

LAW REVIEW¹ 24046

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Yes, the SCRA Provision Mandating the Reduction of Interest Rates to 6% for Persons Entering Active Duty Applies to Student Loans.

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4.1—SCRA right to interest rate reduction upon mobilization.

Q: I am a Senior Airman (E-4) in the Air National Guard (ANG) and a member of the Reserve Organization of America (ROA).³ I have read with great interest several of your “Law Review” articles about the Uniformed Services Employment and Reemployment Rights Act

¹ I invite the reader’s attention to www.roa.org/lawcenter. You will find more than 2,000 “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 Spouses’ 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 90% of the articles, but we are always looking for “other than Sam” articles by other lawyers.

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 45 years, I have collaborated 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 <mailto:swright@roa.org>.

³ In 2018, ROA members amended the ROA Constitution to make enlisted service members, as well as officers, eligible for membership. The organization adopted the “doing business as” name of Reserve Organization of America to emphasize that the organization represents and seeks to recruit as members service members of all services and all ranks, from E-1 to O-10.

(USERRA). I joined your organization because I found that your “Law Review” articles are most useful to me in understanding, exercising, and enforcing my legal rights with respect to my civilian employment.

Recently, an ANG judge advocate spoke to my ANG unit about USERRA and mobilization readiness. He said that USERRA provides for the reduction of interest rates on car loans, credit cards, and other debts to 6%, for Reserve Component service members called to active duty, *but he also said that this provision for reducing interest rates does not apply to student loan debt.*

My student loan debt is my principal financial obligation. I have an excellent full-time civilian job, and if I were to be called to active duty my ability to support myself and my family and to make progress on paying off the large student loan debt would be adversely affected, because my active-duty pay as an E-4 would be substantially less than I have been earning in my civilian job.

Is it true that the interest rate on my student loan debt will not be reduced to 6% if I am mobilized? If that is true, what can we do about that?

Answer, bottom line up front

The ANG judge advocate needs to recheck his research and change the script of his presentation. What he said about student loan debt has not been true since 8/14/2008, more than 16 years ago. Moreover, the law that applies here is the Servicemembers Civil Relief Act (SCRA), not USERRA.

Explanation

On 12/19/2003, President George W. Bush signed the Servicemembers Civil Relief Act (SCRA), a long-overdue update and rewrite of the

Soldiers' and Sailors' Civil Relief Act (SSCRA), which was originally enacted in 1917, shortly after our country entered World War I.⁴ Like the SSCRA, the SCRA provides for interest rates on debts incurred before entering active duty to be reduced to 6% during the individual's active duty service. The pertinent SCRA provision is as follows:

- (a) Interest rate reduction
 - (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.⁵

It is true that it is exceedingly difficult for a student loan debtor to get relief from student loan debt. Until 8/14/2008, the SCRA provision mandating reduction of interest rates to 6% did not apply to student loan debts.

On 8/14/2008, President George W. Bush signed the Higher Education Opportunity Act (HEOA).⁶ That Act made many changes to Title 20 of

⁴ See generally Law Review 116 (March 2004).

⁵ 50 U.S.C. § 3937(a).

⁶ Public Law 110-315, 122 Stat. 3078, 3230-31,

the United States Code, pertaining to education. Pertinent to this discussion, the HEOA amended section 1078(a) of Title 20 to its present form:

No provision of any law of the United States (*other than this chapter and section 3937 of title 50*) or of any State (other than a statute applicable principally to such State's student loan insurance program) which limits the rate or amount of interest payable on loans shall apply [to a federal student loan].⁷

The purpose and effect of the 2008 amendment was to make the SCRA provision for interest rate reduction apply to federal student loans, just as it applies to automobile loans, credit cards, and other financial obligations.

The problem that the ANG judge advocate raised in his presentation was solved 16 years ago, on 8/14/2008.

Q: Does my active-duty military service give me Public Service Loan Forgiveness (PSLF) credit?

A: You are not entitled to PSLF credit for your part-time service in the ANG or another Reserve Component of the armed forces, but you are entitled to such credit for full-time active-duty service. You are also entitled to PSLF credit for civilian employment for the Federal Government, a State, a political subdivision of a State, a territory (Puerto Rico, Guam, etc.), or a Native American tribe. Employment for some but not all private nonprofit organizations also gives rise to PSLF credit.⁸

⁷ 20 U.S.C. § 1078(a) (emphasis supplied).

⁸ See generally Law Review 22024 (April 2022). That article is by Second Lieutenant (now Captain) Lauren Walker, USMC.

Please join or support ROA.

This article is one of 2,200-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. We add new articles each month.

9

ROA is the nation’s only national military organization that exclusively and solely supports the nation’s reserve components, including the Coast Guard Reserve (6,179 members), the Marine Corps Reserve 32,599 members), the Navy Reserve (55,224 members), the Air Force Reserve (68,048 members), the Air National Guard (104,984 members), the Army Reserve (176,171 members), and the Army National Guard (329,705 members).¹⁰

ROA is more than a century old—on 10/2/1922 a group of veterans of “The Great War,” as World War I was then known, founded our organization at a meeting in Washington’s historic Willard Hotel. The meeting was called by General of the Armies John J. Pershing, who had commanded American troops in the recently concluded “Great War.” 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 more than 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

¹⁰ See <https://crsreports.congress.gov/product/pdf/IF/IF10540/>. These are the authorized figures as of 9/30/2022.

other courts, we advocate for the rights and interests of service members and educate service members, military spouses, attorneys, judges, employers, Department of Labor (DOL) investigators, Employer Support of the Guard and Reserve (ESGR) volunteers, federal and state legislators and 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 eight¹¹ 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 <https://www.roa.org/page/memberoptions>. 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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¹¹ Congress recently established the United States Space Force as the eighth uniformed service.

¹² You can also contribute on-line at www.roa.org.