

SERVICE MEMBERS CIVIL RELIEF ACT OF 2003 (SCRA)

OVERVIEW

The Service Members 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**), 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 service members by the SCRA also extend to service members' spouses, dependents, and other persons subject to the obligations of service members. The Housing and Economic Recovery Act of 2008 (HERA) amended several sections of this law, extending the time period for certain activities. The Helping Heroes Keep Their Homes Act of 2010 extended protections related to mortgages and foreclosures through December 31, 2012. The Veterans Disability Protection Act of 2010 added provisions for the US Attorney General to bring civil actions, including for monetary damages, under the SCRA and established a private right of action for violations. The Honoring America's Veterans and Caring for Lejeune Families Act of 2012 further extended timelines for stays of foreclosure proceedings. Major relief provisions of the SCRA include:

(In the case of service members 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." 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 service members 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).)

Maximum Rate of Interest on Loans, Including Mortgages

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

("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 207 of the SCRA, 50 U.S.C. app. 527, applies to "an obligation or liability . . . incurred by the service member, or the service member and the service member's spouse jointly, before the service member enters military service." No distinction is made between personal versus business credit.

However, according to a U.S. Department of Education memorandum, the SCRA limitation on interest rates does not apply to federally insured student loans based on 20 U.S.C. § 1078(d), which states that no provision of any federal or

state law that limits the interest rate on a loan, will apply to loans made under a government student loan program. Nonetheless, the other provisions of the SCRA, including those providing for a stay of proceedings and reopening default judgments, remain available to service members.)

Creditors must maintain the interest rate reduction for the period of military service. In the case of a mortgage, trust deed, or other security in the nature of a mortgage, the interest rate reduction extends for one year after the end of the service member's military service.

(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 HERA, which was signed into law on July 30, 2008. This is a permanent change added by Section 2203(b) of HERA. Section 2203(a) of HERA extended the stay, adjustment, sale, foreclosure, and seizure provisions from 90 days to 9 months following the end of the service member's period of military service. This time period was amended to one year following the end of the service member's period of service by Public Law 112-154, Honoring America's Veterans and Caring for Camp Lejeune Families Act of 2012. This provision will sunset on December 31, 2014 and the 9 month time period will again be in effect.

Creditors who reduce the interest rate on the obligations of a service member must forgive interest in excess of 6 percent. The reduced interest rate provision applies unless a court finds the ability of the service member 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 service member has paid a deposit or made a payment before the service member enters military service, may not be rescinded or terminated after the service member's entry 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 service member if the Service member 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 service member or his dependent may be terminated if the service member, after the lease is executed, enters military service for a period of 180 days or more. Additionally, an automobile lease entered into while the service member is on active duty may be terminated if the service member 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 service member or a dependent as well as those leases executed during military service where the service member 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 service member before the service member'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. Additionally, in an action filed during or within one year after a service member's military service, a court may, after a hearing on its own, or shall, upon application by a service member, 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.

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

(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 figure as of January 1, 2013, is \$2,932.31. This annual adjustment is generally announced in February.)

Life Insurance Assigned as Security

If a life insurance policy on the life of a service member 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 service member'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.

The SCRA also updates life insurance protections provided to activate guard and reserve members by increasing from \$10,000 to \$250,000 the maximum policy coverage that the Federal government will protect from default for nonpayment while on active duty.

Adverse Action

The fact that a service member 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 service member 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 service member in substantially the amount or on substantially the terms requested;

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

A refusal by an insurer to insure the service member;

An annotation in a service member's record by a creditor or a person engaged in the practice of assembling or evaluating consumer credit information identifying the service member 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 service member on an obligation, it may similarly grant a person primarily or secondarily liable such a stay, postponement, or suspension.

Criminal Penalties

The SCRA, section 527(e), provides criminal fines and penalties of up to one year in prison for persons who knowingly violate Section 527(a) regarding interest rate reductions. Section 533(d) also provides fines and misdemeanor penalties for persons who knowingly violate the foreclosure stay provisions.

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 service member 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

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 addresses 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:

- 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 service member or by a service member and spouse jointly, before the service member 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 service member was called to military service.

9. Determine whether the institution applies the interest rate reduction throughout the term of the service member'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 service member entered into military service or executed by the service member 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 service member to terminate the lease.

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

- The motor vehicle lease is for personal or business use by the service member or his/her dependent; and,
- The lease is executed by the service member before he/she enters military service for a period of 180 days or more, or

- The service member, 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 Credit Union-Owned Property

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

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

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

- service member before the service member'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 one year thereafter, until December 31, 2014.

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 service member 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 service member'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 service member that is assigned before the service member'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—

- if the assignee has written consent of the insured service member, 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 service member 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 service member in substantially the same amount or terms; or
- an adverse credit report or reference.

17. Complete the following Aires questionnaires:

Ln – SCRA	<input type="checkbox"/>
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Examination Conclusions

18. 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

REFERENCE

FDIC's Compliance Examination Manual