

SOLDIERS' AND SAILORS' RELIEF ACT

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As a result of recent world events, we feel that it is prudent to remind our clients about this Act.

Overview

The protections under the Act reflect congressional concern that military personnel on active duty would be unable to pay pre-service debts because their military salary might be far less than their pre-service wages. The Act provides the following protections:

- The Act protects military personnel on active duty in the Armed Services.
- The Act restricts a lender's ability to collect obligations from military personnel on active duty. Most of the relief and protection extend only to loans made prior to entering active duty. The Act does not wipe out the obligation.
- After the protected person leaves active duty, the obligation is once again fully enforceable.
- The Act extends protection to sureties, guarantors, endorsers, accommodation makers and others who are obligated to pay a debt upon the default of a protected individual. If a service member is granted relief under the Act, a court may grant the same relief to persons liable on his obligation.
- Dependents of a person in the military service are also entitled to the benefits of the Act.

Active Duty Status

The Act applies to all persons who are on active duty with the Army, Navy, Marine Corps, Air Force, and Coast Guard, as well as National Guard units called to federal active duty, and officers

of the Public Health Service that are on active duty serving with the above armed services.¹ The relief and benefits of the Act also apply to persons who have received orders to report for induction or to assume active status but have not yet been inducted or activated.

Thus the Act does not apply to persons in the military reserves or National Guard until they are ordered to report for active duty. When a National Guard member or reservist is ordered to report for active duty, (s)he becomes eligible for protection under the Act on the date (s)he receives orders to report for active duty.

The client may request verification of active duty status. The most common evidence of active duty status would be a copy of the orders received by the borrower ordering him/her to active duty or to report for induction into the armed forces. Determination of whether the borrower is no longer on active duty is somewhat more difficult. If the borrower or the borrower's family states that the member is still on active duty, the client could request the name and address of the unit and request verification from the borrower's commanding officer. If a whole reserve unit or National Guard unit is activated at once, the client may receive news of the unit's deactivation.

For the most part, the protection of the Act ceases three months after the end of active duty.

Dependents/Others Liable

Dependents of a person in the military service are also entitled to the benefits of the Act. In addition, the Act authorizes the court, in its discretion, to extend certain protections of the Act to other persons liable on the obligations of persons on active duty, such as sureties, guarantors, endorsers, accommodation makers and others who are obligated to pay a debt upon the default of the protected individual. Thus, if a person on active duty involved in a judicial proceeding is granted a stay, if a judgment or decree is vacated or set aside, the court may grant the same relief to other persons liable on the obligation.

¹ It also applies to citizens of the United States serving in the armed forces of nations allied with the United States in a war.

Loans Made Prior to Service

In general, the relief and protection afforded by the Act apply only to loans made prior to entering the service.² In addition, some or all of the relief and protection afforded by the Act may be set aside by a court if, in the opinion of the court, the member's ability to repay an obligation, incur the contract interest rate on an obligation, or otherwise meet the terms and conditions of the obligation, has not been materially affected by active duty. However, the burden of proof is on the client.

Note that the Act does not excuse the member from making the payments on his or her obligation with the client. The service member may, however, petition a court to suspend or reduce the payments if his or her ability to make the payments is materially affected while on active duty.

Reduction of Interest Rate

Section 526 of the Act states that the rate of interest on a loan incurred prior to active duty shall be reduced to 6% during the period of active duty. It appears to be a fairly common practice among lenders to reduce the rate only if so requested by the borrower or the borrower's agent.

We have found no cases addressing the issue of credit card or other open end loans. Given the intent of the Act, it would appear that the client need only reduce the interest rate to 6% on existing balances of open end advances made prior to active duty and could apply the contract rate of interest to advances made after entering into active duty. The client should inform the member if it intends to charge the contract rate of interest on open end advances made after the member enters active duty.

The client can request a court to order the person to pay a higher rate, but the client must convince the court that the ability to pay the higher rate is "not materially affected by reason of the

² However, a serviceman involved in a court proceeding either as a plaintiff or a defendant may apply for a stay of the proceedings during the period of active duty or within sixty days after the end of active duty. This protection extends to court proceedings regarding loans made while in the service. The stay must be granted unless, in the opinion of the court, the ability of the serviceman to prosecute the action or conduct his defense is not materially affected by his active duty.

individual's military service." (The clearest case is where the civilian and military pay are substantially the same.)

It appears that, if the borrower is to realize the financial relief intended by the Act while on active duty, (s)he will likely request a reduction in the payment amount based on the 6% interest.

Collection Attempts--Stay Against Judicial Proceedings--Repossession

While collection attempts are not prohibited, repossession and collection through court proceedings to recover are severely limited. For both secured and unsecured loans, a default judgment is difficult to obtain and even if obtained may be set aside if the defendant has not been able to appear and has not appointed an attorney.

In addition, the court, in its own discretion or upon application by the person on active duty, may stay any legal proceeding in which the person on active duty is involved as a plaintiff or defendant, unless in the opinion of the court, the ability of the person on active duty to conduct or defend the case is not materially affected by reason of active duty. Where a proceeding is stayed with regard to a person on active duty, the Act provides that the court, in its discretion, may also stay the proceeding as to others primarily or secondarily subject to the same liability.

With regard to loans secured by a pledge of real estate or personal property as collateral, seizure of property, foreclosure, and sale of property pledged as collateral are not valid unless approved by the court. Thus, with regard to loans made prior to active duty, a client cannot repossess personal or real property pledged on the loan of a borrower on active duty without judicial approval. If a borrower on active duty misses or reduces payments on a loan, the client cannot exercise the repossession or termination remedies provided for in the loan or security agreement, but instead must initiate judicial proceedings.

Protection of Persons Exercising Rights Under Act

In 1991, the Act was amended to prohibit adverse action by a creditor in current or future lending transactions based on exercise by a person of his or her rights under the Act. (Adverse action can be taken based on other considerations.) Exercise of rights under the Act may not be used as a reason to deny or revoke credit, adversely change terms of existing credit, or as the basis for an adverse report to a credit bureau or other collector or evaluator of consumer credit information.

Waiver or Modification of Rights under the Act

A person may waive some or all of his or her rights under the Act but the waiver must be made after the person enters active duty. The Act allows modification, termination, cancellation or foreclosure of any contract, lien, security agreement or any obligation secured by a mortgage if the parties, including the person in the military service, agree to the change in writing. Such agreements are effective only if they are made after the commencement of active service.

Notes on Impact

Currently, it is a requirement that an affidavit be filed setting forth the facts showing the defendant is either not in military service (50 App.U.S.C.A. 520), or there is no information upon which to make a statement. The client is the one who has tried making telephone contact with the debtor. He/she should have information regarding this military service. The return of summons also provides a possibility, but be careful in this front. The effective date of the stay is the date the order are received. Therefore, the borrower may not have reported, but received orders when the summons was served.