

## LAW REVIEW<sup>1</sup> 21010

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### **The Right to Interest Rate Reduction on Debts Applies to Debts you Incurred Before you Entered Active Duty**

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[About Sam Wright](#)

4.1—SCRA right to interest rate reduction upon mobilization

4.2—SCRA right to a continuance and to protection against default judgment

**Q: I am a First-Class Petty Officer (E-6) in the Regular Navy. I graduated from high school in 2010 and enlisted in the Navy, reporting to basic training a few days after the graduation ceremony. I have been on active duty continuously since then. I am halfway to a 20-year regular retirement.**

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<sup>1</sup>I invite the reader's attention to <https://www.roa.org/page/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 specific topics. The Reserve Officers Association, now doing business as the Reserve Organization of America (ROA), initiated this column in 1997. I am the author of more than 1800 of the articles.

<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 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 38 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).

**While doing an Internet search, I found one of your “Law Review” articles about the Servicemembers Civil Relief Act (SCRA). I understand that the SCRA gives me, as an active duty service member, the right to reduction of interest rates to just 6%. Is that correct?**

**Unfortunately, I have been living beyond my means and have gotten into financial difficulty. I have five credit cards that are maxed out and that carry “punitive” interest rates of 20% or more. I applied to the five banks to reduce the interest rates to 6%, citing the SCRA and providing evidence that I am on active duty. Four of the banks reduced their interest rates to 6%, as I requested. The fifth bank sent me a legalistic letter insisting that the SCRA right to interest rate reduction only applies to financial obligations that the service member incurred *before* entering active duty. What gives?**

**A:** The fifth bank is correct. The right to interest rate reduction under the SCRA only applies to financial obligations that the service member incurred before he or she entered or reentered active duty. Here is the pertinent SCRA section:

**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) 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.<sup>3</sup>

Section 3937 expressly states that the obligation of creditors to reduce the interest rate to 6% only applies to obligations incurred before the service member entered or reentered active duty.

**Q: Why did four of the five banks reduce the interest rate to 6% if they were not required to do so?**

**A:** A creditor can always do more than the law requires, but not less. It is possible that the four banks decided to support service members like you by reducing the interest rate to 6%. Another possibility is that lawyers at the first four banks were confused about the SCRA, while the lawyer at the fifth bank understood it. Still another possibility is that the first four banks simply made business decisions not to fight you about your SCRA eligibility.

In any case, the decision by the first four banks to reduce your interest rate does not obligate the fifth bank to do likewise.

**Q: I thought that the SCRA applied to service members like me, on long-term active duty in the Active Component of the armed forces, as well as to Reservists and National Guard members. I can see where section 3937 would be useful to a junior enlisted member of the National Guard or Reserve who is involuntarily called to active duty and must leave a well-paid civilian job. It seems that section 3937 is worthless to a service member like me. What gives?**

**A:** Section 3937 is just one of many important provisions in the SCRA. I invite your attention to sections 3931 and 3932, as follows:

**Protection of servicemembers against default judgments**

**(a) Applicability of section.** This section applies to any civil action or proceeding, including any child custody proceeding, in which the defendant does not make an appearance.

**(b) Affidavit requirement.**

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<sup>3</sup>50 U.S.C. § 3937 (emphasis supplied).

**(1)** Plaintiff to file affidavit. In any action or proceeding covered by this section, the court, before entering judgment for the plaintiff, shall require the plaintiff to file with the court an affidavit—

**(A)** stating whether or not the defendant is in military service and showing necessary facts to support the affidavit; or

**(B)** if the plaintiff is unable to determine whether or not the defendant is in military service, stating that the plaintiff is unable to determine whether or not the defendant is in military service.

**(2)** Appointment of attorney to represent defendant in military service. If in an action covered by this section it appears that the defendant is in military service, the court may not enter a judgment until after the court appoints an attorney to represent the defendant. If an attorney appointed under this section to represent a servicemember cannot locate the servicemember, actions by the attorney in the case shall not waive any defense of the servicemember or otherwise bind the servicemember.

**(3)** Defendant's military status not ascertained by affidavit. If based upon the affidavits filed in such an action, the court is unable to determine whether the defendant is in military service, the court, before entering judgment, may require the plaintiff to file a bond in an amount approved by the court. If the defendant is later found to be in military service, the bond shall be available to indemnify the defendant against any loss or damage the defendant may suffer by reason of any judgment for the plaintiff against the defendant, should the judgment be set aside in whole or in part. The bond shall remain in effect until expiration of the time for appeal and setting aside of a judgment under applicable Federal or State law or regulation or under any applicable ordinance of a political subdivision of a State. The court may issue such orders or enter such judgments as the court determines necessary to protect the rights of the defendant under this Act [50 USCS §§ 3901 et seq.].

**(4)** Satisfaction of requirement for affidavit. The requirement for an affidavit under paragraph (1) may be satisfied by a statement, declaration, verification, or certificate, in writing, subscribed and certified or declared to be true under penalty of perjury.

**(c) Penalty for making or using false affidavit.** A person who makes or uses an affidavit permitted under subsection (b) (or a statement, declaration, verification, or certificate as authorized under subsection (b)(4)) knowing it to be false, shall be fined as provided in title 18, United States Code, or imprisoned for not more than one year, or both.

**(d) Stay of proceedings.** In an action covered by this section in which the defendant is in military service, the court shall grant a stay of proceedings for a minimum period of 90 days under this subsection upon application of counsel, or on the court's own motion, if the court determines that—

**(1)** there may be a defense to the action and a defense cannot be presented without the presence of the defendant; or

**(2)** after due diligence, counsel has been unable to contact the defendant or otherwise determine if a meritorious defense exists.

**(e) Inapplicability of section 202 procedures.** A stay of proceedings under subsection (d) shall not be controlled by procedures or requirements under section 202 [50 USCS § 3932].

**(f) Section 202 protection.** If a servicemember who is a defendant in an action covered by this section receives actual notice of the action, the servicemember may request a stay of proceeding under section 202 [50 USCS § 3932].

**(g) Vacation or setting aside of default judgments.**

**(1)** Authority for court to vacate or set aside judgment. If a default judgment is entered in an action covered by this section against a servicemember during the servicemember's period of military service (or within 60 days after termination of or release from such military service), the court entering the judgment shall, upon application by or on behalf of the servicemember, reopen the judgment for the purpose of allowing the servicemember to defend the action if it appears that—

**(A)** the servicemember was materially affected by reason of that military service in making a defense to the action; and

**(B)** the servicemember has a meritorious or legal defense to the action or some part of it. **(2)** Time for filing application. An application under this subsection must be filed not later

than 90 days after the date of the termination of or release from military service.

**(h) Protection of bona fide purchaser.** If a court vacates, sets aside, or reverses a default judgment against a servicemember and the vacating, setting aside, or reversing is because of a provision of this Act [50 USCS §§ 3901 et seq.], that action shall not impair a right or title acquired by a bona fide purchaser for value under the default judgment.<sup>4</sup>

**Stay of proceedings when servicemember has notice**

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<sup>4</sup>50 U.S.C. § 3931.

**(a) Applicability of section.** This section applies to any civil action or proceeding, including any child custody proceeding, in which the plaintiff or defendant at the time of filing an application under this section—

**(1)** is in military service or is within 90 days after termination of or release from military service; and

**(2)** has received notice of the action or proceeding. **(b) Stay of proceedings.**

**(1)** Authority for stay. At any stage before final judgment in a civil action or proceeding in which a servicemember described in subsection (a) is a party, the court may on its own motion and shall, upon application by the servicemember, stay the action for a period of not less than 90 days, if the conditions in paragraph (2) are met.

**(2)** Conditions for stay. An application for a stay under paragraph (1) shall include the following:

**(A)** A letter or other communication setting forth facts stating the manner in which current military duty requirements materially affect the servicemember's ability to appear and stating a date when the servicemember will be available to appear.

**(B)** A letter or other communication from the servicemember's commanding officer stating that the servicemember's current military duty prevents appearance and that military leave is not authorized for the servicemember at the time of the letter.

**(c) Application not a waiver of defenses.** An application for a stay under this section does not constitute an appearance for jurisdictional purposes and does not constitute a waiver of any substantive or procedural defense (including a defense relating to lack of personal jurisdiction).

**(d) Additional stay.**

**(1)** Application. A servicemember who is granted a stay of a civil action or proceeding under subsection (b) may apply for an additional stay based on continuing material effect of military duty on the servicemember's ability to appear. Such an application may be made by the servicemember at the time of the initial application under subsection (b) or when it appears that the servicemember is unavailable to prosecute or defend the action. The same information required under subsection (b)(2) shall be included in an application under this subsection.

**(2)** Appointment of counsel when additional stay refused. If the court refuses to grant an additional stay of proceedings under paragraph (1), the court shall appoint counsel to represent the servicemember in the action or proceeding.

**(e) Coordination with section 201.** A servicemember who applies for a stay under this section and is unsuccessful may not seek the protections afforded by section 201 [50 USCS § 3931].

**(f) Inapplicability to section 301.** The protections of this section do not apply to section 301 [50 USCS § 3951].<sup>5</sup>

Let us say that you are serving on a destroyer in the Indian Ocean when somebody sues you back home. You may be unaware of the lawsuit. Even if you are aware, you cannot simply jump overboard and swim to your hometown. In this situation, sections 3931 and 3932 will be valuable to you.

In a civil suit, if the defendant does not respond to the complaint within the time permitted (like 30 or 60 days), the plaintiff can get a default judgment. But if the defendant is on active duty in the United States military, he or she is protected from a default judgment. If a default judgment is awarded, the service member can get it set aside. The service member also has the right to a continuance (a delay of the proceedings).

These protections apply to civil proceedings in federal and state courts. They also apply to administrative proceedings in federal, state, or local government administrative agencies.<sup>6</sup>

Sections 3931 and 3932 most often apply to service members, like you, who are on long-term active duty, but these sections also apply to National Guard and Reserve service members who have been called to active duty or who have voluntarily reentered active duty.

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

This article is one of 2000-plus “Law Review” articles available at <https://www.roa.org/page/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 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.

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<sup>5</sup>*Id.* § 3932.

<sup>6</sup>*Id.* § 3911(5).

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, 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