

As of November 20, 2013, this guidance applies to federal savings associations in addition to national banks.\*



CCE-SCRA

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Comptroller of the Currency  
Administrator of National Banks

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# Servicemembers Civil Relief Act of 2003

Comptroller's Handbook

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\*References in this guidance to national banks or banks generally should be read to include federal savings associations (FSA). If statutes, regulations, or other OCC guidance is referenced herein, please consult those sources to determine applicability to FSAs. If you have questions about how to apply this guidance, please contact your OCC supervisory office.

# CCE

Consumer Compliance Examination

# Servicemembers Civil Relief Act of 2003

## Background and Summary

The Servicemembers Civil Relief Act of 2003 (SCRA) was signed into law on December 19, 2003, replacing the Soldiers' and Sailors' Civil Relief Act of 1940, and is codified at 50 USC App. 501 et seq. The SCRA was amended December 10, 2004, by the Veterans Benefits Improvement Act of 2004. The Housing and Economic Recovery Act of 2008 (HERA) also amended several sections of this law, extending the time period for certain activities. Subsequently, HERA was amended by the Helping Heroes Keep their Homes Act of 2010 to further extend protections related to mortgages and foreclosures through December 31, 2012. In addition, the Veterans Disability Protection Act of 2010 added provisions for the U.S. Attorney General to bring civil actions, including for monetary damages, against violators of the SCRA. It also established the premise that a person has a private right of action for violations.

The SCRA protects members of the United States Army, Navy, Air Force, Marine Corps, and Coast Guard, including members of the National Guard, as they enter military service (active duty<sup>1</sup>), as well as commissioned officers of the Public Health Service and the National Oceanic and Atmospheric Administration engaged in active service. Some of the benefits accorded to service members by the SCRA also extend to service members' spouses, dependents, and other persons subject to the financial obligations of service members.

## Major Relief Provisions

Major relief provisions of the SCRA include the following:

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<sup>1</sup> In the case of service members who are members of the United States Army, Navy, Marine Corps, or Coast Guard, active duty is defined as "full-time duty in the active military service of the United States. Such term includes full-time training duty, annual training duty, and attendance, while in the active military service, at a school designated as a service school by law or by the Secretary of the military department concerned. Such term does not include full-time National Guard duty" (10 USC 101(d)). Note that the term "military service" under the SCRA also includes National Guard members under a call of duty authorized by the President or the Secretary of Defense for more than 30 consecutive days and service members who are commissioned officers of the Public Health Service and the National Oceanic and Atmospheric Administration engaged in "active service" (50 USC app. 511(2)(B)).

## Maximum Rate of Interest on Loans, Including Mortgages

- Upon receiving a written request for relief and a copy of the service member's military orders, creditors must, for the duration of the service member's military service, reduce the interest<sup>2</sup> rate on debts<sup>3</sup> incurred by the service member, or a service member and spouse jointly, prior to entry into military service to no more than 6 percent per year.
- Creditors must maintain the interest rate reduction for the period of military service, except in the case of a mortgage, trust deed, or other security in the nature of a mortgage, where the interest rate reduction extends for one year after the end of the service member's military service.<sup>4</sup>
- Creditors who reduce the interest rate on the obligations of a service member must forgive interest in excess of 6 percent and periodic payments must be reduced by the amount of interest forgiven.<sup>5</sup>
- The reduced interest rate provision applies unless a court finds the ability of the service member to pay interest on the debt at a higher interest rate is not materially affected by his or her military service. In such cases, the court may grant a creditor relief from the interest rate limitations of the act.

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<sup>2</sup> "Interest" is defined in the SCRA to include service and renewal charges or any other fees or charges, except for charges for bona fide insurance (50 USC app. 527(d)).

<sup>3</sup> Section 207 of the SCRA (50 USC app. 527) applies to "an obligation or liability . . . incurred by the servicemember, or the servicemember and the servicemember's spouse jointly, before the service member enters military service." No distinction is made between personal versus business credit. However, according to a U.S. Department of Education memorandum, the SCRA limitation on interest rates does not apply to federally insured student loans based on 20 USC 1078(d), which states that no provision of any federal or state law that limits the interest rate on a loan will apply to loans made under a government student loan program. Nonetheless, the other provisions of the SCRA, including those providing for a stay of proceedings and reopening default judgments, remain available to service members.

<sup>4</sup> The extension of the interest rate reduction for mortgages for an additional one-year period after the end of military service is a permanent change and was added by section 2203(b) of HERA.

<sup>5</sup> 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 service member as a refund, applied toward future monthly payments, or applied toward principal curtailment. If feasible, the service member should be given an opportunity to direct how such funds should be applied.

## Residential and Motor Vehicle Purchases and Leases

- Contracts for the purchase of real or personal property, for which the service member has paid a deposit or made a payment before the service member enters military service, may not be rescinded or terminated after the service member's entry into military service for a breach of the terms of the contract occurring before or during their military service, or the property repossessed because of the breach without a court order.
- Termination of certain residential or motor vehicle leases may be made at the option of the lessee service member if the service member provides to the lessor or the lessor's agent written notice of the request for termination along with a copy of the military orders.
  - Automobiles leased for personal or business use by the service member or their dependent may be terminated if the service member, after the lease is executed, enters military service for a period of 180 days or more.
  - Additionally, an automobile lease entered into while the service member is on active duty may be terminated if the service member receives military orders for a permanent change of station (PCS) outside of the continental United States (this would include a PCS to Hawaii or Alaska) or deployment for a period of 180 days or more.
  - Termination of an automobile lease also includes the return of the automobile to the lessor within 15 days after delivery of the written notice of termination.
  - Termination is permitted of pre-service "residential, professional, agricultural or similar" leases occupied or intended to be occupied by a service member or a dependent as well as those leases executed during military service when the service member subsequently receives orders for a PCS or a deployment for a period of 90 days or more.

## Foreclosure, Eviction from Bank-Owned Property

- Real or personal property owned by a service member prior to the service member's military service that is secured by a mortgage, trust deed, or similar security interest cannot be sold, foreclosed upon, or seized based on a breach of such a secured obligation during the period of military

service or nine months thereafter without a court order or a written agreement in which the service member agrees to waive certain rights. Additionally, in an action filed during or within nine months after a service member's military service, a court may, after a hearing on its own, or shall, upon application by a service member, stay a proceeding to enforce an obligation as described above or adjust the debt, when the member's ability to comply with the obligation is materially affected by reason of the member's military service.<sup>6</sup>

- A landlord may not evict a service member or his or her dependents from certain residences<sup>7</sup> occupied primarily as a residence during a period of military service except by court order.

## Life Insurance Assigned as Security

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 or other specified requirement.

## Adverse Action

- The fact that a service member applies for, or receives a stay, postponement, or suspension of his or her obligations or liabilities pursuant to the SCRA may not in itself provide the basis for the following:
  - A determination by a lender or other person that the service member is unable to pay the obligation or liability in accordance with its terms;

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<sup>6</sup> Section 2203(a) of HERA extends the stay, adjustment, sale, foreclosure, and seizure provisions from 90 days to nine months following the end of the service member's period of military service. These changes expire on December 31, 2012. On January 1, 2013, the SCRA will revert to the 90-day limit per HERA, which was amended by the Helping Heroes Keep their Homes Act of 2010.

<sup>7</sup> The law, as originally passed by Congress, applied to dwellings with monthly rents of \$2,400 or less. Accordingly, evictions involving residences with monthly rents of \$2,400 or less needed a court order. This amount is adjusted yearly and is published in the *Federal Register* by the Department of Defense. The figure as of January 1, 2010, is \$2,958.53 (75FR12518).

- A creditor’s denial or revocation of credit, change in terms of an existing credit arrangement, or refusal to grant credit to the service member in substantially the amount or on substantially the terms requested;
- An adverse report relating to the creditworthiness of the service member by or to a consumer reporting agency;
- A refusal by an insurer to insure the service member;
- An annotation in a service member’s record by a creditor or a person engaged in the practice of assembling or evaluating consumer credit information identifying the service member as a member of the National Guard or a reserve component; or
- A change in the terms offered or conditions required for the issuance of insurance.

## Relief for Other Obligor

- Whenever a court grants a stay, postponement, or suspension to a service member on an obligation, it may likewise grant a person primarily or secondarily liable such a stay, postponement, or suspension.

## References

### Laws

50 USC App. 501 *et seq.*, Servicemembers Civil Relief Act  
Veterans Benefits Improvement Act of 2004  
Housing and Economic Recovery Act of 2008  
Helping Heroes Keep their Homes Act of 2010  
Veterans Disability Protection Act of 2010

# Expanded Procedures—Servicemembers Civil Relief Act of 2003

**Objective:** Determine the bank's level of compliance with the Servicemembers Civil Relief Act of 2003 (SCRA).

Assess the bank's level of compliance by using the Servicemembers Civil Relief Act Examination Worksheet.



## Servicemembers Civil Relief Act Examination Worksheet

This worksheet can be used for reviewing audit work papers, evaluating bank policies, performing expanded procedures, and training as appropriate. Complete only those sections of the worksheet that specifically relate to the issue being reviewed, evaluated or tested; and retain those completed sections in the work papers.

When reviewing audit or evaluating bank policies, a “no” answer indicates a possible exception/deficiency and should be explained in the work papers. When performing expanded procedures, a “no” answer indicates a violation and should be explained in the work papers. If a line item is not applicable within the area you are reviewing, indicate “NA.”

### Servicemembers Civil Relief Act (SCRA) Examination Worksheet

Underline the applicable use:

**Audit    Bank Policies    Expanded Procedures**

	Yes	No	NA
<b>Section 518—Exercise of Rights Under Act Not to Affect Certain Future Financial Transactions</b>			
1. Does the creditor refrain from taking adverse action against a service member solely because the service member exercised rights under the SCRA? [50 USC App. 518]			
<b>Section 527—Maximum Rate of Interest on Debts Incurred Before Military Service</b>			
1. Did the creditor reduce the interest rate on obligations of a service member, or of a service member jointly with the service member’s spouse, incurred prior to military service, to no more than 6 percent during the period of military service upon receipt of written notice and a copy of the service member’s military orders? [527(a)(1)]  <b>Note:</b> In the case of a mortgage, the 6 percent cap extends to one year following the end of military service. Interest under the SCRA includes all service, renewal, or other charges and fees with the exception of bona fide insurance charges.			
2. Did the creditor forgive interest in excess of 6 percent? [527(a)(2)]			
3. Did the creditor reduce any periodic payment due by the service member by the amount of the interest forgiven? [527(a)(3)]			
4. Upon receipt of the written notice from the service member and a copy of the military orders, did the creditor apply the			

interest rate reduction retroactively to the date on which the service member was called to military service? [527(b)(2)]			
<b>Section 532—Protection Under Installment Contracts For Purchase or Lease</b>			
1. Did the creditor obtain a court order before rescinding or terminating contracts by a service member for the purchase, lease, or bailment of real or personal property (including a motor vehicle) for any breach of terms occurring before or during military service, provided a deposit or installment had been paid prior to entry into military service? Similarly, did the creditor obtain a court order before repossessing property due to breach of terms? [532(a)]			
<b>Section 533—Mortgages and Trust Deeds</b>			
1. Did the creditor obtain a court order or a written agreement before selling, foreclosing, or seizing real or personal property from the service member that secures an obligation that originated before the period of the service member’s military service due to a breach of that obligation by a service member during the period of military service or within nine months thereafter? [533(c)]  <b>Note:</b> The nine-month time period expires on December 31, 2012, and the SCRA reverts to the original statutory provision of 90 days on January 1, 2013.			
<b>Section 535—Termination of Residential or Motor Vehicle Lease</b>			
1. Did the creditor terminate the lease within the stipulated time frame once the requirements for termination were met by the service member lessee? [535(d)]			
2. Did the creditor refund the lease amounts paid in advance for a period after the effective date of termination within 30 days of the effective date of the termination of the lease? [535(f)]			
<b>Section 536—Protection of Life Insurance Policy</b>			
1. Unless an exception in section 536(b) applies, did the creditor obtain a court order before exercising any right or option obtained under an assignment of the service member’s life insurance policy made before the service member’s military service during the period of military service or within one year thereafter? [536(a)]			