

# **Servicemembers Civil Relief Act**

**What is it and how does it impact Oregon state  
agency debt collections?**

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# History of the SCRA

- The origins of the SCRA can be traced as far back as the Civil War when Congress passed a moratorium on civil actions brought against Union soldiers and sailors for matters such as breach of contract, bankruptcy, foreclosure or divorce.
- In 1918 the Soldiers' and Sailors' Civil Relief Act was established to ease financial burdens on servicemembers during periods of military service, but that act expired after World War I. Congress renewed the act in 1940 with no expiration date and it has been amended several times since.
- In 2003 the law was retitled to Servicemembers Civil Relief Act.  
(50 USC App. § 3901-4043 et seq, as amended)

# Definitions

- **Servicemember-** a member of the *uniformed services*, as that term is defined in **10 U.S.C. § 101(a)(5)**. Which includes the Army, Navy, Air Force, Marine Corps, Coast Guard, the commissioned corps of the National Oceanic and Atmospheric Administration and the commissioned corps of the Public Health Service.
- **Active duty-** for armed services is defined in **10 U.S.C. § 101(d)(1)** as: “fulltime duty in the active military service of the United States ... [including] 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.”
- **Military Service-** includes “active duty” as defined in **10 U.S.C. § 101(d)(1)**. In the case of a member of the National Guard, includes service under a call to active service authorized by the President or the Secretary of Defense for a period of more than 30 consecutive days for purposes of responding to a national emergency declared by the President and supported by Federal funds; and any period during which the servicemember is absent from duty on account of sickness, wounds, leave or other lawful case.

# Purpose of the SCRA

- The primary purpose of the SCRA is to ease legal and financial burdens on military personnel and their families brought on by the demands of **active duty**. In the words of the act, the provisions were designed to allow service members to "devote their entire energy to the defense needs of the Nation."
- "[T]he Act [SCRA] must be read with an eye friendly to those who dropped their affairs to answer their country's call." Le Maistre v. Leffers, 333 U.S. 1, 6 (1948) (citing Boone v. Lightner, 319 U.S. 561, 575 (1943)).

# Who is covered under the SCRA?

- The SCRA covers all **active duty** service members (Army, Air Force, Coast Guard, Marine Corp and Navy) including reservists. It also covers members of the National Guard and Air National Guard that have been activated for duty. The protection begins on the date of entering active duty and remain in effect during the period of active duty and in some cases beyond.
- The SCRA also provides certain benefits and protections to **servicemember** dependents (see 50 U.S.C. § 3955) and in certain instances to those who co-signed a loan for, or took out a loan with, a servicemember (see 50 U.S.C. § 3913). The term “dependent” includes a servicemember’s spouse, children, and any other person for whom the servicemember has provided more than half of their financial support for the past 180 days. (see 50 U.S.C. § 3911(4)). For most servicemembers, SCRA protections begin on the date they enter active duty **military service** (see 50 U.S.C. § 3911(3)). For military reservists, protections begin upon the receipt of orders to report for military service.

# What does the SCRA do?

- “The SCRA can postpone or suspend financial or civil obligations to prevent **servicemembers** from being taken advantage of while on active duty and away from home.” ([www.Military.com](http://www.Military.com))
- **Benefits and protections** offered by the SCRA include:
  - Foreclosures
  - Civil proceedings
  - Income taxes
  - Interest and Credit Reporting

# Foreclosure

- The SCRA stops foreclosures without a court order for loans that have been taken out prior to the servicemember entering **military service**. Protections apply during the period of military service and for up to one year after (tail coverage).
- Protects against foreclosure to enforce the collection of a property tax that became due before or during the active duty status without:
  - A court order, and
  - A determination by the court that the military service does not materially affect their ability to pay the tax.
- The court may stay the proceedings during the military service and for up to 180 days after the end of that service.



# Civil Proceedings

- A **servicemember** may vacate a default judgment against them when they did not make an appearance in court and the servicemember did not receive any notice of the proceeding. Up to 90 days from termination of active duty. The court or administrative body must reopen the case to allow the servicemember to defend the action.
- A servicemember may request a stay or delay in proceedings, this limits actions for up to 90 days. Additional requests may be made.
  - No fines or penalties may be imposed under any contract for failing to comply with the terms of the contract during the stay of proceedings, unless ordered by the court.
- This includes a “stay” of execution of judgments, attachments and garnishments, unless the court determines the servicemember’s ability to comply with the judgment or garnishment is not materially affected by the **military service**.
- This doesn’t mean that cases cannot be filed, if the servicemember appears in their defense then the SCRA protections do not apply.

# Income taxes

- An income tax obligation arising before or during active duty may be deferred for the duration of the service and up to 180 days after.
  - The **servicemember** must provide written notice to the taxing authority of the active duty status and demonstrate the material impact of the ability to pay the tax. Must be delivered in person or by return receipt mail.
- No interest or penalties for nonpayment of the tax may be assessed during the deferral period.
- The income tax provisions do not apply to spouses or dependents of military personnel.

# Interest and Credit Reporting

- Limits interest (including fees and other charges) on certain financial obligations that were incurred before joining the military to 6 percent and remains in effect for the duration of the active service. This includes auto loans, mortgages, student loans, credit cards, etc.
- SCRA protections when applied limit lender from reporting negative information on a **servicemember** or dependent credit report

# What the SCRA does NOT do?

- The SCRA protections generally do not apply to any obligations incurred while on active duty (loans or purchases on credit).
  - Example: Servicemember has a credit card with a \$ 1,000 charged debt prior to active duty. After going on active duty, he/she charges another \$2,000 in credit card charges. Only the \$1,000 of the total \$3,000 debt will qualify for the interest rate reduction to 6%.
- The SCRA does NOT allow the **servicemember** to stop making payments on obligations. Some mortgage lenders allow servicemembers to move (or extend) payments during active duty status to the end of the loan term, but the SCRA does not require it.

# What should I do if a debtor claims to be covered under the SCRA?

- Obtain a written copy of the active duty orders or verify active duty status through the Department of Defense website.
  - <https://scra.dmdc.osd.mil/scra/#/home>
  - Follow the link for the Single Record Request (no account is required).
  - You will need either an SSN or birthdate, first and last name of the active duty servicemember.
  - The website will provide an SCRA certificate that can be retained with the agencies records to show SCRA provisions apply.
- Determine if the debt was incurred prior to active duty. (Refer to active duty date on the certificate)

# What should I do if a debtor claims to be covered under the SCRA?

- The active duty **servicemember** must invoke or request relief under the SCRA. This can be done through a written notice, or could be verbal (by phone) if active duty has already started.
  - Remember- debts incurred WHILE the servicemember was on active duty are NOT subject to SCRA protections.
- The best rule of thumb is to stop and take a step back when someone claims SCRA protection. While the SCRA doesn't provide for a "stay" of all collections, agencies should exercise caution before pursuing collection enforcement and evaluate accounts to determine if the SCRA applies.

# Next steps

- Once active duty has been verified and that the debt is covered under the SCRA protections (incurred before or in some cases during active duty):
  - **Document**- Make sure your records reflect the SCRA claim and verified active duty status. Note what protections apply and impact on collection process, if any.
  - **Communicate**- Ensure any third parties are informed of the SCRA protections, including the Department of Revenue, Department of Justice, private collection firms, etc.
  - **Adjust**- If the debt is subject to the 6% interest cap, retroactively adjust accounts that accrued interest above the six percent limit established by the SCRA. If fees or penalties are not allowed during the period of active duty those need to be adjusted also.

# Next steps

- Since the SCRA protections generally are in effect for the duration of active duty (and in some cases for a period of time after), agencies should continue to monitor the active duty status using the Department of Defense website.
- Once the debtor is no longer on active duty and the SCRA protections no longer apply, the agency should continue collection efforts.
  - **Document**- Make sure your records reflect the expiration of the SCRA protections and any contact with the debtor regarding next steps.
  - **Communicate**- Ensure any third parties are informed of the expiration of the SCRA protections, including the Department of Revenue, Department of Justice, private collection firms, etc.



# Resources

- For more information on the SCRA visit any of the following websites:
- U.S. Department of Justice-  
<https://www.justice.gov/servicemembers/servicemembers-civil-relief-act-skra>
- <https://www.military.com/benefits/military-legal-matters/scra/servicemembers-civil-relief-act-overview.html>
- <http://www.uscourts.gov/services-forms/bankruptcy/bankruptcy-basics/servicemembers-civil-relief-act-skra>