

441 G St. N.W.
Washington, DC 20548

June 29, 2021

The Honorable Jack Reed
Chairman
The Honorable James M. Inhofe
Ranking Member
Committee on Armed Services
United States Senate

The Honorable Adam Smith
Chairman
The Honorable Mike Rogers
Ranking Member
Committee on Armed Services
House of Representatives

Servicemember Rights: Stakeholders Reported Servicemembers Have Limited Understanding about Waivers of Their Consumer Rights and Protections

The Servicemembers Civil Relief Act, as amended (SCRA), provides certain legal and financial consumer rights and protections for millions of servicemembers, such as allowing them to terminate apartment or car leases when they enter military service or are deployed.¹ One purpose of the act is to strengthen the national defense by extending certain protections to servicemembers to enable them to devote their energy to the defense needs of the Nation. Businesses may ask servicemembers to waive their rights and protections under SCRA, and lawmakers and others have raised questions about the effects of such waivers.

The conference report accompanying the National Defense Authorization Act for fiscal year 2021 includes provisions for GAO to study the effects of SCRA requirements relating to the timing, content, and form of certain waivers on servicemembers and to study servicemembers' use of their right to bring lawsuits in court under SCRA.

This report describes what selected stakeholders reported about servicemembers' understanding of waivers of rights under SCRA. We conducted semi-structured interviews with 15 stakeholders, including Department of Defense (DOD) legal assistance attorneys and other agency officials and associations that represent servicemembers, companies, and private attorneys.² We identified them based on recommendations from agency officials and other stakeholders, and by reviewing a list of stakeholders we similarly identified for prior related

¹Throughout the report, unless otherwise specified, we use the term servicemembers to refer to active-duty personnel as well as members of the Reserve Components of the Armed Forces.

²Specifically, we interviewed four DOD legal assistance attorneys, three chiefs of DOD legal assistance divisions, officials from the Consumer Financial Protection Bureau and the Department of Justice, four associations representing servicemembers, one business association, and one association of private attorneys that represent, among others, servicemembers in SCRA cases.

work.³ While stakeholders cannot speak directly for servicemembers, all 15 have expertise with SCRA and 14 have regular contact with servicemembers or their representatives, spanning a variety of geographic locations and military branches. Reported information is non-generalizable but provides valuable information as there is no known data on servicemembers' understanding of waivers under SCRA, according to all stakeholders and our background research. We also reviewed relevant reports and summarized our prior work on servicemembers' use of their right to bring lawsuits to court under SCRA.⁴

We conducted this performance audit from February 2021 to June 2021 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Background

Servicemembers' Consumer Rights under SCRA

SCRA provides various consumer protections to covered servicemembers to ease financial burdens on them. Servicemembers covered by SCRA may be full-time members of the military (i.e., active duty) or members of a reserve component who become active duty only when receiving military orders.⁵ Legal and financial protections under SCRA include:

- A 6 percent annual interest rate cap on debt incurred prior to entering active duty.⁶
- The right to terminate residential or motor vehicle leases early without penalty for early termination.⁷
- The right to “stay” a civil court proceeding (i.e., delay court proceedings for not less than 90 days) and protections against default judgments (e.g., rulings made by a court against a party who fails to defend themselves in a lawsuit, such as by failing to show up in court; default judgments could lead to, for example, an immediate eviction).⁸
- Protection against the foreclosure, without a court order, of a servicemember's mortgaged property during their period of military service and within one year after.⁹

³GAO, *Servicemember Rights: Mandatory Arbitration Clauses Have Affected Some Employment and Consumer Claims but the Extent of Their Effects is Unknown*, [GAO-21-221](#) (Washington, D.C.: Feb. 26, 2021).

⁴We identified relevant reports based on stakeholder recommendations.

⁵SCRA protections also apply to members of the National Guard on certain federal orders; commissioned officers in active service of the Public Health Service or the National Oceanic and Atmospheric Administration; and servicemembers absent from active duty on account of sickness, wounds, leave, or other lawful cause. See 50 U.S.C. § 3911(2).

⁶The 6 percent annual interest rate cap generally applies during the period of military service and, in certain instances, for one year after. See 50 U.S.C. § 3937(a).

⁷See 50 U.S.C. § 3955.

⁸See 50 U.S.C. §§ 3931-3932.

⁹See 50 U.S.C. § 3953.

Servicemembers may waive (i.e., relinquish) any of their rights provided under SCRA, and the waiver documenting this agreement may need to follow certain requirements.¹⁰ For example, the waiver must be in writing if it applies to the modification, termination, or cancellation of a contract, lease (e.g., an apartment lease), or mortgage, or to the repossession or foreclosure of certain property. To be valid, such a waiver must also adhere to certain requirements regarding timing, content, and form, as required by SCRA. For example:

- **Timing.** The waiver must be signed during the relevant period of military service.¹¹ For most servicemembers, SCRA protections begin on the date they enter active-duty military service. For military reservists, protections begin upon the receipt of certain military orders.
- **Content.** The waiver must specify the contract, lease, or mortgage to which the waiver applies and generally must name the servicemember.
- **Form.** The waiver must be in at least 12-point type size and be its own document. For example, a valid waiver cannot be included in the same document as a lease or as a footnote in a contract.

Federal Agency Resources for Servicemembers Facing Waivers of Consumer Rights

Servicemembers may seek help from various federal agencies to address their questions or concerns about waivers of their SCRA rights, including:

- **DOD legal assistance offices.** Legal assistance attorneys assist individual servicemembers and their families with personal civil legal affairs, including their SCRA rights and waivers. Legal assistance offices have programs to educate servicemembers about their SCRA rights. As part of its common military training, DOD is required to provide servicemembers training about consumer protection law, including SCRA, during basic training and pre- and post-deployment. Servicemembers may seek help with questions about their SCRA rights from a local DOD legal assistance office, which may review servicemembers' contracts or contact companies to educate them about servicemembers' consumer rights. If a legal assistance attorney cannot resolve a servicemember's SCRA issue with a company, the case may be referred to the Department of Justice (DOJ).
- **DOJ.** DOJ has enforcement authority under SCRA, including issues with respect to waivers. Servicemembers can file consumer claims involving potential violations of SCRA directly with DOJ. In addition, DOJ may pursue SCRA claims in federal district court following an investigation.
- **Consumer Financial Protection Bureau (CFPB).** CFPB's Office of Servicemember Affairs educates servicemembers about financial services, including related SCRA rights. CFPB also reviews consumer complaints submitted by servicemembers and researches servicemembers' finances. CFPB may refer potential SCRA violations to DOJ.

¹⁰See 50 U.S.C. § 3918.

¹¹The waiver may also be signed after the period of military service, such as after a servicemember returns home from deployment.

Selected Stakeholders Reported Servicemembers' Understanding about Waivers of Their Rights and Protections under SCRA Is Limited

Selected Stakeholders Reported that Servicemembers' Understanding about Waivers Is Limited

Twelve of 15 stakeholders we interviewed reported that servicemembers have limited understanding about waivers of their rights and protections under SCRA, and the other three said they did not know or did not respond.¹² For example, eight stakeholders said that most servicemembers do not understand their many rights and protections under SCRA, which would make it difficult to understand waivers of those rights and protections. While seven stakeholders said that servicemembers receive military trainings about their SCRA rights, most stakeholders said they were unaware of training that specifically covers waivers.¹³ Further, three stakeholders said that SCRA trainings may occur in stressful times, such as during boot camp, making it difficult for servicemembers to fully understand what they learned.¹⁴

Servicemembers' reported limited understanding may reflect broader patterns of financial literacy, as six stakeholders reported that the population as a whole is generally uninformed about the content of contracts. For example, three stakeholders cited a CFPB study that found consumers, including servicemembers, had limited understanding of credit card contracts they had signed.¹⁵ While DOD legal assistance attorneys are available to review contracts for servicemembers, including waivers, not all servicemembers seek such assistance. Moreover, two stakeholders said that some companies do not allow consumers to take contracts home before signing them, which they said limits servicemembers' ability to consult with legal assistance attorneys about contracts.

In explaining servicemembers' limited understanding about waivers, four stakeholders said that many servicemembers are young or may be signing contracts for the first time.¹⁶ For example, understanding contracts can be difficult even for financially savvy people, so it may be more difficult for those with less experience. Five stakeholders said they are aware of businesses targeting servicemembers, and two stakeholders said that some companies offer military discounts if servicemembers waive their rights and protections under SCRA.

While the prevalence of waivers is unknown, 10 stakeholders said they are aware of particular industries asking servicemembers to sign waivers of their rights and protections under SCRA.

¹²As described above, stakeholders include legal assistance attorneys and 14 of the 15 stakeholders have regular contact with servicemembers or their representatives, spanning a variety of locations and military branches.

¹³Five stakeholders said trainings may cover waivers at the discretion of the legal assistance office.

¹⁴As described above, DOD requires training about consumer protection law during basic training ("boot camp") and pre- and post-deployment. According to CFPB, such information provided in basic training is not always well absorbed due to the rigorous physical, emotional, and temporal demands of that time, so CFPB provides additional optional training for people waiting to begin their military service. For more information, see Consumer Financial Protection Bureau, *The Office of Servicemember Affairs: Charting our course through the military lifecycle*. (Washington, D.C.: May 2017).

¹⁵Specifically, the study surveyed 570 consumers who signed credit card contracts that stipulated whether they can bring a lawsuit against their credit card company in court, and approximately one-half did not know whether they could. Of the 280 whose contract stipulated consumers cannot bring a lawsuit in court, approximately 7 percent correctly responded that they cannot. Consumer Financial Protection Bureau, *Arbitration Study: Report to Congress, pursuant to Dodd-Frank Wall Street Reform and Consumer Protection Act § 1028(a)* (March, 2015).

¹⁶According to DOD data, more than half of active-duty enlisted servicemembers and more than one-third of enlisted reservists are 25 or younger. U.S. Department of Defense, Office of the Deputy Assistant Secretary of Defense for Military Community and Family Policy, *2019 Demographics: Profile of the Military Community*.

These industries include rental housing, storage units, and auto dealers. Three stakeholders said some statewide property rental associations provide standard SCRA waiver forms to their members. In addition, five stakeholders said there may be regional variation in the prevalence of waivers. For example, three stakeholders said that certain states have stronger tenant protections than SCRA, so waivers of rights and protections under SCRA may be uncommon there. Additionally, four stakeholders said that in areas with large military populations, waivers may be commonplace in certain industries such as rental housing.

Selected Stakeholders Reported that Servicemembers' Understanding of Waivers Is Not Ensured by the Timing, Content, and Form Requirements under SCRA

Most stakeholders we interviewed reported that the requirements under SCRA about the timing, content, and form of certain waivers do not ensure servicemembers' understanding.¹⁷

Timing. Thirteen of the 15 stakeholders said that the required timing of the waiver does not ensure a servicemembers' understanding.¹⁸ Eight stakeholders expressed the view that it is problematic to sign a waiver before a situation arises in which a servicemember needs to use a right or protection under SCRA. For example, an active duty servicemember may sign an apartment lease close to the current duty station but then be requested to relocate. When the servicemember first signed the waiver, they may not have known they would have a future reason to terminate the lease.

Most stakeholders described situations in which the timing may increase the likelihood for servicemembers to sign a waiver, regardless of their understanding. Six stakeholders said that servicemembers may need services urgently, such as when they deploy or relocate. In such situations, these stakeholders said that servicemembers may not have time to consult a legal assistance attorney to understand a waiver they are asked to sign, or that understanding waivers may be a relatively low priority among the numerous tasks they face. For example, once servicemembers receive orders to deploy or relocate, some may have a matter of days to obtain storage, terminate an apartment lease, move themselves and their families, and locate doctors and schools near their new home. Moreover, six stakeholders questioned whether signing a waiver was voluntary if waivers are required for products or services that the servicemember urgently needs or if most local businesses in that industry require a waiver. For example, one stakeholder recalled a servicemember who had arranged housing before being relocated to a new town, and when she picked up her keys she was asked to sign a waiver, which she signed because she needed housing immediately. Three stakeholders said this issue may be particularly relevant for servicemembers called up from the reserves, for example, due to a national emergency.

Content. Eleven stakeholders said that the content requirement does not ensure servicemembers' understanding. Nine stakeholders said that the content of waivers can be unclear, such as when sections of the U.S. Code are cited or legal language is used, which can be difficult to understand. For example, one stakeholder showed us a waiver that said the servicemember waives rights under SCRA, "including the right to a stay of a judgment under Section 204 of the SCRA, and my eviction rights under Section 301 of the SCRA." This and other stakeholders said that unless servicemembers know the contents of the referenced SCRA sections, it is very unlikely they will understand what such a waiver means. Moreover, two

¹⁷As described above, businesses may ask servicemembers to waive their rights and protections under SCRA, and the waiver documenting this agreement may need to follow certain requirements.

¹⁸As described above, the waiver must be signed during or after the relevant period of military service.

stakeholders said that electronic signing may result in less comprehension, for example because the signer can skip to the signature screens without reading the content.

Form. While five stakeholders said that the form requirement may improve servicemembers' awareness, most stakeholders also said it does not ensure servicemembers' understanding regarding waivers. For example, six stakeholders said contracts, including SCRA waivers, can be long, and that lengthy contracts are a barrier to servicemembers' understanding. However, five stakeholders said that the form requirement signals to servicemembers that they are signing a waiver or elevates its importance for servicemembers.

Four stakeholders said that servicemembers implicitly trust that their rights are protected, regardless of waivers to those rights. Most of these said that SCRA provides valuable rights and that servicemembers may not believe they will need those rights. However, DOJ officials said that once a servicemember signs a valid waiver of rights and protections under SCRA, those rights have been forfeited.

Six stakeholders also said they know of businesses that have not adhered to the waiver requirements for timing, content, or form under SCRA. For example, DOJ and other stakeholders described a 2020 DOJ settlement with San Antonio housing providers that used an invalid waiver under SCRA. DOJ alleged that the waiver was invalid in part because it was expressly incorporated into the housing lease as an addendum and was signed at the same time as the lease.¹⁹

Selected Stakeholders Reported that Servicemembers Sign Waivers with Limited Understanding of the Effects

Thirteen of 15 stakeholders reported that servicemembers generally do not understand the implications of waivers under SCRA, and 9 said that waiving rights and protections under SCRA could potentially lead to a wide range of negative effects for servicemembers. Nine stakeholders described instances when signing a waiver could lead to negative financial outcomes, such as early termination fees for rental housing, repossession of property, or foreclosure. Four stakeholders said these issues could be difficult to remedy while deployed or at sea. Three stakeholders said that negative financial outcomes could affect a servicemember's credit score, security clearance, and ultimately their military employment. Stakeholders described other negative effects of waivers, such as diminished reputation, forfeiture of storage unit content, or eviction.

Seven stakeholders reported that another provision could also affect SCRA rights and protections, namely mandatory arbitration clauses. These clauses generally require disputes to be resolved in private proceedings with neutral third-party arbitrators rather than in court.²⁰ As we reported in 2021, mandatory arbitration clauses have prevented servicemembers from resolving certain claims in court, including consumer claims under SCRA.²¹ Some stakeholders told us that mandatory arbitration clauses could prevent servicemembers from availing themselves of potentially important processes that are typically available in a judicial forum, such as robust discovery or the ability to appeal interpretations of the law. Representatives of businesses and firms that administer arbitrations told us that arbitration has attributes that can

¹⁹See Consent Order at 2-3, U.S. v. W. Rim Invs., No. SA-20-CV-1147 (W.D. Tex. Sept. 28, 2020).

²⁰Mandatory arbitration clauses may be included in contracts or agreements that individuals (including servicemembers) may sign when, for example, they take out a loan or buy a car.

²¹[GAO-21-221](#).

benefit servicemembers, including that it is generally designed to be easier for individuals to use without an attorney than going to court. These representatives said if required to go to court, servicemembers would be uniquely dependent on hiring attorneys.

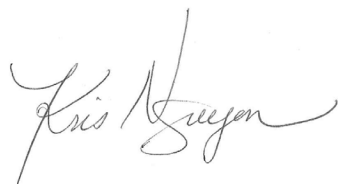
Five stakeholders we spoke with for this report said that mandatory arbitration clauses effectively waive servicemembers' rights under SCRA.²² Two stakeholders said that arbitration clauses may deter servicemembers from seeking remedy for potential SCRA violations, such as when a servicemember has relocated and now the arbitration firm is across the country. In contrast to the waivers of rights and protections under SCRA described elsewhere in this report, DOJ and other stakeholders said that mandatory arbitration clauses do not necessarily remove a servicemembers' ability to have SCRA claims resolved in court. This is because DOJ has a separate right of enforcement under SCRA and can pursue a SCRA claim in court even when the servicemember signed a mandatory arbitration clause, as we reported in 2021.²³

Agency Comments

We provided a draft of this report to the Consumer Financial Protection Bureau, the Department of Defense, and the Department of Justice for review and comment. The Consumer Financial Protection Bureau and the Department of Defense said they had no comments on the report. The Department of Justice provided technical comments, which we incorporated as appropriate.

We are sending copies of this report to the appropriate congressional committees, the Acting Director of the Consumer Financial Protection Bureau, the Secretary of Defense, the Attorney General, and other interested parties. In addition, the report will be available at no charge on the GAO website at <https://www.gao.gov>.

If you or your staff members have any questions about this report, please contact me at (202) 512-7215 or nguyentt@gao.gov. Contact points for our offices of Congressional Relations and Public Affairs may be found on the last page of this report. Key contributors to this report were Michael Collins (Assistant Director), Laura Hoffrey (Analyst In Charge), and Andrew Emmons. Other contributors to this report include Brenda Farrell, Kimberley Granger, Jean McSween, SaraAnn Moessbauer, Tom Moscovitch, Almata Spencer, Kate van Gelder, and Adam Wendel.



Tranchau (Kris) T. Nguyen
Director, Education, Workforce, and Income Security Issues

(105026)

²²The United States Supreme Court has stated that individuals who enter into contracts or agreements with mandatory arbitration clauses do not forgo the substantive rights provided by a statute. Instead, they only submit to the resolution of disputes in an arbitral, rather than a judicial, forum. See *Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth, Inc.*, 473 U.S. 614, 628 (1985).

²³[GAO-21-221](#). DOJ may commence a civil action in federal court against any person who engages in a pattern or practice of violating SCRA or engages in a violation of SCRA that raises an issue of significant public importance. See 50 U.S.C. § 4041.

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