

**Servicemembers' Civil Relief Act and Other
Military Matters**

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2016 Compliance School**

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SCRA and Other Military Matters for Bankers

I. Overview

A. Coverage of this session will include both Servicemembers' Civil Relief Act (SCRA) and Military Lending Act (MLA)

B. SCRA

1. Purpose – to enable men and women serving in the Armed Forces to devote their entire focus and energy on defense needs of the nation without worrying about distracting civil matters related to obligations on the home front.
2. Civil matters covered – include loans, leases, lawsuits and insurance contracts
3. Statute at 50 USC Chapter 50, no implementing regulations

C. Military Lending Act

1. Implemented as part of National Defense Authorization Act in October 2006 and amended in January 2013 - Limitations on Terms of Consumer Credit Extended to Service Members and Dependents
2. Statute at 10 USC 987, Department of Defense Regulations at 32 CFR §232
3. Regulates amount of charges and disclosures required for certain types of consumer loans made to service members and their dependents – coverage expanded on

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10/1/2015 with compliance optional until
10/1/2016 (optional compliance until
10/1/2017 for credit cards)

4. Purpose – relief of financial strain from certain typically high-cost financing options where service members and their families are often the victims of unscrupulous lenders, creating unneeded financial stress

D. History

1. Roots of SCRA go back to US Civil War
2. SSCRA first enacted by Congress in 1918
 - a. Prevented repossession and foreclosure on property of military personnel returning from WWI
3. SSCRA expired and was re-enacted in 1940 – just before WWII
4. Further updates resulting from Persian Gulf conflict in 1990 - 1991
5. Substantially revised and renamed as SCRA in 2003 in aftermath of 9/11
6. Talent Amendment enacted in 2007
7. Further minor revisions enacted in '06, '08, '12, and '14

II. SCRA

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- A. Coverage – 50 USC Appendix 511, 513, 514, 516, and 517
 - 1. Active duty in federal military service - Army, Navy, Marine Corps, Air Force, Coast Guard, and commissioned officers with Public Health Service or National Oceanic and Atmospheric Administration.
 - 2. US Citizens on active duty in the forces of a nation with which US is allied in fighting war or military action
 - 3. Dependents of the servicemembers covered by some protections, but not all.
 - a. Includes spouse, child, and any individual for which the servicemember provided at least 50% of support during 180 days preceding request for relief
 - 4. SCRA applies to any civil, judicial, or administrative proceeding in any court or agency subject to jurisdiction of the US
 - 5. Servicemembers may waive any right or protection afforded by the act (but see below for restrictions applicable to MLA). Must be executed either while on active duty or after receipt of orders to active duty. Waiver must be in writing:
 - a. If pertaining to modification, termination, or cancellation of a lease, contract, or obligation secured by a mortgage, deed, or lien; or

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- b. If related to a repossession, retention, foreclosure, sale, forfeiture, or taking possession of property that is security for an obligation or purchased under a contract, lease, or bailment
6. Protections generally apply during period of military service
- a. Early protection for Reservists - A member of a military reserve component who is ordered to report for military service is entitled to the rights and protections of Titles I, II, and III of the SCRA beginning on the date of the member's receipt of the order
 - b. Early protection for Inductees - A person who has been ordered to report for induction under the Military Selective Service Act is entitled to the rights and protections of SCRA Titles I, II, and III beginning on the date of receipt of the order of induction
 - c. Full protection under SCRA for reservists and inductees begins on date of reporting for active duty
- B. General requirements – 50 USC Appendix 518, 527, and 538
- 1. Exercise of rights under SCRA **CANNOT** be a basis for various actions, including

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- a. A determination that servicemember is unable to pay an obligation in accordance with its terms
 - b. A denial or revocation of credit
 - c. A change in the terms of an existing credit arrangement
 - d. Refusal to grant credit in amount or terms requested
 - e. Adverse creditworthiness reporting
 - f. Notating record that servicemember is a member of the National Guard or reserve component
 - g. Refusal to insure a servicemember by an insurer
2. Interest Rate Cap – 50 USC Appendix 527
- a. Debt incurred prior to entrance to active duty
 - b. Loan to servicemember or jointly with servicemember and spouse
 - c. Shall not bear interest in excess of 6% per year
 - d. Definition of “interest” includes all fees and other charges (except bona fide insurance charges), such as service charges, renewal charges, late payment charges

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- e. Interest in excess of 6% is to be forgiven, not deferred
- f. Amount of installment payments to be reduced by amount of forgiven interest
- g. Lenders must account for any interest paid in excess of 6% that occurred after orders were received but before creditor was notified of relief request. Lender should give borrower option of receiving bulk refund, applying to principal balance, or apply to future monthly payments
- h. Servicemember must provide notice to lender and copy of military orders to active duty
- i. Notice and request for relief can be provided up to 180 days after active duty service ends
- j. Interest rate cap continues for term of active duty service. For debt secured by mortgage or deed of trust, rate cap continues for 1 year after completion of active duty service
- k. Creditor can petition court for relief from the rate cap request if the servicemember's ability to pay interest at a rate greater than 6% is not materially impacted by reason of the servicemember's military service (but beware of the reputation risk associated with this tactic)

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- iii. In actions to execute judgments or attachment or garnishment of property against a servicemember that began before or during their period of service (or within 90 days after), the court shall stay the execution or vacate or stay the attachment or garnishment, unless the court determines that the ability of the defendant is not materially affected by his/her military service
- iv. The period of military service will not be used in computing any statute of limitations for legal proceedings.

4. Contracts, Loans, and Leases

- a. Without a court order, repossessions and foreclosures are almost always prohibited when a borrower is on active duty. An attempted repossession or foreclosure in violation of the SCRA is void and can result in criminal penalties. The protection against foreclosure of a mortgage or deed of trust extends for 12 months after a servicemember returns from active duty (reverts to 90 days on 1/1/16).
- b. Protection also extends to termination of installment contracts for the purchase or lease of personal property entered into prior to active duty. Under this provision, some examiners now looking for SCRA procedures to be incorporated into Safe Deposit Box rentals.

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- c. Property leases can be terminated by a servicemember if the lessee enters military service during the lease term. Leases can also be terminated if lessee is in the military when the lease is signed but thereafter receives PCS orders or deployment of 90 days or more. No penalty may be assessed.
- d. Vehicle leases can be terminated by a servicemember if lessee subsequently enters military service under a call or order specifying a period of 180 days or more. Leases can also be terminated if lessee is in the military when the lease is signed but subsequently receives PCS orders outside of continental US or deployment of 180 days or more. No early termination charge can be assessed for such termination.

5. Federal Student Loans

- a. Added to SCRA protections in 2008
- b. Applies to borrowers in military service as of August 14, 2008
- c. SCRA interest rate limit does not apply to an endorser of a PLUS loan made to a parent or a graduate or professional student unless that person is also performing eligible military service

6. Evictions – Section 531

- a. No evictions from dwelling housing occupied by a servicemember or the dependents of a servicemember during a

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period of military service if the monthly rent does not exceed the established amount. Currently amount is \$3,329.84 and is subject to change annually. This could have implications for OREO property that is leased.

7. Life Insurance

- a. 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 unless the insured party gives written consent; the premiums on the policy are due and unpaid; or the insured dies

8. Past Due Notice – for dwelling-secured loans, a SCRA notice provided by HUD (Form 92070) is required to be included in past due notice.

C. Term of Benefits and Protections

1. Rights and protections continue through period of military service (and afterward as specified in various parts). Where a servicemember has been reported as missing, he/she will be presumed to remain in service until accounted for. No period that is limited by the death of a person will begin or end until the servicemember's death is reported to the Department of Defense.

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III. Military Lending Act

A. Covered Consumer Credit

1. Payday loans – Closed end, term of 91 days or less, \$2,000 or less, charged interest or a fee, and either:
 - a. Receives a check from the borrower and agrees to not deposit or cash the check for more than one day; or
 - b. Borrower authorizes creditor to initiate a debit or debits to the borrower’s deposit account more than one day later
2. Vehicle Title Loans – Closed end, term of 181 days or less, secured by a motor vehicle registered for road use and owned by the borrower, other than a purchase money loan
3. Tax Refund Anticipation Loans – Closed end, borrower expressly grants creditor right to receive all or part of the borrower’s income tax refund or expressly agrees to repay the loan with proceeds of the borrower’s refund

B. Covered Borrowers

1. A regular or reserve member of the Army, Navy, Marine Corps, Air Force, or Coast Guard, serving on active duty under a call or order that does not specify a period of 30 days or fewer, or such a member serving on Active Guard and Reserve duty as that term is defined in [10 U.S.C. 101\(d\)\(6\)](#), or

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2. The member's spouse, the member's child defined in [38 U.S.C. 101\(4\)](#), or an individual for whom the member provided more than one-half of the individual's support for 180 days immediately preceding an extension of consumer credit covered by this part.
- C. Creditor obligated to provide applicants for covered credit with a “Covered Borrower Identification Statement” (content specified at 32 CFR §232.5) prior to becoming obligated. For borrowers identified as covered borrowers, regulation restrictions apply. Creditor may (but not required to) verify status by review of current or prior month Military Leave and Earnings Statement, or Military ID card, or check on DoD database –
www.dmdc.osd.mil/mla/welcome.xhtml
- D. Requirements
1. *MAPR*. The Military Annual Percentage Rate, or MAPR, is capped at 36% for consumer credit to “covered borrowers. MAPR is a broader calculation than finance charges or APR under Regulation Z and includes credit insurance premiums, fees for credit-related ancillary products, and some other fees.
 2. *Particular Disclosures*. The MAPR must be disclosed together with the total of all charges included in the MAPR. A specific disclosure regarding rights under the SCRA must be provided verbally and in writing in addition to Regulation Z disclosures.

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3. *Prohibited Terms.* Several terms are prohibited, including mandatory arbitration, prepayment penalties, and waivers of rights under the SCRA. Rollovers, renewals, refinancings, or consolidations by the same covered borrower and creditor are prohibited unless they result in more favorable terms to the borrower.

E. Expansion effective 10/1/2016 and 10/1/2017

1. DoD issued final rule on 7/22/2015 effective 10/1/2015 with compliance optional until 10/3/2016 (compliance optional until 10/3/2017 for credit card accounts)
2. Expands definition of covered credit to include all consumer credit except residential mortgages and purchase money credit
3. Safe harbor protection now requires creditor to confirm borrower status on DoD database or through a national consumer reporting agency instead of reliance on Covered Borrower statement.
4. MAPR capped at 36%. Finance charges under Reg Z are included in the MAPR calculation, but so are some additional fees and charges even if they would not be considered finance charges under Reg Z:
 - a. Credit insurance premiums and fees for debt cancellation or debt suspension agreements;
 - b. Fees for credit-related ancillary products sold in connection with the credit transaction or account;

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- c. Finance charges associated with the consumer credit; and
 - d. Certain application fees and participation fees, including annual fees
 - e. Exclusion for certain credit card fees if bona fide and reasonable, such as cash advance fees, over limit fees, etc.
5. Streamlined disclosure requirements
- a. Disclosures provided at or before consumer becomes obligated
 - b. 3 elements:
 - i. A statement of the MAPR applicable to the loan (specific standards for what must be included; model statement provided)
 - ii. Any disclosure required by Regulation Z
 - iii. A clear description of the payment obligation of the loan (Reg Z disclosures suffice for this)
 - iv. Disclosures must be provided both in writing in a form the consumer can keep and orally.
6. Prohibited practices
- a. No rollovers, renewals, refinances or consolidation loans regarding covered credit except by banks, savings associations or credit unions
 - b. No waiver of legal recourse, including waiver of SCRA rights
 - c. No mandatory arbitration clauses

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- d. No unreasonable notice requirements in event of a dispute
- e. No use of a vehicle as security for the obligation, except if the creditor is a federally or state-chartered bank, savings association or credit union
- f. No requirement that borrower establish an allotment to repay the debt.
- g. No prohibition of prepayment nor any penalty for prepaying all or part of the credit

IV. Interagency Guidance on Mortgage Servicing Practices Concerning Military Homeowners with Permanent Change of Station Orders

- A. Issued in 2012 because of a number of loan servicing practices were causing harm to servicemembers
 - 1. Failing to provide homeowners with PCS orders with clear, accurate, and readily understandable information about available assistance options for which they may qualify
 - 2. Asking homeowners with PCS orders to waive legal rights under SCRA as a prerequisite to providing information about options available or evaluating homeowners eligibility for assistance
 - 3. Advising homeowners with PCS orders who are current on their loans and able to make the monthly payments to intentionally skip payments in order to create appearance they are having financial difficulties in order to

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qualify for assistance they would otherwise not qualify for

4. Failing to provide a reasonable means for homeowners with PCS order to obtain information about the status of their request for assistance
5. Failing to timely communicate decisions regarding requests for assistance and failing to provide reasons for denial, where required.

B. Guidance expects servicers to ensure adequate training and procedures are in place regarding PCS orders.

C. Violations will likely be considered UDAAP violations.

V. Penalties

A. Civil and Criminal

1. Private rights of action, damages, attorneys fees
2. Knowing violation of SCRA or MLA is a misdemeanor and will be subject to fines and imprisonment of up to one year, or both
3. Any credit that fails to comply with MLA is void from its inception

B. FIRREA Penalties

1. Up to \$7,500 per day for violation of laws and regulations

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2. Up to \$37,500 per day for violations or unsafe/unsound practices engaged in recklessly or part of a pattern of misconduct that causes more than minimal loss to the bank or any gain to parties involved
3. Up to \$1,425,000 per day for knowingly committing a violation and knowingly or recklessly causing a substantial loss to the bank or substantial benefit to the party

VI. Best Practices

A. Policies, Procedures and Training

1. Interest rate relief requests
2. Collection activities
3. OREO

B. Routine Collection Check of Military Status

C. Incorporate SCRA for Safe Deposit Box past due collection and drilling

D. Take advantage of the DoD database

VII. Exam Procedures

A. Review of policies, procedures, and training

B. Sample of interest rate relief requests

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- C. Sample of collection, repossession and foreclosure actions
- D. Review complaints
- E. Most common violation – using incorrect date for interest rate relief for reservists called to active duty – not date of active duty but date of receipt of orders

VIII. Additional Resources

- A. BankersOnline.com SCRA Page:
<http://www.bankersonline.com/lending/sscrapage.html>
- B. Interagency Guidance – PCS:
http://files.consumerfinance.gov/f/201206_cfpb_PCS_Orders_Guidance.pdf
- C. DoD Database:
www.dmdc.osd.mil/mla/welcome.xhtml
- D. OCC SCRA Handbook:
<http://www.occ.treas.gov/publications/publications-by-type/other-publications-reports/scra.pdf>
- E. FDIC Compliance Manual – SCRA:
<https://www.fdic.gov/regulations/compliance/manual/pdf/V-11.1.pdf>
- F. HUD SCRA Notice:
http://www.bankersonline.com/tools/lender/hud_scra.html

A Brief History of Military Lending Protections

- Roots date back to US Civil War
 - Initial SSCRA enacted by Congress in 1918 – prevented repossession and foreclosure on property of military personnel serving in WWI
 - Expired and re-enacted in 1940 just before WWII
 - Persian Gulf conflict in 1990-1991 prompted further revisions
 - Substantial revision and renamed SCRA in 2003 in aftermath of 9/11
 - Numerous other revisions and related provisions enacted by Congress in '06, '07, '08, '12, and '14
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Servicemembers' Civil Relief Act

- Coverage
 - General Requirements
 - Adverse actions
 - Interest rate cap
 - Court actions
 - Contracts, Loans, Leases
 - Federal student loans
 - Evictions
 - Life Insurance
 - Past Due Notice
 - Term of Benefits and Protections
-



Military Lending Act

- Covered Consumer Credit
 - Payday loans
 - Vehicle Title loans
 - Tax Refund Anticipation loans
- Covered Borrowers
- Requirements
 - MAPR
 - Disclosures
 - Prohibited Terms
- Significant Expansion
 - Effective 10/1/2016



Expanded MLA

- Expands covered credit
- Revised safe harbor for determination
- Additions to MAPR
- Streamlined disclosure requirements
- Numerous prohibited practices
 - Some could give banks, savings associations, and credit unions some market advantage



Interagency Guidance - PCS

- Issued 2012
- Identified concerning practices
- Guidance expectations
- UDAAP



Photo courtesy of US Army

Best Practices

- Policies, Procedures, Training
 - Interest rate relief requests
 - Collection activities
 - OREO
 - Loan servicing – PCS
- Routine pre-collection check – military status
- Incorporate SCRA for safe deposit box past due collection & drilling
- Take advantage of DoD database



CFPB Servicemembers' Complaints

Report issued in April 2015

- Debt collection complaints have continued to rise since the last report, and now make up 39 percent of total complaints. It is the largest category of complaints lodged with the Bureau by the military community.
 - Credit reporting remains a top category of concern; 72 percent of these complaints are about incorrect information on credit reports. This remains a significant issue for the military community, one that the Bureau highlighted earlier this year.
 - Student loans are another concern: 49 percent of these complaints are about problems dealing with a lender or servicer. In these complaints, the CFPB continues to see long-standing trends, such as servicemembers complaining about not being provided their Servicemembers Civil Relief Act rights.
 - Servicemembers' spouses have reported problems accessing the servicemembers' accounts or account information even after the servicemember has made arrangements for such access with the financial institution. Similar problems have been experienced with institutions' reluctance to accept powers of attorney from servicemembers stationed overseas.
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CFPB Suggestions

- Attempt to obtain an updated mailing address from military customers before changing terms of military-specific accounts
 - Provide clear instructions on how to provide account access to someone designated by the servicemember and the actions that person can and cannot take as to the account
 - Proactively notify military consumers about company policies on accepting powers of attorney, including providing on the company's website any specific format or language it requires for a POA
 - Ensure feasible communication methods for all consumers (the CFPB noted that limiting communication to telephone or fax for military consumers greatly impacts their ability to conduct bank business, particularly if communication is limited to business hours).
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Penalties

- Civil and Criminal
- FIRREA
 - \$7,500 per day
 - \$37,500 per day
 - \$1,425,000 per day



Exam Procedures



- Review policies, procedures and training
- Sample of interest rate relief requests
- Sample of collection, repossession and foreclosure actions
- Review of complaints
- Most common violation – using incorrect date for interest rate relief for reservists called to active duty – not date of active duty, but date of receipt of orders

Resources for SCRA

BankersOnline.com SCRA Page: <http://www.bankersonline.com/lending/sscrapage.html>

Interagency Guidance – PCS:

http://files.consumerfinance.gov/f/201206_cfpb_PCS_Orders_Guidance.pdf

DoD Database: www.dmdc.osd.mil/mla/welcome.xhtml

OCC SCRA Handbook: <http://www.occ.treas.gov/publications/publications-by-type/other-publications-reports/scra.pdf>

FDIC Compliance Manual – SCRA:

<https://www.fdic.gov/regulations/compliance/manual/pdf/V-11.1.pdf>

HUD SCRA Notice: http://www.bankersonline.com/tools/lender/hud_scra.html

Questions?

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3 percent cap on troops' interest rates? Senator proposes broad protections

Karen Jowers, Military Times 10:45 a.m. EDT March 18, 2016



(Photo: Alex Brandon/AP)

A proposal to limit interest rates on all troops' loans to 3 percent would offer unprecedented sweeping new benefits to service members if it became law.

Sen. Patty Murray, D-Wash., introduced the SCRA Enhancement and Improvement Act of 2016 on Thursday, proposing stronger and more far-reaching financial legal protections under an amended Servicemembers' Civil Relief Act.

Under the SCRA, service members are supposed to receive a 6 percent interest rate cap on debts incurred before they enter active duty. That applies to loans service members took out either before they joined the military on active duty, or before they are called to active duty as a Guard or Reserve member.

The legislation proposed Thursday would require all loans to service members be capped at a 3 percent interest rate, regardless of when the debt is incurred. For service members who are eligible for hostile fire pay or imminent danger pay, the interest rate would be zero.

If this legislation becomes law, it could mean that service members could not be charged more than 3 percent for any loan, including mortgages and credit cards.

The proposed legislation would have to move through a number of steps before becoming law and some observers say it is a long shot,

"I'm sure this is well-intended, but the rate seems awfully low," said one representative of an organization that advocates for the military community. While the organization is supportive of benefits for service members, requiring a 3 percent ceiling on interest rates could lead to military members being unable to obtain loans or credit cards, he said.

But that wouldn't be a problem under Murray's bill, contends Murray spokeswoman Kerry Arndt. She said the bill would prohibit lenders from denying credit because of eligibility for SCRA protections, so service members wouldn't see any reduction in access to credit and they would be protected from predatory and unfair practices.

Murray, the top Democrat on the Senate Health, Education, Labor and Pensions Committee and a senior member of the Senate Veterans' Affairs Committee, said that businesses haven't always honored Servicemembers' Civil Relief Act protections, and the law needs to be strengthened. The most recent example is student loan servicers who overcharged military borrowers after they were called to active duty. Some servicers did not reduce the rates to 6 percent.

"In recent years, we've seen our service members subjected to predatory practices and unfair treatment on several fronts, from overcharges on their student loans, to foreclosures on their homes when they're deployed. That is simply unacceptable," Murray said in a statement announcing the proposed changes.

The legislation would require student loan servicers of federally guaranteed student loans to automatically apply the interest rate cap, and provide timely responses to inquiries. The servicers would also be required to have a designated service representative or point of contact for service members and ensure that these staff are properly trained.

If a service member dies in the line of duty, federal and private student loan debt would be forgiven.

The proposed legislation includes some other expanded protections — including prohibiting prepayment penalties if a mortgage is paid off early for reasons related to a permanent change-of-station move.

It would also allow service members to cancel contracts on cable TV and Internet services in the event of permanent change-of-station moves. Currently, similar protections are offered for residential and auto leases and cellphone contracts.

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