

LAW REVIEW¹ 18103

October 2018

USERRA, the SCRA, and Military Recruiting

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For Fiscal Year 2018 (10/1/2017 through 9/30/2018), the Army failed to recruit as many new soldiers as it had intended and therefore fell short of its end strength target for the Active

¹ I invite the reader's attention to www.roa.org/lawcenter. You will find more than 1700 "Law Review" articles about the Uniformed Services Employment and Reemployment Rights Act (USERRA), the Servicemembers Civil Relief Act (SCRA), the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA), the Uniformed Services Former Spouse Protection Act (USFSPA), and other laws that are especially pertinent to those who serve our country in uniform. You will also find a detailed Subject Index, to facilitate finding articles about very specific topics. The Reserve Officers Association (ROA) initiated this column in 1997. I am the author of more than 1500 of the articles.

² BA 1973 Northwestern University, JD (law degree) 1976 University of Houston, LLM (advanced law degree) 1980 Georgetown University. I served in the Navy and Navy Reserve as a Judge Advocate General's Corps officer and retired in 2007. I am a life member of ROA. For 42 years, I have worked with volunteers around the country to reform absentee voting laws and procedures to facilitate the enfranchisement of the brave young men and women who serve our country in uniform. I have also dealt with the Uniformed Services Employment and Reemployment Rights Act (USERRA) and the Veterans' Reemployment Rights Act (VRRA—the 1940 version of the federal reemployment statute) for 36 years. I developed the interest and expertise in this law during the decade (1982-92) that I worked for the United States Department of Labor (DOL) as an attorney. Together with one other DOL attorney (Susan M. Webman), I largely drafted the proposed VRRA rewrite that President George H.W. Bush presented to Congress, as his proposal, in February 1991. On 10/13/1994, President Bill Clinton signed into law USERRA, Public Law 103-353, 108 Stat. 3162. The version of USERRA that President Clinton signed in 1994 was 85% the same as the Webman-Wright draft. USERRA is codified in title 38 of the United States Code at sections 4301 through 4335 (38 U.S.C. 4301-35). I have also dealt with the VRRA and USERRA as a judge advocate in the Navy and Navy Reserve, as an attorney for the Department of Defense (DOD) organization called Employer Support of the Guard and Reserve (ESGR), as an attorney for the United States Office of Special Counsel (OSC), as an attorney in private practice, and as the Director of the Service Members Law Center (SMLC), as a full-time employee of ROA, for six years (2009-15). Please see Law Review 15052 (June 2015), concerning the accomplishments of the SMLC. My paid employment with ROA ended 5/31/2015, but I have continued the work of the SMLC as a volunteer. You can reach me by e-mail at SWright@roa.org.

Component, the Army Reserve, and the Army National Guard.³ I suggest that the Army and the other services need to expand their focus, beyond high school seniors and recent high school graduates, to include men and women in their 20s and 30s who are already in the civilian workforce. To recruit people like that, recruiters need information about the Uniformed Services Employment and Reemployment Rights Act (USERRA) and the Servicemembers Civil Relief Act (SCRA). The following questions and answers will be useful to military recruiters.

Q: I am an Army recruiter. In recent months, as the economy has improved, there have been more civilian job opportunities for young men and women graduating from high school or college, so the job of the military recruiter has become more difficult. My recruiter colleagues and I have found it increasingly difficult to meet our quotas, and more often we find it necessary to request waivers for young men and women who fail to meet recruiting standards because of criminal convictions, use of illegal drugs, etc. I worry that recruits who got in with such waivers will not make good soldiers and will end up being more trouble than they are worth.

An Army lawyer referred me to your “Law Review” articles about the Uniformed Services Employment and Reemployment Rights Act (USERRA), and I have read some of the articles. The articles that I have read dealt with the application of USERRA to persons who serve in the National Guard or Reserve. Does USERRA also apply to persons who enlist in the Regular Army or another service?

A: Yes, most definitely. As I have explained in Law Review 15116 (December 2015) and many other articles, USERRA applies to any person who meets five simple conditions:

- a. Left a civilian job (federal, state, local, or private sector) to perform “service in the uniformed services” as defined by USERRA.
- b. Gave the employer prior oral or written notice.
- c. Has not exceeded the cumulative five-year limit on the duration of the period or periods of service, relating to the employer relationship for which the person seeks reemployment.
- d. Was released from the period of service without having received a disqualifying bad discharge from the military.⁴
- e. After release from the period of service, has made a timely application for reemployment.⁵

³ <https://www.armytimes.com/news/your-army/2018/09/21/the-army-is-supposed-to-be-growing-but-this-year-it-didnt-at-all/>.

⁴ Disqualifying bad discharges include bad conduct discharges and dishonorable discharges (awarded by court martial for serious offenses) and other-than-honorable administrative discharges. 38 U.S.C. 4304.

⁵ After a period of service of 181 days or more, the person has 90 days to apply for reemployment. 38 U.S.C. 4312(e)(1)(D). Shorter deadlines apply after shorter periods of service.

A person who meets these five conditions is entitled to prompt reinstatement in the job that he or she would have attained if he or she had remained continuously employed by the civilian employer, or another job (for which he or she is qualified) that is of like seniority, status, and pay.⁶ Upon reemployment, the person is entitled to be treated as if he or she had been continuously employed, for seniority and pension purposes in the civilian job.⁷

Section 4303 of USERRA⁸ defines 16 terms used in this law and defines the term “service in the uniformed services” as follows:

The term "service in the uniformed services" means the performance of duty *on a voluntary or involuntary basis* in a uniformed service under competent authority and *includes active duty*, active duty for training, initial active duty for training, inactive duty training, full-time National Guard duty, *a period for which a person is absent from a position of employment for the purpose of an examination to determine the fitness of the person to perform any such duty*, a period for which a System member of the National Urban Search and Rescue Response System is absent from a position of employment due to an appointment into Federal service under section 327 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, and a period for which a person is absent from employment for the purpose of performing funeral honors duty as authorized by section 12503 of title 10 or section 115 of title 32.⁹

For example, Mary Jones (age 29) has already worked for the City of New York for a decade and has a decade of seniority and pension credit. She visits your office because she is interested in serving our country in uniform. She is not interested in making the Army a career, but she would like to serve for four or five years, and her credentials and demeanor seem to indicate that she would be a good soldier. Mary is concerned that if she leaves active duty after four or five years she will fall behind her City of New York colleagues when she returns to work.

If Jones meets the five USERRA conditions (and it will be easy for her to meet them if the conditions are explained to her), she will be entitled to prompt reemployment in the city job that she would have attained if continuously employed (possibly a better job than the one she left), even if that means that another employee must be displaced.¹⁰ Upon reemployment, she will be entitled to seniority and pension credit as if she had been continuously employed.¹¹ She will not fall behind her city colleagues who remained continuously employed during the four or five years that she was on active duty. If these entitlements are explained to her, she will be much more likely to enlist.

⁶ 38 U.S.C. 4313(a)(2)(A).

⁷ 38 U.S.C. 4316(a), 4318.

⁸ 38 U.S.C. 4303.

⁹ 38 U.S.C. 4303(13) (emphasis supplied).

¹⁰ Please see Law Review 17096 (October 2017).

¹¹ 38 U.S.C. 4316(a), 4318.

Q: I have a young man in my office right now—let's call him Joe Smith. Joe is 24 and has worked for Daddy Warbucks Industries (DWI) for four years. He does not like his job, and that is one reason why he is strongly considering enlisting in the Army. Joe wants to join the Army and make it a career. Should Joe give notice to his civilian employer?

A: Yes, Joe should give notice to DWI *but not until after he has taken the enlistment oath and his basic training report date is imminent (within one month)*. If he gives notice now, the employer will likely try to talk him out of it, and if he enlists anyway, despite the employer's objections, he will likely suffer discrimination, maybe even firing. Such discrimination is illegal under section 4311 of USERRA,¹² but it happens.

Joe has no legal or moral obligation to say anything to his civilian employer about his military plans until it is time for him to leave his job to report to duty.¹³ I suggest that Joe keep his military plans to himself until he is within 30 days of his basic training report date and the date is firm and unlikely to slip.

Most men and women joining the military do not report to basic training right away—they are in the Delayed Entry Program (DEP) for months, perhaps up to a year, before they report to basic training. While in the DEP, they are not paid by the military. They must keep their civilian jobs until it is time to report to basic training, just to pay the rent and put food on the table.

If Joe's DWI supervisor knows that Joe will be leaving in a few months anyway, the supervisor will be most reluctant to consider Joe for promotions or training opportunities, and the supervisor may be tempted to fire Joe. If Joe loses his civilian job four months before his basic training report date, that will put him in enormous financial difficulty. For this reason, I suggest that Joe keep his enlistment a "close hold" secret until his report date is imminent.

As I have explained in Law Review 15067 (August 2015) and many other articles, Congress enacted USERRA in 1994, as a long-overdue rewrite of the Veterans' Reemployment Rights Act (VRRA), which was originally enacted in 1940. USERRA's legislative history addresses the DEP scenario as follows:

If the employee is unlawfully discharged under the terms of this section [section 4311—38 U.S.C. 4311] prior to leaving for military service, such as under the Delayed Entry Program, that employee would be entitled to reinstatement for the remainder of the time the employee would have continued to work plus lost wages. Such a claim can be pursued

¹² 38 U.S.C. 4311.

¹³ Even then, he has no legal obligation to notify the employer that he is departing to report to basic training but giving notice to the employer is an eligibility criterion for reemployment. Moreover, it is the right thing to do, as a matter of courtesy. We don't want his civilian supervisor to report him missing to the police, when he does not show up for work one Monday morning.

before or during the employee's military service, and processing of the claim should not await completion of the service, even if only for lost wages.¹⁴

As I have explained in Law Review 200 (November 2005), it is not ordinarily possible to get a court to issue an injunction forbidding an employer to fire a person. Whether Joe relies on the United States Department of Labor (DOL) and the United States Department of Justice (DOJ), or whether Joe hires his own lawyer, it likely will not be possible to get a lawsuit filed, much less resolved, in the four months remaining before Joe's basic training report date. The possibility of getting back pay later, after he is already on active duty, does not help Joe pay the rent and put food on the table now, while he is in the DEP. That is why I think that a person like Joe should conceal his enlistment from his civilian employer until his basic training report date is imminent.¹⁵

When Joe is within 30 days of his basic training report date, he should give notice to his civilian employer, DWI, although he thinks that it is most unlikely that he will ever want to return to work for that company. Giving notice to the employer keeps his civilian job behind him as an unburned bridge, just in case Joe leaves active duty short of retirement eligibility and is unable (at that time) to find another civilian job. Most of the people who enlist with the intent to be career service members leave active duty short of the 20-year point.

When Joe gives DWI notice, he is not required to predict that he will apply for reemployment when he leaves active duty. The DOL USERRA Regulation provides:

Is the employee required to tell his or her civilian employer that he or she intends to seek reemployment after completing uniformed service before the employee leaves to perform service in the uniformed services?

No. When the employee leaves the employment position to begin a period of service, he or she is not required to tell the civilian employer that he or she intends to seek reemployment after completing uniformed service. Even if the employee tells the employer before entering or completing uniformed service that he or she does not intend to seek reemployment after completing the uniformed service, the employee does not forfeit the right to reemployment after completing service. The employee is not required to decide in advance of leaving the civilian employment position whether he or she will seek reemployment after completing uniformed service.¹⁶

¹⁴ House Committee Report, April 28, 1993, H.R. Rep. 103-65, Part 1, reprinted in Appendix B-1 of *The USERRA Manual*, by Kathryn Piscitelli and Edward Still. The quoted paragraph can be found on page 690 of the 2017 edition of the *Manual*.

¹⁵ Please see Law Review 16073 (August 2016) and Law Review 13083 (June 2013).

¹⁶ 20 C.F.R. 1002.88 (bold question in original).

Q: Alice Adams, age 27, has been working for DWI for five years, and has enlisted in the Army recently. Based on the military specialty she chose and the bonus she accepted, she is obligated to remain on active duty for at least six years. In your recitation of the five USERRA conditions, you said that there is a cumulative five-year limit on the duration of the period or periods of uniformed service. Can Alice have the right to reemployment after six years of active duty?

A: Yes. As I have explained in Law Review 16043 (June 2016) and other articles, there are nine exemptions from the five-year limit. That is there are nine kinds of service that do not count toward exhausting the individual's five-year limit.

A period of uniformed service "that is required, beyond five years, to complete an initial period of obligated service" does not count toward exhausting the individual's five-year limit.¹⁷ If Alice leaves active duty at the end of the initial active duty period to which she committed herself in her enlistment contract, and if she meets the other four USERRA conditions, she will have the right to reemployment.

Q: Bradley Barnes, age 33, graduated from high school in 2002 and shortly thereafter enlisted in the Army. He remained on active duty for ten years, leaving in late 2012. He then went to work for DWI, for his first civilian job. Now, five years later, Bradley wants to reenlist and return to active duty. Bradley has already been on active duty well over five years. Can Bradley return to active duty for four or five years and have the right to reemployment at DWI?

A: Yes. Bradley's five-year limit only counts service that he has performed "with respect to the employer relationship for which a person seeks reemployment."¹⁸ Bradley's decade of active duty (2002-12) does not count toward his five-year limit with DWI.

Q: Connie Cox is a recruit that I have signed up—she is in the DEP and is expected to report to basic training in February 2019. In the meantime, she and other DEP members are required to show up for DEP meetings on a weekly basis, on Wednesday afternoons. We need to have the DEP recruits keep in touch with us, so that they don't drift away and lose interest during the months leading up to their basic training report dates.

Connie has missed the last three Wednesday meetings. She said that she cannot make it to our recruiting office on Wednesday afternoons because she is working at DWI and her work day is not over until 5:30 pm. Does USERRA give Connie the right to time off from her civilian job to attend DEP meetings?

¹⁷ 38 U.S.C. 4312(c)(1).

¹⁸ 38 U.S.C. 4312(c).

A: No. I have already quoted USERRA's definition of "service in the uniformed services." The definition is broad, but it does not include DEP meetings. Connie does not have a job-protected right to miss work, even without pay, for DEP meetings. If you (the Army) really need Connie to attend these DEP meetings, you will need to arrange to conduct meetings for her outside her civilian work hours.

Q: David Davis is a young man that I am trying to recruit for the Army. We need for him to go the Military Examination and Processing Station (MEPS) for a physical and to take the Armed Forces Qualifying Test (AFQT). The MEPS is not open on weekends. David will need to miss at least one day of work, and maybe two days, for his MEPS appointment. Does USERRA give David the right to time off from his DWI job for a MEPS appointment?

A: Yes. USERRA's definition of "service in the uniformed services" (quoted above) includes "a period for which a person is absent from a position of employment for the purpose of an examination to determine the fitness of the person to perform any such duty."¹⁹ If David gives the employer notice of the MEPS appointment and reports back to work the next work day after completion of the appointment, he is entitled to reemployment under USERRA, even if he flunked the physical or the AFQT.

A non-trivial percentage of folks who go to the MEPS are found unsuitable for military service, usually for health reasons. I suggest that you try to work it out for David to have a MEPS appointment on a day when he is not scheduled to work at DWI, or when he can obtain a vacation day without explaining the reason.

Q: Edwina Edwards is a recruit in the DEP pool at our recruiting station. She has orders to report to basic training at Fort Jackson, South Carolina on January 2, 2019. Edwina wants to leave her DWI job on December 10, 2018, to have time to get her affairs in order and to say goodbye to her parents before she reports to active duty right after the first of the year. Does Edwina have the right to do that without giving up her potential reemployment rights at DWI?

A: Yes. The DOL USERRA Regulation provides:

Must the employee begin service in the uniformed services immediately after leaving his or her employment position in order to have USERRA reemployment rights?

- No. At a minimum, an employee must have enough time after leaving the employment position to travel safely to the uniformed service site and arrive fit to perform the service. Depending on the specific circumstances, including the duration of service, the amount of notice received, and the location of the service, additional time to rest, or to arrange affairs and report to duty, may be necessitated by reason of service in the uniformed

¹⁹ 38 U.S.C. 4303(13).

services. The following examples help to explain the issue of the period of time between leaving civilian employment and beginning of service in the uniformed services:

- **(a)** If the employee performs a full overnight shift for the civilian employer and travels directly from the work site to perform a full day of uniformed service, the employee would not be considered fit to perform the uniformed service. An absence from that work shift is necessitated so that the employee can report for uniformed service fit for duty.
- **(b)** *If the employee is ordered to perform an extended period of service in the uniformed services, he or she may require a reasonable period of time off from the civilian job to put his or her personal affairs in order, before beginning the service. Taking such time off is also necessitated by the uniformed service.*
- **(c)** If the employee leaves a position of employment in order to enlist or otherwise perform service in the uniformed services and, through no fault of his or her own, the beginning date of the service is delayed, this delay does not terminate any reemployment rights.²⁰

Q: Frank Fox, age 29, is a manager at DWI, with an income well into six figures. Although he has been making a lot of money, he has been spending more, for an expensive Manhattan apartment and an expensive automobile lease, among other expenses. Frank has enlisted in the Army and will be reporting to Officer Candidate School in December.

Frank is a bachelor with no children. As an officer candidate and junior officer, he does not need and cannot afford the expensive automobile and apartment, but the apartment lease does not expire until June 2019 and the automobile lease not until August 2021. Does USERRA give Frank the right to terminate the automobile lease and the apartment lease?

A: No, but the Servicemembers Civil Relief Act (SCRA) gives him that right. The pertinent SCRA section is as follows:

§ 3955. Termination of residential or motor vehicle leases

- **(a)** Termination by lessee.
 - **(1)** In general. The lessee on a lease described in subsection (b) may, at the lessee's option, terminate the lease at any time after--
 - **(A)** *the lessee's entry into military service; or*
 - **(B)** *the date of the lessee's military orders described in paragraph (1)(B) or (2)(B) of subsection (b), as the case may be.*
 - **(2)** Joint leases. A lessee's termination of a lease pursuant to this subsection shall terminate any obligation a dependent of the lessee may have under the lease.
- **(b)** Covered leases. This section applies to the following leases:

²⁰ 20 C.F.R. 1002.74 (bold question in original, emphasis by italics supplied).

- (1) Leases of premises. A lease of premises occupied, or intended to be occupied, by a servicemember or a servicemember's dependents for a residential, professional, business, agricultural, or similar purpose if--
 - (A) the lease is executed by or on behalf of a person who thereafter and during the term of the lease enters military service; or
 - (B) the servicemember, while in military service, executes the lease and thereafter receives military orders for a change of permanent station or to deploy with a military unit, or as an individual in support of a military operation, for a period of not less than 90 days.
- (2) Leases of motor vehicles. A lease of a motor vehicle used, or intended to be used, by a servicemember or a servicemember's dependents for personal or business transportation if--
 - (A) the lease is executed by or on behalf of a person who thereafter and during the term of the lease enters military service under a call or order specifying a period of not less than 180 days (or who enters military service under a call or order specifying a period of 180 days or less and who, without a break in service, receives orders extending the period of military service to a period of not less than 180 days); or
 - (B) the servicemember, while in military service, executes the lease and thereafter receives military orders--
 - (i) for a change of permanent station--
 - (I) from a location in the continental United States to a location outside the continental United States; or
 - (II) from a location in a State outside the continental United States to any location outside that State; or
 - (ii) to deploy with a military unit, or as an individual in support of a military operation, for a period of not less than 180 days.
- (c) Manner of termination.
 - (1) In general. Termination of a lease under subsection (a) is made--
 - (A) by delivery by the lessee of written notice of such termination, and a copy of the servicemember's military orders, to the lessor (or the lessor's grantee), or to the lessor's agent (or the agent's grantee); and
 - (B) in the case of a lease of a motor vehicle, by return of the motor vehicle by the lessee to the lessor (or the lessor's grantee), or to the lessor's agent (or the agent's grantee), not later than 15 days after the date of the delivery of written notice under subparagraph (A).
 - (2) Delivery of notice. Delivery of notice under paragraph (1)(A) may be accomplished--
 - (A) by hand delivery;
 - (B) by private business carrier; or
 - (C) by placing the written notice in an envelope with sufficient postage and with return receipt requested, and addressed as designated by the lessor (or the lessor's grantee) or to the lessor's agent (or the agent's grantee), and depositing the written notice in the United States mails.

- (d) Effective date of lease termination.
 - (1) Lease of premises. In the case of a lease described in subsection (b)(1) that provides for monthly payment of rent, termination of the lease under subsection (a) is effective 30 days after the first date on which the next rental payment is due and payable after the date on which the notice under subsection (c) is delivered. In the case of any other lease described in subsection (b)(1), termination of the lease under subsection (a) is effective on the last day of the month following the month in which the notice is delivered.
 - (2) Lease of motor vehicles. In the case of a lease described in subsection (b)(2), termination of the lease under subsection (a) is effective on the day on which the requirements of subsection (c) are met for such termination.
- (e) Arrearages and other obligations and liabilities.
 - (1) Leases of premises. Rent amounts for a lease described in subsection (b)(1) that are unpaid for the period preceding the effective date of the lease termination shall be paid on a prorated basis. The lessor may not impose an early termination charge, but any taxes, summonses, or other obligations and liabilities of the lessee in accordance with the terms of the lease, including reasonable charges to the lessee for excess wear, that are due and unpaid at the time of termination of the lease shall be paid by the lessee.
 - (2) Leases of motor vehicles. Lease amounts for a lease described in subsection (b)(2) that are unpaid for the period preceding the effective date of the lease termination shall be paid on a prorated basis. The lessor may not impose an early termination charge, but any taxes, summonses, title and registration fees, or other obligations and liabilities of the lessee in accordance with the terms of the lease, including reasonable charges to the lessee for excess wear or use and mileage, that are due and unpaid at the time of termination of the lease shall be paid by the lessee.
- (f) Rent paid in advance. Rents or lease amounts paid in advance for a period after the effective date of the termination of the lease shall be refunded to the lessee by the lessor (or the lessor's assignee or the assignee's agent) within 30 days of the effective date of the termination of the lease.
- (g) Relief to lessor. Upon application by the lessor to a court before the termination date provided in the written notice, relief granted by this section to a servicemember may be modified as justice and equity require.
- (h) Misdemeanor. *Any person who knowingly seizes, holds, or detains the personal effects, security deposit, or other property of a servicemember or a servicemember's dependent who lawfully terminates a lease covered by this section, or who knowingly interferes with the removal of such property from premises covered by such lease, for the purpose of subjecting or attempting to subject any of such property to a claim for rent accruing subsequent to the date of termination of such lease, or attempts to do so, shall*

be fined as provided in title 18, United States Code, or imprisoned for not more than one year, or both.

- (i) Definitions.
 - (1) Military orders. The term "military orders", with respect to a servicemember, means official military orders, or any notification, certification, or verification from the servicemember's commanding officer, with respect to the servicemember's current or future military duty status.
 - (2) CONUS. The term "continental United States" means the 48 contiguous States and the District of Columbia.²¹

Q: Frank also has credit card debts carrying high interest rates—20% or more. Does the SCRA give him the right to reduce these high interest rates after he enters active duty?

A: Yes. The pertinent SCRA section is as follows:

Maximum rate of interest on debts incurred before military service

- (a) Interest rate limitation.
 - (1) Limitation to 6 percent. An obligation or liability bearing interest at a rate in excess of 6 percent per year that is incurred by a servicemember, or the servicemember and the servicemember's spouse jointly, before the servicemember enters military service shall not bear interest at a rate in excess of 6 percent--
 - (A) during the period of military service and one year thereafter, in the case of an obligation or liability consisting of a mortgage, trust deed, or other security in the nature of a mortgage; or
 - (B) during the period of military service, in the case of any other obligation or liability.
 - (2) Forgiveness of interest in excess of 6 percent. Interest at a rate in excess of 6 percent per year that would otherwise be incurred but for the prohibition in paragraph (1) is forgiven.
 - (3) Prevention of acceleration of principal. The amount of any periodic payment due from a servicemember under the terms of the instrument that created an obligation or liability covered by this section shall be reduced by the amount of the interest forgiven under paragraph (2) that is allocable to the period for which such payment is made.
- (b) Implementation of limitation.
 - (1) Written notice to creditor. In order for an obligation or liability of a servicemember to be subject to the interest rate limitation in subsection (a), the servicemember shall provide to the creditor written notice and a copy of the military orders calling the servicemember to military service and any orders

²¹ 50 U.S.C. 3955 (emphasis supplied).

- further extending military service, not later than 180 days after the date of the servicemember's termination or release from military service.
- **(2)** Limitation effective as of date of order to active duty. Upon receipt of written notice and a copy of orders calling a servicemember to military service, the creditor shall treat the debt in accordance with subsection (a), effective as of the date on which the servicemember is called to military service.
- **(c)** Creditor protection. A court may grant a creditor relief from the limitations of this section if, in the opinion of the court, the ability of the servicemember to pay interest upon the obligation or liability at a rate in excess of 6 percent per year is not materially affected by reason of the servicemember's military service.
- **(d)** Definitions. In this section:
 - **(1)** Interest. The term "interest" includes service charges, renewal charges, fees, or any other charges (except bona fide insurance) with respect to an obligation or liability.
 - **(2)** Obligation or liability. The term "obligation or liability" includes an obligation or liability consisting of a mortgage, trust deed, or other security in the nature of a mortgage.
- **(e)** Penalty. Whoever knowingly violates subsection (a) shall be fined as provided in title 18, United States Code, imprisoned for not more than one year, or both.²²

Frank incurred this credit card debt as a civilian, before entering active duty. His entry on active duty has materially (adversely) affected his ability to meet his financial obligations, in that his salary as an officer candidate and a second lieutenant will be substantially less than the six-figure salary he had been receiving as a manager at DWI. Thus, he is entitled to get the credit card interest rates reduced to 6%, while he is on active duty.

While he is on active duty, Frank should pay as much as he can to reduce and eventually eliminate these credit card debts. Any payments that he makes while on active duty will be applied to principal and interest at the 6% rate, not the contract rate of 20% or more. When Frank leaves active duty, the interest rates will revert to the higher rates, if there is a balance remaining at that time. The difference between 6% and the higher contract rate is forgiven, not just deferred.

²² 50 U.S.C. 3937.