

Questions and Answers

Question: *We are a military credit union. A member is being called to active duty from the reserves and transferred to another state. He wants us to give him the 6% rate available under the Servicemembers Civil Relief Act (SCRA). Does this apply?*

Answer: A member of a reserve component who is ordered to report for military service is entitled to the rights and protections of the SCRA. The law requires that the credit union reduce to 6% any obligation incurred before the borrower entered into the military service. The lender may petition the court for a determination that the change in military status has not affected the ability of the borrower to repay a loan. The court will decide the issues on the basis of all facts and circumstances. The switch from reserve to active duty is covered by the statute. Pub. L. 108-189, §§ 106, 207.

Question: *A member was transferred to another military base and has rented out his house. He now wants to refinance the property and take out additional cash to pay off his credit cards. Are we obliged to do this under SCRA?*

Answer: No. The SCRA would not require you to make the loan, but you are prohibited from denying the loan based on any prior exercise of the member's rights under the SCRA. Keep in mind that because the member is currently on active duty, the 6% interest cap does not apply. Pub. L. 108-189, §§ 107, 207.

Question: *Does boot camp qualify as active duty for the purpose of the SCRA?*

Answer: Yes it does. Pub. L. 108-189, § 101, 10 U.S.C. 101(d)(1).

Question: *Under the SCRA, how does a member qualify for the 6% interest limitation?*

Answer: In order for an obligation of a servicemember to be subject to the interest rate limitation, the servicemember must provide to the creditor written notice and a copy of the military orders calling the servicemember to military service and any orders further extending military service, not later than 180 days after the date of the servicemember's termination or release from military service. Pub. L. 108-189, § 207.

Question: *A member entered active military service on July 1. On October 1, she requested a reduction in the interest rate on her car loan to 6%. We know that the SCRA entitles her to this reduction, but we are confused as to when the reduction is effective.*

Answer: Although it is the member's request for the rate reduction that triggers the application of the SCRA, the reduction is effective on the day the member's active service begins. This means that the maximum 6% rate on the debt she acquired prior to her military service applies as of July 1. Pub. L. 108-189, § 207..

Question: *A member wants us to reduce the interest rate on his credit card pursuant to the SCRA. Do we need to reduce the rate on all charges or only on those charges made before he entered the military?*

Answer: You only need to reduce the rate on the charges before he entered the military. Your member is only entitled to relief on those loans incurred prior to his military service. You may charge your normal interest rate on advances made during his military service. Pub. L. 108-189, § 207.

Question: *We have a member with an automobile loan on which her spouse is jointly responsible. The spouse was called up for active duty from reserves for one month. Upon the month ending, the spouse enlisted for a one year commitment. Does the spouse, being the co-borrower, qualify to receive the SCRA application and thus receive the lower interest rate? Also does the fact the member was on active duty for only one month, then signed up for a one year commitment have any impact on the qualification?*

Answer: The loan is entitled to the lower rate of 6% if the obligation is incurred either by the servicemember or the service member and the servicemember's spouse jointly. Pub. L. 108-189, § 207. Thesecond part of the scenario is not as tricky as it may appear. Do not let the timeframe or short periods in and out of active duty confuse the situation. Any time an individual is on active duty, the loan is eligible for rate reduction to 6%. The plain language of the statute makes no consideration for how short or long this period may last. So in this situation, the loan goes to 6% during the one month the reserves called the member into active duty. After the active duty has ended, the auto loan can go back to its original rate. Now the member chooses to enlist for a year. Once the active duty period begins, the loan is again eligible for the reduction in rate.

Question: *Recently one of our members invoked his rights under the SCRA lowering the interest rate on his line of credit balance to 6%. We wish to close his line of credit in order to prevent any further advances as our computer system cannot assign the higher rate to any future advances that would not be covered under the Act. Is this permissible?*

Answer: Not if done for the reason you stated. Section 108 of the SCRA prohibits a lender from retaliating against a borrower who has exercised his or her rights under the Act. Despite your internal software issue, it is likely that a court would view your closing of this account as a retaliatory action. However, if in your line of credit agreement you reserved the right to remove the credit line if the member's financial situation changes, you may be able to reduce or eliminate the credit limit if the member's current circumstances no longer support the amount of credit extended. Just be certain that you treat this member in exactly the same manner that you would treat any other member similarly situated. Pub. L. 108-189, § 108.

Question: *One of our active duty members is delinquent on payments to his credit card account. We would like to report the delinquency to a credit reporting agency, but the member believes we cannot do this due to protection offered to him by the SCRA. Can we report the delinquency?*

Answer: Yes. The SCRA does protect a person in the military service from the issuance of an adverse credit report, but only if the credit union were to make an adverse report based solely on the member's exercise of rights under the Act. Pub. L. 108-189, § 207. For example, the Act requires that the interest rate on obligations incurred before a person enters the military service be reduced to 6% while a person is in active duty status; therefore, the credit union could not issue an adverse credit report solely because a member requested this interest rate reduction. Your decision to file a report based on the member's delinquency is permissible under the Act.