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UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF POSTSECONDARY EDUCATION

THE ASSISTANT SECRETARY

GEN-14-16

Subject: Improved Administration of the Servicemembers Civil Relief Act for Borrowers Under the William D. Ford Direct Loan and Federal Family Education Loan Programs

Summary: This letter provides guidance related to the maximum interest rate that may be charged to certain Direct Loan and Federal Family Education Loan program borrowers who are on active-duty military service under the Servicemembers Civil Relief Act. This letter also discusses the use by lenders and lender servicers of the Department of Defense's Defense Manpower Data Center database.

Dear Colleague:

On August 14, 2008, as part of the Higher Education Opportunity Act, Congress amended §428(d) of the Higher Education Act of 1965, as amended (HEA), to provide that the maximum interest rate that may be charged to certain servicemembers under §207 of the Servicemembers Civil Relief Act (SCRA), 50 U.S.C. App. §527, would apply to loans made under the William D. Ford Federal Direct Loan (Direct Loan) Program and the Federal Family Education Loan (FFEL) Program. The U.S. Department of Education (Department) published implementing regulations on October 29, 2009, which provide that once a loan holder (the Secretary or a FFEL loan holder) receives a borrower's written request and a copy of the borrower's military orders, the maximum interest rate on any Direct Loan or FFEL program loan made prior to the borrower entering active duty status is six percent while the borrower is on active-duty status. (See 34 CFR §§685.202(a)(4) and 682.202(a)(8).)

In June 2011, the Department sent a letter to organizations representing FFEL lenders, guaranty agencies, and loan servicers in response to questions they had raised regarding the requirements for granting the SCRA benefit to borrowers. In responding to those questions, we noted that, under the SCRA, a borrower (or the borrower's representative) must provide the lender or servicer with a copy of the borrower's military orders that reflect the borrower's active-duty status and that the borrower must make a written request to the lender to provide the benefit of the lower interest rate under the SCRA. We also noted that the Department does not interpret or enforce the SCRA, and would need to consult with other federal agencies with regard to any possible flexibility in implementing the regulations. In response to a series of later inquiries, the Department clarified that the borrower could submit the written request for the SCRA interest rate benefit through electronic means (such as e-mail or text message), and authorized use of the Department of Defense's (DOD's) Defense Manpower Data Center (DMDC) database, which allows creditors to confirm that a borrower is (or has been) in military service and the dates of that service, to confirm and/or extend the dates of a servicemember's military service period without further contact with the borrower.

We have also been working with the U.S. Department of Justice and other federal agencies to find ways to ease the process for loan holders to confirm servicemembers' eligibility for the

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benefits of §527 of the SCRA. As a result of those efforts, the Department has adopted new procedures for determining which borrowers are eligible for benefits under the SCRA and for what periods. The Department is implementing these procedures for the loans it holds and, in this letter, is authorizing FFEL lenders to adopt similar procedures.

Under the new procedures, the Department's loan servicers use the DOD's SCRA website, which is available at <https://www.dmdc.osd.mil/appj/scra> to access the DMDC database. The Department has determined that the DMDC database provides sufficient supporting documentation of an individual's eligibility for the SCRA interest rate limitation by identifying borrowers who are, or who have been, in military service and by confirming the dates of that service. Earlier this year, each of the Department's servicers compared its database of borrowers against the DMDC, and each will continue to do so on a regular basis. As they identify borrowers who are eligible for benefits under the SCRA, the servicers will apply the interest rate limitation to the borrower's account and, to the extent necessary, recalculate the borrower's balance.

In addition, we have directed the Department's servicers to check the names of borrowers against the DMDC and to apply the interest rate limitation to the accounts of eligible borrowers without a request from the borrower.

As we have directed the Department's servicers, we are authorizing and encouraging FFEL lenders and lender-servicers, effective with the date of this guidance, to use the DMDC's SCRA website to identify borrowers who are eligible for the interest rate limitation under the SCRA and to grant that benefit. Without a specific request from the borrower, FFEL loan servicers may affirmatively check the names of all borrowers whose loans they service against the DMDC database to identify borrowers who qualify for the SCRA interest rate limitation. Once a borrower's status and service dates have been confirmed using the DMDC, the loan servicer may use the DMDC-generated certification information in lieu of requiring a request from the borrower and a copy of the servicemember's military orders to support the borrower's receipt of the SCRA interest rate limitation. The loan servicer must retain the supporting information from the DMDC in the borrower's file. When the loan servicer applies the SCRA's interest rate limitation to a borrower's account, it must notify the borrower that the interest rate on the loan has been changed.

A FFEL lender that uses the DMDC to confirm a borrower's SCRA status and grant the interest rate limitation, and that maintains the supporting information from the DMDC, will not be subject to any program liabilities if any information provided by the DMDC is found to be incorrect. The loan servicer does not need to confirm the information provided by the DMDC.

Historically, to receive the interest rate limitation under the SCRA, a borrower must provide written notice and a copy of the military orders within 180 days of the servicemember's termination or release date from military service. Under the process described above, the applicant will not need to make a request for the lower interest rate or provide any notice to the loan servicer, and the loan servicer will be relying on the DMDC and not on information from the servicemember. Under these circumstances, the 180 day time limit cannot be applied.

Reservists who have received orders to report for military service or who are in military service are also entitled to the interest rate limitation under the SCRA. A lender may confirm the

eligibility of a reservist using the DMDC and rely on the dates reflected in the system as the active-duty service period for which the borrower is eligible for the reduced interest rate, including using the reservist's order notification date as the start date of the service period.

FFEL lenders are reminded that there are two important limitations on the application of the SCRA's interest rate to FFEL program loans and Direct Loans. First, the SCRA applies only to loans taken out by a servicemember before the servicemember entered active-duty military service. It does not apply to loans taken out after the borrower's active-duty military service began. Second, because a consolidation loan is a new loan, a consolidation loan made after the borrower has started active-duty military service is not eligible for benefits under the SCRA even if the underlying loans were taken out prior to the start of active-duty service. For this purpose, a consolidation loan will be considered eligible for benefits under the SCRA as long as the borrower applied for the consolidation loan before starting active-duty military service.

We believe the new procedures discussed in this letter will reduce the burden on both borrowers and loan servicers in providing this important benefit.

If you have any questions about this guidance, please contact Pamela Moran at 202-502-7732 or by e-mail at pamela.moran@ed.gov or Nathan Arnold at 202-219-7134 or by e-mail at nathan.arnold@ed.gov.

Sincerely,



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