

## Towing Companies Sued for Alleged SCRA Violations

September 30, 2020 | [Chuck Dodge](#)

In mid-August, the Department of Justice sued Target Recovery Towing Inc. and Target Recovery & Transport Inc. in Florida federal court for violating the federal Servicemembers Civil Relief Act when, without a court order, they sold a car to satisfy a storage lien. The car belonged to an active-duty servicemember deployed overseas.

The case is only at the complaint stage, but it reflects an SCRA enforcement initiative different from others that typically make financial services news. Specifically, this case is against towing companies, not a secured creditor, and the claim arises because of a sale in the enforcement of a storage lien, not enforcement of a consensual security interest.

But, the allegations in the government's complaint are familiar: the statutory lienholders (i.e., the towing companies that held a statutory lien on the car for storage fees) did not have policies or procedures in place to ensure that they did not violate the SCRA, the lienholders failed to review the no-fee military database to ensure that the owner of the car was not on active military duty when they sought to enforce the lien, and the lienholders sold the car without a court order.

In its complaint, the DOJ notes a number of factors that it alleges should have led the towing companies to at least investigate whether the owner of the car was in the military: there was a military decal on the vehicle, the owner's address was on a military base, and the towing companies sent a notice of the lien to Navy Federal Credit Union, whose website evidently makes clear that its membership is "restricted to members of the armed forces, the Department of Defense, veterans, and their families."

The DOJ also alleges that the towing companies' procedures did not include a pre-sale review of the Defense Manpower Data Center database or other efforts to see if the car's owner was on active military duty and protected by the SCRA. The DOJ also notes that the towing companies did not have a practice of obtaining court orders to comply with the SCRA in the enforcement of their storage liens.

It has become a standard expectation in financial services regulation since the enactment of the Dodd-Frank Act in 2010 and the evolution of the Consumer Financial Protection Bureau that all participants in the consumer financial services industry, including vendors, have some form of compliance management system designed to ensure compliance with consumer protection laws and avoid consumer harm. When vehicle recovery companies work with secured creditors to repossess collateral, they are

participating in the financial services environment and subject to potential enforcement by the CFPB. They are also, in that context, subject to rules and restrictions imposed by their creditor business partners that most often require some form of SCRA awareness and procedures.

In this case, though, the towing companies were acting on their own behalf when they sold the car subject to their lien. It is important to note that the SCRA still offers servicemembers protections in that context. Specifically, the DOJ claimed violations of 50 U.S.C.A. § 3958, which prohibits the foreclosure or enforcement of a lien "for storage, repair, or cleaning of the property or effects of a servicemember or a lien on such property or effects for any other reason" during the servicemember's period of military service or for 90 days after, without a court order.

The DOJ filed another claim on the same day in Massachusetts federal court against a moving and storage company that allegedly sold a servicemember's possessions while he was deployed overseas, citing the same provision requiring a court order to enforce liens that it cited in its case against the towing companies.

The actions filed by DOJ are consistent with the civil rights initiatives described in the DOJ's congressional budget submission for fiscal year 2020, where it listed enforcement of federal laws that protect servicemembers, veterans, and their families as a priority. Enforcement actions in recent years against finance companies and banks heightened awareness of servicemember protections for players in the financial services space. These two recent actions focusing on different SCRA protections underscore the need for all lienholders, not just lienholders of consensual security interests (like finance companies), to be aware of SCRA protections for servicemembers and their families and to adopt policies and procedures designed to prevent SCRA violations.

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