

SERVICEMEMBERS CIVIL RELIEF ACT (SCRA)

The Servicemembers Civil Relief Act (SCRA) is a federal law that protects military servicemembers in a variety of legal contexts. The protections under the SCRA are afforded to anyone who is on a federal active duty in the Armed Forces of the United States. It also provides protections to members of the National Guard and reservists who are on federal active duty for a period in excess of 30 consecutive days. The jurisdiction of the SCRA is extremely broad, from judicial proceedings to taxation.

Default Judgment Protection

Under the SCRA, servicemembers are granted protections from the entering of default judgments against them while they are serving on active duty. Before a court may enter a default judgment in a 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. If the attorney appointed to represent a servicemember cannot locate the servicemember, actions by the attorney in the case shall not waive any defense of the servicemember.

Upon application of the appointed attorney, the court shall grant a stay of proceedings for a minimum period of 90 days if it is determined 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.

Importantly, a servicemember may reopen a default judgment entered against him or her up to 60 days after his active duty period has ended. The court entering the judgment shall, upon application, set aside the judgment and reopen to matter for further proceedings if it appears that (a) the servicemember was materially affected by

reason of that military service in making a defense to the action; and (b) the servicemember has a meritorious or legal defense to the action or some part of it.

Stay of Civil or Administrative Proceedings

When a servicemember has actual notice of a civil or administrative proceeding and is either in military service or 90 days after release from military service they may to ask for a stay of civil or administrative proceedings for a minimum of 90 days. The application for a stay must include:

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] [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 a stay may apply for an additional stay based on continuing material effect of military duty on the servicemember's ability to appear. Such an application may be made by the servicemember at the time of the initial application or when it appears that the servicemember is unavailable to prosecute or defend the action. The court has discretion to grant the additional stay; however, if the court refuses to grant an additional stay, it shall appoint counsel to represent the servicemember in the action or proceeding.

A servicemember does not need to be deployed for this provision to apply. The servicemember qualifies for the stay as long as military leave is not authorized and servicemember's military duty materially affects the servicemember's ability to appear.

Stay or vacation of execution of judgments

As a last resort, the SCRA allows the servicemember to request a stay of the execution of any judgment in any civil proceeding entered against the servicemember commenced during the period of the servicemember's military service or within 90 days after such service terminates. A servicemember can also request the court to vacate or

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

Tolling of Statutes of limitations

The SCRA provides statute of limitations tolling provisions for servicemembers during their time of 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.

This provision also applies in the computation of any period during which a servicemember may redeem real property sold or forfeited to enforce an obligation, tax, or assessment. However, the SCRA tolling provisions do not apply to any period of limitation prescribed by or under the internal revenue laws of the United States.

6% Interest Rate Cap

Under the SCRA, an obligation or liability bearing interest at a rate of more than 6 percent per year incurred by a servicemember or spouse jointly before the servicemember enters military service shall be reduced to not more than 6 percent. In cases involving a mortgage, trust deed, or other security in the nature of a mortgage, this interest rate cap shall be enforceable during the period of military service and one year thereafter. For all other obligations or liabilities, the rate cap is enforceable only during the servicemember's active duty service. Any interest rate in excess of 6 percent that would have otherwise been incurred is required to be forgiven by the lender under the SCRA.

In order to implement the interest cap, the servicemember needs to provide the creditor with written notice and a copy of military orders. Notice to the creditor may be sent any time during active duty and up to 180 days after release from active duty. All interest in excess of 6% is forgiven during the covered period and cannot accrue or become due after service.

The 6% interest rate cap applies to mortgages, credit cards, car loans, other installment loans, and some student loans as well. "Interest" includes fees and other charges. The SCRA does not apply to debts or obligations incurred while on active duty.

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

Protections from Evictions

The SCRA grants servicemembers protections in eviction proceedings. A landlord may not evict a servicemember, or the dependents of a servicemember, during a period of military service of the servicemember without a court order. However, these provisions only apply to residential lease whole monthly rates fall under \$2,400, as adjusted for inflation.

Mortgage Protections

The SCRA provides servicemembers multiple protections regarding mortgage obligations incurred prior to entering military service. These protections apply during the servicemember's military service and one year after. The SCRA prevents a mortgage creditor from conducting a sale, foreclosure, or seizure of property for a breach of an obligation if made during, or within 9 months after, the period of the servicemember's military service *except* with a court order granted before such sale, foreclosure, or seizure.

The SCRA also allows for the servicemember to stay the proceedings in an action brought by the creditor in any action related to a mortgage obligation. The court must grant the stay if the servicemember can show the obligation is materially affected by military service. The SCRA may also entitle the servicemember to an adjustment of the obligation to preserve the interests of all parties. The Court may also stay or adjust the obligation on its own motion.

Additionally, the Department of Justice entered into a consent judgment which imposes additional SCRA compliance requirements on the five major mortgage servicers: Bank of America, J.P. Morgan Chase, Wells Fargo, Citigroup, and Ally Financial.

Residential Lease Protection

Servicemembers also have the ability to terminate lease agreements under the SCRA if they are entered into their agreement prior to going into active duty status. However, if a servicemember entered into the lease while on active duty and receives Permanent Change of Station (PCS) orders, or received orders to deploy for a period of longer than 90 days, they are allowed to terminate their lease. Under the SCRA, servicemembers are required to provide a written notice of the termination of the lease and a copy of their orders.

Auto Lease Protection

Under the SCRA, a servicemember has the ability to terminate an automobile lease if it was entered into prior to the servicemember's active duty status and the servicemember is called to active duty for 180 days or longer. A servicemember who enters an automobile lease while on active duty can terminate the lease if he or she receives PCS orders outside of the continental United States or will deploy with a military unit for 180 days or longer. The servicemember is required to return the vehicle to the dealer 15 days after giving notice.

Cell Phone Contracts

Under the SCRA, a servicemember may terminate a cellular phone service contract without paying a termination fee at any time after the date the servicemember receives orders to relocate for a period of 90 days or more to a location that does not support the contract. The servicemember must provide written or electronic notice of such termination and a copy of the military orders in order to receive the protections of the SCRA.

Tax Enforcement Proceedings

Under the SCRA, personal property (including motor vehicles), real property occupied for dwelling, professional, business, or agricultural purposes by a servicemember or the servicemember's dependents or employees may not be sold to enforce the collection of such tax or assessment, except by court order. The Court will only issue such order if it is determined that the servicemember's military service *did not* materially affect the servicemember's ability to pay the unpaid tax or assessment.

A court may stay a proceeding to enforce this type of collection or sale of such property, during a period of military service of the servicemember up to 180 days after the completion of military service.

If the court does issue an order allowing the sale real or personal property the servicemember has the right to redeem or commence an action to redeem the property during the period of military service or within 180 days after the military service.

Remedies and Enforcement

The Attorney General may commence a civil action against any person who engages in a pattern or practice of violating the SCRA; or engages in a violation of SCRA that raises an issue of significant public importance.¹ Additionally, any person aggrieved by a violation of the SCRA may commence a civil action against a violator. The servicemember can be awarded appropriate equitable or declaratory relief with respect to the violation of the SCRA and can award all other appropriate relief, including monetary damages, costs, and attorney fees.² Further, the Court may, to vindicate the public interest, assess a civil penalty up to \$55,000 for a first violation; and up to \$110,000 for any subsequent violation.³

¹ 50 U.S.C. App §597(a) (2014).

² 50 U.S.C. App §597(b) (2014).

³ *Id.*

EMPLOYMENT RIGHTS

Uniformed Services Employment and Reemployment Rights Act

The federal Uniformed Services Employment and Reemployment Rights Act (USERRA) establishes certain rights and responsibilities for uniformed service members and their civilian employers. USERRA is a powerful employment statute on the side of military servicemembers and veterans. USERRA prevents discrimination on the basis of military service and guarantees a servicemember reemployment at their previously-held civilian job following a period of active duty.

USERRA applies to all employers (public and private) and protects the employment rights and benefits of individuals who leave employment to undertake military service. USERRA assures an employee returning from military service or training the right to be reemployed to the same position they left (or a like position for which they are qualified) with the same benefits. USERRA does not apply to members of the National Guard when in state status but does apply when acting in a Title 32 (including Annual Training and Inactive Duty Training).

The USERRA reemployment rights are some of the most significant employments rights provided under the law. Any person whose absence from a position of civilian employment is necessitated by reason of service in the uniformed services shall be entitled to reemployment. To be eligible for reemployment the servicemember employee must follow these requirements: 1) have pre-service civilian employment; 2) experience absence from that civilian employment due to service in uniformed service; 3) given advance written or verbal notice of such service to such person's employer; 4) be absent for not more than five cumulative years; 5) return to work or apply for reemployment in a timely manner after conclusion of service; and 6) have not been separated from service with a disqualifying discharge or under other than honorable conditions.⁴

⁴ http://www.dol.gov/vets/programs/userra/USERRA_Private.pdf

Some of these requirements have exceptions and are not strictly enforced to be more lenient toward the servicemember. No notice is required if the giving of such notice is precluded by military necessity or, under all of the relevant circumstances, the giving of such notice is otherwise impossible or unreasonable. Additionally, this notice does not need to be formal.

Further, the rule for the 5-year cumulative limit does not apply to service that is required to complete an initial period of obligated service. There is a broad exception to the cumulative rule for service that is performed by a member 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 of 2001 there has been a standing declaration of national emergency with respect to terrorism.

The standard for the timely return is based on the amount of time that a servicemember spent on military duty. For less than 31 days the servicemember must return by the beginning of the first regularly scheduled work period after the end of the calendar day of duty, plus time required to return home safely and an eight hour rest period.⁵ If this is impossible or unreasonable, then the servicemember must return as soon as possible. For 31 to 180 days the servicemember 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 servicemember, then they must return as soon as possible. For a period over 180 days, the servicemember must apply for reemployment no later than 90 days after completion of military service. Reporting or application deadlines are extended for up to two years for persons who are hospitalized or convalescing from a service-connected injury or illness.

Reemployment

⁵ <http://www.dol.gov/compliance/guide/userra.htm>

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. USERRA also requires that reasonable efforts (such as training or retraining) be made to enable returning servicemembers to qualify for reemployment. If the servicemember cannot qualify for the "escalator" position, he or she must be reemployed, if qualified, in any other position that is the nearest approximation to the escalator position and then to the pre-service position. 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.

Employers must make reasonable efforts to qualify a returning servicemember for the reemployment position. Employers must provide refresher training, and any other training necessary to update a returning employee's skills so that he or she has the ability to perform the essential tasks of the position.

Following a period of service in the uniformed services of less than 91 days, the employee must be reemployed according to the following priority: in the escalator position; if the employee is unqualified for the escalator position, the pre-service position; if the employee is unqualified for either of these then, he or she must be reemployed in any other position that is the nearest approximation first to the escalator position and then to the pre-service position.

Following a period of service of more than 90 days, the employee must be reemployed according to the following priority: the escalator position or a position of like seniority, status, and pay; if unqualified to perform the duties of the escalator position, the pre-service position or one of like seniority, status, and pay; if the employee is unqualified for either of these positions, then he or she must be reemployed any other

position that is the nearest approximation first to the escalator position and then to the pre-service position.

Importantly, the employer must make reasonable efforts to help the employee become qualified to perform the duties of any of each of these positions.

Protection from Discrimination

USERRA protects servicemembers from employment discrimination and retaliation based on past, present, or future military service or because of attempts to enforce USERRA. Adverse actions include denial of initial employment; reemployment; retention in employment; promotion; or any benefit of employment. In addition, an employer may not retaliate against anyone assisting in the enforcement of USERRA rights, including testifying or making a statement in connection with a proceeding under USERRA, even if that person has no service connection. The servicemember or veteran has the burden of proving that a status or activity protected by USERRA was one of the reasons that the employer took action against him or her, then the burden shifts to the employer to prove the affirmative defense that it would have taken the action anyway.

Health Insurance Protection

USERRA provides health insurance continuation coverage if a servicemember leaves their job to perform military service. The servicemember has the right to elect to continue their existing employer-based health plan coverage for them and their dependents for up to 24 months while in the military. Even if the servicemember chooses not to elect to continue coverage during their military service; they have the right to be reinstated in their employer's health plan when they are reemployed, generally without any waiting periods or exclusions (e.g., pre-existing condition exclusions), except for service-connected illnesses or injuries.

Enforcement

USERRA rights are enforceable through administrative procedures as well as civil causes of action. Administratively, servicemembers can use the information and

assistance is provided by the Veterans' Employment and Training Service (VETS) of the Department of Labor. VETS investigates complaints and attempts to resolve them. Filing of complaints with VETS is optional; the employee may freely choose to pursue a claim with private counsel. The law gives VETS a right of access to 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. The law authorizes VETS to subpoena the attendance and testimony of witnesses and the production of documents relating to any matter under investigation.

Individuals have the option to privately file court actions. They may do so if they have chosen not to file a complaint with VETS, have chosen not to request that VETS refer their complaint to the Attorney General, or have been refused representation by the Attorney General.

Remedies available include the servicemembers return to their job, back pay, recover lost benefits, corrected personnel files, recovery of lost promotional opportunities, retroactive seniority, pension adjustments, and restored vacation.

Award of back pay or lost benefits may be doubled in cases where violations of the law are found to be "willful." Awards of attorney fees, expert witness fees, and other litigation expenses to successful plaintiffs who retain private counsel may be made at the court's discretion. Punitive damages are not available. No court fees or costs may be charged to anyone who brings suit.

USERRA RESOURCES

The Employer Support of the Guard and Reserve (ESGR) is a good resource for information and help related to USERRA. ESGR is a Department of Defense agency established to educate service members and civilian employers about their rights and responsibilities under USERRA. ESGR does not enforce USERRA, but serves as a neutral, free resource for employers and service members.

ESGR's Ombudsman Services Program provides information and mediation on issues related to USERRA. ESGR Ombudsmen are volunteers located throughout the United States. The Nevada ESGR office can be reached at 1-775-384-5810 or toll-free at 1-800-336-4590. You can get more information and also submit questions online at www.esgr.mil.

CONSUMER PROTECTION

Military personnel are ripe targets for consumer predators because many are low-income (always the most-targeted group) but have a far longer list of economically-attractive qualities than most low-income people. The military offers higher-than-average numbers of economically-unsophisticated young adult and a working population that universally receives U.S. Government paychecks on a rock-solid schedule – a golden guarantee to the payday lending industry especially -- and that is in no danger of being laid off.⁶ Not only can poor credit and excessive debt result in having to pay higher interest rates, it can also prevent an individual from obtaining or retaining a security clearance necessary for their military duty.

Military Lending Act

The Military Lending Act (MLA) provides active duty servicemembers with a variety of protection in transactions involving high-dollar small interest loans. The MLA covers borrowers who are regular or reserve members of the Army, Navy, Marine Corps, Air Force and Coast Guard serving on active duty under a call or order that specifies longer than 30 days, as well as their card-carrying dependents. The MLA requires that certain types of consumer credit (payday loans, auto title loans, and tax refund anticipation loans) offered to active duty service members and their dependents include certain protections. Lenders are prohibited from securing the loan by holding a check or car title, or obtaining access to a bank account.

The MLA says these loans may not have an Annual Percentage Rate (APR) of more than 36%. The MLA defines a payday loan as a loan that qualifies as closed end credit, has a term of 91 days or less, does not exceed \$2,000, and the borrower must provide a check or give permission for automatic debit authorization that is deferred for one or more days. A vehicle title loan is defined as a loan with closed-end credit that

⁶ National Consumer Law Center, *In Harm's Way*, available at http://www.nclc.org/images/pdf/special_projects/military/report-scams-facing-military.pdf.

has a term of 181 days or less, and is secured by a car licensed to operate on roadways.

In addition to the 36% military APR cap, the MLA requires that certain loan information be clearly and conspicuously given to the borrower prior to entering into the agreement. Among the information required to be disclosed, a clear description of the payment obligation of the covered borrower, the Military Annual Percentage Rate (MAPR), and the total dollar amount of all charges included in the MAPR. 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. Additionally, mandatory arbitration clauses and waivers of legal rights may not be included as loan terms.

The MLA helps servicemembers steer clear of financial mistakes; however, there are some loopholes in the law's ability to protect servicemembers. Because the MLA is limited to closed-end credit transactions, these lenders simply offer revolving lines of credit, much like a credit card.

Telephone Solicitation

Do-Not-Call Lists

To avoid being contacted by telephone solicitors, consumers can sign up for various Do-Not-Call lists. Being on the list can reduce the number of unwanted calls. Consumers can register for the National Do-Not-Call Registry by calling 888-382-1222 or going online to www.donotcall.gov.

The Telemarketing Sales Rule

The Federal Trade Commission's (FTC) Telemarketing Sales Rule (TSR) helps protect consumers from fraudulent telemarketing calls. With some exceptions, individuals or companies that take part in any plan, program, or campaign to sell goods or services through interstate telephone calls must comply with the TSR.

Generally, a person who is making a telephone solicitation may only call between the hours of 8 a.m. to 9 p.m. At the beginning of the call, the telephone solicitor must clearly state his or her identity and the organization that the person represents. Under the TSR, a telemarketer is also:

- required to make disclosures of specific information;
- prohibited from making misrepresentations;
- required to transmit Caller ID information;
- prohibited from unauthorized billing;
- required to abide by payment restrictions for the sale of certain goods and services; and
- required to keep specific business records for two years.

Telemarketers must provide consumers with material information in a “clear and conspicuous” manner. Clear and conspicuous means that the information is presented in a way which a consumer will notice and understand. The goal is that disclosures be communicated as effectively as the sales message. Before a consumer pays for goods or services, telemarketers must disclose the total cost to buy, receive, or use the offered goods or services as well as the total quantity of goods the consumer must pay for and receive. If the telemarketer mentions any kind of special refund, cancellation, exchange or repurchase policy during the sales pitch, he or she must state all of the terms and conditions that may affect the consumer’s decision to buy the goods or services. If there is an “all sales are final” policy, the telemarketer must disclose it to the consumer prior to payment of the offered goods or services.

Free Credit Reports

A credit report includes information on where you live, how you pay your bills, and whether you have been sued or have filed for bankruptcy. Businesses use the information in a credit report to evaluate applications for credit, insurance, employment, and renting or buying a home.

The federal Fair Credit Reporting Act requires each of the nationwide credit reporting companies – Equifax, Experian, and TransUnion – to provide an individual with a free copy of his or her credit report once every 12 months upon request. The only official site through which to order a free annual credit report is www.annualcreditreport.com.

For security reasons, www.annualcreditreport.com does not work outside the U.S. and its territories. Service members stationed outside the U.S. or deployed overseas can mail in a completed request form or call 1-877-322-8228.

Identity Theft Prevention⁷

Servicemembers on active duty may be less able to respond to fraudulent activity on bank and credit card accounts in a timely manner. An amendment to the Fair Credit Reporting Act (FCRA) allows a servicemember to place an “active duty alert” in his or her credit report to help prevent identity theft. When servicemembers are away from their usual stations, placing an active duty alert on a credit report may help minimize the risk of identity theft while deployed. This active duty alert requires creditors to verify the applicant’s identity before granting credit in the servicemember’s name. Additionally, the servicemember’s name will be removed for two years from the nationwide consumer reporting companies’ marketing list for prescreened offers of credit and insurance, unless that active duty alert is removed by the servicemember. To place an active duty alert on a credit report, servicemembers need only contact one of the three nationwide consumer reporting companies:

- Equifax: 1-800-525-6285, www.equifax.com
- Experian: 1-888-397-3742, www.experian.com
- TransUnion: 1-800-680-7289, www.transunion.com

⁷ Information taken from Tennessee Attorney General’s “Military Consumer Protection Guide.”

Each agency is required to notify the other two. It is important to keep the servicemember's contact information updated for as long as the alert is placed on the account.

The best ways to prevent identity theft are relatively simple. Servicemembers should avoid giving out any personal information like Social Security numbers and bank account numbers to anyone unless the servicemember initiated the contact. Banks and credit card companies will never make contact via email or telephone seeking to verify personal information. When credit card offers arrive in the mail, do not toss them in the trash without shredding them first. Keep all personally identifiable information like Social Security cards, bank statements, birth certificates, and driver's license information in a secure location. Avoid clicking on links in emails that come from an unknown sender. Never give out personal information in an email or over the phone unless the contact was initiated by the servicemember.

Any consumer or servicemember should submit a report to the Federal Trade Commission (FTC) if he or she is a victim of identity theft. Consumers should print and keep a copy of the identity theft report, which will be the consumer's Identity Theft Affidavit. Consumers should also file a police report about the identity theft and get a copy of the police report or the report number. When filing the police report, make sure to bring a government-issued photo identification card, proof of address, a copy of the FTC Identity Theft Affidavit, and any other proof of the identity theft. The FTC Identity Theft Affidavit and the police report together make an Identity Theft Report. Creating an Identity Theft Report can help consumers deal with credit reporting companies, debt collectors, and businesses that gave credit to the person who stole the consumer's identity. The FTC can be contacted toll-free at 877-FTC-HELP (877-382-4357) or online at www.ftc.gov.

For a complete guide to dealing with the consequences and aftermath of identity theft, please refer to the FTC's Guide "Taking Charge" which is available for free on the

FTC's website at www.consumer.ftc.gov/articles/pdf-0009-taking-charge.pdf or by calling the FTC. Consumer Affairs Counselors may be able to help servicemembers work through this Guide.

Sales and Lending Schemes

Product Financing Agreements⁸

Predatory businesses use product financing agreements that often target servicemembers which can lead to them being encumbered with overbearing debt. Examples include: price-gouging soldiers; falsely representing their products are new when in fact many were returns, liquidation purchases, and defective equipment; claiming prices are a great deal, but substantially marking up the cost of the products; falsely claiming the businesses were offering 0% financing, but really charging exorbitant rates. Often these predatory retailers will have servicemembers set up allotments.⁹ An allotment is an automatic deduction made from a servicemember's military-pay account which is sent to a third party. These allow the retailer to draw directly from a servicemember's paycheck, guaranteeing payment and making it more difficult for servicemembers to understand the amount they are paying.¹⁰

Small Dollar, High Interest (Payday Lending, Vehicle Title Loans, and tax-refund anticipation loans)

These are short-term loans typically priced at a fixed dollar fee which represents the finance charge to borrow the money. These loans are usually made to borrowers experiencing cash flow issues and few, if any, lower-cost borrowing alternatives. Because these loans have such short terms to maturity, the cost of borrowing, expressed as an annual percentage rate, can range from 300-1,000%, or more.¹¹ Because servicemembers may struggle with being paid on a monthly or bi-monthly

⁸ Information taken from NAGTRI: Military Veterans and Servicemembers Legal Issues Training Manual

⁹ *Id.*

¹⁰ *Id.*

¹¹ An Update on Emerging Issues in Banking : Payday Lending, FDIC.Gov (January 29, 2003), <https://www.fdic.gov/bank/analytical/fyi/2003/012903fyi.html> [hereinafter "FDIC on Payday lending"].

basis, they often find themselves needing extra money between paychecks. Unfortunately, this “quick fix” could wind up costing the servicemember serious money.¹²

Credit Repair Schemes¹³

Promises of a new credit identity or credit repair are often scams. A credit repair company promise to get a person a new credit identity by having a consumer apply for credit using the CPN (credit profile number) or EIN (employer identification number), rather than their own Social Security Number. Often these CPN’s are stolen social security number. By using a stolen number the consumer has now unknowingly been involved with identity theft. EIN’s are legitimate numbers, typically used by businesses to report financial information to the IRS and Social Security Administration — but an EIN is not a substitute for a Social Security number. Further, it is also a federal crime to use an EIN under false pretenses.

The Credit Repair Organization Act (CROA) makes it illegal for credit repair companies to lie about what they can do, and to charge consumers before they have performed their services. This law, which is enforced by the Federal Trade Commission, requires credit repair companies to explain: 1) a consumer’s legal rights in a written contract that also details the services they’ll perform; 2) the three day right to cancel without any charge; 3) how long it will take to get results; 4) the total cost that will be paid; 5) any guarantees they make. If the company fails to live up to their promises the consumer can sue them in federal court for actual losses or for what the servicemember paid them, whichever is more and the servicemember can seek punitive damages.

Automobile Schemes

¹² Information taken from Kentucky Attorney General’s Consumer Protection Guide for Military Servicemembers;
http://ag.ky.gov/civil/consumerprotection/military/documents/consumer_protection_guide_for_military_service_members.pdf

¹³ Credit Repair Scams, FEDERAL TRADE COMMISSION, (Aug. 2012),
<http://www.consumer.ftc.gov/articles/0225-credit-repair-scams>

Studies have shown that many scams related to automobiles target military personnel and that they are a source of financial trouble for servicemembers.¹⁴ Servicemembers should be cautious when making a decision to purchase a vehicle. Some car dealerships that target servicemembers engage in a variety of schemes outlined below.

Yo-Yo Scam¹⁵

A “Yo-Yo sale” is a form of bait and switch scam that 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 agreed-upon terms. 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 their 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 the value of the trade-in if he or she wants to keep the original terms of the deal.

Loan Packing

Servicemembers should take the time and effort to read all sales paperwork and confirm that no additional products or services are being paid for over what was initially discussed with the dealership. Oftentimes, car dealerships will, unbeknownst to the car purchaser, include additional products and services that have not been discussed or requested. This practice is called “loan packing.” Add-ons to watch out for include extended warranties, limited warranties, tire protection, gap insurance, Vehicle Identification Number (VIN) etching, fabric protection, and paint protection. Non add-on

¹⁴ Information taken from Kentucky Attorney General’s Consumer Protection Guide for Military Servicemembers.

¹⁵ *Id.*

items that are typical to every car purchase include tax, title, license, and registration fees. While contracting for the purchase of the car, remember that it is perfectly reasonable to request that the dealer slow down, answer your questions, and explain each add-on that you may have a question about.

Buy Here, Pay Here Dealerships¹⁶

“Buy Here, Pay Here” used car dealerships target those with poor credit for automobile sales with 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.¹⁰ Interest rates on the remainder can reach 30 percent APR or more.¹¹ When a buyer defaults on a payment—which roughly 25 percent of buyers do—the dealer repossesses the vehicle and simply resells it to another vulnerable customer.

Other Schemes

Charging For Military Records

This is a variation on a common scammer trick – fool someone into thinking they have to pay for something they could otherwise get for free or less expensively. Instead of having to pay, most veterans and next-of-kin can receive free military records.

Veterans Charity Scams

Many legitimate charities solicit donations to support the nation’s veterans and families of active duty military personnel. However, not all “charities” are legitimate. Some are sham operators whose only purpose is to make money by taking advantage of the goodwill afforded the men and women of our Armed Forces.

¹⁶ *Id.*

EDUCATION

The Department of Defense and Department of Veterans Affairs provide servicemembers and veterans' tuition and other related benefits to those wishing to pursue higher education and vocational training.

Education Benefits Available

Tuition Assistance Programs

Each branch of the Armed Forces provides a Tuition Assistance program to support the servicemember's educational goals. The Air Force, Army, Navy and Marines have assistance programs that can cover up to 100% of tuition and fees. The Coast Guard Tuition Assistance Program can provide up to 75% of tuition and fees. Further, members of the Reserve Component (National Guard, Army Reserve, Air Force Reserve, Navy Reserve, Marine Reserve, and Coast Guard Reserve) may also be eligible for tuition assistance.

VA Educational Benefits

The VA offers multiple education assistance programs 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 the veteran's release from active duty. The primary benefits include tuition and fee payments made to the veteran's institute of higher learning. Further, the Post 9/11 GI Bill can provide a housing allowance and an annual book and supply stipend. The values of the Post-9/11 GI Bill are adjusted on an annual basis to reflect the costs of higher education.

The Montgomery GI Bill

Montgomery GI Bill Active Duty (MGIB-AD)

The MGIB-AD program—sometimes known as Chapter 30—provides education benefits to veterans and servicemembers who have at least two years of active duty. The monthly benefit paid is based on the type of training taken, length of service, eligibility category and any college fund eligibility. The buy up program allows a

servicemember to contribute \$600 while on active duty in order to later receive up to an additional \$5,400 in MGIB-AD benefit.

Montgomery GI Selected Reserve (MGIB-SR)

The 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, and the Army National Guard and the Air National Guard. Eligibility for this program is determined by the Selected Reserve components and Department of Veterans Affairs makes the payments.

Under the GI bills servicemembers and veterans may use this assistance for college degree and certificate programs, co-op training, technical or vocational courses, flight training, apprenticeships or on-the-job training, high-tech training, licensing and certification tests, entrepreneurship training, certain entrance examinations, and correspondence courses.

Reserve Educational Assistance Program (REAP)

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 are eligible for education benefits or increased benefits to pursue college degrees and other training. Certain Reservists who were activated for at least 90 days after Sept. 11, 2001, may be eligible for benefits. For more information go to <http://www.benefits.va.gov/gibill/reap.asp>.

Pitfalls of For-Profit Colleges

For-profit colleges and universities, unlike non-profit universities, are managed and governed by private businesses or corporations. While these for-profit colleges seem to offer an attractive alternative to public and private universities for some students, it is crucial to make sure that the program being offered fits a student's needs. Often these institutions focus more on recruiting than ensuring their students complete

the programs they enrolled in. Therefore, students end up with more debt without the additional income that the degree could provide.

Some for-profit colleges recruit heavily on military bases because of a government rule called the “90-10 rule.” The 90-10 rule requires for-profit colleges to receive no more than 90% of their revenues from federal Title IV funds, like federal student loans and grants. GI Bill funds do not count against that 90%, so that recruiting servicemembers as students leaves more room for the school to enroll additional students using federal Title IV money.

When deciding whether or not to use GI Bill funds at a for-profit school, a servicemember should ask about the school’s accreditation, ability to transfer credits, job placement rates, and most importantly, the total cost of the program. Accreditation is important, because not only can it lend credibility to the degree earned, but it may be necessary if licensure is required for employment.

Researching Educational Institutions

Information about student borrowers’ default rates at College Navigator, located at nces.ed.gov/collegenavigator/, and the United States Department of Education’s Federal Student Aid website, located at studentaid.ed.gov/about/data-center/student/default.

Other resources can be found at, Student Veterans of America, whose website is located at www.studentveterans.org, has chapters on nearly 300 campuses; their Connect Alumni program, located at www.studentveterans.org/what-we-do/student-veteran-meetup.html, can put servicemembers in touch with veterans from the schools being considered. Over 3,600 institutions have also agreed to follow the Department of Veterans Affairs Principles of Excellence program, located at www.benefits.va.gov/gibill/principles_of_excellence.asp, which includes designating a veteran’s point of contact for academic and financial counseling.