

Consumer Bankers Association
Education Finance Council
National Council of Higher Education
Loan Programs
Student Loan Servicing Alliance

Dear Colleagues:

This responds to your letter of June 9, 2011 in which you requested that the Department of Education (the Department) respond to questions related to application of the interest rate cap under the Servicemembers Civil Relief Act (SCRA) to loans under the William D. Ford Federal Direct Loan Program and the Federal Family Education Loan Program. You asked that we reconsider your earlier recommendations, which we responded to by e-mail on April 12, 2011, and respond to additional recommendations you included in your June 9th letter.

Before we respond to your recommendations, we think it is important to reiterate that the Department of Defense (DOD), not the Department, is the federal agency with authority to interpret and enforce the SCRA requirements. As we noted in our April 12th e-mail response, section 527(b)(1) of the SCRA specifically requires the servicemember to provide the creditor with "written notice and a copy of the military orders." The Department's regulations in this area at 34CFR 682.202(a)(8) and 685.202(a)(4) refer to a "request" from the borrower rather than a "notice," but these terms are substantively the same for this purpose. As we stated in our April 12th response, it appears clear that the SCRA requires submission of something more from the servicemember than just a copy of the servicemember's military orders.

The following are our responses to the specific processing recommendations you included in your June 9th letter:

- 1) Q. Where the military service start and end date is not clearly specified on military orders, begin the 6% interest rate cap on the earliest date indicated on the military orders and end the rate cap on the latest date on the military orders.
 - A. We agree this is a reasonable approach to interpreting the service dates on military orders to identify the start and end dates for the interest rate relief.
- 2) Q. Consider the receipt of a servicemember's military orders as sufficient information that the servicemember intends to request the 6% interest rate cap.
 - A. As we stated in our April 12th response, this suggestion is not consistent with the SCRA. It also is not consistent with the Department's regulations in this area because it eliminates the servicemember's request. Although lenders may opt to require less documentation than is required by the SCRA when dealing with their commercial loan portfolios, any decision by the Department to accept less documentation for federal student loans would require consultation with DOD, a determination that such a change is consistent with the RA and a corresponding regulatory change.

We note, however, that neither the SCRA nor the Department's regulations specify a format for the borrower's request. The servicemember may use the military deferment form or any other program form to include a separate request for the 6 percent interest rate cap relief. Incorporating the servicemember's interest rate cap request into the military deferment form to allow the servicemember to simultaneously request both forms of relief would require a change to the current military deferment form.

We are also aware that many deploying servicemembers provide a spouse, family member, or other individual with a power of attorney for financial matters. A request for the interest rate cap relief from the servicemember's representative with a power of attorney accompanied by a copy of the servicemember's military orders is the same as a request from the servicemember. In highlighting the benefits available to military servicemembers on your websites, we believe you should stress to servicemembers the importance of providing the name of any person they have provided with a financial power of attorney to act on their behalf to the loan holder or servicer.

- 3) Q. In lieu of or in addition to military orders, utilize information that contains DOD commanding officer certifications such as affidavits, federal deferment forms, and other types of correspondence signed by an applicable military officer or authority as well as military status report information report information secured from the U.S. Government Computer System provided the information contains the applicable active duty information that is contained in military orders.
 - A. Accepting other documentation "in lieu" of a copy of the servicemember's military orders would effectively eliminate the requirement for a copy of the orders and is inconsistent with both the SCRA and the applicable program regulations. These alternate forms of documentation do not serve as the servicemember's request for the relief. However, some of these forms of documentation can be used to identify the start and end dates of the servicemember's period of service if the military orders do not include this information.

We trust this clarifies the Department's position on these issues.

Sincerely,
Pamela Moran
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Office of Postsecondary Education

