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**III.**

**Servicemembers Civil Relief Act (SCRA)**

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**U.S. DEPARTMENT OF JUSTICE**  
**SERVICEMEMBERS & VETERANS INITIATIVE**  
**SERVICEMEMBERS CIVIL RELIEF ACT**  
**OVERVIEW**

**November 14-15, 2017**  
**2017 Military & Veterans Law Section**  
**Annual Meeting and CLE on Legal**  
**Assistance for Military Personnel**



## **The SCRA – The Supreme Court Weighs In...**

- 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)).



U.S. DEPARTMENT OF JUSTICE  
SERVICEMEMBERS &  
VETERANS INITIATIVE



## 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, not the date the reservist is being ordered to report to a certain location.



## 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**





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

- 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 (“PHS”) or the National Oceanic and Atmospheric Administration (“NOAA”)
- Servicemembers absent from duty for a lawful cause or because of sickness, wounds or leave



## BASIC SCRA PROTECTIONS

- 6% Interest Rate Cap
- Stay of Civil Proceedings
- Protections in Connection with Default Judgments
- Protections in Connection with Evictions, Mortgage Foreclosures, and Repossessions





## Section 3937 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 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.”
  - 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.





## What a Creditor Must **NOT** Do in Response ...

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



## Duration of the 6% Interest Cap

- Mortgages: For mortgages, trust deeds, and securities “in the nature of a mortgage”: period of military service + **1 year**
- Other obligations: For all other obligations: **period of military service only**





## What Types of Obligations Are Covered Under Section 3937?

- Credit cards
- Automobile, ATV, boat and other vehicle loans
- Mortgages
- Home equity loans
- Student loans\*



## Section 3931 Default Judgments

- Applies to any civil proceeding in which the defendant DOES NOT make an appearance
- Comes up most frequently for the Department of Justice in the context of judicial foreclosure proceedings
- Foreclosures typically proceed **non-judicially** in North Carolina. However, in South Carolina is considered a judicial foreclosure state.





## Section 3931 Default Judgments

- Creditors' obligation – 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.
- KNOWINGLY making a false affidavit is a crime!
- <https://scra.dmdc.osd.mil/scra/#/home>

Department of Defense Manpower Data Center

Results as of: Feb-19-2010 10:02 AM

8284.1.1

Status Report  
Pursuant to Servicemembers Civil Relief Act

Last Name: SMITH  
First Name: JOHN  
Middle Name: DOE  
Active Duty Status As Of: Jun-02-2008

On Active Duty On Active Duty Status Date			
Active Duty Start Date	Active Duty End Date	Branch	Service Component
01-JUN-08	01-JUN-08	Army	Army National Guard
This response reflects the individual's active duty status based on the Active Duty Status Date			

Left Active Duty Within 301 Days of Active Duty Status Date			
Active Duty Start Date	Active Duty End Date	Branch	Service Component
NA	NA	NA	NA
This response reflects the individual's left active duty status within 301 days preceding the Active Duty Status Date			

The Member or member unit has notified a Public Call Up to Active Duty on Active Duty Status Date			
Order Notification Start Date	Order Notification End Date	Branch	Service Component
NA	NA	NA	NA
This response reflects whether the individual or member unit has received any notification to report to active duty			





## **Section 3931 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 3953 Mortgages & Non-Judicial Foreclosures**

- In order for a servicemember to receive the protections of Section 3953, the “obligation on real or personal property” (mortgage) needs to have been taken out PRIOR to the servicemember entering military service.
- North Carolina is typically a non-judicial foreclosure state.
  - Section 3953 – Mortgages (non-judicial foreclosures) –  
Pre-service requirement
  - Section 3931– Default judgments (judicial foreclosures) –  
NO pre-service requirement





## **Section 3953**

### **Mortgages & Non-Judicial Foreclosures**

- During a period of military service, and for one 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. § 3953(d).



## **Section 3953**

### **Tail Coverage Period**

- December 19, 2003 to July 29, 2008 – 90 days
- July 30, 2008 to February 1, 2013 – 9 months
- February 2, 2013 to December 31, 2015 – One year
- January 1, 2016 to March 30, 2016 – 90 days\*
- March 31, 2016 to December 31, 2017 – One year
- What happens on January 1, 2018?





## **Section 3953**

### **More on Tail Coverage Periods**

- On March 31, 2016, President Obama signed into law the Foreclosure Relief and Extension for Servicemembers Act of 2015. This extended the tail coverage period for non-judicial foreclosures back to one year, and made this change retroactive to January 1, 2016. Unless continued by further legislation, the protection period will revert back to 90 days on January 1, 2018.



## **Section 3953**

### **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 3953

### Sibert v. Wells Fargo Bank, N.A.

- Fourth Circuit – Case No. 16-1568 – July 17, 2017
- Loan originated 5/2008 (Virginia) while the borrower was in military service.
- Non-judicial foreclosure sale in 5/2009 while borrower was in military service
- Borrower had breaks in service between 5/2008 and 5/2009. Argued that Section 3953 should apply because the loan originated before his **current** period of military service.
- The Fourth Circuit rejected this argument, holding that the borrower’s interpretation of the statute would lead to “inconsistent treatment of substantially identical obligations and would introduce arbitrariness into Congress’ distinction between protected and unprotected obligations.”



## Section 3951

### Evictions and Distress

- A landlord or other person with paramount title must have a court order to:
  - evict a servicemember, or the dependents of a servicemember, during a period of military service of the servicemember
    - from premises that are occupied or intended to be occupied primarily as a residence,
    - for which the monthly rent does not exceed \$2,400 (adjusted for inflation for years after 2003); OR
  - subject premises described above to a distress during the period of military service





## Section 3951 Housing Price Inflation Adjustment

- Starting in 2004, the monthly rent ceiling referenced in the previous slide is increased by the housing price inflation adjustment for the calendar year involved
- The housing price inflation adjustment for any calendar year is the percentage change (if any) by which—
  - the CPI housing component for November of the preceding calendar year, exceeds the CPI housing component for November of 1984
  - The term "CPI housing component" means the index published by the Bureau of Labor Statistics of the Department of Labor known as the Consumer Price Index, All Urban Consumers, Rent of Primary Residence, U.S. City Average



## Section 3951 More on Evictions and Distress

- In 2017, a landlord or other person with paramount title must have a court order to evict from a residence a servicemember, or the dependents of a servicemember, during a period of military service IF the monthly rent is less than or equal to \$3,584.99 (2017 rate under 82 FR 10762).
- \$3,585.00 per month is too much.





## United States v. McLeod

- No. 2:06-CR-27, 2008 WL 114789 (W.D. Mich. Jan. 9, 2008)
- Defendant landlord – class A misdemeanor for violating the SCRA’s eviction protections
- When plaintiff servicemember failed to pay rent, his landlord, acting without a court order, removed all personal belongings from the servicemember’s family home, padlocking the door to prevent re-entry. At the time of the eviction, the servicemember was deployed, and his wife was out of state visiting family.
- The court sentenced the landlord to six months in prison, one year of supervised relief, a \$1,000 fine, and a payment of \$15,300.28 in restitution to his former tenants.



## Section 3952 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 borrower **placed a deposit** for the vehicle OR made at least **one installment payment** on the contract **BEFORE** entering military service.





## Section 3955 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" orders, including separation orders, 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.\*



## Section 3955 Lease Terminations

- When is a lease termination effective?
- 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.





## Section 3956

### Cellular Telephone Contract Terminations

- Basic rule – If a servicemember has a contract for cellular telephone service, and **LATER** receives military orders to relocate for a period of at least 90 days, then the servicemember may terminate that contract **IF** he or she is relocating to a place that does not support the contract.
- A servicemember may also terminate a contract for cellular telephone service with respect to all beneficiaries of a family plan **AS LONG AS** those beneficiaries accompany the servicemember to the place of relocation.
- A non-servicemember may terminate a contract for cellular telephone service with respect to a servicemember beneficiary of a family plan **AS LONG AS** the servicemember would be able to terminate the contract if it was in his or her name.



## Section 3956

### Cellular Telephone Contract Terminations

- **HOW TO TERMINATE A CELLULAR TELEPHONE CONTRACT:**
  - The servicemember must give the cellular telephone service provider a written or electronic notice in order to terminate the contract at issue;
  - The servicemember must provide the cellular telephone service provider with a copy of his or her military orders; and
  - The servicemember must give the cellular telephone service provider a date upon which the service is to be terminated.





## Section 3956

### Cellular Telephone Contract Terminations

- **IN RESPONSE...**
  - The cellular telephone service provider may not assess an early termination charge, but assessing other amounts such as taxes or unpaid charges IS acceptable.
  - The cellular telephone service provider must, within 60 days of the contract termination, refund any fees or amounts paid in advance (except for billing period remainders).



## Section 3956

### Cellular Telephone Contract Terminations

- **KEEPING THE CELLULAR TELEPHONE NUMBER...**
  - If the period of relocation is for three years or less, **AND**
  - The servicemember re-subscribes to the service within 90 days beginning on the final day of the relocation, **THEN**
  - The cellular telephone service provider must allow the servicemember to keep his or her original cell number.\*





# WAIVERS

## Section 3918

- 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.



## How Do SCRA Matters Come to the Department of Justice?

- Through servicemembers.gov, the Department of Justice can answer basic questions about the SCRA, USERRA and UOCAVA, and direct military members to appropriate legal resources.
- However, in order to have an **individual** SCRA matter reviewed by the Department of Justice, one must first seek assistance from a military legal assistance office. If that office cannot resolve the complaint, it may choose to forward the complaint to the Department of Justice. 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>





## How Do SCRA Matters Come to the Department of Justice?

- Section 4041 of the SCRA permits the Attorney General to file suit in any appropriate federal district court against a person who (or entity that):
  - “engages in a pattern or practice of violating” the SCRA; or
  - “engages in a violation of this chapter that raises an issue of significant public importance.”



**To date, the Department of  
Justice’s SCRA cases and  
settlements have brought in almost  
\$460,000,000 in monetary relief  
for over 118,000 servicemembers.**





## The National Mortgage Settlement

- Part of the \$25 billion “robo-signing” settlement in 2012.
- Settlements with 5 mortgage servicers
  - JP Morgan Chase
  - Wells Fargo
  - Citibank
  - GMAC Mortgage
  - BAC Home Loans Servicing LP (f/k/a Countrywide Home Loans Servicing)
- **Result: 19,200 servicemembers and their co-borrowers receiving a total of over \$367 million for foreclosures that violated the SCRA and mortgage interest rate overcharges.**



## Words from a grateful soldier on the National Mortgage Settlement

**“The home that was taken from me was a home that I had built from the ground up.... The day I packed up my tattered remains and moved out was the worst day of my life.... [W]ith the settlement I will rebuild upon my retirement ... and it will be the most magnificent home ever....”**

Matthew W. Stoddard, Sergeant First Class, 311<sup>th</sup> Expeditionary Sustainment Command, G7,  
United States Army, Feb. 11, 2016





## United States v. Wells Fargo Bank, N.A.

- Settlement approved and entered by the United States District Court for the Central District of California on October 4, 2016.
- Wells Fargo Bank N.A., doing business as Wells Fargo Dealer Services, is required to:

**Pay over \$4.1 million** to resolve allegations that it violated the SCRA by **repossessing 413 cars** owned by protected servicemembers without obtaining a court order;

**Pay \$10,000** to each of the affected servicemembers, plus any lost equity in the vehicle with interest; and

**Repair the credit** of all affected servicemembers.



## Real Life Consequences: Wrongful Repossessions





## FROM SALLIEMAE.COM

<https://www.salliemae.com/student-loans/manage-your-private-student-loan/understand-student-loan-military-benefits/managing-your-student-loan-during-military-service/>

### Understand the Servicemembers Civil Relief Act (SCRA)

With the SCRA benefit, the interest rate on student loans obtained prior to your military service is capped at 6% during eligible periods of military service. This benefit applies to loans that were taken out prior to military service.

Any student loan incurred by a servicemember (or jointly with a spouse) before military service is covered by SCRA.

### Request the SCRA benefit

You can request the SCRA benefit online. You also call, mail, or fax a written request, along with a copy of your military orders if available, to us. [Request benefit.](#)

Call: 855-534-2668, Monday through Thursday, 8 a.m. – 9 p.m., Friday, 8 a.m. – 8 p.m., and Saturday

9 a.m. – 6 p.m. ET. Outside the United States, call 877-224-9408.

Mail: Sallie Mae, PO BOX 6566, Wilmington DE 19804-0566

Fax: 855-756-0010

To understand your SCRA rights, contact a [U.S. Armed Forces Legal Assistance office.](#)



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

- Allegation: Sallie Mae failed to reduce to 6% the interest rates on pre-service private and federally owned and guaranteed student loans held by servicemembers.
- Results: **\$60 million** in total compensation to **77,795** servicemembers
- Credit repair for servicemembers





## Mission



- **The Servicemembers and Veterans Initiative coordinates with Department of Justice components and federal agencies to build a comprehensive legal support and protection network focused on serving servicemembers, veterans and their families.**
- **The Initiative was created in December of 2014.**
- **The Initiative became a permanent part of the Department of Justice in October of 2016.**



## INITIATIVE GOAL

**The Servicemember and Veterans Initiative's goal is to coordinate and expand the efforts of the Department of Justice to protect servicemembers, veterans and military families through:**

- **Outreach**
- **Enforcement**
- **Training**





# ***Servicemembers.gov***

- **Intended to be a one-stop shop for servicemembers, veterans and their families, as well as for the legal community that serves these populations**
- **Features a short online complaint form that, once completed, goes directly to Initiative staff for a timely response**
- **Contains in-depth information on the laws protecting servicemembers, information on recent Department of Justice settlements and recent case summaries**



# ***Servicemembers.gov***

The screenshot displays the 'Welcome to the Servicemembers and Veterans Initiative's Complaint Assistant' page. The header includes the Department of Justice seal, the text 'THE UNITED STATES DEPARTMENT OF JUSTICE', a language selector for 'ESPAÑOL', social media icons, and a search bar. The main content area features a sidebar with a 'SERVICEMEMBER and VETERAN QUESTION/COMPLAINT FORM' link and a main section titled 'WELCOME TO THE SERVICEMEMBERS AND VETERANS INITIATIVE'S COMPLAINT ASSISTANT'. This section contains instructions for legal practitioners, a list of military service categories with radio buttons, and a 'Next Page >' button. The footer shows a Windows taskbar with the date 10/24/2017 and time 1:12 PM.

Welcome to the Servicemembers and Veterans Initiative's Complaint Assistant

If you are a **legal practitioner** please proceed to the form for attorneys [here](#).

Please select a military service category below:

- ☐ Current Servicemember
- ☐ Recent Veteran (Within one year of military service or servicemember at the time of the events at issue)
- ☐ Veteran with a Consumer Complaint
- ☐ Family Member of a Current Servicemember
- ☐ Family Member of a Recent Veteran (Within one year of military service or servicemember at the time of the events at issue)

Please note that if you are, or have an issue involving, a veteran who: 1) was not in military service or within one year of a period of military service at the time of the events at issue; and 2) does not have a complaint involving a consumer fraud issue, then the Servicemembers and Veterans Initiative is likely unable to assist you with your complaint. You may find additional resources that may prove useful at: <https://www.justice.gov/crt-military/other-resources>. Thank you for your interest in servicemembers.gov.

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## Resources

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## PRESENTATION PREPARED BY:



*To learn more, please visit our website:*  
***Servicemembers.gov***

