of Title IV Funds and still remain in compliance with the 90/10 Rule.

By incentivizing for-profits colleges to disproportionately target veterans, the loophole in the 90/10 Rule puts veterans at heightened risk of suffering the inferior outcomes associated with certain for-profit colleges. Further, it puts them at risk of wasting their hard-earned military benefits.

Tools for Researching Educational Institutions

The consumer protection mantra that the educated consumer is the first line of defense is no less true in the higher education context. Beyond the promotional materials provided by a college itself, education-seekers should consult third party resources to verify information regarding tuition, fees, financial aid eligibility, and accreditation status, among other factors. Attorneys can also use some of these resources as case origination tools by comparing a college's advertisements to the data.

General Information

One of the first stops in researching a particular higher education institution should be the National Center for Education Statistics' College Navigator.²⁵⁶ The National Center for Education Statistics (NCES) is the primary federal entity for collecting and analyzing data related to education in the U.S. and other nations. NCES is located within the U.S. Department of Education and the Institute of Education Sciences. The College Navigator compiles a comprehensive and searchable collection of data on colleges. Data categories include tuition, fees, financial aid opportunities, enrollment and admission statistics, retention rates, graduation rates, accreditation status, and more. The College Navigator is available at: http://nces.ed.gov/ collegenavigator/.

An excellent resource for developing a fuller understanding of some of the problems often associated with for-profit colleges is the aforementioned **HELP Committee Report**²⁵⁷ entitled "For Profit Higher Education: The Failure to Safeguard the Federal Investment and Ensure Student Success." The HELP Committee Report includes detailed analysis of for-profit college performance, recruiting strategies, and student consequences, including case studies of thirty for-profit education companies. The HELP Committee Report is available at: http://www.help.senate.gov/imo/media/for_profit_report/Contents.pdf.

²⁵⁰ Id. at 4. These lead generators are websites often featuring military-inspired imagery and language to draw in veterans. They purport to advise veterans on potential educational opportunities, but in reality they are gathering information on users to sell to for-profit colleges for recruitment purposes.

²⁵¹ Id.

²⁵² Id. at 4-5.

²⁵³ Id. at 2.

^{254 20} U.S.C. § 1094(a)(24) (2014). See also Ass'n of Private Colleges & Univs. v. Duncan, 870 F. Supp. 2d 133, 152 (D.D.C. 2012) (explaining 20 U.S.C. § 1094(a)(24)).

²⁵⁵ HELP Report, supra n. 235, at 9.

²⁵⁶ College Navigator, NATIONAL CENTER FOR EDUCATION STATISTICS, http://nces.ed.gov/collegenavigator/ (last visited Oct. 3, 2014).

²⁵⁷ HELP Report, supra n. 235.

Accreditation Information

Accreditation is a vitally important aspect of higher education regulation. The main purpose of accreditation is to ensure a basic level of quality among educational institutions through a system of peer evaluation.²⁵⁸ Accreditation status is also used to determine whether class credits are transferable between institutions and whether an educational program meets the pre-requisites needed for certain professional certifications and licensures.²⁵⁹ Thus, accreditation status has a very real and tangible impact on students' future education and employment opportunities.

The accreditation system is fairly complicated. Accreditation is done through a number of accrediting agencies falling into three main categories: regional accrediting agencies, national accrediting agencies, and programmatic accrediting agencies. ²⁶⁰

The distinction between regional and national accrediting agencies is paramount with respect to transferability of credits. Typically, public and nonprofit universities are regionally accredited, whereas for-profit educational institutions are usually nationally accredited.261 Regionally accredited schools generally will not accept transfer credits from nationally accredited institutions.²⁶² Thus, generally speaking, servicemembers and veterans who attend a for-profit college will not be able to put those credits toward a degree at a public or other non-profit university. This can be problematic given the previously discussed issues regarding withdrawal rates at for-profit colleges, the frequency with which military families are required to move, and the fact that military tuition benefits are ultimately limited.

The distinction between institutional and programmatic accreditation is crucial in the context of professional licensure and certification. The regional and national accrediting agencies previously discussed are institutional accrediting agencies; institutional accreditation certifies that a

college or university meets specified school-wide standards of quality.²⁶³ Programmatic accreditation, on the other hand, certifies that a specific degree or certificate program meets standards expected within a particular field or profession.²⁶⁴ In many technical fields, an education from an institution with programmatic accreditation is either a requirement for professional certification or at least drastically preferred by employers.²⁶⁵ Therefore, in-field employment opportunities will be extremely limited for students who graduate from a program lacking programmatic accreditation.

The Department of Education provides two simple resources allowing servicemembers, veterans, and AG offices easily to ascertain the accreditation status of an educational institution. The **Institution Search** tool allows users to look up educational institutions by name or location and view the accrediting agencies currently accrediting the institution. The Institution Search tool is available at: http://ope.ed.gov/accreditation/Search.aspx.

After determining which accrediting agencies accredit an institution, a user can visit the **Agency List** to see whether those agencies provide regional, national, or programmatic accreditation. The Agency List is available at: http://www.ope.ed.gov/accreditation/agencies.aspx. Similar information can also be found by using the College Navigator discussed in the previous Section.

Financial Aid Participation Information

The Department of Education Federal Student Aid Data Center²⁶⁶ (FSADC) may prove to be a valuable investigatory tool for AG offices. The FSADC provides information on educational institutions' Title IV program participation and student outcomes. Among other data, the FSADC provides student loan default rates, gainful employment rates, and 90/10 Rule

²⁵⁸ Accreditation in the United States, DEPARTMENT OF EDUCATION (MAY 5, 2014), 2, http://www2.ed.gov/admins/finaid/accred/accreditation.html

²⁵⁹ Id.

²⁶⁰ A list of accrediting agencies is available at *Accreditation Agency List*, DEPARTMENT OF EDUCATION, http://www.ope.ed.gov/accreditation/agencies.aspx (last visited Oct. 3, 2014).

²⁶¹ HELP Report, supra n. 235, at 56.

²⁶² Id.

²⁶³ Id. at 102.

²⁶⁴ Id.

²⁶⁵ Id

²⁶⁶ Welcome to the Federal Student Aid Data Center, FEDERAL STUDENT AID, http://studentaid.ed.gov/data-center (last visited Oct. 3, 2014).

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revenue percentages for schools receiving Title IV Funds.²⁶⁷ The FSADC also provides Title IV "volume reports," which detail recipient and volume data by program for each school participating in the Title IV programs.²⁶⁸ The Federal Student Aid Data Center is available at: http://studentaid.ed.gov/data-center.

The Department of Veterans Affairs recently launched a **GI Bill Comparison Tool**²⁶⁹ (Comparison Tool) to assist military veterans and servicemembers

in calculating their benefits eligibility with respect to the schools or training facilities they are considering. The Comparison Tool also provides easy access to other valuable information on any given educational institution, including graduation rates, loan default rates, and the median Federal loan amount for students at the school. The GI Bill Comparison Tool is available at: http://department-of-veterans-affairs.github.io/gi-bill-comparison-tool/.

²⁶⁷ See School Data, FEDERAL STUDENT AID, http://studentaid.ed.gov/about/data-center/school (last visited Oct. 3, 2014).

²⁶⁸ Student Aid Data, FEDERAL STUDENT DATA, http://studentaid.ed.gov/about/data-center/student/title-iv (last visited Oct. 3, 2014).

²⁶⁹ GI Bill Comparison Tool, U.S. DEPARTMENT OF VETERANS AFFIARS, http://department-of-veterans-affairs.github.io/gi-bill-comparison-tool/ (last visited Oct. 3, 2014).

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Employment and USERRA



ADDRESSING THE EMPLOYMENT BENEFITS AFFORDED TO MILITARY SERVICEMEMBERS UNDER THE UNIFORMED SERVICES EMPLOYMENT AND REEMPLOYMENT RIGHTS ACT

The Uniformed Services Employment and Reemployment Rights Act (USERRA)²⁷⁰ is designed "to encourage noncareer service in the uniformed services by eliminating or minimizing the disadvantages to civilian careers and employment which can result from such service; to minimize the disruption to the lives of persons performing service in the uniformed services as well as to their employers, their fellow employees, and their communities, by providing for the prompt reemployment of such persons upon their completion of such service; and to prohibit discrimination against persons because of their service in the uniformed services."271 USERRA replaced the older Veterans Reemployment Rights Act, an amendment to the Military Selective Service Act of 1968, and a further recodification, passed in 1974, the Veterans' Readjustment Assistance Act. Case law had eroded the protections afforded in these acts and,

with the Nation depending more on its Reserves and National Guard components in addressing conflicts around the world, Congress deemed it necessary to strengthen the re-employment rights of veterans by passing the USERRA.

This Part outlines the rights and benefits of Guardsmen and Reservists under USERRA and provides some additional resources to allow AG Offices effectively to deal with USERRA complaints.

Legal Framework

The USERRA is an incredibly powerful statute on the side of military servicemembers and veterans. USERRA guarantees a servicemember reemployment at their previously-held civilian job following a period of active duty, prevents employment discrimination on the basis of military service, and ensures continuity of health insurance coverage while transitioning from civilian employment to active duty and back. This Section describes the legal rights and remedies under USERRA.

²⁷⁰ See 38 U.S.C. §§ 4301, et seq. (2014) 271 38 U.S.C. § 4301(a) (2014).

Rights Conveyed

As previously noted, the rights provided to veterans and servicemembers under USERRA fall into three major categories: reemployment rights, protections from discrimination, and health insurance continuity.

Reemployment Rights²⁷²

The USERRA reemployment guarantees are some of the most substantial employment rights provided under United States law. The essential premise is that, subject to certain eligibility requirements on both employee and employer, all persons whose absence from a position of civilian employment is necessitated by reason of service in the uniformed services²⁷³ shall be entitled to reemployment upon their return from that service.

Eligibility for Reemployment. The eligibility requirements for reemployment under USERRA are quite simple. In short, an employee must:

- Have pre-service civilian employment;
- Experience absence from employment due to service in the uniformed services;
- Provide the civilian employer advance notice of the absence;
- Be absent for not more than five cumulative years;
- Separate from the uniformed services under Honorable conditions; and
- Report back to his or her civilian employer in a timely manner.²⁷⁴

Some of these requirements are not strictly applicable in all situations or are otherwise more lenient than they may appear. Notice is not required if the giving of notice is precluded by military necessity or, under all of the relevant circumstances, the giving of notice is otherwise impossible or unreasonable.²⁷⁵ The notice requirement also has few procedural requirements: notice can be verbal or written and need not be overly formal; even an email will suffice.

Additionally, the computation rules for the 5-year cumulative limit on absence do not count service occurring under a number of conditions, the most important of which is service performed by a servicemember who is ordered to or retained on active duty (other than for training) under any provision of law because of a war or national emergency declared by the President or the Congress. Since September 14, 2001, the United States has had a declared national emergency with respect to the terrorist threat. Thus, the service of many members of the uniformed services in Iraq and Afghanistan will not count toward the 5-year limit.

The limits for timely application for reemployment are on a sliding scale based on the length of service. The scale is structured as follows:²⁷⁸

- "Less than 31 days of service: The servicemember must apply for reemployment by the beginning of the first regularly scheduled work period (i.e., the next work day) after the end of the calendar day of duty, plus time required to return home safely and an eight hour rest period. If this is impossible or unreasonable, then as soon as possible.
- "31 to 180 days of service: The employee must apply for reemployment no later than 14 days after completion of military service. If this is impossible or unreasonable through no fault of the employee, then as soon as possible.

²⁷² See 38 U.S.C. §§ 4312-4316 (2014), 20 CFR §§ 1002.180-1002.248 (2014).

²⁷³ Recall that the "uniformed services" include the Armed Forces (i.e. Air Force, Army, Navy, Marine Corps, and Coast Guard), the Army National Guard and the Air National Guard when engaged in active duty for training, inactive duty training, or full-time National Guard duty, the commissioned corps of the Public Health Service, and any other category of persons designated by the President in time of war or national emergency. 38 U.S.C. § 4303(16) (2014).

²⁷⁴ See 38 U.S.C. § 4312 (2014). See also Your Rights Under USERRA, DEPARTMENT OF LABOR (July 2008), available at http://www.dol.gov/vets/programs/userra/USERRA_Federal.pdf.

^{275 38} U.S.C. § 4312(b) (2014).

^{276 38} U.S.C. § 4312(c)(4)(B) (2014).

²⁷⁷ See Letter—Continuation of the National Emergency Message, WhiteHouse.Gov (Sept. 10, 2013), http://www.whitehouse.gov/the-press-office/2013/09/10/letter-continuation-national-emergency-message.

²⁷⁸ Scale taken directly from: USERRA Employment Law Guide,
DEPARTMENT OF LABOR (Sept. 2009) http://www.dol.gov/
compliance/guide/userra.htm.

- "181 days or more: The employee must apply for reemployment no later than 90 days after completion of military service.
- "Service-connected injury or illness: Reporting or application deadlines are extended for up to two years for persons who are hospitalized or convalescing."

Reemployment Position.²⁷⁹ The full strength of USERRA's reemployment guarantees is borne out in the reemployment position provisions. USERRA provides that "returning servicemembers are to be reemployed in the job that *they would have attained* had they not been absent for military service (the "escalator" principle), with the same seniority, status and pay, as well as other rights and benefits determined by seniority."²⁸⁰ USERRA also requires that "reasonable efforts (such as training or retraining) be made to enable returning servicemembers to qualify for reemployment."²⁸¹

The escalator position "will not necessarily be the same job the person previously held. If the employee would have been promoted with reasonable certainty had the person not been absent, the employee would be entitled to that promotion upon reinstatement. On the other hand, depending on economic circumstances, reorganizations, layoffs, etc., the position could be at a lower level than the one previously held, it could be a different job, or it could conceivably be in layoff status. In other words, the escalator can move up or down." ²⁸²

Further, the escalator position is merely the default reinstatement position. If the servicemember cannot qualify for the escalator position, he or she may be reemployed in a similar position or in the pre-service position. If the servicemember remains unqualified for the escalator position even after an employer makes reasonable efforts to qualify the servicemember, reinstatement options depend to a degree on the length of service. Reinstatement position priority is as follows:

• 91 days or more of service: (1) the escalator position or "a position of like seniority, status, and pay;" (2) if unqualified for the escalator position or a like position, the pre-service position or a position of like seniority, status, and pay; (3) if unqualified for either of the above, any other position that is the nearest approximation first to the escalator position and then to the pre-service position.²⁸⁴

Remember that, in these scenarios, an employee is only "unqualified" if they remain unqualified after the employer's reasonable efforts to qualify them.

Due to the stakes and the legal and factual complexity of the escalator principle, it is one of the most commonly litigated aspects of USERRA. The Department of Justice maintains a compendium of cases that may serve as a valuable starting point for additional legal research on this area. The DOJ's USERRA case compendium is available at: http://www.justice.gov/crt/spec_topics/military/cases.php.

Non-Seniority Rights. USERRA also provides that, while an individual is performing military service, he or she is deemed to be on a furlough or leave of absence and is entitled to the non-seniority rights accorded other individuals on non-military leaves of absence.²⁸⁵

Protection from Discrimination²⁸⁶

USERRA protects servicemembers and veterans from employment discrimination and retaliation because of past, current, or future military obligations or because of attempts to enforce USERRA rights.²⁸⁷ If an individual's past, present, or

^{• 90} days or less of service: (1) the escalator position; (2) if unqualified for the escalator position, the pre-service position; (3) if unqualified for either of the above, any other position that is the nearest approximation first to the escalator position and then to the preservice position.²⁸³

²⁷⁹ See 38 U.S.C. §§ 4313, 4304 (2014); 20 CFR § 1002.192 (2014).

²⁸⁰ See USERRA Employment Law Guide, supra n. 275 (emphasis added)

²⁸¹ See USERRA Employment Law Guide, supra note 267.

²⁸² A Guide to the Uniformed Services Employment and Reemployment Rights Act, Department of Labor, 14, available at http://www.dol.gov/vets/programs/userra/USERRA%20 Pocket%20Guide.html (last visited Oct. 3, 2014) [hereinafter "VETS USERRA Guide"].

²⁸³ See 20 CFR § 1002.196 (2014); see also VETS USERRA Guide at 12...

²⁸⁴ See 20 CFR § 1002.197 (2014); see also VETS USERRA Guide at 13.

²⁸⁵ See 20 CFR §§ 1002.149-150 (2014); see also VETS USERRA Guide at

²⁸⁶ See 38 U.S.C. § 4311 (2014); 20 CFR §§ 1002.18-23 (2014).

²⁸⁷ See 38 U.S.C. § 4311 (2014).

future connection with the service is a motivating factor in an employer's adverse employment action against that individual, the employer has committed a violation *unless* the employer can prove that it would have taken the same action regardless of the individual's connection with the military service. Although the employee bears the initial burden of showing that a USERRA-protected action or status was a motivating factor, the burden then shifts to the employer to prove that it would have taken the adverse action in the absence of the person's service connection or exercise of any USERRA right.²⁸⁸

Health Insurance Continuity²⁸⁹

USERRA also provides for continuation of servicemembers' (and their dependents') coverage under health plans in connection with their employment when servicemembers are absent from work to serve in the military. If a servicemember's health plan coverage would terminate because of an absence due to military service, the person may elect to continue the health plan coverage for up to 24 months after the absence begins or for the period of service (plus the time allowed to apply for reemployment), whichever period is shorter.

A servicemember may be required to take on additional costs in order to preserve coverage. If a military absence lasts for 31 days or more, a servicemember can be required to pay up to 102 percent of the full premium for the coverage. However, if the military service lasts for 30 or fewer days, the servicemember cannot be required to pay more than the normal employee share of any premium.

Enforcement and Remedies

Rights under USERRA are enforceable through administrative procedures or through civil causes of action. This Section provides a brief overview of enforcement methods and available remedies.

Administrative Enforcement²⁹⁰

Administrative enforcement of USERRA is done through the Department of Labor's Veterans' Employment and Training Service (VETS). At a

servicemember's request, VETS will investigate complaints and attempt to resolve them through mediation if a violation is found.

VETS has the right to access, examine, and duplicate any documents that it considers relevant to an investigation. VETS also has the right of reasonable access to interview any persons with information relevant to the investigation. USERRA authorizes VETS to subpoena the attendance and testimony of witnesses and the production of documents relating to any matter under investigation.

Civil Causes of Action

If VETS is unable to resolve a complaint, the aggrieved servicemember may request that their complaint be referred to the Attorney General (for State and private defendants) or Office of Special Counsel (for federal defendants) for possible representation in a civil cause of action.²⁹¹

An aggrieved servicemember may also bypass the administrative process altogether and bring a private civil action against an employer at the outset.²⁹²

Remedies

The remedies available through administrative enforcement include: return to a job, back pay, lost benefits, corrected personnel files, lost promotional opportunities, retroactive seniority, pension adjustments, and restored vacation.²⁹³

The remedies that may be awarded in civil proceedings under USERRA are as follows:

- (a) The court may require the employer to comply with the provisions of [USERRA];
- (b) The court may require the employer to compensate the individual for any loss of wages or benefits suffered by reason of the employer's failure to comply with [USERRA];
- (c) The court may require the employer to pay the individual an amount equal to the amount of lost wages and benefits as liquidated damages, if the court determines that the employer's failure to comply with [USERRA] was willful.

²⁸⁸ See 20 CFR § 1002.22 (2014).

²⁸⁹ See generally 38 U.S.C. § 4317 (2014); 20 CFR §§ 1002.163-171 (2014). See also VETS USERRA Guide at 22-23.

²⁹⁰ See 38 U.S.C. §§ 4321-4327(2014); 20 CFR § 1002.289 (2014); see also VETS USERRA Guide at 26.

²⁹¹ See 38 U.S.C. §§ 4323-4325 (2014); 20 CFR § 1002.291 (2014); see also VETS USERRA Guide at 26.

^{292 20} CFR § 1002.303 (2014).

²⁹³ USERRA Advisor, DEPARTMENT OF LABOR, http://www.dol.gov/elaws/vets/userra/remedies.asp (last visited Oct. 3, 2014).

A violation shall be considered to be willful if the employer either knew or showed reckless disregard that its conduct was prohibited by [USERRA].

(d) Any wages, benefits, or liquidated damages awarded under paragraphs (b) and (c) of this section are in addition to, and must not diminish, any of the other rights and benefits provided by [USERRA] (such as, for example, the right to be employed or reemployed by the employer).²⁹⁴

Role of the AGs and Additional Resources

As is evident from the above materials regarding enforcement methods under USERRA, state Attorneys General have very little role in actually enforcing servicemembers' and veterans' rights under USERRA. However, this does not mean that the attorneys general have no role to play in vindicating servicemembers' and veterans' rights under USERRA. To wit, the Attorneys General should lead by example regarding USERRA compliance and should be able to refer USERRA complaints to the appropriate channels.

Governments are the largest employers of current and former servicemembers.²⁹⁵ Unfortunately, they have also been the most common violators of USERRA.²⁹⁶ For instance, in fiscal year 2011, the federal government was the employer involved in 18% of all USERRA complaints.²⁹⁷ That same year, federal, state, and local government accounted for 27% of all USERRA cases handled by Employer Support of the Guard and Reserve, a Defense Department office which mediates USERRA complaints.²⁹⁸ Armed with the knowledge of the protections provided by and the requirements of USERRA, Attorneys General can ensure that their offices are USERRA-compliant and provide counsel to other state government entities on USERRA compliance.

Furthermore, it is well known that Attorneys General offices receive complaints of all kinds. When

they receive complaints amounting to potential USERRA violations, they need to be able to refer them appropriately.

For career servicemembers and veterans, the primary avenue for non-litigious resolution of a complaint is through **VETS**. ²⁹⁹ As noted in the previous Section on administrative enforcement, VETS will investigate and attempt to resolve USERRA complaints. To begin the administrative process, VETS can be reached by phone at 1-866-4-USA-DOL. Servicemembers and veterans may also find their local VETS office by consulting the regional and state directories on the VETS website. The regional and state directories are available at: http://www.dol.gov/vets/aboutvets/contacts/main.htm.

Members of the National Guard and Reserve have an additional complaint resolution avenue through Employer Support of the Guard and Reserve ("ESGR").300 Before beginning any formal administrative complaint processes or civil litigation, Guardsmen and Reservists may want to attempt to find resolution of a USERRA complaint through ESGR's Ombudsman Services Program.301 The Ombudsman Services Program provides information and mediation on issues related to USERRA. Specially trained Ombudsmen are available to assist members of the Guard and Reserve in resolving disputes with their civilian employers related to military service in the uniformed services through neutral and impartial mediation. ESGR Ombudsmen are volunteers located throughout the United States and U.S. territories.302

ESGR's Customer Service Center is available to answer a USERRA question or to refer cases to a trained Ombudsman. ESGR's Customer Service Center can be reached:

- By Phone: 800-336-4590 option 1
- By Email: osd.USERRA@mail.mil
- On the web: http://www.esgr.mil/USERRA/ USERRA-Contact.aspx

^{294 20} CFR § 1002.312 (2014).

²⁹⁵ Steve Vogel, Returning military members allege job discrimination—by federal government, WASH. POST (Feb. 19, 2012), http://www.washingtonpost.com/world/national-security/returning-military-members-allege-job-discrimination-by-federal-government/2012/01/31/gIQAXvYvNR_story.html.

²⁹⁶ Id.

²⁹⁷ Id.

²⁹⁸ Id.

²⁹⁹ Veterans' Employment and Training Services, DEPARTMENT OF LABOR, http://www.dol.gov/vets/ (last visited Oct. 3, 2014).

³⁰⁰ What Is USERRA?, EMPLOYER SUPPORT OFF THE GUARD AND RESERVE, http://www.esgr.mil/USERRA/What-is-USERRA.aspx (last visited Oct. 3, 2014).

³⁰¹ Id.

³⁰² Id.

Additional information on USERRA rights, requirements, and complaint processing procedures is available through the Department of Labor's **USERRA Advisor**. The USERRA Advisor can be found at: http://www.dol.gov/elaws/vets/userra/mainmenu.asp.

State USERRA Statutes

To expand the protections of USERRA, states and territories have adopted a number of different approaches. Some have directly incorporated USERRA into their own codes, thereby extending its applicability to state national guards and to employees of the state and its municipalities. Others have provided leaves of absence and unemployment rights for public officials serving in the Armed Forces. Typically, states with these types of statutes will also provide some allowance for pay and

retirement benefits when a public employee is called to service. A third category of states and territories have passed unique laws which, typically, build on the basic framework of USERRA and, generally, forbid any employer from declining to employ, refusing to reemploy, or otherwise discriminating against an employee on the basis of membership in the state's national guard or the national Armed Forces. Although some of these statutes apply only to private employers, many apply to state and municipal agencies as well.

In order to best represent these differing approaches, a chart of state and territory statutes follows. The names of the states are in the first column; statutes incorporating USERRA are in the second column; statutes providing public leave and reemployment rights are in the third column; and unique statutes providing for private reemployment rights are in the fourth column.

State	Incorporating USERRA	Public Reemployment	Private Reemployment
Alabama	Ala. Code § 31-12-2		
Alaska		Alaska Stat. §§	Alaska Stat. § 26.05.075
		39.20.340 To 39.20.350	
Arizona	Ariz. Rev. Stat. Ann. §	Ariz. Rev. Stat. Ann. §	Ariz. Rev. Stat. Ann. §
	26-168(D)	26-168(C)	26-168(B)
Arkansas	Ark. Code Ann. § 12-		
	62-413		
California	Cal. Mil. & Vet. Code		Cal. Mil. & Vet. Code
	§ 395.5		§§ 394 to 395.4
Colorado		Colo. Rev. Stat. §§ 28-	
		3-601 et seq.	
Connecticut		Conn. Gen. Stat. §	Conn. Gen. Stat. § 27-
		5-255	33A
Delaware	Del. Code Ann. tit 20,	Del. Code Ann. tit. 29,	
	§ 905	§ 5105	
District of Columbia		D.C. Code §§	• • • • • • • • • • • • •
		1-612.03(M) to	D0000000000000
	. 0	1-612.03(M-3)	000000000000000000000000000000000000000
Florida	Fla. Stat. § 115.15	FLA. STAT. § 115.01 et	FLA. STAT. §§ 250.480 to
		seq.	250.482

Employment and USERRA

State	Incorporating USERRA	Public Reemployment	Private Reemployment
Georgia			Ga. Code Ann. § 38-2- 279
Guam		4 Guam Code Ann. § 4119	10 Guam Code Ann. \$ 63105
Hawaii			Haw. Rev. Stat. § 121-43
Idaho	Idaho Code Ann. § 65-608		Idaho Code Ann. §§ 46- 224, 46-225, 46-407
Illinois			20 ILCs 1805/30.15
Indiana	Ind. Code § 10-16-7-23		IND. CODE \$\$ 10-17-4-1 to 10-17-4-5
Iowa		IOWA CODE § 29A.28	IOWA CODE § 29A.43
Kansas			Kan. Stat. Ann. § 48-517
Kentucky		Ky. Rev. Stat. Ann. § 61.394	Ky. Rev. Stat. Ann. § 38.238
Louisiana			La. Rev. Stat. Ann. \$ 29:401 et seq.
Maine			Me. Rev. Stat. tit 26, §§ 811 to 814
Maryland	Md. Code Ann. Pub. Safety § 13-704	Md. Code Ann. Pub. Safety § 13-706	
Massachusetts	Mass. Gen. Laws Ch. 33, § 13		
Michigan			MICH. COMP. LAWS \$ 32.271 et seq.
Minnesota	Minn. Stat. § 190.055		
Mississippi		Miss. Code Ann. § 33- 1-21	Miss. Code Ann. § 33- 1-19
Missouri		Mo. Rev. Stat. § 105.270	Mo. Rev. Stat. § 41.730
Montana			Mont. Code Ann. § 10- 1-1001 et seq.
Nebraska			Neb. Rev. Stat. §§ 55-160 to 55-166
Nevada		Nev. Rev. Stat. §§ 281.145, 284.359	Nev. Rev. Stat. §§ 412.139 to 412.1395, 412.606
New Hampshire	N.H. Rev. Stat. Ann. \$ 110-C:1	000000000000000000000000000000000000000	

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State	Incorporating USERRA	Public Reemployment	Private Reemployment	
New Jersey		N.J. Stat. Ann. § 38:23-1	N.J. Stat. Ann. § 38:23C- 20	
New Mexico	N.M. Stat. Ann. § 20- 4-7.1			
New York		N.Y. MIL. LAW §§ 242, 243	N.Y. Mil. Law § 317	
North Carolina			N.C. Gen. Stat. § 127A- 202.1	
North Dakota		N.D. Cent. Code \$\$ 37- 01-25 To 37-01-25.2		
Ohio	Ohio Rev. Code Ann. §§ 5903.02, 5919.29			
Oklahoma	OKLA. STAT. tit. 44, § 208.1	Okla. Stat. tit. 72, § 48		
Oregon			Or. Rev. Stat. § 659A.082 et seq.	
Pennsylvania		51 Pa. Cons. Stat. § 4102	51 Pa. Cons. Stat. § 7301 <i>et seq.</i>	
Puerto Rico		P.R. Laws Ann. tit. 25, § 2082	P.R. Laws Ann. tit. 25, \$ 2083	
Rhode Island			R.I. GEN. LAWS § 30-11-1 et seq., 30-21-1	
South Carolina		S.C. Code Ann. §§ 8-7- 90, 25-1-2250	S.C. CODE ANN. § 25-1- 2310 et seq.	
South Dakota	S.D. Codified Laws § 33A-2-9			
Tennessee		Tenn. Code Ann. § 8-33-102		
Texas		Tex. Gov't Code §§ 437.202, 613.001 et seq.	Tex. Gov't Code \$ 437.204	
Utah			Utah Code Ann. § 39- 1-36	
Vermont		Vt. Stat. Ann. tit. 3, § 263	Vt. Stat. Ann. tit. 21, \$\$ 491 to 493	
Virgin Islands			V.I. Code Ann. tit 23, § 1525	
Virginia			VA. CODE ANN.§§ 44-93 to 44-93.5	

Employment and USERRA

State	Incorporating USERRA	Public Reemployment	Private Reemployment
Washington			Wash. Rev. Code §
			73.16.005 et seq.
West Virginia		W.Va. Code § 15-1F-1	W. Va. Code § 15-1F-8
Wisconsin		Wis. Stat. § 230.32	Wis. Stat. §§ 321.64,
			321.65
Wyoming		Wyo. Stat. Ann. § 19-	Wyo. Stat. Ann. § 19-11-
		11-108	111

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Veterans Treatment Courts



Many of our service men and women have returned home after deployments overseas to combat invisible injuries resulting from their service: post traumatic stress syndrome, depression, anger, stress, and traumatic brain injury. The media has well documented the troubling issue of increased suicide in the military and among veterans.³⁰³ Perhaps due to the "macho" culture of the military that promotes mental toughness and self-sufficiency, it is often difficult for both those still in active service and those who have been discharged to seek help for these unseen injuries. Many of those who suffer turn to self-medicating and become addicted to alcohol and drugs. Sometimes these issues contribute to a veteran becoming involved in the criminal justice system.

In 2008, Buffalo, in Erie County, New York, started a Veterans Treatment Court, modeled after the successful Drug Treatment Courts. The court allowed veterans who had become involved

The website justiceforvets.org outlines ten components of a veterans treatment court:

- 1. Incorporating alcohol, drug, and mental health treatment within the judicial process.
- Approaching the issue, by both prosecution and the defense, in a non-adversarial way. The key is to promote the public safety and protect due process. Focus is taken off the merits of the underlying case and placed on the veteran's recovery.
- 3. Identifying eligible participants in the court early in their interactions with the justice system so that multiple arrests will not further inflame the veteran's condition, making rehabilitation more difficult.

Other veterans courts have struggled with whether their services should be available for only combat veterans. If the logic behind these special courts is to assist those who are suffering from combat-related mental health issues, should veterans who have never seen combat be excluded?

³⁰³ See, e.g., Ernest Lodono, "Military Suicides Rise to a Record 349, Topping Number of Troops Killed in Combat," Washington Post, available at http://www.washingtonpost.com/world/national-security/military-suicides-rise-to-a-record-349-topping-number-of-troops-killed-in-combat/2013/01/14/e604e6b4-5e8c-11e2-9940-6fc488f3fecd_story.html (last visited Oct. 9, 2014).

- 4. Incorporating veteran peer monitors to provide moral support and assist in the veteran's access to all needed mental health and rehabilitation services.
- 5. Frequent monitoring by drug and alcohol testing to ensure abstinence.
- 6. Favorable response by the court to compliance by the veteran and the imposition of stricter requirements for non-compliance.
- 7. To establish a relationship with the veteran, continuous involvement by the judge in the process; this helps to ensure that the veteran will stay with the program.
- 8. Measuring and evaluating achievement goals.
- 9. Training for all Veterans Treatment Courts staff to ensure understanding of veterans' issues and knowledge of resources available.
- 10. Forging partnerships with the Veterans Administration and other community support groups.³⁰⁹

Just as Drug Courts have proven to be successful in dealing with addiction issues among adults who are involved in the criminal justice system, Veterans Courts have shown success in assisting veterans, whose service has contributed to addiction, to deal with the trauma they have sustained and guide them to again becoming productive members of society with a very small chance of re-offending.

In 2008, Buffalo, in Erie County, New York, started a Veterans Treatment Court, modeled after the successful Drug Treatment Courts. The court allowed veterans who had become involved with the criminal justice system to come before a judge who was knowledgeable regarding veterans' issues and the resources available to assist them. This court has served for a national model for the 196³⁰⁴ other veterans courts that have since been established.305 A vital component of the court is the availability of veteran mentors who understand the veterans' experiences, help them with linking up to the programs, benefits, and services they have earned, provide moral support as the veteran goes through the program, and assist them in getting their lives back on track and overcoming addiction. The Buffalo court requires that there be a plea prior to accepting a veteran into its program.

An article in the ABA Journal in 2011 detailed some of the disparities among the various veterans courts and some of the issues involved in setting up a court.³⁰⁶ The primary one, of course, is funding. The Department of Justice through its Bureau of Justice Assistance has, in the past, provided funding for training for court personnel and for veteran mentors.307 However, much of the funding must come from local sources, often necessitating the reallocation of existing court resources. Courts also face the issue of what charges should be addressed. Felonies or only misdemeanors? Domestic violence? Judge Robert Russell, who created the Erie County Veteran's Treatment Court, says that the distinguishing factor should be whether the behavior changed after the service or whether the defendant already had a predisposition to violence.³⁰⁸

³⁰⁹ Available at http://justiceforvets.org/sites/default/files/files/Ten%20Key%20Components%20of%20Veterans%20
Treatment%20Courts%20.pdf (last visited Oct. 9, 2014). This website provides a number of resources for those interested in establishing or curious about the operation of veterans' courts, including a list of states (with contacts) that have instituted veterans' courts. These states include Alabama, Alaska, Arizona, Arkansas, California, Colorado, Delaware, Florida, Georgia, Hawaii, Idaho, Illinois, Indiana, Kentucky, Louisiana, Massachusetts, Michigan, Minnesota, Missouri, Montana, Nevada, New Mexico, New York, North Carolina, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Washington, Wisconsin, and Wyoming.

³⁰⁴ Kristin Meriwether, "Veterans Treatment Court Offers Hope, But Only in Three Boroughs," Gotham Gazette, Aug. 28, 2014, available at http://www.gothamgazette.com/index.php/government/5279veterans-treatment-courts-offer-hope-but-only-in-threeboroughs (last visited Oct. 9, 2014).

^{305 &}quot;Buffalo Veteran's Court and Veterans Mentor Handbook," *available at* http://www.nadcp.org/sites/default/files/nadcp/Buffalo%20 Mentor%20Handbook_0.pdf (last visited Oct. 9, 2014).

³⁰⁶ William H. McMichael, "The Battle on the Home Front: Special courts Turn to Vets to Help Other Vets" *ABA Journal*, Nov. 1, 2011, *available at* http://www.abajournal.com/mobile/mag_article/the_battle_on_the_home_front_special_courts_turn_to_vets_to_help_other_vets/ (last visited Oct. 9, 2014).

³⁰⁷ For information concerning free training opportunities in 2015, funded by the Bureau of Justice Assistance, go to http://www.justiceforvets.org/2015-vtcpi (last visited Oct. 9, 2014).

³⁰⁸ Id.

Appendix A **Title 10 "Active Duty" Definition**



Anthony Correia, Shutterstock.com

10 U.S.C. § 101

[...]

- (d) Duty Status The following definitions relating to duty status apply in this title:
- (1) The term "active duty" means full-time duty in the active military service of the United States. Such term includes full-time training duty, annual training duty, and attendance, while in the active military service, at a school designated as a service school by law or by the Secretary of the military department concerned. Such term does not include full-time National Guard duty.
- (2) The term "active duty for a period of more than 30 days" means active duty under a call or order that does not specify a period of 30 days or less.
- (3) The term "active service" means service on active duty or full-time National Guard duty.
- (4) The term "active status" means the status of a member of a reserve component who is not in the inactive Army National Guard or inactive Air National Guard, on an inactive status list, or in the Retired Reserve.
- (5) The term "full-time National Guard duty" means training or other duty, other than inactive duty, performed by a member of the Army National Guard of the United States or the Air National Guard of the United States in the member's status as a member of the National Guard of a State or territory, the Commonwealth of Puerto Rico, or the District of Columbia under section 316, 502, 503, 504, or 505 of title 32 for which the member is entitled to pay from the United States or for which the member has waived pay from the United States.

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- (A) The term "active Guard and Reserve duty" means active duty performed by a member of a reserve component of the Army, Navy, Air Force, or Marine Corps, or full-time National Guard duty performed by a member of the National Guard pursuant to an order to full-time National Guard duty, for a period of 180 consecutive days or more for the purpose of organizing, administering, recruiting, instructing, or training the reserve components.
- (B) Such term does not include the following:
 - (i) Duty performed as a member of the Reserve Forces Policy Board provided for under section 10301 of this title.
 - (ii) Duty performed as a property and fiscal officer under section 708 of title 32.
 - (iii) Duty performed for the purpose of interdiction and counter-drug activities for which funds have been provided under section 112 of title 32.
 - (iv) Duty performed as a general or flag officer.
 - (v) Service as a State director of the Selective Service System under section 10(b)(2) of the Military Selective Service Act (50 App. U.S.C. 460 (b)(2)).
- (7) The term "inactive-duty training" means—
 - (A) duty prescribed for Reserves by the Secretary concerned under section 206 of title 37 or any other provision of law; and
 - (B) special additional duties authorized for Reserves by an authority designated by the Secretary concerned and performed by them on a voluntary basis in connection with the prescribed training or maintenance activities of the units to which they are assigned.

Such term includes those duties when performed by Reserves in their status as members of the National Guard.

Appendix B **Attorneys General Links**



ALABAMA

Office of the Attorney General: www.ago.state.al.us/Default.aspx
OAG Consumer Protection Page: www.ago.state.al.us/Page-Consumer-Protection
OAG Charities Page: www.ago.state.al.us/Page-Consumer-Protection-Consumer-Charities
State Department of Veterans Affairs: www.va.state.al.us/

ALASKA

Office of the Attorney General: www.law.state.ak.us/
OAG Consumer Protection Page: www.law.state.ak.us/department/civil/consumer/cpindex.html
OAG Charities Page: www.law.state.ak.us/department/civil/consumer/cp_charities.html
State Department of Veterans Affairs: veterans.alaska.gov/

AMERICAN SAMOA

Office of the Attorney General: americansamoa.gov/index.php/2012-04-25-19-44-32/2012-04-25-19-52-04/departments/legal-affairs

ARIZONA

Office of the Attorney General: https://www.azag.gov/

OAG Consumer Protection Page: https://www.azag.gov/consumer/home

OAG Charities Page: https://www.azag.gov/consumer/charitable

OAG Veterans Page: https://www.azag.gov/veterans State Department of Veterans Affairs: https://dvs.az.gov/

ARKANSAS

Office of the Attorney General: www.ag.arkansas.gov/

OAG Consumer Protection Page: gotyourbackarkansas.org/

OAG Charities Page: gotyourbackarkansas.org/money/charitable-giving/

State Department of Veterans Affairs: www.veterans.arkansas.gov/

CALIFORNIA

Office of the Attorney General: https://oag.ca.gov/

OAG Consumer Protection Page: https://oag.ca.gov/consumers

OAG Charities Page: https://oag.ca.gov/charities

State Department of Veterans Affairs: https://www.calvet.ca.gov/

COLORADO

Office of the Attorney General: www.coloradoattorneygeneral.gov/

OAG Consumer Protection Page: www.coloradoattorneygeneral.gov/consumer_questions

 $OAG\ Charities\ Page:\ www.coloradoattorneygeneral.gov/departments/consumer_protection/charities$

OAG Veterans Page

www.coloradoattorneygeneral.gov/sites/default/files/uploads/CP/Military%20Guide%204-12-13.pdf

State Department of Veterans Affairs:

www.colorado.gov/cs/Satellite/DepartmentOfMilitaryAndVeteransAffaris/CBON/1251619753245

CONNECTICUT

Office of the Attorney General: www.ct.gov/ag/site/default.asp

OAG Consumer Protection Page: www.ct.gov/ag/cwp/view.asp?a=2093&q=482928

OAG Charities Page: www.ct.gov/ag/cwp/view.asp?a=4424&q=520630 State Department of Veterans Affairs: www.ct.gov/CTVA/site/default.asp

Appendix B—Attorneys General Links

DELAWARE

Office of the Attorney General: attorneygeneral.delaware.gov/
OAG Consumer Protection Page: attorneygeneral.delaware.gov/fraud/index.shtml
OAG Charities Page: attorneygeneral.delaware.gov/documents/brochures/2013/Charities%20Fraud.pdf
State Department of Veterans Affairs: veteransaffairs.delaware.gov/

DISTRICT OF COLUMBIA

Office of the Attorney General: oag.dc.gov/

OAG Consumer Protection Page: oag.dc.gov/consumerprotection

OAG Charities Page: oag.dc.gov/page/charities-and-other-nonprofit-organizations

State Department of Veterans Affairs: ova.dc.gov/

FLORIDA

Office of the Attorney General: myfloridalegal.com/
OAG Consumer Protection Page:
myfloridalegal.com/pages.nsf/Main/3044c14bf59c296d85256cc6006ed999
OAG Charities Page:
myfloridalegal.com/pages.nsf/main/43b5fdeb514b5c5b85256cc90051972e!OpenDocument
State Department of Veterans Affairs: floridavets.org/

GEORGIA

Office of the Attorney General: law.ga.gov/

OAG Consumer Protection Page: law.ga.gov/consumer-information

OAG Charities Page: law.ga.gov/charities

State Department of Veterans Affairs: veterans.georgia.gov/

GUAM

Office of the Attorney General: www.guamag.org/ OAG Consumer Protection Page: www.guamag.org/faqs/consumer_faqs.html State Department of Veterans Affairs: gvao.guam.gov/

HAWAII

Office of the Attorney General: ag.hawaii.gov/ OAG Consumer Protection Page: cca.hawaii.gov/ocp/ State Department of Veterans Affairs: dod.hawaii.gov/ovs/

IDAHO

Office of the Attorney General: www.ag.idaho.gov/index.html

OAG Consumer Protection Page: www.ag.idaho.gov/consumerProtection/consumerIndex.html

OAG Charities Page: www.ag.idaho.gov/publications/consumer/CharitableGiving.pdf

State Department of Veterans Affairs: www.veterans.idaho.gov/

ILLINOIS

Office of the Attorney General: illinoisattorneygeneral.gov/

OAG Consumer Protection Page: illinoisattorneygeneral.gov/consumers/index.html

OAG Veterans Consumer Protection Page:

http://www.ag.state.il.us/rights/State_AG_Toolkit_on_Consumer_Protection_for_the_Military_2013.pdf

OAG Charities Page: www.illinoisattorneygeneral.gov/charities/index.html OAG Veterans Page: www.illinoisattorneygeneral.gov/rights/veterans.html

State Department of Veterans Affairs: www2.illinois.gov/veterans/Pages/default.aspx

INDIANA

Office of the Attorney General: www.in.gov/attorneygeneral/

OAG Consumer Protection Page: www.in.gov/attorneygeneral/2350.htm

OAG Charities Page: www.in.gov/attorneygeneral/2381.htm OAG Veterans Page: www.in.gov/atttorneygeneral/2843.hutm State Department of Veterans Affairs: www.in.gov/dva/

IOWA

Office of the Attorney General: www.iowaattorneygeneral.gov/

OAG Consumer Protection Page:

www.iowaattorneygeneral.gov/protecting_consumers/index.html

OAG Charities Page: www.state.ia.us/government/ag/protecting_giving/index.html

State Department of Veterans Affairs: https://va.iowa.gov/

KANSAS

Office of the Attorney General: https://ag.ks.gov/

OAG Consumer Protection Page: https://ag.ks.gov/consumer-protection

OAG Veterans Consumer Protection Page:

http://www.consumer.ftc.gov/articles/pdf-0016-military-identity-theft.pdf

OAG Charities Page: ag.ks.gov/consumer-protection/charities

OAG Veterans Page:http://ag.ks.gov/in-your-corner-kansas/your-family/military-families

State Department of Veterans Affairs: kcva.ks.gov/

KENTUCKY

Office of the Attorney General: ag.ky.gov/Pages/default.aspx

OAG Consumer Protection Page: ag.ky.gov/Pages/protectingconsumers.aspx

OAG Veterans Consumer Protection Page:

http://ag.ky.gov/civil/consumerprotection/military/Pages/default.aspx

OAG Veterans Consumer Brochure:

http://www.consumer.ftc.gov/articles/pdf-0016-military-identity-theft.pdf

OAG Charities Page:

ag.ky.gov/civil/consumerprotection/business/pages/charityscams.aspx

State Department of Veterans Affairs: veterans.ky.gov/Pages/default.aspx

LOUISIANA

Office of the Attorney General: https://www.ag.state.la.us/

OAG Consumer Protection Page: https://www.ag.state.la.us/Article.aspx?articleID=36&catID=0

OAG Charities Page: https://www.ag.state.la.us/Article.aspx?articleID=3&catID=0

OAG Veterans Page: https://www.ag.state.la.us/Article.aspx?articleID=753&catID=0

State Department of Veterans Affairs: www.vetaffairs.la.gov/

MAINE

Office of the Attorney General: www.maine.gov/ag/

OAG Consumer Protection Page: www.maine.gov/ag/consumer/index.shtml

OAG Charities Page: www.maine.gov/ag/consumer/charities/index.shtml

State Department of Veterans Affairs: www.maine.gov/dvem/bvs/

MARYLAND

Office of the Attorney General: www.oag.state.md.us/

OAG Consumer Protection Page: www.oag.state.md.us/Consumer/index.htm

OAG Charities Page: www.sos.state.md.us/charity/charityhome.aspx310

OAG Veterans Page: www.oag.state.md.us/nationalGuardRights.htm

State Department of Veterans Affairs: veterans.maryland.gov/

MASSACHUSETTS

Office of the Attorney General: www.mass.gov/ago/

OAG Consumer Protection Page:

www.mass.gov/ago/bureaus/public-protection-and-advocacy/the-consumer-protection-division/

OAG Charities Page:

www.mass.gov/ago/doing-business-in-massachusetts/public-charities-or-not-for-profits/

OAG Veterans Page: www.mass.gov/ago/news-and-updates/initiatives/veterans/

State Department of Veterans Affairs: www.mass.gov/veterans/

³¹⁰ This site is run by the Secretary of State but is referenced by the consumer page of the Attorney General's website.

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MICHIGAN

Office of the Attorney General: www.michigan.gov/ag

OAG Consumer Protection Page: www.michigan.gov/ag/0,4534,7-164-17337---,00.html

OAG Charities Page: www.michigan.gov/ag/0,4534,7-164-17337_18095---,00.html

OAG Veterans Page: www.michigan.gov/ag/0,4534,7-164-65798---,00.html

OAG Veterans Legal Service Guide:

www.michigan.gov/documents/ag/MI_Military__Veterans_Legal_Services_Guide_463213_7.pdf

State Department of Veterans Affairs: www.michigan.gov/dmva

MINNESOTA

Office of the Attorney General: www.ag.state.mn.us/

OAG Consumer Protection Page: www.ag.state.mn.us/Consumer/ConsumerAdvice.asp

OAG Charities Page: www.ag.state.mn.us/Charities/

OAG Veterans Page: www.ag.state.mn.us/Brochures/pubVeteranAndServiceMemberAssistance.pdf

State Department of Veterans Affairs: mn.gov/mdva/

MISSISSIPPI

Office of the Attorney General: www.ago.state.ms.us/

OAG Consumer Protection Page: www.ago.state.ms.us/consumer-protection/

State Department of Veterans Affairs: www.vab.ms.gov/

MISSOURI

Office of the Attorney General: https://www.ago.mo.gov/

OAG Consumer Protection Page: ago.mo.gov/Consumer-Protection.htm

OAG Charities Page: ago.mo.gov/checkacharity/

State Department of Veterans Affairs: mvc.dps.mo.gov/

MONTANA

Office of the Attorney General: https://doj.mt.gov/

OAG Consumer Protection Page: https://doj.mt.gov/consumer/

State Department of Veterans Affairs: montanadma.org/montana-veterans-affairs

NEBRASKA

Office of the Attorney General: www.ago.ne.gov/

OAG Consumer Protection Page: www.ago.ne.gov/consumer_protection

State Department of Veterans Affairs: www.vets.state.ne.us/

NEVADA

Office of the Attorney General: ag.nv.gov/ OAG Consumer Protection Page: ag.nv.gov/About/Consumer_Protection/Bureau_of_Consumer_Protection/ State Department of Veterans Affairs: www.veterans.nv.gov/

NEW HAMPSHIRE

Office of the Attorney General: doj.nh.gov/ OAG Consumer Protection Page: doj.nh.gov/site-map/consumers.htm OAG Charities Page: doj.nh.gov/consumer/sourcebook/charitable-solicitations.htm State Department of Veterans Affairs: www.nh.gov/nhveterans/

NEW JERSEY

Office of the Attorney General: www.nj.gov/oag/ OAG Consumer Protection Page: www.njconsumeraffairs.gov/ OAG Charities Page: www.state.nj.us/lps/ca/charity/chardir.htm State Department of Veterans Affairs: www.state.nj.us/military/

NEW MEXICO

Office of the Attorney General: www.nmag.gov/
OAG Consumer Protection Page: www.nmag.gov/consumer
OAG Charities Page:
www.nmag.gov/the_office/Communications-Division/consumer-protection/charities
State Department of Veterans Affairs: www.dvs.state.nm.us/

NEW YORK

Office of the Attorney General: www.ag.ny.gov/
OAG Consumer Protection Page: www.ag.ny.gov/bureau/consumer-frauds-bureau
OAG Charities Page: www.charitiesnys.com/home.jsp
OAG Veterans Page: www.ag.ny.gov/consumer-frauds/veterans-resource-guide
State Department of Veterans Affairs: www.veterans.ny.gov/

NORTH CAROLINA

Office of the Attorney General: www.ncdoj.gov/ OAG Consumer Protection Page: www.ncdoj.gov/Consumer.aspx OAG Charities Page: www.ncdoj.gov/Consumer/Charity.aspx OAG Veterans Page: www.ncdoj.gov/military.aspx

OAG Veterans Guide:

www.ncdoj.gov/getdoc/525e6723-a467-45f8-ad76-f315ef15f1cf/CP-for-military-download-2-28-2014.aspx State Department of Veterans Affairs: www.doa.nc.gov/vets/

NORTH DAKOTA

Office of the Attorney General: www.ag.nd.gov/ OAG Consumer Protection Page: www.ag.nd.gov/CPAT/CPAT.htm State Department of Veterans Affairs: www.nd.gov/veterans/

NORTHERN MARIANA ISLANDS

Office of the Attorney General: oagcnmi.net/sec.asp?secID=1 OAG Consumer Protection Page: oagcnmi.net/consumers.asp

OHIO

Office of the Attorney General: www.ohioattorneygeneral.gov/

OAG Consumer Protection Page: www.ohioattorneygeneral.gov/Individuals-and-Families/Consumers

OAG Charities Page: www.ohioattorneygeneral.gov/Business/Services-for-Charities

OAG Veterans Page: www.ohioattorneygeneral.gov/Individuals-and-Families/Military-and-Veterans

OAG Veterans Guide:

www.ohioattorneygeneral.gov/getattachment/88a7e7d9-63b5-4e44-8c18-a1a5672d8521/Resources-for-

Active-Military-Veterans-and-their.aspx

State Department of Veterans Affairs: dvs.ohio.gov/

OKLAHOMA

Office of the Attorney General: www.oag.state.ok.us/ OAG Consumer Protection Page: www.oag.ok.gov/oagweb.nsf/Consumer!OpenPage State Department of Veterans Affairs: www.ok.gov/odva/

OREGON

Office of the Attorney General: www.doj.state.or.us/Pages/index.aspx

OAG Consumer Protection Page: www.doj.state.or.us/consumer/pages/index.aspx

OAG Charities Page: www.doj.state.or.us/charigroup/pages/index.aspx

OAG Veterans Page: www.doj.state.or.us/veterans/Pages/protections.aspx?IsDlg=1

State Department of Veterans Affairs: www.oregon.gov/ODVA/pages/index.aspx

PENNSYLVANIA

Office of the Attorney General: www.attorneygeneral.gov/ OAG Consumer Protection Page: www.attorneygeneral.gov/consumers.aspx OAG Charities Page: www.attorneygeneral.gov/consumers.aspx?id=227 State Department of Veterans Affairs: www.dmva.state.pa.us/portal/server.pt/community/dmva_home/5902

PUERTO RICO

Office of the Attorney General: www.justicia.gobierno.pr/

RHODE ISLAND

Office of the Attorney General: www.riag.ri.gov/ OAG Consumer Protection Page: www.riag.ri.gov/civil/consumer/ OAG Veterans Page: www.riag.ri.gov/veterans/ State Department of Veterans Affairs: www.vets.ri.gov/

SOUTH CAROLINA

Office of the Attorney General: www.scag.gov/ OAG Consumer Protection Page: www.scag.gov/civil State Department of Veterans Affairs: www.govoepp.state.sc.us/va/

SOUTH DAKOTA

Office of the Attorney General: atg.sd.gov/
OAG Consumer Protection Page: atg.sd.gov/Consumers.aspx
OAG Charities Page: atg.sd.gov/Consumers/FastFacts.aspx#charity
State Department of Veterans Affairs: mva.sd.gov/default.html

TENNESSEE

Office of the Attorney General: www.tn.gov/attorneygeneral/
OAG Consumer Protection Page: www.tn.gov/attorneygeneral/cpro/protectingconsumer.html
OAG Veterans Consumer Guide:
http://www.tn.gov/attorneygeneral/cpro/militaryguide/militaryconsumerguide.pdf
OAG Charities Page: www.tn.gov/attorneygeneral/nonprofit/nonprofit.html
State Department of Veterans Affairs: www.state.tn.us/veteran/

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TEXAS

Office of the Attorney General: https://www.texasattorneygeneral.gov/
OAG Consumer Protection Page: https://www.texasattorneygeneral.gov/consumer/index.shtml
OAG Charities Page: https://www.texasattorneygeneral.gov/consumer/charities.shtml
State Department of Veterans Affairs: www.tvc.state.tx.us/

U.S. VIRGIN ISLANDS

Office of the Attorney General: doj.vi.gov/DivisionContent_2.php?divId=84

UTAH

Office of the Attorney General: attorneygeneral.utah.gov/ OAG Consumer Protection Page: attorneygeneral.utah.gov/protecting-utah/from-fraud/ State Department of Veterans Affairs: veterans.utah.gov/

VERMONT

Office of the Attorney General: www.ago.vermont.gov OAG Consumer Protection Page: www.atg.state.vt.us/issues/consumer-protection.php OAG Charities Page: www.atg.state.vt.us/issues/consumer-protection/charities.php State Department of Veterans Affairs: veterans.vermont.gov/

VIRGINIA

Office of the Attorney General: www.oag.state.va.us/
OAG Consumer Protection Page: www.oag.state.va.us/Consumer%20Protection/index.html
OAG Veterans Page: www.oag.state.va.us/Programs%20and%20Resources/Veterans/index.html
State Department of Veterans Affairs: www.dvs.virginia.gov/

WASHINGTON

Office of the Attorney General: www.atg.wa.gov/ OAG Consumer Protection Page: www.atg.wa.gov/SafeguardingConsumers.aspx#.UznFIKhdWuk

OAG Charities Page: www.atg.wa.gov/ConsumerIssues/Charities/default.aspx#.UznUfahdWuk
OAG Veterans Page: www.atg.wa.gov/veteranmilitaryresources.aspx#.UznUlKhdWuk

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State Department of Veterans Affairs: www.dva.wa.gov/

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Appendix B—Attorneys General Links

WEST VIRGINIA

Office of the Attorney General: www.wvago.gov/
OAG Consumer Protection Page: www.wvago.gov/publicresource.cfm
State Department of Veterans Affairs: www.veterans.wv.gov/Pages/default.aspx

WISCONSIN

Office of the Attorney General: www.doj.state.wi.us/ OAG Consumer Protection Page: www.doj.state.wi.us/dls/consumer-protection/consumer-protection State Department of Veterans Affairs: dva.state.wi.us/

WYOMING

Office of the Attorney General: attorneygeneral.state.wy.us/ OAG Consumer Protection Page: attorneygeneral.state.wy.us/consumer.htm State Department of Veterans Affairs: https://sites.google.com/a/wyo.gov/wyomingmilitarydepartment/home Veterans Legal Manual

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Appendix C Recent Lawsuits/Activities By State Attorneys General Offices On Behalf Of Veterans



CALIFORNIA

People of the State of California v. Help Hospitalized Veterans, et al., No. RIC 1212288 (Riverside Superior Court): Company represented itself as a charity aiding hospitalized veterans when, in reality, it was not. California AGO sued, and a settlement was reached the day before trial. **Contact:** Sonja Berndt, Sonja.Berndt@doj.ca.gov

People v. Heald: California filed a lawsuit against a for-profit school for targeting service-members and veterans through the use of military seals. Litigation is still pending.

Contact: Nicklas Akers, nicklas.akers@doj.ca.gov

People v. JP Morgan Chase: This lawsuit alleges, among other things, state SCRA violations. Litigation is still pending.

Contact: Nicklas Akers, nicklas.akers@doj.ca.gov

INDIANA

Entity was representing veterans before the VA but had not been accredited and was charging unauthorized fees. AVC was reached and is currently pending before the court.

Contact: Tom Irons, tom.irons@atg.in.gov

Charitable organization possibly misrepresented its practices and did not forward contributions towards helping veterans. AGO has filed a complaint.

Contact: Tom Irons, tom.irons@atg.in.gov

MASSACHUSETTS

Focus on Veterans: AG alleges that Focus on Veterans used unfair and deceptive charitable solicitation practices and that the organization unlawfully solicited donations outside Massachusetts businesses without a valid Certificate for Solicitation. The case is currently ongoing.

Contact: Ashley Wisneski, (617)963-2079

Veterans Community Foundation: AG alleges that Veterans Community Foundation (VCF) unlawfully solicited storefronts without a valid Certificate of Solicitation. The complaint further alleges that VCF has used unfair and deceptive charitable solicitation practices during these campaigns. The case is currently ongoing.

Contact: Eric Carriker, (617)963-2118 or Ashley Wisneski, (617)963-2079

Richard Trott, Sr., former officer of the Cape Cod chapter of Disabled American Veterans, Inc.: AG alleged that defendant stole approximately \$125,000 from Disabled American Veterans (DAV), transferring money into his own accounts and using money in the DAV account as if it were his own. Further investigation brought an allegation that defendant created several organizations with names intentionally similar to DAV in order to defraud donors.

Contact: Cara Krysil, (617)963-2684

Christopher Adam Scott, former executive director of Mason Square Veteran's Outreach Center: The defendant stole \$34,000 from Mason Square Veteran's Outreach Center by pocketing grant dollars meant for community development projects.

Contact: Beth Ann Lux, (617) 963-7712

Bay State Vietnam Veterans, Inc.: Defendant was ordered to pay \$125,000 in financial penalties and permanently banned from any charitable or fundraising activity for engaging in deceptive practices while conducting charitable solicitations for Bay State Vietnam Veterans, including falsely stating that 100% of donations would benefit veterans living in donors' communities.

Contact: Eric Carriker, (617) 963-2118

Appendix C—Recent Lawsuits

Life Insurance Company of North America: Defendant was accused of marketing health insurance through a variety of improper tactics to more than 1,000 Massachusetts veterans. AG reached a settlement with the company whereby the company agreed to pay \$1.7 million.

Contact: Emiliano Mazlen, (617) 963-2457 or Jacklyn C. Varela, jacklyn.varela@state.ma.us

NEBRASKA

For information about Nebraska initiatives, contact Abigail Stempson, Abigail.Stempson@nebraska.gov

NEW MEXICO

Phillip G. Ramirez, Jr. v. State of New Mexico Children, Youth, and Families Dept., et al., No. 34613 (N.M.): Jury verdict awarded USERRA damages to a PTSD New Mexico National Guard Vet. State appellate court overturned the award on 10th Amendment grounds. Case currently on appeal to the New Mexico Supreme Court, oral argument in October 2014.

Contact: David Pederson, dpederson@nmag.gov

TEXAS

Texas v. Veterans Support Organization, et al., No. 1:14-CV-00365-LY (W.D. Tex.): Alleges statutory violations of DTPA, the Texas Occupations Code, and the Texas Organizations Code, along with common law claims of breach of fiduciary duty, fraud, and negligence. Veterans Support Organization (VSO), a non-profit organization, misrepresented to Texas residents that donations were being used to help local, needy veterans. In reality, these donations were sent to Florida to pay civilians and veterans in VSO's "work program," which VSO represented as job training to transition veterans back into the workforce. However, the program was little more than structured panhandling, requiring veterans and civilians to station themselves outside of storefronts and ask for more donations. In addition, VSO represented its housing program as a means to help homeless veterans, when the program was actually provided to both veterans and civilians and would evict those who could not pay rent. Currently in settlement discussions/discovery.

Contact: Corey D. Kintzer, corey.kintzer@texasattorneygeneral.gov

MULTI-STATE

Rome/Culver Litigation: Several states filed suits against a number of finance companies alleging that the companies engaged in predatory and deceptive sales and lending practices. Specifically, the companies made fraudulent computer sales to military enlistees in violation of the states' consumer protection laws. In total, the CFPB and 13 state attorneys general announced a total of approximately \$92 million for about 17,000 soldiers and other consumers.

Contact: Indiana, Tom Irons, tom.irons@atg.in.gov

Massachusetts – Jacklyn C. Varela, jacklyn.varela@state.ma.us and Lisa Dyen, (617) 963-2373 Michigan – William Bloomfield, BloomfieldW@michigan,gov Tennessee – Olha N.M. Rybakoff, Olha.rybakoff@ag.tn.gov





2030 M Street NW, Eighth Floor, Washington, DC 20036 • (202) 326-6000