Service Members Civil Relief Act of 2003

Introduction

The Servicemembers Civil Relief Act of 2003 (SCRA) was signed into law on December 19, 2003, amending and replacing the Soldiers' and Sailors' Civil Relief Act of 1940, and is codified at 50 U.S.C. App. 501 et seq. It was further amended December 10, 2004, by the Veterans Benefits Improvement Act of 2004. The law protects members of the Army, Navy, Air Force, Marine Corps and Coast Guard, including members of the National Guard, as they enter military service (active duty[1]), as well as commissioned officers of the Public Health Service and the National Oceanic and Atmospheric Administration engaged in active service. Some of the benefits accorded servicemembers by the SCRA also extend to servicemembers' spouses, dependents, and other persons subject to the obligations of servicemembers. The Foreclosure Relief and Extension for Servicemembers Act of 2014 (FRESA) FRESA recently amended several sections of this law, extending the time period for certain activities [2] Major relief provisions of the SCRA include:

Maximum Rate of Interest on Loans, Including Mortgages

Upon receiving a written notice and a copy of a servicemember's military orders, creditors must, for the duration of the servicemember's military service, reduce the interest[3] rate on debts[4] incurred by the servicemember, or a servicemember and spouse jointly, before entry into military service to no more than 6 percent per year. (This applies to the individual servicemember's debt or joint debt with a spouse.)

Creditors shall not condition the granting of benefits upon the use of a specific form or require that a written notice explicitly request benefits. Creditors shall accept copies of borrowers' military orders as written notice of eligibility for reduced interest rates pursuant to the SCRA via email facsimile, mail, or overnight delivery. Creditors shall also accept borrowers' requests for any form of military deferment or forbearance as written notice of eligibility for reduced interest rates pursuant to the SCRA.

Upon receipt of notice, creditors must retroactively reduce the interest rate on servicemember's debts as of the date on which the servicemember was called to military service, in the case of a reservist or inductee, the day on which the servicemember received his or her orders.[5] Creditors must maintain the interest rate reduction for the duration of the servicemember's period of military service. [6] Additionally, in the case of a mortgage, trust deed, or other security in the nature of a mortgage, creditors must extend this interest rate reduction for one year after the end of the servicemember's military service.[7]

Creditors who reduce the interest rate on the obligations of a servicemember must forgive interest in excess of 6 percent.

The reduced interest rate provision applies unless a court finds the ability of the servicemember to pay interest on the debt at a higher interest rate is not materially affected by his or her military service. In such cases, the court may grant a creditor relief from the interest rate limitations of the Act.

Residential and Motor Vehicle Purchases and Leases

Contracts for the purchase of real or personal property, for which the servicemember has paid a deposit or made a payment before the servicemember enters military service, may not be rescinded or terminated after the servicemember's entry

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1 In the case of servicemembers who are members of the Army, Navy, Marine Corps, or Coast Guard, 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 USC § 101(d). Note the term "military service" under the SCRA also includes National Guard members under a call of duty authorized by the President or the Secretary of Defense for more than 30 consecutive days and servicemembers who are commissioned officers of the Public Health Service and the National Oceanic and Atmospheric Administration engaged in "active service." 50 U.S.C. app. 511(2)(B).

2 Pub. L. No. 113-286 (Dec. 18, 2014).

3 "Interest" is defined in the SCRA to include service and renewal charges or any other fees or charges, except for charges for bona fide insurance. 50 U.S.C. app. 527(d).

4 Section 1007 of the SCRA, 50 U.S.C. App. §527, applies to "an obligation or liability . . . incurred by the servicemember, or the servicemember and the servicemember's spouse jointly, before the service member enters military service."

5 50 U.S.C. App. §§ 516 and 527.

6 Creditors cannot schedule these benefits to terminate automatically at any point prior to the date on which the servicemember leaves the service, nor can creditors require servicemembers to periodically reapply or recertify their eligibility to maintain benefits.

7 The extension of the interest rate reduction for mortgages for an additional one-year period after the end of military service was added by section 2203(b) of Housing and Economic Recovery Act of 2008 (HERA), which was signed into law on July 30, 2008. Although these additional protections were scheduled to expire, Congress has repeatedly extended them (most recently on Dec. 18, 2014). Unless further extended, these additional protections will expire on December 31, 2015.

into military service for a breach of the terms of the contract occurring before or during their military service, or the property repossessed because of the breach without a court order.

Termination of certain residential or motor vehicle leases may be made at the option of the lessee servicemember if the servicemember provides to the lessor or the lessor's agent written notice of the request for termination along with a copy of the military orders.

Automobiles leased for personal or business use by the servicemember or his dependent may be terminated by the servicemember, if after the lease is executed, the servicemember enters military service for a period of 180 days or more.

Additionally, an automobile lease entered into while the servicemember is on active duty may be terminated by the servicemember if he or she receives military orders for a permanent change of station (PCS) outside the continental United States (this would include a PCS to Hawaii or Alaska) or deployment for a period of 180 days or more.

Termination of an automobile lease also includes the return of the automobile to the lessor within 15 days after delivery of the written notice of termination.

Termination is permitted of pre-service "residential, professional, agricultural, or similar" leases occupied or intended to be occupied by a servicemember or a dependent as well as those leases executed during military service where the servicemember subsequently receives orders for a PCS or a deployment for a period of 90 days or more.

Foreclosure, Eviction from Bank-Owned Property

Real or personal property owned by a servicemember before the servicemember's military service that secures a mortgage, trust deed, or similar security interest cannot be sold, foreclosed upon, or seized based on a breach of such a secured obligation during the period of military service or one year thereafter without a court order. [8] Additionally, in an action filed during or within one year after a servicemember's military service, a court may, after a hearing on its own, or shall, upon application by a servicemember, stay a proceeding to enforce an obligation as described above or adjust the debt, when the member's ability to comply with the obligation is materially affected by reason of the member's military service.[9]

A landlord may not evict a servicemember or his or her dependents from certain residences[10] occupied primarily as a residence during a period of military service except by court order.

A creditor must notify the homeowner by a statement or notice, written in plain English by the Secretary of Housing and Urban Development, in consultation with the Secretary of Defense and the Secretary of Treasury, explaining the mortgage and foreclosure rights of servicemembers, and the dependents of such servicemembers, under the Servicemembers Civil Relief Act (50 U.S.C. App. 501 et seq.), including the toll-free military one source number to call if servicemembers, or the dependents of such servicemembers, require further assistance.

Life Insurance Assigned as Security

If a life insurance policy on the life of a servicemember is assigned before military service to secure the payment of an obligation, the assignee of the policy (except the insurer in connection with a policy loan) may not exercise, during the period of the servicemember's military service or within one year thereafter, any right or option obtained under the assignment, absent compliance with a court order or other specified requirement.

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8 Any sale or foreclosure made in violation of this provision shall be void. *See* section 303(c) of the SCRA, 50 U.S.C. App. § 533(b). Originally, this provision applied only to sales, foreclosures, or seizures of property which occurred during or within 90 days after a servicemember's period of service. In 2008, this protection was temporarily extended from 90 days to 9 months pursuant to section 2203 of HERA. In 2012, this provision was further amended to temporarily extend the protections from 9 months to one year. Pub. L. No. 112-154 (Aug. 6, 2012), as amended by Section 2 of FRESA. In the absence of further legislation, these extensions will expire on Dec. 31, 2015, and on January 1, 2016, section 303(c) of the SCRA will once again only apply to sales, foreclosures, or seizures of property occurring during or within 90 days after a servicemember's period of service.

9 Section 303(b) of the SCRA, 50 U.S.C. App. § 533(b). As with section 303(c) of the SCRA, discussed above, this provision originally only applied to proceedings filed during or within 90 days after a servicemember's period of service. This period was temporarily extended for up to one year after service. Pub. L. No. 112-154 (Aug. 6, 2012), as amended by Section 2 of FRESA. In the absence of further legislation, this extension will expire on Dec. 31, 2015, and on January 1, 2016, section 303(b) of the SCRA will once again only apply to proceedings occurring during or within 90 days after a servicemember's period of service.

10 The law as originally passed by Congress applied to dwellings with monthly rents of $2,400 or less. Accordingly, evictions involving residences with monthly rents of $2,400 or less needed a court order. This amount is adjusted yearly and is published in the Federal Register by the Department of Defense. The rent ceiling is adjusted annually for inflation and in 2014 the amount wasis $3,217.81.. This annual adjustment is generally announced in February.

Adverse Action

The fact that a servicemember applies for, or receives a stay, postponement, or suspension of his or her obligations or liabilities pursuant to the SCRA may not in itself provide the basis for the following:

A determination by a lender or other person that the servicemember is unable to pay the obligation or liability in accordance with its terms;

A creditor's denial or revocation of credit, change in terms of an existing credit arrangement, or refusal to grant credit to the servicemember in substantially the amount or on substantially the terms requested;

An adverse report relating to the creditworthiness of the servicemember by or to a consumer reporting agency;

A refusal by an insurer to insure the servicemember;

An annotation in a servicemember's record by a creditor or a person engaged in the practice of assembling or evaluating consumer credit information identifying the servicemember as a member of the National Guard or a reserve component; or

A change in the terms offered or conditions required for the issuance of insurance.

Relief for Other Obligors

Whenever a court grants a stay, postponement, or suspension to a servicemember on an obligation, it may similarly grant a person primarily or secondarily liable such a stay, postponement, or suspension.

Examination Objectives

1. Determine the institution's compliance with the provisions of the SCRA, as applicable, to the institution's product offering and operations, including management of other real estate owned where a servicemember or his/her dependents may be tenants.

2. Assess the quality of the institution's compliance risk management systems and its policies and procedures for implementing the provisions.

3. Determine the reliance that can be placed on the institution's internal controls and procedures for monitoring the institution's compliance with the provisions.

4. Determine corrective action when violations of law are identified or when the institution's policies or internal controls are deficient.

Examination Procedures[11]

General

1. Through discussions with management and review of available information, determine whether the institution's internal controls are adequate to ensure compliance with the SCRA. Consider:

   - policies and procedures
   - account documentation
   - checklists
   - computer program documentation, including any computer program testing and validation.

2. Determine the extent and adequacy of the training received by individuals whose responsibilities relate to compliance with the regulation. Review any training materials pertaining to the Act and determine if the training is comprehensive and covers the various aspects of the provisions that apply to the creditor's offerings and operations.

3. Review compliance reviews or audit materials, including work papers and reports, to determine if:

   - The scope of any audits address all provisions of the SCRA, as applicable;
   - Transaction testing includes samples covering relevant product types and decision centers (for example, mortgage and credit card processing centers);
   - The work performed is accurate;
   - Significant deficiencies and their causes are included in reports to management or to the Board of Directors;
   - Management has taken corrective actions to follow-up on previously identified deficiencies; and,
   - The frequency of review/audit is appropriate.

4. If any complaints based on the SCRA have been filed against the institution, determine:

[11] These reflect the interagency examination procedures in their entirety.

- Why were they filed, and
- How they were resolved.

5. If the institution has received any actual requests for relief under the SCRA, determine whether appropriately trained staff reviewed the requests and if appropriate records are maintained.

Interest Rate Reduction for Loans, Including Mortgages

6. Determine how the institution handles requests for interest rate reductions under the SCRA on an obligation incurred by a servicemember or by a servicemember and spouse jointly, before the servicemember entered military service.

7 Determine how the institution calculates the reduced interest rate. Does the institution include all service and renewal charges, as well as other fees and charges, with the exception of charges for bona fide insurance?

8. Determine whether the institution applies the interest rate reduction effective as of the date the servicemember was called to military service.

9. Determine whether the institution applies the interest rate reduction throughout the term of the servicemember's military service for all credit products. In the case of a mortgage, the institution must continue to apply the interest rate reduction for a one- year period following the termination of military service.

Residential and Motor Vehicle Leases

10. Determine, in the case of a residential lease entered into before the servicemember entered into military service or executed by the servicemember while in military service but who subsequently receives orders for a permanent change of station or for a deployment of at least 90 days, that the institution permits the servicemember to terminate the lease.

11. Determine if the institution permits the servicemember to terminate a motor vehicle lease where:

    - The motor vehicle lease is for personal or business use by the servicemember or his/her dependent; and,
    - The lease is executed by the servicemember before he/she enters military service for a period of 180 days or more, or
    - The servicemember, while in military service, executes the lease and subsequently receives military orders for a PCS outside of the continental United States (this include a PCS to Hawaii or Alaska), or deployment with a military unit for a period of 180 days or more.

Foreclosure, Eviction from Bank-Owned Property

12. Determine, in the case of an institution acting as a landlord, that the institution does not evict a servicemember or his/her dependents[12] from a residence covered by the Act occupied primarily as a residence during a period of military service except by court order.

13. Determine whether, in the case of real or personal property owned by a

    - service member before the servicemember's military service and is secured by a mortgage, trust deed, or similar security interest, the institution obtains a court order before initiating the sale, foreclosure, or seizure based on a breach of such a secured obligation during the period of military service or nine months thereafter.

Installment Contracts

14. Determine, in the case of an institution that finances or purchases installment contracts for the purchase of real or personal property, that where a servicemember has paid a deposit or made a payment before entering military service, that the contract was not rescinded or terminated by the institution after the servicemember's entry into service, absent a court order for a breach of the terms of the contract occurring before or during the military service, or the property repossessed because of the breach.

Insurance Assigned as Security for a Loan

15. Determine, in the case of an insurance policy on the life of a servicemember that is assigned before the servicemember's military service as security for an obligation, that the institution does not exercise, during a period of military service or within one year thereafter, any right or option obtained under the assignment, absent a court order. This prohibition does not apply—

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12 Dependents are defined in the SCRA as (a) the servicemember's spouse, (b) the servicemember's child, or (c) an individual for whom the servicemember provided more than one-half the individual's support for 180 days preceding an application for relief under the SCRA.

- if the assignee has written consent of the insured servicemember, obtained during his/her military service;
- when the premiums on the policy are due and unpaid; or
- upon the death of the insured.

Adverse Action

16. Determine, in the case of an application from or receipt by a servicemember of a stay, postponement, or suspension of an obligation, that the institution does not use such action as a basis of:

- a determination that the lender is unable to pay the obligation or liability in accordance with its terms;
- denial or revocation of credit; change in terms of an existing credit; or refusal by the creditor to grant credit to the servicemember in substantially the same amount or terms; or
- an adverse credit report or reference.

Examination Conclusions

17. Conclude the examination after taking the following actions:

- Fully address identified deficiencies and violations, if any
- Attach appropriate supporting workpaper documentation
- Discuss findings with management and board of directors
- Write comments, as applicable, in the Report of Examination
- Include appropriate violation write-ups
- Discuss proposed enforcement action, if needed

References:

Servicemembers Civil Relief Act, Pub. L. 108-189 (codified at 50 U.S.C. App. 501 et seq.

http://ra.defense.gov/documents/mobil/pdf/scra.pdf

Veterans Benefits Improvement Act of 2004, Pub. L. 108-454

Housing and Economic Recovery Act of 2008, Pub. L. 110-289

20 U.S.C. § 1078(d), Federal payments to reduce student interest costs

Foreclosure Relief and Extension for Servicemembers Act of 2014, Pub. L. 113-286

Examination Checklist – Servicemembers Civil Relief Act		
	Yes	**No**
Section 518 - Exercise of Rights Under Act Not to		
1. Does the creditor refrain from taking adverse action against a servicemember solely because the servicemember exercised rights under the Act? (50 U.S.C. App. § 518) **(If No, cite a violation of Section 518.)**		
Section 527 - Maximum Rate of Interest on		
1. Did the creditor reduce the interest rate on obligations of a servicemember or of a servicemember jointly with the servicemember's spouse, incurred before military service, to no more than 6 percent during the period of military service upon receipt of written notice and a copy of the servicemember's military orders? (527(a)(1)) Note that in the case of a mortgage, the 6 percent cap extends to one year following the end of military service. Interest under the SCRA includes all service, renewal, or other charges and fees with the exception of bona fide insurance charges. **(If No, cite a violation of Section 527(a)(1).)**		
2. Did the creditor forgive interest in excess of 6 percent? (527(a)(2)) **(If No, cite a violation of Section 527(a)(2).)**		
3. Did the creditor reduce any periodic payment due by the servicemember by the amount of the interest forgiven? (527(a)(3)) **(If No, cite a violation of Section 527(a)(3).)**		
4. Upon receipt of the written notice from the servicemember and a copy of the military orders, did the creditor apply the interest rate reduction retroactively to the date on which the servicemember is called to military service? (527(b)(2)) **(If No, cite a violation of Section 527(b)(2).)**		
Section 532 - Protection Under Installment		
1. Did the creditor obtain a court order before rescinding or terminating contracts by a servicemember for the purchase, lease, or bailment of real or personal property (including a motor vehicle) for any breach of terms occurring before or during military service, provided a deposit or installment had been paid before entry into military service? Similarly, did the creditor obtain a court order before repossessing property due to breach of terms? (532(a)) **(If No, cite a violation of Section 532(a).)**		
Section 533 - Mortgages and Trust Deeds		
1. Did the creditor obtain a court order before selling, foreclosing, or seizing real or personal property due to a breach of an obligation by a servicemember during the period of military service or within one year after without a court order? (533(c)) Note that HERA and subsequent amendments to HERA sunset the one year extension on December 31, 2015, and the SCRA reverts to the original statutory provision of 90 days **(If No, cite a violation of Section 533(c).)**		
Section 535 - Termination of Residential or Motor Vehicle License		
1. Did the creditor terminate the lease within the stipulated time once the requirements for termination were met by the servicemember lessee? (535(d)) **(If No, cite a violation of Section 535(d).)**		

Examination Checklist – Servicemembers Civil Relief Act		
	Yes	**No**
2. Did the creditor refund the lease amounts paid in advance for a period after the effective date of termination within 30 days of the effective date of the termination of the lease? (535(e) **(If No, cite a violation of Section 535(e).)**		
Section 536 - Protection of Life Insurance Policy		
1. Did the creditor obtain a court order before exercising any right or option obtained under an assignment of the servicemember's life insurance policy made before the servicemember's military service during the period of military service or within one year thereafter? (536(a)) (**If No, cite a violation of Section 536(a).)**		