

USERRA, the SCRA, and Military Recruiting

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¹ Please see www.roa.org/lawcenter. You will find more than 2,000 “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 Spouses’ 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 specific topics. The Reserve Officers Association, now doing business as the Reserve Organization of America (ROA), initiated this column in 1997, and we add new articles each month. I am the author of more than 90% of the articles published so far, but we are always looking for “other than Sam” articles by other lawyers.

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As is explained by [a recent Fox News article](#), all the armed services struggled to meet their recruiting goals for Fiscal Year 2022 (10/1/2021 through 9/30/2022). Specifically, the Army fell 25% short of its goal for the year. This month (January 2023) marks the 50th anniversary of the end of the draft and the establishment of the All-Volunteer Military (AVM) in January 1973.

With a force made up exclusively of volunteers, the United States has the best-motivated, best-led, and most effective military in the world, and we hope that it will never be necessary for our country to reinstate the draft. Those who propose the reimposition of the draft should look to the woeful performance of Russian conscripts in Ukraine.

If we are to continue the AVM, we must find ways to help the services recruit the necessary quality and quantity of young men and women to serve our country in uniform in the next generation. The five military recruiting commands are welcome to use this article as a hand-out, for recruiters to distribute selectively to potential recruits who express reluctance to join because of concerns about civilian employment or financial obligations, like lease payments or credit cards.

The factual set-up for this article is hypothetical, but realistic.

Q: I am an Army recruiter in New York City. In recent months, when there have been millions of unfilled civilian jobs and civilian employers have been competing vigorously to recruit young people (18-29) for employment, military recruiters like me have struggled to meet our recruiting goals. We have found it necessary to request waivers to permit the enlistment of young men and women who do not meet the recruiting standards because of criminal convictions, use of illegal drugs, obesity, and other problems. I worry that recruits who get in with such waivers will often not make good soldiers and will be 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 several of your articles. The articles I read deal with the application of USERRA to service members in the National Guard and Reserve. Does USERRA also apply to persons who enlist in the Regular Army or another service?

A: Yes. USERRA applies to people who leave civilian jobs to serve in the Active Component of the Army, or any other armed force, as well as the National Guard and Reserve. A person who meets five simple conditions has the right to reemployment under USERRA:

- a. Must have left a civilian job (Federal, State, local, or private sector) to perform “service in the uniformed services” as defined by USERRA.⁴
- b. Must have given the employer prior oral or written notice.⁵
- c. Must not have exceeded the cumulative five-year limit on the duration of the period or periods of uniformed service, relating to the employer relationship for which the person seeks reemployment.⁶
- d. Must have been released from the period of service without having received a disqualifying bad conduct discharge from the military.⁷
- e. After release from the period of service, must have made a timely application for reemployment.⁸

A person who meets these five conditions is entitled to prompt reinstatement in the position of employment that he or she *would have attained* if he or she had been continuously employed by the employer during the entire time that he or she was away from work for that period of uniformed service or in another position for which he or she is qualified that is of like seniority, status, and pay.⁹ Upon reemployment, the returning service member is also entitled to the seniority and pension credit that he or she would have attained if continuously employed.¹⁰

USERRA’s broad definition of “service in the uniformed services” includes voluntary or involuntary active duty, as well as active duty for training, initial active-duty training, inactive duty training, and full-time National Guard duty (forms of duty that are unique to the Reserve Components).¹¹ USERRA applies to Active Component service, as well as service in the National Guard and Reserve.

Q: Mary Jones, age 29, visited me in my office yesterday. She has already worked for the City of New York for ten years, and she has a decade of seniority and pension credit in her civilian job. She is interested in enlisting, but not for a career. She wants to serve four or five years and then return to her civilian career. Based on her demeanor and credentials, I think that she would make a good soldier, and I want to recruit her. What can I tell Mary about her rights under USERRA?

⁴ 38 U.S.C. § 4312(a) (2018).

⁵ *Id.* § 4312(a)(1).

⁶ *Id.* § 4312(c); *See* ROA Law Review 16403, May 2016. There are nine exceptions to the five-year that do not count toward exhausting an individual’s limit with respect to a specific employer.

⁷ *Id.* § 4304. Disqualifying discharges include punitive discharges (awarded by court martial for serious offenses) and other-than-honorable administrative discharges.

⁸ *Id.* § 4312(e)(1)(D). After a period of service lasting 181 days or more, the returning service member has 90 days to apply for reemployment. Shorter deadlines apply after shorter periods of service.

⁹ *Id.* § 4313(a)(2). In many cases, the position to which the individual is entitled upon reemployment will be better than the position that he or she left.

¹⁰ *Id.* §§ 4316(a), - 4318.

¹¹ *Id.* § 4303(13).

A: If Mary meets the five conditions (and it will be easy for her to meet them if somebody explains her rights and obligations to her), she will be entitled to prompt reinstatement to her City of New York job when she is released from active duty in 2027 or 2028, within the five-year limit. She will be entitled to the job that she would have attained if she had been continuously employed, or another job (for which she is qualified) that is of like seniority, status, and pay. She will return to work with 14 or 15 years of seniority and pension credit, including the ten years she had when she left and constructive seniority and pension credit for the time that she was away from work for military service.

Q: Mary said that employment for the City of New York is very cyclical. In some years, there are many vacancies and thousands of new employees are hired. In other years, vacancies are few and almost no new employees are hired. Mary said that she is concerned that when she returns from active duty in 2027 or 2028 the City of New York will not be hiring, and she will be unemployed. What do you say about that?

A: When Mary is released from active duty and meets the five USERRA conditions, she is entitled to prompt reemployment in the appropriate position *even if that means that another employee must be laid off to make room for her*.

In a case involving a Department of Veterans Affairs (VA) chaplain who sought reinstatement to the position of chief chaplain at a specific VA medical center, after returning from three years of active duty, the United States Court of Appeals for the Federal Circuit¹² held:

The department [VA] first argues that, in this case, Nichols' [the returning veteran and plaintiff] former position was "unavailable" because it was occupied by another, and thus it was within the department's discretion to place Nichols in an equivalent position. This is incorrect. Nichols' former position is not unavailable because it still exists, even if occupied by another. A returning veteran will not be denied his rightful position because the employer will be forced to displace another employee. "Employers must tailor their workforces to accommodate returning veterans' statutory rights to reemployment. Although such arrangements may produce temporary work dislocations for nonveteran employees, these hardships fall within the contemplation of the Act, which is to be construed liberally to benefit those who "left private life to serve their country." *Fishgold v. Sullivan Drydock & Repair Corp.*, 328 U.S. 275, 285 (1946). *Goggin v. Lincoln St. Louis*, 702 F.2d 698, 704 (8th Cir. 1983). Although occupied by Walsh, Nichols' former position is not unavailable, and it is irrelevant that the department would be forced to displace Walsh to restore him.¹³

¹² The Federal Circuit is the specialized Federal appellate court that sits in our nation's capital and has nationwide jurisdiction over certain kinds of cases, including appeals from Merit Systems Protection Board (MSPB) decisions.

¹³ *Nichols v. Department of Veterans Affairs*, 11 F.3d 160, 163 (Fed. Cir. 1994). See also *Rivera-Melendez v. Pfizer Pharmaceutical LLC*, 730 F.3d 49, 55-56 (1st Cir. 2013); *Ryan v. Rush-Presbyterian-St. Luke's Medical Center*, 15 F.3d

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,¹⁴ but it happens.

Joe has no legal 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.¹⁵ 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

697 (7th Cir. 1994); *Cole v. Swint*, 961 F.2d 58, 60 (5th Cir. 1992); *Goggin v. Lincoln St. Louis*, 702 F.2d 698, 704 (8th Cir. 1983); *Davis v. Crothall Services Group*, 961 F. Supp. 2d 716, 730-31 (W.D. Pa. 2013); *Serricchio v. Wachovia Securities LLC*, 556 F. Supp. 2d 99, 107 (D. Conn. 2008); *Murphree v. Communications Technologies, Inc.*, 460 F. Supp. 2d 700, 710 (E.D. La. 2006); *Fitz v. Board of Education of the Port Huron Area Schools*, 662 F. Supp. 10 (E.D. Mich. 1985); *Green v. Oktibbeha County Hospital*, 526 F. Supp. 49 (N.D. Miss. 1981); *Hembree v. Georgia Power Co.*, 104 L.R.R.M. (BNA) 2535 (N.D. Ga. 1979), *affirmed in part and reversed in part on other grounds*, 637 F.2d 423 (5th Cir. 1981); *Jennings v. Illinois Department of Education*, 97 L.R.R.M. (BNA) 3027 (S.D. Ill. 1978), *judgment affirmed*, 589 F.2d 935 (7th Cir. 1979); and *Muscianere v. U.S. Steel Corp.*, 354 F. Supp. 1394, 1402 (E.D. Pa. 1973).

¹⁴ 38 U.S.C. § 4311.

¹⁵ 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.

(VRRRA), 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 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.¹⁶

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.¹⁷

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

¹⁶ H.R. Rep. No. 103-65 (Part 1), at 23-24 (1993), *reprinted in* KATHERYN PISCITELLI & EDWARD STILL, THE USERRA MANUAL: UNIFORMED SERVICES EMPLOYMENT & REEMPLOYMENT RIGHTS 862 (2022). The quoted paragraph can be found in Appendix D-1, which discusses USERRA's legislative history.

¹⁷ See ROA Law Review 16073 (August 2016) and Law Review 13083 (June 2013).

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.¹⁸

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.¹⁹ 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."²⁰ 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

¹⁸ 20 C.F.R. § 1002.88.

¹⁹ 38 U.S.C. § 4312(c)(1) (2018).

²⁰ 38 U.S.C. § 4312(c).

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 workday is not over until 5:30 pm. Does USERRA give Connie the right to time off from her civilian job to attend DEP meetings?

A: No. If you look at the definition of "service in the uniformed services" (quoted above) 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."²¹ 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, 2022. Edwina wants to leave her DWI job on December 10, 2021, 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?

²¹ *Id.* § 4303(13).

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 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.²²

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:

²² 20 C.F.R. § 1002.74 (emphasis added).

§ 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:
 - **(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.²³

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

²³ 50 U.S.C. § 3955 (emphasis added).

- **(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 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.²⁴

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-

²⁴ 50 U.S.C. § 3937.

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.

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²⁵ Congress recently created the United States Space Force as the 8th uniformed service.

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