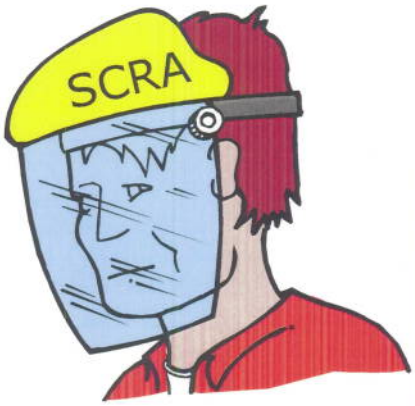
# "Protecting Ourselves" — A SCRA Primer

**by CPT Yolanda Williams**




Servicemembers make a lot of sacrifices to answer the country's call to protect and defend freedom. Although taking care of your personal affairs while serving in the military can be challenging, Congress has done its part to provide additional protections for servicemembers to ease some of those burdens. The Servicemembers Civil Relief Act (SCRA) was designed to postpone or suspend certain civil obligations of military personnel during their military service. The SCRA's protections apply in civil lawsuits, in bankruptcy proceedings, and in administrative hearings, but they do not apply in criminal proceedings. The SCRA seeks to alleviate certain legal burdens that confront servicemembers so they can focus their energies on the defense of the nation.

Here are a few of the protections afforded under the SCRA:

- A stay of proceedings is allowed when a servicemember with notice of proceedings in civil court or an administrative hearing is unavailable and whose ability to appear is materially affected by military service. A court shall grant a stay for not less than 90 days upon the servicemember's application.
- A servicemember neither acquires nor loses his or her domicile based on presence in a state due to military orders. As of November 11, 2009, this taxation provision applies to spouses living with servicemembers if the spouse's domicile is the same as the servicemember's. Military income is deemed earned in the state of domicile and personal property (*e.g.*, a car) is deemed located in the state of domicile. Note: the SCRA does not protect the servicemember's nonmilitary income (*e.g.*, wages earned after duty hours as a bouncer at a nightclub).
- The SCRA limits interest to 6% on pre-service obligations. Lenders are required to forgive interest above 6% and cannot accelerate payment of the principal. This interest cap requires the servicemember to give notice only and has no requirement to show material effect. Interest rates on mortgages may be reduced to 6% during active duty and for one year after being released from active duty.
- A court cannot enter a default judgment against a servicemember until the court appoints an attorney to represent the defendant servicemember. The default judgment protection applies only if the servicemember has not appeared. The plaintiff is required to file an affidavit as to the defendant servicemember's military status. Upon application by the servicemember, the court shall reopen any default judgment rendered while the servicemember was on active duty or within 60 days of release from active duty.
- The SCRA tolls the running of the statute of limitations in civil and administrative proceedings. This protection applies whether the servicemember is the plaintiff or defendant. This protection does not apply when it comes to tax matters.
- Residential lease termination is covered for pre-service leases, permanent change of station moves, and deployments over 90 days. The protection releases dependents' obligations along with the servicemember's. This protection requires written notice with a copy of your military orders.
- The eviction protection rule provides that a servicemember can only be evicted upon court order. Foreclosure without a court order is prohibited and applies to pre-service obligations secured by a mortgage. The servicemember is required to show material effect and the court may stay the proceedings or adjust the obligation as equity requires. The period of protection was extended in 2008 from 90 days to nine months. Self-help repossession of items purchased on installment contracts is prohibited. The contract must be a pre-service obligation; common examples are contracts for appliances, furniture, and motor vehicles. A court order is required prior to termination for breach of contract or repossession and material effect must be shown.

*[continued on page 13...]*

# "Protecting Ourselves" (continued...)

**Who Gets SCRA Protections?**

Active Component servicemembers, Reservists when on Active Duty in a Title 10 status, National Guard when on federal duty (Title 10) and sometimes when on state duty (Title 32), and family members (in certain instances) are protected under the SCRA.

**When Do SCRA Protections Begin?**

SCRA protection begins upon entry on active duty, upon receipt of induction orders for new enlistees, or on receipt of mobilization orders for Reservists.

*If you have any concerns about the issues addressed above or your rights under the SCRA, make an appointment to see a Legal Assistance Attorney at the Kaiserslautern Legal Services Center by calling DSN 483-8848 or Civilian 0631-411-8848, and let us help you protect your legal rights.*

# AFFIRMATIVE CLAIMS — GETTING $$$ BACK

**by CPT Mike Gilbertson**

Have you or your dependents been injured because of someone else's fault? Or do you know of U.S. Government property that has been lost or damaged? If the U.S. Government provided medical care to you or your dependents or paid to have the Government property repaired or replaced, let your local military claims office know ASAP!

Under federal law, the U.S. can seek reimbursement, through an affirmative claim, against an individual who causes such injury, and/or their insurance company. This reimbursement includes recovering lost military pay and the reasonable value of medical care provided furnished by Military Treatment Facilities (MTF) by civilian medical facilities at Government expense. The U.S. can also recover the reasonable value of damage to and loss or destruction of Government property, such as fences, gates, barriers, tactical vehicles, vessels, aircraft, NAFI property, and GSA-owned property. So do your part to help reduce the deficit, and let your nearest claims office know about injuries or damage caused by others today!

**I WANT YOU**

**TO HELP U.S. TAXPAYERS**

**NEAREST CLAIMS OFFICE**

**KAISERSLAUTERN LEGAL SERVICES CENTER**
**BLDG. 3210, ROOM 109, KLEBER KASERNE**
**DSN 483-8414 OR CIVILIAN 0631-411-8414**

***Breaking News:* The Kaiserslautern Legal Services Center Claims Office has won The Judge Advocate General's Award for Excellence in Claims Support for the fifth consecutive year. Other winners included the 21st TSC Claims Offices in Stuttgart and Mons, Belgium. 21st TSC lives up to its motto: "First in Support!"**