



THE SERVICEMEMBERS CIVIL RELIEF ACT (SCRA)

Updated January 6, 2017 - JUSTICE.GOV

Background

The Civil Rights Division of the Department of Justice, created in 1957 by the enactment of the Civil Rights Act of 1957, works to uphold the civil and constitutional rights of all Americans, particularly some of the most vulnerable members of our society. As part of this work, the Civil Rights Division is tasked with enforcing the Servicemembers Civil Relief Act ("SCRA"), 50 U.S.C. §§ 3901-4043.

The SCRA, enacted in 2003 and amended several times since then, revised and expanded the Soldiers' and Sailors' Civil Relief Act of 1940 (SSCRA), a law designed to ease financial burdens on servicemembers during periods of military service. The SCRA is a federal law that provides protections for military members as they enter active duty. It covers issues such as rental agreements, security deposits, prepaid rent, evictions, installment contracts, credit card interest rates, mortgage interest rates, mortgage foreclosures, civil judicial proceedings, automobile leases, life insurance, health insurance and income tax payments.

The location of the SCRA within the United States Code has recently changed. Previously found at (codified and cited as) 50 U.S.C. App. §§ 501-597b, there was an editorial reclassification of the SCRA by the Office of the Law Revision Counsel of the United States House of Representatives that became effective on December 1, 2015. The SCRA is now found at (codified as) 50 U.S.C. §§ 3901-4043.

Overview

"[T]he Act [SCRA] must be read with an eye friendly to those who dropped their affairs to answer their country's call." *Le Maistre v. Leffers*, 333 U.S. 1, 6 (1948) (citing *Boone v. Lightner*, 319 U.S. 561, 575 (1943)). Restated, the SCRA should generally be read in favor of the servicemembers it is intended to protect.

Under the SCRA, the Attorney General is authorized to file a federal lawsuit against any person (or entity) who engages in a pattern or practice of violating this law. The Attorney General may also file such a suit where the facts at hand raise "an issue of significant public importance." When the Attorney General files a lawsuit under the SCRA, she has the authority to seek monetary damages on behalf of individual servicemembers. The Attorney General also has the authority to seek civil penalties, equitable relief, and declaratory relief. See Section 4041 (formerly Section 597).

In order to have an individual SCRA case reviewed by the Department of Justice, non-attorneys must first seek the assistance of a military legal assistance office. If that office cannot resolve the complaint, it may choose to forward the complaint to the Department. The Department then will review the matter to determine whether action by the United States is appropriate.

The SCRA provides a wide range of benefits and protections to those in military service. Military service is defined under the SCRA as including: 1) full-time active duty members of the five military branches (Army, Navy, Air Force, Marine Corps

and Coast Guard); 2) Reservists on federal active duty; and 3) members of the National Guard on federal orders for a period of more than 30 days. Finally, servicemembers absent from duty for a lawful cause or because of sickness, wounds or leave are covered by the SCRA. Commissioned officers in active service of the Public Health Service (PHS) or the National Oceanic and Atmospheric Administration (NOAA) are also covered by the SCRA. See Section 3911 (formerly Section 511).

The SCRA also provides certain benefits and protections to servicemember dependents and, in certain instances, to those who co-signed a loan for, or took out a loan with, a servicemember. The term “dependent” includes a servicemember’s spouse, children, and any other person for whom the servicemember has provided more than half of their financial support for the past 180 days. See Section 3911 (formerly Section 511) and Section 3913 of the SCRA (formerly Section 513).

For most servicemembers, SCRA protections begin on the date they enter active duty military service. For military reservists, protections begin upon the receipt of certain military orders.

Specific Benefits And Protections

Below you will find a description of those SCRA benefits and protections that trigger the most questions received by the Department of Justice. For questions involving areas of the SCRA not addressed below, please contact us.

Benefit and Protection No. 1 – The 6 percent interest rate cap. See Section 3937 of the SCRA (formerly Section 527)

The SCRA’s benefits and protections include a 6 percent interest rate cap on financial obligations that were incurred prior to military service; the ability to stay civil court proceedings; protections in connection with default judgments; protections in connection with residential (apartment) lease terminations; and protections in connection with evictions, mortgage foreclosures, and installment contracts such as car loans.

The SCRA limits the amount of interest that can be charged on certain financial obligations that were incurred prior to military service to no more than 6 percent per year, including most fees. In order to have the interest rate on a financial obligation such as a credit card or a mortgage capped at 6 percent per year, a servicemember must provide the creditor with a copy of his or her military orders and a written notice. This written notice must reference the servicemember’s desire to receive the interest rate cap. The written notice and military orders must be provided to creditor within 180 days of the end of the servicemember’s military service

In response to a properly made request for a 6 percent interest rate benefit (cap) under the SCRA a creditor must forgive – not defer – interest greater than 6 percent per year. The creditor must forgive this interest retroactively. The creditor is also prohibited from accelerating the payment of principal in response to a properly made request for a 6 percent interest rate cap.

For mortgages, interest is capped at 6 percent during the entire period of military service and for one year after the period of military service. For all other obligations, interest is capped at 6 percent only for the duration of the period of military service.

A hypothetical under Section 3937 (formerly Section 527) of the SCRA: John Doe takes out a mortgage and then enters military service. Captain John Doe is in military service continuously for 20 years. Captain Doe retires from military service and on the 179th day of his retirement requests that the interest rate on his mortgage be lowered to 6 percent per year. The creditor must forgive the entire 20 years of interest that was at a rate greater than 6 percent – inclusive of fees – and an additional year of interest going forward.

A creditor may avoid reducing the interest rate to 6 percent per year only when a court determines that the servicemember's ability to pay interest at rate higher than 6 percent per year is not "materially affected" by the servicemember's military service.

The following types of financial obligations, among others, are currently eligible for the 6 percent SCRA interest rate benefit: credit cards; automobile, ATV, boat and other vehicle loans; mortgages; home equity loans; and student loans.

Prior to August 14, 2008, the SCRA did not cover federally guaranteed student loans. On August 14, 2008, President Bush signed into law the Higher Education Opportunity Act, P.L. 110-315, that, among other things, amended 20 U.S.C. § 1078(d) to make federally guaranteed student loans protected under the SCRA. Student loans typically have a ten year term. There are four types of student loans: 1) private loans (which have always been covered by the SCRA); 2) Direct Department of Education Student Loans; 3) student loans originated under the Federal Family Education Loan ("FFEL") Program that are owned by the Department of Education; and 4) student loans originated under the FFEL program that are not owned by the Department of Education. The last three types of student loans are federally guaranteed and were not covered by the SCRA until August 14, 2008. So, for Direct Department of Education Student Loans and FFEL loans that originated before August 14, 2008, the servicemember borrower is not covered by the SCRA.

A student loan hypothetical under Section 3937 of the SCRA (formerly Section 527): John Doe takes out five private student loans prior to entering into military service. After entering military service, Servicemember Doe consolidates his five loans into one loan. Six months later, he hears about the SCRA's 6 percent interest rate cap and requests that the interest rate on his loan be lowered to 6 percent per year. He sends in written notice and a copy of his military orders.

Question: Is Servicemember Doe entitled to the 6 percent interest rate cap?

Answer: Only for the period of time between when he entered military service and when he consolidated his private student loans. Once you consolidate your student loans, it creates a brand new loan that was not taken out pre-military service.

Benefit and Protection No. 2 – Protections against default judgments – Section 3931 of the SCRA (formerly Section 521)

In any civil court proceeding in which the defendant servicemember does not make an appearance, a plaintiff creditor must file an affidavit with the court stating one of 3 things: 1) that the defendant is in military service; 2) that the defendant is not in military service; or 3) that the creditor is unable to determine whether or not the defendant is in military service after making a good faith effort to determine the defendant's military service status. It comes up most frequently for the Department of Justice in the context of judicial foreclosure proceedings. [Note: Foreclosures can proceed in one of two ways, either judicially (through a court process), or non-judicially (without a court's involvement). The way in which the SCRA treats the two types of foreclosure proceedings is very different.

To verify an individual's military service status, best practices involve searching the Department of Defense's (DOD) Defense Manpower Data Center (DMDC) database. This may be found online at: <https://scra.dmdc.osd.mil/>.

The SCRA states that for civil court proceedings where a defendant servicemember has not made an appearance and it seems that he or she is in military service, a court may not enter a default judgment against that defendant until after it appoints an attorney to represent the interests of that defendant servicemember. The court must stay a civil court proceeding for at least 90 days if that appointed attorney has been unable to contact the defendant servicemember, or if there may be a defense to the action that requires that the defendant be present.

Benefit and Protection No. 3 – Non-judicial foreclosures – Section 3953 of the SCRA (formerly Section 533)

Section 3953 of the SCRA (formerly Section 533) addresses the topic of mortgages and non-judicial foreclosures. In order for a servicemember to receive the protections of Section 3953 of the SCRA, the “obligation on real or personal property” needs to have been taken out prior to the servicemember entering military service.

Under Section 3953 of the SCRA (formerly Section 533), during a period of military service, and for one year after a period of military service, a creditor must get a court order prior to foreclosing on a mortgage. This is a strict liability section of the SCRA, and a person who knowingly violates this provision of the may be fined and/or imprisoned for up to one year.

On March 31, 2016, the President signed into law S. 2393, the “Foreclosure Relief and Extension for Servicemembers Act of 2015,” that, inter alia, amended the Honoring America's Veterans and Caring for Camp Lejeune Families Act of 2012 to extend through 2017 the one-year tail coverage period after a servicemember’s military service during which any covered foreclosure is invalid without a court order.

Under Section 3953 of the SCRA (formerly Section 533), a court may on its own – and shall upon application by a servicemember – stay a non-judicial foreclosure proceeding or adjust the obligation, provided that the servicemember’s ability to meet the obligation is materially affected by reason of his or her military service.

Benefit and Protection No. 4 – Installment contracts and repossessions – Section 3952 of the SCRA (formerly Section 532)

The SCRA states that a creditor may not repossess a vehicle during a borrower’s period of military service without a court order as long as the servicemember borrower either placed a deposit for the vehicle, or made at least one installment payment on the contract, before entering military service.

Benefit and Protection No. 5 – Residential (apartment) lease terminations – Section 3955 of the SCRA (formerly Section 535)

Section 3955 of the SCRA (formerly Section 535) addresses the topic of lease terminations. With respect to residential apartment leases, the SCRA requires that the premises be occupied (or are intended to be occupied) by a servicemember or a servicemember’s dependent(s). Additionally, the lease must either be executed by a person who later enters military service, or is in military service and later receives permanent change of station (PCS) orders or deployment orders for a period of at least 90 days. To terminate a residential lease, the servicemember must submit a written notice and a copy of his or her military orders – or a letter from a commanding officer – by hand delivery, United States Postal Service (USPS) return receipt requested or private carrier to the landlord or landlord’s agent.

Under Section 3955 of the SCRA (formerly Section 535), if a servicemember pays rent on a monthly basis, once he or she gives proper notice and a copy of their military orders, then the lease will terminate 30 days after the next rent payment is due.

A lease termination hypothetical under Section 3955 of the SCRA (formerly Section 535): Jane Servicemember receives PCS orders to transfer from Iowa to Texas. She gives her landlord written notice of her intent to terminate her apartment lease and a copy of her PCS order on September 18th. Her next rent payment is due on October 1st. The effective date of the lease termination will be Halloween – October 31st.

Go to the following site to see specific DOJ SCRA cases and settlements:

<http://www.justice.gov/crt/housing-and-civilenforcement-section-cases-1#sm>

A Final Note

At present, any of the rights and protections provided for in the SCRA may be waived. For contracts, leases (including apartment leases) and mortgages, all modifications, terminations and cancellations require a written waiver of rights. Such written waivers are effective only if executed during or after the relevant period of military service. Written waivers must be in at least 12 point font. In order to be effective, the written waiver must be its own document. All of this information is found in Section 3918 of the SCRA (formerly Section 517).

Updated January 6, 2017

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