

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. In 2015, the law was recodified at 50 U.S.C. §§ 3901-4043.

The SCRA protects full-time members of the Army, Navy, Air Force, Marine Corps, and Coast Guard engaged in active duty; reservists on federal active duty; and members of the National Guard on federal orders for a period of more than 30 days. It also protects commissioned officers of the Public Health Service and the National Oceanic and Atmospheric Administration engaged in active service. Service members absent from duty for a lawful cause or because of sickness, wounds or leave are covered by the SCRA. §3911(2)(c). The SCRA provides benefits and protections to service member dependents and, in certain instances, to those who co-signed a loan for, or took out a loan with, a service member. §3913. The term "dependent" includes a service member's spouse, children, and any other person for whom the service member has provided more than half of their financial support for the past 180 days. §3911(4). For most service members, protections begin on the date they enter active duty military service. §3911(3). For military reservists, protections begin upon the receipt of certain military orders. § 3917(a).

Major relief provisions of the SCRA include:

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 to include service and renewal charges or any other fees or charges, except for bona fide insurance. No distinction is made between personal versus business loans. In June, 2012, the Department of Education made the SCRA interest rate reduction automatic for federal student loans. The interest rate reduction is not automatic for private student loans and must be requested.

The request may be made **not later than 180 days** after the date of termination or release from service. The interest rate reduction is effective as of the date on which the service member is called to military service. This provision contains criminal penalties for willful violations. §3937.

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**. §3937(a)(1)(A).

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. §3955

Nonjudicial Foreclosure

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**. Any sale or foreclosure in violation of this provision shall be void. §3953(c) *

Stay provisions. In an action filed during or **within one year** after a service member's military service, a court may 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. §3953 (b). *

*On December 12, 2017 the National Defense Authorization Act for Fiscal Year 2018, Pub. L. No. 115-91 §557 extended the one year period through December 31, 2019. In the absence of further legislation, this extension will expire on December 31, 2019, and on January 1, 2020, section 303(b) of the SCRA will once again only apply to proceedings occurring during or within 90 days after a service member's period of service

To verify an individual's military service status, creditors must search the Department of Defense's Defense Manpower Data Center ("DMDC") database. This database is at: <https://scra.dmdc.osd.mil/>.

Installment contracts and repossessions

A creditor may not repossess a vehicle during a borrower's period of military service without a court order as long as the service member either placed a deposit for the vehicle, or made at least

one installment payment on the contract before entering military service. § 3952

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 provides criminal fines and penalties of up to one year in prison for persons who knowingly violate Section 3937 regarding interest rate reductions. Section 3953(d) also provides fines and misdemeanor penalties for persons who knowingly violate the foreclosure stay provisions.

State of Washington SCRA

RCW 38.42.010 (2) provides protections to service members who have business loans (sole proprietor or owner of at least 50% of an entity). "Business loan" means a loan or extension of credit granted to a business entity that: (a) Is owned and operated by a service member, in which the service member is either (i) a sole proprietor, or (ii) the owner of at least fifty percent of the

entity; and (b) experiences a material reduction in revenue due to the service member's military service.

Amendments to RCW 38.42.010 (8) effective June 7, 2018 changed the definition of "service member" to include "an active member of the United States Armed Forces, a member of a military reserve component, or a member of the National Guard who is either stationed in, or a resident of, Washington state." HB 1056, An act relating to consumer protections for military service members on active duty, Chapter 197, 2018 Laws.

RCW 38.42.110 interest rate reduction for certain business loans.

(1) Upon the request of a service member with a qualifying business loan, the financial institution must restructure the interest rate of the loan to the equivalent provisions in the federal service members civil relief act. The service member must notify the institution **at least five days prior** to the beginning of military service and submit official documentation that substantiates their eligibility for the protections of this chapter.

(2) This section applies only to loans with an outstanding balance of less than one hundred thousand dollars at the time the service member is called to military service.

(3) This section applies only to business loans executed on or after January 1, 2007.

RCW 38.42.020 provides that the protections of the statute apply to "any service member who is ordered to report for military service and his or her dependents" . . . during the period beginning on the date on which the service member receives the order and ending one hundred eighty days after termination of or release from military service."

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 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.

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.

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 questionnaire: SCRA Examination Conclusions

REFERENCES

FDIC Compliance Examination Manual – May 2018

U.S. Department of Justice webpage

<https://www.justice.gov/servicemembers/servicemembers-civil-relief-act-skra>