

RESCINDED

AL 2004-8

OCC ADVISORY LETTER

Comptroller of the Currency
Administrator of National Banks

This issuance has been replaced by OCC Bulletin
2008-30

Subject: Servicemembers Civil
Relief Act

TO: Chief Executive Officers and Compliance Officers of All National Banks and
All Examining Personnel

Background

The Servicemembers Civil Relief Act (Act), Pub. L. No. 108-189, 117 Stat. 2835 (to be codified at 50 USC App. 501 et seq.) was signed into law on December 19, 2003. The act amended and replaced the Soldiers' and Sailors' Civil Relief Act of 1940, 50 USC App. 501 et seq. In general, the act seeks to strengthen the national defense by providing for temporary suspension of legal proceedings and financial transactions that may adversely affect the rights of servicemembers during their military service.

This advisory letter is intended to provide general information about certain provisions of the act that are most likely to affect national banks. This guidance supersedes OCC Advisory Letter 2001-10 (Soldiers' and Sailors' Civil Relief Act of 1940), October 25, 2001.

Rate of Interest

Creditors must forgive interest in excess of 6 percent per year on debts (including credit card and other open-end debts) incurred by a servicemember *before* the servicemember entered military service. This limitation also applies to debts incurred jointly by the servicemember and the servicemember's spouse. The act defines "interest" to include service and renewal charges or any other fees or charges (except charges for bona fide insurance) that are related to the debt. The act clarifies that creditors must forgive, rather than merely defer, interest above the 6 percent threshold during the time of service. The act also provides that the creditor must reduce any periodic payments due under the debt to reflect the reduced interest rate.

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 his or her military service. In such cases, the court may grant a creditor relief from the interest rate limitations of the act.

Finally, the act provides that the servicemember must give the creditor written notice, and a copy of the servicemember's military orders, in order 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.

Installment Contracts and Leases

The act also addresses installment contracts by servicemembers for the purchase of real or personal property (including motor vehicles), and the lease or bailment of such property. If the servicemember has paid a deposit or installment on the contract *before* entry into military service, the other party may not rescind or terminate the contract after the 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 any such breach without a court order.

The act contains specific provisions relating to the termination of residential and motor vehicle leases by servicemembers. The act provides that a servicemember generally may terminate a residential lease if the servicemember either (i) enters into military service after executing the lease, or (ii) executes the lease while in military service but subsequently receives 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 (i) after executing the lease, enters into military service under a call or order for a specified term of at least 180 days, or (ii) 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.

Mortgages and Trust Deeds

The act also contains special rules regarding debts secured by a mortgage, trust deed, or similar security interest in real or personal property owned by a servicemember. Generally, the act prohibits the sale, foreclosure, or seizure of property, based on a breach of such a secured obligation, during the period of military service or within 90 days thereafter. The prohibition applies only to obligations that originated prior to the servicemember's military service, and for which the servicemember is still obligated.

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 act may not in itself 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 the 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.

Dependents and Persons Secondarily Liable

Many of the benefits accorded to servicemembers by the act 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 act 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 act 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 act. Banks should monitor their portfolios and the performance of loans affected by the act and adjust loan loss allowances accordingly.

If you have any questions regarding this advisory letter, please contact the appropriate supervisory office, the Compliance Division at (202) 874-4428, or the Community and Consumer Law Division at (202) 874-5750.

Ann Jaedicke
Deputy Comptroller
Compliance Division

RESCINDED