

**Legal/Financial
Issues for Veterans
and Possible Solutions**

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Introduction

- Like many Americans, veterans are challenged with managing personal finances, debt management and unemployment.
- The unique life style of military personnel includes frequent transfers and deployments, adding complexity to financial management challenges.
- Military personnel may face increased periods of unemployment reflecting the challenge of translating unique education and training to civilian job market.
- Military personnel are increasingly exposed to risks from cuts in defense spending.

Veteran Unemployment

◦ National:

- While Veteran unemployment remains below that of nonveterans, labor participation appears to be a factor:
 - The jobless rate for veterans declined to 4.4% or 459,000 for June 2015.
 - Unemployment for nonveterans declined to 5.2% 7,594,000 for June 2015.
 - The labor participation rate among veterans (49.7% or 10.1 million) is sharply lower than nonveterans (65.9% or 137.7 million)

Veteran Unemployment

Montana:

- Veterans in Montana do not compare favorably to civilian counterparts:
 - While Montana boasts a favorable unemployment picture, the rate of unemployed veterans here (5.8%) exceeds both the State (3.9%) and National (5.5%) averages.
 - For perspective, the highest and lowest jobless rates are from Maryland (7.3%) and Nebraska (2.6%) respectively.

Unemployment Trends

• Additionally ...

- The Army has announced that it will reduce its strength by more than 40,000 by 2017.
- The Army will also reduce its civilian workers by 17,000 (many are former military).
- The Navy, Air Force & Marines will also reduce their strengths, but the numbers haven't yet been announced.
- All of these will hit the civilian job market in the next two years.

Veteran Poverty

Veteran Poverty Is on the Rise:

- Based on a study from May of 2015:
 - Although the **Poverty Rate** among Veterans (6.9% or 1.5 million) is lower than non-Vets (14.4% or 30.1 million), the **Veteran Poverty Growth Rate** (8.7%) is rising.
 - Not surprising, poverty rates among veterans with disabilities is higher than non-veterans (except over age 65).
 - Veteran poverty is clustered in the Southeast and Northwest parts of the country.
 - The rate of Veterans utilizing SNAP assistance (7.8%) is sharply lower than Non-Vets (14.9%).

Veteran Education

- Veteran education levels are not dissimilar to non-veterans with females leading the way:
 - The percentage of veterans with some college education is higher than non-veterans.
 - The percentage of female veterans with some college (43.4%) is sharply higher than veteran males (31.9%).
 - The current college veteran graduation rate (51.7%) is slightly less than for non-veteran peers (59%).
 - Of those veterans attending college approximately 33% are obtaining a bachelor's degree or higher.
 - Air Force Veterans have a sharply higher graduation rate (67%) than Army (47%) and Marine (45%) Veterans.

Veterans and Debt

- Veterans face the challenge of easy credit combined with lifestyle constraints:
 - Service members have an average debt ratio of 46.5%, 10% higher than the average
 - Steady pay makes credit more accessible.
 - Military pay is reliable but often small.
 - Frequent moves add expenses and hinder spouse careers.
 - Deployment places more financial responsibility on spouse, increasing likelihood of missed payments.
 - Fear of jeopardizing security clearance makes veterans less likely to pursue financial help.

Financial Risks

- The military life style may create financial risk:
 - Military families often start young, making substantial financial commitments with limited experience
 - Military pay represents a steady income, so an extension/amount of credit is easily attainable
 - Maintaining a good relationship with civilian employers who don't understand "military training exercises" and "call to active duty" away time
 - Military families are targets for financial scams and abuse

Veterans and Saving

Veterans are Savings-Challenged in spite of steady incomes:

- Veteran median income is \$36,381, which compares favorably to the non-veteran population of \$25,820.
- More than 25% of military families with credit cards carry a balance of more than \$10,000
- Veterans 29 or younger have average monthly expenses exceeding income by \$900 or more.
- Only 50% report having set aside funds sufficient to cover expenses for three months in case of emergency.

Why Special Treatment?

- Are there different rules for servicemembers? Yes, there are some.
- Why should an SM be treated differently from anyone else? Sure, they have jobs that may place them in harm's way as a way of life, but they chose that, right?
- The answer is not just that "the servicemember is serving us", but goes to the nature of what we are requiring of them.

Special Treatment? (cont'd)

- Putting aside the whole idea of their service, the military gives them strict requirements that the rest of us don't have. SM are told where to go, when to be there, and can be punished by law if they don't. They have to obey orders, or are punishable by law if they don't. They have to provide support for their dependents, or are punishable by law if they don't. (do you detect a trend here?)
- SM often are not able to leave their duty station to attend a court hearing "back home", making them prime targets for default judgments or other adverse judicial orders.

Why Military Personnel Are Financial Targets

- Deployments, frequent relocations and unique demands of a military lifestyle.
- SMs are required by the UCMJ to pay their debts
- Steady income, job security, stable retirement
- Military culture expects SMs to lead orderly, financially stable lives.
- Big money-management decisions are often made by first-time decision makers

Common Scams Faced by Military Personnel

- Paycheck advances, loans for car titles
- Internet scams (including arranged marriages – in Montana, that can even be done by proxy)
- Selling of veterans benefits on unfavorable terms

Common Abuses Faced by Military Personnel

- Illegal foreclosure notices and overcharges on mortgages on military personnel serving abroad
- Internet lenders charging triple digit interest and high fees
- Threats from debt collectors, especially to a supervisor/commander:
 - Harm a SM's financial record.
 - May cost the SM their security clearance and even their job.

Opportunities to Assist

Financial Readiness For Deployment:

- Financial Professionals
 - Working with a Financial Overseer
 - Creating a Budget and Savings Plan
- Legal Professionals
 - Preparing a Will or POA
 - Understanding Servicemembers Civil Relief Act (SCRA) [i.e.,start lower interest rate?]
- General Professional
 - Reviewing Employment Rights (USERRA)
 - Understanding their Entitlements

Opportunities to Assist

- Non-Veteran-Specific Areas
 - Vacating existing Powers of Attorney
 - Protection from Creditors (Homestead Exemptions)
 - Termination of allotments
 - Protection from Predatory Lending

Homestead Exemption

- A homestead declaration can protect a Montanan's home up to \$250,000 against most creditors' claims.
- Does not protect against: judgments made before filing, mortgage foreclosures, or mechanics liens for work done on the property.
- §70-32-101 through §70-32-303; §7-4-2636 & 7-4-2637, MCA
- For more explanation, see <http://store.msuextension.org/publications/FamilyFinancialManagement/MT199815HR.pdf>

Allotments

- SM often set up allotments (part of their military pay) to a person or business to do one of many things; “send money home”, pay a debt, etc.
- Allotments follow an SM from active-duty into any Reserve/Guard service they choose.
- However, if their circumstances change, they may not want to continue the allotment (requires specific process to cancel).
- Help SM work through their unit finance to end the allotment.

Predatory Lending

- SM are prime targets for lenders around military bases. They prey on soldiers, esp. junior enlisted, needing short-term money for items attractive to them (i.e., cars, entertainment, etc.).
- SM take out more payroll advances than civilians: 22% vs. 16%
- The debt may follow the SM after service.

Predatory Lending - MLA

- The 2006 Military Lending Act (P.L. 109–364, Sec. 670) protects SM & families from predatory lending practices.
- Caps the Military Annual Percentage Rate (MAPR) at 36%.
- Gave federal regulators (i.e., Consumer Financial Protection Bureau) authority to enforce the law.

Predatory Lending - MLA

- MLA prohibits lenders from:
 - taking account access or a security interest in a vehicle title
 - requiring SM to submit to arbitration.
- Current rules only apply to three consumer credit products:
 - closed-end payday loans for no more than \$2,000 and with terms of 91 days or less;
 - closed-end auto title loans with terms of 181 days or less; and
 - closed-end tax refund anticipation loans.

Legal/Financial Protections

The Servicemembers Civil Relief Act (SCRA) provides a range of relief to active duty service-members. The types of relief provided under the law include:

- Reducing the rate of interest for debts incurred before entering active duty to 6%;
- Protecting SMs against default judgments, evictions, mortgage foreclosures, and repossessions of property;
- Giving SMs the ability to terminate residential and automobile leases.

SCRA Purposes

- To provide for, strengthen and expedite the national defense through protection to servicemembers to enable them to **devote their entire energy to the defense needs of the nation**
- To provide for the temporary suspension of judicial and administrative proceedings and transactions that may adversely affect the civil rights of servicemembers during their military service
- Applicable in all civil and administrative proceedings (not criminal)

SCRA – a True “Consumer” Law

- 50 U.S.C. App. §501 *et seq*
- Alters conventional contracts
- Prevents default judgment except in accordance with its provisions
- Allows for cancellation of premises leases and auto/truck leases
- Reduces interest rates on some pre-service obligations to 6%
- Gives consumers anticipatory relief option without filing bankruptcy

SCRA Protections

- §§531-538 contain Major substantive protections for SM and Dependents against:
 - Evictions
 - termination of installment contracts
 - foreclosure on mortgages, and
 - termination of leases by lessees
- Effective in all Courts, including bankruptcy, and all administrative agencies (i.e., child support, tax appeals, zoning, professional disciplinary actions)
- Whether or not they are of record

SCRA - “Materially Affected”

- SCRA protection requires a finding that the SM’s service “materially affected” his ability to comply.
- Does military service prejudice the SM’s ability to comply with a civilian obligation (i.e., can’t appear in court, pay a creditor, pay rent, make a payment on a contract, etc.)?
- There must be actual prejudice caused by the military service.

“Materially Affected” (cont’d)

- The SCRA is a “shield”, not a “sword”
- Ability to appear (§ 522 – Stay)
- Ability to present a defense (§ 521 – Default Protections)
- It is a “but for” analysis

When Does SCRA Protection Begin & End?

- It begins on entry into active duty. For RC SMs, protection begins when they receive orders activating them to federal service (or National Guard service for longer than 30 days).
- SCRA coverage usually ends when the SM is released from active duty or dies while in military service.
- HOWEVER, protection can follow release from active duty, such as when an order has been improperly entered.
 - i.e., SCRA allows a court to postpone a proceeding to enforce collection of a tax or sale of a property up to 180 days after release from active duty.

Protection After Active Duty

- In any action started against a SM before his period of military service, during it, or within 90 days after the end of service, if a SM’s military duties materially affect his ability to comply with a court order or judgment, then the court may, on its own motion, or shall on motion by the SM –
 - stay the execution of any judgment or order entered against the SM, and
 - vacate/stay any attachment or garnishment of property, money or debts in the possession of the SM or a third party,
- regardless of whether it is before or after judgment. § 524.

“Stays” of Litigation

- Stays are not automatic.
- Can be requested by SM.
- Can be imposed by the Court.
- SM may request a 90-day stay.
 - Servicemember’s Letter.
 - Commander’s Letter.
- Additional stays may be requested by the SM upon providing additional, similar proof.

SCRA Enforcement/Remedies

- Attorney General authorized to enforce (§597)
- Private cause of action to recover damages and attorney fees recognized (§597a)
- Preserves other remedies (including punitive damages) (§597b)

VACATING DEFAULT JUDGMENT

- §§ 521, 522, 524, & 525
- A Court SHALL reopen a default entered while SM was on active duty or within 60 days thereafter, when
 - SM applies by affidavit while on active duty or within 90 days thereafter; and
 - Shows a “Material effect”,
 - plus a Meritorious Defense.
- BONA FIDE purchasers are protected

Internet SCRA Resources

- The Army JAG School published the "Servicemembers Civil Relief Act Guide" (JA 260). Every section of the SCRA is examined by the Army's JAG School faculty. (pre-2010 SCRA amendments)

<http://www.americanbar.org/content/dam/aba/migrated/legalservices/lamp/downloads/SCRAguide.authcheckdam.pdf>

- "A Judge's Guide to the Servicemembers Civil Relief Act" is available at <http://apps.americanbar.org/family/military/scrajudgesguidecklist.pdf>

Employment Rights (USERRA)

- The Uniformed Services Employment and Reemployment Rights Act (USERRA) protects the civilian employment rights of service-members and veterans.
- USERRA applies to **all public and private employers** in the United States including federal, state, and local governments, regardless of size.
- Employers are encouraged to understand their USERRA obligations to help facilitate job security and financial wellbeing of National Guard and Reserve employees.

Employment Rights (USERRA)

Employer Responsibilities:

Providing that a service member meets certain obligations, employers must provide the following:

- Military leave of absence
- Prompt job reinstatement
- Accumulation of seniority, including pension plan benefits
- Reinstatement of benefits
- Training / retraining of job skills, including accommodations for the disabled
- Protection against discrimination

Employment Rights (USERRA)

Employee Obligations:

- Provide advance notice of employees service
- Serve under honorable conditions
- Return to work in accordance with USERRA guidelines

USERRA is codified at 38 USC 4301, et. seq.

USERRA Prerequisites

- Civilian job (no exception based on size of the employer).
- Prior notice of military service must be given to civilian employer.
- Cannot exceed five years.
- Employee's service must have been under "honorable conditions" -- that is, no punitive discharge (OTH), and not "dropped from the rolls" (DFR).
- Report back or apply for reemployment in a timely manner.

USERRA Protections

- Prompt Reinstatement
- Leave of absence and reinstatement
- The employee must return to a position with the same status as previous employment
- The employee must return to the seniority "escalator" as if he/she had never left
- Employee must be immediately reinstated in the employer's health insurance plan
- Employer must make reasonable efforts to re-qualify the employee for the job.

USERRA vs. Discharge

- Special protections against discharge.
 - For service 181 days or longer, special protection lasts one year.
 - For service 31 days to 180 days, special protection lasts for 180 days.
 - There is no “special protection” for service 30 days or less, but USERRA’s general prohibition against discrimination or reprisals still applies.

USERRA Enforcement

- The Vet does not have to fight the former employer on his/her own.
- Agencies and groups will pursue an action on the Vet’s behalf.
- Resources and Enforcement
 - National Committee for Employer Support of Guard & Reserve www.esgr.org
 - Veterans’ Employment & Training Service www.dol.gov/vets
 - USDOJ Enforcement - 38 USC §4323

Resources

- Joint Services Support (JSS):
 - JSS is home to seven service programs of the National Guard, providing a gateway to service members and families to a national community of support.
- National Guard Yellow Ribbon Reintegration Program (YRRP):
 - YRRP is a DoD-wide effort to promote the well-being of National Guard and Reserve members. Service members and loved ones connect with local resources before, during and after deployments.
- Employer Support of the Guard and Reserve (ESGR):
 - Improve the quality of life for service members by promoting security of their civilian jobs.
- National Guard Financial Management Awareness Program - Financial information, services and support.
- National Resource Directory:
 - Connects wounded warriors, service members, veterans, their families and caregivers to services and programs that support them.

Financial Resources

- The Montana Bar’s “Law-Related Education Committee” created an 80-page pamphlet, “Personal Finance – a Resource Guide for Montana Veterans”. It is filled with helpful advice in areas such as debt, credit cards, scams, loans, student debt, identity theft, bankruptcy, etc. (being updated)
- http://c.ymcdn.com/sites/www.montanabar.org/resource/resmgr/veterans_resource_library/personal_finance.pdf

Employer Support of the Guard and Reserve (ESGR)

- **ESGR is a Department of Defense agency**
- **Provides free education, consultation, and remediation for employers of Guard and Reserve employees.**
- **Support to America’s employers who share their employees with the nation to ensure our national security.**
- **Job resources to Reserve component members**

Verifying Military Service

- Department of Defense
 - https://www.dmdc.osd.mil/app/scra/single_record.xhtml
 - There is no charge for using the DoD central website
- Army
 - World Wide Locator Service, Enlisted Records & Evaluation Center, 8899 East 56th St, Indianapolis, IN 46249-5031
- Navy
 - Bureau of Naval Personnel, PERS-312E, 5720 Integrity Drive, Millington, TN (901) 874-3388

Verifying Military Service

- Air Force
 - Air Force Personnel Center, AFPC/DPDXIDL, 550 C Street West, Suite 50, Randolph AFB, TX 78150-4752
 - Locator Service:
<http://www.afpc.af.mil/library/airforcelocator.asp>
or (210) 565-2660
- Marine Corps
 - Commandant of The Marine Corps, Headquarters, U.S. Marine Corps (MMSB I 0), 2008 Elliott Road, Suite 201, Quantico, VA 22134-5030
 - Locator Service: (703) 784-3941-3944

Advice for Employers

- Learn more about military culture, especially if you are a supervisor or hiring manager.
- Consider the workplace benefits of military training and promote workplace service appreciation.
- Tax incentives are available for companies that hire military veterans:
 - The federal Work Opportunity Tax Credit provides up to \$9,600 per veteran hired to eligible for-profit corporations.
- Ensure employment policies comply with servicemember rights.

Advice for Financial Professionals

- Educate yourself and clients about harmful financial practices (loan and credit scams; unfair bank overdraft loans; bank and internet payday)
- The Defense Finance and Accounting Service provides specialized help for wounded warriors
- The SCRA protects active duty soldiers from financial issues concerning debt, taxes and housing obligations
- Kiplinger and the Better Business Bureau have partnered to produce a Personal Financial Guide for military families
- The Internal Revenue Service publishes an Armed Forces Tax Guide for tax return preparation.
- Military families are eligible for certain tax benefits during deployment
- The Military Spouse Residency Relief Act exempts a military spouse from state income taxes when certain circumstances exist

Advice for Legal Professionals

- Become familiar with military assistance programs (State Bar's Veterans' Law Section, Montana Attorneys for Montana Veterans, & Military *Pro Bono* Project) offering *pro bono* or free legal service for veterans
- Military personnel typically require legal assistance in the areas of veteran benefits, personal civil matters, and criminal defense.
- Become familiar with the SCRA and USERRA.
- Employer Support of the Guard and Reserve (ESGR) offers ombudsman assistance to help mediate disputes between SMs and civilian employers.

Thank You for promoting the financial well being
and legal assistance of our Armed Forces
personnel and Veterans!

Questions?
