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Re: Deployment Cycle Readiness Handbook

The Servicemembers Civil Relief Act (SCRA) was signed into law (50 U.S.C. App. §§ 501-596) on December 19, 2003, amending and replacing the Soldiers' and Sailors' Civil Relief Act of 1940. The SCRA is a federal law that gives all Servicemembers some important protections as they enter active duty and other protections while they are on active duty. The SCRA protects any member of the uniformed services serving on active duty including Reserve, National Guard, and Coast Guard members called to active duty (starting on the date active duty orders are received), and, in limited situations, their dependents. The SCRA covers such issues as rental agreements, eviction, car payments, installment contracts, credit card interest rates, mortgage interest rates, mortgage foreclosure, civil judicial proceedings, and income tax payments. SCRA protections generally begin the first date of the active duty period, and may extend from 30 days up to 180 days after the member is released from active duty.

- **Interest Rates:** The SCRA provides that an obligation or liability entered into by a Servicemember or the Servicemember and Spouse jointly before the Servicemember's entry into military service cannot bear interest in excess of six percent during the period of military service. The SCRA clarifies that creditors must forgive rather than defer interest above six percent during the time of service. Interest includes service charges, renewal charges, fees or any other charges (except bona fide insurance). The amount of any periodic payment due under the terms of the contract shall be reduced by the amount of the forgiven interest for that payment period. In order to receive the reduction in interest, the Servicemember must provide written notice and a copy of the military orders to the creditor. A court, however, may grant a creditor relief from the interest rate cap if it finds the Servicemember's ability to pay the contract interest rate is not materially affected by military service.

It is imperative that the Servicemember take action to invoke the Act. For example, to obtain a reduction of pre-active duty mortgage or credit card interest rates, the Servicemember should send a lender/creditor a written request and a copy of mobilization orders.

Please note that the SCRA does not afford reduction in interest rates regarding Federal Student Loans.

- **Mortgages:** Generally, for obligations secured by a mortgage, trust deed, or similar security interest in real or personal property owned by a Servicemember, the law invalidates the sale, foreclosure, or seizure of

property for the breach of such a secured obligation during the period of military service or within 90 days thereafter. This provision applies only to obligations that originated prior to the Servicemember's military service, and for which the Servicemember is still obligated.

If a Servicemember defaults on a mortgage, the SCRA prohibits the sale, foreclosure, or seizure of Servicemember property secured by the mortgage during the period of military service, or within 90 days thereafter. Institutions are required to notify Servicemembers of their rights under the SCRA (HUD's service member notice is available at

<http://www.hud.gov/offices/adm/hudclips/forms/files/92070.pdf>). While the SCRA requirements apply only to obligations that were originated prior to the Servicemember's military service; lenders are encouraged to work with Servicemembers and their Families who are unable to meet any of their contractual mortgage obligations.

- **Installment Loans:** For contracts for the purchase of real or personal property, such as a motor vehicle or the lease or bailment of such property, for which the Servicemember made a deposit or installment payment prior to entering military service, the SCRA provides that such a contract may not be rescinded or terminated for a breach of terms occurring before or during military service without court order. Similarly, such property may not be repossessed without a court order.
- **Residential or Motor Vehicle Leases:** A Servicemember may terminate a residential or motor vehicle lease in certain circumstances. For leases of premises (for residential, professional, business, agricultural, or similar purpose) that is occupied or intended to be occupied by a Servicemember or his/her dependent, the lease may be terminated if (a) the lease is executed by or for a Servicemember who subsequently enters military service during the term of the lease, or (b) while in military service, the Servicemember executes the lease but subsequently receives military orders for a permanent change of duty station or to deploy for a period of not less than 90 days. For motor vehicle leases, used or intended to be used by the Servicemember or his/her dependents, the Servicemember may terminate the lease if (a) after executing the lease, the Servicemember enters into military service under a call or order for a specified term of at least 180 days, or (b) while in military service, executes the lease but subsequently receives orders for a permanent change of station outside the continental United States or to deploy with a military unit for at least 180 days.
- **Residency for Tax Purposes:** The SCRA provides that a nonresident Servicemember's military income and personal property are not subject to

state taxation if the Servicemember is present in the state only due to military orders. The state is also prohibited from using the military pay of these nonresident Servicemembers to increase the state income tax of the spouse.

- **Delay of Court and Administrative Proceedings:** The SCRA permits Servicemembers who are unable to appear in a court or administrative proceeding due to their military duties to postpone the proceeding for a mandatory minimum of ninety days upon the Servicemember's request. The request must be in writing and (1) explain why the current military duty materially affects the Servicemember's ability to appear, (2) provide a date when the Servicemember can appear, and (3) include a letter from the commander stating that the Servicemember's duties preclude his or her appearance and that he is not authorized leave at the time of the hearing. This letter or request to the court will not constitute a legal appearance in court. Further delays may be granted at the discretion of the court, and if the court denies additional delays, an attorney must be appointed to represent the Servicemember.

A person covered by the SCRA who has received notice of a proceeding may ask the court to stay the proceeding (50 U.S.C. app. § 522). The court may also order a stay on its own motion (50 U.S.C. app. § 522). The court will grant the Servicemember's stay application and will stay the proceeding for at least 90 days if the application includes: (1) a letter or other communication setting forth facts demonstrating that the individual's current military duty requirements materially affect the Servicemember's ability to appear along with a date when the Servicemember will be able to appear; and (2) a letter or other communication from the Servicemember's commanding officer stating that the Servicemember's current military duty prevents his or her appearance and that military leave is not authorized for the Servicemember at the time of the letter. The court has discretion to grant additional stays upon further application.

- **Default Judgment Protection:** If a default judgment is entered against a Servicemember during his or her active duty service, or within 60 days thereafter, the SCRA allows the Servicemember to reopen that default judgment and set it aside. In order to set aside a default judgment, the Servicemember must show that he or she was prejudiced by not being able to appear in person, and that he or she has good and legal defenses to the claims against him/her. The Servicemember must apply to the court for relief within 90 days of the termination or release from military service.

In addition to the court's ability to regulate default judgments and stay proceedings, the court may on its own motion and must upon application: (1) stay the execution of any judgment or order entered against a Servicemember; and (2) vacate or stay any attachment or garnishment of the Servicemember's property or assets, whether before or after judgment if it finds that the Servicemember's ability to comply with the judgment or garnishment is materially affected by military service (50 U.S.C. app. § 524). The stay of execution may be ordered for any part of the Servicemember's military service plus 90 days after discharge from the service. The court may also order the Servicemember to make installment payments during any stay ordered. A court may also extend some of the protections afforded a Servicemember under the SCRA to persons co-liable or secondarily liable on the Servicemember's obligation (50 U.S.C. app. § 513).

- **Eviction:** A landlord may not evict a Servicemember or his/her dependents from premises occupied or intended to be occupied primarily as a residence, during the period of military service of the Servicemember, if the rent does not exceed \$2,400 per month (adjusted annually), without court order. For 2007, the adjusted amount is \$2,720.95.

Another key provision of the SCRA protects dependents from being evicted while the Servicemember is serving active duty. A rented house or apartment that is occupied for dwelling purposes, and the rent does not exceed \$2720.95 per month, requires the landlord to obtain a court order authorizing eviction. This provision applies regardless of whether quarters were rented before or after entry into military service. In cases of eviction from dwelling quarters, courts may grant a stay of up to three months or enter any other "order as may be just" if military service materially affects the Servicemember's ability to pay the rent. This provision is not intended to allow military members to avoid paying rent, but rather to protect Families when they cannot pay the rent because military service has affected their ability to do so.

- **Exercise of Rights:** 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
 - 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
- A change in the terms offered or conditions required for the issuance of insurance, or
- An annotation in a Servicemember's record by a creditor or consumer reporting agency, identifying the Servicemember as a member of the National Guard or a Reserve component

Protections depend on the situation and must be considered on a case by case basis. For instance, if you have a situation in which you are being sued or someone is attempting to collect a debt from you, the SCRA may offer full, partial or no protection.