

Servicemembers Civil Relief Act of 2003

PURPOSE

To provide uniform procedures for reviewing financial institutions' compliance with the Servicemembers Civil Relief Act (SCRA or Act) during comprehensive examinations.

BACKGROUND

The 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 USC App. 501 *et seq.* It was further amended

L I N K S

[Program](#)

[Questionnaire](#)

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 duty¹), 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 to servicemembers by the SCRA also extend to servicemembers' spouses, dependents and other persons subject to the obligations of servicemembers. The Housing and Economic Recovery Act of 2008 (HERA) recently amended several sections of this law, extending the time period for certain activities. Major relief provisions of the SCRA include the following:



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 USC app. 511(2)(B)).

Maximum Rate of Interest on Loans, Including Mortgages

- Upon receiving a written request for relief and a copy of the servicemember's military orders, creditors must, for the duration of the servicemember's military service, reduce the interest² rate on debts³ incurred by the servicemember, or a servicemember and spouse jointly, prior to entry into military service to no more than six percent per year. (This applies to the individual servicemember's debt or joint debt with a spouse.)
- Creditors must maintain the interest rate reduction for the period of military service, except in the case of a mortgage, trust deed, or other security in the nature of a mortgage, where the interest rate reduction extends for one year after the end of the servicemember's military service.⁴
- Creditors who reduce the interest rate on the obligations of a servicemember must forgive interest in excess of six 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

- Where the servicemember has paid a deposit or made a payment on a contract for the purchase of real or personal property before entering military service, the contract may not be terminated for a breach of the terms of the contract after the servicemember's entry into military service without a court order. Similarly, the property underlying such a contract may not be repossessed without a court order.

² "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 USC app. 527(d)).

³ Section 207 of the SCRA, 50 USC 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." 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 USC § 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 servicemembers.

⁴ 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. Section 2203(a) of HERA extends the stay, adjustment, sale, foreclosure, and seizure provisions from 90 days to 9 months following the end of the servicemember's period of military service. Unlike section 2203(b), the amendment described in section 2203(a) expires on December 31, 2010. On January 1, 2011, the SCRA will revert to the provisions in effect before the date of enactment.

- Certain residential or motor vehicle leases may be terminated 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 their dependent may be terminated if the servicemember, after the lease is executed, 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 if the servicemember receives military orders for a permanent change of station (PCS) outside of 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, farm 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 Institution-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 nine months thereafter without a court order. Additionally, in an action filed during or within nine months 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.⁵
- A landlord may not evict a servicemember or his or her dependents from certain residences⁶ occupied primarily as a residence during a period of military service except by court order.

⁵ Section 303 of the SCRA, 50 USC app. 533, as amended by section 2203(a) of HERA.

⁶ 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, 2008, is \$2,831.13. This annual adjustment is generally announced in February.

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.

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

Relief for Other Obligor

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

REFERENCES

Servicemembers Civil Relief Act, Pub. L. 108-189 (codified at 50 USC App. 501 *et seq.*)

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

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

United States Code (USC)

20 USC § 1078(d), Federal payments to reduce student interest costs