

Interest Rate Reduction upon Mobilization

By Captain Samuel F. Wright, JAGC, USN (Ret.)²

[About Sam Wright](#)

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Q: I am a Specialist (E-4) in the Army Reserve. I was involuntarily called to active duty, and I am currently serving in Afghanistan. I found your “Law Review” articles¹ by doing an Internet search.

Before I was called to active duty, I had a very good civilian job. The mobilization reduced my pay by almost half. I have a credit card with the XYZ³ Bank. I missed a couple of payments, before I was called to active duty, and the bank raised the interest rate to 29%.

¹I invite the reader’s attention to 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.

²BA 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 (VRRRA—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 VRRRA 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 VRRRA 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.

³I am not mentioning the name of the bank, but it is a name that all readers would recognize.

A guy in my Army Reserve unit told me that a federal law called the Soldiers' and Sailors' Civil Relief Act (SSCRA) gives me the right to get interest rates reduced to 6%, because I have been called to active duty and have lost income as a result of the call-up. I sent a certified letter to XYZ Bank, along with a copy of my mobilization orders, and the bank reduced the interest rate to 6%.

My mother is managing my financial affairs while I am in Afghanistan. She told me that she recently received a letter from XYZ Bank, saying that my SCRA rights have "expired" and that the interest rate is being raised back up to 29%. Help!

A: You are still on active duty, and your right to have the interest rate reduced to 6% and capped has most certainly not expired.

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 in the Appendix to Title 50 of the United States Code, at sections 501 through 597b (50 U.S.C. App. 501-597b). The pertinent section is section 527, which reads as follows:

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

(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. 527 (emphasis supplied).

Under section 527(a)(1)(B), the right to interest rate reduction applies *during the period of military service*. Your right to this interest rate reduction does not expire until you leave active duty.

The corresponding SSCRA provision was somewhat ambiguous, and some lenders argued that the difference in rates was merely deferred, not forgiven. Although the courts generally rejected that argument, it is fortunate that the new law (SCRA) explicitly provides that the difference is forgiven.

Whatever payments you make, during your period of service, will be applied to principal and interest at the 6% rate, not the contractual rate. That should give you the opportunity to reduce the balance, or at least to keep it from rising still further. When you leave active duty, the interest rate will revert to the contractual rate, but the bank is not permitted to raise the rate even further, or extend the number of payments, to make up for the forgiven interest.

I suggest that while you are on active duty you should pay as much as possible to XYZ Bank, in order to take advantage of the temporarily lowered interest rate and to reduce or eliminate the amount you owe.

I suggest that you send this article to your mother, and get her to send it to XYZ Bank. You should specifically invite the banker's attention to section 527(e). Knowingly violating the requirement to reduce interest rates to 6% is a federal crime, punishable by incarceration for up to a year and a substantial fine.

Q: Does the SCRA provide a private right of action? If the bank ignores my request to maintain the interest rate at 6% until I leave active duty, am I permitted to retain a lawyer

and file suit in federal court? If I file suit through private counsel and win, do I get attorney fees?

A: Yes to all three questions. Section 597a (50 U.S.C. App. 597a) creates an explicit private right of action in federal court. That section also provides for requiring the defendant to pay the attorney fees of the successful SCRA plaintiff. If this big bank continues to flout the SCRA, I know several lawyers who would salivate at the prospect of suing the bank in a case like this.

Update – March 2022⁴

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 effective on December 1, 2015.⁵ 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.

50 U.S.C. App. § 597a discussing private right of action can now be found at 50 U.S.C. § 4042.

For a complete conversion chart for the SCRA please see *The Servicemembers Civil Relief Act Has Moved*.⁶

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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.

⁴Update by Second Lieutenant Lauren Walker, USMC.

⁵*The Servicemembers Civil Relief Act (SCRA)*, THE UNITED STATES DEPARTMENT OF JUSTICE, <https://www.justice.gov/servicemembers/servicemembers-civil-relief-act-skra> (last visited Mar. 10, 2022).

⁶Samuel F. Wright, *The Servicemembers Civil Relief Act Has Moved*, Law Review 15115 (Dec. 2015).

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 eight⁷ 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 National Guard, or the Reserve. If you are eligible for ROA membership, please join. You can join on-line at www.roa.org or call ROA at 800-809-9448.

If you are not eligible to join, please contribute financially, to help us keep up and expand this effort on behalf of those who serve. Please mail us a contribution to:

Reserve Organization of America
1 Constitution Ave. NE

⁷Congress recently established the United States Space Force as the 8th uniformed service.