

More SCRA Enforcement Activity by the Department of Justice

September 30, 2021 | [Chuck Dodge](#)

The Servicemembers and Veterans Initiative at the U.S. Department of Justice continues. At the end of July, the DOJ entered into a consent order in a Texas case where a towing company sold active-duty servicemembers' cars without a court order.

In prior cases, the DOJ has claimed that towing companies picked up active-duty servicemembers' cars and sold them without the court order the SCRA requires and that a storage company sold servicemembers' belongings while their owners were deployed overseas, also without a court order. The companies paid penalties and compensation to the affected servicemembers.

In its most recent case, the DOJ settled claims that United Tows, LLC, engaged in a pattern or practice of violating the SCRA when, without a court order, it auctioned, sold, or otherwise disposed of the motor vehicles and personal effects of SCRA-protected servicemembers during a period of military service or within 90 days thereafter. The report from the DOJ indicates that a servicemember contacted United Tows after learning that his car had been sold while he was at basic training (which constitutes active duty), but the person he spoke with said she did not believe he was a servicemember. Without investigating his claim, United Tows sold his car and some personal effects that were in the car. It appears from the consent order that United Tows did not have SCRA procedures in place to avoid selling cars that belonged to servicemembers on active duty.

The consent order references certain new policies that United Tows developed and adopted during the negotiation of the consent order that are designed to avoid SCRA violations like the ones alleged. Beyond ordinary SCRA scrubs, United Tows agreed to perform certain actions that help identify whether a car's owner is a servicemember before enforcing any lien against the car:

- (1) review any information it has received from the owner(s) or from a third party for evidence of military service (e.g., statements about military service, APO/FPO addresses, or addresses located on a military installation);
- (2) visually examine the vehicle and its contents for evidence of military service (e.g., military paperwork, uniform, equipment, registration sticker, or insignia); and
- (3) search the Defense Manpower Data Center website for evidence of SCRA eligibility by last name and social security number. In the event that United Tows does not have an SSN for an owner, United Tows' policy requires it to attempt to determine whether the owner is an SCRA-protected servicemember by searching the DMDC website by last name and date of birth (and if United Tows is aware of any aliases or last name variants, like a maiden name or

hyphenated last name, United Tows' policy says it will search the DMDC website for each such name variant). In cases where neither an SSN nor a date of birth of an owner is readily available, United Tows' policy requires it to use the owner's name and address to conduct a search on a commercially available public records database to obtain the owner's SSN or, if an SSN cannot be found, the owner's date of birth.

The policy United Tows adopted appropriately requires it to get a court order or an SCRA-compliant waiver from a servicemember before proceeding against any car or its contents. It also requires United Tows, as a final step of SCRA diligence, to file a non-military affidavit that it prepares not more than two days before filing a request for default judgment in any case where it files a complaint to enforce a lien.

These specific procedural steps, while not explicitly required by the SCRA and evidently not required in Texas, can be useful additions to an SCRA policy and procedure that is designed to avoid harming servicemembers on active duty. It is not clear whether the DOJ *required* these specific steps in the negotiation of the consent order, but they clearly passed DOJ muster and appear well-suited to protect servicemembers who are on active duty.

The consent order also included damages of \$20,000 payable to the servicemember referenced above and \$20,000 to be split among four other servicemembers identified in the investigation, as well as a \$10,000 civil fine.

The DOJ is clearly following through on its commitment to SCRA enforcement. Whereas five or more years ago, its SCRA enforcement actions focused on finance companies' compliance with finance charge reductions and personal property foreclosure actions against servicemembers in the context of consumer credit transactions, more recent cases reflect a focus on the actions of a broader spectrum of providers whose business models affect servicemembers. We will continue to monitor and report on these cases. Towing companies and others that enforce liens against personal property that could be owned by active-duty servicemembers would do well to take time to update their SCRA compliance policies to ensure that they include steps designed to identify servicemember owners.

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