

## LAW REVIEW<sup>1</sup> 13052

April 2013

### The SCRA and the “Collection Fee” on my College Tuition

By Captain Samuel F. Wright, JAGC, USN (Ret.)<sup>2</sup>

[About Sam Wright](#)

4.1—Right to interest rate reduction upon mobilization

**Q: I am an enlisted member of the Army National Guard. I graduated from college and received my BA degree in May 2010, and I owed the university \$25000 for tuition for the final semesters. I promised the university that I would pay the full amount due by the end of 2010, but shortly after graduation I was called to active duty and deployed to Afghanistan, and I frankly forgot all about this bill until November 2012, when I was released from active duty and returned home. I paid the university the full amount due in December 2012, two years late.**

**The university tried to contact me while I was on active duty and was unable to reach me, so they turned over the debt to their “internal collection agency.” Although the principal amount of the debt has been paid in full, the university claims that I owe an additional \$9,000**

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<sup>1</sup>I invite the reader’s attention to [www.roa.org/lawcenter](http://www.roa.org/lawcenter). You will find more than 2000 “Law Review” articles about the Uniformed Services Employment and Reemployment Rights Act (USERRA), the Servicemembers Civil Relief Act (SCRA), the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA), the Uniformed Services Former Spouse Protection Act (USFSPA), and other laws that are especially pertinent to those who serve our country in uniform. You will also find a detailed Subject Index, to facilitate finding articles about very specific topics. The Reserve Officers Association, now doing business as the Reserve Organization of America (ROA), initiated this column in 1997.

<sup>2</sup>BA 1973 Northwestern University, JD (law degree) 1976 University of Houston, LLM (advanced law degree) 1980 Georgetown University. I served in the Navy and Navy Reserve as a Judge Advocate General’s Corps officer and retired in 2007. I am a life member of ROA. For 43 years, I have worked with volunteers around the country to reform absentee voting laws and procedures to facilitate the enfranchisement of the brave young men and women who serve our country in uniform. I have also dealt with the Uniformed Services Employment and Reemployment Rights Act (USERRA) and the Veterans’ Reemployment Rights Act (VRRA—the 1940 version of the federal reemployment statute) for 36 years. I developed the interest and expertise in this law during the decade (1982-92) that I worked for the United States Department of Labor (DOL) as an attorney. Together with one other DOL attorney (Susan M. Webman), I largely drafted the proposed VRRA rewrite that President George H.W. Bush presented to Congress, as his proposal, in February 1991. On 10/13/1994, President Bill Clinton signed into law USERRA, Public Law 103-353, 108 Stat. 3162. The version of USERRA that President Clinton signed in 1994 was 85% the same as the Webman-Wright draft. USERRA is codified in title 38 of the United States Code at sections 4301 through 4335 (38 U.S.C. 4301-35). I have also dealt with the VRRA and USERRA as a judge advocate in the Navy and Navy Reserve, as an attorney for the Department of Defense (DOD) organization called Employer Support of the Guard and Reserve (ESGR), as an attorney for the United States Office of Special Counsel (OSC), as an attorney in private practice, and as the Director of the Service Members Law Center (SMLC), as a full-time employee of ROA, for six years (2009-15). Please see Law Review 15052 (June 2015), concerning the accomplishments of the SMLC. My paid employment with ROA ended 5/31/2015, but I have continued the work of the SMLC as a volunteer. You can reach me by e-mail at [SWright@roa.org](mailto:SWright@roa.org).

for a “collection fee.” I am interested in applying for law school. The university has threatened to withhold providing transcripts to graduate schools, until I pay the \$9,000 fee.

I understand that there is a law called the Soldiers’ and Sailors’ Civil Relief Act (SSCRA). Have my rights under that law been violated?

A: In 2003, Congress enacted the Servicemembers Civil Relief Act (SCRA), as a long-overdue rewrite of the SSCRA, which dates back to 1917. The SCRA is codified at sections 501 through 597b of the appendix to title 50 of the United States Code (50 U.S.C. App. 501-597b). Section 207 of the SCRA provides as follows:

#### **§ 527. Maximum rate of interest on debts incurred before military service**

##### **[Sec. 207]**

###### **(a) Interest rate limitation.**

(1) Limitation to 6 percent. An obligation or liability bearing interest at a rate in excess of 6 percent per year that is incurred by a servicemember, or the servicemember and the servicemember's spouse jointly, before the servicemember enters military service shall not bear interest at a rate in excess of 6 percent –

(A) during the period of military service and one year thereafter, in the case of an obligation or liability consisting of a mortgage, trust deed, or other security in the nature of a mortgage; or  
(B) during the period of military service, in the case of any other obligation or liability.

(2) Forgiveness of interest in excess of 6 percent. Interest at a rate in excess of 6 percent per year that would otherwise be incurred but for the prohibition in paragraph (1) is forgiven.

(3) Prevention of acceleration of principal. The amount of any periodic payment due from a servicemember under the terms of the instrument that created an obligation or liability covered by this section shall be reduced by the amount of the interest forgiven under paragraph (2) that is allocable to the period for which such payment is made.

###### **(b) Implementation of limitation.**

(1) Written notice to creditor. In order for an obligation or liability of a servicemember to be subject to the interest rate limitation in subsection (a), the servicemember shall 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.

(2) Limitation effective as of date of order to active duty. Upon receipt of written notice and a copy of orders calling a servicemember to military service, the creditor shall treat the debt in accordance with subsection (a), effective as of the date on which the servicemember is called to military service.

(c) Creditor protection. A court may grant a creditor relief from the limitations of this section if,

in the opinion of the court, the ability of the servicemember to pay interest upon the obligation or liability at a rate in excess of 6 percent per year is not materially affected by

reason of the servicemember's military service.

(d) Definitions. In this section:

(1) Interest. The term "interest" includes service charges, renewal charges, fees, or any other charges (except bona fide insurance) with respect to an obligation or liability.

(2) Obligation or liability. The term "obligation or liability" includes an obligation or liability consisting of a mortgage, trust deed, or other security in the nature of a mortgage.

(e) Penalty. Whoever knowingly violates subsection (a) shall be fined as provided in title 18, United States Code, imprisoned for not more than one year, or both.

50 U.S.C. App. 527.

**Q: The general counsel (GC) of the university insists that this provision does not apply because the "collection fee" does not amount to "interest." What do you say about that?**

**A:** Section 207 (50 U.S.C. App. 527) has its own definitions. The definition of "interest" is as follows: "The term 'interest' includes service charges, renewal charges, fees, or any other charges (except bona fide insurance) with respect to an obligation or liability." 50 U.S.C. App. 527(d)(1). This "collection fee" clearly qualifies as interest, and it is unlawful insofar as it exceeds 6% per year.

**Q: The GC has pointed out that I did not give the university written notice of my call to active duty, nor did I provide the university a copy of my mobilization orders. Does that matter?**

**A:** It is not too late to give the notice now. The deadline for doing so is "not later than 180 days after the servicemember's termination or *release* from military service." 50 U.S.C. App. 527(b)(1) (emphasis supplied).

Since you were released from active duty in November 2012, the deadline for you to give this notice runs out sometime in May 2013. I suggest that you give the university notice now, by certified mail, and enclose a copy of your military orders. When you do this, the university is required to reduce the interest rate to 6% "effective as of the date on which the servicemember is called to military service." 50 U.S.C. App. 527(b)(2).

### **Update – March 2022<sup>3</sup>**

The location of the SCRA within the United States code changed in late 2015. Previously codified at 50 U.S.C App. §§ 501-597(b), there was an editorial reclassification of the SCR by the Office of the Law Revision Counsel to the United States House of Representatives that became

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<sup>3</sup>Update by Second Lieutenant Lauren Walker, USMC.

effective on December 1, 2015.<sup>4</sup> The SCRA is now codified at 50 U.S.C. §§ 3901-4043. The changes in codification have not changed the substance or application of the sections. Therefore, the application of the SCRA throughout this article applies the same today as it did in 2013.

The relevant sections cited throughout the article can be found as followed:

50 U.S.C. App. § 527 discussing the maximum rate of interest on debts incurred before military service can now be found at 50 U.S.C. § 3937.

For a complete conversion chart for the SCRA please see *The Servicemembers Civil Relief Act Has Moved.*<sup>5</sup>

#### **Please join or support ROA**

This article is one of 2,300-plus “Law Review” articles available at [www.roa.org/lawcenter](http://www.roa.org/lawcenter). The Reserve Officers Association, now doing business as the Reserve Organization of America (ROA), initiated this column in 1997. New articles are added each month.

ROA is almost a century old—it was established on 10/1/1922 by a group of veterans of “The Great War,” as World War I was then known. One of those veterans was Captain Harry S. Truman. As President, in 1950, he signed our congressional charter. Under that charter, our mission is to advocate for the implementation of policies that provide for adequate national security. For almost a century, we have argued that the Reserve Components, including the National Guard, are a cost-effective way to meet our nation’s defense needs.

Through these articles, and by other means, including amicus curiae (“friend of the court”) briefs that we file in the Supreme Court and other courts, we educate service members, military spouses, attorneys, judges, employers, DOL investigators, ESGR volunteers, congressional and state legislative staffers, and others about the legal rights of service members and about how to exercise and enforce those rights. We provide information to service members, without regard to whether they are members of ROA, but please understand that ROA members, through their dues and contributions, pay the costs of providing this service and all the other great services that ROA provides.

If you are now serving or have ever served in any one of our nation’s eight<sup>6</sup> uniformed services, you are eligible for membership in ROA, and a one-year membership only costs \$20 or \$450 for a life membership. Enlisted personnel as well as officers are eligible for full membership, and eligibility applies to those who are serving or have served in the Active Component, the

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<sup>4</sup>*The Servicemembers Civil Relief Act (SCRA)*, THE UNITED STATES DEPARTMENT OF JUSTICE, <https://www.justice.gov/servicemembers/servicemembers-civil-relief-act-scra> (last visited Mar. 10, 2022).

<sup>5</sup>Samuel F. Wright, *The Servicemembers Civil Relief Act Has Moved*, Law Review 15115 (Dec. 2015).

<sup>6</sup>Congress recently established the United States Space Force as the 8<sup>th</sup> uniformed service.

National Guard, or the Reserve. If you are eligible for ROA membership, please join. You can join on-line at [www.roa.org](http://www.roa.org) or call ROA at 800-809-9448.

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