

SERVICEMEMBERS CIVIL RELIEF ACT OF 2003 EXAMINATION CHECKLIST

Purpose: To provide uniform procedures for reviewing financial institutions' compliance with the Servicemembers Civil Relief Act (SCRA or Act) during compliance examinations.

Background: The SCRA was signed into law on December 19, 2003, amending and replacing the Soldiers' and Sailors' Civil Relief Act of 1940, and is codified at 50 U.S.C. App. 501 *et seq.* It was further amended December 10, 2004, by the Veterans Benefits Improvement Act of 2004. The law protects members of the Army, Navy, Air Force, Marine Corps and Coast Guard, including members of the National Guard, as they enter military service (active duty¹), 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 servicemembers by the SCRA also extend to servicemembers' spouses, dependents and other persons subject to the obligations of servicemembers. The Housing and Economic Recovery Act of 2008 (HERA) recently amended several sections of this law, extending the time period for certain activities. Major relief provisions of the SCRA include the following:

Maximum Rate of Interest on Loans, Including Mortgages

- Upon receiving a written request for relief and a copy of the servicemember's military orders, creditors must, for the duration of the servicemember's military service, reduce the interest² rate on debts³ incurred by the servicemember, or a servicemember and spouse jointly, prior to entry into military service to no more than 6 percent per year. (This applies to the individual servicemember's debt or joint debt with a spouse.)

¹ In the case of servicemembers who are members of the 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 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 servicemembers who are commissioned officers of the Public Health Service and the National Oceanic and Atmospheric Administration engaged in "active service." 50 U.S.C. app. 511(2)(B).

² "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 U.S.C. app. 527(d).

³ Section 207 of the SCRA, 50 U.S.C. 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 U.S.C. § 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 servicemembers.

SERVICEMEMBERS CIVIL RELIEF ACT OF 2003

EXAMINATION CHECKLIST

- 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 servicemember's military service.⁴
- Creditors who reduce the interest rate on the obligations of a servicemember must forgive interest in excess of 6 percent.
- The reduced interest rate provision applies unless a court finds the ability of the servicemember 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.

Residential and Motor Vehicle Purchases and Leases

- Contracts for the purchase of real or personal property, for which the servicemember has paid a deposit or made a payment before the servicemember enters military service, may not be rescinded or terminated after the servicemember'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 servicemember if the servicemember 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 servicemember or their dependent may be terminated if the servicemember, after the lease is executed, enters military service for a period of 180 days or more.
 - Additionally, an automobile lease entered into while the servicemember is on active duty may be terminated if the servicemember 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.

⁴ The extension of the interest rate reduction for mortgages for an additional one year period after the end of military service was added by Section 2203(b) of HERA, which was signed into law on July 30, 2008. Section 2203(a) of HERA extends the stay, adjustment, sale, foreclosure, and seizure provisions from 90 days to 9 months following the end of the servicemember's period of military service. Unlike section 2203(b), the amendment described in section 2203(a) expires on December 31, 2010. On January 1, 2011, the SCRA will revert to the provisions in effect before the date of enactment.

SERVICEMEMBERS CIVIL RELIEF ACT OF 2003

EXAMINATION CHECKLIST

- Termination is permitted of pre-service “residential, professional, agricultural or similar” leases occupied or intended to be occupied by a servicemember or a dependent as well as those leases executed during military service where the servicemember 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 servicemember before the servicemember’s military service that secures 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 9 months thereafter without a court order. Additionally, in an action filed during or within 9 months after a servicemember’s military service, a court may, after a hearing on its own, or shall, upon application by a servicemember, 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.⁵
- A landlord may not evict a servicemember or his or her dependents from certain residences⁶ 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 servicemember 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 servicemember’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 servicemember 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 servicemember is unable to pay the obligation or liability in accordance with its terms;

⁵ Section 303 of the SCRA, 50 U.S.C. app. 533, as amended by section 2203(a) of HERA.

⁶ 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, 2008, is \$2,831.13. This annual adjustment is generally announced in February.

SERVICEMEMBERS CIVIL RELIEF ACT OF 2003

EXAMINATION CHECKLIST

- A creditor's denial or revocation of credit, change in terms of an existing credit arrangement, or refusal to grant credit to the servicemember in substantially the amount or on substantially the terms requested;
- An adverse report relating to the creditworthiness of the servicemember by or to a consumer reporting agency;
- A refusal by an insurer to insure the servicemember;
- An annotation in a servicemember's record by a creditor or a person engaged in the practice of assembling or evaluating consumer credit information identifying the servicemember 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 Obligors

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

Examination Objectives

1. Determine the institution's compliance with the provisions of the SCRA, as applicable, to the institutions product offering and operations, including management of other real estate owned where a servicemember or his/her dependents may be tenants.
2. Assess the quality of the institution's compliance risk management systems and its policies and procedures for implementing the provisions.
3. Determine the reliance that can be placed on the institution's internal controls and procedures for monitoring the institution's compliance with the provisions.
4. Determine corrective action when violations of law are identified, or when the institution's policies or internal controls are deficient.

SERVICEMEMBERS CIVIL RELIEF ACT OF 2003 EXAMINATION CHECKLIST

Examination Procedures

General

1. Through discussions with management and review of available information, determine whether the institution's internal controls are adequate to ensure compliance with the SCRA. Consider:
 - policies and procedures
 - account documentation
 - checklists
 - computer program documentation, including any computer program testing and validation.
2. Determine the extent and adequacy of the training received by individuals whose responsibilities relate to compliance with the regulation. Review any training materials pertaining to the Act and determine whether the training is comprehensive and covers the various aspects of the provisions that apply to the creditor's offerings and operations.
3. Review compliance reviews or audit materials, including work papers and reports, to determine if:
 - The scope of any audits address all provisions of the SCRA, as applicable;
 - Transaction testing includes samples covering relevant product types and decision centers (for example, both mortgage and credit card processing centers);
 - The work performed is accurate;
 - Significant deficiencies and their causes are included in reports to management or to the Board of Directors;
 - Management has taken corrective actions to follow-up on previously identified deficiencies; and,
 - The frequency of review/audit is appropriate.
4. If any complaints based on the SCRA have been filed against the institution, determine:

SERVICEMEMBERS CIVIL RELIEF ACT OF 2003 EXAMINATION CHECKLIST

- Why were they filed, and
 - How they were resolved.
5. If the institution has received any actual requests for relief under the SCRA, determine whether appropriately trained staff reviewed the requests and if appropriate records are maintained.

Interest Rate Reduction for Loans, Including Mortgages

6. Determine how the institution handles requests for interest rate reductions under the SCRA on an obligation incurred by a servicemember or by a servicemember and spouse jointly, before the servicemember entered military service.
7. Determine how the institution calculates the reduced interest rate. Does the institution include all service and renewal charges, as well as other fees and charges, with the exception of charges for bona fide insurance?
8. Determine whether the institution applies the interest rate reduction effective as of the date the servicemember was called to military service.
9. Determine whether the institution applies the interest rate reduction throughout the term of the servicemember's military service, for all credit products. In the case of a mortgage, the institution must continue to apply the interest rate reduction for a one year period following the termination of military service.

Residential and Motor Vehicle Leases

10. Determine, in the case of a residential lease entered into before the servicemember entered into military service or executed by the servicemember while in military service but who subsequently receives orders for a permanent change of station or for a deployment of at least 90 days, that the institution permits the servicemember to terminate the lease.
11. Determine if the institution permits the servicemember to terminate a motor vehicle lease where:
- The motor vehicle lease is for personal or business use by the servicemember or his/her dependent; and,
 - The lease is executed by the servicemember before he/she enters military service for a period of 180 days or more, or
 - the servicemember, while in military service, executes the lease and subsequently receives military orders for a PCS outside of the continental United States (this include a PCS to Hawaii or Alaska), or deployment with a military unit for a period of 180 days or more.

SERVICEMEMBERS CIVIL RELIEF ACT OF 2003

EXAMINATION CHECKLIST

Foreclosure, Eviction from Bank-Owned Property

12. Determine, in the case of an institution acting as a landlord, that the institution does not evict a servicemember or his/her dependents⁷ from a residence covered by the Act occupied primarily as a residence during a period of military service except by court order.
13. Determine whether, in the case of real or personal property owned by a service member before the servicemember's military service and is secured by a mortgage, trust deed, or similar security interest, the institution obtains a court order before initiating the sale, foreclosure, or seizure based on a breach of such a secured obligation during the period of military service or nine months thereafter.

Installment Contracts

14. Determine, in the case of an institution that finances or purchases installment contracts for the purchase of real or personal property, that where a servicemember has paid a deposit or made a payment before entering military service, that the contract was not rescinded or terminated by the institution after the servicemember's entry into service, absent a court order for a breach of the terms of the contract occurring before or during the military service, or the property repossessed because of the breach.

Insurance Assigned as Security for a Loan

15. Determine, in the case of an insurance policy on the life of a servicemember that is assigned before the servicemember's military service as security for an obligation, that the institution does not exercise, during a period of military service or within one year thereafter, any right or option obtained under the assignment, absent a court order. This prohibition does not apply—
 - if the assignee has written consent of the insured servicemember, obtained during his/her military service;
 - when the premiums on the policy are due and unpaid; or
 - upon the death of the insured.

⁷ Dependents are defined in the SCRA as (a) the servicemember's spouse, (b) the servicemember's child, or (c) an individual for whom the servicemember provided more than one-half of the individual's support for 180 days preceding an application for relief under the SCRA.

SERVICEMEMBERS CIVIL RELIEF ACT OF 2003 EXAMINATION CHECKLIST

Adverse Action

16. Determine, in the case of an application from or receipt by a servicemember of a stay, postponement, or suspension of an obligation, that the institution does not use such action as a basis of:
- a determination that the lender is unable to pay the obligation or liability in accordance with its terms;
 - denial or revocation of credit; change in terms of an existing credit; or refusal by the creditor to grant credit to the servicemember in substantially the same amount or terms; or
 - an adverse credit report or reference.

Examination Conclusions

17. Conclude the examination after taking the following actions:
- Fully address identified deficiencies and violations, if any
 - Attach appropriate supporting work-paper documentation
 - Discuss findings with management and board of directors
 - Write comments, as applicable, in the Report of Examination
 - Include appropriate violation write-ups
 - Discuss proposed enforcement action, if needed

Applicable Laws and Regulations

Servicemembers Civil Relief Act, Pub. L. 108-189 (codified at 50 U.S.C. App. 501 *et seq.*)

Veterans Benefits Improvement Act of 2004, Pub. L. 108-454

Housing and Economic Recovery Act of 2008, Pub. L. 110-289

20 U.S.C. § 1078(d), Federal payments to reduce student interest costs