



# RESCINDED

OCC 2008-30  
OCC BULLETIN

Comptroller of the Currency  
Administrator of National Banks

OCC 2008-30 has been replaced by OCC 2011-16

Subject: **Servicemembers Civil Relief Act**

Description: **Legal Requirements**

Date: October 24, 2008

**TO:** Chief Executive Officers and Compliance Officers of All National Banks,  
Department and Division Heads, and All Examining Personnel

## Background

The Servicemembers Civil Relief Act (SCRA) (codified at 50 USC App. 501 *et seq.*) seeks to strengthen the national defense by providing, among other things, for interest rate adjustments on certain debts and for temporary suspension of legal proceedings that may adversely affect the rights of servicemembers during their military service. Section 2203 of the Housing and Economic Recovery Act of 2008 (HERA), Pub. L. 110-289, 122 Stat. 2654 (2008), revised certain provisions of the SCRA. The revisions provide additional protections to servicemembers by extending the period during which a creditor may not charge interest in excess of six percent per year in connection with obligations and liabilities consisting of a mortgage, trust deed, or other security in the nature of a mortgage. The revisions also extend the periods during which a creditor is restricted from enforcing, or foreclosing upon, such credit obligations on real or personal property owned by a servicemember. The revisions became effective upon enactment on July 30, 2008.

This bulletin provides general information about the provisions of the SCRA that are most likely to affect national banks, including the recent revisions to SCRA. This guidance supersedes OCC Advisory Letter 2004-8 (Servicemembers Civil Relief Act), June 18, 2004.

## Rate of Interest

The SCRA requires creditors to forgive (not merely defer) interest in excess of six percent per year on any obligation or liability, such as debts (including credit card and other open-end debts), incurred by a servicemember *before* the servicemember entered military service. The SCRA requires that the reduced interest rate must continue throughout the period of military service. In the case of credit obligations secured by a mortgage, trust deed, or other security in the nature of a mortgage, the SCRA, as amended by HERA, provides that the reduced interest rate will apply during the period of military service and one year thereafter.

Thus, a servicemember is entitled to have the interest rate on any debt outstanding as of

the date of entry into military service reduced to six percent. This rate stays in effect throughout the term of service and, in the case of an obligation secured by a mortgage, trust deed, or other security in the nature of a mortgage, until one year after the end of such service.

The SCRA's interest rate limitation also applies to debts jointly incurred by the servicemember and the servicemember's spouse that were entered into prior to the servicemember's military service. The SCRA defines "interest" to include "service charges, renewal charges, fees, or any other charges (except bona fide insurance)" related to the debt. To prevent the acceleration of principal repayment, the SCRA also provides that creditors must reduce any periodic payments due under the debt to reflect the amount of forgiven interest.

The SCRA provides that the servicemember must give the creditor written notice and a copy of the servicemember's military orders to receive the interest rate reduction. The notice must be provided to the creditor no later than 180 days after the servicemember's termination or release from military service, and the creditor must then apply the interest rate reduction effective as of the date the servicemember was called to military service.

When a servicemember provides notice after commencement of service, but within the time period described above, the creditor also must account for any interest payments that have been made in excess of the six percent rate during the period in which the reduced rate applies. Any such excess payments should be provided to the servicemember as a refund, applied toward future monthly payments, or applied toward principal curtailment. If feasible, the servicemember should be given an opportunity to direct how such funds should be applied.

The reduced interest rate provision applies unless a court finds that the ability of the servicemember to pay interest on the debt at a higher rate is not materially affected by the servicemember's military service. In such cases, the court may grant a creditor relief from the interest rate limitations of the SCRA. The SCRA does not provide a mechanism outside of a petition by the creditor to an appropriate court for such relief.

### **Mortgages and Trust Deeds**

The SCRA contains special rules regarding debts secured by a mortgage, trust deed, or other security in the nature of a mortgage on real or personal property owned by a servicemember. As revised by HERA, the SCRA prohibits, with limited exceptions, the sale, foreclosure, or seizure of property, based on a breach of such a secured obligation, during the period of the servicemember's military service, or within nine months after the end of the period of military service. A related provision applies to any legal action to enforce such an obligation. A court may, after a hearing and on its own motion, and shall, upon application by a servicemember whose ability to comply with the obligation is materially affected by military service, stay the proceedings or adjust the obligation to preserve the interests of all parties. In such cases, the SCRA, as amended by HERA, permits such action during the period of military service or within nine months after the end of service. These provisions apply only to obligations that originated prior to the servicemember's military service, and for which the servicemember is still obligated.

The HERA amendments extended, on a temporary basis, the period after the end of military service during which these foreclosure prohibition and stay of proceedings

provisions apply from 90 days to nine months. This extension ends on December 31, 2010. On January 1, 2011, the period after the end of a servicemember's military service during which a creditor may not sell, foreclose, or seize property based on a breach of a mortgage, trust deed, or other security in the nature of a mortgage on real or personal property owned by a servicemember, or a court may stay proceedings enforcing such obligations will again be 90 days.

### **Installment Contracts and Leases**

The SCRA addresses installment contracts by servicemembers for the purchase, lease, or bailment of real or personal property (including motor vehicles) in which the servicemember has paid a deposit or installment on the contract *before* entry into military service. The SCRA provides that the other party may not rescind or terminate the contract after the servicemember's entry into service for any breach of the contract by the servicemember that occurred *before or during* the period of military service. Moreover, the property may not be repossessed for such a breach without a court order.

The SCRA contains specific provisions relating to the termination of residential and motor vehicle leases by servicemembers. The SCRA generally allows a servicemember to terminate a residential lease if the servicemember either (1) enters into military service after executing the lease, or (2) executes the lease while in military service but subsequently receive orders for a permanent change of station or for a deployment of at least 90 days. Motor vehicle leases generally may be terminated if the servicemember either (1) after executing the lease, enters into military service under a call or order for a specified term of at least 180 days, or (2) executes the lease while in military service but subsequently receives orders for a permanent change of station outside of the continental United States or for a deployment of at least 180 days.

### **Eviction**

Except by court order, a servicemember, or the dependents of a servicemember, may not be evicted, during a period of military service of the servicemember, from premises that are occupied or intended to be occupied primarily as a residence, and for which the monthly rent does not exceed an amount that is published annually in the *Federal Register* by the Department of Defense.

### **Exercise of Rights**

The fact that a servicemember applies for or is granted temporary relief from his or her obligations and liabilities pursuant to the SCRA may not itself (without regard to other considerations) be 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 in substantially the amount or on substantially the terms requested;
- An adverse report related to the creditworthiness of the servicemember by or to a credit bureau;
- An annotation in the servicemember's record by a creditor or credit bureau identifying the servicemember as a member of the National Guard or a reserve

- component;
- A refusal by an insurer to insure the servicemember; or
- A change in the terms offered or conditions required for the issuance of insurance.

### **Waiver of Rights**

A servicemember may waive any of the rights and protections provided by the SCRA. For the following types of actions, a waiver must be in writing:

- The modification, termination, or cancellation of:
  - A contract, lease, or bailment; or
  - An obligation secured by a mortgage, trust, deed, lien, or other security in the nature of a mortgage;
- The repossession, retention, foreclosure, sale, forfeiture, or taking possession of property that:
  - Is security for any obligation; or
  - Was purchased or received under a contract, lease, or bailment.

In such cases, the written waiver agreement is effective only if it is executed during or after the servicemember's period of military service. The written agreement must specify the legal instrument to which the waiver applies.

### **Business or Trade Obligations**

If any trade or business of a servicemember has an obligation or liability for which the servicemember is personally liable, the assets of the servicemember not held in connection with the trade or business may not be used to satisfy the obligation or liability during the servicemember's military service. Upon application of the holder of the obligation or liability, a court may grant relief from this SCRA servicemember protection for equitable and other reasons.

### **Dependents and Persons Secondarily Liable**

Many of the benefits accorded to servicemembers by the SCRA relating to financial obligations may be extended to dependents of servicemembers if the dependents apply to a court for such protection. Dependents are entitled to these protections if the ability of the dependent to comply with the terms of the obligation is materially affected by the servicemember's military service. Additionally, certain provisions of the SCRA may apply, if so ordered by a court, to other persons who are primarily or secondarily liable on obligations of servicemembers.

Additional provisions of the SCRA may apply to an individual bank's operations or its customers' circumstances. The OCC, therefore, encourages national banks to seek the advice of bank counsel to resolve any disputes that arise over claims for relief and to ensure the institution's compliance with the SCRA. Banks should monitor their portfolios and the performance of loans affected by the SCRA to adjust loan loss allowances accordingly.

If you have any questions regarding this bulletin, please contact the appropriate supervisory office, the Community and Consumer Law Division at (202) 874-5750, or

the Compliance Policy Division at (202) 874-4428.

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/signed/

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Deputy Comptroller for Compliance Policy

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