The Servicemembers Civil Relief Act (SCRA)

Regulatory Brief and Industry Updates

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SCRA Agenda

- SCRA overview
- 6% interest rate provision
- Contract for real or personal property
- Foreclosure provision
- Military orders/DMDC website challenges
- Penalties/civil enforcement action update
- Enterprise impact of SCRA/challenges in managing implementation
- Maturity model for SCRA governance
- Recommendations for SCRA compliance
- MLA overview
SERVICEMEMBERS CIVIL RELIEF ACT (SCRA)
Overview of Servicemembers Civil Relief Act (SCRA)

SCRA was enacted to alleviate the financial burden of servicemembers and provide the temporary suspension against enforcement of civil liabilities while on active duty serving the United States.

Covered Persons

- US Armed Forces (e.g., Army, Navy, Marines, Air Force).
- Federally Activated National Guard and Reserves.
- Commissioned Officers of the Public Health Service.
- National Oceanic and Atmospheric Administration.
- Protections extend to dependents and cover agreements that are for business as well as personal purposes if the servicemember is primarily obligated or secured by his or her residence.

Key Benefits

- Interest rate cap of 6% on any interest bearing products opened before active duty.
- Early motor vehicle lease termination.

Key Protections

- Protection against default judgments, repossessions, or foreclosures.
- Protection against satisfying business obligation if personally guaranteed with property not connected to the trade or business.

*Servicemember population and complaints have a high visibility within the CFPB through a dedicated group – Office of Servicemember Affairs*
Under the SCRA, servicemembers are entitled to reduced interest rates under certain circumstances.

If a servicemember individually, or a servicemember and the servicemember’s spouse jointly, incurred a debt before the servicemember entered military service, the servicemember is entitled to have the interest rate on the debt reduced to 6% during the period of military service, and for one year thereafter in the case of mortgage debt.

- **Rationale**: Want to help someone who is already obligated on a debt who might be materially affected by military service.

The term “interest” includes service charges, renewal charges, fees, and all other charges (except charges for bona fide insurance).
6% Interest Rate Protection: 50 U.S.C. § 527: How to Obtain?

• **To take advantage of 6% interest rate reduction**, the servicemember must provide the creditor with:
  
  – Written notice of the request; and
  
  – Copy of the military orders calling the servicemember to military service (and any orders further extending military service).

• **Deadline for notice to creditor by servicemember:**
  
  – This notice must be delivered not later than 180 days after the date of the servicemember’s termination or release from military service.

• **How to apply interest rate reduction:** must apply the interest rate reduction effective as of the date on which the servicemember was called to military service.
6% Interest Rate Protection: 50 U.S.C. § 527: Any Exceptions? Caveats?

• **Court exception:** ability of the servicemember to pay interest on the debt at a rate in excess of 6 percent per year is not materially affected by reason of the servicemember’s military service.

• **How to determine coverage period:** be careful of breaks in service and applicability of one year grace period for mortgage debt.

Contract for Real or Personal Property:
50 U.S.C. § 532

• **Statute:** After a servicemember enters military service, a contract by the servicemember for the purchase of real or personal property (including a motor vehicle) ... **may not be rescinded or terminated for a breach** of terms of the contract occurring before or during that person's military service, **nor may the property be repossessed for such breach without a court order.**

• **Voluntary surrender:** Limited case law suggests that repossession is permissible without a court order if a servicemember voluntarily surrenders the collateral.
  
  – Voluntary surrender of collateral in a written separate document in at least 12-point font executed by the servicemember during or after the period of military service specifying the instrument to which the waiver applies. 50 App. U.S.C. § 517(a).

• Collection of the remainder of the debt from the borrower during their period of military service, absent a written waiver, is not appropriate.
• **Statute**: Prohibits the “sale, foreclosure, or seizure” of real or personal property owned by a servicemember securing a debt that originated before the servicemember entered military service without a court order.

• **Materiality defense**: was servicemember materially affected?

• **Exceptions to foreclosure-related penalties**: mortgage loan servicer may not foreclose on a servicemember during the period of active military service and within grace period thereafter, except:
  
  – With a court order obtained in advance (that is still valid at time of foreclose).
  
  – If the servicemember has signed a valid waiver of this SCRA provision.

  • Waiver: in writing, during/after military service, and in 12-point font.

• **Effect of violating Section 533**: any such sale, foreclosure, or seizure will be invalid.
Challenges in Reading and Understanding Military Orders

• **Variations between the different services**
  - Each branch uses its own format, abbreviations, and acronyms while issuing orders.

• **Difference between Reserve and National Guard**
  - National Guard members do not always qualify for SCRA protection. Only when they are on Title 10 orders will they receive protection.

• **Orders not always complete**
  - TAD or TDY orders overseas may not have a specific end date, and may be difficult to determine if the servicemember will be going overseas for a period of 180 days or longer.
  
  - A reservist may have separate sets of orders to multiple periods of instruction that individually are less than 180 days, but combined are longer than 180 days.
The Defense Manpower Data Center (DMDC) serves under the Office of the Secretary of Defense to collate personnel, manpower, training, financial, and other data for the Department of Defense.

- Website has information on start/end dates of military service.

Historical accuracy problems

Do you have a vendor helping you with this check?

Maintain printouts/proof that you checked website at various key points.

- For example, in vehicle repossession context: active duty at time of first payment, active duty at time of referral for repossession, and active duty at time of repossession itself.
Challenges in Applying Benefits and Remediating Errors

• When applying benefits retroactively, will the impacted billing cycle be prorated?
• When benefits are applied retroactively, will the amount overpaid be applied to the principal or refunded to the customer?
• When a borrower and co-borrower have SCRA protection for different periods of time, how will the covered periods be tracked to ensure the account receives protections for the correct period of time?
• If fees were assessed and paid during a period that is retroactively covered by SCRA protection, how will the money be paid?
SCRA Penalties

• The United States Attorney General may bring action against any person who engages in a pattern or practice of violating the SCRA or in a violation of the SCRA that raises an issue of significant public importance.

• The court may grant:
  – Equitable or declaratory relief, including awards of monetary damages;
  – Civil penalty of up to $55,000 for first violation; up to $110,000 for any subsequent violation; and
  – Criminal sanctions for anyone who knowingly violates the interest rate reduction provisions of the SCRA.

• Reputational risk is an issue.

• Potential for private right of action for “equitable or declaratory relief,” “all other appropriate relief, including monetary damages,” and “the costs of the action, including a reasonable attorney fee.”
Cost of Noncompliance Has Significant Long-Term Effects on Brand and Satisfaction

- **Banco Santander USA (DOJ)**
  - February 25, 2015
  - SCRA Consent Order and Civil Lawsuit
  - Civil Money Penalty of $9.35 million

- **Bank of America (OCC)**
  - May 29, 2015
  - SCRA Consent Order and Civil Lawsuit
  - Civil Money Penalty of $30 million
SCRA has a very broad and deep impact across a banking institution unlike other consumer regulations:

- Regulation not only impacts traditional consumer businesses, but also commercial and wholesale businesses.
- Regulation does not provide guidance or define types of applicable financial products SCRA impacts.
- Regulation may impact certain businesses more, depending on the type of product offered and servicemember volume.
- Key corporate functions, including audit, compliance, risk, and legal, must be aware of how SCRA is of impact to their LOB and products offered.
- People, processes, and technology must be customized for each LOB depending on the product and business type.

**Corporate Functions**
Audit, Compliance, Risk, and Legal

- Consumer Bank
- Trade Finance
- Corporate/Wholesale Banking
- Small Business Banking
- Specialty Lending Products

- Auto Finance
- Student Lending
- Credit Card
- Private Wealth Management
- Mortgage

**Processes**
Policies and Procedures, Product Development, Origination, Servicing, Collections, Credit Reporting

**People**
Training, Servicing Operations, Customer Awareness and Marketing

**Technology**
Servicing Systems, Risk and Control Monitoring
Common Challenges in Managing Implementation of SCRA

Eligibility Management
- Reading and interpreting military orders, jargon, and administrative actions to apply appropriate start and end dates.
- Treatment of dependents, joint obligors, power of attorney holders, and servicemembers on commercial loans and trade financing.
- Understanding the impact of Reserve/National Guard service on start dates.
- DMDC data accuracy.

SCRA Benefits and Denials
- Maintaining history of benefit and denial decisions for QA, audit, and regulatory purposes.
- Appropriate design of calculation of amounts to be charged/refunded to servicemembers (rates and fees) and correctly setting interest rates and suppressing fees on SCRA-protected accounts to keep APR under the 6% cap.
- General customer service training and awareness.

SCRA Protections
- Pre-default judgment Sworn Documents affidavit of non-SCRA status.
- Accurately identifying SCRA-protected customers after default (e.g., collections, foreclosures, default judgments, repossessions, rental evictions, etc.).

Ongoing Monitoring
- Accurate identification of SCRA end dates.
- Returning APR to pre-SCRA level after benefit period expires.
- Follow up with SCRA-protected customers to determine status.

Vendor Oversight
- SCRA and vendor oversight aligned in the Mortgage Consent Orders, but linkage applies to all consumer products.
- SCRA considerations key when developing compliance oversight protocols.
- SCRA risks should be appropriately characterized and reported.

Product Development
- SCRA regulatory impact on newly developed financial products.
- Determination of fees that are considered interest under SCRA.
Customer self-service feature for managing SCRA benefit requests through online banking channels.

Dedicated military customer servicing group.

Continuous monitoring, of customer military history information.

Automated self-compliance testing of controls related to SCRA policies and procedures.

Identification of Servicemembers in acquired portfolios or one-time notification to buyer of sold portfolios.
## Practical Recommendations for SCRA Compliance

<table>
<thead>
<tr>
<th>Topic</th>
<th>Recommendations</th>
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<tbody>
<tr>
<td><strong>Eligibility periods of servicemembers</strong></td>
<td>• Procedures and processes should be developed at an enterprise level to ensure consistent treatment of SCRA protections and benefits across LOBs.</td>
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<td><strong>Identification of eligible products and lines of business</strong></td>
<td>• All product offerings, including business purpose loans, should be reviewed for SCRA applicability.</td>
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<td><strong>Cross-Line of business sharing</strong></td>
<td>• Creation of a centralized information-sharing solution that includes:</td>
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<td>• Aggregation of any data available firm-wide on customers who are military service members in a standardized manner, including identifying information and military tour dates.</td>
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<tr>
<td></td>
<td>• A program for analysis of aggregated military tour data to identify dates of SCRA benefit eligibility.</td>
</tr>
<tr>
<td></td>
<td>• Distribution of data on identified customers and SCRA benefit eligibility period data across the organization.</td>
</tr>
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## Practical Recommendations for SCRA Compliance (cont’d)

<table>
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<tr>
<th>Topic</th>
<th>Recommendations</th>
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</table>
| **Enterprise level administration & reporting of SCRA performance** | • While data limitations and complexities present a challenge in SCRA compliance, a systematized approach reduces errors and improves efficiency when compared to any manual approach.  
• Reporting should be established at the enterprise level to monitor for SCRA compliance.  
• Establish appropriate data retention standards.                                                                 |
| **Calculation of Sec. 527 interest rate benefits** | • Develop consistent approach for handling data limitations with fees or missing transaction data (e.g., waive all fees or average harm amount).  
• The applications must provide:  
  • Identification of time periods, considering multiple sources, in which the customer was eligible for SCRA benefits.  
  • Recalculation of fees and interest paid by the customer during periods of eligibility.  
  • Solutions to calculate SCRA benefits retroactively must take into consideration challenges in data availability and in complexity of calculation methods; both of these are likely to be greater than originally estimated by the business. |
MILITARY LENDING ACT (MLA)
Military Lending Act (MLA) Overview

• Enacted in 2007 and applies to all covered extensions of credit issued after October 1, 2007.

• Governs loans taken while on active duty (not just prior to duty as in the SCRA).

• Population subject to coverage: Active duty servicemembers, including:
  – US Armed Forces (e.g., Army, Navy, Marines, Air Force) called to duty for longer than 30 days.
  – Federally activated National Guard and Reserves.
  – Dependents of a covered servicemember (as defined in 10 U.S.C. 1072).

• Congress gave the DoD the rulemaking authority for the regulation, and a 2012 amendment gave enforcement authority to the CFPB (banks and non-banks) and the FTC (non-banks).

• Violators of the MLA can be subject to both criminal and civil liability. Administrative actions can be taken by the regulators in accordance with their powers under the Truth in Lending Act (TILA).

“We have to revisit this. . . If we're serious about protecting military families from exploitation, this law has to be a lot tighter." Sen. Dick Durbin indicating the possibility of heightening the requirements on lenders under the MLA. – May 15, 2013
The rule was finalized on October 1, 2015 and applies to covered consumer credit transactions or accounts created after October 3, 2016. Open-ended accounts and credit card accounts are exempt from the final rule until October 2, 2017. Includes the concept/term “Military APR” (MAPR).

- Limit of 36% MAPR including all interest and fees associated with a loan to include "add-on" products.

- Expands definition of “Consumer Credit” to be more fully consistent with the definition under the Truth in Lending Act.

- Makes lenders responsible for identifying covered borrowers.

- Prohibitions on what the lender can require of a covered borrower.
QUESTIONS
Identification of Covered Borrowers–MLA

• Onus will be on the lender to determine if a borrower is a covered person.

• On October 3, 2016, banks will be able to determine military or dependent status through the DoD database or one of the nationwide consumer reporting agencies.

• Lender must show they used either the DoD database or a consumer reporting agency to be afforded safe harbor.
New MLA Prohibitions

• Lending institutions cannot require servicemembers to:
  – Submit to mandatory arbitration
  – Waive SCRA rights
  – Provide a payroll allotment as a condition of obtaining credit

• Refinance a payday loan
  – Provide a lender access to a bank account or car title as a condition of certain loans
  – Pay prepayment penalty
Effect of New Military Lending Act

- Financial Institutions should:
  - Review their financial products to identify the ones newly affected by the amended MLA and potentially subject to the MAPR cap.
  - Review their procedures to require verification of the military status of borrowers at these products’ origination and record retention of this information.
  - Accurately calculate MAPR (in particular, to include some APR excluded fees) in addition to APR.
  - Ensure that prohibited terms are not embedded in loan agreements with military borrowers.
  - Provide military members in covered consumer transactions appropriate TILA disclosures.

- Failure to verify compliance may result in voided transactions, reputation damage, and financial liability.
## Examples of When SCRA Protection May Begin for Different Servicemembers

<table>
<thead>
<tr>
<th>Servicemember Status</th>
<th>When Invoked</th>
<th>When SCRA Protections Begin</th>
</tr>
</thead>
<tbody>
<tr>
<td>Active Duty</td>
<td>At Induction</td>
<td>• SCRA protections begin on the date the SM is ordered to report for Initial Entry Training.</td>
</tr>
<tr>
<td>Active Duty</td>
<td>During Service</td>
<td>• SCRA protections begin immediately as well as with benefit coverage back-dated to the SM’s enlistment date.</td>
</tr>
<tr>
<td>Active Duty</td>
<td>After Service</td>
<td>• SM must invoke the protections within 180 days of leaving active service in order to have the benefits applied for the period from the enlistment date to the end-of-service date.</td>
</tr>
<tr>
<td>Reserve/National Guard/IRR</td>
<td>Before Mobilization</td>
<td>• Reserve and National Guard servicemembers are eligible to receive the benefits from the day they are notified to report for an active duty mobilization.</td>
</tr>
<tr>
<td>Reserve/National Guard/IRR</td>
<td>During Mobilization</td>
<td>• SCRA protections begin immediately as well as with benefit coverage back-dated to the date they were notified to report for an active duty mobilization.</td>
</tr>
<tr>
<td>Reserve/National Guard/IRR</td>
<td>After Mobilization</td>
<td>• If SM invokes SCRA within 180 days after the end of their active duty mobilization, he/she will get the benefits applied for the period starting with the date they were notified of the mobilization and ending on the end-of-mobilization date.</td>
</tr>
<tr>
<td>Active Guard Reserve (AGR)</td>
<td>During Service</td>
<td>• Eligibility begins when the AGR SM enters the AGR status (if coming from a reserve status) or at their enlistment/active-duty start date (if transferring from active service). NOTE: If the AGR is serving under Title 32 orders, he/she is not eligible for SCRA status.</td>
</tr>
<tr>
<td>Active Guard Reserve (AGR)</td>
<td>After Service</td>
<td>• AGR SM must invoke the protections within 180 days of leaving active service in order to have the benefits applied for the period from the enlistment date to the end-of-service date.</td>
</tr>
</tbody>
</table>
# Types of Military Orders that May Trigger SCRA Benefits and Protections

<table>
<thead>
<tr>
<th>Orders Type</th>
<th>Who Can Receive?</th>
<th>What They Are</th>
</tr>
</thead>
<tbody>
<tr>
<td>Orders to Initial Training</td>
<td>Active Duty, Reserve, or National Guard</td>
<td>Orders that direct the individual to report for initial military training (Recruit Training, Officer Candidate School, etc.).</td>
</tr>
<tr>
<td>Permanent Change of Station (PCS) Orders</td>
<td>Active Duty</td>
<td>Orders that direct a servicemember if a servicemember receives PCS orders to go outside of the Continental US (OCONUS) or orders returning from OCONUS, certain SCRA protections, such as early lease termination, will apply.</td>
</tr>
<tr>
<td>Temporary Duty or Temporary Additional Duty (TDY, TAD)</td>
<td>Active Duty, Reserve, or National Guard</td>
<td>Orders that direct a servicemember to report to a different unit or duty station for a temporary period of time. These are often used for an individual to deploy to a combat zone as an augmentee to another deployed unit.</td>
</tr>
<tr>
<td>Temporary Duty Under Instruction (TEMINS)</td>
<td>Active Duty</td>
<td>These orders direct a servicemember to report to a military school for a period of instruction. This often happens in conjunction with a permanent change of station for PCS/TEMINS Orders.</td>
</tr>
<tr>
<td>Orders to Active Duty</td>
<td>Reserve or National Guard</td>
<td>Orders that direct a member of the Active Reserves, Individual Ready Reserve, or National Guard to report for a period of active service. If the orders are for a member of the National Guard, they must be Title 10 orders to qualify for SCRA protection.</td>
</tr>
<tr>
<td>Unit Orders</td>
<td>Active Duty, Reserve, or National Guard</td>
<td>Orders that direct an entire unit, rather than an individual. To use these orders to qualify for SCRA protection, the servicemember must show that the orders direct the unit to do something that would grant protection (i.e. deploy overseas for a period of 180 days) and the servicemember must show that he or she is a member of the unit.</td>
</tr>
<tr>
<td>Redacted Orders</td>
<td>Active Duty, Reserve</td>
<td>Members of the Special Forces, or service members serving in billets that require the details of their orders to be kept secret may only be allowed to provide orders that have much of the pertinent information redacted.</td>
</tr>
<tr>
<td>Letter from Commanding Officer</td>
<td>Active Duty, Reserve, or National Guard</td>
<td>Commanding Officers may write a letter or memo that details the servicemember under their command is executing orders that will give him or her protection under the SCRA.</td>
</tr>
</tbody>
</table>
QUESTIONS
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