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POSITION PAPER

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THE SERVICEMEMBERS CIVIL RELIEF ACT (SCRA) PROTECTIONS

Requested Action:

ROA encourages Congress to support improved provisions to the Servicemembers Civil Relief Act (SCRA), 50 U.S.C. App. 501-596, that will protect the financial interests of all serving members of the uniformed services.

A challenge with any law is when statutes are static in a dynamic environment. The changing nature of contingency operations and the conditions of service today indicate that the SCRA must be continuously reviewed to protect service families. ROA suggests the following improvements by amending SCRA to:

- Forbid discrimination based on a member being in the Reserve Component or the possibility of future utilization of SCRA rights.
- Include protections on leases and contracts impacting mobilized small business owners.
- Give the mobilized Reserve Component member the right to terminate or suspend a contract or lease for services or goods, such as professional equipment, communication or computer services.
- Broaden the types of insurance that the service member is entitled to reinstate after returning from military service. As currently written, the returning service member is entitled to reinstate health insurance under SCRA and USERRA, but other insurance protections are needed for professionals, dental and disability coverage.
- Clarify that SCRA applies to the debts of limited liability companies and Subchapter S corporations when the company/corporation is wholly-owned by the service member or the service member and spouse and that he or she is personally liable on the debt, either as a co-maker or as a guarantor.
- Amend 50 U.S.C. App. §597a of the SCRA to provide that no action brought to enforce a member's rights or obtain damages as a result of SCRA violations shall be subject to a mandatory arbitration clause in the contract.
- Amend Section 305 of the SCRA (50 U.S.C. App. §535) to:
 - a) clarify that an order to a service member to move from off-base into on-base quarters qualifies as a grounds to terminate a lease earlier than its term, and
 - b) that the term "permanent change of station" has the definition found in the Joint Federal Travel Regulations (which would include ETS moves and retirement moves).
- Amend Section 203 of the SCRA (50 U.S.C. App. §523) to clarify that an early pre-payment penalty on a mortgage is included within the coverage of that section and providing that if it is necessary for a service member to obtain a court order to force a creditor to waive an early pre-payment penalty for a mortgage when the pre-payment is a result of either a deployment in excess of 180 days or a PCS move.

[over]

- Amend the SCRA to add a provision that the expiration dates of any license or certification issued by any state or federal agency (including driver's licenses, nurses' licenses, contractors' licenses, etc.) shall be extended to a period that is 90 days after the release from active duty of a service member.
- Add a SCRA provision to exempt from the requirements of continuing legal or medical education levied by any state or federal agency, bar or medical association any service member who is serving in a legal or medical billet and is deployed outside the CONUS for 180 days or more during the year.
- Add a provision preventing any foreclosure action (judicial or nonjudicial) against a deployed service member who has given notice of his or her deployment to the mortgage creditor, regardless of whether the mortgage was pre-service or not. The “safe haven” against foreclosures should be for the duration of the deployment plus 90 days after the service member’s release from active duty.

Discussion:

The SCRA is the single greatest source of civil law rights and protections for American service members. Never has this comprehensive, substantive and procedural shield been put to the test as in this era of overseas conflict, with hundreds of thousands of service members — Active, Reserve, and National Guard — enduring repeated mobilizations and extended overseas deployments. Those mobilizations and deployments have given rise to countless personal legal challenges over consumer, landlord-tenant, family, property, and business matters.

The intent of Congress was to give peace of mind to the service members by granting special protections to their rights and property interests while he or she labors in the service of this country. The provisions of the Act allow the serving members on active duty, especially when deployed, to have their legal rights secured until the members can return from the military to defend themselves. Protection includes mortgage rates, mortgage foreclosure, and credit card interest rates, and the ability to represent oneself in court.

This Act applies at all times not just when the U.S. is at war. The primary benefits are granted directly to persons in the military service. “Person in military service” is defined to include full-time members of the Army, Navy, Air Force, Marine Corps, Coast Guard, officers of the Public Health Service and National Oceanic and Atmospheric Administration, and those persons who are on active duty with the Reserve or the National Guard.

For those full-time members of the seven branches of the uniformed services, the protections applies from the date of entry into the military; for those who are in the Reserves or the National Guard, the protections start when they enter active duty. The period of military service terminates with the date of discharge from active service or death while in active service, although some protections extend by several months after discharge.

