

Client Alert

Financial Institution Practice Group

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The SCRA and Student Loans—Senate Hearings Highlight Agency Collaboration on Investigative and Enforcement Activities

Congress enacted the Servicemembers Civil Relief Act (SCRA or “Act”), a law whose origins date back to the Civil War, to strengthen the national defense through certain protections provided to servicemembers. By protecting servicemembers from a gamut of penalties and commitments — high interest rates, foreclosure, and default judgments, to name a few of many — the SCRA allows servicemembers to “devote their entire energy to the defense needs of the Nation.”¹ The Act, first formally enacted in 1940 as the Soldiers’ and Sailors’ Civil Relief Act, has been updated and amended to enhance such protections.

Although Congress recently considered, but did not pass, additional protections for servicemembers, federal agencies continue to monitor and focus on various forms of SCRA compliance, including compliance with SCRA protections related to student loans. Specifically, section 527 of the SCRA prohibits creditors from charging active duty servicemembers an interest rate above 6% per year for debts incurred prior to their military service and forgives interest above 6% that would otherwise be incurred.²

While some Congressional policymakers have recently focused their attention on foreclosure-related SCRA enforcement issues, certain congressional committees are taking a greater interest in student loan servicers’ activities, including the Senate Committee on Banking, Housing, and Urban Affairs and the Senate Veterans’ Affairs Committee. Notably, at a July 31 hearing on “The Rights of Servicemembers and Veterans in the Financial Marketplace,” (“Rights Hearing”) Senate Veterans’ Affairs Committee Chairman Bernard Sanders (I-VT) expressed concerns regarding SCRA interest rate protections, noting that: “The Consumer Financial Protection Bureau has identified similar practices and concerns within the student loan servicing market. This unacceptable behavior also must be ended.”³

The Consumer Financial Protection Bureau (CFPB) has taken a leading role in investigating and monitoring SCRA-related complaints from student loan borrowers. CFPB director, Richard Cordray, has made statements to the press indicating his focus on the overall student loan debt issue, saying such debt “effectively ruin[s]” the lives of borrowers.⁴ A May report by the CFPB found that certain levels of debt could delay borrowers from reaching

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financial and cultural milestones.⁵ And recent comments by Rohit Chopra, the CFPB's Assistant Director & Student Loan Ombudsman, appear to specifically indicate a special focus on military borrowers, who may face unique issues in managing debt. While testifying before the Senate Banking Committee on June 25, 2013, Chopra noted that the CFPB continues to receive complaints from servicemembers with student loans who have had trouble accessing SCRA benefits. In this regard, Chopra explained that "some servicers have placed inappropriate requirements on servicemembers seeking the [interest] rate cap" and stated: "Unfortunately, many of the problems reported by these student loan borrowers bear an uncanny resemblance to those faced by mortgage borrowers. Like the mortgage market, the treatment of servicemembers by student loan servicers has been quite troubling."⁶

The CFPB is not the only agency focusing on the student loan servicing market. Last year, the CFPB and the Department of Justice (DOJ) executed a Memorandum of Understanding establishing a framework for coordinating fair lending investigative and enforcement efforts, including those related to potential SCRA violations.⁷ In fact, the DOJ remains one of the federal government's primary agencies with SCRA enforcement tools, particularly given its explicit statutory authority to bring civil actions against those violating the Act.⁸ In the last four years, the DOJ has obtained over \$50 million from its SCRA enforcement actions.⁹ At the Rights Hearing, DOJ witness and Special Counsel for Fair Lending Eric Halperin confirmed that the DOJ has "active investigations" underway regarding potential violations of SCRA interest rate protections and referred to the CFPB as an "important source of information about the financial challenges facing service members."¹⁰

The collaboration between the CFPB and the DOJ, coupled with increasing Congressional interest, suggests that federal agencies will likely continue to focus on compliance and enforcement of SCRA protections, including protections regarding student loans. Given this increased scrutiny, creditors should take steps to ensure their compliance with section 527 of the Act when calculating the appropriate interest rate for student loans made to servicemembers.

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This alert provides a general summary of recent legal developments. It is not intended to be and should not be relied upon as legal advice.

¹ 50 U.S.C. app. § 502.

² 50 U.S.C. app. § 527. A court may grant the creditor relief from the interest rate cap provision, however, if, in the opinion of the court, the servicemember's ability to pay an interest rate above 6% is not materially affected by his or her active duty service. *Id.* § 527(c).

³ Opening Remarks of Senator Bernard Sanders, Chairman, Senate Committee on Veterans' Affairs, before the Senate Committee on Veterans' Affairs (July 31, 2013), http://www.veterans.senate.gov/hearings.cfm?action=release.display&release_id=475f7db8-342a-479d-9fdc-0fdd56049c35.

⁴ Jayne O'Donnell, "Consumer protection chief puts focus on student loans," *USA Today*, Aug. 4, 2013, available at <http://www.usatoday.com/story/money/personalfinance/2013/08/04/cfpb-student-loan-debt-cordray/2609467/>.

⁵ CFPB, *Student Loan Affordability, Analysis of Public Input on Impact and Solutions* (May 8, 2013), http://files.consumerfinance.gov/f/201305_cfpb_rfi-report_student-loans.pdf.

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⁶ Testimony of Rohit Chopra, Assistant Director & Student Loan Ombudsman, Consumer Financial Protection Bureau, before the Senate Committee on Banking, Housing, and Urban Affairs (June 25, 2013), <http://www.consumerfinance.gov/testimonies/the-cfpb-before-the-senate-committee-on-banking-housing-and-urban-affairs/>.

⁷ Memorandum of Understanding between the Consumer Financial Protection Bureau and the Department of Justice Regarding Fair Lending Coordination (Dec. 6, 2012), http://files.consumerfinance.gov/f/201212_cfpb_doj-fair-lending-mou.pdf.

⁸ 50 U.S.C. app § 597.

⁹ Testimony of Eric Halperin, Special Counsel for Fair Lending, Civil Rights Division, DOJ, before the Senate Committee on Veterans' Affairs (July 31, 2013), http://www.veterans.senate.gov/hearings.cfm?action=release.display&release_id=63eef5ff-08b4-43d6-ba38-d7e1fbd2903c.

¹⁰ *Id.*