

LAW REVIEW¹ 20044

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Yes, the SCRA Applies to you while you Attend Coast Guard A School

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[About Sam Wright](#)

4.1—SCRA right to interest rate reduction upon mobilization

Q: I am a Seaman (E-3) in the Coast Guard Reserve and a member of the Reserve Organization of America.³ I have read with great interest several of your “Law Review” articles about the

¹ I 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 (ROA) initiated this column in 1997. I am the author of more than 1800 of the articles.

² 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 44 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.

³ At its September 2018 annual convention, the Reserve Officers Association amended its Constitution to make all service members (E-1 through O-10) eligible for membership and adopted a new “doing business as” (DBA) name: Reserve Organization of America. The full name of the organization is now the Reserve Officers Association DBA the Reserve Organization of America. The point of the name change is to emphasize that our organization represents the interests of all Reserve Component members, from the most junior enlisted personnel to the most senior officers. Our nation has seven Reserve Components. In ascending order of size, they are the Coast Guard Reserve, the Marine Corps Reserve, the Navy Reserve, the Air Force Reserve, the Air National Guard, the Army Reserve, and the Army National Guard. The number of service members in these seven components is almost equal to the number of personnel in the Active Components of the armed forces, so Reserve Component personnel make up almost half of our nation’s pool of trained and available military personnel. Our nation is more

Servicemembers Civil Relief Act (SCRA), the Uniformed Services Employment and Reemployment Rights Act (USERRA), and other laws that are especially pertinent to those who serve our country in uniform.

In the Coast Guard Reserve, I seek to be promoted to Petty Officer Third Class (E-4). To get that promotion, I need to attend a Coast Guard “A School” at Yorktown, Virginia. The school lasts three months and is scheduled to start 6/1/2020, but it may be delayed by the COVID-19 emergency.

I did not join the Coast Guard Reserve for the money. I have a great job and make a lot more money in that job than I make while on Coast Guard duty. I understand that USERRA does not require my civilian employer to pay me or to make up the difference in pay while I am away from my civilian job performing Coast Guard duty. Thus, I will lose a considerable amount of money while I am on full-time Coast Guard duty for three months.

I have two credit cards with outstanding balances. The interest rate on each card is 16%. I understand that the SCRA has a provision on interest rates for debts incurred before entering active duty, and that when I go on active duty the interest rate should be reduced to 6%. Is that true? Does that provision apply to me when I am at Coast Guard A School for three months?

Answer, bottom line up front

Yes, the SCRA does include such a provision, and yes it does apply to you while you are at A School. You should notify each creditor (bank), and it should reduce the interest rate to 6% starting on the date the A School class begins. While you are on duty, any payments that you make should be credited to principal and interest at the 6% rate, not the 16% rate. The difference between 6% and 16% is forgiven, not just deferred. I suggest that you pay as much as possible during your three-month duty period. It should be possible to pay off or at least substantially reduce these debts.

Explanation

The pertinent SCRA section is as follows:

(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

personnel make up almost half of our nation’s pool of trained and available military personnel. Our nation is more dependent than ever before on the Reserve Components for national defense readiness. More than a million Reserve Component personnel have been called to the colors since the terrorist attacks of 9/11/2001.

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) Proof of military service.

(A) **In general.** Not later than 180 days after the date of a servicemember's termination or release from military service, in order for an obligation or liability of the 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—

(i) the military orders calling the servicemember to military service and any orders further extending military service; or

(ii) any other appropriate indicator of military service, including a certified letter from a commanding officer.

(B) Independent verification by creditor.

(i) **In general.** A creditor may use, in lieu of notice and documentation under subparagraph (A), information retrieved from the Defense Manpower Data Center through the creditor's normal business reviews of such Center for purposes of obtaining information indicating that the servicemember is on active duty.

(ii) **Safe harbor.** A creditor that uses the information retrieved from the Defense Manpower Data Center under clause (i) with respect to a servicemember has not failed to treat the debt of the servicemember in accordance with subsection (a) if—(I) such information indicates that, on the date the creditor retrieves such information, the servicemember is not on active duty; and

(II) the creditor has not, by the end of the 180-day period under subparagraph (A), received the written notice and documentation required under that subparagraph with respect to the servicemember.

(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.⁴*

Under section 3937, your right to have the interest rate reduced to 6% applies “during the period of military service.” The SCRA’s definitions section defines “military service” as follows:

The term “military service” means—(A)

in the case of a servicemember who is a member of the Army, Navy, Air Force, Marine Corps, or Coast Guard—

(i) *active duty*, as defined in section 101(d)(1) of title 10.⁵

The definitions section of title 10 of the United States Code defines the term “active duty” as follows:

The term “active duty” means full-time duty in the active military service of the United States. Such term includes full-time training duty, annual training duty, *and attendance while in the active military service, at a school designated as a service school* by law or by the Secretary of the military department concerned. Such term does not include full-time National Guard duty.⁶

Your three-month period of training at the Coast Guard A School in Yorktown qualifies as “active duty” as defined in title 10 and as “military service” as defined in the SCRA. You are entitled to have the interest rate on your two credit cards reduced to 6% during your training.

Please join or support ROA

This article is one of 1900-plus “Law Review” articles available at 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 in 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

⁴ 50 U.S.C. 3937 (emphasis supplied).

⁵ 50 U.S.C. 3911(2)(A) (emphasis supplied).

⁶ 10 U.S.C. 101(d)(1) (emphasis supplied).

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 many decades, we have argued that the Reserve Components, including the National Guard, are a cost-effective way to meet our nation's defense needs.

Indeed, ROA is the *only* national military organization that exclusively supports America's Reserve and National Guard.

Through these articles, and by other means, we have sought to educate service members, their spouses, and their attorneys about their legal rights and about how to exercise and enforce those rights. We provide information to service members, without regard to whether they are members of ROA or eligible to join, 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 seven uniformed services, you are eligible for membership in ROA, and a one-year membership only costs \$20. 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:

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