

LAW REVIEW 943

(Web Only)

4.10—Protection against Discrimination Based on Exercise of SCRA Protections

Is it Unlawful To Deny a Loan Because of Reserve Component Membership?

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Q: I am a Second Lieutenant in the Army Reserve. I recently got married, and I am looking to buy a house. I found a house that my wife loves, and we have applied for a mortgage. I have a good job and should easily qualify for the mortgage, but the bank refused to give me the mortgage after it learned that I am in the Army Reserve and could be mobilized. Doesn't this refusal to loan to me violate the Uniformed Services Employment and Reemployment Rights Act (USERRA)?

A: USERRA does not apply because the bank is not your employer, but the Servicemembers' Civil Relief Act (SCRA) could apply. Unfortunately, the relevant SCRA provision is not written broadly enough to cover your situation.

In 1917, shortly after the United States entered World War I, Congress enacted the Soldiers' and Sailors' Civil Relief Act (SSCRA), an important law to protect the rights and financial interests of those who were called to the colors through the draft, the mobilization of National Guard or Reserve personnel, or voluntary enlistment. The original SSCRA expired after World War I ended. Congress reenacted the law in 1940 and made it permanent after World War II.

After Operation Desert Storm (1991), a group of judge advocates of all services conducted a long-overdue review of the provisions of the SSCRA and comprehensively rewrote the law. Congress enacted their work product in 2003, and the new law is called the Servicemembers Civil Relief Act (SCRA). Like the SSCRA, the SCRA is codified in the Appendix of Title 50 of the United States Code.

The SCRA contains an anti-discrimination provision, as follows: "*Application* by a servicemember for, or *receipt* by a servicemember of, a stay, postponement, or suspension pursuant to this Act in the payment of a tax, fine, penalty, insurance premium, or other civil obligation or liability of that servicemember shall not itself (without regard to other considerations) provide the basis for any of the following: (1) A determination by a lender or other person that the servicemember is unable to pay the civil obligation or liability in accordance with its terms. (2) With respect to a credit transaction between a creditor and the servicemember—(A) a denial or revocation of credit by the creditor; (B) a change by the creditor in the terms of an existing credit arrangement; or (C) a refusal by the creditor to grant credit to the servicemember in substantially the amount or on substantially the terms requested. (3) An adverse report relating to the creditworthiness of the servicemember by or to a person engaged in the practice of assembling or evaluating consumer credit information. (4) A refusal by an insurer to insure the servicemember. (5) An annotation in the 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. (6) A change in the terms offered or conditions required for the issuance of insurance." 50 U.S.C. App. 518 (emphasis supplied).

In your situation, as I understand it, you have not applied for nor have you received a stay, postponement, or suspension pursuant to the SCRA. The bank is reluctant to loan to you because the bank believes that you *might* apply for SCRA benefits or that you *might* be called to active duty and thereby suffer a significant reduction in your income. Section 518 is not worded broadly enough to cover this scenario. ROA will draft and push for corrective legislation.

Update: December 2015

As explained in Law Review 15115, the editors of the United States Code (U.S.C.) recently eliminated the “Appendix” of title 50 of the Code, and the Servicemembers Civil Relief Act (SCRA) can now be found in title 50 at sections 3901 and following.