



2006 IRA Contribution Deadline Extended



Credit Union employees should be prepared to answer questions about the tax filing deadline and IRA contribution deadline. The IRS has announced that taxpayers throughout the country will now have an extra day, until April 17, 2007, to file their 2006 returns and pay any taxes due.

This announcement came after the IRS became aware that, under recently-enacted legislation, April 16th is Emancipation Day—a legal holiday in the District of Columbia. Under federal law, holidays observed in the District of Columbia impact tax issues, including the tax filing deadline.

Because of this, prior-year contributions to IRAs and other tax-advantaged plans, such as Health Savings Accounts (HSA) are also affected. Taxpayers will have until the April 17 deadline to make these contributions as well.

Credit unions should make sure their data processing systems are capable of accepting and properly reporting prior-year contributions received or postmarked by the April 17 deadline.

The tax filing date listed in this year's booklets is April 16th. The traditional April 15 tax filing deadline had already been delayed until April 16th because of the rule that whenever April 15 falls on a Saturday, Sunday, or legal holiday, the deadline is the next business day. The IRS found out too late that April 16th is Emancipation Day. They will not be reprinting the booklets with the correct date, so members may be confused about the tax filing date as well as the final date to make 2006 contributions to traditional IRAs, Roth IRAs, Coverdell Education Savings Accounts (ESAs) and Health Savings Accounts (HSAs). Taxpayers will have until April 17, 2007 to file their 2006 returns and make these contributions for 2006, and pay any taxes due, regardless of the deadline printed in the tax booklets.

An Overview of The Servicemembers' Civil Relief Act of 2003

One of the things we try to do with this newsletter is inform all staff of compliance issues that do not require specific training classes or that have too little information to conduct a class on. On pages 2, 3, and 4 of this newsletter you will find information on The Servicemembers' Civil Relief Act of 2003 (SCRA). The general provisions of the SCRA are easily summed up, and, in general, exceptions are few. Please remember, however, that it is just a summary of the *general* purpose and provisions of this regulation. Should you have any questions about an actual member requesting relief under the act, please feel free to inquire about any applicable exceptions.



The Servicemembers' Civil Relief Act of 2003

Purpose:

The SCRA protects individuals who are on full-time duty in the active military service of the United States who have been “materially affected” or disadvantaged as a result of going on active duty. The act provides for relief to be given to servicemembers who suffer a pay cut as a result of being called for active duty. The member is able to receive a break on some interest payments during the active duty period. Also, institutions are limited in their ability to institute legal proceedings to collect payments for debt incurred prior to active duty.

When does the Act apply?:

SCRA protection applies during active duty, which begins on the date service begins and ends when an individual is “separated” from military service (i.e., dies while on active duty or is released from active duty). Enlisted reservists may receive protection as soon as they receive orders to report for duty.

Active duty personnel include:

- Individuals appointed, enlisted, or inducted into regular branches of the U.S. military service (Army, Air Force, Navy, Marines, and Coast Guard)
- Personnel mobilized in National Guard and Reserve units
- Commissioned officers of the Public Health Service
- Commissioned officers of the National Oceanic and Atmospheric Administration
- Officers in full time training (e.g., boot camp, advanced training, etc.) at a school designated by law or by the Secretary of the military department as a military service school
- National Guard members called to state active duty under Title 32 if (1) the duty was because of a federal emergency; (2) the request for active duty was made by the President or Secretary of Defense; and (3) the member was activated longer than 30 days.

Servicemembers' dependents (spouse, child, or an individual for whom the servicemember provided more than one-half of the individual's support for the 180 days immediately preceding an application for SCRA relief) are generally not entitled to receive reduced rates of interest on loans (unless there is a joint obligation with the servicemember), but may seek court protection to prevent foreclosure, repossession, or an out of court sale.

What must a servicemember do?:

The servicemember must provide creditors with a written notice and a copy of the military orders calling the servicemember to active duty, as well as any orders further extending military service. The notice must be provided not later than 180 days after the date of the servicemember's termination or release from military service. Once the credit union receives this notice, it must reduce the interest rate on any pre-service debt as of the date on which the servicemember was called to active duty.

6 % interest-rate cap:

Under the SCRA, as soon as an individual goes on active duty (or receives orders to go on active duty), that person should be charged no more than 6% interest on obligations incurred **prior** to active duty. Prior joint obligations that involve the servicemember and his/her spouse would also receive the 6% rate reduction. Services that would be subject to a 6% interest rate period during the active duty period include:

- Outstanding balances on lines of credit

- Home mortgages
- Car loans
- Share secured loans
- Signature loans

The credit union must **forgive** any interest in excess of 6% that would have been incurred by the member if no rate cap was in effect. The term “interest” includes service charges, renewal fees, or any other charges (except bona fide insurance) with respect to an obligation or liability. In addition, credit unions must reduce the amount of any periodic payment due from a service member “by the amount of the interest forgiven... that is allocable to the period for which the payment is made.” Credit unions will violate the SCRA if, rather than reduce the amount of any payment on outstanding balances due while the member is on active duty, they reduce the number of total payments the member must make.

The 6% interest rate limit does not apply to new advances under an existing credit card or home equity line of credit program. The statute requires the reduced rate only for obligations incurred prior to active duty. The servicemember is not entitled to the reduced rate for debt incurred during or after active duty, which would include advances on open-end plans. This is true even if the open-end plan were established for the member prior to active duty.

Renegotiating credit terms:

Rather than collect the 6% provided by the Act, the credit union and the servicemember may choose to renegotiate the original loan contract. The SCRA provides that contracts may be modified, terminated or cancelled and that property which is security for an obligation may be repossessed, foreclosed, sold or forfeited pursuant to a written agreement between the creditor and the servicemember that is entered into during or after the period of active duty.

Fees:

For closed-end loans, it is clear that the rate limitation applies to all fees, service charges, renewal charges or any other charges except bona fide insurance. Thus, if a credit union charges the full 6%, it may not charge other fees, including an annual fee or a late fee, during the servicemember’s period of active duty.

For open-end loans, the 6% rate limit’s effect on fees is not so cut and dry. If the fee is related to new advances taken while the servicemember is on active duty, the fee may be added to the account balance. Fees that relate to the outstanding balance prior to active duty and that have not been paid when active duty begins may not be added to the account. If such fees have already been billed, they should be removed from the account.

Truth in Lending issues:

The SCRA’s interest rate limitation provisions trigger certain requirements under truth-in-lending (Regulation Z). For open-end loans, a change in terms notice is required when the member is no longer on active duty and the credit union reinstates the contract rate. It has been determined that a disclosure stating that the interest rate will return to the original rate after the service member is discharged given to the member when the rate is dropped to 6 % is sufficient.

For closed-end loans, an additional disclosure will only be required for variable rate loans secured by a member’s principal dwelling that have a term of greater than one year. This could present a problem because the servicemember does not have to request relief until no later than 180 days after his discharge, even though the rate change is effective from the first day of service, meaning retroactive credit may have to be given. TILA requires the rate change notice to be sent no later than 25 days after the rate change. This is one of those times that regulations conflict with each other because they do not take into account other laws or regulations. The best thing to do is due diligence in delivering the required disclosures as soon as possible

after the credit union becomes aware of the member's active duty status.

Closed-end loan disclosures need to include, as applicable:

- (1) the current and prior interest rates;
- (2) the index values upon which the current and prior rates are based;
- (3) the extent to which the credit union has foregone an increase in the interest rate;
- (4) contractual effects of the adjustment, including the payment due after the adjustment and a statement of the loan balance; and
- (5) the payment if different from the disclosure in #4 that would be required to fully amortize the loan at the new interest rate over the remainder of the loan term.

These disclosures need sent both when the 6% rate takes effect and when the loan returns to its original rate.

Freezing or terminating lines of credit and obtaining a default judgment against an active service-member:

Nothing in Regulation Z specifically prohibits freezing or terminating a line of credit, however, credit unions are urged to exercise caution. There are so many exceptions and smaller prohibitions that lenders have found that it is nearly impossible to separate the servicemember's invocation of his or her SCRA rights from the credit union's decision to freeze or terminate the line of credit.

The SCRA provides that in any action or proceeding in any court in which the defendant (i.e., the servicemember) does not make "any appearance," the plaintiff (i.e., the credit union) before obtaining a default judgment must file an affidavit stating facts showing that the defendant is not in military service. If the statement is not filed, the judgment is voidable, i.e., it can be set aside and reopened by the servicemember upon proper showing that he has been prejudiced by reason of his military service in making defense. The court may also require the creditor-plaintiff to file a bond to protect the defendant against loss should the judgment be set aside at a later date.

Therefore, if a servicemember has a loan agreement with the credit union and has failed to make repayment on the loan as called for in the contract, the credit union is not precluded from taking action in court to seek what is owed him under the contract. If the servicemember is able to appear in court either in person or through his or her chosen representative, the provisions of Title II regarding default judgments will not have effect. However, if the servicemember is unable to appear, the Act severely restricts a creditor's ability to obtain a default judgment against the member. Please note that violations of this provision may result in a criminal fine and/or one year's imprisonment.

Compliance Training Calendar

	Monday	Tuesday	Wednesday	Thursday	Friday
	19—Offices Closed	20	21—UCC 9	22	23
February/March	26	27	28— UCC 3 & 4	1- UCC 3 and 4	2
	5	6	7—Lending regs.	8	9
	12	13	14	15	16
	19	20	21—Fair Housing	22	23
	26—TISA/TILA advertising	27—TISA/TILA advertising	28	29	30
April	2	3	4	5	6
<i>Key:</i>	9	10	11- Make-up Day	12- Make-up Day	13
<i>Everyone Loan Dept.</i>	16	17	18—RESPA	19- FINAL make-up day	20
<i>Front Line Loan. Marketing and Front Line</i>	23— Post Testing (during day)	24—Post Testing (during day)	25	26	27