

SERVICEMEMBERS CIVIL RELIEF ACT ("SCRA") 50 U.S.C. app. §§ 501-597b




THE UNITED STATES
DEPARTMENT OF JUSTICE

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- ▶ The Civil Rights Division of the Department of Justice, created in 1957 by the enactment of the Civil Rights Act of 1957, works to uphold the civil and constitutional rights of all Americans, particularly some of the most vulnerable members of our society.
- ▶ The Division enforces federal statutes prohibiting discrimination on the basis of race, color, sex, disability, religion, familial status and national origin.


The Housing and Civil Enforcement Section ("HCE")

- ▶ The Housing and Civil Enforcement Section enforces:
 - the Fair Housing Act, which prohibits discrimination in housing,
 - the Equal Credit Opportunity Act, which prohibits discrimination in credit,
 - Title II of the Civil Rights Act of 1964, which prohibits discrimination in certain places of public accommodation,
 - the Religious Land Use and Institutionalized Persons Act, which prohibits local governments from adopting or enforcing land use regulations that discriminate against religious assemblies and institutions or which unjustifiably burden religious exercise,
 - and the Servicemembers Civil Relief Act.




How Do Matters Come to HCE?

- ▶ Section 597 of the SCRA permits the Attorney General to file suit in any appropriate federal district court against a person who:
 - "engages in a pattern or practice of violating" the SCRA; or
 - "engages in a violation of this Act that raises an issue of significant public importance."




How Do Matters Come to HCE?

- ▶ In order to have an SCRA matter reviewed by the Department of Justice, one must first seek the assistance of a military legal assistance office. If that office cannot resolve the complaint, it may choose to forward the complaint to the Department. The Department then will review the matter to determine whether Departmental action is appropriate.
- ▶ **U.S. Armed Forces Legal Assistance Legal Services Locator:**
<http://legalassistance.law.af.mil/content/locator.php>



The United States as Plaintiff

- ▶ Section 597 of the SCRA, 50 U.S.C. app. § 597, gives the Attorney General the authority to seek monetary damages on behalf of individual "aggrieved" servicemembers, as well as civil penalties, equitable relief, and declaratory relief.
- ▶ Department of Justice attorneys cannot and do not represent individual servicemembers.



The Supreme Court on the SSCRA



- ▶ The SCRA, enacted in 2003 and amended several times since then, revised and expanded the Soldiers' and Sailors' Civil Relief Act of 1940 ("SSCRA"), a law designed to ease financial burdens on servicemembers during periods of military service.
- ▶ "[T]he Act must be read with an eye friendly to those who dropped their affairs to answer their country's call." *Le Maistre v. Leffers*, 333 U.S. 1, 6 (1948) (citing *Boone v. Lightner*, 319 U.S. 561, 575 (1943)).

Who Gets the Benefits and/or Protections of the SCRA?

- ▶ Those in "military service"
- ▶ "[A] member of the Army, Navy, Air Force, Marine Corps, or Coast Guard . . . [who is] active duty, as defined in section 101(d)(1) of title 10, United States Code . . ."
- ▶ Reservists – When on active duty in Title 10 status
- ▶ A member of the National Guard – When: 1) called to active service; 2) by the President or Secretary of Defense; 3) for more than 30 consecutive days; 4) under 32 U.S.C. § 502(f); and 5) for purposes of responding to a national emergency declared by the President and supported by Federal funds
- ▶ Spouses and Other Dependents – Sometimes
- ▶ Persons Secondarily Liable – When a court grants a stay, suspension, or postponement of an order, proceeding or obligation
- ▶ Commissioned officers in active service of the Public Health Service or the National Oceanic and Atmospheric Administration
- ▶ Servicemembers absent from duty for a lawful cause or because of sickness, wounds or leave

How Can I Check to See if Someone is in Military Service?

https://www.dmdc.osd.mil/appj/scra/single_record.xhtml

The screenshot shows the 'Single Record Request' form on the DDMC website. It includes fields for 'Request Date', 'From Date', 'Last Name', 'First Name', 'Middle Name', and 'Active Duty Status'. There are also sections for 'Tips & Notes' and 'Requirements'.

When Do SCRA Protections Begin?

- ▶ For most, SCRA protections begin on the date one enters active duty.
- ▶ For military reservists, protections begin upon receipt of mobilization orders.
- ▶ Restated, one should generally look at the date of a reservist's orders, and not the date the reservist is being ordered to report to a certain location.



BASIC SCRA PROTECTIONS



- 1.) 6% INTEREST RATE CAP
- 2.) STAY OF CIVIL PROCEEDINGS
- 3.) PROTECTIONS IN CONNECTION WITH DEFAULT JUDGMENTS
- 4.) PROTECTIONS IN CONNECTION WITH RESIDENTIAL LEASE TERMINATIONS
- 5.) PROTECTIONS IN CONNECTION WITH EVICTIONS, MORTGAGE FORECLOSURES, AND INSTALLMENT CONTRACTS

Section 527 – 50 U.S.C. app. § 527 The 6% Interest Rate Cap

- ▶ Basic rule – Limits interest to 6% on pre-service obligations
- ▶ Requirements
 - The "obligation or liability" must have been obtained prior to military service.
 - The "obligation or liability" must have or have had an interest rate – inclusive of fees – greater than 6% per annum.
 - The servicemember must submit a written notice to the creditor in order to obtain this benefit.
 - The servicemember must provide the creditor with "a copy of the military orders calling the servicemember to military service and any orders further extending military service." 50 U.S.C. app. § 527(b)(1).
 - The written notice and orders must be provided to creditor within 180 days of the end of military service.

What a Creditor Must Do In Response...

- ▶ The creditor must FORGIVE – not defer – interest above 6% per year.
- ▶ The creditor must forgive this interest retroactively.
 - Hypothetical: John Doe takes out a mortgage and then enters military service. Mr. Doe is in military service continuously for 20 years. Mr. Doe retires from military service and on the 179th day of his retirement requests that the interest rate on his mortgage be lowered to 6% per year. The creditor must forgive the entire 20 years of interest that was at a rate greater than 6% AND an additional year of interest going forward.


What a Creditor Must NOT Do in Response ...

- ▶ The creditor is prohibited from accelerating the payment of principal.

WIGGLE ROOM?

A creditor may avoid reducing the interest rate if – and only if – a court determines that the servicemember’s ability to pay the interest at rate higher than 6% per year is NOT “materially affected” by the servicemember’s military service. See 50 U.S.C. app. § 527(c).

Duration of the 6% Interest Cap

- ▶ **Mortgages:** For mortgages, trust deeds, and securities “in the nature of a mortgage,” interest is capped at 6% during the entire period of military service and for one year after the period of military service. See 50 U.S.C. app. § 527(a)(1)(A). 
- ▶ **Other obligations:** For all other obligations, interest is capped at 6% ONLY for the duration of the period of military service. See 50 U.S.C. app. § 527(a)(1)(B).

What Types of Obligations Are Covered Under Section 527?

- ▶ Credit cards
- ▶ Automobile, ATV, boat and other vehicle loans
- ▶ Mortgages
- ▶ Home equity loans
- ▶ Student loans
 - Why student loans are tricky...

Section 521– 50 U.S.C. § 521 Default Judgments

- ▶ Applies to any civil proceeding in which the defendant DOES NOT make an appearance
- ▶ Comes up most frequently for the Department in the context of judicial foreclosure proceedings
- ▶ Obligation of Creditors – A plaintiff creditor **MUST** file an affidavit with the court stating:
 - that the defendant IS in military service;
 - that the defendant IS NOT in military service; or
 - that the creditor is UNABLE TO DETERMINE whether or not the defendant is in military service AFTER MAKING A GOOD FAITH EFFORT TO DETERMINE THE DEFENDANT’S MILITARY SERVICE STATUS.

Best Practices!

Use the DMDC and append a copy of the certificate generated to the military affidavit.



If you KNOWINGLY make a false affidavit, then you could face criminal penalties!




**Section 521 – 50 U.S.C. § 521
More on Default Judgments**

- ▶ Basic rule – Where it appears that a defendant is in military service, the court MAY NOT enter a default judgment against that defendant until AFTER it appoints an attorney – guardian ad litem (“GAL”) – to represent the servicemember.
- ▶ The court MUST stay a proceeding for at least 90 days if:
 - counsel has been unable to contact the defendant; or
 - there may be a defense to the action that requires that the defendant be present.


**Section 533 – 50 U.S.C. app. § 533
Mortgages & Non-Judicial Foreclosures**

- ▶ In order for a servicemember to receive the protections of Section 533, the “obligation on real or personal property” (mortgage) needs to have been taken out PRIOR to the servicemember entering military service.
- ▶ To recap –
 - Section 521 – Default judgments (judicial foreclosures) – NO pre-service requirement
 - Section 533 – Mortgages (non-judicial foreclosures) – Pre-service requirement


**Section 533 – 50 U.S.C. app. § 533
More on Mortgages & Non-Judicial Foreclosures**



- ▶ During a period of military service, and for 1 year after a period of military service, a creditor MUST get a court order prior to foreclosing on a mortgage.
- ▶ This is a strict liability section of the SCRA.
- ▶ A person who KNOWINGLY violates this provision of the SCRA may be fined and/or “imprisoned for not more than one year” 50 U.S.C. app. § 533(d).




**Section 533 – 50 U.S.C. app. § 533
Yet More on Mortgages & Non-Judicial Foreclosures**

- ▶ A court may on its own – and SHALL upon application by a servicemember –
 - Stay a non-judicial foreclosure proceeding OR
 - Adjust the obligation 
 - PROVIDED THAT the servicemember’s ability to meet the obligation is materially affected by reason of his or her military service.

**Section 532 – 50 U.S.C. app. § 532
Installment Contracts (Repossessions)**

- ▶ A creditor MAY NOT repossess a vehicle during a borrower’s period of military service without a court order as long as:
 - the servicemember borrower either placed a deposit for the vehicle, or made at least one installment payment on the contract BEFORE entering military service.



**Section 535 – 50 U.S.C. app. § 535
Lease Terminations**

- ▶ Apartment leases
 - The premises must be occupied or intended to be occupied by a servicemember or a servicemember’s dependent(s).
 - The lease must either be executed by a person who later enters military service OR is in military service and later receives “PCS” or deployment orders for at least 90 days.
 - The servicemember must submit a written notice and a copy of his or her military orders (XO letter) by hand delivery, USPS return receipt requested or private carrier.

Who Likes Riddles?

- ▶ “In the case of a lease described in subsection (b)(1) that provides for monthly payment of rent, termination of the lease under subsection (a) is effective 30 days after the first date on which the next rental payment is due and payable after the date on which the notice under subsection (c) is delivered.” 50 U.S.C. app. § 535(d)(1).
- ▶ **When is a lease termination effective?**

Translation!

- ▶ If you pay rent on a monthly basis, once you give proper notice and a copy of your military orders, then the lease will terminate 30 days after your next rent payment is due.
- ▶ **When is a lease termination effective?**


WAIVERS

Section 517 – 50 U.S.C. app. § 517

- ▶ ANY of the rights and protections provided for in the SCRA may be waived!
- ▶ For contracts, leases (including apartment leases) and mortgages, modifications, terminations and cancellations require a WRITTEN waiver of rights.
- ▶ Waivers for the above are effective ONLY if executed during or after the relevant period of military service.
- ▶ Written waivers MUST be in at least 12 point font.
- ▶ In order to be effective, the waiver must be its own document.

RECENT DEPARTMENT SCRA SETTLEMENTS

- ▶ United States v. Sallie Mae, Inc. (D. Del.)
- ▶ On September 29, 2014, the court entered a consent order in the above case.
- ▶ The complaint, filed on May 13, 2014, alleged that three separate owners or servicers of private and federally guaranteed student loans (collectively "Sallie Mae") violated Section 527 of the SCRA when they failed to reduce to 6% the interest rates on pre-service loans held by approximately 60,000 servicemembers.



United States v. Sallie Mae, Inc. (D. Del.)

- ▶ The complaint also alleged that Sallie Mae violated Section 521 of the SCRA by obtaining improper default judgments against SCRA-protected servicemembers.
- ▶ The consent order provides for a \$60 million settlement fund to compensate aggrieved servicemembers and a \$55,000 civil penalty.
- ▶ The consent order also requires Sallie Mae to streamline the process by which servicemembers may obtain SCRA interest rate benefits and requires Sallie Mae to correct negative credit entries associated with interest overcharges and improper default judgments.

United States v. Sallie Mae, Inc. (D. Del.)

- ▶ On June 12, 2015, checks were mailed to 77,795 servicemembers under this settlement.
- ▶ These 77,795 checks represent over \$60 million in compensation for servicemembers having been charged excess interest on their student loans.
- ▶ 3,224 servicemembers residing in North Carolina received checks under this settlement.

National Mortgage Settlement

- ▶ This is a 2012 settlement with five of the nation's largest mortgage servicers
- ▶ In February 2015, the Department announced that 952 servicemembers and their co-borrowers are eligible to receive over \$123 million for non-judicial foreclosures that violated the SCRA.
- ▶ The five mortgage servicers are JP Morgan Chase Bank N.A.; Wells Fargo Bank N.A. and Wells Fargo & Co.; Citi Residential Lending Inc., Citibank, NA and CitiMortgage Inc.; GMAC Mortgage, LLC, Ally Financial Inc. and Residential Capital LLC; and BAC Home Loans Servicing LP formerly known as Countrywide Home Loans Servicing.



National Mortgage Settlement

- ▶ In the first round of payments under the SCRA portion of the National Mortgage Settlement, 666 servicemembers and their co-borrowers will receive over \$88 million from JP Morgan Chase, Wells Fargo, Citi and GMAC Mortgage.
- ▶ The other 286 servicemembers and their co-borrowers are receiving over \$35 million from Bank of America through an earlier settlement.
- ▶ The non-judicial foreclosures at issue took place between January 1, 2006, and April 4, 2012.