



AMERICAN
BANKRUPTCY
INSTITUTE

2022 Annual Spring Meeting

Veterans' and Servicemembers' Affairs Task Force

Steven M. Berman, Moderator

Shumaker, Loop & Kendrick, LLP; Tampa, Fla.

Hon. Mary Jo Heston

U.S. Bankruptcy Court (W.D. Wash.); Tacoma

John D. Penn

Perkins Coie LLP; Dallas

VETERANS' AND SERVICEMEMBERS' TASK FORCE PANEL

Introduce Task Force (mission statement; how created; how structured)

A. Top Issues for Representing Veterans

B. Servicemembers Civil Relief Act (SCRA)

1. Applicability and eligibility
2. Scope
3. Impact in landlord tenant disputes
4. Credit card and mortgage interest rates
5. Civil litigation
6. Insurance
7. Income Tax
8. Bankruptcy implications

C. HAVEN Act enactment

1. Initiative
2. Language
3. Impact

D. Proposed or Pending Legislation

Judge Mary Jo Heston
United States Bankruptcy Court W.D. Wash.

John Penn
Perkins Coie LLP; Dallas

Steven Berman
Shumaker, Loop & Kendrick, LLP; Tampa

A. Top Issues for Representing Veterans

**GENERAL ISSUES TO THINK ABOUT WHEN REPRESENTING ACTIVE
MILITARY & MILITARY VETERANS
ON BANKRUPTCY AND DEBTOR CREDITOR ISSUES¹**

Prepared for: ABI Annual Spring Meeting, April 28-30, 2022, Washington, D.C.

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3. Servicemembers Are Moved Regularly and Sometimes Are Deployed for Active Duty. Because these factors may affect financial resources, certain bankruptcy claims, rights against third parties, budgets, timing and availability of resources and remedies and other financial issues, availability for court appearances and preparation for defending court matters, it is a good idea to ask any active military clients questions about periods of prior deployment, periods of service and types of service as well as known upcoming moves and deployments. Verified, active deployment which makes a servicemember unavailable for appearance appears to be grounds for waiving the requirement that a debtor appear and testify at a Section 341 Meeting. See e.g., Memorandum from Region 7 United States Trustee dated April 7, 2003, Richard W. Simmons, U.S. Trustee Region 7 to trustees in Southern and Western District of Texas which states that: “The Executive Office of the United States Trustee has concluded that as a “matter of the Program Policy, United States Trustees should excuse unavailable Active Duty Servicemembers from attendance at the 341 meeting in appropriate circumstances.”²
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5. Exemption Choice Is Made According to a Debtor’s Domicile, Not Residence. The choice of which state’s exemptions apply is based on domicile not residence. As noted above, a servicemember may have more than one domicile. Section 522(b)(3)(A) provides that a debtor that has more than one domicile in the 730

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days prior to filing for bankruptcy, the applicable state exemptions will be for the state where the debtor's domicile was located for the 180 days prior to the petition date or the longer portion of such 180-day period, as applicable. Depending on the facts, there may be timing and other issues which could affect a debtor's available exemptions. One issue that may come up is the availability under the applicable state exemptions of exempting property located in another state, as this may be a common fact pattern existing for military families that have moved. In sum, the debtor's counsel should both understand the facts and fully analyze the possible exemption issues that could arise for their servicemember clients. For a much more thorough discussion of these issues, See attached article, Louis M. Bubala III and Joseph E. Dagher, "*Homestead Exemptions for Military Members on Assignment*," 34 ABI Journal, p. 34-36.

6. Understanding Your Client's Military and Disability Pay is Important to Chapter Choice and Other Bankruptcy Issues. The Haven Act dramatically impacted the scope of COMI for many veterans and servicemembers (and in some circumstances the COMI of their family members) by excluding from COMI "any monthly compensation, pension, pay, annuity, or allowance paid under title 10, 37, or 38 in connection with a disability, combat-related injury or disability, or death of a member of the uniformed services, **except that any retired pay excluded under this subclause shall include retired pay paid under chapter 61 of title 10 only to the extent that such retired pay exceeds the amount of retired pay to which the debtor would otherwise be entitled if retired under any provision of title 10 other than chapter 61 of that title.**" Section 101(10A). It is important for you to understand the nature and scope of your military or veteran client's income by accessing the DOD & VA's eBenefits website for award letters, payment history and military discharge documents and other records at www.ebenefits.va.gov. See also DFA's MyPay website for leave and earnings statements www.mypay.dfas.mil.
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protections could impact the allowability of certain claims filed in the bankruptcy case, the validity of default judgments obtained prior to bankruptcy, as well as your client's rights in relation to pending litigation in both the bankruptcy court as well as non-bankruptcy courts. Some remedies are self-executing while other remedies must be affirmatively sought to protect your client's rights. Attached is a comprehensive article by former bankruptcy judge Robert E. Gerber that provides a good summary of the SCRA's provisions: Robert E. Gerber, "Protections Afforded by the Servicemembers Civil Relief Act."

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GENERAL ISSUES TO THINK ABOUT WHEN REPRESENTING ACTIVE

MILITARY & MILITARY VETERANS

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Feature

BY LOUIS M. BUBALA III AND JOSEPH E. DAGHER

Homestead Exemptions for Military Members on Assignment

Life in the military comes with inherent risks. Outside of combat, service members face challenging legal issues. New assignments in new states mean new laws. In Nevada, with five military bases, military families have faced obstacles in voting¹ and obtaining school vouchers.²

Bankruptcy presents its own wrinkles. A recent appellate decision addressed whether military members on assignment can claim homestead exemptions and, if so, under what law.³ The answer is not as clear as it seems, however. Debtors, property and the court might be in different states, and the question of residence and domicile involves a mix of fact and law. Finally, a court must apply both federal and state law. There is a complex body of law for claims of cross-border, extraterritorial exemptions.⁴

The U.S. Bankruptcy Appellate Panel (BAP) for the Ninth Circuit provided guidance with *Burke v. Larsen* (*In re Larsen*). Neither the debtor nor the trustee provided the bankruptcy court with the correct law, resulting in an incorrect decision below. The BAP highlighted the controlling federal statute: Section 522(b) of the Bankruptcy Code states that the applicable exemption law is determined by the debtors' domicile.⁵ Despite the bright line, lawyers and courts have overlooked it. Case law is not always correct when addressing a military member's homestead exemption. This oversight can result in tactical and financial errors in evaluating a potential bankruptcy. In a bankruptcy, the mistake can result in a windfall for one side. *Larsen* is a reminder that without applying the correct federal law at the start, the remaining evaluation might lead to an outcome subject to reversal on appeal.

Statutory Framework

Larsen invoked questions on the federal bankruptcy venue, the federal allowance of exemptions and the federal interpretation of state law of allowable exemptions. Debtors may file for bankruptcy in any federal judicial district where they had their "domicile, residence, principal place of business ...

or principal assets" in the 180 days before bankruptcy (or the longer portion of that period).⁶ While a residence usually encompasses the same district for all purposes, some debtors might be able to file in multiple districts.

Military families may have a different *domicile* and *residence*, giving them two venues for filing. The terms are similar but distinct. A residence is where one lives in real time.⁷ A domicile is a permanent home — where one resides with the intention to remain or to which one intends to return following a temporary departure.⁸ A person residing in a state is not necessarily domiciled there.⁹ When domicile is disputed, "courts try to determine the subjective intent of [the] debtors" from subjective statements and objective facts.¹⁰

The second relevant statute allows debtors to exempt assets from collection and liquidation in bankruptcy.¹¹ Individuals may select exemptions authorized by federal bankruptcy law or the state law of their domicile.¹² While the venue statute may allow a debtor to file in multiple jurisdictions, the exemption statute depends solely on the debtor's domicile.¹³

The applicable exemptions also may depend on finer points. The first arises if the debtor was domiciled in two or more states in the 730 days prior to filing for bankruptcy. The court applies the law of the state where the debtor had the longest domicile for the 180 days before those 730 days.¹⁴ The second arises in determining the applicable exemptions. Some states permit debtors to select state or federal exemptions,¹⁵ but other states opt out of the federal exemptions, thus requiring debtors to apply the state exemptions.¹⁶ Finally, some states bar their exemptions from applying to property outside the state. Rather than denying the debtor an exemption, the debtor still can apply the federal exemption.¹⁷



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1 Amy Rose, "We're Serving Our Country. Now Trump Says Votes Like Ours Don't Count," *Washington Post* (Nov. 11, 2020), 50 U.S.C. § 4025 (military member does not lose voting right in home state).

2 Sandra Chereb, "Policy Allows Military Exemption on Nevada's School Choice Accounts," *Las Vegas Review-Journal* (Nov. 11, 2015).

3 *Burke v. Larsen* (*In re Larsen*), No. NV-20-1133-FBG, 2020 WL 6440884 (B.A.P. 9th Cir. Nov. 3, 2020) (mem. per curiam).

4 See, e.g., *Fernandez v. Miller* (*In re Fernandez*), No. EP-11-CV-1123-KC, 2011 WL 3423373 (W.D. Tex. Aug. 5, 2011), *rev'd*, 445 B.R. 790 (Bankr. W.D. Tex. 2011).

5 11 U.S.C. § 522(b)(1).

6 28 U.S.C. § 1408(1).

7 *Carl v. United States* (*In re Carl*), 142 B.R. 257, 259 (Bankr. N.D. Ill. 1992); William Houston Brown, et al., *Bankruptcy Exemption Manual* § 4:6 (2020).

8 *Levy v. Moss*, 797 F.2d 747, 749 (9th Cir. 1986).

9 *Wetzel v. United States*, 244 F.2d 158, 163 (9th Cir. 1957).

10 *Bankruptcy Exemption Manual* § 4:6 (citing *In re Felix*, 562 B.R. 700, 705 (Bankr. S.D. Ohio 2017)).

11 11 U.S.C. § 522(b)(1).

12 11 U.S.C. § 522(b)(1)-(3), (d).

13 11 U.S.C. § 522(b); *In re Stockburger*, 192 B.R. 908, 910 (E.D. Tenn. 1996), *aff'd*, 106 F.3d 402, No. 96-5409, 1997 WL 41202 (6th Cir. Jan. 31, 1997) (table).

14 11 U.S.C. § 522(b)(3)(A); *Mancuso v. Yarnall* (*In re Mancuso*), No. NV 16-1387-BHTa, 2018 WL 1354337, *2 (B.A.P. 9th Cir. March 12, 2018).

15 For example, courts recognize that Washington law does not require debtors domiciled there to select its state law exemptions. *Klein v. Anderson* (*In re Anderson*), 989 F.3d 1210 (9th Cir. 2021).

16 See, e.g., Nev. Rev. Stat. 21.090(3).

17 11 U.S.C. § 522(b)(3) (hanging paragraph), (d); *In re Roddy*, 478 B.R. 384 (Bankr. D. Ariz. 2012).

Background of Larsen

Larsen presented a mixed set of facts when debtors filed a joint chapter 7 petition in January 2020 in Nevada.¹⁸ They were from Washington, and Cami Larsen owned a home there, which they lived in until Jason Larsen was assigned to Guam in 2014. They moved to Nevada in 2017 when he was assigned to Naval Air Station Fallon.¹⁹ From 2014-20, the Larsens rented the Washington house at times, and a relative lived there on the petition date. Debtors scheduled the Washington home as exempt under Nevada law. They believed that because they lived in Nevada, they were required to file for bankruptcy in Nevada and use its exemption law.

The Issue and the BAP's Ruling

The trustee objected to the exemption and argued that the Washington house could not be their homestead because they did not reside there. He also argued that Nevada's homestead exemption does not apply to property outside the state.²⁰

The Larsens responded that they considered the Washington home their permanent home. Their driver's licenses were from Washington, the debtor husband's earnings statement listed Washington as his legal state of residence, and they paid Washington property taxes under the state's homestead law. The family member at the debtor's home was only housesitting, and they intended to return to the home once Mr. Larsen retired in June 2020.²¹

The debtors argued that they lived in Nevada under the Navy's orders, and that Washington remained their residence for voting purposes while on active duty under federal law. The Larsens also claimed that they were obligated to file for bankruptcy in Nevada under the venue statute. Finally, the Larsens argued that the Ninth Circuit allowed state law exemptions to apply to properties in other states.²² Hon. **Bruce T. Beesley** overruled the trustee's objection, allowing the exemption because Mr. Larsen was in the military at the time.

The BAP subsequently held that the bankruptcy court correctly determined that the debtors were entitled to an exemption. The panel also held that the trustee correctly argued that the debtors could not exempt their Washington home under Nevada law, but the reasoning behind both points was flawed because it overlooked the federal law on exemptions in bankruptcy.

The BAP pointed to § 522(b), which states that exemptions are determined by the debtor's "domicile."²³ After considering the law on the residence and domicile, the BAP noted that debtors can file bankruptcy cases in states where they cannot claim the exemptions due to a different domicile. Effectively, its legal conclusion did not depend on many issues raised at the bankruptcy court, including on the Larsens' residence in Nevada, the amount of time they spent in Nevada and the amount of time they spent away from Washington. The BAP held that the uncontradicted evidence in the record established that the Larsens were domiciled in Washington.²⁴

Although the decision reversed the original order sustaining their exemption, the BAP noted that the debtors were not left unprotected. Debtors may amend their exemptions as a matter of course at any time before the case is closed, subject to limited exceptions.²⁵ The debtors subsequently amended their schedules to claim exemptions under Washington law.

Other Rulings in Military Contexts

There are scant decisions about a military member's exemptions. The case of first impression is *In re Wellberg*, with a debtor from Minnesota on active duty in Virginia who filed for bankruptcy in Virginia.²⁶ The court debated the application of Virginia and Minnesota homestead law. The court held that the debtor remained domiciled in Minnesota when on call and, applying § 522(b), allowed the homestead exemption under Minnesota law.²⁷ Some subsequent decisions have correctly applied § 522(b).²⁸

Other courts have reached contrary conclusions. In *In re Anderson*, a debtor filed for bankruptcy in Texas while on assignment there and claimed a federal homestead exemption in property in South Carolina.²⁹ The trustee objected that she did not live in South Carolina. The court considered the facts about the property and state law decisions about absences due to military service, then allowed the exemption under federal bankruptcy law.

Anderson is similar to *Larsen* in that both courts felt compelled to provide a homestead exemption — but both decisions failed to address § 522(b). If the court had analyzed the statute, it could not have allowed an exemption under federal bankruptcy law. The court clearly found that the debtor remained domiciled in South Carolina, so the debtor should have applied South Carolina exemption law under § 522(b). South Carolina has opted out of the federal exemptions, and as a result, the debtor could not take the federal exemptions under South Carolina exemption law.

Yet the bankruptcy court still allowed the debtor to claim federal exemptions. Those were only available if the court held that the debtor was domiciled in Texas, which had not opted out of the federal exemptions.³⁰ The court had to ignore the issue of domicile and missed the requirements of § 522(b) to allow federal exemptions under Texas law. The outcome is even more surprising because the court cited *Wellberg*. Had the court followed that case, it would have held that the debtor was domiciled in South Carolina and limited to an exemption under South Carolina law.

In another case, the court factually rejected the debtors' claim of domicile in the state where they had a home, apart from their state of residence during the military assignment.³¹ The debtors lived in Utah while the debtor husband worked there with the Air Force. The debtors had bought land in Idaho 16 years before filing for bankruptcy, built a cabin

18 2020 WL 6440884 at *1.

19 Fallon is home to the Navy's "Top Gun" program; in the 1986 movie, the program was based in San Diego.

20 2020 WL 6440884 at *1-2.

21 *Id.* at *2.

22 *Id.* (citing *Arrol v. Broach (In re Arrol)*, 170 F.3d 934 (9th Cir. 1999)).

23 *Id.* at *4 (citing *In re Stanton*, 457 B.R. 80, 85 (Bankr. D. Nev. 2011)).

24 *Id.*

25 *Id.* at *5 (citing Fed. R. Bankr. P. 1009, and *Lua v. Miller (In re Lua)*, 692 F. App'x 851 (9th Cir. 2017)).

26 12 B.R. 48 (Bankr. E.D. Va. 1981).

27 The decision did not consider whether the debtor's raw land and an intent to build a home qualified as an exempt homestead that the debtor "uses as a residence." 11 U.S.C. § 522(d).

28 *In re Ober*, 613 B.R. 631, 636 & n.5 (Bankr. E.D. Pa. 2020) (uncontested application of Arizona exemption while military member was in Pennsylvania); *In re Porvaznik*, 456 B.R. 738 (Bankr. M.D. Pa. 2011) (overruling trustee objection based on debtor's absence from state during husband's assignment in Louisiana).

29 240 B.R. 254 (Bankr. W.D. Tex. 1999).

30 S.C. Code § 15.41-30(A)(1).

31 *In re Kline*, 350 B.R. 497 (Bankr. D. Idaho 2005).

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Homestead Exemptions for Military Members on Assignment

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and spent summers there. They stated that their intent was to retire to Idaho, remaining in Utah after his retirement until she retired. The debtor wife retired shortly before the bankruptcy, but the debtors were unable to move until after the filing due to the seasonal weather. Under those facts, the court held that they were domiciled in Utah and ineligible for Idaho exemptions. In *dicta*, Hon. **Jim D. Pappas** suggested that the debtors could not claim any exemption since Utah opted out and only exempted property in the state.³² The decision did not discuss the savings clause that preserves a federal exemption if none is available under state law.

There is an economic impact on applying one state's exemptions rather than another, whether rightly or wrongly. In *Larsen*, the Nevada homestead exemption protects up to \$605,000 in equity,³³ but Washington's exemption is capped at \$125,000.³⁴ In an appellate brief, the parties disputed whether the debtors had \$107,000 in equity or \$202,000.

Under the original ruling with Nevada law, the equity would be exempt in either scenario. However, when the domicile is determined and Washington law is applied, there is excess equity for the bankruptcy estate if the trustee's valuation is correct. The decision to file for bankruptcy seemed to make sense if Nevada law applied and exempted all their home equity. In retrospect, the decision to file for bankruptcy makes less sense because the trustee can recover the excess home equity under Washington's less generous law.

Bankruptcy courts have complex questions of state and federal law when presented with issues of residence, domicile, homesteads and military duty. Differing decisions are common in cases involving multiple questions of fact and law. However, *Larsen* provides a baseline of the legal questions and analysis to resolve future cases. **abi**

Editor's Note: ABI's Veterans and Servicemembers Affairs Task Force was created to to educate, remediate and prevent adverse debt concerns and impacts on veterans and service members. For more information, visit veterans.abi.org.

³² *Id.* at 502, n.6.

³³ Nev. Rev. Stat. 21.090(1)(d), 115.050.

³⁴ Wash. Rev. Code § 6.13.030.

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Advanced Hot Topics in Consumer Bankruptcy, November 2, 2019¹

The HAVEN Act, A Primer

I. The HAVEN Act – Honoring American Veterans in Extreme Need (HAVEN) Act of 2019

- A. Redefined 11 U.S.C. 101(10A) “Current Monthly Income” to also EXCLUDE

“(IV) any monthly compensation, pension, pay, annuity, or allowance paid under title 10, 37, or 38 in connection with a disability, combat-related injury or disability, or death of a member of the uniformed services, except that any retired pay excluded under this subclause shall include retired pay paid under chapter 61 of title 10 only to the extent that such retired pay exceeds the amount of retired pay to which the debtor would otherwise be entitled if retired under any provision of title 10 other than chapter 61 of that title.”

- B. Signed into law on August 23, 2019 and became effective immediately.
C. The HAVEN Act overturns decisions holding that, under the U.S. bankruptcy laws as previously written, disabled veterans were required to include their VA disability benefits in their disposable income for bankruptcy purposes – even though recipients of Social Security disability benefits were not required to do the same with their benefits.

II. Benefit is Not Limited to “Veterans”

- A. Department of Defense pays under Titles 10 & 37.
B. Department of Veterans Affairs pays under Title 38.
C. Examples and additional potentially excludable receipts excluded from “Current Monthly Income” are discussed here: http://abi-org.s3.amazonaws.com/Newsroom/HAVENActTPMAddendum_Aug_2019.pdf.

III. Application to Cases Pending Upon Enactment?

- A. Applies to cases filed after August 23, 2019.
B. Arguments in support of applying the revised Current Monthly Income definition to cases and payment plans that were pending on that date include:
1. *Landgraf v. USI Film Prod.*, 511 U.S. 244 (1994) (setting forth the standard as to application of a statute before its enactment);

¹ Courtesy of the NCBJ 2019 Annual Conference.

2. *Rivers v. Roadway Exp., Inc.*, 511 U.S. 298, 311 (1994) (applying narrow error-correcting statutes to pending cases where a contrary reading renders the statute ineffective);
3. *In re Padilla*, 365 B.R. 492, 503 (Bankr. E.D. Pa. 20017) (quoting 11 U.S.C. § 350(b)) (providing a bankruptcy case may be reopened to accord relief to the debtor).

IV. Implementation

- A. Official Forms for Schedules are being revised.
- B. Bankruptcy Rules, Local Rules and Procedures are being updated.

V. Find Supporting Documentation

- A. DOD & VA's eBenefits website (www.ebenefits.va.gov) for Award Letters and Payment History, Military Discharge Document (e.g., DD Form 214) and Records.
- B. DFAS's MyPay website (www.mypay.dfas.mil) for Leave and Earnings Statements.

VI. Additional Resources

- A. ABI Task Force on Veterans and Servicemembers Affairs, <https://veterans.abi.org>; webinar - <https://veterans.abi.org/podcast/webinar-experts-discuss-new-bankruptcy-laws-help-distressed-small-businesses-disabled>.
- B. Stateside Legal, <https://statesidelegal.org>.
- C. American Bar Association Standing Committee on Legal Assistance for Military Personnel, https://www.americanbar.org/groups/legal_assistance_military_personnel/.
- D. U.S. Dep't of Def. Warrior Care, <https://warriorcare.dodlive.mil/benefits/compensationand-benefits/>.
- E. U.S. Dep't of Veterans Affairs, <https://www.va.gov/>; Office of Gen. Counsel's Accreditation Search, <https://www.va.gov/ogc/apps/accreditation/index.asp>.

VII. Also - Administrative Discharge of Student Loans for Disabled Veterans

- A. President signed an executive action requiring the Dep't of Ed. and VA to develop a more streamlined process to administratively discharge the federal student loan debt of disabled veterans with the designation of "totally and permanently disabled."
- B. See Memorandum for the Secretary of Education the Secretary of Veterans Affairs, WHITE HOUSE (Aug. 21, 2019), <https://www.whitehouse.gov/presidentialactions/presidential-memorandum-discharging-federal-student-loan-debt-totallypermanently-disabled-veterans/>; codified at Discharging the Federal Student Loan Debt of Totally and

Permanently Disabled Veterans, 84 Fed. Reg. 44,677, 2019 WL 3996836
(Aug. 21, 2019).

return. Thus, Debtor's 2006 tax debt was discharged under § 523(a)(1)(B).

CONCLUSION

WHEREFORE, Debtor's Complaint to Determine Dischargeability is GRANTED.

FURTHER, Judgment is hereby entered in favor of Plaintiff.



**IN RE: Christopher Kyle
FAGAN, Debtor.**

Case No. 15-28694-C-7

United States Bankruptcy Court,
E.D. California.

Signed November 14, 2016

Background: Chapter 7 debtor filed motion for order of contempt in his reopened case to enforce discharge injunction with respect to debt to Defense Finance and Accounting Service (DFAS) to repay unearned part of his Navy reenlistment bonus.

Holding: The Bankruptcy Court, Christopher M. Klein, J., held that military debt was not debt which could be discharged. Motion denied.

1. Bankruptcy § 334

Chapter 7 debtor's military debt to repay unearned part of his Navy reenlistment bonus was not debt which could be discharged, as discharge was entered less than five years after debtor left the Navy and Defense Finance and Accounting Service (DFAS) billed him \$5,945.09 to recoup the unearned portion of his reenlistment bonus. 37 U.S.C.A. §§ 303a, 373(c); 11 U.S.C.A. § 523.

2. Statutes §§ 1215, 1219, 1452

The usual canon of statutory construction where statutes conflict is to give effect to each and to construe a later statute as implicitly amending an earlier, more general statute.

3. Statutes §§ 1219

Where a conflict is irreconcilable in interpreting statutes, the more recent statute governs.

4. Bankruptcy § 2465.3

Contempt-of-discharge action must be pursued in the bankruptcy court that entered the discharge.

Peter Cianchetta, Elk Grove, California,
for Debtor.

Phillip A. Talbert, Acting United States
Attorney; Bruce A. Emard, Assistant
United States Attorney, for United States.

OPINION REGARDING MILITARY DEBT DISCHARGE EXCEPTION

CHRISTOPHER M. KLEIN,
Bankruptcy Judge:

Inconspicuous exceptions to bankruptcy discharges lurking at 37 U.S.C. §§ 303a(e)(4) and 373(c) surprised the debtor who assumed that his debt to repay the unearned part of his Navy reenlistment bonus had been discharged. He urges that Bankruptcy Code § 727(b) (discharge "from all debts" not named in § 523) trumps statutes not named in Bankruptcy Code § 523, but Congress has said otherwise in a later-enacted statute. His motion for an order of contempt to enforce the discharge injunction is DENIED.

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These obscure discharge exceptions, enacted in 2006 and 2008, warrant exegesis as a case of first impression. They anchor more than 60 repayment provisions scattered around Titles 10, 14, and 37 of the United States Code and have not been reviewed in reported bankruptcy decisions.

Facts

The debtor was involuntarily discharged from the Navy after serving fifteen months of a six-year reenlistment.

The Defense Finance and Accounting Service (DFAS) billed him \$5,945.09 to recoup the unearned portion (1735 days) of his reenlistment bonus.

He filed a chapter 7 bankruptcy case on November 9, 2015, scheduling a \$5,945.10 debt to DFAS, which he expected to be discharged. His chapter 7 discharge was entered on February 22, 2016; the case closed four days later.

DFAS sent the debtor a bill dated March 24, 2016, noting that additional charges are assessed under 31 U.S.C. § 3717 and that the debt could be turned over to the Treasury for collection or offset from tax refunds and other federal benefits. It was followed by another DFAS bill dated May 26, 2016.

The Department of the Treasury billed him on August 6, 2016, for \$5,975.33, with a payment coupon showing a \$7,648.42 debt.

The debtor filed a motion for an order of contempt in his reopened case on September 14, 2016.

He does not interpose a fact-based defense or question the amount of the debt, relying instead on the theory that Bank-

ruptcy Code § 523 controls all exceptions to the chapter 7 discharge.

Issue

Do 37 U.S.C. §§ 303a(e) and 373(c) operate as exceptions to discharge under 11 U.S.C. § 727(b), thereby insulating the United States from exposure to liability for violation of the discharge injunction under 11 U.S.C. § 524(a)?

Jurisdiction

Federal subject-matter jurisdiction is founded on 28 U.S.C. § 1334. Enforcing the injunction against collecting a discharged debt, including determining whether such debt is discharged, is a core proceeding that may be heard and determined by a bankruptcy judge. 28 U.S.C. §§ 157(b)(2)(I) and (O).

Congress abrogated sovereign immunity for Bankruptcy Code § 524 discharge injunction violations. 11 U.S.C. § 106(a)(1).

Discussion

Two substantially identical discharge exceptions in Title 37—37 U.S.C. § 303a(e)(4) and § 373(c)—are considered because the record is ambiguous about the statutory basis for the debt. They amount to two paths to the same result. The debtor still has to pay the unearned portion of his Navy reenlistment bonus.

I

If, as implied by the invocation of § 303a(e)(4), the debtor reenlisted under the authority granted by 37 U.S.C. § 308 (“Special pay: reenlistment bonus”), then his repayment obligation is triggered by § 308(d)¹ and is restated and implemented

1. Section 308(d) provides:

(d) A member who does not complete the term of enlistment for which a bonus was paid to the member under this section, or a member who is not technically qualified in

the skill for which a bonus was paid to the member under this section, shall be subject to the repayment provisions of section 303a(e) of this title.

37 U.S.C. § 308(d).

at § 303a(e).²

If he reenlisted under the authority of 37 U.S.C. § 331 ("General bonus authority for enlisted members"), then his repayment obligation is triggered by § 331(g)³ and is restated and implemented at § 373(a).⁴

Sections 303a and 373 collectively are cross-referenced by, and anchor, more than 60 separate uniformed services pay provisions that entail repayment obligations.

2. Section 303a(e)(1)(A):

(e)(1)(A) Except as provided in paragraphs (2) and (3) [sole survivorship and combat-related exceptions], a member of the uniformed services who receives a bonus or similar benefit and whose receipt of the bonus or similar benefit is subject to the condition that the member continue to satisfy certain eligibility requirements shall repay to the United States an amount equal to the unearned portion of the bonus or similar benefit if the member fails to satisfy the eligibility requirements and may not receive any unpaid amounts of the bonus or similar benefit after the member fails to satisfy the requirements, unless the Secretary concerned determines that the imposition of the repayment requirement and termination of the payment of unpaid amounts of the bonus or similar benefit with regard to the member would be contrary to a personnel policy or management objective, would be against equity and good conscience, or would be contrary to the best interests of the United States.

37 U.S.C. § 303a(e)(1)(A).

3. Section 331(g) provides:

(g) Repayment. A person or member who receives a bonus under this section and who fails to complete the period of service, or meet the conditions of service, for which the bonus is paid, as specified in the written agreement under subsection (d), shall be subject to the repayment provisions of section 373 of this title.

37 U.S.C. § 331(g).

4. Section 373(a) provides:

II

The discharge exceptions at § 303a(e)(4) and § 373(c) are identical.⁵

Each excepts repayment debts under §§ 303a and 373(a) from any discharge order entered in a bankruptcy case within five years after the trigger date of the debt. Specifically, they provide "discharge in bankruptcy under title 11 does not discharge a person from such debt if the discharge order is entered less than five years after" termination of the service or the agreement on which the debt is based.⁶

(a) Repayment and termination. Except as provided in subsection (b) [sole survivorship, combat-related, and discretionary exceptions], a member of the uniformed services who is paid a bonus, incentive pay, or similar benefit, the receipt of which is contingent upon the member's satisfaction of certain service or eligibility requirements, shall repay to the United States any unearned portion of the bonus, incentive pay, or similar benefit if the member fails to satisfy any such service or eligibility requirement, and the member may not receive any unpaid amounts of the bonus, incentive pay, or similar benefit after the members fails to satisfy such service or eligibility requirement.

37 U.S.C. § 373(a).

5. The only difference is that one uses the word "subsection" where the other uses "section."

6. Sections 303a(e)(4) and 373(c) each provide:

An obligation to repay the United States under this subsection is, for all purposes, a debt owed the United States. A discharge in bankruptcy under title 11 does not discharge a person from such debt if the discharge order is entered less than five years after—

(A) the date of the termination of the agreement or contract on which the debt is based; or

(B) in the absence of such an agreement or contract, the date of the termination of the service on which the debt is based. 37 U.S.C. §§ 303a(e)(4) & 373(c) (§ 373(c): "section" vice "subsection").

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A

Section 302a(e) was added to § 303a in 2006. Act of Jan. 6, 2006, Pub. L. 109-163, § 687, 119 Stat. 8326, 8336.

The bankruptcy discharge exception, initially enacted as § 303a(e)(3), was redesignated § 303a(e)(4) in 2009. Act of Oct. 28, 2009, Pub. L. 111-84, § 617(a), 123 Stat. 2190, 2354.

The text of § 303a(e)(4) has not been amended since 2006.

B

Section 373 (c) was enacted in 2008 and plainly was cloned from § 303a(e). Act of Jan. 28, 2008, Pub. L. 110-181, § 661, 122 Stat. 3, 163.

The text of § 373(c) has not been amended since 2008.

III

[1] The debtor served only fifteen months of a sixty-month reenlistment for which he had received a reenlistment bonus of about \$7,500.00. DFAS calculated that the unearned portion of the bonus was \$5,945.09. That sum is owed to the United States by virtue of the statutes described above.

The chapter 7 case was filed with the expectation that the debt to the United States would be discharged. This motion for an order of contempt brings § 303a(e)(4) and § 373(c) into play.

A

This is a situation in which the parties rely on what the debtor contends are conflicting statutes.

The 1978 Bankruptcy Code used mandatory terms in § 727(b) naming the Bankruptcy Code § 523 nondischargeability provisions as the sole source of exceptions to discharge:

§ 727(b) Except as provided in section 523 of this title, a discharge under subsection (a) of this section discharges the debtor from all debts that arose before the date of the order for relief under this chapter, and any liability on a claim that is determined under section 502 of this title as if such claim had arisen before the commencement of the case, whether or not a proof of claim based on any such debt or liability is filed under section 501 of this title, and whether or not a claim based on any such debt or liability is allowed under section 502 of this title.

11 U.S.C. § 727(b).

Read literally, the only exceptions to the § 727 discharge are those stated in § 523. The debtor relies on that language.

In 2006 and 2008, Congress used unambiguous terms referring to title 11 at two places in title 37 to create exceptions to discharge without mentioning Bankruptcy Code §§ 727(b) or 523: “A discharge in bankruptcy under title 11 does not discharge a person from such debt...” 37 U.S.C. §§ 303a(e)(4) & 373(c).

[2] The usual canon of statutory construction where statutes conflict is to give effect to each and to construe a later statute as implicitly amending an earlier, more general statute. Smith v. Robinson, 468 U.S. 992, 1024, 104 S.Ct. 3457, 82 L.Ed.2d 746 (1984); Acosta v. Gonzales, 439 F.3d 550, 555 (9th Cir. 2006).

[3] Where a conflict is irreconcilable, the more recent statute governs. Watt v. Alaska, 451 U.S. 259, 268, 101 S.Ct. 1673, 68 L.Ed.2d 80 (1981).

Here, the debtor is relying on a 1978 statute as a defense against conflicting statutes enacted in 2006 and 2008.

The 2006 and 2008 statutes are more specific than the 1978 statute. If they do

not surmount Bankruptcy Code § 727(b), then they would have no effect. It would, however, be absurd to construe them as having no effect in the face of an earlier, more general statute. Congress must have meant for those two statutes to mean something. That something is an implicit amendment to the earlier statute adding an extra "except" clause to Bankruptcy Code § 727(b).

It follows that § 303a(e)(4) and § 373(c), in order to be given any effect at all, must be construed as creating exceptions to bankruptcy discharge regardless of the seemingly-comprehensive language of Bankruptcy Code § 727(b).

To be sure, Congress invites confusion when it strews bankruptcy-related statutes around other titles of the U.S. Code without a cross-reference in the Bankruptcy Code. It may even offend internal legislative procedural rules to circumvent the congressional committees responsible for bankruptcy legislation to sneak bankruptcy provisions into other legislation, but those are internal housekeeping matters for Congress.

The statutes enacting § 303a(e)(4) and § 373(c) are valid acts of Congress passed by the House of Representatives and the Senate and presented to, and signed by, the President. For better or worse, the Bankruptcy Power entitles Congress to do what it likes with entitlements in bankruptcy. U.S. Const. art. I, § 8; *Raleigh v. Ill. Dep't of Revenue*, 530 U.S. 15, 21, 120 S.Ct. 1951, 147 L.Ed.2d 13 (2000).

B

The exceptions to discharge in § 303a(e)(4) and § 373(c) are not absolute.

By their terms, those statutes permit discharge in bankruptcy of unearned military bonus and incentive payments if the discharge is entered more than five years

after termination of the agreement on which the debt is based or, if no such agreement, termination of service. 37 U.S.C. §§ 303a(e)(4) & 373(c).

1

The debtor's chapter 7 discharge would have been effective to discharge his debt if he had waited to file a bankruptcy case for nearly five years, instead of six months, after leaving the Navy. His chapter 7 discharge was entered February 22, 2016. To be sure, there are ways to defer the entry of discharge in chapter 7 cases, but those deferrals are ordinarily measured in months, not years. Fed. R. Bankr. P. 4004(c).

2

While § 303a(e)(4) and § 373(c) purport to apply to all bankruptcy discharges, the operation of the five-year rule in those sections leaves open the possibility of discharging § 303a(e)(4) and § 373(c) debt in chapter 11, 12, and 13 cases.

Chapter 13 plans commonly provide for payments over a period of five years. 11 U.S.C. § 1325(b)(4).

Discharge is not "entered" until after completion of all payments under the plan. 11 U.S.C. § 1328(a).

Thus, a discharge entered after completing a sixty-month payment plan in a chapter 13 case filed after a § 303a(e)(4) or § 373(c) debt arises would qualify for discharge under the five-year rule in those sections.

C

It is also noted that § 303a(e)(1) and § 373(b)(1) each permit the Secretary concerned to determine that the imposition of the repayment requirement "would be contrary to a personnel policy or management objective, would be against equity and

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good conscience, or would be contrary to the best interests of the United States.” 37 U.S.C. §§ 303a(e)(1) & 373(b)(1). This language confers constrained discretion and suggests that defenses focused on those grounds could be asserted.

Regulations are authorized to describe circumstances in which an exception to repayment may be granted. 37 U.S.C. §§ 303a(e)(1) & 373(b)(1).

Such regulations should address the statutory standards for excusing payment: personnel policy or management objective; equity and good conscience; and best interests of the United States. *Cf. In re [Redacted]* [sic], 2008 Westlaw 10707636 (D.O.H.A.C.A.B. 2008) (DoD Claims Appeals Bd. disclaiming jurisdiction and citing § 303a(e)(1)); Vol. 7A, DoD Fin. Mgmt. Reg.—Military pay Policy & Procedures, DoD 7000.14R, 090501–090504 (Recoupment).

An interesting question that can be left to another day is whether a bankruptcy court could review (presumably after exhaustion of administrative remedies) whether repayment would, for example, be “against equity and good conscience” within the meaning of 37 U.S.C. §§ 303a(e)(1) & 373(b)(1).

The debtor has identified no facts that might suggest that one of these statutory exceptions ought to apply in his case.

IV

The procedure applicable to this dispute also deserves review because of a confusing Ninth Circuit decision.

A

The question of the discharge status of the unearned portion of a military reenlist-

ment bonus can arise in three distinct, albeit overlapping, contexts.

First, during the case, it could be the subject of an objection to claim under Rule 3007. Fed. R. Bankr. P. 3007; *Ryan v. Defense Fin. & Accounting Serv. (In Ryan)*, 2016 WL 402201 at *21 (Bankr. E.D.N.C 2016).

Second, during or after the case, it can be raised in an adversary proceeding to determine the dischargeability of a debt. Fed. R. Bankr. P. 7001(6); *Ryan*, 2016 WL 402201 at *1.

Third, after entry of discharge, it can, as occurred in this case, form the essential predicate of a Rule 9020 motion for an order of contempt to enforce the discharge injunction. 11 U.S.C. § 524(a); Fed. R. Bankr. P. 9020; *Barrientos v. Wells Fargo Bank, N.A.*, 633 F.3d 1186, 1189–91 (9th Cir. 2011).

B

The debtor here raised the matter after entry of discharge as a motion for an order of contempt pursuant to Rule 9020 governed by Rule 9014.⁷ This was consistent with the *Barrientos* decision. *Barrientos*, 633 F.3d at 1189, construing *Walls v. Wells Fargo Bank, N.A.*, 276 F.3d 502, 506–07 (9th Cir. 2002).

It should be noted, however, that a dictum in the Ninth Circuit’s *Barrientos* decision seems to widen its split with the First Circuit on procedure for enforcing the § 524(a) discharge injunction. Compare *Barrientos*, 633 F.3d at 1190, with *Bessette v. Aveo Fin. Servs., Inc.*, 230 F.3d 439, 443–45 (1st Cir. 2000). *Barrientos* neither noted nor discussed *Bessette*.

7. Rule 9020 provides:

Rule 9020. Contempt Proceedings. Rule 9014 governs a motion for an order of

contempt made by the United States trustee or a party in interest.
Fed. R. Bankr. P. 9020.

The First Circuit in *Bessette* held that enforcement of the § 524 discharge injunction as a § 105 contempt matter need not be in the court that entered the discharge and permitted enforcement to be raised in a civil action that included class action allegations. *Bessette*, 230 F.3d at 446; 11 U.S.C. § 105. It remanded the civil action to district court to consider whether it would handle contempt-of-discharge enforcement proceeding or refer the matter (including the class certification question) to the bankruptcy court that had entered the discharge. *Id.*

[4] The Ninth Circuit in *Barrientos* affirmed the bankruptcy court's dismissal of a one-count adversary proceeding seeking an injunction, a fine, declaratory relief, and attorney's fees on account of alleged violation of the § 524 discharge injunction. It construed its precedent in *Walls* that there is no private cause of action for violation of the § 524 discharge injunction and that contempt under § 105 is the sole remedy, as also (splitting with *Bessette*) requiring that the contempt be determined by the court that issued the discharge order.⁸ *Barrientos*, 633 F.3d at 1188-89.⁹

Having clarified the law of the circuit that *Walls* limits discharge injunction enforcement to contempt proceedings under § 105 that must be decided by the court whose order is to be enforced, the *Barrien-*

tos court gratuitously muddled the waters.

In a dictum based on a dubious reading of the rules of procedure, it appeared to say that a contempt issue never may be presented in an adversary proceeding and that a party may complain of a § 524 discharge injunction violation only by way of motion under Rule 9020 as a contested matter governed by Rule 9014.¹⁰

This doubled the width of the existing split with the First Circuit. *Walls* and *Bessette* already disagreed on whether another court could entertain a § 105 contempt-of-discharge matter. The *Barrientos* dictum that Rule 9020 "mandates" party-initiated contempt be a Rule 9014 contested matter implies that it can never be included in an adversary proceeding. This conflicts with *Bessette* where contempt-of-discharge was allowed to be a count in a civil action. *Bessette*, 230 F.3d at 445-47.

A closer look at *Barrientos*, however, suggests that the conflict with the First Circuit is less than meets the eye. The split is real, of course, regarding which judicial officer has authority over § 524 discharge injunction enforcement. But the procedural split can be bridged by the overlapping structure of the Bankruptcy Rules regarding contested matters and adversary proceedings. The history of Rule 9020 indicates that the rule permits, but

8. The adversary proceeding was filed in the court that issued the discharge. In re Adolfo Barrientos, No. 3:06-bk-01685.

9. The Eleventh Circuit agrees with the Ninth Circuit that a contempt action must be pursued in the bankruptcy court that entered the discharge. *Alderwoods Grp., Inc. v. Garcia*, 682 F.3d 958, 970-71 (11th Cir. 2012) (chapter 11) ("A debtor who believes that the discharge injunction has been violated may file a contempt action with the bankruptcy court that entered the discharge injunction, not with another court.").

10. Here is the transition from holding to dictum:

We therefore rule that *Walls* is sufficient to dispose of the present case. However, even in the absence of *Walls*, it appears that the Bankruptcy Rules require that an action for contempt arising out of the violation of an order issued in a bankruptcy case must be brought by motion in the bankruptcy case. *Barrientos*, 633 F.3d at 1189.

The more-accurate statement is that the Bankruptcy Rules permit an action for contempt arising out of the violation of an order issued in a bankruptcy case to be brought by motion in the bankruptcy case.

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does not require, bankruptcy contempt issues to be presented in Rule 9014 contested matters.

C

The statements in the Barrientos dictum about the procedural differences between Rule 9014 “contested matters” and Rule 7001 adversary proceedings are inaccurate. The problem is that they create the misimpression that contested matters and adversary proceedings are mutually exclusive—they are not.

1

The essential characteristic of Rule 9014 contested matters is streamlined procedure that permits litigation within a matter of weeks without sacrificing too much due process.

The hallmark of the contested matter rules is the power of the court to tailor the rules to fit the situation. A pared-down set of the adversary proceeding rules that excludes most of the pleading and scheduling rules presumptively applies.¹¹ But those are a minimum, and the bankruptcy court has the flexibility to direct that any or all of the other adversary proceeding rules apply in any particular situation.¹²

In contrast, Rule 7001 adversary proceedings, which are essentially conventional civil actions under the Federal Rules of Civil Procedure, entail the more formal

and time-consuming process of complaint, answer, counterclaim, cross-claim, third-party complaint, dilatory motions, scheduling orders, and pretrials that do not ordinarily apply in contested matters.

The Barrientos decision placed emphasis on the fact that § 524 discharge injunction enforcement matters are not listed in Rule 7001 as requiring an adversary proceeding and that Rule 9020 specifies that Rule 9014 “governs” a motion for an order of contempt made by the United States trustee or a party in interest, from which the court of appeals concluded that the rule “mandates” a contested matter and forbids treating such a matter in an adversary proceeding. Barrientos, 633 F.3d at 1190. The conclusion does not follow from the premise.

2

The primary significance of the matters that are listed at Rule 7001 is that such matters are regarded as of sufficient importance to require the due process and time and expense of being processed as a full-blown civil action, *i.e.* adversary proceeding, under the Federal Rules of Civil Procedure. A bankruptcy judge, like a district judge, risks disapproval on appeal whenever short shrift is given to those rules.

11. Rule 9014(c) provides, in relevant part:

(c) Application of Part VII rules. Except as otherwise provided in this rule, and unless the court directs otherwise, the following rules shall apply: 7009, 7017, 7021, 7025, 7026, 7028–7037, 7041, 7052, 7054–7056, 7064, 7069, and 7071. The following subdivision of Fed. R. Civ. P. 26, as incorporated by Rule 7026, shall not apply in a contested matter unless the court directs otherwise: 26(a)(1) (mandatory disclosure), 26(a)(2) (disclosures regarding expert testimony) and 26(a)(3) (additional pretrial dis-

closure), and 26(f) (mandatory meeting before scheduling conference/discovery plan). Fed. R. Bankr. P. 9014(c) (first two sentences).

12. The relevant part of Rule 9014(c) provides:

The court may at any stage in a particular matter direct that one or more of the other rules in Part VII shall apply. The court shall give the parties notice of any order issued under this paragraph to afford them a reasonable opportunity to comply with the procedures prescribed by the order.

Fed. R. Bankr. P. 9014(c) (last two sentences).

Rule 9014 contested matters incorporate some of those rules, including discovery, consolidation, taking evidence in the same manner as an adversary proceeding, making findings of fact and conclusions of law, and post-judgment relief. Fed. R. Civ. P. 26, 28-37, 42, 43-44.1, 52, 59-60, incorporated by Fed. R. Bankr. P. 7026, 7028-37, 7042, 7052, 9017, 9023-24, further incorporated by Fed. R. Bankr. P. 9014(c).

In addition, as noted, the court may order that all of the adversary proceeding rules apply in a particular contested matter, making contested matter procedure potentially congruent with adversary proceeding procedure. Fed. R. Bankr. P. 9014(c). At that juncture, the distinction between adversary proceeding and contested matter becomes a distinction without a difference.

3

Also significant is the applicability of the consolidation rule to contested matters. Fed. R. Civ. P. 42, incorporated by Fed. R. Bankr. P. 7042 & 9014(c). The bankruptcy court has the discretion to apply Civil Rule 42 to consolidate a claim made in a contested matter with a claim made in an adversary proceeding.

If a contested matter may be consolidated with an adversary proceeding, then it

seems nonsensical to forbid alleging a contested matter issue as a count in an adversary proceeding.

There are, of course, practical reasons for a bankruptcy court to decline to consolidate a motion for an order of contempt with a claim being made in an adversary proceeding. Confusion of remedies is one example. Indeed, it appears that the Barrientos bankruptcy judge dismissed the one-count adversary proceeding because parties were confusing adversary proceeding remedies with contempt remedies. Such a ruling is within the discretion of a trial judge who is trying to maintain order and promote clarity.

4

Coming back to Rule 9020, the Barrientos dictum suggests that the rule "mandates" contested matter procedure, to the exclusion of adversary proceeding procedure, for § 524 discharge injunction contempt matters. The history of Rule 9020, however, suggests that the more accurate description is that Rule 9020, as revised in 2001, merely "authorizes" contested matter procedure for § 524 discharge injunction contempt matters in an effort to streamline theretofore cumbersome contempt procedures.¹³

13. The Advisory Committee Note to the 2001 Amendment of Rule 9020 providing for Rule 9014 contested matter procedure explains the background:

This rule, as amended in 1987, delayed for ten days from service the effectiveness of a bankruptcy judge's order of contempt and rendered the order subject to de novo review by the district court. These limitations on contempt orders were added to the rule in response to the Bankruptcy Amendments and Federal Judgeship Act of 1984, Pub. L. 98-353, 98 Stat. 333, which provides that bankruptcy judges are judicial officers of the district court, but does not specifically mention contempt power. See 28 U.S.C. § 151. As explained in the com-

mittee note to the 1987 amendments to this rule, no decisions of the courts of appeals existed concerning the authority of a bankruptcy judge to punish for either civil or criminal contempt under the 1984 Act and, therefore, the rule as amended in 1987 "recognizes that bankruptcy judges may not have the power to punish for contempt." Committee Note to 1987 Amendments to Rule 9020.

Since 1987, several courts of appeals have held that bankruptcy judges have the power to issue civil contempt orders. [citations omitted.] To the extent that Rule 9020, as amended in 1987, delayed the effectiveness of civil contempt orders and required de novo review by the district court, the

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What then to make of what the Ninth Circuit was deciding in Barrientos? A clue is found in the decision's agreement with the Second Circuit's Kalikow decision where the bankruptcy court, like the bankruptcy court in Barrientos, required a Rule 9020 contested matter, rather than by adversary proceeding. Solow v. Kalikow (In re Kalikow), 602 F.3d 82, 93-94 (2d Cir. 2010).

Kalikow held that it was not error to proceed by way of contested matter and rejected argument that an adversary proceeding was required. Thus, whether to proceed by way of contested matter or adversary proceeding is a discretionary matter for the bankruptcy court that issued the discharge to determine.

There are practical reasons why a bankruptcy judge might use adversary proceeding procedure as a case management device to corral a complex situation headed toward trial. Fractious parties exchanging salvos in contested matter motion papers can be herded towards more focused trial preparation if required to employ the format of complaint and answer, as Rule 9014(c) permits. This helps sharpen the focus and narrow issues for trial. Likewise, other issues and parties that do necessitate an adversary proceeding may overlap the contempt and warrant simultaneous treatment.

If the bankruptcy court in Barrientos (which had issued the discharge), instead of dismissing, had elected to address the § 524 discharge injunction contempt in an adversary proceeding, limiting relief to that which is available on a motion for contempt, it seems unlikely that the Ninth Circuit would have reversed for having afforded too many procedural protections.

rule may have been unnecessarily restrictive in view of the judicial decisions recognizing that bankruptcy judges have the power to hold parties in civil contempt.

It follows that the law of the Ninth Circuit after Walls and Barrientos should be understood as holding that the remedy for violation of the § 524 discharge injunction is limited to contempt, which ordinarily is a Rule 9014 contested matter and which must be decided by the court that entered the discharge.

Reading Barrientos in conjunction with Kalikow and Besette reveals that all three circuits agree that the choice whether to permit a Rule 9020 contempt matter to be consolidated with, or raised in, an adversary proceeding is up to the discretion of the bankruptcy court. A bankruptcy judge's decision, as in Barrientos, to dismiss an adversary proceeding in favor of requiring a stand-alone Rule 9020 contested matter is reviewed for abuse of discretion. Likewise, a decision not to dismiss an adversary proceeding that contains a count alleging contempt should receive the same deferential review.

The court being persuaded that Congress validly exercised its power to except certain military-related debts from discharge in bankruptcy, the debt being conceded, and no matters in the nature of defense having been asserted, the debtor's Motion for an Order of Contempt pursuant to Federal Rule of Bankruptcy Procedure 9020 is DENIED.

An appropriate order will issue.



Fed. R. Bankr. P. 9020, Advisory Comm. Note to 2001 Amendment.

return. Thus, Debtor's 2006 tax debt was discharged under § 523(a)(1)(B).

CONCLUSION

WHEREFORE, Debtor's Complaint to Determine Dischargeability is GRANTED.

FURTHER, Judgment is hereby entered in favor of Plaintiff.



**IN RE: Christopher Kyle
FAGAN, Debtor.**

Case No. 15-28694-C-7

United States Bankruptcy Court,
E.D. California.

Signed November 14, 2016

Background: Chapter 7 debtor filed motion for order of contempt in his reopened case to enforce discharge injunction with respect to debt to Defense Finance and Accounting Service (DFAS) to repay unearned part of his Navy reenlistment bonus.

Holding: The Bankruptcy Court, Christopher M. Klein, J., held that military debt was not debt which could be discharged. Motion denied.

1. Bankruptcy § 334

Chapter 7 debtor's military debt to repay unearned part of his Navy reenlistment bonus was not debt which could be discharged, as discharge was entered less than five years after debtor left the Navy and Defense Finance and Accounting Service (DFAS) billed him \$5,945.09 to recoup the unearned portion of his reenlistment bonus. 37 U.S.C.A. §§ 303a, 373(c); 11 U.S.C.A. § 523.

2. Statutes §§ 1215, 1219, 1452

The usual canon of statutory construction where statutes conflict is to give effect to each and to construe a later statute as implicitly amending an earlier, more general statute.

3. Statutes §§ 1219

Where a conflict is irreconcilable in interpreting statutes, the more recent statute governs.

4. Bankruptcy § 2465.3

Contempt-of-discharge action must be pursued in the bankruptcy court that entered the discharge.

Peter Cianchetta, Elk Grove, California,
for Debtor.

Phillip A. Talbert, Acting United States
Attorney; Bruce A. Emard, Assistant
United States Attorney, for United States.

OPINION REGARDING MILITARY DEBT DISCHARGE EXCEPTION

CHRISTOPHER M. KLEIN,
Bankruptcy Judge:

Inconspicuous exceptions to bankruptcy discharges lurking at 37 U.S.C. §§ 303a(e)(4) and 373(c) surprised the debtor who assumed that his debt to repay the unearned part of his Navy reenlistment bonus had been discharged. He urges that Bankruptcy Code § 727(b) (discharge "from all debts" not named in § 523) trumps statutes not named in Bankruptcy Code § 523, but Congress has said otherwise in a later-enacted statute. His motion for an order of contempt to enforce the discharge injunction is DENIED.

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These obscure discharge exceptions, enacted in 2006 and 2008, warrant exegesis as a case of first impression. They anchor more than 60 repayment provisions scattered around Titles 10, 14, and 37 of the United States Code and have not been reviewed in reported bankruptcy decisions.

Facts

The debtor was involuntarily discharged from the Navy after serving fifteen months of a six-year reenlistment.

The Defense Finance and Accounting Service (DFAS) billed him \$5,945.09 to recoup the unearned portion (1735 days) of his reenlistment bonus.

He filed a chapter 7 bankruptcy case on November 9, 2015, scheduling a \$5,945.10 debt to DFAS, which he expected to be discharged. His chapter 7 discharge was entered on February 22, 2016; the case closed four days later.

DFAS sent the debtor a bill dated March 24, 2016, noting that additional charges are assessed under 31 U.S.C. § 3717 and that the debt could be turned over to the Treasury for collection or offset from tax refunds and other federal benefits. It was followed by another DFAS bill dated May 26, 2016.

The Department of the Treasury billed him on August 6, 2016, for \$5,975.33, with a payment coupon showing a \$7,648.42 debt.

The debtor filed a motion for an order of contempt in his reopened case on September 14, 2016.

He does not interpose a fact-based defense or question the amount of the debt, relying instead on the theory that Bank-

ruptcy Code § 523 controls all exceptions to the chapter 7 discharge.

Issue

Do 37 U.S.C. §§ 303a(e) and 373(c) operate as exceptions to discharge under 11 U.S.C. § 727(b), thereby insulating the United States from exposure to liability for violation of the discharge injunction under 11 U.S.C. § 524(a)?

Jurisdiction

Federal subject-matter jurisdiction is founded on 28 U.S.C. § 1334. Enforcing the injunction against collecting a discharged debt, including determining whether such debt is discharged, is a core proceeding that may be heard and determined by a bankruptcy judge. 28 U.S.C. §§ 157(b)(2)(I) and (O).

Congress abrogated sovereign immunity for Bankruptcy Code § 524 discharge injunction violations. 11 U.S.C. § 106(a)(1).

Discussion

Two substantially identical discharge exceptions in Title 37—37 U.S.C. § 303a(e)(4) and § 373(c)—are considered because the record is ambiguous about the statutory basis for the debt. They amount to two paths to the same result. The debtor still has to pay the unearned portion of his Navy reenlistment bonus.

I

If, as implied by the invocation of § 303a(e)(4), the debtor reenlisted under the authority granted by 37 U.S.C. § 308 (“Special pay: reenlistment bonus”), then his repayment obligation is triggered by § 308(d)¹ and is restated and implemented

the skill for which a bonus was paid to the member under this section, shall be subject to the repayment provisions of section 303a(e) of this title.

37 U.S.C. § 308(d).

1. Section 308(d) provides:

(d) A member who does not complete the term of enlistment for which a bonus was paid to the member under this section, or a member who is not technically qualified in

at § 303a(e).²

If he reenlisted under the authority of 37 U.S.C. § 331 ("General bonus authority for enlisted members"), then his repayment obligation is triggered by § 331(g)³ and is restated and implemented at § 373(a).⁴

Sections 303a and 373 collectively are cross-referenced by, and anchor, more than 60 separate uniformed services pay provisions that entail repayment obligations.

2. Section 303a(e)(1)(A):

(e)(1)(A) Except as provided in paragraphs (2) and (3) [sole survivorship and combat-related exceptions], a member of the uniformed services who receives a bonus or similar benefit and whose receipt of the bonus or similar benefit is subject to the condition that the member continue to satisfy certain eligibility requirements shall repay to the United States an amount equal to the unearned portion of the bonus or similar benefit if the member fails to satisfy the eligibility requirements and may not receive any unpaid amounts of the bonus or similar benefit after the member fails to satisfy the requirements, unless the Secretary concerned determines that the imposition of the repayment requirement and termination of the payment of unpaid amounts of the bonus or similar benefit with regard to the member would be contrary to a personnel policy or management objective, would be against equity and good conscience, or would be contrary to the best interests of the United States.

37 U.S.C. § 303a(e)(1)(A).

3. Section 331(g) provides:

(g) Repayment. A person or member who receives a bonus under this section and who fails to complete the period of service, or meet the conditions of service, for which the bonus is paid, as specified in the written agreement under subsection (d), shall be subject to the repayment provisions of section 373 of this title.

37 U.S.C. § 331(g).

4. Section 373(a) provides:

II

The discharge exceptions at § 303a(e)(4) and § 373(c) are identical.⁵

Each excepts repayment debts under §§ 303a and 373(a) from any discharge order entered in a bankruptcy case within five years after the trigger date of the debt. Specifically, they provide "discharge in bankruptcy under title 11 does not discharge a person from such debt if the discharge order is entered less than five years after" termination of the service or the agreement on which the debt is based.⁶

(a) Repayment and termination. Except as provided in subsection (b) [sole survivorship, combat-related, and discretionary exceptions], a member of the uniformed services who is paid a bonus, incentive pay, or similar benefit, the receipt of which is contingent upon the member's satisfaction of certain service or eligibility requirements, shall repay to the United States any unearned portion of the bonus, incentive pay, or similar benefit if the member fails to satisfy any such service or eligibility requirement, and the member may not receive any unpaid amounts of the bonus, incentive pay, or similar benefit after the members fails to satisfy such service or eligibility requirement.

37 U.S.C. § 373(a).

5. The only difference is that one uses the word "subsection" where the other uses "section."

6. Sections 303a(e)(4) and 373(c) each provide:

An obligation to repay the United States under this subsection is, for all purposes, a debt owed the United States. A discharge in bankruptcy under title 11 does not discharge a person from such debt if the discharge order is entered less than five years after—

(A) the date of the termination of the agreement or contract on which the debt is based; or

(B) in the absence of such an agreement or contract, the date of the termination of the service on which the debt is based. 37 U.S.C. §§ 303a(e)(4) & 373(c) (§ 373(c): "section" vice "subsection").

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A

Section 302a(e) was added to § 303a in 2006. Act of Jan. 6, 2006, Pub. L. 109-163, § 687, 119 Stat. 3326, 3336.

The bankruptcy discharge exception, initially enacted as § 303a(e)(3), was redesignated § 303a(e)(4) in 2009. Act of Oct. 28, 2009, Pub. L. 111-84, § 617(a), 123 Stat. 2190, 2354.

The text of § 303a(e)(4) has not been amended since 2006.

B

Section 373 (c) was enacted in 2008 and plainly was cloned from § 303a(e). Act of Jan. 28, 2008, Pub. L. 110-181, § 661, 122 Stat. 3, 163.

The text of § 373(c) has not been amended since 2008.

III

[1] The debtor served only fifteen months of a sixty-month reenlistment for which he had received a reenlistment bonus of about \$7,500.00. DFAS calculated that the unearned portion of the bonus was \$5,945.09. That sum is owed to the United States by virtue of the statutes described above.

The chapter 7 case was filed with the expectation that the debt to the United States would be discharged. This motion for an order of contempt brings § 303a(e)(4) and § 373(c) into play.

A

This is a situation in which the parties rely on what the debtor contends are conflicting statutes.

The 1978 Bankruptcy Code used mandatory terms in § 727(b) naming the Bankruptcy Code § 523 nondischargeability provisions as the sole source of exceptions to discharge:

§ 727(b) Except as provided in section 523 of this title, a discharge under subsection (a) of this section discharges the debtor from all debts that arose before the date of the order for relief under this chapter, and any liability on a claim that is determined under section 502 of this title as if such claim had arisen before the commencement of the case, whether or not a proof of claim based on any such debt or liability is filed under section 501 of this title, and whether or not a claim based on any such debt or liability is allowed under section 502 of this title.

11 U.S.C. § 727(b).

Read literally, the only exceptions to the § 727 discharge are those stated in § 523. The debtor relies on that language.

In 2006 and 2008, Congress used unambiguous terms referring to title 11 at two places in title 37 to create exceptions to discharge without mentioning Bankruptcy Code §§ 727(b) or 523: “A discharge in bankruptcy under title 11 does not discharge a person from such debt...” 37 U.S.C. §§ 303a(e)(4) & 373(c).

[2] The usual canon of statutory construction where statutes conflict is to give effect to each and to construe a later statute as implicitly amending an earlier, more general statute. *Smith v. Robinson*, 468 U.S. 992, 1024, 104 S.Ct. 3457, 82 L.Ed.2d 746 (1984); *Acosta v. Gonzales*, 439 F.3d 550, 555 (9th Cir. 2006).

[3] Where a conflict is irreconcilable, the more recent statute governs. *Watt v. Alaska*, 451 U.S. 259, 268, 101 S.Ct. 1673, 68 L.Ed.2d 80 (1981).

Here, the debtor is relying on a 1978 statute as a defense against conflicting statutes enacted in 2006 and 2008.

The 2006 and 2008 statutes are more specific than the 1978 statute. If they do

not surmount Bankruptcy Code § 727(b), then they would have no effect. It would, however, be absurd to construe them as having no effect in the face of an earlier, more general statute. Congress must have meant for those two statutes to mean something. That something is an implicit amendment to the earlier statute adding an extra "except" clause to Bankruptcy Code § 727(b).

It follows that § 303a(e)(4) and § 373(c), in order to be given any effect at all, must be construed as creating exceptions to bankruptcy discharge regardless of the seemingly-comprehensive language of Bankruptcy Code § 727(b).

To be sure, Congress invites confusion when it strews bankruptcy-related statutes around other titles of the U.S. Code without a cross-reference in the Bankruptcy Code. It may even offend internal legislative procedural rules to circumvent the congressional committees responsible for bankruptcy legislation to sneak bankruptcy provisions into other legislation, but those are internal housekeeping matters for Congress.

The statutes enacting § 303a(e)(4) and § 373(c) are valid acts of Congress passed by the House of Representatives and the Senate and presented to, and signed by, the President. For better or worse, the Bankruptcy Power entitles Congress to do what it likes with entitlements in bankruptcy. U.S. Const. art. I, § 8; *Raleigh v. Ill. Dep't of Revenue*, 530 U.S. 15, 21, 120 S.Ct. 1951, 147 L.Ed.2d 13 (2000).

B

The exceptions to discharge in § 303a(e)(4) and § 373(c) are not absolute.

By their terms, those statutes permit discharge in bankruptcy of unearned military bonus and incentive payments if the discharge is entered more than five years

after termination of the agreement on which the debt is based or, if no such agreement, termination of service. 37 U.S.C. §§ 303a(e)(4) & 373(c).

1

The debtor's chapter 7 discharge would have been effective to discharge his debt if he had waited to file a bankruptcy case for nearly five years, instead of six months, after leaving the Navy. His chapter 7 discharge was entered February 22, 2016. To be sure, there are ways to defer the entry of discharge in chapter 7 cases, but those deferrals are ordinarily measured in months, not years. Fed. R. Bankr. P. 4004(c).

2

While § 303a(e)(4) and § 373(c) purport to apply to all bankruptcy discharges, the operation of the five-year rule in those sections leaves open the possibility of discharging § 303a(e)(4) and § 373(c) debt in chapter 11, 12, and 13 cases.

Chapter 13 plans commonly provide for payments over a period of five years. 11 U.S.C. § 1325(b)(4).

Discharge is not "entered" until after completion of all payments under the plan. 11 U.S.C. § 1328(a).

Thus, a discharge entered after completing a sixty-month payment plan in a chapter 13 case filed after a § 303a(e)(4) or § 373(c) debt arises would qualify for discharge under the five-year rule in those sections.

C

It is also noted that § 303a(e)(1) and § 373(b)(1) each permit the Secretary concerned to determine that the imposition of the repayment requirement "would be contrary to a personnel policy or management objective, would be against equity and

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good conscience, or would be contrary to the best interests of the United States.” 37 U.S.C. §§ 303a(e)(1) & 373(b)(1). This language confers constrained discretion and suggests that defenses focused on those grounds could be asserted.

Regulations are authorized to describe circumstances in which an exception to repayment may be granted. 37 U.S.C. §§ 303a(e)(1) & 373(b)(1).

Such regulations should address the statutory standards for excusing payment: personnel policy or management objective; equity and good conscience; and best interests of the United States. *Cf. In re [Redacted]* [sic], 2008 Westlaw 10707636 (D.O.H.A.C.A.B. 2008) (DoD Claims Appeals Bd. disclaiming jurisdiction and citing § 303a(e)(1)); Vol. 7A, DoD Fin. Mgmt. Reg.—Military pay Policy & Procedures, DoD 7000.14R, 090501–090504 (Recoupment).

An interesting question that can be left to another day is whether a bankruptcy court could review (presumably after exhaustion of administrative remedies) whether repayment would, for example, be “against equity and good conscience” within the meaning of 37 U.S.C. §§ 303a(e)(1) & 373(b)(1).

The debtor has identified no facts that might suggest that one of these statutory exceptions ought to apply in his case.

IV

The procedure applicable to this dispute also deserves review because of a confusing Ninth Circuit decision.

A

The question of the discharge status of the unearned portion of a military reenlist-

ment bonus can arise in three distinct, albeit overlapping, contexts.

First, during the case, it could be the subject of an objection to claim under Rule 3007. Fed. R. Bankr. P. 3007; *Ryan v. Defense Fin. & Accounting Serv. (In Ryan)*, 2016 WL 402201 at *21 (Bankr. E.D.N.C. 2016).

Second, during or after the case, it can be raised in an adversary proceeding to determine the dischargeability of a debt. Fed. R. Bankr. P. 7001(6); *Ryan*, 2016 WL 402201 at *1.

Third, after entry of discharge, it can, as occurred in this case, form the essential predicate of a Rule 9020 motion for an order of contempt to enforce the discharge injunction. 11 U.S.C. § 524(a); Fed. R. Bankr. P. 9020; *Barrientos v. Wells Fargo Bank, N.A.*, 633 F.3d 1186, 1189–91 (9th Cir. 2011).

B

The debtor here raised the matter after entry of discharge as a motion for an order of contempt pursuant to Rule 9020 governed by Rule 9014.⁷ This was consistent with the *Barrientos* decision. *Barrientos*, 633 F.3d at 1189, construing *Walls v. Wells Fargo Bank, N.A.*, 276 F.3d 502, 506–07 (9th Cir. 2002).

It should be noted, however, that a dictum in the Ninth Circuit’s *Barrientos* decision seems to widen its split with the First Circuit on procedure for enforcing the § 524(a) discharge injunction. Compare *Barrientos*, 633 F.3d at 1190, with *Bessette v. Avco Fin. Servs., Inc.*, 230 F.3d 439, 443–45 (1st Cir. 2000). *Barrientos* neither noted nor discussed *Bessette*.

7. Rule 9020 provides:

Rule 9020. Contempt Proceedings. Rule 9014 governs a motion for an order of

contempt made by the United States trustee or a party in interest. Fed. R. Bankr. P. 9020.

The First Circuit in Besette held that enforcement of the § 524 discharge injunction as a § 105 contempt matter need not be in the court that entered the discharge and permitted enforcement to be raised in a civil action that included class action allegations. Besette, 230 F.3d at 446; 11 U.S.C. § 105. It remanded the civil action to district court to consider whether it would handle contempt-of-discharge enforcement proceeding or refer the matter (including the class certification question) to the bankruptcy court that had entered the discharge. Id.

[4] The Ninth Circuit in Barrientos affirmed the bankruptcy court's dismissal of a one-count adversary proceeding seeking an injunction, a fine, declaratory relief, and attorney's fees on account of alleged violation of the § 524 discharge injunction. It construed its precedent in Walls that there is no private cause of action for violation of the § 524 discharge injunction and that contempt under § 105 is the sole remedy, as also (splitting with Besette) requiring that the contempt be determined by the court that issued the discharge order.⁸ Barrientos, 633 F.3d at 1188-89.⁹

Having clarified the law of the circuit that Walls limits discharge injunction enforcement to contempt proceedings under § 105 that must be decided by the court whose order is to be enforced, the Barrien-

tos court gratuitously muddled the waters. In a dictum based on a dubious reading of the rules of procedure, it appeared to say that a contempt issue never may be presented in an adversary proceeding and that a party may complain of a § 524 discharge injunction violation only by way of motion under Rule 9020 as a contested matter governed by Rule 9014.¹⁰

This doubled the width of the existing split with the First Circuit. Walls and Besette already disagreed on whether another court could entertain a § 105 contempt-of-discharge matter. The Barrientos dictum that Rule 9020 "mandates" party-initiated contempt be a Rule 9014 contested matter implies that it can never be included in an adversary proceeding. This conflicts with Besette where contempt-of-discharge was allowed to be a count in an civil action. Besette, 230 F.3d at 445-47.

A closer look at Barrientos, however, suggests that the conflict with the First Circuit is less than meets the eye. The split is real, of course, regarding which judicial officer has authority over § 524 discharge injunction enforcement. But the procedural split can be bridged by the overlapping structure of the Bankruptcy Rules regarding contested matters and adversary proceedings. The history of Rule 9020 indicates that the rule permits, but

8. The adversary proceeding was filed in the court that issued the discharge. In re Adolfo Barrientos, No. 3:06-bk-01685.

9. The Eleventh Circuit agrees with the Ninth Circuit that a contempt action must be pursued in the bankruptcy court that entered the discharge. Alderwoods Grp., Inc. v. Garcia, 682 F.3d 958, 970-71 (11th Cir. 2012) (chapter 11) ("A debtor who believes that the discharge injunction has been violated may file a contempt action with the bankruptcy court that entered the discharge injunction, not with another court.").

10. Here is the transition from holding to dictum:

We therefore rule that Walls is sufficient to dispose of the present case. However, even in the absence of Walls, it appears that the Bankruptcy Rules require that an action for contempt arising out of the violation of an order issued in a bankruptcy case must be brought by motion in the bankruptcy case. Barrientos, 633 F.3d at 1189.

The more-accurate statement is that the Bankruptcy Rules permit an action for contempt arising out of the violation of an order issued in a bankruptcy case to be brought by motion in the bankruptcy case.

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does not require, bankruptcy contempt issues to be presented in Rule 9014 contested matters.

C

The statements in the Barrientos dictum about the procedural differences between Rule 9014 “contested matters” and Rule 7001 adversary proceedings are inaccurate. The problem is that they create the misimpression that contested matters and adversary proceedings are mutually exclusive—they are not.

1

The essential characteristic of Rule 9014 contested matters is streamlined procedure that permits litigation within a matter of weeks without sacrificing too much due process.

The hallmark of the contested matter rules is the power of the court to tailor the rules to fit the situation. A pared-down set of the adversary proceeding rules that excludes most of the pleading and scheduling rules presumptively applies.¹¹ But those are a minimum, and the bankruptcy court has the flexibility to direct that any or all of the other adversary proceeding rules apply in any particular situation.¹²

In contrast, Rule 7001 adversary proceedings, which are essentially conventional civil actions under the Federal Rules of Civil Procedure, entail the more formal

and time-consuming process of complaint, answer, counterclaim, cross-claim, third-party complaint, dilatory motions, scheduling orders, and pretrials that do not ordinarily apply in contested matters.

The Barrientos decision placed emphasis on the fact that § 524 discharge injunction enforcement matters are not listed in Rule 7001 as requiring an adversary proceeding and that Rule 9020 specifies that Rule 9014 “governs” a motion for an order of contempt made by the United States trustee or a party in interest, from which the court of appeals concluded that the rule “mandates” a contested matter and forbids treating such a matter in an adversary proceeding. Barrientos, 633 F.3d at 1190. The conclusion does not follow from the premise.

2

The primary significance of the matters that are listed at Rule 7001 is that such matters are regarded as of sufficient importance to require the due process and time and expense of being processed as a full-blown civil action, *i.e.* adversary proceeding, under the Federal Rules of Civil Procedure. A bankruptcy judge, like a district judge, risks disapproval on appeal whenever short shrift is given to those rules.

11. Rule 9014(c) provides, in relevant part:

(c) Application of Part VII rules. Except as otherwise provided in this rule, and unless the court directs otherwise, the following rules shall apply: 7009, 7017, 7021, 7025, 7026, 7028–7037, 7041, 7052, 7054–7056, 7064, 7069, and 7071. The following subdivision of Fed. R. Civ. P. 26, as incorporated by Rule 7026, shall not apply in a contested matter unless the court directs otherwise: 26(a)(1) (mandatory disclosure), 26(a)(2) (disclosures regarding expert testimony) and 26(a)(3) (additional pretrial dis-

closure), and 26(f) (mandatory meeting before scheduling conference/discovery plan). Fed. R. Bankr. P. 9014(c) (first two sentences).

12. The relevant part of Rule 9014(c) provides:

The court may at any stage in a particular matter direct that one or more of the other rules in Part VII shall apply. The court shall give the parties notice of any order issued under this paragraph to afford them a reasonable opportunity to comply with the procedures prescribed by the order.

Fed. R. Bankr. P. 9014(c) (last two sentences).

Rule 9014 contested matters incorporate some of those rules, including discovery, consolidation, taking evidence in the same manner as an adversary proceeding, making findings of fact and conclusions of law, and post-judgment relief. Fed. R. Civ. P. 26, 28-37, 42, 43-44.1, 52, 59-60, incorporated by Fed. R. Bankr. P. 7026, 7028-37, 7042, 7052, 9017, 9023-24, further incorporated by Fed. R. Bankr. P. 9014(c).

In addition, as noted, the court may order that all of the adversary proceeding rules apply in a particular contested matter, making contested matter procedure potentially congruent with adversary proceeding procedure. Fed. R. Bankr. P. 9014(c). At that juncture, the distinction between adversary proceeding and contested matter becomes a distinction without a difference.

3

Also significant is the applicability of the consolidation rule to contested matters. Fed. R. Civ. P. 42, incorporated by Fed. R. Bankr. P. 7042 & 9014(c). The bankruptcy court has the discretion to apply Civil Rule 42 to consolidate a claim made in a contested matter with a claim made in an adversary proceeding.

If a contested matter may be consolidated with an adversary proceeding, then it

seems nonsensical to forbid alleging a contested matter issue as a count in an adversary proceeding.

There are, of course, practical reasons for a bankruptcy court to decline to consolidate a motion for an order of contempt with a claim being made in an adversary proceeding. Confusion of remedies is one example. Indeed, it appears that the Barrientos bankruptcy judge dismissed the one-count adversary proceeding because parties were confusing adversary proceeding remedies with contempt remedies. Such a ruling is within the discretion of a trial judge who is trying to maintain order and promote clarity.

4

Coming back to Rule 9020, the Barrientos dictum suggests that the rule "mandates" contested matter procedure, to the exclusion of adversary proceeding procedure, for § 524 discharge injunction contempt matters. The history of Rule 9020, however, suggests that the more accurate description is that Rule 9020, as revised in 2001, merely "authorizes" contested matter procedure for § 524 discharge injunction contempt matters in an effort to streamline theretofore cumbersome contempt procedures.¹³

13. The Advisory Committee Note to the 2001 Amendment of Rule 9020 providing for Rule 9014 contested matter procedure explains the background:

This rule, as amended in 1987, delayed for ten days from service the effectiveness of a bankruptcy judge's order of contempt and rendered the order subject to de novo review by the district court. These limitations on contempt orders were added to the rule in response to the Bankruptcy Amendments and Federal Judgeship Act of 1984, Pub. L. 98-353, 98 Stat. 333, which provides that bankruptcy judges are judicial officers of the district court, but does not specifically mention contempt power. See 28 U.S.C. § 151. As explained in the com-

mittee note to the 1987 amendments to this rule, no decisions of the courts of appeals existed concerning the authority of a bankruptcy judge to punish for either civil or criminal contempt under the 1984 Act and, therefore, the rule as amended in 1987 "recognizes that bankruptcy judges may not have the power to punish for contempt." Committee Note to 1987 Amendments to Rule 9020.

Since 1987, several courts of appeals have held that bankruptcy judges have the power to issue civil contempt orders. [citations omitted.] To the extent that Rule 9020, as amended in 1987, delayed the effectiveness of civil contempt orders and required de novo review by the district court, the

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What then to make of what the Ninth Circuit was deciding in Barrientos? A clue is found in the decision's agreement with the Second Circuit's Kalikow decision where the bankruptcy court, like the bankruptcy court in Barrientos, required a Rule 9020 contested matter, rather than by adversary proceeding. Solow v. Kalikow (In re Kalikow), 602 F.3d 82, 93-94 (2d Cir. 2010).

Kalikow held that it was not error to proceed by way of contested matter and rejected argument that an adversary proceeding was required. Thus, whether to proceed by way of contested matter or adversary proceeding is a discretionary matter for the bankruptcy court that issued the discharge to determine.

There are practical reasons why a bankruptcy judge might use adversary proceeding procedure as a case management device to corral a complex situation headed toward trial. Fractional parties exchanging salvos in contested matter motion papers can be herded towards more focused trial preparation if required to employ the format of complaint and answer, as Rule 9014(c) permits. This helps sharpen the focus and narrow issues for trial. Likewise, other issues and parties that do necessitate an adversary proceeding may overlap the contempt and warrant simultaneous treatment.

If the bankruptcy court in Barrientos (which had issued the discharge), instead of dismissing, had elected to address the § 524 discharge injunction contempt in an adversary proceeding, limiting relief to that which is available on a motion for contempt, it seems unlikely that the Ninth Circuit would have reversed for having afforded too many procedural protections.

rule may have been unnecessarily restrictive in view of the judicial decisions recognizing that bankruptcy judges have the power to hold parties in civil contempt.

It follows that the law of the Ninth Circuit after Walls and Barrientos should be understood as holding that the remedy for violation of the § 524 discharge injunction is limited to contempt, which ordinarily is a Rule 9014 contested matter and which must be decided by the court that entered the discharge.

Reading Barrientos in conjunction with Kalikow and Bessette reveals that all three circuits agree that the choice whether to permit a Rule 9020 contempt matter to be consolidated with, or raised in, an adversary proceeding is up to the discretion of the bankruptcy court. A bankruptcy judge's decision, as in Barrientos, to dismiss an adversary proceeding in favor of requiring a stand-alone Rule 9020 contested matter is reviewed for abuse of discretion. Likewise, a decision not to dismiss an adversary proceeding that contains a count alleging contempt should receive the same deferential review.

The court being persuaded that Congress validly exercised its power to except certain military-related debts from discharge in bankruptcy, the debt being conceded, and no matters in the nature of defense having been asserted, the debtor's Motion for an Order of Contempt pursuant to Federal Rule of Bankruptcy Procedure 9020 is DENIED.

An appropriate order will issue.



Fed. R. Bankr. P. 9020, Advisory Comm. Note to 2001 Amendment.

Protections Afforded by the Servicemembers Civil Relief Act ("SCRA")

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The SCRA extends relief to all Army, Air Force, Coast Guard, Marine Corps, and Navy servicemembers on active duty; members of the Reserve components when serving on active duty; members of the National Guard mobilized under federal orders for more than 30 consecutive days; and active-duty commissioned officers of the Public Health Service and National Oceanic and Atmospheric Administration.¹

A number of SCRA provisions also extend to spouses and other dependents, such as when they are faced with eviction or need relief related to the termination of residential and motor vehicle leases.

Reservists and National Guard personnel are protected under the SCRA when—but only when—they've been called to active duty. Retired Servicemembers (whether those who served on active duty, as Reservists, or as National Guard personnel) lose their SCRA protection when they leave active duty or within a few months thereafter. (Exactly when that protection comes to an end varies with the particular protection.)

Portions of the SCRA also apply to reservists and inductees who have received orders but haven't yet reported to active duty or induction into military service

A. What kinds of protection does the SCRA provide?

Some of your rights under the SCRA come automatically—without the need for you to notify anyone. But relief under the SCRA isn't always automatic, and most of the time, you'll have to request relief.

And more than a few SCRA entitlements (though much less than all of them) require a judicial finding that the military service "materially impairs"—affects in a significant way—the Servicemember's ability to comply with the legal obligation in question.

As you read through the discussion that follows, note (1) which of your protections are automatic, (2) which require action on your part, or on your behalf and (3) which, once you ask, you can assume you'll be entitled to, and (4) which will still be subject to judicial discretion.

¹ Active duty personnel become eligible for SCRA protection starting on the date their active duty orders are received. Protection generally terminates within 30-90 days after the date of release from extended active duty. Those absent from duty as a result of being wounded or being granted leave are also granted protection under the SCRA.

Important—Some of these protections are straightforward, but many are technical. You might want to familiarize yourself generally with these, by reading this and the web links at the end of this discussion. But whether or not you do, your interests would best be served by your working with your nearest Armed Forces Legal Assistance Office to identify and properly invoke any SCRA protections that would be of importance to you and your dependents.

Also—Please note that this isn't a complete discussion of all of Servicemembers' rights and protections under the SCRA. But the most important of them, as applicable to Servicemembers' dealings with their creditors, follow.

1. *Court and Administrative Proceedings*

Military service can sometimes make it difficult for Servicemembers to defend their legal rights—especially when they're far from home or wherever their obligations originated. Sometimes Servicemembers know of proceedings that were brought against them, but can't get leave, or their duties make it difficult or impossible to defend. Sometimes they do not even know that proceedings were brought against them—leading to a failure to defend and, as a result, a "default judgment"—a judgment entered without considering whether there might be a valid defense.

The SCRA provides protections to Servicemembers in four principal ways with respect to court and administrative proceedings:

(a) *Protection Against Default Judgments Before They Happen*

In any civil court proceeding (including any child custody proceeding) in which the defendant Servicemember doesn't make an appearance,² a plaintiff creditor must file an affidavit with court stating one of three things: (1) that the defendant is in military service; (2) that the defendant is not in military service; or (3) that the creditor isn't able to determine whether or not the defendant is in military service, after making a good faith effort to determine the defendant's military service status.³

When any defendant—whether a Servicemember or not—doesn't make an appearance to defend a lawsuit—the plaintiff will typically ask the court to give the plaintiff a win by default, and to enter a default judgment granting the plaintiff the relief sought in the complaint. But where a defendant Servicemember hasn't made an appearance and it seems that he or she *is* in military service, a court may not enter a default judgment against that defendant until after it appoints an attorney to represent the interests of that defendant Servicemember.⁴ The court must stay a civil court proceeding for at least 90 days if that appointed attorney has been unable to contact the

² § 3931(a).

³ § 3931(b)(1).

⁴ § 3931(b)(2).

defendant Servicemember, or if there may be a defense to the action that requires that the defendant be present.⁵

If, based on the filed affidavit, the court can't determine *whether or not* the defendant is in the military, it may condition entry of judgment against the defendant upon the plaintiff's filing of a bond. If the defendant is later found to be in military service, the bond is available to indemnify the defendant against any loss or damage the defendant may suffer by reason of any judgment for the plaintiff against the defendant should the judgment later be set aside in whole or in part.⁶

(b) *Protection Against Default Judgments If They Happen Anyway*

If a judgment is entered against the defendant while he or she is in military service or within 60 days of discharge from military service, and the defendant was prejudiced in making his or her defense because of his or her military service, the judgment may, upon application by the defendant, be opened by the court and the defendant may then provide a defense.⁷

But before the judgment may be opened, the defendant must show that he or she was materially affected by reason of that military service in making a defense to the action, AND has a meritorious or legal defense to some or all of the action.⁸

The Servicemember must timely request such relief (i.e., within 90 days from release from active duty).

If a default judgment was entered against you when you were in military service or within 60 days thereafter, you should consult with a legal assistance attorney to obtain information on possible relief available to you.

(c) *Stay of Action When Servicemember Defendant's Ability to Defend is Impaired*

Sometimes the Servicemember will have heard about the lawsuit, or appointed counsel will have gone to bat for the Servicemember. Under the SCRA, if requested by counsel for a Servicemember defendant, or upon the court's "own motion" (i.e., on the court's own initiative), the court must grant a stay of proceedings for no less than 90 days if it determines that (1) there may be a defense and the defense can't be presented without the defendant's presence; or (2) after due diligence, the defendant's

⁵ § 3931(d).

⁶ § 3931(b)(3).

⁷ § 3931(g).

⁸ § 3931g((1).

attorney hasn't been able to contact the defendant Servicemember or otherwise determine if a meritorious defense exists.⁹

Backup for the request is necessary. The court will grant the Servicemember's stay application and will stay the proceeding for at least 90 days if the application includes: (1) a letter or other communication setting forth facts demonstrating that the individual's current military duty requirements materially affect the Servicemember's ability to appear along with a date when the Servicemember will be able to appear; and (2) a letter or other communication from the Servicemember's commanding officer stating that the Servicemember's current military duty prevents his or her appearance and that military leave is not authorized for the Servicemember at the time of the letter.

This letter or request to the court for the stay doesn't constitute an "appearance for jurisdictional purposes" (*i.e.*, constitute an acknowledgment that the court has jurisdiction over the Servicemember), and doesn't constitute a waiver of any substantive or legal defenses the Servicemember might have.¹⁰

After receiving the written request, the judge, magistrate or hearing officer must grant a minimum 90-day delay if the Servicemember includes the necessary information.¹¹ So that stay is automatic if requested with the necessary backup—but the Servicemember still needs to ask for it.

The court or administrative agency may make further orders to protect the rights of the defendant under the SCRA,¹² but any additional delay beyond the mandatory 90-day period is within the discretion of the judge, magistrate or hearing officer. (Normally it will turn on whether the military duty has a continuing effect on the ability to appear and defend.)

(d) *Stay or Vacation of Execution of
Judgments, Attachments and
Garnishments*

In addition to the court's ability to regulate default judgments and stay proceedings, the court may on its own motion and must upon application: (1) stay the execution of any judgment or court order entered against a Servicemember; and (2) vacate or stay any attachment or garnishment of the Servicemember's property or assets, whether before or after judgment if it finds that the Servicemember's ability to comply with the judgment or garnishment is materially affected by military service. The stay of execution may be ordered for any part of the Servicemember's military service

⁹ § 3932.

¹⁰ § 3932(c).

¹¹ § 3932(b)(1).

¹² § 3932(d).

plus 90 days after discharge from the service. The court may also order the Servicemember to make installment payments during any stay ordered.¹³

2. *Evictions, Foreclosures, Repossessions and Forced Sales*

Some states require a court proceeding and related court order to evict tenants and others from real property, and some states permit eviction without one. Likewise, some states require a court proceeding and related court order to take and sell one's property after the default on a secured debt (the process we call "foreclosure"), and some states—such as those in which "deeds of trust" or "trust deeds" are utilized—permit such a sale without approval of a court. In the absence of relief under the SCRA, Servicemembers and their dependents could lose their homes, vehicles, or other personal property at a time when military duties impair the ability to defend. The SCRA gives Servicemembers protections in each of these situations.

(a) *Protection against Evictions*

Although the SCRA doesn't excuse Servicemembers from paying rent, it does afford some relief if military service makes payment difficult. Military members and their dependents (in their own right) have some protection from eviction.

As just noted, some states require a court order for a landlord to evict and other states don't. But if you rent your home or apartment and the rent does not exceed a certain amount (which in 2019 is \$3,851.03 per month), then your landlord can't evict you or your dependents while you're serving on active duty without first obtaining a court order.¹⁴ That court order is required even if the state generally doesn't require a court order to evict a tenant. And the court order is required whether or not the lease was entered into before entry on active duty.

And then, to issue the court order authorizing eviction, the court must find the member's failure to pay is not materially affected by his/her military service.¹⁵

That "material" effect is present where the Servicemember doesn't earn sufficient income to pay the rent. Where the member is materially affected by military service, the court may stay the eviction (for 90 days, unless the court decides on a shorter or longer period in the interest of justice) when the military member or dependents request it.

In addition, you can request that the court delay the execution of an order to evict you or your dependents for 90 days. But unlike the stay of other judicial proceedings, the court will have the ability to decide whether to postpone eviction and, if so, for how long—which can be longer or shorter than 90 days, as "justice and equity

¹³ § 3934.

¹⁴ § 3951.

¹⁵ § 3951(b)(1).

require.”¹⁶ The court also can adjust the rental obligation under the lease “to preserve the interests of all parties.”¹⁷ . Also, if a stay is granted, the court may grant to the landlord such relief “as equity may require.”¹⁸

The rent threshold typically changes each year to reflect inflation and any rise in housing costs.

(b) *Protection against Foreclosures and
Forced Sales*

If you are on active-duty and it results in your inability to pay your mortgage or meet the terms of a purchase or installment contract, the SCRA may be able to help you.

While the SCRA doesn’t erase that debt, it provides that a creditor must get a court order prior to foreclosing on a mortgage—or proceeding with a sale under a trust deed, even though trust deeds ordinarily don’t require court orders before sales.¹⁹

No sale, foreclosure or seizure of property for nonpayment of a pre-service mortgage debt—whether secured by a mortgage or trust deed—is valid if made during or within one year after your service on active duty, unless carrying out a valid court order.²⁰

Mortgages generally, if not always, require court orders to achieve foreclosure in any event. But for trust deeds—which normally don’t require a court order to complete a foreclosure sale—the SCRA is particularly important. It’s been observed that this can provide tremendous protections from foreclosure in the many states permitting foreclosures to proceed without involving the courts.²¹

But note that unlike the protection relating to eviction, in order for a Servicemember to receive the protection relating to foreclosures and forced sales, the obligation needs to have been taken out *before* the Servicemember entered military service.²²

¹⁶ § 3951(b)(1)(A).

¹⁷ § 3951(b)(B).

¹⁸ § 3951(b)(2).

¹⁹ § 3953.

²⁰ § 3953.

²¹ <https://www.militaryonesource.mil/family-relationships/relationships/relationship-challenges-and-divorce/servicemembers-civil-relief-act>.

²² § 3953(a)(1).

(c) *Protection from Vehicle Repossessions
and Forced Sales*

Servicemembers' rights with respect to vehicle repossessions are similar to those that they have with respect to real estate. So long as the loan originated before the period of military service, and the Servicemember remains liable on the obligation,²³ a creditor may not repossess a vehicle during a borrower's period of military service without a court order.²⁴

Also, if a creditor has a security interest on a loan secured by the motor vehicle (as most auto loans are), SCRA prohibits a foreclosure or sale of the vehicle without a court order.²⁵

Once again, though (and again unlike the protection relating to eviction), in order for a Servicemember to receive protection relating to repossession, foreclosures and forced sales, the vehicle obligation needs to have been taken out *before* the Servicemember entered military service.²⁶

(d) *Protections from Other Kinds of Forced
Sales*

The protections against repossession and forced sales go beyond liens on real estate and vehicles. They require a court order before a foreclosure or sale on other kinds of liens as well. Liens for storage, repair, or cleaning of the Servicemember's property are specifically mentioned in SCRA as liens requiring a court order to enforce.

So, for example, if you have household goods stored in a warehouse or ministorage, a car in the possession of a company that towed it, or a car stored at a garage or left there after the completion of repairs, your property can't be sold to satisfy a debt for unpaid storage or towing charges without first obtaining a court order.

SCRA provides that the liens covered also include "a lien on such property or effects for any other reason."²⁷

If a court order to foreclose or enforce that lien is sought, the court may on its own motion, and *must* if requested by a Servicemember whose ability to comply with the obligation resulting in the proceeding is materially affected by military service (1) stay the proceeding for a period of time as justice and equity require; or (2) adjust the obligation to preserve the interests of all parties.

²³ § 3953(a)(1).

²⁴ §§ 3952.

²⁵ § 3953.

²⁶ § 3953(a)(1).

²⁷ § 3958.

* * *

The provisions that relate Servicemembers' protection in the face of evictions, foreclosures and other lien enforcement actions can be especially complicated. So be sure to consult with legal counsel at your nearest Armed Forces Legal Assistance Office regarding any civil court actions against you or you and your dependents.

3. *Contracts and Leases*

Servicemembers, far more than others, need to move, resulting in the need to terminate real property and auto leases, contracts for cell phones, and sometimes other contracts for services that might not work or be needed in the new locale. Also, military duty sometimes requires the Servicemember to bear additional costs (such as for housing in both the old and new locale), so relief on interest rates payable on obligations that will be ongoing can be very helpful. The SCRA provides Servicemembers with several protections in this area.

(a) *Ability to Terminate Real Estate Leases.*

Servicemembers generally can terminate without penalty any residential and business property leases that began before their active-duty assignments.²⁸ They also can terminate a lease they signed during active duty in the event of a change in their permanent duty station or if a new deployment will last more than 90 days.²⁹

Terminating the lease requires written notice of cancellation to the landlord—by hand, a private business carrier (like Federal Express, DHL, or UPS), or by mail with adequate postage and a return receipt—with a copy of military orders.³⁰ Verbal notice is not enough.

Such terminations also terminate any obligation of the Servicemember's dependents under the lease.³¹

(b) *Ability to Terminate Vehicle Leases*

The SCRA also allows the termination of leases of vehicles leased for personal or business by servicemembers and their dependents.³² The pre-service vehicle lease may be cancelled if the servicemember receives active duty orders for a period of one hundred and eighty (180) days or more. The automobile lease entered into while the servicemember is on active duty may be terminated if the servicemember

²⁸ § 3955(a)(1)(A).

²⁹ §3955(a) (1)(B).

³⁰ § 3955(c).

³¹ § 3955(a)(2).

³² § 3955(b)(2).

receives permanent change of station (PCS) orders to a (1) location outside the continental United States, or (2) deployment orders for a period of 180 days or more.

Generally, a reserve or guard Servicemember must, after entering the lease, be called to active duty service for at least 180 days or more. An active duty Servicemember must, after entering the lease, EITHER (a) receive military orders for a permanent change of station either (i) from the continental United States (CONUS) to outside CONUS or (ii) from a state outside CONUS to any location outside that state OR (b) deploy for 180 days or more.

Terminating the lease requires written notice to the lessor with a copy of military orders.

*(c) Ability to Terminate Phone, Internet, Cable,
and Cell Phone Contracts*

The right to terminate contracts for phone, internet, cable and cell phone installment contracts are also protected.³³ These contracts may be cancelled or suspended if the Servicemember is deployed overseas for 90 days or longer or if he makes a permanent change-of-station (PCS) move. The Servicemember may cancel or suspend the cell phone contract without penalties or extra fees as long as the deployment or PCS materially affects the Servicemember's ability to satisfy the contract or utilize the service.

Under the SCRA, the service provider can't impose an early termination charge, but any tax or other obligation that is due and unpaid at the time of termination remains payable.³⁴

If the services were provided under a "family plan," the Servicemember may also terminate the contract with respect to the other beneficiaries of the contract if all of them accompany the Servicemember during the Servicemember's period of relocation.³⁵

*(d) 6% Cap on Interest Rate on Debt
Incurred Before Entry on to Active Duty*

A Servicemember may reduce the higher interest rates the Servicemember pays for any financial obligation (for example, a credit card, loan, or mortgage) individually or jointly entered into *before* active service to 6% if active service materially affects the Servicemember's ability to repay the financial obligation³⁶

³³ § 3956.

³⁴ § 3956(e).

³⁵ § 3956(d).

³⁶ § 3937.

In addition, the SCRA prohibits the lender from accelerating the principal amount owed, and the SCRA forgives (as contrasted to defers) the excess interest payments that would have been due under the higher interest rate so that the Servicemember is not liable for the excess after he or she is released from active service.

This reduced interest rate is effective only during the period of active military duty for most obligations. But for a *mortgage* obligation, the reduced interest rate continues for one year following release from military service.

Importantly, this reduced rate does not apply to financial obligations (including refinancing or credit card balance increases) entered into or accrued while on active service, or to federally guaranteed student loans.

To receive this benefit you must be proactive. You must notify your lender in writing and include a copy of your orders to active duty service or a letter from your commanding officer that shows the date you began active duty service.

The written notice and proof of military service must be provided to the creditor within 180 days of the end of the Servicemember's military service.

(e) *Contractual Penalties*

When an action for compliance with a contract is stayed under the SCRA, contractual penalties do not accrue during the period of the stay.³⁷

(f) *Protection for Small Business Owners*

If a Servicemember owns a small business (and even if the Servicemember executed a guaranty or otherwise is personally liable for the business's debts), the Servicemember's non-business assets and military pay are protected from creditors enforcing business debts or obligations while the Servicemember is on active duty.³⁸

In some situations, civilian employers have agreed to pay the military member the difference between the military pay and the civilian pay earned before the call to active duty. In most such situations, military service hasn't materially affected the member's ability to pay, so it's unlikely that the SCRA 6% interest limitation would apply. Of course, if Servicemember's expenses increased (for example, if the Servicemember had to pay for a second apartment at the duty station, or the Servicemember's spouse gave up a job to move with the Servicemember), military service might have materially affected the Servicemember, and the SCRA 6% interest limit could apply. [https://www.jag.navy.mil/legal_services/documents/The%20SCRA%20Overview%20\(RovJan2014\).pdf](https://www.jag.navy.mil/legal_services/documents/The%20SCRA%20Overview%20(RovJan2014).pdf)

³⁷ § 3933.

³⁸ §§ 3955, 4026. See also <https://www.militaryonesource.mil/family-relationships/relationships/relationship-challenges-and-divorce/servicemembers-civil-relief-act>.

4. *Credit Rating Protection*

Lenders cannot deny or revoke credit, change the terms of an existing loan, or refuse to grant credit because the Servicemember sought SCRA protections. Any claim of rights under SCRA cannot be used as the basis for a lender to conclude that the Servicemember is unable to pay a debt, or as the basis to generate an adverse credit report. Furthermore, an insurer may not refuse to insure a Servicemember based on any SCRA protections the Servicemember may invoke.

5. *Insurance.*

Servicemembers' rights with respect to several different types of insurance that they might have obtained are protected under the SCRA.

(a) *Life Insurance*

Life insurance companies cannot terminate coverage or require payment of additional premiums if you are in military service. (But increases in premiums based on age in individual term insurance are not covered by SCRA.) An insurer also may not limit or restrict coverage for any activity required by military service.

Life insurance also is protected against lapse, termination, and forfeiture for nonpayment of premiums or indebtedness for the period of military service plus two years.

For SCRA protection for life insurance policies, the Servicemember must submit a written request to the Department of Veteran Affairs.

(b) *Health Insurance*

The SCRA provides for reinstatement of health insurance without waiting periods or other penalties, provided the insurance was effective before the active duty period, the insurance was terminated during the active duty period, and certain other conditions exist.

If your health insurance was canceled when on active duty, it can be reinstated without loss of benefits, waiting periods, or penalties in most instances.

(c) *Professional Liability Insurance*

Professionals in health care, legal services or another profession, as determined by the Secretary of Defense, called to active duty may suspend their professional liability insurance policy by written request to the insurance carrier. Premiums for suspended insurance do not have to be paid, and any premiums paid by an individual while on active duty must be refunded. To reinstate suspended insurance, the individual must send a request to the insurance carrier within 30 days of release from active duty.

* * *

Deadlines for applying for reinstatement differ depending on the type of insurance. For instance, you have only 30 days after release from active duty to request reinstatement of professional liability insurance and receive SCRA protections, but you have 120 days to request reinstatement of health insurance benefits.

6. *Tax Relief.*

(a) *Deferral of Taxes Due When Ability to Pay is Materially Affected by Military Service*

The Internal Revenue Service and state and local taxing authorities must defer Servicemembers' income taxes due before or during their military service if their ability to pay the income tax is materially affected by military service. No interest or penalty can be added because of this type of deferral.

Important—This is not a general exemption from the duty to pay taxes—and it requires proof that your ability to pay the tax is *materially affected* by the military service.

(b) *Taxes on Military and Nonmilitary Income*

If you receive military orders that require you to move from your home state to another state, your "domicile"—your state of legal residence, for tax, voting, inheritance and other purposes—does not change. And the SCRA prevents you from having to pay state taxes on your military income—or on personal property, such as a car—to any state other than your home state of legal residency.³⁹

If you or your spouse earns non-military income, you may have to pay income taxes to the state where you're stationed, if that state has an income tax. But the state cannot use your military earnings to increase either your tax liability or your spouse's.

7. *Domicile (Legal Residence) & Taxation*

A Servicemember can maintain the domicile or legal residence in the state the Servicemember resided before entering active duty. A Servicemember does not lose the domicile (legal residence) in a state when absence from that state is due to military orders.

³⁹ For example, if your state of legal residence is Texas and the military sends you to Virginia, you won't have to pay Virginia's state income tax on your military earnings, nor will you have to pay personal property taxes to the state of Virginia.

A Servicemember can, however, change his or her domicile if he or she wants to, and meets the conditions for changing legal residence.

Domicile should not be confused with residence. A person can have as many residences as he or she can afford but can have only one domicile.

A Servicemember does not acquire a new domicile or legal residence for purposes of income tax when the Servicemember's presence in the state is solely due to military orders. Furthermore, the SCRA prohibits states (where the Servicemember is located merely because of military orders) from including military income of a nonresident Servicemember to increase the tax liability imposed on nonmilitary income earned by the nonresident Servicemember or spouse subject to tax by the state. The military income is taxable only by the Servicemember's domicile state, if the domicile state has an income tax.

8. *For Military Spouses: The Military Spouses
Residency Relief Act (MSRRA) and Taxation*

In November 2009, the MSRRA became law and amended the SCRA. The MSRRA changes some basic rules of taxation that could affect Servicemembers and their spouses.

Under the MSRRA, a military spouse who is present with a Servicemember in a particular State under military orders does not have to pay State income tax on wages earned in that State as long as that State is NOT the spouse's domicile. But the spouse would have to pay taxes to the State of domicile, if the laws of that State required such payments. (Some States, of course, don't have State income taxes.)

But the MSRRA doesn't allow a spouse to pick or chose a domicile in just any State. Domicile is established, not arbitrarily chosen. The spouse must have actually been present in the State, established it as his or her domicile, and maintained it by forming and maintaining the necessary contacts, such as registering to vote, owning property, registering vehicles, holding professional licenses, declaring a homestead, or indicating a State of probate in a last will and testament. Similarly, the MSRRA does not allow a spouse to "inherit" or assume the Servicemember's domicile upon marriage without the necessary contacts with the State.

The law under the MSRRA is complex, and because its effect will depend on the interpretations of each State, Servicemembers and their spouses are encouraged to seek free, confidential advice from an Armed Forces Legal Assistance Office.

B. Servicemembers Civil Relief Act (SCRA)

I. Protections for Service Members

A. Soldiers' and Sailors' Civil Relief Act of 1940

B. Servicemembers Civil Relief Act (SCRA)

1. 6% interest rate cap (50 USC 3937)
2. Ability to stay civil proceedings
3. Protections in connection with default judgments (50 USC 3931)
4. Residential lease termination protections (50 USC 3955)
5. Eviction and foreclosure protections (50 USC 3953)
6. Installment contract and repossession protections (50 USC 3952)
7. Storage lien enforcement protections (50 USC 3958)

C. Consumer Financial Protection Bureau Protections

1. New federal law in 2018 requiring free security freezes and one year fraud alerts at the three nationwide CRAs: Military Credit Monitoring Rule
2. The law addresses several financial issues for the military, such as:
 - a. Holding lenders to more stringent requirements when they participate in VA's refinance programs
 - i. *Net Tangible Benefit Test*: a lender must be able to provide the borrower with a net tangible benefit test that shows the interest rate for a new fixed loan is at least 0.5 percent less than the previous loan or 2 percent less than an adjustable-rate loan, and can demonstrate that the rate drop is not solely because of upfront discount points
 - ii. *Minimum time between loans*: A lender cannot offer VA loan refinancing unless at least 210 days have passed since the first payment has been made on the current loan or the date on which the sixth monthly payment has been made on the loan, whichever is later.
 - iii. *Fee recoupment*: A lender cannot offer VA loan refinancing unless at least 210 days have passed since the first payment has been made on the current loan or the date on which the sixth monthly payment has been made on the loan, whichever is later.
 - b. Ensuring continued foreclosure protections for servicemembers up to one year after they leave active duty

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- i. The SCRA requires creditors to get a court order before foreclosing on active duty servicemembers and up to a year after a servicemember separates from active duty
 - c. Prohibiting medical debt that should have been paid by the VA to be reported as part of a veteran's credit history
 - i. Gives veterans greater credit reporting protections on certain medical debts owed to private medical providers when the VA has authorized payment for those services
 - ii. Also grants credit reporting protections when the VA is wrongly charging a veteran for medical services
 - d. Providing free credit monitoring for active-duty military, including the national guard
 - i. If you are active duty, you can enroll in the credit monitoring service by submitting proof of service and contact information to the nationwide CRAs
 - ii. This credit monitoring will notify you of any material additions or modifications to your credit file
- 3. Office of Servicemember Affairs:
 - a. Provides educational resources
 - b. Monitors complaints
 - c. Works with other agencies
- 4. Misadventures in Money Management:
 - a. Cutting edge, graphic novel where you can choose your own adventure in a virtual learning experience
 - i. Trains future and current servicemembers and their families on how to navigate future financial landmines in a fun and interactive way
- 5. Strengthening the Military Lending Act (MLA)
 - a. Enacted in 2006 to protect servicemembers from loans with annual rates over 36 percent
 - i. Includes the following, non-inclusive costs: finance charges, credit insurance premiums, add-on-credit-related products sold in connection with the credit, certain fees such as application fees, participation fees, or fees for debt cancellation contracts
 - b. No mandatory waivers of certain legal rights
 - c. No mandatory allotments
 - d. No prepayment penalty
 - e. Regulation coverage expanded in 2015

D. Federal Trade Commission Protections

1. Ongoing efforts to eliminate harmful scams through aggressive enforcement actions
2. Use of educational campaigns to protect servicemember-consumers
3. Active monitoring of the marketplace
4. *Military Sentinel Complaint Network*: a secure online database of complaints from DOD and military communities
 - a. Allows complaints to be recorded by branch of service and installation
5. Recent authorization of the use of civil investigative demands and subpoenas to investigate potentially unlawful practices targeting service members, veterans, and their families
6. [*Military Reports*](#): an online tool that is updated quarterly to show data for servicemember reports to the FTC

E. Various State Law Protections

1. State Enforcement Actions—analogous to the SCRA (e.g., Washington’s Service Members’ Civil Relief Act, R.C.W. 38.42)

II. American Bar Association and American Bankruptcy Institute

A. Prohibition on Referral of Military Members to Private Counsel

B. Legal Assistance for Military Personnel (LAMP) Program

1. Fosters the continued growth of the military legal assistance programs and promotes the delivery of legal services to military personnel and their family members
2. Works with other supporting organizations to enhance the scope, quality, and delivery of free or affordable legal services to eligible legal assistance clients

C. Veterans Task Force

1. Mission:
 - a. Use resources within the American Bankruptcy Institute to understand, respond to, and coordinate with other institutions and organizations to educate, remediate, and prevent adverse debt concerns and impacts
2. Projects:
 - a. Honoring American Veterans in Extreme Need (HAVEN) Act of 2019
 - b. Developing a listing of volunteers trained to help veterans and current servicemembers better understand credit issues
 - c. Providing additional communications outreach efforts within and without the ABI

III. Representation in Bankruptcy or State Court or in an Out of Court Resolution

A. When to Contact Outside Counsel

B. What Information to Gather Before Sending a File to Outside Counsel

C. Preservation of Records and Litigation Holds

1. ESI – and other “exciting” terms
2. Communications with the Insured
3. Remember your Retention Claims

D. Defaults and Enforcement

1. Monetary defaults
2. Non-monetary defaults

3. Inconsistent enforcement of creditors' rights
4. Irregularity of payments
5. Communications with defaulting customer

E. What to do about a financially troubled Service Member or Veteran

1. Counsel about dispute and end game
2. Risk to security clearance
3. Federal and state law protections to Service Members
4. Risk of forfeiture, foreclosure or eviction
5. Risk to credit
6. Out of court resolution, surrender or repayment
7. Litigation options
8. Fix infirmities in the collateral/credit (Workout, extension or advance of credit, reduction of interest rate, other consideration)

F. When to Take Action

1. Immediately
2. Wait out avoidance periods

G. How to Take Action

1. Review contracts and enforcement rights
2. Review perfection of security interests
3. Assess borrower
4. Assess creditor
5. In any workout, pay down or refinance, provide value to the borrower
6. Referrals of servicemembers / veterans to ABA LAMP volunteers through ABI Task Force clearinghouse

H. Remedies

1. State Law
 - a. Foreclosure
 - b. Suit on Note
 - c. Suit on Guaranty
 - d. Replevin
 - e. Self-help
 - f. Garnishment
 - g. Levy
 - h. Consider rework of credit to resolve credit defects
2. Bankruptcy Law
 - a. Involuntary Bankruptcy Petition

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- b. File Proof of Claim
 - i. Proof of claim must be filed by creditor only if claim scheduled by debtor as disputed, contingent, or unliquidated
 - ii. Attorney's inadvertent, good-faith late filing could constitute "excusable neglect" (*Pioneer v. Brunswick*)
- c. File Administrative Claim
- d. Motion to Dismiss (Bad Faith)
- e. Motion to Prohibit Use of Cash Collateral
- f. Motion to Compel Assumption/Rejection of Executory Contract
- g. Debtor in Possession Financing
- h. Rule 2004 Discovery
- i. Objection to Disclosure Statement
- j. Objection to Confirmation
 - i. Chapter 11
 - ii. Chapter 13

Protections Afforded by the Servicemembers Civil Relief Act (“SCRA”)

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The SCRA extends relief to all Army, Air Force, Coast Guard, Marine Corps, and Navy servicemembers on active duty; members of the Reserve components when serving on active duty; members of the National Guard mobilized under federal orders for more than 30 consecutive days; and active-duty commissioned officers of the Public Health Service and National Oceanic and Atmospheric Administration.¹

A number of SCRA provisions also extend to spouses and other dependents, such as when they are faced with eviction or need relief related to the termination of residential and motor vehicle leases.

Reservists and National Guard personnel are protected under the SCRA when—but only when—they’ve been called to active duty. Retired Servicemembers (whether those who served on active duty, as Reservists, or as National Guard personnel) lose their SCRA protection when they leave active duty or within a few months thereafter. (Exactly when that protection comes to an end varies with the particular protection.)

Portions of the SCRA also apply to reservists and inductees who have received orders but haven’t yet reported to active duty or induction into military service

A. *What kinds of protection does the SCRA provide?*

Some of your rights under the SCRA come automatically—without the need for you to notify anyone. But relief under the SCRA isn’t always automatic, and most of the time, you’ll have to request relief.

And more than a few SCRA entitlements (though much less than all of them) require a judicial finding that the military service “materially impairs”—affects in a significant way—the Servicemember’s ability to comply with the legal obligation in question.

As you read through the discussion that follows, note (1) which of your protections are automatic, (2) which require action on your part, or on your behalf and (3) which, once you ask, you can assume you’ll be entitled to, and (4) which will still be subject to judicial discretion.

¹ Active duty personnel become eligible for SCRA protection starting on the date their active duty orders are received. Protection generally terminates within 30-90 days after the date of release from extended active duty. Those absent from duty as a result of being wounded or being granted leave are also granted protection under the SCRA.

Important—Some of these protections are straightforward, but many are technical. You might want to familiarize yourself generally with these, by reading this and the web links at the end of this discussion. But whether or not you do, your interests would best be served by your working with your nearest Armed Forces Legal Assistance Office to identify and properly invoke any SCRA protections that would be of importance to you and your dependents.

Also—Please note that this isn't a complete discussion of all of Servicemembers' rights and protections under the SCRA. But the most important of them, as applicable to Servicemembers' dealings with their creditors, follow.

1. *Court and Administrative Proceedings*

Military service can sometimes make it difficult for Servicemembers to defend their legal rights—especially when they're far from home or wherever their obligations originated. Sometimes Servicemembers know of proceedings that were brought against them, but can't get leave, or their duties make it difficult or impossible to defend. Sometimes they do not even know that proceedings were brought against them—leading to a failure to defend and, as a result, a “default judgment”—a judgment entered without considering whether there might be a valid defense.

The SCRA provides protections to Servicemembers in four principal ways with respect to court and administrative proceedings:

(a) *Protection Against Default Judgments Before They Happen*

In any civil court proceeding (including any child custody proceeding) in which the defendant Servicemember doesn't make an appearance,² a plaintiff creditor must file an affidavit with court stating one of three things: (1) that the defendant is in military service; (2) that the defendant is not in military service; or (3) that the creditor isn't able to determine whether or not the defendant is in military service, after making a good faith effort to determine the defendant's military service status.³

When any defendant—whether a Servicemember or not—doesn't make an appearance to defend a lawsuit—the plaintiff will typically ask the court to give the plaintiff a win by default, and to enter a default judgment granting the plaintiff the relief sought in the complaint. But where a defendant Servicemember hasn't made an appearance and it seems that he or she *is* in military service, a court may not enter a default judgment against that defendant until after it appoints an attorney to represent the interests of that defendant Servicemember.⁴ The court must stay a civil court proceeding for at least 90 days if that appointed attorney has been unable to contact the

² § 3931(a).

³ § 3931(b)(1).

⁴ §3931(b)(2).

defendant Servicemember, or if there may be a defense to the action that requires that the defendant be present.⁵

If, based on the filed affidavit, the court can't determine *whether or not* the defendant is in the military, it may condition entry of judgment against the defendant upon the plaintiff's filing of a bond. If the defendant is later found to be in military service, the bond is available to indemnify the defendant against any loss or damage the defendant may suffer by reason of any judgment for the plaintiff against the defendant should the judgment later be set aside in whole or in part.⁶

(b) *Protection Against Default Judgments If They Happen Anyway*

If a judgment is entered against the defendant while he or she is in military service or within 60 days of discharge from military service, and the defendant was prejudiced in making his or her defense because of his or her military service, the judgment may, upon application by the defendant, be opened by the court and the defendant may then provide a defense.⁷

But before the judgment may be opened, the defendant must show that he or she was materially affected by reason of that military service in making a defense to the action, AND has a meritorious or legal defense to some or all of the action.⁸

The Servicemember must timely request such relief (i.e., within 90 days from release from active duty).

If a default judgment was entered against you when you were in military service or within 60 days thereafter, you should consult with a legal assistance attorney to obtain information on possible relief available to you.

(c) *Stay of Action When Servicemember Defendant's Ability to Defend is Impaired*

Sometimes the Servicemember will have heard about the lawsuit, or appointed counsel will have gone to bat for the Servicemember. Under the SCRA, if requested by counsel for a Servicemember defendant, or upon the court's "own motion" (i.e., on the court's own initiative), the court must grant a stay of proceedings for no less than 90 days if it determines that (1) there may be a defense and the defense can't be presented without the defendant's presence; or (2) after due diligence, the defendant's

⁵ § 3931(d).

⁶ § 3931(b)(3).

⁷ § 3931(g)

⁸ § 3931g((1).

attorney hasn't been able to contact the defendant Servicemember or otherwise determine if a meritorious defense exists.⁹

Backup for the request is necessary. The court will grant the Servicemember's stay application and will stay the proceeding for at least 90 days if the application includes: (1) a letter or other communication setting forth facts demonstrating that the individual's current military duty requirements materially affect the Servicemember's ability to appear along with a date when the Servicemember will be able to appear; and (2) a letter or other communication from the Servicemember's commanding officer stating that the Servicemember's current military duty prevents his or her appearance and that military leave is not authorized for the Servicemember at the time of the letter.

This letter or request to the court for the stay doesn't constitute an "appearance for jurisdictional purposes" (*i.e.*, constitute an acknowledgment that the court has jurisdiction over the Servicemember), and doesn't constitute a waiver of any substantive or legal defenses the Servicemember might have.¹⁰

After receiving the written request, the judge, magistrate or hearing officer must grant a minimum 90-day delay if the Servicemember includes the necessary information.¹¹ So that stay is automatic if requested with the necessary backup—but the Servicemember still needs to ask for it.

The court or administrative agency may make further orders to protect the rights of the defendant under the SCRA,¹² but any additional delay beyond the mandatory 90-day period is within the discretion of the judge, magistrate or hearing officer. (Normally it will turn on whether the military duty has a continuing effect on the ability to appear and defend.)

(d) *Stay or Vacation of Execution of
Judgments, Attachments and
Garnishments*

In addition to the court's ability to regulate default judgments and stay proceedings, the court may on its own motion and must upon application: (1) stay the execution of any judgment or court order entered against a Servicemember; and (2) vacate or stay any attachment or garnishment of the Servicemember's property or assets, whether before or after judgment if it finds that the Servicemember's ability to comply with the judgment or garnishment is materially affected by military service. The stay of execution may be ordered for any part of the Servicemember's military service

⁹ § 3932.

¹⁰ § 3932(c).

¹¹ § 3932(b)(1).

¹² § 3932(d).

plus 90 days after discharge from the service. The court may also order the Servicemember to make installment payments during any stay ordered.¹³

2. *Evictions, Foreclosures, Repossessions and Forced Sales*

Some states require a court proceeding and related court order to evict tenants and others from real property, and some states permit eviction without one. Likewise, some states require a court proceeding and related court order to take and sell one's property after the default on a secured debt (the process we call "foreclosure"), and some states—such as those in which "deeds of trust" or "trust deeds" are utilized—permit such a sale without approval of a court. In the absence of relief under the SCRA, Servicemembers and their dependents could lose their homes, vehicles, or other personal property at a time when military duties impair the ability to defend. The SCRA gives Servicemembers protections in each of these situations.

(a) *Protection against Evictions*

Although the SCRA doesn't excuse Servicemembers from paying rent, it does afford some relief if military service makes payment difficult. Military members and their dependents (in their own right) have some protection from eviction.

As just noted, some states require a court order for a landlord to evict and other states don't. But if you rent your home or apartment and the rent does not exceed a certain amount (which in 2019 is \$3,851.03 per month), then your landlord can't evict you or your dependents while you're serving on active duty without first obtaining a court order.¹⁴ That court order is required even if the state generally doesn't require a court order to evict a tenant. And the court order is required whether or not the lease was entered into before entry on active duty.

And then, to issue the court order authorizing eviction, the court must find the member's failure to pay is not materially affected by his/her military service.¹⁵

That "material" effect is present where the Servicemember doesn't earn sufficient income to pay the rent. Where the member is materially affected by military service, the court may stay the eviction (for 90 days, unless the court decides on a shorter or longer period in the interest of justice) when the military member or dependents request it.

In addition, you can request that the court delay the execution of an order to evict you or your dependents for 90 days. But unlike the stay of other judicial proceedings, the court will have the ability to decide whether to postpone eviction and, if so, for how long—which can be longer or shorter than 90 days, as "justice and equity

¹³ § 3934.

¹⁴ § 3951.

¹⁵ § 3951(b)(1).

require.”¹⁶ The court also can adjust the rental obligation under the lease “to preserve the interests of all parties.”¹⁷ . Also, if a stay is granted, the court may grant to the landlord such relief “as equity may require.”¹⁸

The rent threshold typically changes each year to reflect inflation and any rise in housing costs.

(b) *Protection against Foreclosures and Forced Sales*

If you are on active-duty and it results in your inability to pay your mortgage or meet the terms of a purchase or installment contract, the SCRA may be able to help you.

While the SCRA doesn’t erase that debt, it provides that a creditor must get a court order prior to foreclosing on a mortgage—or proceeding with a sale under a trust deed, even though trust deeds ordinarily don’t require court orders before sales.¹⁹

No sale, foreclosure or seizure of property for nonpayment of a pre-service mortgage debt—whether secured by a mortgage or trust deed—is valid if made during or within one year after your service on active duty, unless carrying out a valid court order.²⁰

Mortgages generally, if not always, require court orders to achieve foreclosure in any event. But for trust deeds—which normally don’t require a court order to complete a foreclosure sale—the SCRA is particularly important. It’s been observed that this can provide tremendous protections from foreclosure in the many states permitting foreclosures to proceed without involving the courts.²¹

But note that unlike the protection relating to eviction, in order for a Servicemember to receive the protection relating to foreclosures and forced sales, the obligation needs to have been taken out *before* the Servicemember entered military service.²²

¹⁶ § 3951(b)(1)(A).

¹⁷ § 3951(b)(B).

¹⁸ § 3951(b)(2).

¹⁹ § 3953.

²⁰ § 3953.

²¹ <https://www.militaryonesource.mil/family-relationships/relationships/relationship-challenges-and-divorce/servicemembers-civil-relief-act>.

²² § 3953(a)(1).

(c) *Protection from Vehicle Repossessions
and Forced Sales*

Servicemembers' rights with respect to vehicle repossessions are similar to those that they have with respect to real estate. So long as the loan originated before the period of military service, and the Servicemember remains liable on the obligation,²³ a creditor may not repossess a vehicle during a borrower's period of military service without a court order.²⁴

Also, if a creditor has a security interest on a loan secured by the motor vehicle (as most auto loans are), SCRA prohibits a foreclosure or sale of the vehicle without a court order.²⁵

Once again, though (and again unlike the protection relating to eviction), in order for a Servicemember to receive protection relating to repossession, foreclosures and forced sales, the vehicle obligation needs to have been taken out *before* the Servicemember entered military service.²⁶

(d) *Protections from Other Kinds of Forced
Sales*

The protections against repossession and forced sales go beyond liens on real estate and vehicles. They require a court order before a foreclosure or sale on other kinds of liens as well. Liens for storage, repair, or cleaning of the Servicemember's property are specifically mentioned in SCRA as liens requiring a court order to enforce.

So, for example, if you have household goods stored in a warehouse or ministorage, a car in the possession of a company that towed it, or a car stored at a garage or left there after the completion of repairs, your property can't be sold to satisfy a debt for unpaid storage or towing charges without first obtaining a court order.

SCRA provides that the liens covered also include "a lien on such property or effects for any other reason."²⁷

If a court order to foreclose or enforce that lien is sought, the court may on its own motion, and *must* if requested by a Servicemember whose ability to comply with the obligation resulting in the proceeding is materially affected by military service (1) stay the proceeding for a period of time as justice and equity require; or (2) adjust the obligation to preserve the interests of all parties.

²³ § 3953(a)(1).

²⁴ §§ 3952.

²⁵ § 3953.

²⁶ § 3953(a)(1).

²⁷ § 3958.

* * *

The provisions that relate Servicemembers' protection in the face of evictions, foreclosures and other lien enforcement actions can be especially complicated. So be sure to consult with legal counsel at your nearest Armed Forces Legal Assistance Office regarding any civil court actions against you or you and your dependents.

3. *Contracts and Leases*

Servicemembers, far more than others, need to move, resulting in the need to terminate real property and auto leases, contracts for cell phones, and sometimes other contracts for services that might not work or be needed in the new locale. Also, military duty sometimes requires the Servicemember to bear additional costs (such as for housing in both the old and new locale), so relief on interest rates payable on obligations that will be ongoing can be very helpful. The SCRA provides Servicemembers with several protections in this area.

(a) *Ability to Terminate Real Estate Leases.*

Servicemembers generally can terminate without penalty any residential and business property leases that began before their active-duty assignments.²⁸ They also can terminate a lease they signed during active duty in the event of a change in their permanent duty station or if a new deployment will last more than 90 days.²⁹

Terminating the lease requires written notice of cancellation to the landlord—by hand, a private business carrier (like Federal Express, DHL, or UPS), or by mail with adequate postage and a return receipt—with a copy of military orders.³⁰ Verbal notice is not enough.

Such terminations also terminate any obligation of the Servicemember's dependents under the lease.³¹

(b) *Ability to Terminate Vehicle Leases*

The SCRA also allows the termination of leases of vehicles leased for personal or business by servicemembers and their dependents.³² The pre-service vehicle lease may be cancelled if the servicemember receives active duty orders for a period of one hundred and eighty (180) days or more. The automobile lease entered into while the servicemember is on active duty may be terminated if the servicemember

²⁸ § 3955(a)(1)(A).

²⁹ §3955(a) (1)(B).

³⁰ § 3955(c).

³¹ § 3955(a)(2).

³² § 3955(b)(2).

receives permanent change of station (PCS) orders to a (1) location outside the continental United States, or (2) deployment orders for a period of 180 days or more.

Generally, a reserve or guard Servicemember must, after entering the lease, be called to active duty service for at least 180 days or more. An active duty Servicemember must, after entering the lease, EITHER (a) receive military orders for a permanent change of station either (i) from the continental United States (CONUS) to outside CONUS or (ii) from a state outside CONUS to any location outside that state OR (b) deploy for 180 days or more.

Terminating the lease requires written notice to the lessor with a copy of military orders.

*(c) Ability to Terminate Phone, Internet, Cable,
and Cell Phone Contracts*

The right to terminate contracts for phone, internet, cable and cell phone installment contracts are also protected.³³ These contracts may be cancelled or suspended if the Servicemember is deployed overseas for 90 days or longer or if he makes a permanent change-of-station (PCS) move. The Servicemember may cancel or suspend the cell phone contract without penalties or extra fees as long as the deployment or PCS materially affects the Servicemember's ability to satisfy the contract or utilize the service.

Under the SCRA, the service provider can't impose an early termination charge, but any tax or other obligation that is due and unpaid at the time of termination remains payable.³⁴

If the services were provided under a "family plan," the Servicemember may also terminate the contract with respect to the other beneficiaries of the contract if all of them accompany the Servicemember during the Servicemember's period of relocation.³⁵

*(d) 6% Cap on Interest Rate on Debt
Incurred Before Entry on to Active Duty*

A Servicemember may reduce the higher interest rates the Servicemember pays for any financial obligation (for example, a credit card, loan, or mortgage) individually or jointly entered into *before* active service to 6% if active service materially affects the Servicemember's ability to repay the financial obligation³⁶

³³ § 3956.

³⁴ § 3956(e).

³⁵ § 3956(d).

³⁶ § 3937.

In addition, the SCRA prohibits the lender from accelerating the principal amount owed, and the SCRA forgives (as contrasted to defers) the excess interest payments that would have been due under the higher interest rate so that the Servicemember is not liable for the excess after he or she is released from active service.

This reduced interest rate is effective only during the period of active military duty for most obligations. But for a *mortgage* obligation, the reduced interest rate continues for one year following release from military service.

Importantly, this reduced rate does not apply to financial obligations (including refinancing or credit card balance increases) entered into or accrued while on active service, or to federally guaranteed student loans.

To receive this benefit you must be proactive. You must notify your lender in writing and include a copy of your orders to active duty service or a letter from your commanding officer that shows the date you began active duty service.

The written notice and proof of military service must be provided to the creditor within 180 days of the end of the Servicemember's military service.

(e) *Contractual Penalties*

When an action for compliance with a contract is stayed under the SCRA, contractual penalties do not accrue during the period of the stay.³⁷

(f) *Protection for Small Business Owners*

If a Servicemember owns a small business (and even if the Servicemember executed a guaranty or otherwise is personally liable for the business's debts), the Servicemember's non-business assets and military pay are protected from creditors enforcing business debts or obligations while the Servicemember is on active duty.³⁸

In some situations, civilian employers have agreed to pay the military member the difference between the military pay and the civilian pay earned before the call to active duty. In most such situations, military service hasn't materially affected the member's ability to pay, so it's unlikely that the SCRA 6% interest limitation would apply. Of course, if Servicemember's expenses increased (for example, if the Servicemember had to pay for a second apartment at the duty station, or the Servicemember's spouse gave up a job to move with the Servicemember), military service might have materially affected the Servicemember, and the SCRA 6% interest limit could apply.

[https://www.jag.navy.mil/legal_services/documents/The%20SCRA%20Overview%20\(R%20RevJan2014\).pdf](https://www.jag.navy.mil/legal_services/documents/The%20SCRA%20Overview%20(R%20RevJan2014).pdf)

³⁷ § 3933.

³⁸ §§ 3955, 4026. See also <https://www.militaryonesource.mil/family-relationships/relationships/relationship-challenges-and-divorce/servicemembers-civil-relief-act>.

4. Credit Rating Protection

Lenders cannot deny or revoke credit, change the terms of an existing loan, or refuse to grant credit because the Servicemember sought SCRA protections. Any claim of rights under SCRA cannot be used as the basis for a lender to conclude that the Servicemember is unable to pay a debt, or as the basis to generate an adverse credit report. Furthermore, an insurer may not refuse to insure a Servicemember based on any SCRA protections the Servicemember may invoke.

5. Insurance.

Servicemembers' rights with respect to several different types of insurance that they might have obtained are protected under the SCRA.

(a) Life Insurance

Life insurance companies cannot terminate coverage or require payment of additional premiums if you are in military service. (But increases in premiums based on age in individual term insurance are not covered by SCRA.) An insurer also may not limit or restrict coverage for any activity required by military service.

Life insurance also is protected against lapse, termination, and forfeiture for nonpayment of premiums or indebtedness for the period of military service plus two years.

For SCRA protection for life insurance policies, the Servicemember must submit a written request to the Department of Veteran Affairs.

(b) Health Insurance

The SCRA provides for reinstatement of health insurance without waiting periods or other penalties, provided the insurance was effective before the active duty period, the insurance was terminated during the active duty period, and certain other conditions exist.

If your health insurance was canceled when on active duty, it can be reinstated without loss of benefits, waiting periods, or penalties in most instances.

(c) Professional Liability Insurance

Professionals in health care, legal services or another profession, as determined by the Secretary of Defense, called to active duty may suspend their professional liability insurance policy by written request to the insurance carrier. Premiums for suspended insurance do not have to be paid, and any premiums paid by an individual while on active duty must be refunded. To reinstate suspended insurance, the individual must send a request to the insurance carrier within 30 days of release from active duty.

* * *

Deadlines for applying for reinstatement differ depending on the type of insurance. For instance, you have only 30 days after release from active duty to request reinstatement of professional liability insurance and receive SCRA protections, but you have 120 days to request reinstatement of health insurance benefits.

6. *Tax Relief.*

(a) *Deferral of Taxes Due When Ability to Pay is Materially Affected by Military Service*

The Internal Revenue Service and state and local taxing authorities must defer Servicemembers' income taxes due before or during their military service if their ability to pay the income tax is materially affected by military service. No interest or penalty can be added because of this type of deferral.

Important—This is not a general exemption from the duty to pay taxes—and it requires proof that your ability to pay the tax is *materially affected* by the military service.

(b) *Taxes on Military and Nonmilitary Income*

If you receive military orders that require you to move from your home state to another state, your “domicile”—your state of legal residence, for tax, voting, inheritance and other purposes—does not change. And the SCRA prevents you from having to pay state taxes on your military income—or on personal property, such as a car—to any state other than your home state of legal residency.³⁹

If you or your spouse earns non-military income, you may have to pay income taxes to the state where you're stationed, if that state has an income tax. But the state cannot use your military earnings to increase either your tax liability or your spouse's.

7. *Domicile (Legal Residence) & Taxation*

A Servicemember can maintain the domicile or legal residence in the state the Servicemember resided before entering active duty. A Servicemember does not lose the domicile (legal residence) in a state when absence from that state is due to military orders.

³⁹ For example, if your state of legal residence is Texas and the military sends you to Virginia, you won't have to pay Virginia's state income tax on your military earnings, nor will you have to pay personal property taxes to the state of Virginia.

A Servicemember can, however, change his or her domicile if he or she wants to, and meets the conditions for changing legal residence.

Domicile should not be confused with residence. A person can have as many residences as he or she can afford but can have only one domicile.

A Servicemember does not acquire a new domicile or legal residence for purposes of income tax when the Servicemember's presence in the state is solely due to military orders. Furthermore, the SCRA prohibits states (where the Servicemember is located merely because of military orders) from including military income of a nonresident Servicemember to increase the tax liability imposed on nonmilitary income earned by the nonresident Servicemember or spouse subject to tax by the state. The military income is taxable only by the Servicemember's domicile state, if the domicile state has an income tax.

*8. For Military Spouses: The Military Spouses
Residency Relief Act (MSRRA) and Taxation*

In November 2009, the MSRRA became law and amended the SCRA. The MSRRA changes some basic rules of taxation that could affect Servicemembers and their spouses.

Under the MSRRA, a military spouse who is present with a Servicemember in a particular State under military orders does not have to pay State income tax on wages earned in that State as long as that State is NOT the spouse's domicile. But the spouse would have to pay taxes to the State of domicile, if the laws of that State required such payments. (Some States, of course, don't have State income taxes.)

But the MSRRA doesn't allow a spouse to pick or chose a domicile in just any State. Domicile is established, not arbitrarily chosen. The spouse must have actually been present in the State, established it as his or her domicile, and maintained it by forming and maintaining the necessary contacts, such as registering to vote, owning property, registering vehicles, holding professional licenses, declaring a homestead, or indicating a State of probate in a last will and testament. Similarly, the MSRRA does not allow a spouse to "inherit" or assume the Servicemember's domicile upon marriage without the necessary contacts with the State.

The law under the MSRRA is complex, and because its effect will depend on the interpretations of each State, Servicemembers and their spouses are encouraged to seek free, confidential advice from an Armed Forces Legal Assistance Office.

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The SCRA extends relief to all Army, Air Force, Coast Guard, Marine Corps, and Navy servicemembers on active duty; members of the Reserve components when serving on active duty; members of the National Guard mobilized under federal orders for more than 30 consecutive days; and active-duty commissioned officers of the Public Health Service and National Oceanic and Atmospheric Administration [\[1\]](#).

A number of SCRA provisions also extend to spouses and other dependents, such as when they are faced with eviction or need relief related to the termination of residential and motor vehicle leases.

Reservists and National Guard personnel are protected under the SCRA when—but only when—they’ve been called to active duty. Retired Servicemembers (whether those who served on active duty, as Reservists, or as National Guard personnel) lose their SCRA protection when they leave active duty or within a few months thereafter. (Exactly when that protection comes to an end varies with the particular protection.)

Portions of the SCRA also apply to reservists and inductees who have received orders but haven’t yet reported to active duty or induction into military service.

A. What kinds of protection does the SCRA provide?

Some of your rights under the SCRA come automatically—without the need for you to notify anyone. But relief under the SCRA isn’t always automatic, and most of the time, you’ll have to request relief.

And more than a few SCRA entitlements (though much less than all of them) require a judicial finding that the military service “materially impairs”—affects in a significant way—the Servicemember’s ability to comply with the legal obligation in question.

As you read through the discussion that follows, note (1) which of your protections are automatic, (2) which require action on your part, or on your behalf and (3) which, once you ask, you can assume you’ll be entitled to, and (4) which will still be subject to judicial discretion.

Important—Some of these protections are straightforward, but many are technical. You might want to familiarize yourself generally with these, by reading this and the web links at the end of this discussion. But whether or not you do, your interests would best be served by your working with your nearest Armed Forces Legal Assistance Office to identify and properly invoke any SCRA protections that would be of importance to you and your dependents.

Also—Please note that this isn’t a complete discussion of all of Servicemembers’ rights and protections under the SCRA. But the most important of them, as applicable to Servicemembers’ dealings with their creditors, follow.

1. Court and Administrative Proceedings

Military service can sometimes make it difficult for Servicemembers to defend their legal rights—especially when they’re far from home or wherever their obligations originated. Sometimes Servicemembers know of proceedings that were brought against them, but can’t get leave, or their duties make it difficult or impossible to defend. Sometimes they do not even know that proceedings were brought against them—leading to a failure to defend and, as a result, a “default judgment”—a judgment entered without considering whether there might be a valid defense.

The SCRA provides protections to Servicemembers in four principal ways with respect to court and administrative proceedings:

a) Protection Against Default Judgments Before They Happen

In any civil court proceeding (including any child custody proceeding) in which the defendant Servicemember doesn’t make an appearance [\[2\]](#), a plaintiff creditor must file an affidavit with court stating one of three things: (1) that the defendant is in military service; (2) that the defendant is not in military service; or (3) that the creditor isn’t able to determine whether or not the defendant is in military service, after making a good faith effort to determine the defendant’s military service status [\[3\]](#).

When any defendant—whether a Servicemember or not—doesn’t make an appearance to defend a lawsuit—the plaintiff will typically ask the court to give the plaintiff a win by default, and to enter a default judgment granting the plaintiff the relief sought in the complaint. But where a defendant Servicemember hasn’t made an appearance and it seems that he or she *is* in military service, a court may not enter a default judgment against that defendant until after it appoints an attorney to represent the interests of that defendant Servicemember [\[4\]](#). The court must stay a civil court proceeding for at least 90 days if that appointed attorney has been unable to contact the defendant Servicemember, or if there may be a defense to the action that requires that the defendant be present [\[5\]](#).

If, based on the filed affidavit, the court can’t determine *whether or not* the defendant is in the military, it may condition entry of judgment against the defendant upon the plaintiff’s filing of a bond. If the defendant is later found to be in military service, the bond is available to indemnify the defendant against any loss or damage the defendant may suffer by reason of any judgment for the plaintiff against the defendant should the judgment later be set aside in whole or in part [\[6\]](#).

(b) Protection Against Default Judgments If They Happen Anyway

If a judgment is entered against the defendant while he or she is in military service or within 60 days of discharge from military service, and the defendant was prejudiced in making his or her

defense because of his or her military service, the judgment may, upon application by the defendant, be opened by the court and the defendant may then provide a defense [\[7\]](#).

But before the judgment may be opened, the defendant must show that he or she was materially affected by reason of that military service in making a defense to the action, AND has a meritorious or legal defense to some or all of the action [\[8\]](#).

The Servicemember must timely request such relief (*i.e.*, within 90 days from release from active duty).

If a default judgment was entered against you when you were in military service or within 60 days thereafter, you should consult with a legal assistance attorney to obtain information on possible relief available to you.

(c) Stay of Action When Servicemember Defendant's Ability to Defend is Impaired

Sometimes the Servicemember will have heard about the lawsuit, or appointed counsel will have gone to bat for the Servicemember. Under the SCRA, if requested by counsel for a Servicemember defendant, or upon the court's "own motion" (*i.e.*, on the court's own initiative), the court must grant a stay of proceedings for no less than 90 days if it determines that (1) there may be a defense and the defense can't be presented without the defendant's presence; or (2) after due diligence, the defendant's attorney hasn't been able to contact the defendant Servicemember or otherwise determine if a meritorious defense exists [\[9\]](#).

Backup for the request is necessary. The court will grant the Servicemember's stay application and will stay the proceeding for at least 90 days if the application includes: (1) a letter or other communication setting forth facts demonstrating that the individual's current military duty requirements materially affect the Servicemember's ability to appear along with a date when the Servicemember will be able to appear; and (2) a letter or other communication from the Servicemember's commanding officer stating that the Servicemember's current military duty prevents his or her appearance and that military leave is not authorized for the Servicemember at the time of the letter.

This letter or request to the court for the stay doesn't constitute an "appearance for jurisdictional purposes" (*i.e.*, constitute an acknowledgment that the court has jurisdiction over the Servicemember), and doesn't constitute a waiver of any substantive or legal defenses the Servicemember might have [\[10\]](#).

After receiving the written request, the judge, magistrate or hearing officer must grant a minimum 90-day delay if the Servicemember includes the necessary information [\[11\]](#). So that stay is automatic if requested with the necessary backup—but the Servicemember still needs to ask for it.

The court or administrative agency may make further orders to protect the rights of the defendant under the SCRA [\[12\]](#), but any additional delay beyond the mandatory 90-day period is within the

discretion of the judge, magistrate or hearing officer. (Normally it will turn on whether the military duty has a continuing effect on the ability to appear and defend.)

(d) Stay or Vacation of Execution of Judgments, Attachments and Garnishments

In addition to the court's ability to regulate default judgments and stay proceedings, the court may on its own motion and must upon application: (1) stay the execution of any judgment or court order entered against a Servicemember; and (2) vacate or stay any attachment or garnishment of the Servicemember's property or assets, whether before or after judgment if it finds that the Servicemember's ability to comply with the judgment or garnishment is materially affected by military service. The stay of execution may be ordered for any part of the Servicemember's military service plus 90 days after discharge from the service. The court may also order the Servicemember to make installment payments during any stay ordered [\[13\]](#).

2. Evictions, Foreclosures, Repossessions and Forced Sales

Some states require a court proceeding and related court order to evict tenants and others from real property, and some states permit eviction without one. Likewise, some states require a court proceeding and related court order to take and sell one's property after the default on a secured debt (the process we call "foreclosure"), and some states—such as those in which "deeds of trust" or "trust deeds" are utilized—permit such a sale without approval of a court. In the absence of relief under the SCRA, Servicemembers and their dependents could lose their homes, vehicles, or other personal property at a time when military duties impair the ability to defend. The SCRA gives Servicemembers protections in each of these situations.

(a) Protection against Evictions

Although the SCRA doesn't excuse Servicemembers from paying rent, it does afford some relief if military service makes payment difficult. Military members and their dependents (in their own right) have some protection from eviction.

As just noted, some states require a court order for a landlord to evict and other states don't. But if you rent your home or apartment and the rent does not exceed a certain amount (which in 2019 is \$3,851.03 per month), then your landlord can't evict you or your dependents while you're serving on active duty without first obtaining a court order [\[14\]](#). That court order is required even if the state generally doesn't require a court order to evict a tenant. And the court order is required whether or not the lease was entered into before entry on active duty.

And then, to issue the court order authorizing eviction, the court must find the member's failure to pay is not materially affected by his/her military service [\[15\]](#).

That "material" effect is present where the Servicemember doesn't earn sufficient income to pay the rent. Where the member is materially affected by military service, the court may stay the eviction (for 90 days, unless the court decides on a shorter or longer period in the interest of justice) when the military member or dependents request it.

In addition, you can request that the court delay the execution of an order to evict you or your dependents for 90 days. But unlike the stay of other judicial proceedings, the court will have the ability to decide whether to postpone eviction and, if so, for how long—which can be longer or shorter than 90 days, as “justice and equity require.” [16] The court also can adjust the rental obligation under the lease “to preserve the interests of all parties.” [17] Also, if a stay is granted, the court may grant to the landlord such relief “as equity may require.” [18]

The rent threshold typically changes each year to reflect inflation and any rise in housing costs.

(b) Protection against Foreclosures and Forced Sales

If you are on active-duty and it results in your inability to pay your mortgage or meet the terms of a purchase or installment contract, the SCRA may be able to help you. While the SCRA doesn’t erase that debt, it provides that a creditor must get a court order prior to foreclosing on a mortgage—or proceeding with a sale under a trust deed, even though trust deeds ordinarily don’t require court orders before sales [19].

No sale, foreclosure or seizure of property for nonpayment of a pre-service mortgage debt—whether secured by a mortgage or trust deed—is valid if made during or within one year after your service on active duty, unless carrying out a valid court order [20].

Mortgages generally, if not always, require court orders to achieve foreclosure in any event. But for trust deeds—which normally don’t require a court order to complete a foreclosure sale—the SCRA is particularly important. It’s been observed that this can provide tremendous protections from foreclosure in the many states permitting foreclosures to proceed without involving the courts [21].

But note that unlike the protection relating to eviction, in order for a Servicemember to receive the protection relating to foreclosures and forced sales, the obligation needs to have been taken out *before* the Servicemember entered military service [22].

(c) Protection from Vehicle Repossessions and Forced Sales

Servicemembers’ rights with respect to vehicle repossessions are similar to those that they have with respect to real estate. So long as the loan originated before the period of military service, and the Servicemember remains liable on the obligation, [23] a creditor may not repossess a vehicle during a borrower’s period of military service without a court order [24].

Also, if a creditor has a security interest on a loan secured by the motor vehicle (as most auto loans are), SCRA prohibits a foreclosure or sale of the vehicle without a court order [25].

Once again, though (and again unlike the protection relating to eviction), in order for a Servicemember to receive protection relating to repossession, foreclosures and forced sales, the vehicle obligation needs to have been taken out *before* the Servicemember entered military service [26].

(d) Protections from Other Kinds of Forced Sales

The protections against repossession and forced sales go beyond liens on real estate and vehicles. They require a court order before a foreclosure or sale on other kinds of liens as well. Liens for storage, repair, or cleaning of the Servicemember's property are specifically mentioned in SCRA as liens requiring a court order to enforce.

So, for example, if you have household goods stored in a warehouse or ministorage, a car in the possession of a company that towed it, or a car stored at a garage or left there after the completion of repairs, your property can't be sold to satisfy a debt for unpaid storage or towing charges without first obtaining a court order.

SCRA provides that the liens covered also include "a lien on such property or effects for any other reason." [\[27\]](#)

If a court order to foreclose or enforce that lien is sought, the court may on its own motion, and *must* if requested by a Servicemember whose ability to comply with the obligation resulting in the proceeding is materially affected by military service (1) stay the proceeding for a period of time as justice and equity require; or (2) adjust the obligation to preserve the interests of all parties.

* * *

The provisions that relate Servicemembers' protection in the face of evictions, foreclosures and other lien enforcement actions can be especially complicated. So be sure to consult with legal counsel at your nearest Armed Forces Legal Assistance Office regarding any civil court actions against you or you and your dependents.

3. Contracts and Leases

Servicemembers, far more than others, need to move, resulting in the need to terminate real property and auto leases, contracts for cell phones, and sometimes other contracts for services that might not work or be needed in the new locale. Also, military duty sometimes requires the Servicemember to bear additional costs (such as for housing in both the old and new locale), so relief on interest rates payable on obligations that will be ongoing can be very helpful. The SCRA provides Servicemembers with several protections in this area.

(a) Ability to Terminate Real Estate Leases.

Servicemembers generally can terminate without penalty any residential and business property leases that began before their active-duty assignments. [\[28\]](#) They also can terminate a lease they signed during active duty in the event of a change in their permanent duty station or if a new deployment will last more than 90 days [\[29\]](#).

Terminating the lease requires written notice of cancellation to the landlord—by hand, a private business carrier (like Federal Express, DHL, or UPS), or by mail with adequate postage and a return receipt—with a copy of military orders [\[30\]](#). Verbal notice is not enough.

Such terminations also terminate any obligation of the Servicemember's dependents under the lease [\[31\]](#).

(b) Ability to Terminate Vehicle Leases

The SCRA also allows the termination of leases of vehicles leased for personal or business by servicemembers and their dependents [\[32\]](#). The pre-service vehicle lease may be cancelled if the servicemember receives active duty orders for a period of one hundred and eighty (180) days or more. The automobile lease entered into while the servicemember is on active duty may be terminated if the servicemember receives permanent change of station (PCS) orders to a (1) location outside the continental United States, or (2) deployment orders for a period of 180 days or more.

Generally, a reserve or guard Servicemember must, after entering the lease, be called to active duty service for at least 180 days or more. An active duty Servicemember must, after entering the lease, EITHER (a) receive military orders for a permanent change of station either (i) from the continental United States (CONUS) to outside CONUS or (ii) from a state outside CONUS to any location outside that state OR (b) deploy for 180 days or more.

Terminating the lease requires written notice to the lessor with a copy of military orders.

(c) Ability to Terminate Phone, Internet, Cable, and Cell Phone Contracts

The right to terminate contracts for phone, internet, cable and cell phone installment contracts are also protected [\[33\]](#). These contracts may be cancelled or suspended if the Servicemember is deployed overseas for 90 days or longer or if he makes a permanent change-of-station (PCS) move. The Servicemember may cancel or suspend the cell phone contract without penalties or extra fees as long as the deployment or PCS materially affects the Servicemember's ability to satisfy the contract or utilize the service.

Under the SCRA, the service provider can't impose an early termination charge, but any tax or other obligation that is due and unpaid at the time of termination remains payable [\[34\]](#).

If the services were provided under a "family plan," the Servicemember may also terminate the contract with respect to the other beneficiaries of the contract if all of them accompany the Servicemember during the Servicemember's period of relocation [\[35\]](#).

(d) 6% Cap on Interest Rate on Debt Incurred Before Entry on to Active Duty

A Servicemember may reduce the higher interest rates the Servicemember pays for any financial obligation (for example, a credit card, loan, or mortgage) individually or jointly entered into

before active service to 6% if active service materially affects the Servicemember's ability to repay the financial obligation [\[36\]](#).

In addition, the SCRA prohibits the lender from accelerating the principal amount owed, and the SCRA forgives (as contrasted to defers) the excess interest payments that would have been due under the higher interest rate so that the Servicemember is not liable for the excess after he or she is released from active service.

This reduced interest rate is effective only during the period of active military duty for most obligations. But for a *mortgage* obligation, the reduced interest rate continues for one year following release from military service.

Importantly, this reduced rate does not apply to financial obligations (including refinancing or credit card balance increases) entered into or accrued while on active service, or to federally guaranteed student loans.

To receive this benefit, you must be proactive. You must notify your lender in writing and include a copy of your orders to active duty service or a letter from your commanding officer that shows the date you began active duty service.

The written notice and proof of military service must be provided to the creditor within 180 days of the end of the Servicemember's military service.

(e) Contractual Penalties

When an action for compliance with a contract is stayed under the SCRA, contractual penalties do not accrue during the period of the stay [\[37\]](#).

(f) Protection for Small Business Owners

If a Servicemember owns a small business (and even if the Servicemember executed a guaranty or otherwise is personally liable for the business's debts), the Servicemember's non-business assets and military pay are protected from creditors enforcing business debts or obligations while the Servicemember is on active duty [\[38\]](#).

4. Credit Rating Protection

Lenders cannot deny or revoke credit, change the terms of an existing loan, or refuse to grant credit because the Servicemember sought SCRA protections. Any claim of rights under SCRA cannot be used as the basis for a lender to conclude that the Servicemember is unable to pay a debt, or as the basis to generate an adverse credit report. Furthermore, an insurer may not refuse to insure a Servicemember based on any SCRA protections the Servicemember may invoke.

5. Insurance.

Servicemembers' rights with respect to several different types of insurance that they might have obtained are protected under the SCRA.

(a) Life Insurance

Life insurance companies cannot terminate coverage or require payment of additional premiums if you are in military service. (But increases in premiums based on age in individual term insurance are not covered by SCRA.) An insurer also may not limit or restrict coverage for any activity required by military service.

Life insurance also is protected against lapse, termination, and forfeiture for nonpayment of premiums or indebtedness for the period of military service plus two years.

For SCRA protection for life insurance policies, the Servicemember must submit a written request to the Department of Veteran Affairs.

(b) Health Insurance

The SCRA provides for reinstatement of health insurance without waiting periods or other penalties, provided the insurance was effective before the active duty period, the insurance was terminated during the active duty period, and certain other conditions exist.

If your health insurance was canceled when on active duty, it can be reinstated without loss of benefits, waiting periods, or penalties in most instances.

(c) Professional Liability Insurance

Professionals in health care, legal services or another profession, as determined by the Secretary of Defense, called to active duty may suspend their professional liability insurance policy by written request to the insurance carrier. Premiums for suspended insurance do not have to be paid, and any premiums paid by an individual while on active duty must be refunded. To reinstate suspended insurance, the individual must send a request to the insurance carrier within 30 days of release from active duty.

* * *

Deadlines for applying for reinstatement differ depending on the type of insurance. For instance, you have only 30 days after release from active duty to request reinstatement of professional liability insurance and receive SCRA protections, but you have 120 days to request reinstatement of health insurance benefits.

6. Tax Relief.

(a) Deferral of Taxes Due When Ability to Pay is Materially Affected by Military Service

The Internal Revenue Service and state and local taxing authorities must defer Servicemembers' income taxes due before or during their military service if their ability to pay the income tax is materially affected by military service. No interest or penalty can be added because of this type of deferral.

Important—This is not a general exemption from the duty to pay taxes—and it requires proof that your ability to pay the tax is materially affected by the military service.

(b) Taxes on Military and Nonmilitary Income

If you receive military orders that require you to move from your home state to another state, your “domicile”—your state of legal residence, for tax, voting, inheritance and other purposes—does not change. And the SCRA prevents you from having to pay state taxes on your military income—or on personal property, such as a car—to any state other than your home state of legal residency [\[39\]](#).

If you or your spouse earns non-military income, you may have to pay income taxes to the state where you're stationed, if that state has an income tax. But the state cannot use your military earnings to increase either your tax liability or your spouse's.

7. Domicile (Legal Residence) & Taxation

A Servicemember can maintain the domicile or legal residence in the state the Servicemember resided before entering active duty. A Servicemember does not lose the domicile (legal residence) in a state when absence from that state is due to military orders.

A Servicemember can, however, change his or her domicile if he or she wants to, and meets the conditions for changing legal residence.

Domicile should not be confused with residence. A person can have as many residences as he or she can afford but can have only one domicile.

A Servicemember does not acquire a new domicile or legal residence for purposes of income tax when the Servicemember's presence in the state is solely due to military orders. Furthermore, the SCRA prohibits states (where the Servicemember is located merely because of military orders) from including military income of a nonresident Servicemember to increase the tax liability imposed on nonmilitary income earned by the nonresident Servicemember or spouse subject to tax by the state. The military income is taxable only by the Servicemember's domicile state, if the domicile state has an income tax.

8. For Military Spouses: The Military Spouses Residency Relief Act (MSRRA) and Taxation

In November 2009, the MSRRA became law and amended the SCRA. The MSRRA changes some basic rules of taxation that could affect Servicemembers and their spouses.

Under the MSRRA, a military spouse who is present with a Servicemember in a particular State under military orders does not have to pay State income tax on wages earned in that State as long as that State is NOT the spouse's domicile. But the spouse would have to pay taxes to the State of domicile, if the laws of that State required such payments. (Some States, of course, don't have State income taxes.)

But the MSRRA doesn't allow a spouse to pick or chose a domicile in just any State. Domicile is established, not arbitrarily chosen. The spouse must have actually been present in the State, established it as his or her domicile, and maintained it by forming and maintaining the necessary contacts, such as registering to vote, owning property, registering vehicles, holding professional licenses, declaring a homestead, or indicating a State of probate in a last will and testament. Similarly, the MSRRA does not allow a spouse to "inherit" or assume the Servicemember's domicile upon marriage without the necessary contacts with the State. The law under the MSRRA is complex, and because its effect will depend on the interpretations of each State, Servicemembers and their spouses are encouraged to seek free, confidential advice from an Armed Forces Legal Assistance Office.

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[1] Active duty personnel become eligible for SCRA protection starting on the date their active duty orders are received. Protection generally terminates within 30-90 days after the date of release from extended active duty. Those absent from duty as a result of being wounded or being granted leave are also granted protection under the SCRA.

[2] § 3931(a).

[3] § 3931(b)(1).

[4] § 3931(b)(2).

[5] § 3931(d).

[6] § 3931(b)(3).

[7] § 3931(g).

[8] § 3931(g)(1).

[9] § 3932.

[10] § 3932(c).

[11] § 3932(b)(1).

[12] § 3932(d).

[13] § 3934.

[14] § 3951.

[15] § 3951(b)(1).

[16] § 3951(b)(1)(A).

[17] § 3951(b)(B).

[18] § 3951(b)(2).

[19] § 3953.

[20] § 3953.

[21] <https://www.militaryonesource.mil/family-relationships/relationships/relationship-challenges-and-divorce/servicemembers-civil-relief-act>.

[22] § 3953(a)(1).

[23] § 3953(a)(1).

[24] § 3952.

[25] § 3953.

[26] § 3953(a)(1).

[27] § 3958.

[28] § 3955(a)(1)(A).

[29] § 3955(a)(1)(B).

[30] § 3955(c).

[31] § 3955(a)(2).

[32] § 3955(b)(2).

[33] § 3956.

[34] § 3956(e).

[35] § 3956(d).

[36] § 3937.

[37] § 3933.

[38] §§ 3955, 4026. See also <https://www.militaryonesource.mil/family-relationships/relationships/relationship-challenges-and-divorce/servicemembers-civil-relief-act>.

[39] For example, if your state of legal residence is Texas and the military sends you to Virginia, you won't have to pay Virginia's state income tax on your military earnings, nor will you have to pay personal property taxes to the state of Virginia.

In some situations, civilian employers have agreed to pay the military member the difference between the military pay and the civilian pay earned before the call to active duty. In most such situations, military service hasn't materially affected the member's ability to pay, so it's unlikely that the SCRA 6% interest limitation would apply. Of course, if Servicemember's expenses increased (for example, if the Servicemember had to pay for a second apartment at the duty station, or the Servicemember's spouse gave up a job to move with the Servicemember), military service might have materially affected the Servicemember, and the SCRA 6% interest limit could apply.

[https://www.jag.navy.mil/legal_services/documents/The%20SCRA%20Overview%20\(RvJan2014\).pdf](https://www.jag.navy.mil/legal_services/documents/The%20SCRA%20Overview%20(RvJan2014).pdf)

Justice Department Resolves Lawsuit Against BayPort Credit Union for Violations of the Servicemembers Civil Relief Act

The Justice Department today announced that it has obtained a settlement agreement requiring BayPort Credit Union (BayPort) to pay nearly \$110,000 to resolve allegations it violated the Servicemembers Civil Relief Act (SCRA) by charging excessive interest on servicemembers' loans and repossessing servicemembers' cars without court orders.

"This case is just the latest example of the Justice Department's steadfast commitment to safeguarding the rights of servicemembers, who make so many sacrifices in defending our country," said Assistant Attorney General Kristen Clarke of the Department's Civil Rights Division. "We will continue to vigorously enforce the protections to which servicemembers are entitled under federal law, including their right to a 6% interest rate cap on loans and a right not to have their car repossessed without a court order."

"Entering military service can create financial hardships for our servicemembers who make incredible sacrifices for our nation's security," said U.S. Attorney Jessica D. Aber for the Eastern District of Virginia. "This consent order helps ensure that these men and women are not disadvantaged by their military service and that servicemembers' rights are protected going forward."

The SCRA requires creditors to reduce the interest rate on servicemembers' financial obligations, including retail installment sales contracts, to 6% in certain circumstances. The SCRA also prohibits repossessing a motor vehicle from a servicemember during military service without a court order, as long as the servicemember made a deposit or installment payment on the loan before entering military service.

Today's settlement, which must be approved by the U.S. District Court for the Eastern District of Virginia, resolves a lawsuit filed today by the Department of Justice. The lawsuit alleges that BayPort unlawfully charged interest in excess of 6% to 21 servicemembers who qualified for and sought SCRA interest rate benefits. In at least one instance, BayPort told a servicemember that reducing the interest rate would increase her monthly payment. The lawsuit also alleges that BayPort unlawfully repossessed three servicemembers' motor vehicles without court orders. In at least one of those cases, BayPort knew about the borrower's military service and repossessed the vehicle from a military base.

Under the terms of today's settlement, BayPort must pay nearly \$70,000 to the affected servicemembers. Additionally, BayPort must pay \$40,000 to the United States as a civil penalty. The agreement also requires BayPort to revise its policies and procedures to prevent future SCRA violations and provide SCRA training to its employees.

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Servicemembers and their dependents who believe their SCRA rights have been violated should contact the nearest Armed Forces Legal Assistance Program Office. Office locations can be found at <http://legalassistance.law.af.mil/>.

The Justice Department's enforcement of the SCRA is conducted by the Civil Rights Division's Housing and Civil Enforcement Section and U.S. Attorneys' Offices throughout the country. Since 2011, the department has obtained over \$476 million in monetary relief for over 121,000 servicemembers through its enforcement of the SCRA. Additional information on the department's enforcement of the SCRA and other laws protecting servicemembers is available at www.servicemembers.gov.



DEFENSE MANPOWER DATA CENTER

SERVICEMEMBERS CIVIL RELIEF ACT WEBSITE USERS GUIDE

VERSION 5.5

AS OF

AUGUST 25, 2020

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Welcome to SCRA

1

The SCRA website will help you determine if an individual is/was actively serving on active duty, or received a notice to serve, on a given date.

If you need to learn if an individual was actively serving, received a notice to serve, or was serving 367 days prior to a given date (e.g., loan date, default date, foreclosure date, etc.), you can specify the 'Active Duty Status Date', and the website will provide you with the information you need as to the status of the individual on that date.

Overview

The Servicemembers Civil Relief Act (SCRA) (50 USC App. § 3901 et seq, as amended), formerly known as the Soldiers' and Sailors' Civil Relief Act of 1940, provides important safeguards to members on active duty status in the area of financial management, including rental agreements, security deposits, evictions, installment contracts, credit card interest rates, mortgages, civil judicial proceedings, income tax payments, etc. As a financial service provider, this website will help you verify if an individual is eligible for the provisions of SCRA.

This document is intended to be used with the Defense Manpower Data Center (DMDC) SCRA website. The website supports laws and privileges related to active duty Service members and are free to the public.

The website will enable you to input identifying information along with a specific Active Duty Status Date and determine if the individual:

- Is on active duty on the date in question,
- Has left active duty within 367 days of the date in question, or
- Has been notified of call-up to active duty before the date in question.

What You Will Learn

In this guide, you will learn how to:

- ☑ Retrieve information on one individual, in real-time (Single Record Request).
- ☑ Obtain an individual's SCRA Certificate.
- ☑ Create and manage an Account (create an account, reset a forgotten password, a disabled account, etc.) with which you can retrieve information on multiple individuals at once (known as a Multiple Record Request, or "batch" request).

- ☒ Log In (for Single and Multiple Record Requests)
- ☒ Format/Upload 'Request' files for Multiple Record Request(s).
- ☒ Download 'Result' file(s).
- ☒ Download Certificates for Multiple Record Request(s).
- ☒ Troubleshoot errors received while navigating through the site.

DoD Support

The Department of Defense (DoD) strongly supports the enforcement of the Servicemembers Civil Relief Act. Information provided is in support of Title 10 and a part of Title 14 for Army, Navy, Marine Corps, Air Force, NOAA, Public Health and Coast Guard. The data is extracted from DMDC's Defense Eligibility and Enrollment Reporting System (DEERS) database, which is the official source of data regarding eligibility for uniformed services medical care and other benefits and entitlements.

DMDC has issued thousands of "*does not possess any information indicating that the individual is currently on active duty*" responses and has experienced a very small error rate. Nevertheless, if you receive the above response and a family member, friend, or representative asserts that the individual is or was on active duty status for the active duty status date, or is otherwise entitled to the protections of the SCRA, you are strongly encouraged to obtain further verification of the person's status by contacting the associated Service. Service contact information can be found at: <https://scra.dmdc.osd.mil/scra/#/faqs>. If you have evidence the individual is or was on active duty on the active duty status date provided and you fail to obtain this additional Service verification, punitive provisions of the SCRA may be invoked against you. See 50 USC App. § 3931(c).

Consent to Monitor

The SCRA Website, <https://scra.dmdc.osd.mil>, is a U.S. Government (USG) Information System (IS). As such, users must accept the "Consent to Monitor" terms in order to access the website. Upon entering the website, users will be prompted to click on the "Accept" button. If users do not click on the "Accept" button, they will not be able to access the site or its contents.

The terms for the "Consent to Monitor" are as follows:

- The USG routinely intercepts and monitors communications on this IS for purposes including, but not limited to, penetration testing, COMSEC monitoring, network operations and defense, personnel misconduct (PM), law enforcement (LE), and counterintelligence (CI) investigations.
- At any time, the USG may inspect and seize data stored on this IS.
- Communications using, or data stored on, this IS are not private, are subject to routine monitoring, interception, and search, and may be disclosed or used for any USG-authorized purpose.
- This IS includes security measures (e.g., authentication and access controls) to protect USG interests--not for your personal benefit or privacy.

- Notwithstanding the above, using this IS does not constitute consent to PM, LE or CI investigative searching or monitoring of the content of privileged communications, or work product, related to personal representation or services by attorneys, psychotherapists, or clergy, and their assistants. Such communications and work product are private and confidential. See User Agreement for details.

Useful Terminology

Below are some brief definitions of terms you will see as you navigate through the SCRA website:

- **Active Duty Status Date** The active duty status of the individual will be determined for this date. SCRA only reports on active duty dates from September 30, 1985 to present. (Note: SCRA 2.0 referred to this field as the “Date of Interest.”)
- **Certificate** A document used as apparent evidence of the active duty status of the specified individual.
- **DOB** Date of birth
- **EID** Early Identification Date of notification, a notice for Reserve and Guard members to report to active duty at a future date. SCRA only reports on EID dates from October 2003 up to the current date.
- **SSN** Social Security Number
- **Title 10** Title 10 of the United States Code outlines the role of Armed Forces and the legal basis for the roles, missions and organization of each of the Services as well as the United States Department of Defense.
- **Title 14** Title 14 of the United States Code outlines the role of the United States Coast Guard.
- **Title 32** Title 32 of the United States Code outlines the role of the United States National Guard. The National Guard is established under Title 32, but members are frequently activated to support the DoD, in which case their orders are covered under Title 10.



Look for this icon throughout the Guide for more useful tips and/or suggestions

IMPORTANT! – Please watch the “News and Alerts” portion of the Home Page DAILY for the latest information on known website issues as well as information on future and current releases!

Single Record Request

2

Request a Single Record

You can request a Certificate verifying the Active Duty Status for an individual on a specified date

To perform a Single Record Request:

1. Choose “Single Record Request” from the navigation bar on the Home Page.
(<https://scra.dmdc.osd.mil>).

Note: if this is your first time accessing the website and you receive a Security Certificate error message, see: Q1 in the [Troubleshooting and FAQs](#) section of this Guide.



Figure 1. Select Single Request/Home

2. Click “Single Record Request” tab.
3. Log in to your account.

Note: For instructions on how to log in to an account go to [Log in](#). If this is your first time requesting single or multiple records, you must [create a new account](#). If you’ve forgotten your password, please refer to [Forgot Your Password](#) for instructions on how to reset your password.

4. Once the SCRA Single Record Request screen appears (see Figure 2), complete the [required fields](#). If the individual’s SSN is unavailable, you can also obtain information by providing a Last Name and Date of Birth.

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7. If prompted by reCAPTCHA, select each image that contains the object described in the text. Click "VERIFY" when you have selected all images that apply. For an audio challenge, click on the headphone icon. Next, press "PLAY" and enter the words you hear. Click "VERIFY" when you have completed entering the words.
Note: If there are no squares that match the description, click the "SKIP" button. If you cannot view the image, click on the refresh icon (circling arrows) for a new visual challenge.
8. The website will process the request to search for the individual's active duty status (if any) based on the information provided.
Note: A search typically takes 10-15 seconds, but can be over 30 seconds. See the [Troubleshooting and FAQs](#) section of this Guide if you encounter any errors/issues.
9. Once the request has been processed, the website will provide a SCRA Certificate reporting the active duty status for the individual, in PDF format. See [View/Print the Certificate](#) for additional information about the Certificate provided.

To clear the Single Request screen:

1. On the SCRA Single Record Request screen, click Clear.
2. All fields on the screen will be cleared of previously entered text.

Single Record Request Required Field Descriptions

- **SSN**
The Social Security Number must be entered without spaces or dashes (e.g., 00022333). It must be nine numbers long and include leading zeros, if necessary.
- **Repeat SSN**
The Repeat Social Security Number and Social Security Number must match.
- **Birth Date**
The Birth Date must be numeric in the following format: YYYYMMDD. If a date of birth is not used you may substitute 8 blank spaces. No dates before 19000101 and no future dates are allowed.
- **Last Name**
This is the last name of the person of interest. Entries in this field must be alphabetic (A-Z or a-z). No special characters, other than the blank space " ", the dash "-", and the apostrophe "'", are allowed. Do not include suffixes (Jr., Sr., III, etc.).
- **First Name**
This is the first name of the person of interest. Entries in this field must be alphabetic (A-Z or a-z). No special characters, other than the blank space " ", the dash "-", and the apostrophe "'", are allowed.
- **Middle Name**
This is the middle name of the person of interest. Entries in this field must be alphabetic (A-Z or a-z). No special characters, other than the blank space " ", the dash "-", and the apostrophe "'", are allowed.
- **Active Duty Status Date**

The date queried to determine the status of the individual – to check whether or not the individual was actively serving, received a notice to serve, or was serving 367 days prior to the given date, or not. The date can be the loan origination, foreclosure, etc. It must be numeric in the following date format: YYYYMMDD. The date must be on or after 19850930 and cannot be a future date. A future date is equal to the current date plus 1 day.

View/Print the Certificate for a Single Record Request


Certificates are provided as a result of a Single Request inquiry. Depending on the number of records returned from the search, one of the following Certificates will be provided:

1. [Status Report \(single match found\)](#)
2. [Status Report \(multiple matches found\)](#)

The Status Report (single match found) will include the name provided on the Single Request Screen, the Active Duty Status Date, the Active Duty Start Date, the Active Duty End Date, the Active Duty Status, and the Service Component for each of the following conditions:

- On Active Duty On Active Duty Status Date
- Left Active Duty Within 367 Days of the Active Duty Status Date
- The Member or His/Her Unit Was Notified of a Future Call-Up To Active Duty on the Active Duty Status Date

Example:

 To obtain certificates on multiple individuals at one time, you must use Multiple Record Request.




Status Report Pursuant to Servicemembers Civil Relief Act

SSN: XXX-XX-6789
 Birth Date: Jan-XX-2000
 Last Name: SMITH
 First Name: JOHN
 Middle Name: DOE
 Status As Of: Jul-21-2017
 Certificate ID: FNEXPVUADPQN69

On Active Duty On Active Duty Status Date			
Active Duty Start Date	Active Duty End Date	Status	Service Component
NA	NA	No	NA
This response reflects the individual's active duty status based on the Active Duty Status Date.			

Left Active Duty Within 367 Days of Active Duty Status Date			
Active Duty Start Date	Active Duty End Date	Status	Service Component
NA	NA	No	NA
This response reflects where the individual left active duty status within 367 days preceding the Active Duty Status Date.			

The Member or Member Unit Was Notified of a Future Call-Up to Active Duty on Active Duty Status Date			
Order Notification Start Date	Order Notification End Date	Status	Service Component
NA	NA	No	NA
This response reflects whether the individual's member unit was notified to report for active duty.			

 To improve the quality of the match results, DMDC recommends that you enter as much known information as possible.

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Figure 3. Status Report (Single Match)

The Status Report (multiple matches found) is provided for informational purposes only and will include the Name and Active Duty Status Date based on the information provided; however since multiple records were found, DMDC cannot definitively identify the individual and therefore cannot release any information.

Example:

Department of Defense Manpower Data Center Results as of: Aug 08 2017 03:17:25 PM
DCMA # 0

 **Status Report**
Pursuant to Servicemembers Civil Relief Act

SSN: XXX-XX-XXXX
Birth Date: Mar-XX-1965
Last Name: LIGHTYEAR
First Name:
Middle Name:
Status As Of: Aug-08-2017

On Active Duty On Active Duty Status Date			
Active Duty Start Date	Active Duty End Date	Status	Service (Department)
BASED ON THE PERSONAL INFORMATION YOU PROVIDED, THERE ARE MULTIPLE RECORDS. ACCORDINGLY, DMDC CANNOT DEFINITELY IDENTIFY THE INDIVIDUAL AND IS UNABLE TO RELEASE ANY INFORMATION. WE STRONGLY RECOMMEND IN THIS CASE THAT YOU CALL THE SERVICE SCRIP FOR ADDITIONAL VERIFICATION. A URL FOR THE SERVICE SCRIP PORTALS OF CONTACT IS PROVIDED BELOW.			

HOWEVER, WITHOUT A SOCIAL SECURITY NUMBER, THE DEPARTMENT OF DEFENSE MANPOWER DATA CENTER CANNOT AUTHORITATIVELY ASSERT THAT THIS IS THE SAME INDIVIDUAL THAT YOUR QUERY REFERS TO. NAME AND DATE OF BIRTH ALONE DO NOT UNIQUELY IDENTIFY AN INDIVIDUAL.

Figure 4. Status Report (Multiple Match)



WARNING

If you receive a response indicating DMDC *"does not possess any information indicating that the individual is currently on active duty"*, yet you have evidence the individual is or was on active duty for the Active Duty Status Date, and you fail to obtain additional Service verification, punitive provisions of the Servicemembers Civil Relief Act may be invoked against you. See 50 USC App. § 3931(c).

To print the Single Record Request Certificate:

1. From your browser menu bar choose *File > Print*.
2. Select the destination printer.
3. Click Print.

Multiple Record Requests

3

Request Multiple Records

You can request information on multiple individuals for current and historical Active Duty Status Dates.

To request information for multiple individuals:

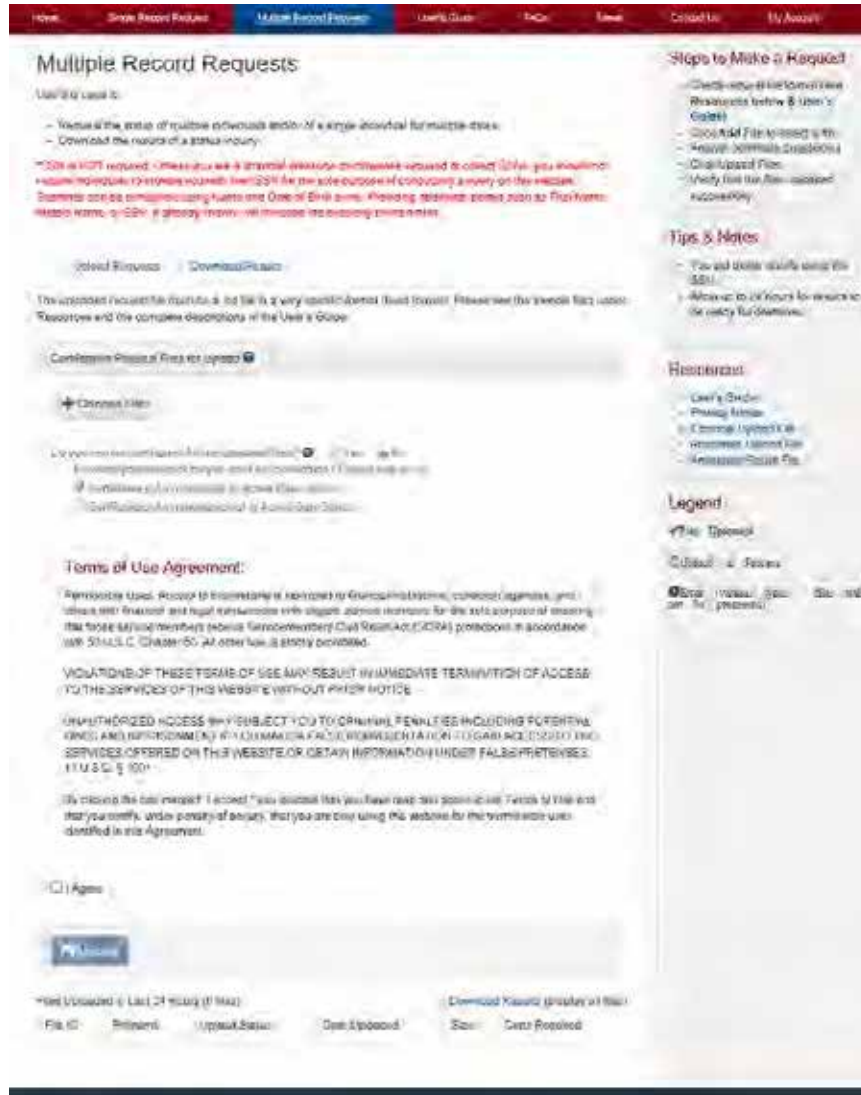
1. Choose “Multiple Record Request” from the navigation bar on the Home Page (<https://scra.dmdc.osd.mil>).


Note: If this is your first time accessing the website and you receive a Security Certificate error message, please see: Q1 in the [Troubleshooting and FAQs](#) section of this Guide.



Figure 5. Select a Multiple Record Request

2. Click “Multiple Record Request” tab.
3. Log in to your account
Note: For instructions on how to log in to an account go to [Log in](#). If this is your first time requesting single or multiple records, you must [create a new account](#). If you’ve forgotten your password, please refer to [Forgot Your Password](#) for instructions on how to reset your password.
4. Once the SCRA Multiple Record Request – Upload File(s) screen appears you are presented with the ability to upload request files and view the File Status of any previously uploaded files (if applicable).
Please refer to the [Download Results](#) section of this Guide for more information.



 *Certificates are not provided by default on individuals when requesting multiple records at a time.*

If you require a certificate for reference, you must select the option to generate certificates.

Figure 6. Upload File for Multiple Record Request

5. Click “Choose Files” to add a new file to the upload list.
Note: If this is your first time at this website, it is imperative that you review [Formatting the Request File](#) prior to uploading a file.
6. A window displays allowing you to browse your computer’s directory and select the request file.
7. Once you locate and select the file, the filename will appear in the “Files for Upload” list. Please review [Guidelines for File Names](#) prior to uploading file.
8. If Certificates are required for the uploaded files, click “Yes” to the prompt to have a Certificate file generated.
Note: The default is set to “No”, meaning the Certificate file is not required and will not be created.



For each account, a maximum of 50 Request files can be uploaded within a 24 hour period.

Each Request file cannot contain more 250,000 records.

Figure 7. File Selected for Upload

9. If you select “Yes”, you are prompted to select the population you want the certificates for – individuals on active duty service and/or individuals not on active duty service.
10. Click the box marked “I Accept” to indicate that you have read and agree to the Terms of Use.
Note: You must agree to the Terms of Use in order run a Multiple Record search.
11. After making your certificate selection and agreeing to the Terms of Use, click “Upload”.
12. The system will validate your file to ensure it is in a useable format. If it is, the file will be uploaded. If it is not in the correct format, you will be notified immediately. A file will not be processed unless it is validated.

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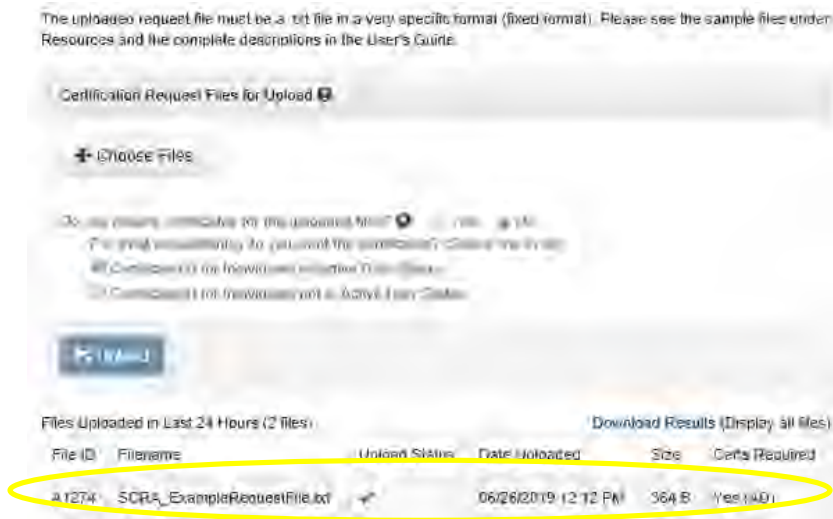


Figure 8. Files Uploaded

- Return to the website in 24 hours to check the status of the file under the "File Status" portion of our screen. The Results file and the Certificate file will not necessarily be ready to download at the same time.

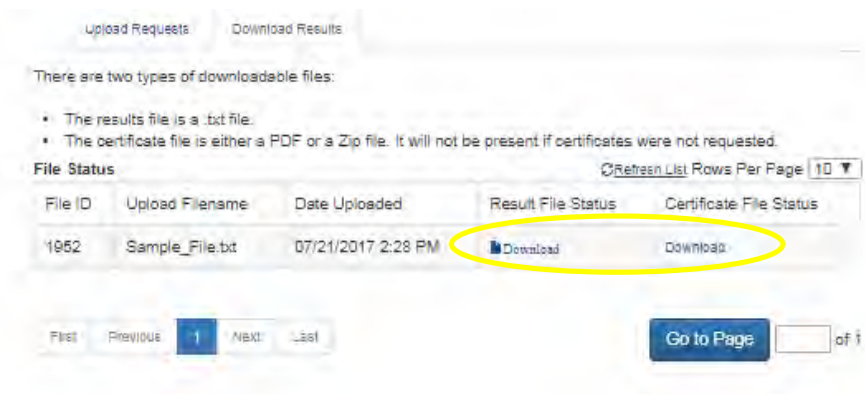


Figure 9. Files Complete, Ready for Download

- If the Results file has completed processing, the Result/Certificate File Status field, on the Download Results tab, will display the Results Ready Icon (📄) and a *Download* link.
- Click the "*Download*" link. A window displays and you can browse your computer's directories and select where to save the Results file.
- If you selected Yes, to the "Do you require certificates..." option, the Certificate File Status field will display the certificate status. If the certificate file has finished processing, the status field will display the Certificate Ready Icon (📄) and the *Download* link.

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17. Selecting the Certificate file “Download” button will display a dialog box prompting you to select ZIP or PDF download format. Make a selection.

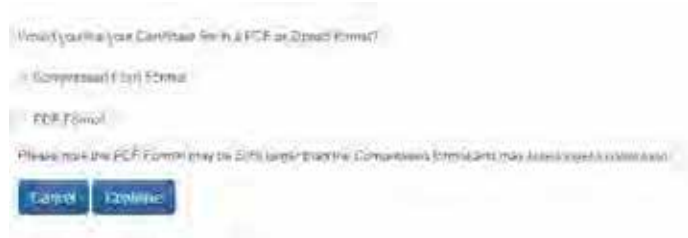


Figure 10. Certificate Format

18. Click Submit. A window displays and you can browse your computer's directory and select where to save the Certificate file.

See the [Troubleshooting and FAQs](#) section of this Guide if you encounter any errors/issues.

File Status

1. *All records in error*
File processed but no records to process further as all records errored out.
2. *File Uploaded*
File uploaded with at least one record to process in batch.
3. *Processing*
Requests being processed.
4. *Complete*
Requests processing complete.
5. *Download Complete*
You have downloaded the result file. No error encountered during download.
6. *Upload stopped due to system error*
Error encountered in the web application during upload. Please try your upload again.
7. *Download stopped due to system error*
Error encountered in the web application during download. Please try your download again.
8. *System error*
Please upload your file again, an error occurred during processing.
9. *File size too big*
File exceeds the maximum size allowed. Please ensure your file is no more than 250,000 records.
10. *Exceeded limit of 50 Files within 24 hours*
File exceeds the limit of 50 files submitted within a 24 hour period.
11. *Upload in process*
The file is in the process of being uploaded.

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12. *No Rows Uploaded*

No records from the file were uploaded. Please ensure your file conforms to the file format in this document.

13. *Only Non-Affiliated Records Uploaded*

All records in the file were Non-Affiliated Records.

14. *Download Period Expired*

The File was uploaded more than 15 days in the past and the download period has expired. The records are no longer available. Please resubmit your file if you need these results.

15. *Certificates Requested*

User has requested certificate generation.

16. *Certificates In-Progress*

The Certificate File is being generated.

17. *Certificates Completed*

The Certificate file has completed.

18. *Certificates Failed*

The Certificate file generation failed.

The SCRA Multiple Record Request – Upload File(s) tab will display the File ID, File Name, Upload Status, Upload Date, Size, and Certificate Required. Download Request(s) tab will display File ID, Upload Filename, Upload Date, Results File Status, and Certificate File Status for each file that has been uploaded. The Upload Date displays the date and time the file was uploaded. Fifteen days after the upload date, the file expires and is no longer available for download. Thirty days after the download date, the historical record of this file is no longer visible.

Note: If you're returning to the website after an extended period of time (i.e., the minimum 24 hour processing time) you must first [Log In](#) before you can check the status of a file.

Guidelines for File Names

Included are the guidelines for creating file names for up load of Multiple Record requests:

- Allowed:
 1. Upper and lower letters: a-z
 2. Numbers 0-9
 3. The underscore character (_)
- Not Allowed:
 1. Spaces
 2. Additional periods before the extension
 3. Any special symbols or characters not mentioned above
- Files Must end in .txt
- Length of name (not counting extension) is a maximum of 30 characters

Formatting the Request File

A Request file contains information on multiple (up to 250,000) individuals and can be used to retrieve all associated status information at one time. The Request file must be formatted correctly to allow the DMDC database to read and process the information in it (see [Request File Example](#) for a visual reference).

Criteria for Matching an Individual

While *every field* must be accounted for, the three fields that are most important for validating a match are:

- Social Security Number (SSN)
- Last Name
- Active Duty Status Date

Note: Entries that are not valid will be represented in the Result file with an [Error](#) code.

File Information/Limitations

The Request file must be provided as follows:

- The file format must be 'fixed width' (See [Request File Layout/Format](#) table for Positions/Lengths)
- The file can contain numbers (0-9)¹, letters (A-Z or a-z), and spaces ().² The use of any other characters not previously listed will result in an ["Error Uploading File"](#) message.
- The file must be saved as a .txt (text only) file type
- The file must be UTF-8 encoded flat text

¹ Name fields (Last, First, and Middle) are exceptions as they cannot contain numbers (0-9) but can include dashes (-) and apostrophes (').

² The Customer Record ID field can also include dashes (-) and apostrophes (').

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- The file cannot contain more than 250,000 records. The maximum number of records in a file will be enforced; this number is displayed on the SCRA Batch Request Upload File screen and may change for performance reasons.
- No more than 50 files can be uploaded in a 24 hour period

Request File Example

The diagram illustrates the layout of a request file with the following fields and examples:

Field	Character Range	Example
Social Security Number (SSN)	Chars 1 - 9	023456789
Date of Birth	Chars 10 - 17	012345678
Last Name	Chars 18 - 43	Jones
First Name	Chars 44 - 63	Jonathan
Customer Record ID	Chars 64 - 91	20065603
Active Duty Status Date	Chars 92 - 99	20060301
Middle Name	Chars 100 - 119	Michael

Request File Layout/Format

Field Name	Length	Type	Field Name	Format
1-9	9	Numeric	Social Security Number (SSN)	Left Justified
10-17	8	Numeric	Date of Birth	Left Justified, YYYYMMDD
18-43	26	Alphabetic plus Dash (-) and Apostrophe (')	Last Name	Left Justified
44-63	20	Alphabetic plus Dash (-) and Apostrophe (')	First Name	Left Justified
64-91	28	Alphanumeric plus Dash (-) and Apostrophe (')	Customer Record ID	Left Justified
92-99	8	Numeric	Active Duty Status Date	Left Justified, YYYYMMDD
100-119	20	Alphabetic plus Dash (-) and Apostrophe (')	Middle Name	Left Justified

Field Descriptions

- **SSN**
The Social Security Number must be entered without spaces or dashes (e.g., 00022333). It must be nine numbers long and include leading zeros, if necessary.
- **Date of Birth**
The Date of Birth must be numeric in the following format: YYYYMMDD. No spaces, dashes, or slashes in the date of birth. If a date of birth is not used you may substitute 8 blank spaces. No dates before 19000101 and no future dates are allowed

- **Last Name**
This is the last name of the person of interest. Entries in this field must be alphabetic (A-Z or a-z). No special characters, other than the blank space " ", the dash "-", and the apostrophe "'", are allowed. Do not include suffixes (Jr., Sr., III, etc.).
- **First Name**
This is the first name of the person of interest. Entries in this field must be alphabetic (A-Z or a-z). No special characters, other than the blank space " ", the dash "-", and the apostrophe "'", are allowed.
- **Customer Record ID**
This is an optional field for your personal use. It could be a loan ID or any other identifier you would like to link with the record. Entries in this field must be alphanumeric (A-Z, a-z, 0-9). No special characters, other than the blank space " ", the dash "-", and the apostrophe "'", are allowed.
- **Active Duty Status Date**
The date queried to determine the status of the individual – to check whether or not the individual was actively serving, received a notice to serve, or was serving 367 days prior to the given date, or not. The date can be the loan origination, foreclosure, etc. It must be numeric in the following date format: YYYYMMDD. The date must be on or after 19850930 and cannot be a future date. A future date is equal to the current date plus 1 day.
- **Middle Name**
This is the middle name of the person of interest. Entries in this field must be alphabetic (A-Z or a-z). No special characters, other than the blank space " ", the dash "-", and the apostrophe "'", are allowed.

Download Results

Once a Request file has been successfully completed, a Result file will be available to download to your computer. The result file contains the SCRA version number in the prefix of the filename, e.g., `scra4_0_myfilename.txt`. When upgrades to SCRA occur, this allows you to identify the version of SCRA that processed the file.

Note: If you have left the SCRA website, you must [Log In](#) to obtain Result file(s).

To download a Result file:

1. Once logged in, the SCRA Multiple Record Request – Download Results(s) screen provides a list of files available for downloading.



Responses to your inquiries are based on the information provided to DMDC.

Providing erroneous or improperly formatted information will not provide you with the information you seek.

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Welcome to the Official
Servicemembers Civil Relief Act (SCRA) Website

Home Single Record Request Multiple Record Request User's Guide FAQs News Contact Us My Account

Multiple Record Requests

Use this page to:

- Request the status of multiple individuals and/or of a single individual for multiple dates.
- Download the results of a status inquiry.

Upload Requests Download Results

There are two types of downloadable files:

- The results file is a .txt file.
- The certificate file is either a PDF or a .Zip file. It will not be present if certificates were not requested.

File Status [Refresh List Rows Per Page 10](#)

File ID	Upload Filename	Date Uploaded	Result File Status	Certificate File Status
A1275	SCRA_ExampleRequestFile.txt	06/26/2019 12:24 PM	Download	Download
A1274	SCRA_ExampleRequestFile.txt	06/26/2019 12:12 PM	Download	Download
A1273	SCRA_ExampleRequestFile.txt	06/26/2019 12:10 PM	Download	N/A

First Previous 1 Next Last [Go To Page](#)

Steps to Retrieve Results

- Locate correct upload file in the table. If output is ready, click the Download link.
- Open and/or save results.
- Interpret the results file.
 - For examples, see Resources below.
 - For complete descriptions, see the User's Guide.

Tips & Notes

- Allow up to 24 hours for results to be ready for download.
- Results are available for only a limited time:
 - 15 days (Results files)
 - 3 days (Certificate files)

Resources

- User's Guide
- Privacy Notice
- Example Upload File
- Annotated Upload File
- Annotated Result File
- Download Adobe Reader

Legend

- ✓ Upload/Download complete
- 📄 Results ready
- 📄 Certificate ready
- 🔄 Processing
- ⏳ Timing (various types)
- 📄 Error (various types - files will not be generated)
- N/A Certificates not requested

Privacy Notice No Fear Act Notice USA Gov SCRA 5.0

Figure 11. File Status

2. Locate the desired Result file in the list and click Download in the Results File Status column associated with that file.

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3. A window will appear so you can navigate to the location on your computer where you want to save the file.

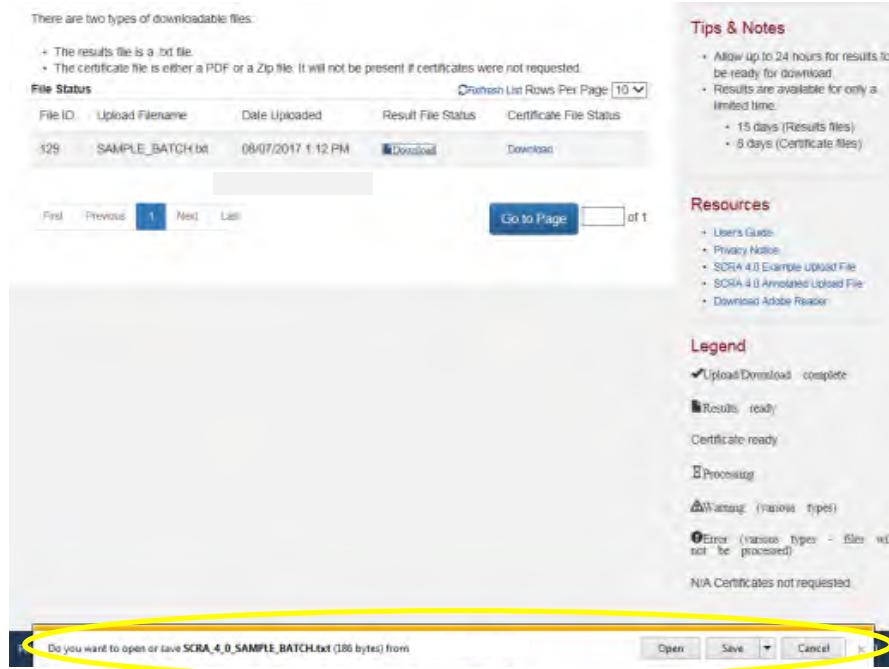


Figure 12. Open or Save File

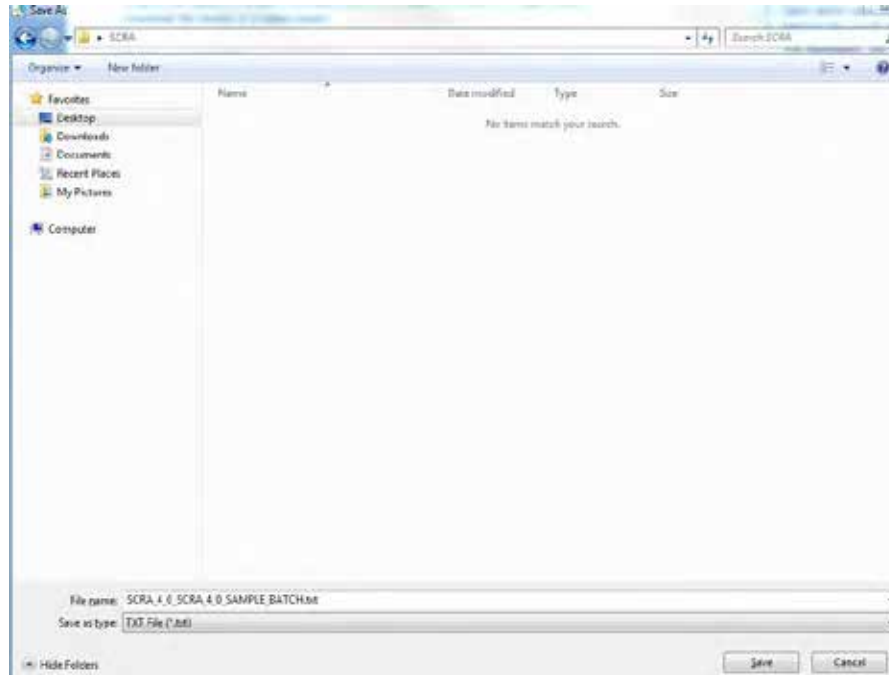


Figure 13. Save File

4. After saving the file, you are returned to the SCRA Multiple Record Request – Upload File(s) screen.

Interpreting the Result File

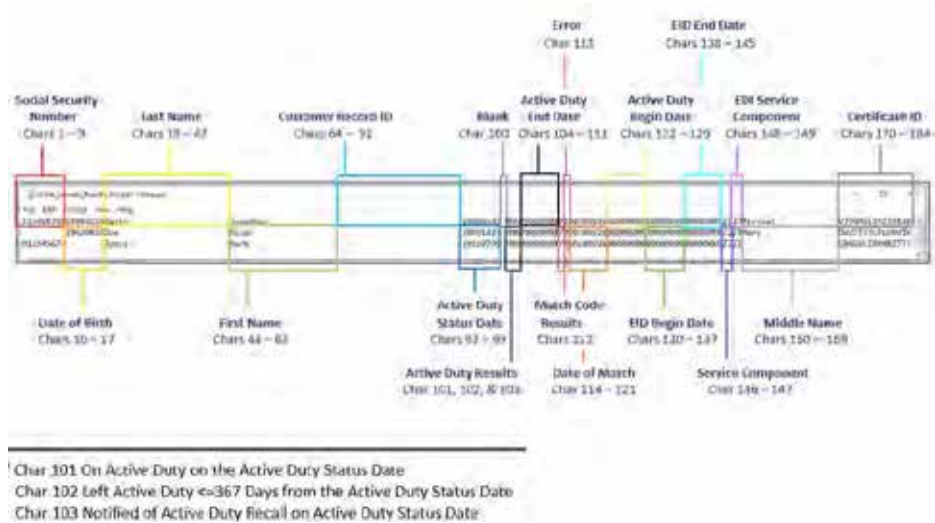
A Result file includes the original information (from your Request file) and additional information added to the end; these characters are the results for each individual.

File Information

Like your Request file, each Result file will:

- Be in a 'fixed width' format
- Result File Layout/Format table below

Result File Example



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Result File Layout/Format

Position	Length	Type	Field Name	Format
1-9	9	Numeric	Social Security Number (SSN)	Left Justified
10-17	8	Numeric	Date of Birth	Left Justified; YYYYMMDD
18-43	26	Alphabetic plus Dash (-) and Apostrophe (')	Last Name	Left Justified
44-63	20	Alphabetic plus Dash (-) and Apostrophe (')	First Name	Left Justified
64-91	28	Alphanumeric plus Dash (-) and Apostrophe (')	Customer Record ID	Left Justified
92-99	8	Numeric	Active Duty Status Date	Left Justified; YYYYMMDD
100	1	Alphanumeric	Blank	Left Justified
101	1	Alphanumeric	On Active Duty on the Active Duty Status Date	Left Justified
102	1	Alphanumeric	Left Active Duty <=367 Days from the Active Duty Status Date	Left Justified
103	1	Alphanumeric	Notified of Active Duty Recall on Active Duty Status Date	Left Justified
104-111	8	Numeric	Active Duty End Date	Left Justified
112	1	Numeric	Match Result Code	Left Justified
113	1	Numeric	Error	Left Justified
114-121	8	Numeric	Date of Match	Left Justified; YYYYMMDD
122-129	8	Numeric	Active Duty Begin Date	Left Justified; YYYYMMDD
130-137	8	Numeric	EID Begin Date	Left Justified; YYYYMMDD
138-145	8	Numeric	EID End Date	Left Justified; YYYYMMDD
146-147	2	Alphanumeric	Service Component	Left Justified
148-149	2	Alphanumeric	EID Service Component	Left Justified
150-169	20	Alphabetic plus Dash (-) and Apostrophe (')	Middle Name	Left Justified
170-184	15	Alphanumeric	Certificate ID	Left Justified

Field Name Descriptions

For every individual in the Request file, their personal information and the Active Duty Status Date is returned for reference. Match results are added to the end of each record.

- **SSN**
The Social Security Number of the person of interest as provided in the Request file.
- **Date of Birth**
The Date of Birth must be numeric in the following format: YYYYMMDD. No spaces, dashes, or slashes in the date of birth. If a date of birth is not used you may substitute 8 blank spaces. No dates before 19000101 and no future dates are allowed
- **Last Name**
The last name of the person of interest as provided in the Request file.
- **First Name**
The first name of the person of interest as provided in the Request file.

- **Customer Record ID**

This is an optional field, and is the same value as provided in the Request file, if any.

- **Active Duty Status Date**

This is the Active Duty Status As Of date as provided in the Request file.

- **Active Duty on Active Duty Status Date**

This indicates if the person was on active duty on the Active Duty Status Date. The values returned describe the following (See [Active Duty Definition](#) below for further information on what qualifies as Active Duty):

- **Y:** Yes, On Active Duty on the Active Duty Status Date and that period of Active Duty has ended
- **X:** Yes, On Active Duty on the Active Duty Status Date and is still on Active Duty
- **N:** No, Not on Active Duty on the Active Duty Status Date (see [Left Active Duty <=367 Days from the Active Duty Status Date](#) for additional information in this file)
- **Z:** There was an issue with the data input. (See [Error](#) section for further information)



Active Duty Definition:

Active Duty status, as reported in this file, is defined in accordance with 10 USC § 101(d) (1). Prior to 2007, DMDC only received information on active duty periods of more than 30 consecutive days. In the case of a member of the National Guard, Active Duty includes service under a call to active service authorized by the President or the Secretary of Defense under 32 USC § 502(f) for purposes of responding to a national emergency declared by the President and supported by Federal funds. All Active Guard Reserve (AGR) members must be assigned against an authorized mobilization position in the unit they support. This includes Navy Training and Administration of the Reserves (TARs), Marine Corps Active Reserve (ARs), and Coast Guard Reserve Program Administrator (RPAs).

Active Duty status also applies to a Uniformed Service member who is an active duty commissioned officer of the U.S. Public Health Service or the National Oceanic and Atmospheric Administration (NOAA Commissioned Corps).

Coverage under the SCRA is broader in some cases and includes some categories of persons on active duty for purposes of the SCRA who would not be reported as on Active Duty in this file.

Many times orders are amended to extend the period of active duty, which would extend SCRA protections. Persons seeking to rely on the data in this file should check to make sure the orders on which SCRA protections are based have not been amended to extend the inclusive dates of service. Furthermore, some protections of the SCRA may extend to persons who have received orders to report for active duty or to be inducted, but who have not actually begun active duty or actually reported for induction. The Last Date on Active Duty entry is important because a number of protections of the SCRA extend beyond the last dates of active duty.

■ **Left Active Duty <=367 Days from the Active Duty Status Date**

This indicates if the person left active duty within 367 days prior to the Active Duty Status Date, and is only applicable if the [On Active Duty on Active Duty Status Date](#) field is 'N'.

- **Y:** Yes
This person left active duty within 367 days prior to the Active Duty Status Date.
- **N:** No
This person did not leave active duty within 367 days prior to the Active Duty Status Date.
- **Z:** Not Applicable or Error
There was an issue with the data input. (See [Error](#) section for further information)

■ **Notified of a Future Call-Up to Active Duty on the Active Duty Status Date**

This indicates the Active Duty Status Date is within the uniformed service member's notification period to report for active duty. The values returned describe the following:

- **Y:** Yes
Active Duty Status Date falls within the future call-up to Active Duty period.
- **N:** No
Active Duty Status Date does not fall within the future call-up to Active Duty period.
- **Z:** Not Applicable or Error
There was an issue with the data input. (See [Error](#) section for further information)

■ **Active Duty End Date**

The Active Duty End Date will be populated if the Service Member left active duty under two conditions.

1. The individual was on active duty on the Active Duty Status Date, and that active duty period has subsequently ended.
2. The individual was not on active duty on the Active Duty Status Date, but left active duty within 367 days prior to the Active Duty Status Date.

If there is no Active Duty End Date, it will be returned as '00000000'. When the individual was on Active Duty on the Active Duty Status Date and that period of Active Duty has ended, the Active Duty End Date (positions 104-111) will be populated as formatted in the [Result File Layout/Format](#) table above.

■ **Match Result Code**

If SCRA was able to match the individual's information from the Request file against a period of active duty in the DMDC database, the result of the match will be indicated by a Match Result Code value. The values are as follows:

- **1:** Match - SSN, Date of Birth, Last Name, and First Name
There was a record match on SSN, Last Name, First Name, and Date of Birth.

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- **2: Match - SSN, Date of Birth, and Last Name**

There was a record match on SSN, Last Name, and Date of Birth.

If you obtain additional information about the person (e.g., First Name), we encourage you to submit your request again to improve the quality of this match.



- **3: Match - SSN, Last Name, and First Name**

There was a record match on SSN, Last Name, and First Name.

If you obtain additional information about the person (e.g., a Date of Birth), we encourage you to submit your request again to improve the quality of this match.



- **4: Match – SSN and Last Name**

There was a record match on SSN and Last Name.

If you obtain additional information about the person (e.g., a First Name and a Date of Birth), we encourage you to submit your request again to improve the quality of this match.



- **6: Last Name and Date of Birth**

There was a record match on Last Name and Date of Birth.

- **7: No Match**

According to our records, the information you provided failed to match to any Service member's period of active duty in our database. This could be because the SSN and Name you provided do not match to any Service member in our database, or the Last Name and Date of Birth you provided do not match to any Service member in our database, or because the individual for whom you searched was not on active duty on the Active Duty Status Date you supplied.

- **9: Insufficient information to perform a match**

There was not enough information to attempt a match. Check the Error field for more information. Ensure all required fields are populated.

Note: Match Result Code 5 is not used.

■ Error

This field is used to indicate possible errors. The values are as follows:

- **1: Missing required field**

A required field is missing. See [Criteria for Matching an Individual](#) for further information.

- **2: Invalid SSN**

The social security number given is invalid. It must be a 9 digits and alphanumeric. There cannot be dashes or spaces. Letters (e.g., alpha characters) are invalid. Leading zeros are required.

- **3: Invalid date**

The date must have the following format, YYYYMMDD. The Active Duty Status Date must be on or after 19850930 and none of the dates can be in the future. There cannot be dashes (-), slashes (/), periods (.), or spaces.

- **4: Multiple Records**

DMDC cannot definitively identify the individual because multiple records were found based on the information you provided. More information may be required to confirm the correct record.

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- **9:** No Errors
No errors were found.
- **B:** Invalid date of birth
The date of birth must have the following format, YYYYMMDD.
- **D:** Invalid first name
The first name is an optional field for the customer's use. This error may occur if the first name does not appear in the file in the correct location.
- **E:** Invalid customer ID
The customer ID is an optional field for the customer's use. It could be a loan ID or any other identifier the customer would like to link with the record. This error may occur if the first name does not appear in the file in the correct location.
- **G:** Invalid middle name
The middle name is an optional field for the customer's use. This error may occur if the middle name does not appear in the file in the correct location.

■ **Date of Match**

This field is used to record the date that DMDC completed the SCRA match. It is effectively the “as of” date of the match. The current active duty status of Service members can and does change daily, so it’s important to record when the SCRA match was completed.

■ **Active Duty Begin Date**

The date the service member entered active duty

■ **EID Begin Date**

The start date of the order notification

■ **EID End Date**

The end date of the order notification

■ **Service Component**

Used by the DoD to classify service positions. The values are as follows:

- **1:** AG
Army National Guard
- **2:** AJ
Army Cadet
- **3:** AR
Army Active Duty
- **4:** AV
Army Reserve
- **5:** AZ
Army affiliate
- **6:** CJ
Coast Guard Cadet
- **7:** CR
Coast Guard Active Duty
- **8:** CV
Coast Guard Reserve
- **9:** CZ
Coast Guard affiliate

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- **10:** FG
Air National Guard
- **11:** FJ
Air Force Cadet
- **12:** FR
Air Force Active Duty
- **13:** FV
Air Force Reserve
- **14:** HR
Public Health Services
- **15:** MR
Marines Corps Active Duty
- **16:** MV
Marine Corps Reserve
- **17:** MZ
Marine Corps affiliate
- **18:** NJ
Navy Cadet
- **19:** NR
Navy Active Duty
- **20:** NV
Navy Reserve
- **21:** OR
Nat'l Oceanic & Atmospheric Administration Active
- **22:** ZZ
Other

■ **EID Service Component**

Used by the DoD to classify service positions

- **1:** AG
Army National Guard
- **2:** AJ
Army Cadet
- **3:** AR
Army Active Duty
- **4:** AV
Army Reserve
- **5:** AZ
Army affiliate
- **6:** CJ
Coast Guard Cadet
- **7:** CR
Coast Guard Active Duty
- **8:** CV
Coast Guard Reserve
- **9:** CZ
Coast Guard affiliate

- **10: FG**
Air National Guard
- **11: FJ**
Air Force Cadet
- **12: FR**
Air Force Active Duty
- **13: FV**
Air Force Reserve
- **14: HR**
Public Health Services
- **15: MR**
Marines Corps Active Duty
- **16: MV**
Marine Corps Reserve
- **17: MZ**
Marine Corps affiliate
- **18: NJ**
Navy Cadet
- **19: NR**
Navy Active Duty
- **20: NV**
Navy Reserve
- **21: OR**
Nat'l Oceanic & Atmospheric Administration Active
- **22: ZZ**
Other

■ **Middle Name**

The middle name of the person of interest as provided in the Request file.

■ **Certificate ID**

The certificate identifier used to locate a certificate in the certificate file. This can also be blank if you did not choose to create a certificate file.



Responses to your inquiries are based on the information provided to DMDC.

Providing erroneous or improperly formatted information will not provide you with the information you seek.

Download Certificates

Once a Certificate file has been successfully completed, a certificate file will be available to download to your computer. The certificate file contains the SCRA version number in the prefix of the filename, e.g., `scra3_0_myfilename.txt`. When upgrades to SCRA occur, this allows you to identify the version of SCRA that processed the file.

Note: If you have closed your browser, you must [Log In](#) again to obtain Certificate file(s).

To download a Certificate file:

1. Once logged in, the SCRA Multiple Record Request – Download Request(s) screen provides a list of files available for downloading.

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The screenshot displays the 'Multiple Record Requests' page on the SCRA website. The header includes the website title and navigation links. The main content area shows instructions for using the page, including requesting status and downloading results. A table lists uploaded request files with columns for File ID, Upload Filename, Date Uploaded, Result File Status, and Certificate File Status. The table contains three rows of data. To the right, there are sections for 'Steps to Retrieve Results', 'Tips & Notes', 'Resources', and a 'Legend' explaining file status icons.

File ID	Upload Filename	Date Uploaded	Result File Status	Certificate File Status
A402T	SCRA_RequestFile_batch.txt	05/14/2019 9:35 PM	Download	Download
A405S	SCRA_RequestFile_batch.txt	05/14/2019 9:26 PM	Download	N/A
A409S	SCRA_RequestFile_batch.txt	05/14/2019 9:22 PM	Download	N/A

Figure 14. Certificate File

2. Locate the desired Certificate file in the list and click Download in the Results File Status column associated with that file.

The screenshot shows a window titled 'Would you like your Certificate with a PDF or Zip File?' with two radio button options: 'Compressed File (Zip)' and 'PDF Format'. The 'PDF Format' option is selected. Below the options, a note states: 'Please note the PDF Format may be 20M larger than the Compressed format and may take longer to download.' At the bottom are 'Cancel' and 'Continue' buttons.

Figure 15. Certificate File

3. A window will appear for you to choose the format type, compressed (ZIP) or PDF format. Note the approximate size of the file is displayed. Click submit to download the file or Cancel to return to the Upload File(s) screen.

4. A window will appear and you can navigate to the location on your computer where you want to save the file.
5. After saving the file, you are returned to the SCRA Multiple Record Request – Upload File(s) screen.

View/Print the Certificates for a Multiple Record Request

Certificates are provided as a result of a Multiple Record Request inquiry, if they are requested. Depending on the number of records returned from the search, one of the following Certificates will be provided for each individual:

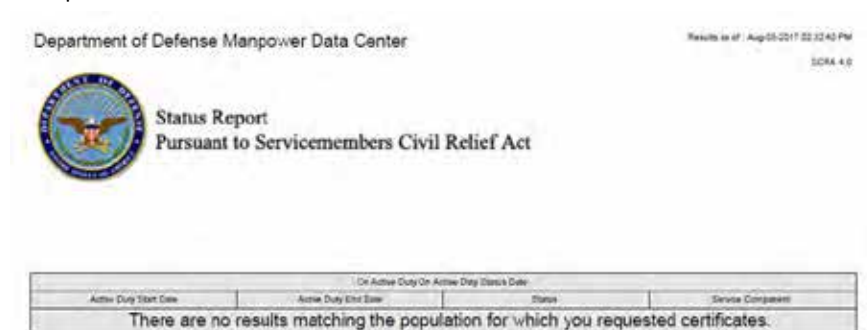
1. [Status Report \(single match found\)](#)
2. [Status Report \(multiple matches found\)](#)

Note: These certificates are the same format as the Single Record Request inquiry, see the sections linked above for samples of those certificates.

If you select the option for receiving only all positive matches OR only all negative matches, and there are no matches in your file, you will receive a Status Report (No Matches Found) certificate. The Status Report (No Matches Found) is provided for informational purposes only and will not include any Names or Active Duty Status Dates that were provided in the file.

Example:

To obtain certificates on multiple individuals at one time, you must use Multiple Record Request.



Department of Defense Manpower Data Center

Results in 07 / Aug 08 2017 02:32:40 PM
SCRA 4.0

Status Report
Pursuant to Servicemembers Civil Relief Act

Active Duty Start Date	Active Duty End Date	Status	Service Component
There are no results matching the population for which you requested certificates.			

Figure 16. Status Report (No Matches Found)



WARNING

If you receive a response indicating DMDC "does not possess any information indicating that the individual is currently on active duty", yet you have evidence the individual is or was on active duty for the Active Duty Status Date, and you fail to obtain additional Service verification, punitive provisions of the Servicemembers Civil Relief Act may be invoked against you. See 50 USC App. § 3931(c).

To print the Multiple Record Request Certificates file:

4. From your browser menu bar choose *File > Print*.

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5. Select the destination printer.
6. Click Print.

Managing Your Account

4

Need a New Account

Since this is a public website, accessible to anyone at any time, a Username and Password combination is used to enhance security of the site and to better protect the personal information of Service members.

To create an Account:

1. Choose the “My Account” tab on the navigation bar of the Home Page (<https://scra.dmdc.osd.mil>). You can also access account creation by clicking on the “Single Record Request” or “Multiple Record Request” tabs on the navigation bar. The Login screen will appear and you can select the “Create an Account” button on the right side under the “Need an Account?” heading.

Note: if this is your first time accessing the website and you receive a Security Certificate error message, please see: [Q1](#) in the [Troubleshooting and FAQs](#) section of this Guide.



Figure 17. Select My Account

2. Click “Create an Account”.

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3. The Create an Account screen will appear:

[illegible]

Figure 18. New Account-Username & Password

4. **Username & Password:** Enter a Username, Password, and Confirm Password (same as Password). If prompted, complete the reCAPTCHA challenge.

Note: To check if the Username is already in use, click "Check Availability".

5. **Challenge Questions:** Click on the ▼ buttons to select three different security questions from the drop down list and provide answers. (See [Guidelines](#) below)

Challenge Questions

Question 1: _____ (*)

Answer 1: _____

Question 2: _____ (*)

Answer 2: _____

Question 3: _____ (*)

Answer 3: _____

Tips & Notes:

Warning:

- You must remember your username. There is no way to retrieve it from this site.
- You must have JavaScript enabled to login or create an account.
- Set your browser settings to enable JavaScript.
- An account is created for Google Record Response.
- An account is created for Multiple Record Response.

Cancel Back Next

Figure 19. *New Account-Challenge Questions*

6. Click “Next”
7. **Additional Information:** Enter the required user information. (See [Guidelines](#) below)

Note: In order to create an account and run a Single or Multiple Record Requests, you must at minimum provide first name, last name, address, and e-mail address. Depending on the level of usage of the system, you may be required to provide additional (Company) information.

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User Info

First Name:

Last Name:

Email Address:

Phone:

Residential Address:

Company Info

Company Name:

POC First Name:

POC Last Name:

POC Title:

POC Email Address:

Terms & Notes

WARNING:

1. This is a new account. Please read the Terms of Use and Privacy Policy before proceeding.

2. If you are a current user, please log out before proceeding.

3. If you are a current user, please log out before proceeding.

4. If you are a current user, please log out before proceeding.

5. If you are a current user, please log out before proceeding.

6. If you are a current user, please log out before proceeding.

7. If you are a current user, please log out before proceeding.

8. If you are a current user, please log out before proceeding.

9. If you are a current user, please log out before proceeding.

10. If you are a current user, please log out before proceeding.

Cancel Save Next

Figure 20. New Account-Additional information

8. Click "Next"
9. **Verification:** Click on the "Terms of Use Agreement" link to view the Terms of Use. Click on the "X" or the "Close" link to return to the Verification screen.

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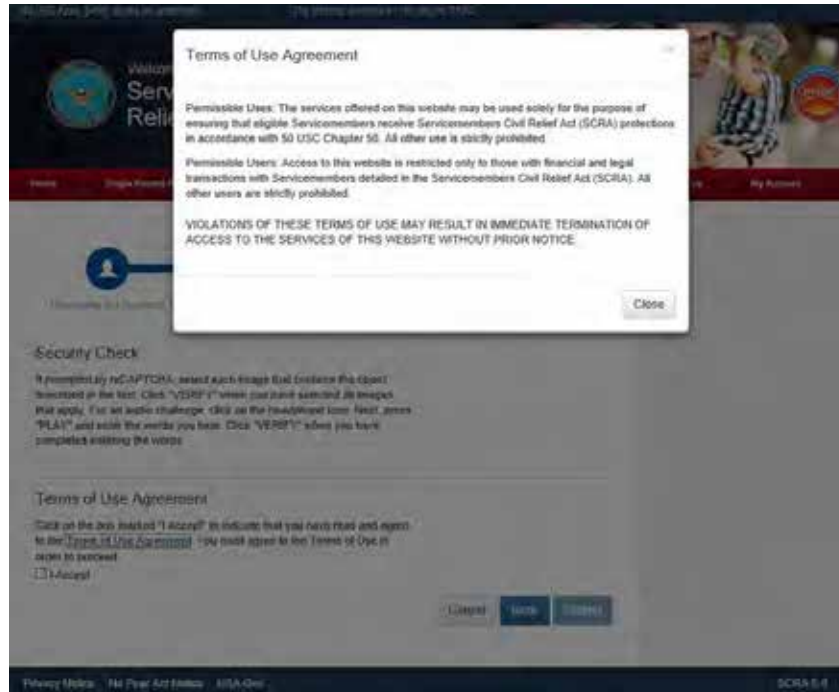


Figure 21. New Account- Verification

10. Click the box marked "I Accept" to indicate that you have read and agree to the Terms of Use.
Note: You must agree to the Terms of Use in order create an Account. You will not be able to successfully create a New Account until you have accepted the Terms of Use.
11. Click "Submit".
12. If prompted by reCAPTCHA, select each image that contains the object described in the text. Click "VERIFY" when you have selected all images that apply. For an audio challenge, click on the headphone icon. Next, press "PLAY" and enter the words you hear. Click "VERIFY" when you have completed entering the words.
Note: If there are no squares that match the description, click the "SKIP" button. If you cannot view the image, click on the refresh icon (circling arrows) for a new visual challenge.
13. After successfully creating a new account, the system will send you a verification code to the email used to create your account. (See e-mail verification) You will be prompted to enter the verification code upon your first login to SCRA's Single or Multiple Record Request Searches.

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Login

Login is required in order to request information on multiple individuals or debts, or to check on the status of all previous multiple record inquiries. If you do not have an account, you may [Create an Account](#) now.

Congratulations! Your new account has been successfully created. To request information on multiple records, click on the 'Multiple Records' link in the top right corner.

Username:

Forgot Login?

Password:

Forgot Password?

Security Check

If protected by reCAPTCHA, check each image that contains the object, described in the text. Click "VERIFY" when you have checked all images that apply. For an audio challenge, click on the textphone icon. Once done, click "PLAY" and enter the words you hear. Click "VERIFY" when you have completed entering the words.

Need an Account?

Tip & Notes

- If you do not see the Security Check (reCAPTCHA) window, check your browser settings to make sure JavaScript is enabled.
- The Security Check is required to sign or create an account.

Resources

- User's Guide
- Privacy Policy
- Electronic Upload File
- Anonymous Upload File
- Anonymous Report
- FAQ and Glossary
- Contact Us

ECA Login

If you have registered as ECA Identity Codeable to your account, you can use it to login to your account.

Figure 22. New Account -Success

Guidelines	
Username	<ul style="list-style-type: none"> Must be unique Must be at least 4 and no more than 30 characters in length Contain only letters (A-Z and a-z) and numbers (0-9) with the following exceptions: <ul style="list-style-type: none"> Only special characters allowed: ".", "_", and "@"
Password	<ul style="list-style-type: none"> Must be <i>at least</i> 14 characters in length Must include a minimum of: <ul style="list-style-type: none"> One upper case letter One lower case letter One number One special character (e.g., # & %, etc.) The account is disabled if not used within 60 days The account is locked after 3 failed attempts The password must be changed every 60 days
Confirm Password	Repeat exactly the information you entered into the 'Password' field.
Challenge Questions	<p>The Challenge Questions are a security measure to verify you are the legitimate owner of the SCRA account. These are used when requesting to reset an account's password.</p> <ul style="list-style-type: none"> Answers are directly associated to adjacent Questions. Answers are case-sensitive. Once a Question has been chosen, it cannot be used again for a subsequent Question/Answer combination. <p><i>If resetting an account password, all answers must be correctly provided, in addition to the Username (see above).</i></p>

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Required User Information	<p>User is required to fill out the following fields:</p> <ul style="list-style-type: none">▪ First Name<ul style="list-style-type: none">- Alphabetic (A-Z and a-z) plus space (), dash (-), and/or apostrophes (')- No other special characters- Maximum 20 characters in length▪ Last Name<ul style="list-style-type: none">- Alphabetic (A-Z and a-z) plus space (), dash (-), and/or apostrophes (')- No other special characters- Maximum 26 characters in length▪ Email Address<ul style="list-style-type: none">- Alphanumeric (A-Z, a-z, and 0-9) plus period (.), dash (-), underscore (_), and at sign (@)- No other special characters- Maximum 255 characters in length▪ Address (line 1 and 2)<ul style="list-style-type: none">- Alphanumeric (A-Z, a-z, and 0-9) plus space (), period (.), dash (-), and/or apostrophes (')- No other special characters- Maximum 100 characters in length▪ City<ul style="list-style-type: none">- Alphabetic (A-Z and a-z) plus space (), dash (-), and/or apostrophes (')- No other special characters- Maximum 50 characters in length▪ State<ul style="list-style-type: none">- Alphabetic (A-Z) only- Must be 2 characters in length▪ Zip Code<ul style="list-style-type: none">- Numeric (0-9) only- Must be 5 or 9 digits in length
Company Information	<p>Starting mid-August, companies submitting higher volumes of requests will have tiered access permissions depending on levels of use. This information will be required in order to access those permissions</p> <ul style="list-style-type: none">▪ Company Name<ul style="list-style-type: none">- This is the name of company, organization, or other entity submitting the Requests.- Even if you are requesting information on behalf of another company, you must enter the name of your company- Alphanumeric (A-Z, a-z, and 0-9) plus space (), period (.), dash (-), and/or apostrophes (')- No other special characters- Maximum 100 characters in length▪ Company address<ul style="list-style-type: none">- See User Address guidelines above

	<p>The Point of Contact (POC) is the person, within the company, that can be contacted in order to verify usage of the application.</p> <ul style="list-style-type: none"> ▪ Point of Contact (POC) First Name <ul style="list-style-type: none"> - Alphabetic (A-Z and a-z) plus space (), dash (-), and/or apostrophes (') - No other special characters - Maximum 20 characters in length ▪ POC Last Name <ul style="list-style-type: none"> - Alphabetic (A-Z and a-z) plus space (), dash (-), and/or apostrophes (') - No other special characters - Maximum 26 characters in length ▪ POC Title <ul style="list-style-type: none"> - Alphabetic (A-Z and a-z) plus space (), dash (-), and/or apostrophes (') - No other special characters - Maximum 50 characters in length
Additional Information	<ul style="list-style-type: none"> ▪ User Phone Number <ul style="list-style-type: none"> - Numeric (0-9) and plus (+) for international numbers - No other special characters - Maximum 16 characters in length (including the +) ▪ Purpose of Use <ul style="list-style-type: none"> - In accordance with the permissible uses of the application detailed in the Terms of Use Agreement, this field is to specify categories of uses. This will later be used to determine tier level access for multiusers. - Alphabetic (A-Z and a-z) plus space () - No other special characters - Maximum 100 characters in length

See the [Troubleshooting and FAQs](#) section of this Guide if you encounter any errors/issues.

Email Verification

Once you have successfully created an account, an email will be sent to the email address that you provided upon account creation. The email contains an 8 character code that you will use to verify that your email is valid. You will be required to verify your email upon first log in of your account.

To verify your email:

1. Check the email account that you entered upon account creation to obtain the 8 character verification code.

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Note: The verification code will expire within 24 hours from the time the account was created and the message sent.

2. Log in to your account using the username and password (see account log in)
3. If you have not previously verified the email on your account you will be taken to the email verification page. Enter the 8 character code in the box provided.

4. Click "Submit"
Note: If you have not received your email verification code, or if the code has expired, you may request a new code by clicking on the "Request new code" button. There is a 24 hr waiting period between codes sent.

Log In

Once you have created an account and verified your account email, you can [Log In](#) to make [Single Record Request](#), [Multiple Records Requests](#), or [Download Results](#) that have finished processing.

Note: If you have not verified your account email, you will be taken to the email verification page and prompted to enter the verification code upon first log in. (see email verification)

To Log In:

5. Choose the "Single Record Request" or "Multiple Record Request" tab in the navigation bar to log in. You can also access the Login screen by selecting the "My Account" tab on the top navigation bar and select the 'Go to Login Page' button.

Note: If you have registered an ECA Identity Certificate to your account you can use it to log in to your account by clicking on the Proceed to ECA Login button. For more information on how to register an ECA Identity Certificate See [Registering an ECA Identity Certificate](#).

Figure 23. Login Screen

 If you forgot your password, see [Forgot Your Password](#) if you forgot your Username, you must [Create a New Account](#)

6. Once the Login screen appears, enter your Username and Password.
Note: If this is your first time requesting single or multiple records, you must [create a new account](#). If you've forgotten your password see [Forgot Your Password](#) for instructions on how to reset your password
7. Click "Login".
8. If prompted by reCAPTCHA, select each image that contains the object described in the text. Click "VERIFY" when you have selected all images that apply. For an audio challenge, click on the headphone icon. Next, press "PLAY" and enter the words you hear. Click "VERIFY" when you have completed entering the words.
Note: If there are no squares that match the description, click the "SKIP" button. If you cannot view the image, click on the refresh icon (circling arrows) for a new visual challenge.
9. You can now make a [Single Record Request](#), [Multiple Records Request](#), check [File Status](#), or [Download Results](#) as needed.
Note: If you have not updated your account with the [required user information](#) you will be redirected to the Manage Account page until all required fields have been completed. For instructions on how to update your account information, see: [Edit User or Company Information](#).

Manage Account

Once you have logged in to your account, a manage account tool bar will appear in the upper right corner of all screens. The tool bar will allow you to manage your account and log out.

To Manage your Account:

1. Log in to your Account.
2. Click on the “Manage” link located on the upper right corner of the screen.

The screenshot displays the 'Manage Account' page of the Official Servicemembers Civil Relief Act (SCRA) Website. At the top, a navigation bar includes links for Home, Single Record Request, Multiple Record Requests, User's Guide, FAQs, News, Contact Us, and My Account. The 'Manage' link in the top right corner is highlighted with a yellow circle. The main content area is divided into three sections: User Info, Company Info, and ECA Registration. The User Info section includes fields for First Name, Last Name, Email Address (SAMPLE@EMAIL.COM), and Address (Sample Address, City, State, Zip). The Company Info section includes fields for Company Name, Position, Company Address, and City. The ECA Registration section includes a button for ECA Registration and a section for Reset Password and Close Account. The footer contains links for Privacy Notice, No Fear Act Notice, and USA Gov, along with the SCRA 5.0 version number.

TO USC Apts: ©2022 in reg. as amended The services provided on this site are FREE

Welcome to the Official
Servicemembers Civil
Relief Act (SCRA) Website

Home Single Record Request Multiple Record Requests User's Guide FAQs News Contact Us My Account

Manage Account

User Info

First Name Last Name
First Last

Email Address
SAMPLE@EMAIL.COM

Address
Sample Address
City State Zip
Sample City CA 99999

Checking on dependent Status

Edit User

Company Info

Company Name
Position
Company Address
City State Zip

Edit Company

ECA Registration

SCRA supports authentication with PKI certificates. To enable certificate authentication you must obtain a Department of Defense (DoD) ECA Identity Certificate from an approved DoD ECA Vendor and register the certificate to your account. See the SCRA User's Guide for more information on obtaining an ECA Identity Certificate.

If you are an ECA Identity Certificate holder, you must create an account before registering your certificate. You must also login to your account prior to registering. If you have created and logged in to your account, click the "ECA Registration" button below to register your ECA certificate.

Note: If you receive a "Certificate Required" message during the registration process or a connection error (while error page) you will have to close your browser and reopen the SCRA website. Generally this error occurs if there was a problem receiving your ECA certificate.

ECA Registration

Reset Password

Reset Password

Close Account

Close Account

Privacy Notice No Fear Act Notice USA Gov SCRA 5.0

Figure 24. Manage Account

You will now be able to edit your User and Company information, register an ECA Identity Certificate, reset your password, or close your account.

Edit User or Company Information

Upon creating an account, you are asked to enter your user and company information. You can edit and update your information in the Manage Account page.

To edit your User or Company information:

1. Log in to your Account.
2. Click on the “Manage” link located on the upper right corner of the screen.
3. You will be directed to the Manage Account page.
4. Click on the “Edit User” or “Edit Company” buttons.
5. Update the fields you wish to change.
6. Click “Save User” or “Save Company” in order to accept the changes.
7. You may click on the “Cancel” button to go back to the Manage Account page.

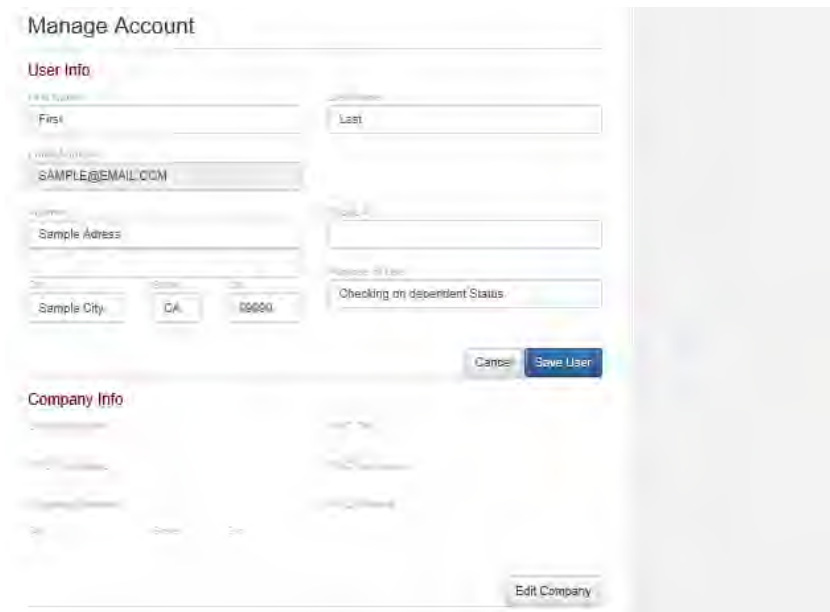
The screenshot displays the 'Manage Account' interface. It features two main sections: 'User Info' and 'Company Info'. The 'User Info' section includes input fields for 'First' and 'Last' names, an email address field containing 'SAMPLE@EMAIL.COM', a 'Sample Address' field, and a 'City' field with 'Sample City'. There are also dropdown menus for 'State' (set to 'CA') and 'Zip' (set to '95600'). A 'Checking on dependent Status' checkbox is present. At the bottom of this section are 'Cancel' and 'Save User' buttons. The 'Company Info' section is partially visible below, with an 'Edit Company' button at the bottom right of the form area.

Figure 25. Manage Account-Edit User Information

Reset Password

1. Log in to your Account.

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2. Click on the “Manage” link located on the upper right corner of the screen.
3. You will be directed to the Manage Account page.
4. Click on the “Reset Password” button.
5. Type your current password in the Current Password field.
6. Type your new password in the New Password field, using the information displayed on this window as a password selection guideline.
7. Type your new password again in the Confirm New Password field.
8. Click “Submit”.
9. If the new password is not accepted, a message displays indicating that your password was not changed.
10. If the new password is accepted, a message displays indicating that the password change was successful.

100 MDC Apps, 1500+ of any 30,000+ only
The services provided on this site are FREE
Manage | Logout

Welcome to the Official
Servicemembers Civil
Relief Act (SCRA) Website

Home | Single Record Request | Multiple Record Requests | User's Guide | FAQs | News | Contact Us | My Account

Reset Password

Reset your password.

Password Requirements

- 1. must contain at least 14 and no more than 28 characters
- 2. must contain at least one each of
 - Lowercase letter
 - Uppercase letter
 - Number
 - Special character from this list: ! @ \$ % & * ^ > ?
- 3. The same character cannot be repeated more than twice in a row

Current Password:

New Password:

Confirm New Password:

Cancel Submit

Privacy Notice | No Fear Act Notice | USA.Gov | SCRA 5.0

Figure 26. Manage Account- Reset Password

Forgot Your Password


In the event you forget your account password, you can reset it if you remember your Username and the answers to the questions you selected during initial account creation. If you don't remember your username and/or the answers to the questions you selected during account creation, see [Need a New Account](#) to create a new account.

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To reset your password:

1. Choose the Single Record Request or Multiple Record Request tab on the navigation bar.


Passwords and Answers are case-sensitive.

You are provided 3 attempts to correctly answer the Challenge Questions. If you fail to answer the questions correctly after 3 attempts, your account will become disabled.



Figure 27. Login Screen

2. Once the Login screen appears, enter your Username and then click on the 'Forgot password?' link beneath the Password field.
3. The Reset Password screen will appear with the Challenge Questions you selected during initial account creation and their corresponding entry fields.



Figure 28. Forgot Your Password-Challenge Questions

4. Enter the answers to the Questions and then click Submit.

The New Password screen will appear

Reset Password
Reset (01/1/2022/01/01)

(Forgot a security code?)

Password Requirements:

- ✓ 1. It must contain at least 8 characters including 24 characters
- ✓ 2. It must contain at least 2 special characters
- ✓ 3. It must contain at least 1 uppercase letter
- ✓ 4. It must contain at least 1 lowercase letter
- ✓ 5. It must contain at least 1 number
- ✓ 6. The new password cannot be identical to the previous password

New Password:

Confirm New Password:

Cancel Submit

Need an Account?
Create an Account

Tips & Notes

- If you do not see the Security Check (reCAPTCHA) window, check your browser settings to make sure JavaScript is enabled.
- The Security Check is required to login or create an account.

Resources

- User Guide
- Privacy Policy
- Additional Features
- Account Reset
- Account Lockout
- Help and Contact Us
- Security Checklist

Figure 29. Forgot Your Password-Reset

5. Enter and confirm a new password. Your new password cannot be the same as your old password.
6. Click "Submit".

Expired Password

SCRA account passwords expire every 60 days. Five days before your password expires, after you have successfully logged in, a message will display indicating that your password will expire. You may choose to reset your password, or continue without resetting the password.

Password Expiration

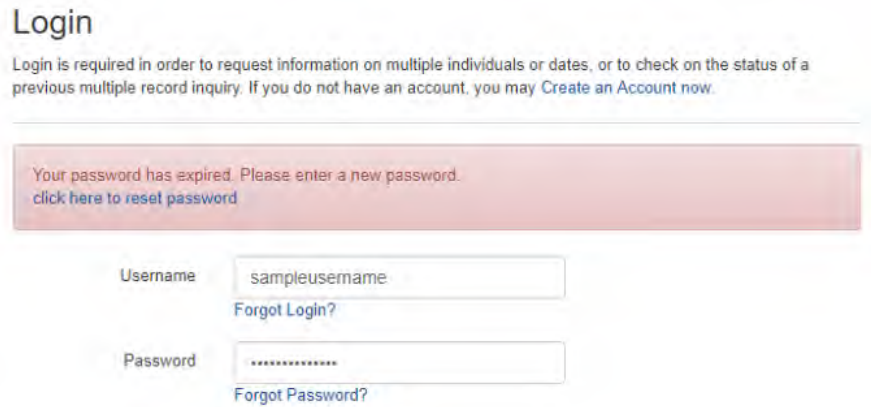
Your password expires soon. Please change your password.

Change Password Now Change Password Later

Figure 30. Password Expiration

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You may continue without changing your password. However, after you have logged in, if the expiration date is reached, the screen will display a message indicating that your password has expired and you must change your password. The following will display:



Login

Login is required in order to request information on multiple individuals or dates, or to check on the status of a previous multiple record inquiry. If you do not have an account, you may [Create an Account now](#).

Your password has expired. Please enter a new password.
[click here to reset password](#)

Username:


[Forgot Login?](#)

Password:

[Forgot Password?](#)

Figure 31. Expired Password-Reset

1. Click on the “click here to reset password” link.
2. Answer your three previously set challenge questions.



Challenge Questions

Please answer the security questions below to reset your password. Answers are case-sensitive (as entered during account creation).

!! Includes a required field.

Question 1: What was the first name of your mom/maid of honor?

Answer 1:

Question 2: In which city was your first elementary school?

Answer 2:

Question 3: When is your youngest sibling's birthday (MM/DD)?

Answer 3:

[Cancel](#) [Submit](#)

Figure 32. Expired Password-Reset: Challenge Questions

3. Type your new password in the New Password field, using the information displayed on this window as a password selection guideline.

Reset Password
Reset your password

Password Requirements

- ✖ 1. It must contain at least 16 and no more than 70 characters.
- ✖ 2. It must contain at least one each of:
 - ✖ Uppercase Letter
 - ✖ Lowercase Letter
 - ✖ Number
 - ✖ Special Character from the set ! @ # \$ % ^ & * () . ~
- ✖ 3. The same character cannot be repeated more than twice in a row.

New Password:

Confirm New Password:

Cancel Submit

Figure 33. Expired Password-Reset: New password

4. Type your new password again in the Confirm New Password field.
5. Click “Submit”.
6. If the new password is not accepted, a message displays indicating that your password was not changed.
7. If the new password is accepted, you will be redirected to the [Login](#) page.
8. Login in with your Username and New Password.

Disabled Accounts

Since the website is public and accessible to anyone at any time, additional security measures are in place to ensure that that only you are allowed to track and recover the file(s) you uploaded. Below are reasons your account might be disabled:

- **Inactivity**
If you have not logged in to the system within the last 60 days, the system will automatically disable your account and you will no longer have access to the file(s) you uploaded under that account.
- **Forgotten Username/Password/Challenge Questions**
If you cannot successfully answer the Challenge Questions after three attempts during the [Forgot Your Password](#) process, your account will be immediately disabled and all of the information associated to your account will no longer be accessible.

In order to [Request Multiple Records](#) again, you must create a new account. Any previous requests, regardless of status, will need to be re-requested after your new account is created.

Registering an ECA Identity Certificate

Individuals who wish to bypass the reCAPTCHA prompts for Single and Multiple Record Requests may do so by obtaining an ECA Identity Certificate. In order to use an ECA Identity Certificate, you will need to [create an account](#). If you already have an account, you will need to [Log in](#) to your account and register your ECA Identity Certificate to your account.

Note: Information on how to obtain an ECA Identity Certificate is available at <http://iase.disa.mil/pki/eca/Pages/index.aspx>. The SCRA website will accept either a Medium Assurance Level Identity (soft) or Medium Token Assurance Level Identity (hard) certificate for logging into the SCRA website and bypassing the CAPTCHA prompt.

1. Choose the My Account tab in the navigation bar. For first time registration of your ECA Identity Certificate with your account, select the “Go to Login Page” button:

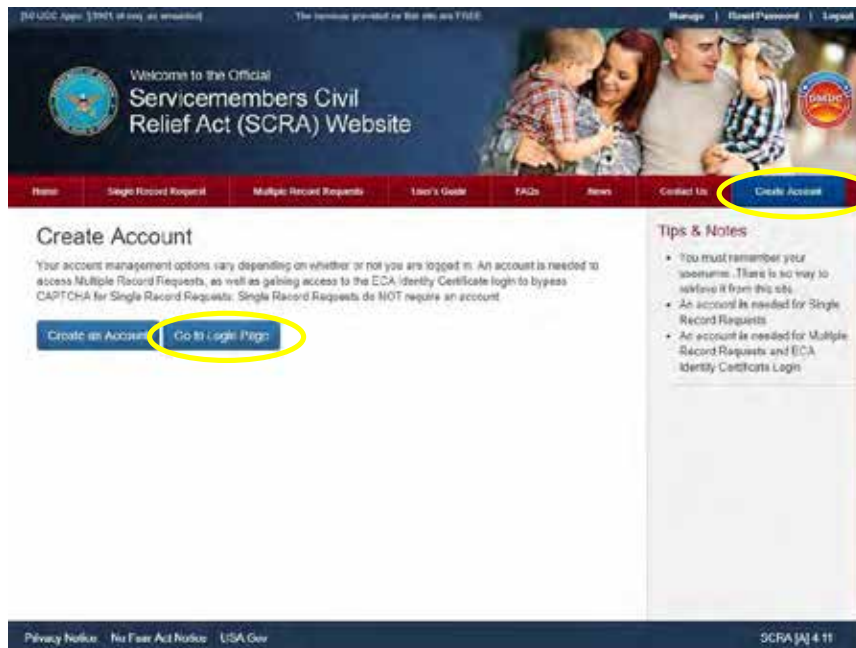


Figure 34. Registering an ECA Identity Certification

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2. Provide your username and password, complete the reCAPTCHA field if prompted, and then click the “Login” button:



The screenshot shows the login page of the Official Servicemembers Civil Relief Act (SCRA) Website. The header features the website title and a navigation bar with links: Home, Single Record Request, Multiple Record Requests, User's Guide, FAQs, News, Contact Us, and My Account. The main content area is titled 'Login' and includes a sub-header 'Login is required in order to request information on multiple individuals or dates, or to check on the status of a previous multiple record inquiry. If you do not have an account, you may Create an Account now.' Below this are input fields for 'Username' and 'Password', each with a 'Forgot' link. A 'Security Check' section follows, explaining the reCAPTCHA process. A 'Login' button is positioned to the right of the security check. Below the login section is an 'ECA Login' section with a 'Proceed to ECA Login' button. The right sidebar contains links for 'Need an Account?' (Create an Account), 'Tips & Notes' (Security Check, Java, etc.), and 'Resources' (User's Guide, Privacy Notice, etc.). The footer includes links for 'Privacy Notice', 'No Fear Act Notice', 'USA Gov', and 'SCRA 5.0'.

Figure 35. Registering an ECA Identity Certification -Login

3. Once you have logged in, you will be taken to the Manage Account Page. Select the ‘ECA Registration’ button:

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[10 USC App. §3602 is not an amended] The services provided on this site are FREE Manage Logout

Welcome to the Official
Servicemembers Civil
Relief Act (SCRA) Website

Home Single Record Request Multiple Record Requests User's Guide FAQs News Contact Us My Account

Manage Account

User Info

First Name: First Last

Email Address: SAMPLE@EMAIL.COM

Address: Street 2

Sample Address

City: CA Zip: 99999

Checking on dependent Status

Edit User

Company Info

Company Name: SDC Inc

Principal Address: SDC (Sample Address)

Company Address: SDC (Sample Address)

City: State: Zip:

Edit Company

ECA Registration

SCRA supports authentication with PKI certificates. To enable certificate authentication you must obtain a Department of Defense (DoD) ECA Identity Certificate from an approved DoD ECA Vendor and register the certificate to your account. See the SCRA User's Guide for more information on obtaining an ECA Identity Certificate.

If you are an ECA Identity Certificate holder, you must create an account before registering your certificate. You must also login to your account prior to registering. If you have created and logged in to your account, click the "ECA Registration" button below to register your ECA certificate.

Note: If you receive a "Certificate Required" message during the registration process or a connection error (while error page) you will have to close your browser and reopen the SCRA website. Generally this error occurs if there was a problem receiving your ECA certificate.

ECA Registration

Reset Password

Reset Password

Close Account

Close Account

Privacy Notice No Fear Act Notice USA Gov SCRA 5.0

Figure 36. Registering an ECA Identity Certification-Select Registration

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4. Verify your account using your username and password, complete the reCAPTCHA challenge (if prompted), and click the “Register Certificate to Your Account” button:



Figure 37. Registering an ECA Identity Certification

5. Select a Certificate on the certificate drop down menu and click the “OK” button:

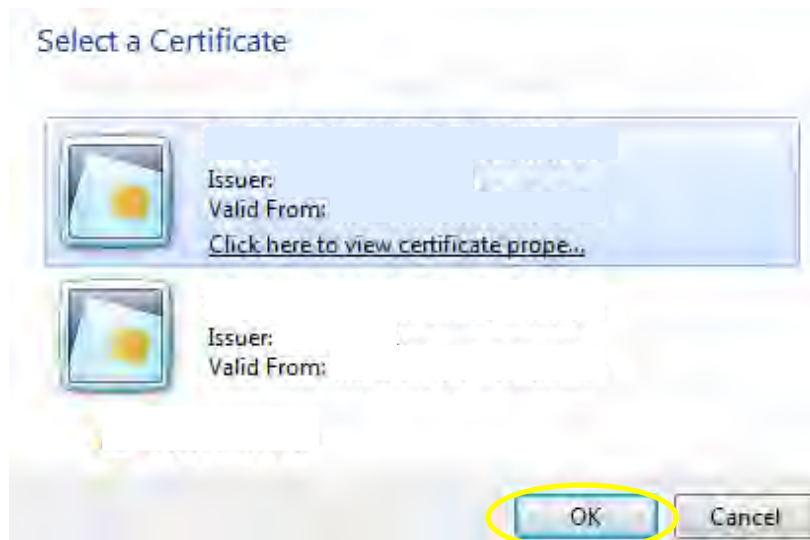


Figure 38. Registering an ECA Identity Certification

Note: The appearance of the certificate drop down menu might vary due to differences in internet browsers.

6. On the ECA Certificate Login screen, click the “ECA Login” button:



Figure 39. Registering an ECA Identity Certification

7. You can now perform an ECA Single Record Request that bypasses CAPTCHA:

Figure 40. Registering an ECA Identity Certification

Login Using an ECA Identity Certificate

Once your account is associated with an ECA Identity Certificate, you will need to login using ECA Login:

1. If your account is already associated with an ECA Identity Certificate, select the My Account tab, then click the “Go to Login Page” button:



Figure 41. Log in Using an ECA Identity Certification

2. You will be directed to the Login screen. Click the “Proceed to ECA Login” button:

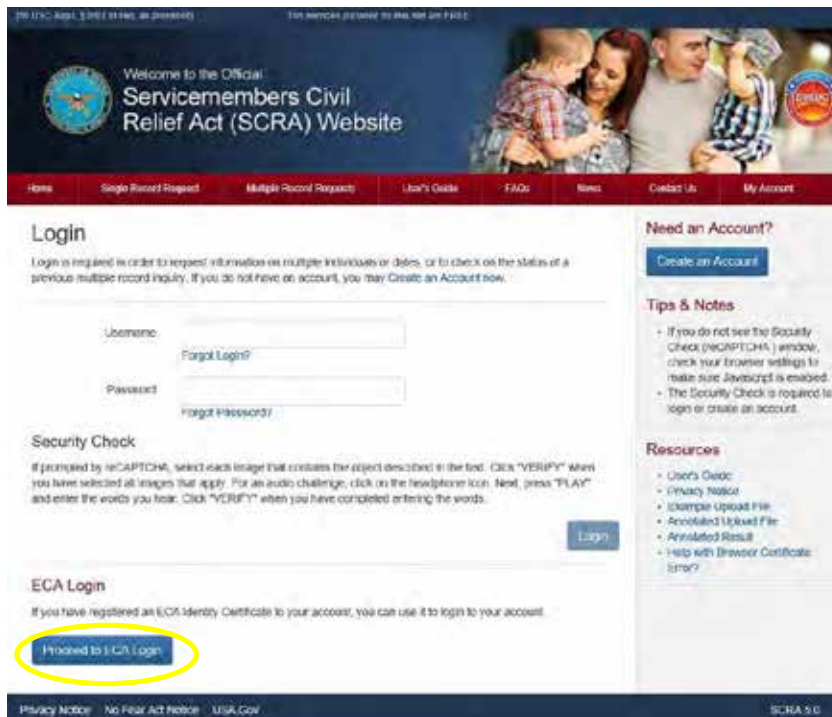


Figure 42. Log in Using an ECA Identity Certification

- The ECA Login registration verification screen will appear. Click on “proceed to ECA Login”

Note: You can click on “Nevermind Cancel” if you have not previously registered an ECA Identity Certificate.

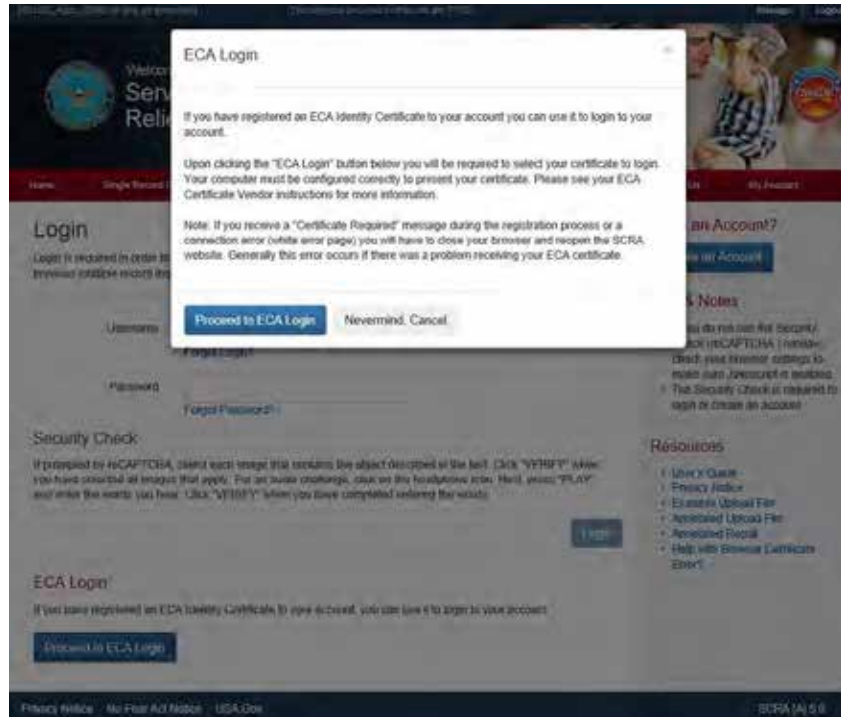


Figure 43. Proceed to ECA Login

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4. You can now perform an ECA Single Record Request that bypasses reCAPTCHA:

The screenshot shows the 'ECA Single Record Request' form on the official website. The header includes the website title and navigation links. The form fields include SSN, Repeat SSN, Birth Date (with a calendar icon), Last Name, First Name, Middle Name, and Active Duty Status Date (with a calendar icon). A 'Submit' button and a 'Clear' button are at the bottom. On the right, there are 'Tips & Notes' and 'Resources' sections. The footer contains 'Privacy Notice', 'No Fear Act Notice', 'USA Gov', and 'SCRA 5.3'.

Figure 44. Log in Using an ECA Identity Certification

Session Timeout

SCRA will automatically log users out of a session after a set period of inactivity. Once a user has logged in, if there is no activity for 10 minutes³ or more, the session will be terminated. A warning banner will display with a countdown, letting users know when the session will be terminated. Users may choose to continue with the session, logout of the session, or let the timer run out and be automatically logged out of the session.



Figure 45. Warning banner-Session Timeout

³ Set period of inactivity and warning timer lengths may be subject to change.

Session Timeout Options:

- Click on the “continue” button before the timer expires in order to continue with the session.
 - a. The banner will be removed and user may continue as normal.
- Click on the “logout” button before the timer expires.
 - a. The system will log the user out
 - b. Users will be returned to the login page.
- Remain inactive and allow timer to expire.
 - a. The system will log the user out
 - b. Users will be returned to the home page.

Troubleshooting and FAQs

5

General Questions/Issues

If you're experiencing any problems with the website, please read the information below:

- Q1.** [Why am I receiving a Security Certificate error message \(Digital Certification Help\)?](#)
- Q2.** [Why can't I get to the website?](#)
- Q3.** [Does the website restrict my access in any way?](#)
- Q4.** [Is the information between my computer and the DMDC database encrypted?](#)
- Q5.** [Who do I contact for general website assistance?](#)
- Q6.** [Does the website maintain cookies?](#)
- Q7.** [Can I use SCRA for employment verification?](#)
- Q8.** [Where does it say Title 32 isn't covered?](#)
- Q9.** [What is Title 32 vs Title 10 with respect to SCRA?](#)
- Q10.** [How do I get rid of the Security error I get on your site?](#)
- Q11.** [Does the Security Certificate error I get on the SCRA website mean the site is not secure?](#)
- Q12.** [How long do you keep the information in the database?](#)

Request(s) Questions/Issues

If you're experiencing any problems with your Requests, please read the information below:

- Q13.** [How do I get an SCRA Certificate?](#)
- Q14.** [Receiving a 'Missing Required Field' error](#)
- Q15.** [Receiving a 'Social Security Number is Invalid' error](#)
- Q16.** [Receiving 'Invalid Date' error](#)

- Q17. [Receiving 'Error Uploading File' message](#)
- Q18. [How many Requests can I make each day?](#)
- Q19. [What is the maximum number of individuals I can request in one file?](#)
- Q20. [Can I request multiple dates for one individual?](#)
- Q21. [Do the Request file filenames need to be unique in order to upload?](#)
- Q22. [What format does the Request file need to be in?](#)
- Q23. [Does the SCRA website include ALL active duty periods?](#)

Result(s) Questions/Issues

If you're experiencing any problems with your Results, please read the information below:

- Q24. [How long do you keep Multiple Record Request Certificate files?](#)
- Q25. [How long will the website keep my Result files?](#)
- Q26. [When will my Result file\(s\) be available?](#)
- Q27. [I can't find my Result file\(s\) anymore, why not?](#)
- Q28. [How can I download multiple Result files at a time?](#)

Account Questions/Issues

If you're experiencing any problems with your Account, please read the information below:

- Q29. [Where are the Certificates for each individual in the Result file?](#)
- Q30. [Do I need an Account?](#)
- Q31. [Why did my session expire?](#)
- Q32. [What if I forgot my Username and/or Password?](#)
- Q33. [Why is my account disabled?](#)
- Q34. [How can I get Result file\(s\) from a disabled account?](#)
- Q35. [How can I contact the Military Services for additional verification?](#)

Answers

Below are the answers to the Questions/Issues above:

Q1. [Why am I receiving a Security Certificate error message \(Digital Certification Help\)?](#)

All internet communications between your computer and the DMDC SCRA website are encrypted using SSL standards set by the Department of Defense. Under normal circumstances, web pages are automatically encrypted using a DoD certificate public key, in order to send Privacy Act data in an encrypted form across the Internet. If the certificate is not installed on your computer, you may experience security alerts from your browser.

Example:



Most web browsers don't come with the DoD certificates already installed. The best and most secure solution is for the user to install all of the DoD's public certificates in their web browser. That can be done using a tool called InstallRoot that will install the DoD root PKI certificates on client browsers. InstallRoot is available by clicking on the Trust Store tab on this page: <http://iase.disa.mil/pki-pke/Pages/tools.aspx>. Look for the InstallRoot NIPR Windows Installer and download the version appropriate for your operating system. A User Guide for the InstallRoot tool is also available on this page. InstallRoot is supplied by the Defense Information Systems Agency (DISA), which handles related security matters for the DoD.

For corporations, businesses or individuals with a local systems administrator, we recommend that installation of the DoD certificate be handled at the IT policy level through coordination with your local systems administrator. Once these certificates are installed, your browser should not display security warnings, as the certificate will be recognized by the browser.

Q2. [Why can't I get to the website?](#)

If the hyperlink is valid and you're receiving this error, any of the following could be the reason you're receiving an error:

- Your computer was able to communicate with DMDC, but DMDC is unable to find what you requested.
- You could have followed a broken or dead hyperlink.
- Internet connectivity has been lost.
- The website is temporarily unavailable.
- The Domain Name Server (DNS) is not reachable.
- The Domain Name Server (DNS) does not have a listing for the website's domain.

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- There might be a typing error in the address.
- If this is an HTTPS (secure) address, click Tools, click Internet Options, click Advanced, and check to be sure the SSL and TLS protocols are enabled under the security section.

Q3. [Does the website restrict my access in any way?](#)

For Single Record Requests and Multiple Record Requests, a username and password are required. The intent of the website is to handle requests to generate individual certificates or perform Multiple Record Requests.

Each SSN and last name provided is recorded with your IP address, Report ID, and timestamp for audit purposes. The site is not set up to handle automated scripts and you must upload files individually. DMDC identifies automated scripts at a threshold of 1,000 hits per hour and may reserve the right to turn off access to IP addresses generating high traffic levels if these levels would deny access to individual users.

Q4. [Is the information between my computer and the DMDC database encrypted?](#)

All internet communications between your computer and the DMDC SCRA website is encrypted using SSL standards set by the Department of Defense. For additional information see [Why am I receiving a Security Certificate error message \(Digital Certification Help\)?](#)

Q5. [Who do I contact for general website assistance?](#)

For questions regarding information you have received from SCRA, please call:

Customer Data or Certificate Questions: For questions related to DEERS data, the information on SCRA certificates, a service member's status, or military service contacts, please call the DMDC DEERS Support Office (DSO) at 1-800-538-9552.

Technical Issues/Web Site Issues: For technical questions such as site connectivity concerns, access to site, error codes, Multiple Record Requests, or general website assistance, please call the DMDC Technical Support Center (DSC) at 1-800-477-8227.

Q6. [Does the website maintain cookies?](#)

This web site does not use persistent cookies (persistent tokens that pass information back and forth from the client machine to the server). This web site may use session cookies (tokens that remain active only until you close your browser) in order to make the site easier to use. DMDC DOES NOT retain a database of information obtained from these cookies.

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Q7. [Can I use SCRA for employment verification?](#)

SCRA does not provide past or present employment verification. Information provided by SCRA is only for the purpose of verifying an individual's active duty status for a given active duty status date to determine if they are eligible for protection under the Servicemembers Civil Relief Act.

Q8. [Where does it say Title 32 isn't covered?](#)

Title 32 outlines the role of the United States National Guard; normally Title 32 members are not covered under SCRA. Those Title 32 members and others who meet the criteria referenced in Title 50 USC App. § 3901 below are accurately represented on the SCRA website.

In order to be considered for SCRA coverage a Title 32 member must be called "...to active service authorized by the President or the Secretary of Defense for a period of more than 30 consecutive days under section 502(f) of title 32, United States Code, for purposes of responding to a national emergency declared by the President and supported by Federal funds." Title 50 USC App. § 3901 et seq, as amended, states the following:

"TITLE 50, APPENDIX - WAR AND NATIONAL DEFENSE

SERVICEMEMBERS CIVIL RELIEF ACT

ACT OCT. 17, 1940, CH. 888, 54 STAT. 1178

TITLE I - GENERAL PROVISIONS

Sec. 3911. Definitions

For the purposes of this chapter:

(1) Servicemember

The term "servicemember" means a member of the uniformed services, as that term is defined in section 101(a)(5) of title 10, United States Code.

(2) Military service

The term "military service" means -

(A) in the case of a servicemember who is a member of the Army, Navy, Air Force, Marine Corps, or Coast Guard -

(i) active duty, as defined in section 101(d)(1) of title 10, United States Code, and

(ii) 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 under section 502(f) of title 32, United States Code, for purposes of responding to a national emergency declared by the President and supported by Federal funds;

(B) in the case of a servicemember who is a commissioned officer of the Public Health Service or the National Oceanic and Atmospheric Administration, active service; and

(C) any period during which a servicemember is absent from duty on account of sickness, wounds, leave, or other lawful cause."

Q9. [What is Title 32 vs Title 10 with respect to SCRA?](#)

The United States Code, under Title 10, outlines the role of the Armed Forces and the legal basis for their responsibilities, missions and organization. Title 10 service is covered by SCRA. The role of the United States National Guard is outlined under Title 32. Title 32 members are normally not covered under SCRA, unless they meet the specified criteria covered in question 8.

- Under authority of Title 32 of the U.S. Code, the National Guard is federally funded but under the command and control of the state's governor even though the Guard is employed "in the service of the United States." The purpose of the service may be either shared state/federal or for a primary federal purpose.
- Title 10 duty—Under authority of Title 10 of the U.S. Code, the National Guard is deployed by the President for a federal purpose; command and control rests solely with the President and the federal government.

Q10. [How do I get rid of the Security error I get on your site?](#)

For corporations, businesses or individuals with a local systems administrator, we recommend that installation of the DoD certificate be handled at the IT policy level through coordination with your local systems administrator. Once these certificates are installed, your browser should not display security warnings, as the certificate will be recognized by the browser. See [Q1](#) above for additional information.

Q11. [Does the Security Certificate error I get on the SCRA website mean the site is not secure?](#)

The Security Certificate error indicates the digital certificate has not been installed by the manufacturer of your browser. See [Q1](#) above for additional information.

SCRA uses Hyper Text Transfer Protocol Secure (HTTPS), a secure protocol which allows secure transactions to occur on the Internet. Web browsers such as Internet Explorer and Firefox display a padlock icon to indicate that the website is secure, and it also displays https:// in the address bar.

When a user connects to a website via HTTPS, the website encrypts the session with a digital certificate. A user can tell if they are connected to a secure website if the website URL begins with https:// instead of http://.

Q12. [How long do you keep the information in the database?](#)

Every result file is retained by the website for 15 calendar days following the Upload date. If you have not downloaded your result file during the 15 day retention period and still wish to retrieve the results, you must upload the file again for re-processing.

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Q13. [How do I get an SCRA Certificate?](#)

Certificates are provided as a result of a Single Request inquiry or by selecting the certificate option on the Multiple Record Request Upload screen. The certificate is the xx produced via this website. (where xx is memorandum, letter, something)

Q14. [Receiving a 'Missing Required Field' error](#)

Indicates the minimum-required Social Security Number and Last Name, or Last Name and Date of Birth, were not entered.

Q15. [Receiving a 'Social Security Number is Invalid' error](#)

The Social Security Number must be 9 digits long (e.g., 123456789) and should include only numbers. Do not include dashes (-), periods (.), slashes (\ /), spaces, letters, or any other characters. If you are entering a SSN with less than 9 characters, the number should be preceded with zeros (e.g., 001234567).

Q16. [Receiving 'Invalid Date' error](#)

Single Record Request

The Date of Birth and Active Duty Status date must be entered in the following format for a Single Record Request: MM/DD/YYYY, where MM designates the two digits needed for the Month, DD designates the two digits needed for the Day, and YYYY designates the four digits needed for the Year.

Multiple Records Request

The Date of Birth and Active Duty Status As Of date must be entered in the following format for a Multiple Records Request: YYYYMMDD, where YYYY designates the four digits needed for the Year, MM designates the two digits needed for the Month, and DD designates the two digits needed for the Day. Do not include dashes (-), periods (.), slashes (\ /), spaces, letters, or any other characters for Year, Month, or Day.

Q17. [Receiving 'Error Uploading File' message](#)

Request files must be 'fixed width' and follow the [Formatting the Request File](#) format. If any records within the file does not meet the file requirements, the entire file will fail to upload. An error message will appear, detailing which records (up to five lines per error message) do not meet the file requirements and why. You must fix the records and re-upload the file.

Example

Error uploading file: SCRA_MAX_BATCH_1.txt [Line 1 : less than minimum allowable characters found in line Line 2 : less than minimum allowable characters found in line Line 3 : less than minimum allowable characters found in line Line 4 : less than minimum allowable characters found in line Line 5 : less than minimum allowable characters found in line]

Q18. [How many Requests can I make each day?](#)

Single Record Request

The number of Single Record Requests you can make in a day is limited to 1,000; however, keep in mind that each SSN and last name provided is recorded with your IP address, Report ID, and timestamp for audit purposes and DMDC reserves the right to turn off access to IP addresses generating high traffic levels if these levels would deny access to other users.

Multiple Records Request

The number of files for Multiple Record Requests you can make in a day is limited to 50 files uploaded per day.

Q19. [What is the maximum number of individuals I can request in one file?](#)

The maximum number of individuals allowed in a Multiple Record Request can be viewed on the SCRA Batch Request Upload screen. This number may change periodically, so please check the website.

Q20. [Can I request multiple dates for one individual?](#)

Yes. Enter the information on the individual as if they were a separate and unique individual in the file, but with a different Active Duty Status As Of date.

Q21. [Do the Request file filenames need to be unique in order to upload?](#)

No. The website will consider every file uploaded as a unique file, even if the file from your computer has the same filename as a file previously uploaded to the website. The Request file must be a TXT (text) file.

Q22. [What format does the Request file need to be in?](#)

The Request file must be a .TXT (text) file.

Q23. [Does the SCRA website include ALL active duty periods?](#)

No. SCRA only reports on active duty status since September 30, 1985. The SCRA website only reports Title 10 active duty (AD) periods. AD periods of less than 30 days of length are not currently included on the SCRA website.

Q24. [How long do you keep Multiple Record Request Certificate files?](#)

Every Multiple Record Request Certificate file will be retained by the website for 10 calendar days following the Completed Processing date. If you have not downloaded your Certificate file during the 10 day retention period and still wish to retrieve the Certificates, you must upload the Request file again for re-processing. On average, the website will attempt to deliver a Certificate file within 24 hours following the Upload

date/time; however, depending on extenuating circumstances, a Certificate file may be returned after 24 hours has passed. DMDC recommends that you return to the website any time within or after 24 hours from the time you uploaded the Request file to check on the status of your Certificate file(s). See [File Status](#) for additional information.

Q25. [How long will the website keep my Result files?](#)

Every Result file will be retained by the website for 10 days. If you have not downloaded your Result file during the 10 day retention period and still wish to retrieve the results, you must upload the file again for re-processing.

On average, the website will attempt to deliver a Result file within 24 hours following the Upload date; however, depending on extenuating circumstances, a Result file may be returned after 24 hours has passed. DMDC recommends that you return to the website any time before or after 24 hours from the time you uploaded the Request file to check on the status of your file(s). See [File Status](#) for additional information.

Q26. [When will my Result file\(s\) be available?](#)

On average, the website will attempt to deliver a Result file 24 hours following the Upload Date; however, depending on extenuating circumstances, a Result file may be returned before or after 24 hours has passed. DMDC recommends that you return to the website any time within or after 24 hours from the time you uploaded the Request file to check on the status of your file(s). See [File Status](#) for additional information.

Q27. [I can't find my Result file\(s\) anymore, why not?](#)

Result files are only retained by the website for 10 days. If you have not downloaded your Result file during the 10 day retention period, this file has been discarded. You must upload the file again to obtain results.

Q28. [How can I download multiple Result files at a time?](#)

The system was designed to only download one file at a time.

Q29. [Where are the Certificates for each individual in the Result file?](#)

Certificates are provided if you have requested them on the Upload File(s) screen, see Request Multiple Records.

Q30. [Do I need an Account?](#)

If you only need to obtain information on one individual at a time, known as a Single Record Request, then you do not need to create an account; however, if you need to obtain information on multiple individuals at one time, then you must Create an Account.

Q31. [Why did my session expire?](#)

SCRA will automatically log users out of a session after a set period of inactivity. Once a user has logged in, if there is no activity for 10 minutes or more, the session will be terminated. (See [Session Timeout](#))

Q32. [What if I forgot my Username and/or Password?](#)

Password

If you forget your account's password, you can reset it if you remember your Username and the answers to the challenge questions you entered during account creation. See Reset Password for instruction on how to reset your account password.

Username

If you don't remember your username and/or the answers to the challenge questions you entered during account creation, you will need to create a new account by clicking Need a New Account on the Multiple Records Request Log-in page.

Q33. [Why is my account disabled?](#)

Inactivity

If your account becomes inactive after 90 days, the system will automatically disable your account and you will no longer have access to the file(s) you uploaded under that account.

Forgotten Username/Password/Challenge Questions

If you cannot successfully answer the Challenge Questions after three attempts during the Reset Password process, your account will be immediately disabled.

Q34. [How can I get Result file\(s\) from a disabled account?](#)

If your account becomes disabled, you will no longer have access to the file(s) you uploaded under that account. To Request Multiple Records again, you must create a new account, Need a New Account.

Any previous requests, no matter the status of the request, will need to be re-requested after you create a new account

Q35. [How can I contact the Military Services for additional information?](#)

Army:

Army Human Resource Service Center
1-888-ARMYHRC (1-888-276-9472)
Email: askhrc.army@us.army.mil

Navy:

Navy World Wide Locator
Navy Personnel Command

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PERS 1
5720 Integrity Drive
Millington, TN 38055
1-866-U-ASK-NPC (1-866-827-5672)

Marine Corps:

HEADQUARTERS U S MARINE CORPS
PERSONNEL MANAGEMENT SUPPORT BRANCH (MMSB-17)
2008 ELLIOT ROAD
QUANTICO, VA 22134-5030
Phone number: 703-784-3941 / 3942 / 3943

Air Force:

HQ AFPC/DS1W
550 C St West Ste 50
Randolph AFB, TX 78150-4752
Total Force Service Center (800-525-0102)

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C. HAVEN Act enactment

Advanced Hot Topics in Consumer Bankruptcy, November 2, 2019¹

The HAVEN Act, A Primer

I. The HAVEN Act – Honoring American Veterans in Extreme Need (HAVEN) Act of 2019

- A. Redefined 11 U.S.C. 101(10A) “Current Monthly Income” to also EXCLUDE –

“(IV) any monthly compensation, pension, pay, annuity, or allowance paid under title 10, 37, or 38 in connection with a disability, combat-related injury or disability, or death of a member of the uniformed services, except that any retired pay excluded under this subclause shall include retired pay paid under chapter 61 of title 10 only to the extent that such retired pay exceeds the amount of retired pay to which the debtor would otherwise be entitled if retired under any provision of title 10 other than chapter 61 of that title.”
- B. Signed into law on August 23, 2019 and became effective immediately.
- C. The HAVEN Act overturns decisions holding that, under the U.S. bankruptcy laws as previously written, disabled veterans were required to include their VA disability benefits in their disposable income for bankruptcy purposes – even though recipients of Social Security disability benefits were not required to do the same with their benefits.

II. Benefit is Not Limited to “Veterans”

- A. Department of Defense pays under Titles 10 & 37.
- B. Department of Veterans Affairs pays under Title 38.
- C. Examples and additional potentially excludable receipts excluded from “Current Monthly Income” are discussed here: http://abi-org.s3.amazonaws.com/Newsroom/HAVENActTPMAddendum_Aug_2019.pdf.

III. Application to Cases Pending Upon Enactment?

- A. Applies to cases filed after August 23, 2019.
- B. Arguments in support of applying the revised Current Monthly Income definition to cases and payment plans that were pending on that date include:
 - 1. *Landgraf v. USI Film Prod.*, 511 U.S. 244 (1994) (setting forth the standard as to application of a statute before its enactment);
 - 2. *Rivers v. Roadway Exp., Inc.*, 511 U.S. 298, 311 (1994) (applying narrow error-correcting statutes to pending cases where a contrary reading renders the statute ineffective);

¹ Courtesy of the NCBJ 2019 Annual Conference.

3. *In re Padilla*, 365 B.R. 492, 503 (Bankr. E.D. Pa. 20017) (quoting 11 U.S.C. § 350(b)) (providing a bankruptcy case may be reopened to accord relief to the debtor).

IV. Implementation

- A. Official Forms for Schedules are being revised.
- B. Bankruptcy Rules, Local Rules and Procedures are being updated.

V. Find Supporting Documentation

- A. DOD & VA's eBenefits website (www.ebenefits.va.gov) for Award Letters and Payment History, Military Discharge Document (e.g., DD Form 214) and Records.
- B. DFAS's MyPay website (www.mypay.dfas.mil) for Leave and Earnings Statements.

VI. Additional Resources

- A. ABI Task Force on Veterans and Servicemembers Affairs, <https://veterans.abi.org>; webinar - <https://veterans.abi.org/podcast/webinar-experts-discuss-new-bankruptcy-laws-help-distressed-small-businesses-disabled/>.
- B. Stateside Legal, <https://statesidelegal.org>.
- C. American Bar Association Standing Committee on Legal Assistance for Military Personnel, https://www.americanbar.org/groups/legal_assistance_military_personnel/.
- D. U.S. Dep't of Def. Warrior Care, <https://warriorcare.dodlive.mil/benefits/compensationand-benefits/>.
- E. U.S. Dep't of Veterans Affairs, <https://www.va.gov/>; Office of Gen. Counsel's Accreditation Search, <https://www.va.gov/ogc/apps/accreditation/index.asp>.

VII. Also - Administrative Discharge of Student Loans for Disabled Veterans

- A. President signed an executive action requiring the Dep't of Ed. and VA to develop a more streamlined process to administratively discharge the federal student loan debt of disabled veterans with the designation of "totally and permanently disabled."
- B. See Memorandum for the Secretary of Education the Secretary of Veterans Affairs, WHITE HOUSE (Aug. 21, 2019), <https://www.whitehouse.gov/presidentialactions/presidential-memorandum-discharging-federal-student-loan-debt-totallypermanently-disabled-veterans/>; codified at Discharging the Federal Student Loan Debt of Totally and Permanently Disabled Veterans, 84 Fed. Reg. 44,677, 2019 WL 3996836 (Aug. 21, 2019).

HAVEN Act – Frequently Asked Questions

Question: What does the Honoring American Veterans in Extreme Need Act of 2019 (“HAVEN Act” or the “Act”) do?

Answer: The Act excludes certain benefits paid to veterans or their family members from the definition of Current Monthly Income (“CMI”) found in the Bankruptcy Code. 11 U.S.C. § 101(10A). The types of compensation excluded from CMI under the Act include, but are not limited to, the following:

- Disability and death benefits paid by the Veterans Administration under title 38 of the United States Code.
- Monthly special compensation for catastrophic injuries or illnesses paid to servicemembers under 37 U.S.C. § 439.
- Any combat-related special compensation paid by the Department of Defense under 10 U.S.C. § 1413a.
- Disability severance pay paid by the Department of Defense under 10 U.S.C. § 1212.
- Any payment by the Department of Defense to a survivor in connection with the death of a member of the uniformed services. *See* 10 U.S.C. §§ 1431-1456.
- Disability-related military retired pay paid by the Department of Defense to a servicemember retired under 10 U.S.C. §§ 1201-1202, 1204-1205, except that such payments are excluded from CMI only to the extent that they exceed the military retired pay that the servicemember would have received if the servicemember had retired without a disability.

It should be noted, however, that certain benefits to current servicemembers are included in the CMI calculation, for example monthly special compensation from DOD, and retirement pay for people on the temporary disability retired list.

Question: How does the Act affect enforcement under section 707(b)(2) of the Bankruptcy Code and the determination of whether the presumption of abuse arises for veterans or their family members filing for chapter 7 relief under the Bankruptcy Code?

Answer: Veterans or their family members who file for bankruptcy relief under chapter 7 should exclude income covered by the Act from the calculation of CMI. The calculation of CMI is the starting point for determining whether a chapter 7 bankruptcy case is presumed abusive under section 707(b)(2).

Question: How does the Act affect chapter 13 cases?

Answer: Veterans and their family members who file for bankruptcy relief under chapter 13 should exclude income covered by the Act from the calculation of CMI, which may affect the determination of projected disposable income available for a chapter 13 plan.

Question: Will the USTP require debtors to produce documentation to support any veterans' benefits that they exclude from the calculation of CMI?

Answer: The USTP will limit its requests for documents related to income excluded from CMI under the HAVEN Act so as to not unduly burden debtors. The USTP does not routinely request from debtors documents not otherwise required by the Bankruptcy Code or Rules without a specific need for additional information.

Question: How does the Act affect the USTP's enforcement under section 707(b)(3) of the Bankruptcy Code (bad faith and the totality of the circumstances), and the determination of a debtor's actual ability to repay creditors?

Answer: By modifying the definition of "current monthly income," the HAVEN Act does not directly impact section 707(b)(3)'s provisions providing for dismissal of cases based on the debtor's bad faith or under the totality of the circumstances.

Feature

BY LOUIS M. BUBALA III AND JOSEPH E. DAGHER

Homestead Exemptions for Military Members on Assignment



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Life in the military comes with inherent risks. Outside of combat, service members face challenging legal issues. New assignments in new states mean new laws. In Nevada, with five military bases, military families have faced obstacles in voting¹ and obtaining school vouchers.²

Bankruptcy presents its own wrinkles. A recent appellate decision addressed whether military members on assignment can claim homestead exemptions and, if so, under what law.³ The answer is not as clear as it seems, however. Debtors, property and the court might be in different states, and the question of residence and domicile involves a mix of fact and law. Finally, a court must apply both federal and state law. There is a complex body of law for claims of cross-border, extraterritorial exemptions.⁴

The U.S. Bankruptcy Appellate Panel (BAP) for the Ninth Circuit provided guidance with *Burke v. Larsen* (*In re Larsen*). Neither the debtor nor the trustee provided the bankruptcy court with the correct law, resulting in an incorrect decision below. The BAP highlighted the controlling federal statute: Section 522(b) of the Bankruptcy Code states that the applicable exemption law is determined by the debtors' domicile.⁵ Despite the bright line, lawyers and courts have overlooked it. Case law is not always correct when addressing a military member's homestead exemption. This oversight can result in tactical and financial errors in evaluating a potential bankruptcy. In a bankruptcy, the mistake can result in a windfall for one side. *Larsen* is a reminder that without applying the correct federal law at the start, the remaining evaluation might lead to an outcome subject to reversal on appeal.

Statutory Framework

Larsen invoked questions on the federal bankruptcy venue, the federal allowance of exemptions and the federal interpretation of state law of allowable exemptions. Debtors may file for bankruptcy in any federal judicial district where they had their "domicile, residence, principal place of business ...

or principal assets" in the 180 days before bankruptcy (or the longer portion of that period).⁶ While a residence usually encompasses the same district for all purposes, some debtors might be able to file in multiple districts.

Military families may have a different *domicile* and *residence*, giving them two venues for filing. The terms are similar but distinct. A residence is where one lives in real time.⁷ A domicile is a permanent home — where one resides with the intention to remain or to which one intends to return following a temporary departure.⁸ A person residing in a state is not necessarily domiciled there.⁹ When domicile is disputed, "courts try to determine the subjective intent of [the] debtors" from subjective statements and objective facts.¹⁰

The second relevant statute allows debtors to exempt assets from collection and liquidation in bankruptcy.¹¹ Individuals may select exemptions authorized by federal bankruptcy law or the state law of their domicile.¹² While the venue statute may allow a debtor to file in multiple jurisdictions, the exemption statute depends solely on the debtor's domicile.¹³

The applicable exemptions also may depend on finer points. The first arises if the debtor was domiciled in two or more states in the 730 days prior to filing for bankruptcy. The court applies the law of the state where the debtor had the longest domicile for the 180 days before those 730 days.¹⁴ The second arises in determining the applicable exemptions. Some states permit debtors to select state or federal exemptions,¹⁵ but other states opt out of the federal exemptions, thus requiring debtors to apply the state exemptions.¹⁶ Finally, some states bar their exemptions from applying to property outside the state. Rather than denying the debtor an exemption, the debtor still can apply the federal exemption.¹⁷

⁶ 28 U.S.C. § 1408(1).

⁷ *Carl v. United States* (*In re Carl*), 142 B.R. 257, 259 (Bankr. N.D. Ill. 1992); William Houston Brown, et al., *Bankruptcy Exemption Manual* § 4:6 (2020).

⁸ *Lew v. Moss*, 797 F.2d 747, 749 (9th Cir. 1986).

⁹ *Weible v. United States*, 244 F.2d 158, 163 (9th Cir. 1957).

¹⁰ *Bankruptcy Exemption Manual* § 4:6 (citing *In re Felix*, 562 B.R. 700, 705 (Bankr. S.D. Ohio 2017)).

¹¹ 11 U.S.C. § 522(b)(1).

¹² 11 U.S.C. § 522(b)(1)-(3), (d).

¹³ 11 U.S.C. § 522(b); *In re Stockburger*, 192 B.R. 908, 910 (E.D. Tenn. 1996), *aff'd*, 106 F.3d 402, No. 96-5409, 1997 WL 41202 (6th Cir. Jan. 31, 1997) (table).

¹⁴ 11 U.S.C. § 522(b)(3)(A); *Mancuso v. Yarnall* (*In re Mancuso*), No. NV 16-1387-BHTa, 2018 WL 1354337, *2 (B.A.P. 9th Cir. March 12, 2018).

¹⁵ For example, courts recognize that Washington law does not require debtors domiciled there to select its state law exemptions. *Klein v. Anderson* (*In re Anderson*), 988 F.3d 1210 (9th Cir. 2021).

¹⁶ See, e.g., Nev. Rev. Stat. 21.090(3).

¹⁷ 11 U.S.C. § 522(b)(3) (hanging paragraph), (d); *In re Rody*, 478 B.R. 384 (Bankr. D. Ariz. 2012).

Background of *Larsen*

Larsen presented a mixed set of facts when debtors filed a joint chapter 7 petition in January 2020 in Nevada.¹⁸ They were from Washington, and Cami Larsen owned a home there, which they lived in until Jason Larsen was assigned to Guam in 2014. They moved to Nevada in 2017 when he was assigned to Naval Air Station Fallon.¹⁹ From 2014-20, the Larsens rented the Washington house at times, and a relative lived there on the petition date. Debtors scheduled the Washington home as exempt under Nevada law. They believed that because they lived in Nevada, they were required to file for bankruptcy in Nevada and use its exemption law.

The Issue and the BAP's Ruling

The trustee objected to the exemption and argued that the Washington house could not be their homestead because they did not reside there. He also argued that Nevada's homestead exemption does not apply to property outside the state.²⁰

The Larsens responded that they considered the Washington home their permanent home. Their driver's licenses were from Washington, the debtor husband's earnings statement listed Washington as his legal state of residence, and they paid Washington property taxes under the state's homestead law. The family member at the debtor's home was only housesitting, and they intended to return to the home once Mr. Larsen retired in June 2020.²¹

The debtors argued that they lived in Nevada under the Navy's orders, and that Washington remained their residence for voting purposes while on active duty under federal law. The Larsens also claimed that they were obligated to file for bankruptcy in Nevada under the venue statute. Finally, the Larsens argued that the Ninth Circuit allowed state law exemptions to apply to properties in other states.²² Hon. **Bruce T. Beesley** overruled the trustee's objection, allowing the exemption because Mr. Larsen was in the military at the time.

The BAP subsequently held that the bankruptcy court correctly determined that the debtors were entitled to an exemption. The panel also held that the trustee correctly argued that the debtors could not exempt their Washington home under Nevada law, but the reasoning behind both points was flawed because it overlooked the federal law on exemptions in bankruptcy.

The BAP pointed to § 522(b), which states that exemptions are determined by the debtor's "domicile."²³ After considering the law on the residence and domicile, the BAP noted that debtors can file bankruptcy cases in states where they cannot claim the exemptions due to a different domicile. Effectively, its legal conclusion did not depend on many issues raised at the bankruptcy court, including on the Larsens' residence in Nevada, the amount of time they spent in Nevada and the amount of time they spent away from Washington. The BAP held that the uncontradicted evidence in the record established that the Larsens were domiciled in Washington.²⁴

Although the decision reversed the original order sustaining their exemption, the BAP noted that the debtors were not left unprotected. Debtors may amend their exemptions as a matter of course at any time before the case is closed, subject to limited exceptions.²⁵ The debtors subsequently amended their schedules to claim exemptions under Washington law.

Other Rulings in Military Contexts

There are scant decisions about a military member's exemptions. The case of first impression is *In re Wellberg*, with a debtor from Minnesota on active duty in Virginia who filed for bankruptcy in Virginia.²⁶ The court debated the application of Virginia and Minnesota homestead law. The court held that the debtor remained domiciled in Minnesota when on call and, applying § 522(b), allowed the homestead exemption under Minnesota law.²⁷ Some subsequent decisions have correctly applied § 522(b).²⁸

Other courts have reached contrary conclusions. In *In re Anderson*, a debtor filed for bankruptcy in Texas while on assignment there and claimed a federal homestead exemption in property in South Carolina.²⁹ The trustee objected that she did not live in South Carolina. The court considered the facts about the property and state law decisions about absences due to military service, then allowed the exemption under federal bankruptcy law.

Anderson is similar to *Larsen* in that both courts felt compelled to provide a homestead exemption — but both decisions failed to address § 522(b). If the court had analyzed the statute, it could not have allowed an exemption under federal bankruptcy law. The court clearly found that the debtor remained domiciled in South Carolina, so the debtor should have applied South Carolina exemption law under § 522(b). South Carolina has opted out of the federal exemptions, and as a result, the debtor could not take the federal exemptions under South Carolina exemption law.

Yet the bankruptcy court still allowed the debtor to claim federal exemptions. Those were only available if the court held that the debtor was domiciled in Texas, which had not opted out of the federal exemptions.³⁰ The court had to ignore the issue of domicile and missed the requirements of § 522(b) to allow federal exemptions under Texas law. The outcome is even more surprising because the court cited *Wellberg*. Had the court followed that case, it would have held that the debtor was domiciled in South Carolina and limited to an exemption under South Carolina law.

In another case, the court factually rejected the debtors' claim of domicile in the state where they had a home, apart from their state of residence during the military assignment.³¹ The debtors lived in Utah while the debtor husband worked there with the Air Force. The debtors had bought land in Idaho 16 years before filing for bankruptcy, built a cabin

25 *Id.* at *5 (citing Fed. R. Bankr. P. 1009, and *Lua v. Miller (In re Lua)*, 692 F. App'x 851 (9th Cir. 2017)).

26 12 B.R. 48 (Bankr. E.D. Va. 1981).

27 The decision did not consider whether the debtor's raw land and an intent to build a home qualified as an exempt homestead that the debtor "uses as a residence." 11 U.S.C. § 522(d).

28 *In re Ober*, 613 B.R. 631, 636 & n.5 (Bankr. E.D. Pa. 2020) (uncontested application of Arizona exemption while military member was in Pennsylvania); *In re Porvaznik*, 456 B.R. 738 (Bankr. M.D. Pa. 2011) (overruling trustee objection based on debtor's absence from state during husband's assignment in Louisiana).

29 240 B.R. 254 (Bankr. W.D. Tex. 1999).

30 S.C. Code § 15.41-30(A)(1).

31 *In re Kline*, 350 B.R. 497 (Bankr. D. Idaho 2005).

18 2020 WL 6440884 at *1.

19 Fallon is home to the Navy's "Top Gun" program; in the 1986 movie, the program was based in San Diego.

20 2020 WL 6440884 at *1-2.

21 *Id.* at *2.

22 *Id.* (citing *Arrol v. Broach (In re Arrol)*, 170 F.3d 934 (9th Cir. 1999)).

23 *Id.* at *4 (citing *In re Stanton*, 457 B.R. 80, 85 (Bankr. D. Nev. 2011)).

24 *Id.*

continued on page 60

Homestead Exemptions for Military Members on Assignment

from page 35

and spent summers there. They stated that their intent was to retire to Idaho, remaining in Utah after his retirement until she retired. The debtor wife retired shortly before the bankruptcy, but the debtors were unable to move until after the filing due to the seasonal weather. Under those facts, the court held that they were domiciled in Utah and ineligible for Idaho exemptions. In *dicta*, Hon. **Jim D. Pappas** suggested that the debtors could not claim any exemption since Utah opted out and only exempted property in the state.³² The decision did not discuss the savings clause that preserves a federal exemption if none is available under state law.

There is an economic impact on applying one state's exemptions rather than another, whether rightly or wrongly. In *Larsen*, the Nevada homestead exemption protects up to \$605,000 in equity,³³ but Washington's exemption is capped at \$125,000.³⁴ In an appellate brief, the parties disputed whether the debtors had \$107,000 in equity or \$202,000.

³² *Id.* at 502, n.6.

³³ Nev. Rev. Stat. 21.090(1)(f), 115.050.

³⁴ Wash. Rev. Code § 6.13.030.

Under the original ruling with Nevada law, the equity would be exempt in either scenario. However, when the domicile is determined and Washington law is applied, there is excess equity for the bankruptcy estate if the trustee's valuation is correct. The decision to file for bankruptcy seemed to make sense if Nevada law applied and exempted all their home equity. In retrospect, the decision to file for bankruptcy makes less sense because the trustee can recover the excess home equity under Washington's less generous law.

Bankruptcy courts have complex questions of state and federal law when presented with issues of residence, domicile, homesteads and military duty. Differing decisions are common in cases involving multiple questions of fact and law. However, *Larsen* provides a baseline of the legal questions and analysis to resolve future cases. **abi**

Editor's Note: ABI's Veterans and Servicemembers Affairs Task Force was created to to educate, remediate and prevent adverse debt concerns and impacts on veterans and service members. For more information, visit veterans.abi.org.

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AMERICAN BANKRUPTCY INSTITUTE

Memorandum

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INFORMATION



NR

Subject:

§341 Meeting of Creditors
Attendance of Active Duty Service Members

Date:

April 7, 2003

To:

All Chapter 7 and
Chapter 13 Trustees
Southern and Western Districts of Texas

From:

Richard W. Simmons
United States Trustee
Region 7

The United States Trustee previously distributed minimum requirements for handling the non-appearances of a debtor at §341 meetings, and requests for waivers of appearances. The United States Trustee recognizes in times of war, certain additional exceptional circumstances may apply. The Office of the General Counsel, Executive Office of the United States Trustee, concluded "as a matter of Program policy, United States Trustees should excuse unavailable Active Duty Service members from attendance at the §341 meeting in appropriate circumstances."

Such **waivers are appropriate, without the need for a court order or Motion**, of the Active Duty service member's attendance at the §341 meeting using the following guidelines:

1. The **Joint** debtor spouse is an Active Duty service member and is unable to appear in person or telephonically because of mobilization or deployment; and
2. The **Joint** debtor spouse attends the §341 meeting and is able to testify competently regarding the Debtors' financial affairs; and
3. No party in interest, including the trustee, objects; and
4. There is no indication of fraud or bad faith; and
5. The Joint debtor's identity, mobilization, deployment and Active Duty service status, and consent to the bankruptcy filing is properly verified.

This Memorandum modifies the United States Trustee's prior policy that only two (2) options were available in exceptional circumstances, either asking the trustee to conduct a telephonic §341 meeting, or filing a motion to waive the appearance of one debtor. This is in recognition of the exigent circumstances created by the current war.

If you have any questions concerning the appropriate guidelines or criteria when waivers are appropriate for Active Duty service members, please contact the Assistant U.S. Trustees in your respective area, listed below.

2022 ANNUAL SPRING MEETING

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Attendance of Active Duty Service Members
April 7, 2003
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Steven M. Berman is a partner in the Tampa, Fla., office of Shumaker, Loop & Kendrick, LLP, specializing in the firm's bankruptcy and creditors' rights practice group. He has more than 30 years of bankruptcy experience and focuses his practice on business bankruptcy litigation, representing creditors, investors, distressed-debt lenders, trustees, committees and business entities litigating disputes in bankruptcy court. Mr. Berman is Board Certified by the American Board of Certification in both Creditors' Rights Law and Business Bankruptcy Law, and he is a member of the Florida, California, District of Columbia, New York and Puerto Rico (Federal) bars. He is also admitted to practice before the Eleventh Circuit Court of Appeals and the U.S. Supreme Court. Mr. Berman serves on the board of directors of the American Board of Certification and is a member of its Faculty Committee. He also serves on ABI's Board of Directors, its Endowment Committee and its Task Force on Veterans and Servicemembers Affairs, and he routinely volunteers and speaks at its seminars and other programs. On a local level, Mr. Berman is a member of the Tampa Bay Bankruptcy Bar Association, the Bankruptcy Bar Association of the Southern District of Florida, the Southwest Florida Bankruptcy Professionals Association and the San Diego Bankruptcy Forum. He also guest lectures at the University of Florida College of Law and Stetson University College of Law, both in the advanced bankruptcy courses. Additionally, Mr. Berman serves as the Judge Advocate and Parliamentarian to the Coronado Yacht Club in Coronado, Calif., and volunteers in providing *pro bono* bankruptcy and insolvency services and training for U.S. Navy Judge Advocate General officers and staff, along with representation of service members and their families in need. He received his B.S. in multinational business operations from Florida State University and his J.D. from the University of Florida Levin College of Law.

Hon. Mary Jo Heston is a U.S. Bankruptcy Judge for the Western District of Washington in Tacoma, appointed on Jan. 31, 2017. Previously, she was a shareholder in the Seattle and Portland, Ore., offices of Lane Powell PC, where her practice involved commercial litigation and transactional matters with an emphasis on business reorganizations, international insolvency and the acquisition of troubled businesses and assets. Between 1988 and 1993, Judge Heston served as the first Region 18 U.S. Trustee, overseeing bankruptcy cases and fiduciaries in Washington, Oregon, Idaho, Alaska and Montana. She also is a former law clerk to a federal district court judge and a bankruptcy judge and a former estate administrator of the federal bankruptcy court. Judge Heston taught bankruptcy courses for more than 20 years at both Seattle University School of Law and University of Washington Law School. She is a 2001 Fellow of the American College of Bankruptcy and an active participant in both professional organizations and community service organizations, and she currently serves or has served in leadership positions for the National Conference of Bankruptcy Judges, ABI, INSOL International, the Washington State Bar Association's Debtor Creditor Section, the Turnaround Management Association, CARE and CENTS. Judge Heston is a frequent international, national and regional speaker and author on topics including international insolvency issues, creditors' rights issues, and commercial and consumer insolvency issues. Her recent community service efforts have focused on military and veterans' financial and bankruptcy-related issues through her service on the *Pro Bono* Committee of ABI's Veterans and Servicemembers Affairs Task Force. Judge Heston received her undergraduate degree *cum laude* from the University of Washington in 1975 and her J.D. *cum laude* from the Seattle University School of Law in 1980.

John D. Penn is the firmwide chair of Perkins Coie LLP's Bankruptcy & Restructuring Practice in New York and Dallas. He is licensed by the Supreme Court of Texas and the Supreme Court, Appellate Division of New York in 2010, and has been an active bankruptcy and insolvency practitioner for almost 40 years. Mr. Penn is a former ABI president and chairman, and he served as chairman and past president of the American Board of Certification. He has been Board Certified in Business Bankruptcy Law by both the American Board of Certification and the Texas Board of Legal Specialization for nearly 30 years. Mr. Penn has written extensively on bankruptcy and reorganization topics. His work has been published in the *ABI Law Review*, the *ABI Journal* and a number of other publications. Mr. Penn received both his B.B.A. and J.D. from Baylor University.