

CFPB Issues SCRA Paper Identifying Underused Benefits

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A couple of months ago, the Consumer Financial Protection Bureau issued a research paper it said revealed that many active duty servicemembers who were entitled to interest rate reductions under the federal Servicemembers Civil Relief Act were not receiving the benefit from their creditors. It also found that creditors were still repossessing servicemembers' cars without a court order, despite considerable attention to that issue over the past several years. In our experience, these things happen from time to time notwithstanding policies and procedures designed to prevent them from happening.

The report goes through the CFPB's analysis of the data and describes how it arrived at its conclusions. As you might imagine, there is some hyperbole in the CFPB's press release headline ("CFPB Finds Members of the Reserves and National Guard Paying Millions of Dollars in Extra Interest Each Year") that you have to cut through to get to the point of the paper—to identify ways that creditors can help prevent servicemembers from missing out on important benefits. If this sounds familiar to readers, it should by now; the CFPB overstates its case based on a study using data that it acknowledges in the report (not in the headline) is limited and incomplete to remind the industry of its compliance obligations.

To level set, it may be worth a quick reminder about how the interest rate reduction provision in the SCRA works. The statute gives a servicemember up to 180 days after the termination or release of his or her period of active duty to furnish to a creditor a copy of his or her orders or any other form of indication of military service. The statute also says that a creditor may use information obtained from the Defense Manpower Data Center through "normal business reviews" for purposes of confirming that a servicemember is on active duty. It gives creditors a "safe harbor" in case the DMDC information is wrong about the servicemember's status, if the servicemember does not provide written notice and documentation of his or her orders. If the DMDC information is wrong but the servicemember provides written notice and orders, the creditor has to provide the benefits.

In contrast to the SCRA's interest rate reduction provision, which puts the primary onus on the servicemember to notify creditors when he or she is called to active duty, the repossession protection that requires creditors to have a court order before taking a servicemember's collateral property puts the onus exclusively on the creditor to make sure that it uses judicial process—not self-help—to repossess personal property of a

servicemember who took on the credit obligation (and made a deposit or payment) before his or her period of active duty.

Against that backdrop, the CFPB issued this paper suggesting that servicemembers do not always get the benefit of an interest rate reduction when they are entitled to that benefit. The CFPB describes the assumptions it made to develop the statistical model it used to derive its conclusions and identifies (beginning on page 21 of the report) the limitations on its data, including potentially erroneous or incomplete information in consumers' data reported by creditors (because, for example, the data is a snapshot that does not capture updates) and speculative interest rate information because creditors do not furnish finance charge rates or interest rates with payment information conveyed to the consumer reporting agencies. The data shortcomings and the imputation of data described in the report are not uncommon for statistical studies where the inputs are not readily available—but it is a little disappointing for an agency that counts among its responsibilities the protection of consumers against unfair, *deceptive*, and abusive practices to use such a misleading headline for the announcement of its research paper that "aims to fill an important gap in knowledge about the use of SCRA among members of the reserve component called to active duty." Can you make a finding and fill a knowledge gap on admittedly speculative data?

The shortcomings of the study are interesting but not the focus of this article. Rather, because the CFPB highlights actions creditors can take to help ensure that they are providing important and valuable SCRA benefits to servicemembers who are eligible for those protections, we focus on those. Specifically, the CFPB highlights a few affirmative measures for creditors to consider implementing that would alleviate the burden of servicemembers called to active duty from having to notify creditors of their military status:

1. Apply SCRA interest rate reductions for all accounts held by the creditor if the servicemember invokes protections for a single account.

This one is logical and builds on a consent order from way back in 2012, where the CFPB required a creditor to adopt this approach. While it is aimed at financial institutions where the likelihood of holding multiple accounts for a servicemember is considerably higher than it is for a vehicle dealer, this protection is simple enough to apply and allows servicemembers to avoid having to notify the same creditor multiple times about their eligibility for benefits.

2. Find ways to automatically apply the SCRA's interest rate reduction.

This suggestion requires some effort by the creditor to identify servicemembers who have not requested protections, but creditors with sufficient resources and significant servicing pools often run SCRA scrubs against their accounts to ensure that they do not repossess collateral owned by a servicemember on active duty. Those scrubs could identify servicemembers who have not alerted the creditor to their military status, and this process can help obtain benefits for those servicemembers without requiring them to notify the creditor and provide orders.

3. Develop periodic indicators of SCRA benefit utilization. The upshot of this recommendation is not clear—the report indicates that a "comprehensive and

periodic review of SCRA rate reduction utilization would provide beneficial information to inform and evaluate future efforts to expand servicemembers' financial protections." While that statement rings true, it is not clear how it would apply to an individual creditor. Rather, the recommendation may be calling for a periodic financial services industry-wide assessment of the frequency with which creditors provide SCRA benefits to identify whether servicemembers on active duty are receiving the protections to which they are entitled. If creditors implement the first two suggestions above and capture all of their servicemembers' accounts and provide the available benefits to those servicemembers' accounts, then, in theory at least, the CFPB or someone else could aggregate the data and gain confidence that the SCRA is benefitting servicemembers the way it should.

It may be the case that the writers at the CFPB feel like nobody will read their materials if they do not use titles or captions that in many circles would be considered "click bait" to introduce the materials, but maybe we can let that go and take the recommendations as well-intentioned. It is reasonable for creditors to automatically apply benefits to all servicemember accounts they hold when the servicemember asks for those benefits on a single account. For example, if a servicemember has a credit card and a vehicle finance account with a bank and asks the bank to reduce her interest rate on her credit card because she has been called to active duty, the bank could pretty easily identify the vehicle finance account and reduce the rate there, too. And if that same servicemember had trouble with payments on the vehicle finance account, the bank, having taken that extra step to protect the servicemember, could also avoid an impermissible repossession of the servicemember's vehicle.

Similarly, running regular proactive SCRA scrubs on a creditor's entire consumer portfolio could help avoid those same impermissible repossessions and would allow the creditor to identify opportunities to provide the valuable interest rate reduction that makes it considerably easier for servicemembers called to active duty to manage payments on their military pay. This approach also has the advantage for the creditor of providing the benefit early in the servicemember's term of service so that, in the case of a servicemember who does not think to alert the creditor to her orders until after her period of service is over, the creditor does not have to reconcile the servicemember's account, refund interest and fees, and figure out where that leaves both of them.

In describing the SCRA in the report, the CFPB reminds us that "Congress established the SCRA to provide legal and financial protections to servicemembers on active duty to help ensure that financial or legal issues do not distract them from their mission." We value our servicemembers and appreciate their service—implementing the processes the CFPB recommends in this report is a great way to show that appreciation, even if it costs a little bit to be more proactive about offering SCRA benefits. ❌

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