SERVICEMEMBER'S CIVIL RELIEF ACT

(SCRA)

OVERVIEW

Overview

The Servicemember's Civil Relief Act of 2003 (SCRA) gives relief to individuals who are called to active duty in any of the military branches, including reservists or members of the National Guard. SCRA replaces and expands the Soldiers' and Sailors' Civil Relief Act of 1940.

Major provisions of the SCRA that may affect credit unions include:

- Allowing borrowers to have their interest rates reduced to 6% on loans granted before going on active duty, if the call up to military service materially affected their ability to pay.
- Permitting active duty servicemembers, who are unable to appear in a court or administrative proceeding due to their military duties, to postpone court proceedings for a mandatory minimum of ninety days upon the servicemember's request.
- Prohibiting foreclosures or repossessions without prior court approval, up until three months after leaving active service.
- Prohibiting future adverse credit decisions based on the grant of SCRA relief.

The 6% interest limitation only affects loans granted before the member entered active duty. Any loan granted after the member entered onto active duty would continue to have the terms at the time the loan was granted.

The provisions related to foreclosures and repossessions apply to dependents also. The provision related to the maximum interest rates only apply to a dependent when the member of the military also signed the note, prior to entering active duty.

Associated Risks

- Compliance risk can occur when the credit union fails to implement the necessary controls to comply with SCRA.
- Reputation risk can occur when the credit union incurs fines and penalties or receives decreased member confidence as a result of failure to comply with SCRA.

Additional Information

Additional information is available at http://www.jagcnet.army.mil/legal.

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OPERATIONAL REQUIREMENTS

Disclosures / Notices

Highest interest rates allowed under SCRA
No obligation or liability incurred before entry into military service will bear an interest rate greater than 6 percent per year unless a court determines that the member's ability to pay the higher rate is not materially affected by reason of such military service. [50 U.S.C. App. §526]

Restrictions on repossessing or foreclosing on collateral under SCRA
No sale, foreclosure, or seizure of property for nonpayment of any sum due under an obligation secured by real or personal property, or for any other breach of the terms thereof, will be valid if made during the period of military service or within three months thereafter, unless upon an order previously granted by the court. [§532 (3)]

Restrictions on future adverse actions
Application by a person in military service for, or receipt by a person in military service of a stay, postponement, or suspension pursuant to the provisions of SCRA will not itself (without regard to other considerations) provide the basis for any adverse credit decision or adverse report relating to the creditworthiness of such person. [§518]

Other rights
The SCRA provides service members with other rights that may affect a credit union's ability to collect on the obligations of service members, including rights involving default judgments [§520], stays of proceedings [§§521, 590], the tolling of statutes of limitation [§525], and automobile leases [§531].

Written Programs / Documentation

Procedures for Training and Compliance
A credit union must establish and maintain procedures to ensure its compliance with the SCRA. It must also provide a statement of applicable portions of the procedures to employees who perform tasks subject to the requirements of the SCRA.

Enforcement / Liability

Enforcement
Private Cause of Action – Up to the individual affected.

Civil Liability

Any person who shall knowingly make or cause to be made any sale, foreclosure, or seizure of property described in §532, or resumes possession of property subject to §531, or attempts so to do is guilty of a misdemeanor and may be punished by imprisonment not to exceed one year or by fine not to exceed $1,000, or both.