



SCRA Meets FCRA *When Acronyms Collide*

By: John Costello

When acronyms collide, confusion can ensue for consumers and lenders. Obligations under one statute must be harmonized with others. Two easily confused statutes are the SCRA and the FCRA. The SCRA, or the Servicemembers Civil Relief Act, provides certain benefits and protections for members of the United States Armed Forces when called to active duty military service. The FCRA, or the Fair Credit Reporting Act, regulates the collection, dissemination, and use of consumer information, including consumer credit information. One question that often arises is whether the exercise of SCRA rights means that a creditor cannot engage in any credit reporting under FCRA. The answer is actually straight-forward and understandable: a servicemember's exercise of SCRA rights does not prohibit a lender's otherwise valid exercise of FCRA rights.

Section 518 of the SCRA – The Anti-Retaliation Provision

Under the SCRA, creditors are prohibited from using the fact that a servicemember exercised his or her rights under the SCRA as a basis for determining that the servicemember debtor is unable to pay the obligation in accordance with its terms, or making an adverse report as to the creditworthiness of the servicemember. Section 518, entitled "Exercise of rights under Act not to affect certain future financial transactions," provides:

Application by a servicemember for, or receipt by a servicemember of, a stay, postponement, or suspension pursuant to this Act in the payment of a tax, fine, penalty, insurance premium, or other civil obligation or liability of that servicemember shall not itself (without regard to other considerations) provide the basis for any of the following:

- (1) A determination by a lender or other person that the servicemember is unable to pay the civil obligation or liability in accordance with its terms.
- (2) With respect to a credit transaction between a creditor and the servicemember--
 - (A) A denial or revocation of credit by the creditor;
 - (B) A change by the creditor in the terms of an existing credit arrangement; or
 - (C) A refusal by the creditor to grant credit to the servicemember in substantially the amount or on substantially the terms requested.
- (3) An adverse report relating to the creditworthiness of the servicemember by or to a person engaged in the practice of assembling or evaluating consumer credit information.
- (4) A refusal by an insurer to insure the servicemember.
- (5) An annotation in a servicemember's record by a creditor or a person engaged in the practice of assembling or evaluating consumer credit information, identifying the servicemember as a member of the National Guard or a reserve component.
- (6) A change in the terms offered or conditions required for the issuance of insurance.

Exercise of SCRA Rights Does Not Prohibit Exercise of FCRA Rights

This section of the SCRA is at core an anti-retaliation provision. If a creditor has a valid basis to otherwise make a credit report, such as non-payment, then the SCRA does not affect that right to make a credit report. A recent



federal district court case, *Murphy v. Bank of America*, Case No.: 2:12-CV-2520-VEH (N.D. Ala. Nov. 28, 2012), provides important insight into the interaction of these two consumer protection statutes. As the *Murphy* court stated: "It is only doing one of the enumerated activities solely because of a service member's application for, or receipt of, a stay that §518 prohibits."

In *Murphy v. Bank of America*, the plaintiff was obligated under a mortgage loan obtained prior to his deployment to Afghanistan in September 2010. During his deployment, plaintiff failed to make his regularly scheduled mortgage payments. The Plaintiff alleged he had been told that he did not need to make payments and that his credit would not be reported on during his active duty time. The lender disputed this allegation, and had submitted adverse credit reports of the Plaintiff's delinquency during the period of active duty military service. The plaintiff claimed this violated the SCRA and sought damages on behalf of a putative class.

In dismissing the SCRA claim, the district court noted that the complaint failed to allege that the lender took either action because the plaintiff applied for, or received, a stay under the SCRA. Noting the complaint allegations that the plaintiff was seven-months behind on his mortgage because he did not make his mortgage payments while he was in Afghanistan, the district court held that the missed payments were a valid and alternative reason for the lender to file an adverse credit report. According to the court:

Section 518 is not a blanket prohibition on these [] activities. Instead, it only prohibits doing these activities because of a service member's application for, or receipt of, a stay under the SCRA. So long as the creditor has a valid and alternative reason for its action, the creditor does not violate §518.

Likewise, since the lender was found not to have violated the SCRA, there could be no possible FCRA violation either.

Take Away

The *Murphy* case does, however, provide an invitation to review compliance management systems in place for SCRA credit reporting compliance.

- It is critical for compliance personnel to inquire with management regarding the controls in place to ensure that credit applications received are not denied or offered less favorable terms as a result of such action because of the applicant's military status or previous invocation of protections under the SCRA.
- Similarly, compliance personnel should review the mechanisms by which institutions refrain from furnishing adverse credit information to credit reporting agencies regarding active duty servicemembers.

Situations involving extensions of benefits and protections beyond those required by the express language of the SCRA, such as gratuitous programs as well as regulatory consent order requirements, require that institutions have robust compliance systems in place to ensure that business units are internally consistent in their treatment of consumers.

For more information on the matters discussed in this *Locke Lord QuickStudy*, please contact the author:

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