HUDSON COOK

Washington Regulator Interprets SCRA Scope Broadly

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The Servicemembers Civil Relief Act offers servicemembers financial protections, including the ability to have interest rates reduced to 6%, when a servicemember is called to active duty after entering into a credit transaction. The SCRA provides that non-mortgage installment credit with an interest rate greater than "6% per year incurred by a servicemember, or the servicemember and the servicemember's spouse jointly, before the servicemember enters military service" may not bear interest greater than 6% during the period of military service.

In a case reported in its Summer 2019 Newsletter, the Washington State Department of Financial Institutions expanded the plain language of the SCRA by applying the interest rate reduction requirement to credit entered into solely by the spouse of a servicemember.

According to the DFI, the wife of a servicemember received a negotiable check in her maiden name. Depositing the check resulted in a loan that included interest in excess of 6%. When her husband later joined active military service, he provided notice and documentation of active duty service to the creditor and requested an interest rate forgiveness pursuant to the SCRA. The creditor declined the request, noting that the servicemember's name was not on the loan documents, and, therefore, the loan was not taken out "jointly."

Reasoning that because Washington is a community property state and because a debt incurred by one spouse is presumed to be a joint obligation absent evidence that the debt was incurred separately, the DFI concluded that the wife's debt was entitled to SCRA protections, even though her servicemember spouse did not sign the credit contract. Therefore, the DFI requested that the creditor reduce the interest rate to 6% and refund what was paid in excess of 6%.

We think that the DFI's reliance on Washington's community property statute is misplaced. Community property statutes tend to focus on a creditor's ability to obtain recourse against community property in the event of a default. The ability to eventually obtain recourse against community property does not support the interpretation that both spouses automatically are personally liable to repay debt incurred by only one spouse separately.

The SCRA's interest rate reduction requirement focuses on whether the obligation was

incurred by the servicemember or jointly by the servicemember and the servicemember's spouse, not on whether the servicemember's property could be used to pay his or her spouse's obligation in the event of default.

There is no Washington statute, regulation, guidance, or attorney general opinion that requires a creditor to treat an obligation incurred by a non-servicemember spouse as an obligation incurred by the servicemember and the servicemember's spouse jointly. Further, no guidance provided by any federal regulator, including the Department of Defense, requires the interest rate reduction in that instance under any state's community property laws.

The SCRA's plain language supports the position that the credit obligation has to be entered into by the servicemember or the servicemember and the servicemember's spouse jointly in order to qualify for the interest rate reduction. The DFI's broad interpretation to include credit incurred by a servicemember's spouse separately runs afoul of the plain language of the SCRA and imposes a requirement on Washington creditors beyond that imposed by the law.

The DFI's misinterpretation of the SCRA has implications beyond the SCRA. The DFI claims that all debts incurred during marriage are presumed to be joint obligations. Does this mean that every application for credit by a married person must signify that it is a joint application? Does this mean that a creditor must inform a non-signing spouse of any debt incurred by a signing spouse? Does a car that one spouse buys always have to be titled in both the signing spouse's and the non-signing spouse's names? Does a creditor have to furnish a consumer report on a non-signing spouse when it furnishes one on a signing spouse? Does a creditor have to provide post-default notices to non-signing spouses? These are just a few of the many questions that this misinterpretation has spawned.

In reading its community property law broadly to benefit a military family, Washington damaged the rights of married consumers to apply for and have individual credit. The Equal Credit Opportunity Act and laws like it prohibit discrimination on the basis of sex and marital status. By treating all credit of married persons as joint credit at origination under its community property law, and ostensibly disallowing individual credit for married people, Washington likely discriminates on the basis of both.

And, although slightly off topic, I can't help but mention how this position might injure a spouse in or trying to get out of an abusive relationship.

on a matter, one should seek the advice of counsel.

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