

Client Alert

Financial Institution Practice

May 7, 2013

The SCRA and Motor Vehicles - Auto Loans Vroom into the Forefront of Enforcement

In 2003, Congress passed the Servicemembers Civil Relief Act (SCRA or “Act”),ⁱ which updated and replaced the Soldiers’ and Sailors’ Civil Relief Act. The SCRA has been described as the “greatest single statutory source of civil-law protections for American military members and their families.”ⁱⁱ

The purpose of the law is to “provide for, strengthen, and expedite the national defense” by allowing servicemembers “to devote their entire energy to the defense needs of the Nation.”ⁱⁱⁱ

The SCRA offers a multitude of protections to active duty servicemembers regarding various obligations ranging from residential mortgages to motor vehicle financings. Since its enactment, Congress has amended the SCRA several times to enhance and extend the law’s existing protections. For example, in 2010, Congress passed the Veterans’ Benefits Act of 2010 (P.L. 111-275), which amended the SCRA by providing the Department of Justice (DOJ) with explicit authority to bring civil actions against those violating the Act.^{iv} P.L. 111-275 also created a private right of action for protected individuals under the Act.^v

While multiple federal agencies such as the Consumer Financial Protection Bureau (CFPB), the Federal Reserve Board (FRB), and the Office of the Comptroller of the Currency (OCC) are involved in SCRA compliance monitoring, the DOJ remains one of the federal government’s primary agencies with enforcement tools. According to recent Congressional testimony, over the last four years, DOJ has obtained over \$50 million from its SCRA enforcement actions.^{vi} In response to the increased volume of foreclosures, federal agencies and Congressional policymakers have recently devoted much of their attention to monitoring and enforcing the SCRA’s provisions, including those regarding motor vehicle leases and motor vehicle financings.

In testimony before the Senate Banking Committee last year, CFPB’s Assistant Director of Servicemember Affairs, Holly Petraeus, expressed the CFPB’s continued concerns regarding “installment loans marketed to the military.”^{vii} Assistant Director Petraeus went on to testify: “I hear from financial counselors on the installations about the prevalence of payday-like products that are specifically marketed to military families - often with patriotic-sounding names and the American flags on the website to match, but with a sky-high interest rate for the servicemember who takes out the loan.”^{viii} At the same hearing, the Department of Defense witness noted that “another concern coming from the field is that automobile dealers, especially used car

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dealers and ‘buy here, pay here’ establishments, are employing high-interest rate loans.^{xix}

When attempting to exercise remedies under motor vehicle leases or installment contracts with servicemembers, creditors should keep in mind the following SCRA provisions:

- **Maximum Rate of Interest on Debts Incurred Before Military Service (§ 527):** The SCRA prohibits creditors from charging active duty servicemembers an interest rate above 6% per year for debts incurred prior to their military service. This provision of the statute also forgives interest above 6% that would otherwise be incurred. However, a court may grant the creditor relief from the interest rate cap provision 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.^x
- **Protection Under Installment Contracts for Purchase or Lease (§ 532):** Section 532 of the SCRA protects servicemembers who enter into installment contracts prior to active duty and then subsequently breach the terms of the installment contracts for which they previously made at least one payment or a deposit prior to active duty. Absent a court order, creditors may not rescind or terminate such contracts, nor may they repossess property, for breach of the terms.^{xi}
- **Termination of Motor Vehicle Leases (§ 535):** Section 535 of the SCRA allows a servicemember to terminate a motor vehicle lease at any time after entering a period of active duty military service of 180 days or longer.^{xii} Such a termination also terminates any obligation on the lease owed by a dependent.^{xiii} To terminate a motor vehicle lease, the servicemember must first provide the lessor with written notice and a copy of the servicemember’s military orders.^{xiv} The servicemember must then deliver the motor vehicle to the lessor within 15 days after delivering the written notice.^{xv} Termination of the motor vehicle lease is effective on the day the vehicle is returned to the lessor.^{xvi} While the SCRA prohibits the lessor from imposing early termination fees on the servicemember, he or she is still liable for any outstanding taxes, title and registration fees, or other obligations under the lease terms that are unpaid at the time of termination.^{xvii}
- **Enforcement of Storage Liens (§ 537):** Under Section 537 of the SCRA, a lienholder may not enforce a lien (as defined in the statute)^{xviii} on the property or effects of a servicemember during the term of his or her active duty military service plus 90 days without a previously entered court order.^{xix}

Creditors should also be aware that these provisions provide ample ammunition to federal agencies seeking to enforce servicemember protections. Federal agencies will likely continue to focus on compliance and enforcement of SCRA protections, including protections regarding automobile leases and installment contracts.

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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.

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ⁱ Pub. L. No. 108-189, 117 Stat. 2835 (2003).

ⁱⁱ Leg. Assistance Branch of Admin. and Civ. L. Dept. of J. Advoc. Gen's Leg. Ctr. & Sch. U.S. Army, the Judge Advocate General's School Guide to the Servicemembers Civil Relief Act 1-2 (LTC Jeffrey P. Sexton ed., ABA Publ. 2007), at iii.

ⁱⁱⁱ 50 U.S.C. app § 502.

^{iv} 50 U.S.C. app § 597.

^v *Id.*

^{vi} "Testimony of Samuel R. Bagenstos Before the House Judiciary Committee" (April 16, 2013), *available at* http://judiciary.house.gov/hearings/113th/04162013_2/Bagenstos%2004162013.pdf.

^{vii} "Testimony of Hollister K. Petraeus Before the Senate Banking, Housing, and Urban Affairs Committee," (June 26, 2012), *available at* http://www.banking.senate.gov/public/index.cfm?FuseAction=Hearings.Testimony&Hearing_ID=13ca50a8-af89-4872-89fa-ab73a7c09097&Witness_ID=0c715894-0825-42c6-b271-9986b0e60fc6.

^{viii} *Id.*

^{ix} "Testimony of Col. Paul Kantwill Before the Senate Banking, Housing, and Urban Affairs Committee" (June 26, 2012), *available at* http://www.banking.senate.gov/public/index.cfm?FuseAction=Hearings.Testimony&Hearing_ID=13ca50a8-af89-4872-89fa-ab73a7c09097&Witness_ID=e9cac22f-d259-447f-97ff-5d49896ee4b8.

^x 50 U.S.C. app. § 527(c).

^{xi} 50 U.S.C. app. § 532(a).

^{xii} 50 U.S.C. app. § 535(b)(2)(A).

^{xiii} 50 U.S.C. app. § 535(a)(2).

^{xiv} 50 U.S.C. app. § 535(c)(1)(A).

^{xv} 50 U.S.C. app. § 535(c)(1)(B).

^{xvi} 50 U.S.C. app. § 535(d)(2).

^{xvii} 50 U.S.C. app. § 535(e)(2).

^{xviii} "For the purposes of paragraph (1), the term 'lien' includes a lien for storage, repair, or cleaning of the property or effects of a servicemember or a lien on such property or effects for any other reason." 50 U.S.C. app. § 537(a)(2).

^{xix} 50 U.S.C. app. § 537(a)(1).