

Primer on Bankruptcy-Related Provisions Applicable to Service Members

Prepared for the *Commercial, Consumer, and Bankruptcy Law Issues
Affecting Members of the Military Training Session*

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I. Introduction

There are several provisions in title 11 of the United States Code, 11 U.S.C. §§ 101, *et seq.* (the “Bankruptcy Code”) that are specifically applicable to service members and these materials seek to provide a broad overview of those provision, as well as a discussion of various topics to be considered when counseling service members on whether filing for bankruptcy protection either under Chapter 7 or Chapter 13 of the Bankruptcy Code would be in their best interests.¹ Additionally, given the expansive protections it affords active service members, the Servicemembers Civil Relief Act (“SCRA”), 50 App. U.S.C. §§ 501 *et seq.*, is also discussed extensively herein.

II. Pre-filing Considerations

A. Potential Impact on Security Clearances

There is no prohibition against active service members filing for bankruptcy protection, to the extent doing so is necessary to address financial difficulties.² Furthermore, once a filing has occurred, section 525 of the Bankruptcy Code recognizes that discrimination against individuals that file for bankruptcy is prohibited by public and private employers. 11 U.S.C. § 525. Specifically, with respect to public employers, section 525 of the Bankruptcy Code states that: “...(A) governmental unit may not deny revoke, suspend or refuse to renew a license, permit, charter, franchise or other similar grant to, condition such a grant to, discriminate with

¹ Attached as Appendix A to this primer is a listing of helpful financial education resources for service members as well.

² In providing an overview regarding the Air Force’s policies on filing for bankruptcy, the United States Air Force Academy website states that:

The Air Force policy concerning bankruptcy petitions filed by military members is one of strict neutrality. Air Force members have a statutory right to invoke the procedures of the Bankruptcy Act. No adverse actions may be taken against a member of the Air Force for filing a petition for bankruptcy, receiving a discharge of a debt in bankruptcy, or consolidating his debts under a Chapter 13 bankruptcy plan. Similarly, Commanders and Supervisors may not require members to seek financial counseling assistance before allowing them to file bankruptcy. The assets and protection of rights of individual creditors are matters for the Bankruptcy Court and the Air Force cannot intervene in any matter. Creditors should receive no assistance from the Air Force to collect debts and members should be treated like any individual not in military service.

Nevertheless, the underlying circumstances of a case may involve such mismanagement of personal affairs or dishonorable failure to pay just debts as to become factors that may form a basis for adverse action against the member. However, the mere filing of a petition in bankruptcy, or receiving a discharge in bankruptcy is not considered "mismanagement" or "dishonorable."

United States Air Force Academy, *What is the Air Force Policy on Bankruptcy?* at <http://www.usafa.edu/superintendent/ja/bankruptcy.cfm?catname=JA>.

respect to such a grant against, deny employment to, terminate the employment of, or discriminate with respect to employment against, a person that is or has been a debtor under the Bankruptcy Code solely because the debtor has been a debtor under the Bankruptcy Code.” *Id.*

Despite the prohibition in section 525, the underlying reasons for filing the bankruptcy may have certain career implications for active service members including adverse actions based on mismanagement of personal affairs or dishonorable failure to pay debts and failure to obtain and/or maintain security clearances.

Military members are required to manage their finances and avoid “dishonorable” failure to pay debts. The Uniform Code of Military Justice (“UCMJ”) specifically provides certain debt related “punitive articles,” specific offenses, which, if violated, can result in an adverse action against the service member. For example, Article 123a relates to the making, drawing, uttering or delivery of an instrument without sufficient funds. Further, Article 134 of the UCMJ covers dishonorably failing to pay debt. While something more than negligence in nonpayment is required to demonstrate a violation under Article 134 of the UCMJ, the potential maximum punishment is a bad-conduct discharge, forfeiture of all pay and allowances, and confinement for six months. Articles 123a and 134 of the UCMJ are attached as Appendix B to this Primer. While the mere filing of a bankruptcy petition or receipt of a discharge is not the basis for adverse circumstances, the underlying circumstances related to the filing may be considered for potential adverse actions under the UCMJ.

Moreover, in order to obtain security clearance, a service member must disclose financial information, including whether the applicant has filed for bankruptcy protection in the past and, if so, under what chapter. It is unclear what universal impact, if any, this disclosure has on obtaining clearances. However, in describing the affect of a bankruptcy filing on security clearance, the United States Air Force Academy website provides that:

The status of your security clearance can be affected, but it is not automatic. The outcome depends on the circumstances that led up to the bankruptcy and a number of other factors, such as your job performance and relationship with your chain of command. The security section will weigh whether the bankruptcy was caused primarily by an unexpected event, such as medical bills following a serious accident, or by financial irresponsibility. The security section may also consider the recommendations and comments of your chain of command and co-workers. This is an issue that can be argued both ways, so as a practical matter your security clearance probably should not be a significant factor in making your decision about whether to file bankruptcy. The amount of your unpaid debts, by itself, may jeopardize your clearance, even if you don't file bankruptcy. In that sense, not filing for bankruptcy may make you more of a security risk due to the size of your outstanding debts. By the same token, using a government-approved means of dealing with your debts may actually be viewed as an indication of financial responsibility. Eliminating your debts through bankruptcy may make you less of a security risk. There is no hard and fast answer here, with one exception: it never hurts to have a good reputation with your co-workers and your chain of command.

United States Air Force Academy, *Will Bankruptcy Affect My Security Clearance?* at <http://www.usafa.edu/superintendent/ja/bankruptcy.cfm?catname=JA>.

B. Eligibility for VA Loans

The filing of a Chapter 7 or Chapter 13 bankruptcy case may affect a veteran's eligibility for a federally guaranteed VA Loan, which is a mortgage guaranteed by the Department of Veterans Affairs ("VA") that does not require a down payment and has lower closing costs compared to a conventional loan, depending on the length of time that has passed from the date of discharge. Every borrower's situation is unique and veterans must demonstrate that they are a satisfactory credit risk. However, there is more scrutiny to the extent that the bankruptcy was discharged less than 5 years ago.³

Moreover, Bankruptcy Courts have determined the anti-discrimination provision under section 525 of the Bankruptcy Code discussed in section II(A) *supra* does not apply to veteran home-loan guaranty entitlement under the Servicemen's Readjustment Act, 38 U.S.C. § 3701 *et seq.* See *Ayes v. U.S. Dept. of Veterans Affairs*, 473 F.3d 104 (4th Cir. 2006). In *Ayes*, the Fourth Circuit Court of Appeals found that the VA guaranty entitlement was not an "other similar grant," within the meaning of section 525 of the Bankruptcy Code. In that case, veterans brought a class action against the VA claiming that it violated section 525 by refusing to fully reinstate their veteran home-loan guaranty entitlements because the veterans had previously received discharges in bankruptcy. The Court found that section 525 was inapplicable to such a grant which was more like an extension of credit rather than the grants that could be categorized as having gate-keeping functions set forth in section 525(a). Accordingly, the VA may deny a home-loan guaranty to a veteran if the VA has lost funds on a previously guaranteed loan, including where the loss is attributable to a discharge under the Bankruptcy Code.

C. Non-dischargeability of Certain Military Related Debts:

Another potential issue to be aware of is that certain military-related debt may not be dischargeable under the Bankruptcy Code. Specifically, if a service member has received retention and career status bonuses and continuation pay under various service agreements, the obligation to repay such amounts back if the service member is unable to complete the required term under the program is not dischargeable for a period of up to five years following the termination of the applicable service agreement.

Interestingly, the non-dischargeability of these amounts as a debt owed to the U.S. Government is set forth in sections 301(e) and 314 of title 37 and not in section 523 of title 11, Bankruptcy Code provision dealing with exceptions to discharge. This requirement appears to have first been set forth in the National Defense Authorization Act for Fiscal Year 2000, Public Law 106-65 (S. 1059, 113 Stat 512), authorizing appropriations for fiscal year 2000 for military activities of the Department of Defense, among other things. There are no reported cases regarding the intersection of sections 301(e) and 314 of title 37 and section 523 of the Bankruptcy Code.

III. Specific Bankruptcy Code Provisions Applicable to Servicemembers and Veterans

A. Exception to Means Test Requirement

³ A Veteran Borrowers in Delinquency Quick Reference Sheet is attached as Appendix C to this Primer.

One of the changes introduced by the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (“BAPCPA”) was the implementation of a means test in order to attempt to create an objective standard to determine whether a debtor holding primarily consumer debts is entitled to relief under Chapter 7 of the Bankruptcy Code or whether the case should be dismissed for abuse of the provisions of Chapter 7. Section 707(b) sets forth need-based guidelines to establish whether the debtor’s income and expenses dictate a presumption of abuse, grounds pursuant to which the presumption may be rebutted and certain instances where the means test does not apply.

There is an exception to the means test requirement for disabled veterans, indicating that such debtors have unfettered access to relief under Chapter 7 of the Bankruptcy Code. Section 707(b)(2)(D)(i) of the Bankruptcy Code specifically provides that the means test does not apply “if the debtor is a disabled veteran (as defined in section 3741(1) of title 38), and the indebtedness occurred primarily during a period during which he or she was—(i) on active duty (as defined in section 101(d)(1) of title 10); or (ii) performing a homeland defense activity (as defined in section 901(1) of title 32).” 11 U.S.C. § 707(b)(2)(D)(i). The issue of who qualifies as a disabled veteran is not necessarily clear cut, however.

Under 38 U.S.C. § 3741(1), a “disabled veteran” is defined as, “a veteran who is entitled to compensation under laws administered by the Secretary for a disability rated at 30 percent or more, or (B) a veteran whose discharge or release from active duty was for a disability incurred or aggravated in the line of duty.” 38 U.S.C. § 3741(1). The VA makes the disability rating determination rating. Given the alternative definition in subsection B of section 3741(1), it appears that even veterans who have disabilities rated at less than 30% may assert that they are eligible to for the means test exception because their discharge or release from active duty was for a disability incurred or aggravated in the line of duty. Supporting documentation with respect to the claimed disability is critical in this context.

Further, “active duty” is defined as “full-time duty in the active military service of the United States. Such term includes full-time training duty, annual training duty, and attendance, while in the active military service, at a school designated as a service school by law or by the Secretary of the military department concerned. Such term does not include full-time National Guard duty.” 10 U.S.C. § 101(d)(1). “[P]erforming a homeland defense activity” is defined as “an activity undertaken for the military protection of the territory or domestic population of the United States, or of infrastructure or other assets of the United States determined by the Secretary of Defense as being critical to national security, from a threat or aggression against the United States.” 32 U.S.C. § 901(1). Again, supporting documentation appears to be critical in this context as well, but there is no indication of what would satisfactorily qualify as proof of performing a homeland defense activity.

The exclusion of the National Guard from the term “active duty,” and, thus, from the means test exception applicable to disabled veterans has been addressed in section 707(b)(2)(D)(ii). Section 707(b)(2)(D)(ii) of the Bankruptcy Code provides:

with respect to the debtor, while the debtor is—

(I) on, and during the 540-day period beginning immediately after the debtor is released from, a period of active duty (as defined in section 101(d)(1) of title 10) of not less than 90 days; or

(II) performing, and during the 540-day period beginning immediately after the debtor is no longer performing, a homeland defense activity (as defined in section 901 (1) of title 32) performed for a period of not less than 90 days;

if after September 11, 2001, the debtor while a member of a reserve component of the Armed Forces or a member of the National Guard, was called to such active duty or performed such homeland defense activity.

11 U.S.C. § 707(b)(2)(D)(ii). This subsection raises additional questions, since the provision with respect to reservists and National Guard members called to active duty does not specifically reference a disability requirement.

B. Exception to Requirement for Completion of Financial Management Course

BAPCPA also added additional grounds for denial of a discharge under Chapters 7 and 13, including where a debtor fails to complete a financial management course pursuant to sections 109(h) and 111 of the Bankruptcy Code. However, there is an exception to this requirement if the debtor is unable to comply because of incapacity, disability, or active military duty in a military combat zone or unless the U.S. trustee or bankruptcy administrator has determined that adequate financial management instruction is not available. 11 U.S.C. §§ 727(a)(11), 1328(g). To the extent a determination is made that a financial management course is not available, the trustee must review that assessment within one year after making it and no less frequently than annually thereafter. *See id.*

C. Exemption of Veterans' Benefits

Certain property is exempt from an individual's bankruptcy estate pursuant to section 522 of the Bankruptcy Code. Debtors may choose exemptions available either under the Bankruptcy Code or state law. Section 522(d)(10)(B) provides an unlimited federal exemption for a debtor's right to receive a veterans' benefit. The protection afforded to such benefits appears to apply even after the funds have been deposited into a debtor's savings or checking account. However, there may be a question whether such benefits, when actually distributed, remain exempt, particularly in light of the inclusion of language in section 522(d)(11) of the Bankruptcy Code, which exempts both the debtor's "right to receive" and "property that is traceable to" certain benefits. However, once these funds have been converted into other property, the applicable exemption most likely would no longer apply.

Additionally, veterans' benefits are also exempted pursuant to section 5301(a) of title 38, which applies when a state opts out of the bankruptcy exemptions.

III. Servicemembers Civil Relief Act

The SCRA was enacted in 2003, replacing the Soldiers' and Sailors' Civil Relief Act of 1940. Its stated purpose is "to provide for, strengthen, and expedite the national defense through

protection extended by this Act” to enable service members “to devote their entire energy to the defense needs of the Nation.” 50 App. U.S.C. § 502(1). The SCRA “temporarily suspends “judicial and administrative proceedings and transactions that may adversely affect the civil rights of servicemembers during their military service” *Id.* at § 502(2).

Among the protections provided by the SCRA is a stay of proceedings under certain circumstances pursuant to sections 521 and 522 of the SCRA. The SCRA applies to any judicial or administrative proceeding, other than criminal proceedings. Such a stay is not automatic and a service member must comply with two conditions for obtaining authority for stay at any time prior to final judgment in a civil action or proceeding: (1) the application must include a communication stating the manner in which military duty requirements materially affect the ability to appear, and stating a date when the service member will be available to appear; and (2) another communication from the service member’s commanding officer confirming that his or her current military duty prevents the service member’s appearance, and that military leave is not authorized. 50 App. U.S.C. § 522(b)(2). Section 521 of the SCRA specifically deals with the entry of default judgments as well. *See id.* at § 521. Before a default judgment can be entered in a matter, this provision requires the plaintiff to file an affidavit certifying military service. *See id.*

In addition, Section 526 of the SCRA tolls the statutes of limitation during the period of military service, so that a servicemember’s period of 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.” 50 App. U.S.C. § 526. This tolling of statute of limitations periods does not apply to any limitation period contained in the internal revenue laws of the United States. *See id.* at § 526(c).

There are also several transaction-related financial protections that may help to alleviate financial pressures faced by service members. For example, the interest payable on a service member’s debts is capped at 6% per year, provided that the service member’s ability to pay more than 6% interest is materially affected by his or her military service.⁴ 50 App. U.S.C. § 527. The implementation of the interest rate cap is not automatic. An eligible service member may obtain the reduced interest rate by providing written notice to the lender of the start of the military service and copies of relevant military orders to ask for a reduction under the SCRA as of the date active duty service began. *See id.* The lender can seek relief from the interest cap provision if it can prove that the service member has the ability to make the payments at the original interest rate notwithstanding military service. *See id.* at § 527(c).

⁴ The reduced interest rate protection provided under the SCRA has recently been in the news. In connection with a lawsuit filed against it by a service member claiming that he had been overcharged on the interest rate of his mortgage, J.P. Morgan Chase & Co. admitted it had wrongly foreclosed on several military personnel and overcharged other military members on their mortgages in violation of the SCRA. A settlement was recently reached in the matter and J.P. Morgan Chase & Co. has implemented a program providing for a 4% interest cap amount on its loans to eligible borrowers.

Active duty service members may also be able to terminate real property lease obligations. 50 App. U.S.C. § 535(b)(1) applies to real property leases for residential, professional, business, agricultural, or similar purposes executed (i) before entry into military service, and (ii) after military service has begun and the service member receives deployment orders. Tenants who enter active military service after signing a lease or rental agreement have a right to terminate that rental agreement. The service member must mail written notice of his or her intent to terminate the tenancy, along copies of the activation orders, to the landlord.

Similarly, service members may also be eligible to terminate motor vehicle leases as well under § 535(b)(2) of the SCRA, provided that the service member enters military service for not less than 180 days or if the service member executes the lease after military service starts and is deployed to a permanent change of station outside the United States for not less than 180 days. 50 App. U.S.C. § 535(b)(2). Vehicle lease terminations are effective on the date that the termination notice and delivery of the vehicle are completed pursuant to 50 App. U.S.C. § 535(c)(1)(A) and (B). Moreover, the lessor may not charge an early termination fee but may assess taxes, title, and registration fees, and other obligations under the lease contract including charges for mileage and excess wear and tear. *See id.* at § 535(e). After a service member enters military service, a contract by the service member for the purchase or lease of real or personal property (including a motor vehicle) regarding which the service member has paid a deposit or installment before commencement of military service cannot be rescinded or terminated for breach during a period of military service. In addition, the property cannot be repossessed without court order pursuant to § 532(a) of the SCRA. However, the court may order the repayment of some or all of the funds to the service member, stay the proceedings, or enter other forms of relief as is equitable to preserve the interests of all parties. *See id.* at § 532(c).

With respect to foreclosures, a mortgage executed by a service member before the commencement of his or her service cannot be collected upon by litigation, sale, foreclosure, or seizure during his or her military service or within 90 days after the military service ends. 50 App. U.S.C. § 533(c). A sale, foreclosure, or seizure of property during the service member's military service is prohibited by § 533(c) of the SCRA, but may proceed if ordered by a court after notice to the service member or if by agreement of the parties.

In connection with other housing matters, the SCRA also impacts whether service members may be evicted. Service members and their families may be protected from eviction from residential real property if their monthly rent is less than \$2,400, as adjusted by the housing price inflation adjustment for the relevant calendar year. 50 App. U.S.C. § 531(a). If a service member requests a stay of the proceedings in an eviction action, the court must stay the proceedings for at least 90 days, unless the court determines that a longer or shorter time period is required. The court also has the discretion to adjust the lease obligation to preserve the interests of all parties. *See id.* at § 531(b).

APPENDIX A

Veteran-specific Financial Education Resources¹

I. FINANCIAL MANAGEMENT²

A. *Personal Financial Management Program (PFMP)*³: Created by the Department of Defense (DoD) to assist military members and families in controlling finances and planning for financial futures. The financial advice given through this program is available without cost. Classes, counseling sessions, and additional information are available to educate service members on consumer rights and financial stability. PFMP offices are available at all DoD military installations. These services are available to service members and families, DoD civilians, and military retirees.

- i. PRINT RESOURCES: MyHELPList⁴ is a publication that provides various resources—including information about military financial resources, relief societies, family service centers, military compensation and benefits information, and a number of additional military and civilian financial resources—for service members and families facing challenging economic times.
- ii. SPECIFIC SERVICES AND PROGRAMS:⁵
 1. **Military OneSource “Money Matters”**⁶ provides financial calculators, articles, and DVDs and CDs regarding financial wellness, how-to strategies, sample budgets, mortgages, and foreclosures.
 2. **Military OneSource consultants** are available daily and provide up to twelve sessions per person of free, confidential financial counseling with a certified financial professional.

¹ Special thanks to Martha Drane and the students at the New England School of Law for preparing this outline.

² For a list of Financial Management Training Documents developed by the Marine Corps Community Service, see <http://www.usmc-mccs.org/finance/documents.cfm?sid=0&smid=4>.

³ Military Homefront, U.S. Department of Defense, <http://www.militaryhomefront.dod.mil/sp/pfm>, referred from U.S. Financial Literacy and Education Commission

⁴ <http://www.militaryhomefront.dod.mil/sp/pfm/resources>

⁵ <http://www.militaryhomefront.dod.mil/l/pfm>

⁶ Upcoming Webinar topic covers planning a budget and meeting financial goals: <http://www.militaryonesource.com/MOS/OnlineCommunity/Webinars.aspx>

3. **Financial professionals** are available at military installations to provide on-site group financial counseling, workshops, classes, and one-on-one private financial counseling. Services include prevention education, mandatory classes and training, debt liquidation assistance, consumer advocacy services and complaint resolution, coordination with emergency financial assistance organizations, and financial classes for youth and teens. Financial professionals also provide services for individual unit and command-level events (e.g., family days, deployment readiness briefings) through the Joint Family Resource Center.
 - a. Hanscom AFB (MA), Ft. Devens (MA), Naval Submarine New London (CT), Portsmouth Naval Shipyard (NH), Naval Station Newport (RI), and Westover ARB (MA) are all within 100 miles of Boston.

II. RECEIVING FEDERAL BENEFITS

A. *Electronic Transfer Accounts (ETA)* were designed by the U.S. Department of Treasury; ETAs are accounts for recipients of Federal payments, including military retirement and veterans benefits.⁷

i. **ELIGIBILITY:** Any individual who receives a Federal benefit, wage, salary, or retirement payment can to open an ETA at a participating bank, credit union, or savings and loan. An ETA may be jointly held.

ii. **BENEFITS**⁸:

1. Even if an individual has bad credit, an ETA provider must open an ETA for the recipient of the Federal benefit, unless:

- a. the financial institution knows that the individual previously held an ETA that was closed because of fraud at any financial institution; or
- b. the institution, for reasons of fraud or account misuse, previously closed an ETA held by the individual at that institution.

⁷ Social Security Administration, Electronic Transfer Account, [http:// www.ssa.gov/deposit/lowcost.htm](http://www.ssa.gov/deposit/lowcost.htm); Electronic Transfer Account (ETA), <https://www.eta-find.gov/Index.cfm>.

⁸ For a detailed list of Frequently Asked Questions, *see* Electronic Transfer Account (ETA)—Facts, Frequently Asked Questions about ETA, <https://www.eta-find.gov/ETAFactsPage5.cfm>.

2. ETA Providers must provide monthly statements and allow their ETA customers a minimum of four free withdrawals per month.
 3. When withdrawing money, the individual will receive cash through one of the following methods:
 - a. at an automated teller machine (ATM); or over-the-counter at the ETA Provider's main office or branch locations; or
 - b. through a combination of ATM and over-the-counter transactions.
- iii. MA PROVIDERS: there are fourteen ETA providers in MA and 761 total branch locations.⁹ The providers include: Bankfive; Bay State Savings Bank; Commerce Bank & Trust; Eagle Bank; East Boston Savings Bank; Jeanne D Arc Credit Union; Metabank; Monadnock Community Bank; National Grand Bank of Marblehead; North Cambridge Co-Operative Bank; Northmark Bank; Riverbank; Taunton Federal Credit Union; and Wrentham Co-Operative Bank.

B. *Veterans Administration (VA) loan*: Veterans can qualify for a VA loan that does not require a downpayment and has low closing costs by contacting the U.S. Department of Veterans Affairs Loan Guaranty Service at 888-244-6711 and by requesting VA Form 26-1880, Request for a Certificate of Eligibility for Home Loan Benefits.¹⁰

- i. ELIGIBILITY: veterans; active duty personnel; reservists/national guard members; some surviving spouses may apply and the individual must:
 1. Either live in the home as their primary residence; or
 2. Must qualify in terms of income and credit.
- ii. PROCESS: an individual will obtain a loan from a private lender, and the VA then “stands behind” the loan with that lender. If something goes wrong and the individual cannot make the payments, the lending institution can come to VA to cover any losses they might incur. The *VA loan guaranty* is this “insurance” that we provide the lender.
- iii. BENEFITS:

⁹ Search For Providers by State, <https://www.eta-find.gov/SearchForProvidersByState.cfm> (select MA to view a list of specific branch locations).

¹⁰ <http://www.benefits.va.gov/homeloans/eligibility.asp>

1. An individual buy a home without a down payment—as long as the sales price doesn't exceed the appraised value (one must qualify in terms of income and credit);
2. An individual does not need to buy private mortgage insurance;
3. VA rules limit the amount an individual can be charged for closing costs;
4. Closing costs *may* be paid by the seller;
5. The lender can't charge an individual a penalty fee if he or she pays the loan off early; and
6. VA may be able to provide an individual some assistance if he or she has trouble making payments.

III. **FACING A FINANCIAL EMERGENCY:** Each military branch offers an associated, non-profit organization assisting service members and their families during a financial crisis. Through these organizations, service members can request grants and interest-free loans if they demonstrate a valid need for emergency financial assistance. Emergency transportation, funeral expenses, medical/dental bills, food, rent, utilities, disaster relief, child care expenses, essential vehicle repair, or any other unforeseen family emergencies are considered valid requests for financial assistance. The following are not considered a financial emergency: non-essentials, vacations, legal expenses, taxes, or expenses associated with living beyond one's means.

A. *Army Emergency Relief (AER)*¹¹

- i. Available to soldiers on extended active duty and dependents, members of Army National Guard and U.S. Army Reserve on continuous duty for more than 30 days and their dependents, soldiers retired because of longevity or physical disability or retired upon reaching age 60 (Reserve Components) and their dependents, widows and widowers of soldiers who died while on active duty or after they retired (Toll free: 1-866-878-6378).

B. *Navy-Marine Corps Relief Society (NMCRS)*¹²

- i. Available to active duty and retired active and reserve component Sailors and Marines, eligible family members, reservists on extended active duty greater than 30 days, indigent widows and mothers (over

¹¹ <http://www.aerhq.org/>

¹² <http://www.nmcrs.org/>

age 65) of the deceased, ex-spouses who have not remarried who were married to a Sailor or Marine during 20 years of active duty.

- ii. Closest locations: Groton, CT; Newport, RI; Portsmouth, NH, Newburgh, NY

C. *Air Force Aid Society (AFAS)*¹³

- i. Available to Active duty Air Force personnel and their eligible family members, Retired Air Force personnel and their eligible family members, but not on a continuing basis, and based on a case-by-case review, Air National Guard or Air Force Reserve personnel away from home station on extended active duty 15 days or more under Title 10 USC, Spouses and dependent age children of deceased Air Force personnel (who died on active duty or in retired status) (Toll free: 1-800-769-8951).

D. *Coast Guard Mutual Assistance (CGMA)*¹⁴

- i. Available to active duty members, retired military personnel, civilian employees, reserve members, auxiliary members, PHS officers and Chaplains, CGMA employees, immediate family members, and surviving family members (Toll Free: (800) 881-2462)

¹³ <http://www.afas.org/>

¹⁴ <http://www.cgmahq.org/>

Appendix B

Punitive Articles of the UCMJ Article 123a—Making, drawing, or uttering check, draft, or order without sufficient funds

“Any person subject to this chapter who—”

(1) “for the procurement of any article or thing of value, with intent to defraud; or”

(2) “for the payment of any past due obligation, or for any other purpose, with intent to deceive; makes, draws, utters, or delivers any check, draft, or order for the payment of money upon any bank or other depository, knowing at the time that the maker or drawer has not or will not have sufficient funds in, or credit with, the bank or other depository for the payment of that check, draft, or order in full upon its presentment, shall be punished as a court-martial may direct. The making, drawing, uttering, or delivering by a maker or drawer of a check, draft, or order, payment of which is refused by the drawee because of insufficient funds of the maker or drawer in the drawee’s possession or control, is prima facie evidence of his intent to defraud or deceive and of his knowledge of insufficient funds in, or credit with, that bank or other depository, unless the maker or drawer pays the holder the amount due within five days after receiving notice, orally or in writing, that the check, draft, or order was not paid on presentment. In this section, the word “credit” means an arrangement or understanding, express or implied, with the bank or other depository for the payment of that check, draft, or order.”

Elements.

(1) *For the procurement of any article or thing of value, with intent to defraud.*

(a) That the accused made, drew, uttered, or delivered a check, draft, or order for the payment of money payable to a named person or organization;

(b) That the accused did so for the purpose of procuring an article or thing of value;

(c) That the act was committed with intent to defraud; and

(d) That at the time of making, drawing, uttering, or delivery of the instrument the accused knew that the accused or the maker or drawer had not or would not have sufficient funds in, or credit with, the bank or other depository for the payment thereof upon presentment.

(2) *For the payment of any past due obligation, or for any other purpose, with intent to deceive.*

(a) That the accused made, drew, uttered, or delivered a check, draft, or order for the payment of money payable to a named person or organization;

(b) That the accused did so for the purpose or purported purpose of effecting the payment of a past due obligation or for some other purpose;

(c) That the act was committed with intent to deceive; and

(d) That at the time of making, drawing, uttering, or delivering of the instrument, the accused knew that the accused or the maker or drawer had not or would not have sufficient funds in, or credit with, the bank or other depository for the payment thereof upon presentment.

Explanation.

(1) *Written instruments.* The written instruments covered by this article include any check, draft (including share drafts), or order for the payment of money drawn upon any bank or other depository, whether or not the drawer bank or depository is actually in existence. It may be inferred that every check, draft, or order carries with it a representation that the instrument will be paid in full by the bank or other depository upon presentment by a holder when due.

(2) *Bank or other depository.* "Bank or other depository" includes any business regularly but not necessarily exclusively engaged in public banking activities.

(3) *Making or drawing.* "Making" and "drawing" are synonymous and refer to the act of writing and signing the instrument.

(4) *Uttering or delivering.* "Uttering" and "delivering" have similar meanings. Both mean transferring the instrument to another, but "uttering" has the additional meaning of offering to transfer. A person need not personally be the maker or drawer of an instrument in order to violate this article if that person utters or delivers it. For example, if a person holds a check which that person knows is worthless, and utters or delivers the check to another, that person may be guilty of an offense under this article despite the fact that the person did not personally draw the check.

(5) *For the procurement.* "For the procurement" means for the purpose of obtaining any article or thing of value. It is not necessary that an article or thing of value actually be obtained, and the purpose of the obtaining may be for the accused's own use or benefit or for the use or benefit of another.

(6) *For the payment.* "For the payment" means for the purpose or purported purpose of satisfying in whole or in part any past due obligation. Payment need not be legally effected.

(7) *For any other purpose.* "For any other purpose" includes all purposes other than the payment of a past due obligation or the procurement of any article or thing of

value. For example, it includes paying or purporting to pay an obligation which is not yet past due. The check, draft, or order, whether made or negotiated for the procurement of an article or thing of value or for the payment of a past due obligation or for some other purpose, need not be intended or represented as payable immediately. For example, the making of a postdated check, delivered at the time of entering into an installment purchase contract and intended as payment for a future installment, would, if made with the requisite intent and knowledge, be a violation of this article.

(8) *Article or thing of value.* "Article or thing of value" extends to every kind of right or interest in property, or derived from contract, including interests and rights which are intangible or contingent or which mature in the future.

(9) *Past due obligation.* A "past due obligation" is an obligation to pay money, which obligation has legally matured before making, drawing, uttering, or delivering the instrument.

(10) *Knowledge.* The accused must have knowledge, at the time the accused makes, draws, utters, or delivers the instrument, that the maker or drawer, whether the accused or another, has not or will not have sufficient funds in, or credit with, the bank or other depository for the payment of the instrument in full upon its presentment. Such knowledge may be proved by circumstantial evidence.

(11) *Sufficient funds.* "Sufficient funds" refers to a condition in which the account balance of the maker or drawer in the bank or other depository at the time of the presentment of the instrument for payment is not less than the face amount of the instrument and has not been rendered unavailable for payment by garnishment, attachment, or other legal procedures.

(12) *Credit.* "Credit" means an arrangement or understanding, express or implied, with the bank or other depository for the payment of the check, draft, or order. An absence of credit includes those situations in which an accused writes a check on a non-existent bank or on a bank in which the accused has no account.

(13) *Upon its presentment.* "Upon its presentment" refers to the time the demand for payment is made upon presentation of the instrument to the bank or other depository on which it was drawn.

(14) *Intent to defraud.* "Intent to defraud" means an intent to obtain, through a misrepresentation, an article or thing of value and to apply it to one's own use and benefit or to the use and benefit of another, either permanently or temporarily.

(15) *Intent to deceive.* "Intent to deceive" means an intent to mislead, cheat, or trick another by means of a misrepresentation made for the purpose of gaining an advantage for oneself or for a third person, or of bringing about a disadvantage to the interests of the person to whom the representation was made or to interests represented by that person.

(16) *The relationship of time and intent.* Under this article, two times are involved: (a) when the accused makes, draws, utters, or delivers the instrument; and (b) when the instrument is presented to the bank or other depository for payment. With

respect to (a), the accused must possess the requisite intent and must know that the maker or drawer does not have or will not have sufficient funds in, or credit with, the bank or the depository for payment of the instrument in full upon its presentment when due. With respect to (b), if it can otherwise be shown that the accused possessed the requisite intent and knowledge at the time the accused made, drew, uttered, or delivered the instrument, neither proof of presentment nor refusal of payment is necessary, as when the instrument is one drawn on a nonexistent bank.

(17) *Statutory rule of evidence.* The provision of this article with respect to establishing prima facie evidence of knowledge and intent by proof of notice and nonpayment within 5 days is a statutory rule of evidence. The failure of an accused who is a maker or drawer to pay the holder the amount due within 5 days after receiving either oral or written notice from the holder of a check, draft, or order, or from any other person having knowledge that such check, draft, or order was returned unpaid because of insufficient funds, is prima facie evidence (a) that the accused had the intent to defraud or deceive as alleged; and (b) that the accused knew at the time the accused made, drew, uttered, or delivered the check, draft, or order that the accused did not have or would not have sufficient funds in, or credit with, the bank or other depository for the payment of such check, draft, or order upon its presentment for payment. Prima facie evidence is that evidence from which the accused's intent to defraud or deceive and the accused's knowledge of insufficient funds in or credit with the bank or other depository may be inferred, depending on all the circumstances. The failure to give notice referred to in the article, or payment by the accused, maker, or drawer to the holder of the amount due within 5 days after such notice has been given, precludes the prosecution from using the statutory rule of evidence but does not preclude conviction of this offense if all the elements are otherwise proved.

(18) *Affirmative defense.* Honest mistake is an affirmative defense to offenses under this article. See [R.C.M. 916\(j\)](#).

Lesser included offenses.

(1) [Article 134](#)—making, drawing, uttering or delivering a check, draft, or order, and thereafter wrongfully and dishonorably failing to maintain sufficient funds

(2) [Article 80](#)—attempts

Maximum punishment.

(1) *For the procurement of any article or thing of value, with intent to defraud, in the face amount of:*

(a) *\$500.00 or less.* Bad-conduct discharge, forfeiture of all pay and allowances, and confinement for 6 months.

(b) *More than \$500.00.* Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 5 years.

(2) *For the payment of any past due obligation, or for any other purpose, with intent to deceive.* Bad-conduct discharge, forfeiture of all pay and allowances, and confinement for 6 months.

Punitive Articles of the UCMJ Article 134—(Debt, dishonorably failing to pay)

Elements.

- (1) That the accused was indebted to a certain person or entity in a certain sum;
- (2) That this debt became due and payable on or about a certain date;
- (3) That while the debt was still due and payable the accused dishonorably failed to pay this debt; and
- (4) That, under the circumstances, the conduct of the accused was to the prejudice of good order and discipline in the armed forces or was of a nature to bring discredit upon the armed forces.

Explanation. More than negligence in nonpayment is necessary. The failure to pay must be characterized by deceit, evasion, false promises, or other distinctly culpable circumstances indicating a deliberate nonpayment or grossly indifferent attitude toward one's just obligations. For a debt to form the basis of this offense, the accused must not have had a defense, or an equivalent offset or counterclaim, either in fact or according to the accused's belief, at the time alleged. The offense should not be charged if there was a genuine dispute between the parties as to the facts or law relating to the debt which would affect the obligation of the accused to pay. The offense is not committed if the creditor or creditors involved are satisfied with the conduct of the debtor with respect to payment. The length of the period of nonpayment and any denial of indebtedness which the accused may have made may tend to prove that the accused's conduct was dishonorable, but the court-martial may convict only if it finds from all of the evidence that the conduct was in fact dishonorable.

Lesser included offenses. None.

Maximum punishment. Bad-conduct discharge, forfeiture of all pay and allowances, and confinement for 6 months.

Appendix C



Veteran Borrowers in Delinquency

Quick Reference Sheet

General Guidance

The US Department of Veterans Affairs urges all veterans who are encountering problems making their mortgage payments to speak with their servicers as soon as possible to explore options to avoid foreclosure. Contrary to popular opinion, servicers really do *not* want to foreclose because foreclosure costs a lot of money. Depending on a veteran's specific situation, servicers may offer any of the following options to avoid foreclosure:

- Repayment Plan – The borrower makes regular installment each month plus part of the missed installments.
- Special Forbearance – The servicer agrees not to initiate foreclosure to allow time for borrowers to repay the missed installments. An example of when this would be likely is when a borrower is waiting for a tax refund.
- Loan Modification - Provides the borrower a fresh start by adding the delinquency to the loan balance and establishing a new payment schedule.
- Additional time to arrange a private sale – The servicer agrees to delay foreclosure to allow a sale to close if the loan will be paid off.
- Short Sale – When the servicer agrees to allow a borrower to sell his/her home for a lesser amount than what is currently required to payoff the loan.
- Deed-in-Lieu of Foreclosure - The borrower voluntarily agrees to deed the property to the servicer instead of going through a lengthy foreclosure process.

Servicemembers Civil Relief Act

Veteran borrowers may be able to request relief pursuant to the Servicemembers Civil Relief Act (SCRA). In order to qualify for certain protections available under the Act, his or her obligation must have originated prior to the current period of active military service. SCRA may provide a lower interest rate for up to one year, and provide forbearance, or prevent foreclosure or eviction up to nine months from period of military service.

Assistance to Veterans with VA-Guaranteed Home Loans

When a VA-guaranteed home loan becomes delinquent, VA provides supplemental servicing assistance to help cure the default. The servicer has the primary responsibility of servicing the loan to resolve the default. However, in cases where the servicer is unable to help the veteran borrower, Loan Guaranty has Loan Technicians in eight Regional Loan Centers and two special servicing centers who take an active role in interceding with the servicer to explore all options to avoid foreclosure.

Veterans with VA-guaranteed home loans can call **(877) 827-3702** to reach the nearest Loan Guaranty office where loan specialists are prepared to discuss potential ways to help save the loan.

For more information go to www.benefits.va.gov/homeloans, or call **(877) 827-3702**



Veteran Borrowers in Delinquency

Quick Reference Sheet

(cont'd)

Assistance to Veterans with non-VA Guaranteed Home Loans

For a veteran or service member who may have obtained a conventional or sub-prime loan, VA has a network of eight Regional Loan Centers and two special servicing centers that can offer advice and guidance. Borrowers may visit VA's Loan Guaranty website at www.benefits.va.gov/homeloans or call toll free (877) 827-3702 to speak with a VA Loan Technician. However, unlike the case of a veteran or service member with a VA-guaranteed home loan, VA does not have the legal authority or standing to intervene on the borrower's behalf. Therefore, it is imperative that a borrower contacts his/her servicer as quickly as possible.

VA Refinancing of a non-VA Guaranteed Home Loan

Veterans with conventional home loans now have new options for refinancing to a VA-guaranteed home loan. These new options are available as a result of the Veterans' Benefits Improvement Act of 2008, which the President signed into law on October 10, 2008. Veterans who wish to refinance their subprime or conventional mortgage may now do so for up to 100 percent of the value of the property, which is up from the previous limit of 90 percent.

Additionally, Congress raised VA's maximum loan amount for these types of refinancing loans to \$729,750 depending on where the property is located (this limit is significantly higher in Guam, Alaska, and Hawaii). These changes will allow more qualified veterans to refinance through VA, allowing for savings on interest costs and avoiding foreclosure. A VA refinancing loan may help a veteran who is facing a big payment increase.

Other Assistance for Delinquent Veteran Borrowers

If VA is not able to help a veteran borrower retain his/her home (whether a VA-guaranteed loan or not), the HOPE NOW Alliance may be of assistance. HOPE NOW is a joint alliance consisting of servicers, counselors, and investors whose main goal is to assist distressed borrowers retain their homes and avoid foreclosure. They have expertise in financial counseling, as well as programs that take advantage of relief measures that VA can not. HOPE Now provides outreach, counseling and assistance to homeowners who have the willingness and ability to keep their homes but are facing financial difficulty as a result of the crisis in the mortgage market. The HOPE NOW Alliance can be reached at (888) 995-HOPE (4673), or by visiting www.hopenow.com.

For more information go to www.benefits.va.gov/homeloans, or call (877) 827-3702